



2013 Bulletin #22

Prohibition On Charging Separate Fees for Release Tracking or Post Closing Lien Searches

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Over the weekend, DFS's Division of Agent and Agency Services released a [newsletter](#) article which prohibited charging a separate fee for Release Tracking or Post-Closing Lien Searches. Release Tracking services provide a definite value and can help an agency more efficiently make sure liens are properly cleared and avoid future claims – they may be a good business decision even if we are not permitted to charge for them separately.

Here is the full text of DFS article:

Title Agencies: Release Tracking or Post Closing Lien Search Fees

The Florida Statutes defines "primary title services" to mean determining insurability in accordance with sound underwriting practices based upon evaluating a title search or such other information, determining and clearing of underwriting objections and requirements to eliminate risk, preparing and issuing a title insurance commitment, and preparing and issuing the policy. Such services do not include closing services or title searches, for which a separate charge or separate charges may be made.

The Florida Statutes further define "premium" as the charge that is made by a title insurer for a title insurance policy, including the charge for performing primary title services, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms. The word "premium" does not include a commission.

Under primary title services the title insurance agent or agency is required to perform a determination and clearance of underwriting objections and requirements to eliminate risk. If the agent or agency fails to verify that the proper releases have been satisfied and recorded then these requirements have not been fulfilled.

You will note that primary title services are considered to be a part of the premium. Therefore, charging a separate fee for tracking a release or performing the post closing search to confirm the status of the property's title would be

considered to be charging an additional premium to the insured, which is not permitted. [\[See 627.7711, Florida Statutes\]](#)

This article has raised a few questions and areas of potential concern. Will this rule be narrowly limited to post-closing matters? Or applied to any cost of clearing title objections and requirements? A broader interpretation could be problematic for all agencies if it requires condo and HOA estoppel fees, rush fees, the legal fees for quiet title actions, probates and guardianships and other costs of satisfying the commitment requirements to all be paid out of Premium. Such costs can easily exceed the total Premium paid.

Our friends at ReQuire disagree with the DFS interpretation, and point out that when the Texas Department of Insurance raised essentially the same issue, the Texas Department of Insurance ultimately reached the opposite conclusion. [\[TDI Letter\]](#) [\[TDI Ruling\]](#). ReQuire has indicated they plan to schedule a meeting with Ray Wenger, at DFS and Peter Rice and Jeff Joseph at OIR to discuss and seek further clarification of this issue.

This type of article usually indicates that the Department has identified a problem and intends to start enforcing violations through fines and other penalties. We encourage all of our agents to be aware of and compliant with DFS' position on this matter until the differences of opinion have been fully resolved.

As always, FLTA will keep you informed as this further information becomes available!

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