

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 826

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Title Insurance Claims

DATE: January 26, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/CS
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS requires title insurance companies to cover additional costs paid by the insured while a challenge to title is being cured. The additional coverage is only applied if the failure to establish title directly impacts the costs paid by the insured. In the event of a complete loss of title the CS requires insurers to pay full policy limits regardless of market value. Additionally, the CS requires insurers to issue supplemental policies to owners of real property whenever a new “loan policy” is issued. Finally, the CS requires all title searches to begin from the “root of title” pursuant to s. 712.01(2), F.S.

This bill creates the following sections of the Florida Statutes: 627.7832, 627.7844.

This bill amends the following section of the Florida Statutes: 627.7845

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer² that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is lending money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Regulation

In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage³ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁴

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.⁵ Title insurers may deviate from the prescribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁶ In Florida, title insurers can only transact title insurance and cannot transact any other type of insurance.⁷

Challenges

There are no set timeframes in statute as to when disputes to a title of real property must be cured by a title insurance company. The insurance company's primary objective in a dispute is to

¹ Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

² 627.7711(3), F.S.

³ Section 627.777, F.S.

⁴ Section 627.782, F.S.

⁵ Section 627.782, F.S.

⁶ Section 627.783, F.S.

⁷ Section 627.786, F.S.

validate the policy as issued. If a challenge to title is brought, the title insurance company can settle with the challenging parties, challenge the dispute in court or tender partial or full policy limits for any damages occurred to the insured from the partial or total loss of title. Often disputes to title of real property can be settled between the parties involved without the involvement of the courts, thus cutting down on the time it takes for a challenge to title to be cured.

Loss of Title

When a complete loss of title occurs the insurer will tender full policy limits if at the time of loss the market value of the real property is at or above the policy limits originally insured. Consequently, if at the time of loss the market value of the real property is below the value initially insured, the insurer will only pay the insured the market value of the real property and not the limits initially insured.

Searches

Florida law does not require how far back a title search must go. Often new policies are issued based on the results of the previous title search performed. While s. 712.01(2), F.S. does not impose a timeframe it does define the “root of title” being the last previous owner to have owned the real property for 30 years or more.

III. Effect of Proposed Changes:

The CS requires title insurers to pay full policy limits within 90 days after a challenge to title is filed or cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include; attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees and or mortgage interest paid up until the claim is cured. The CS states the additional coverage only applies if the failure to establish title directly impacts the costs paid by the insured. Additional, the CS requires title insurers must pay full policy limits regardless of market value whenever a complete loss of title occurs. The CS requires insurers to issue supplemental policies to owners of real property whenever a new “loan policy” is issued and allows owners to waive in writing the new loan coverage. Finally, the CS requires all title searches to begin from the “root of title” pursuant to s. 712.01(2), F.S. This Act applies to all title insurance policies issued after July 1, 2012

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Title insurance companies would be subject to additional costs when trying to cure a challenge to title.

Owners of real property must decline in writing any new supplemental policies issue.

C. Government Sector Impact:

None

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 26, 2012.

Section 1 – Creates s. 627.7832, F.S., which requires title insurers to cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include; attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees and or mortgage interest paid up until the claim is cured. The additional coverage only applied if the failure to establish title directly impacts the costs paid by the insured. In the event of complete loss of title the insurer shall pay full policy limits regardless of market value.

Sections 2 - Creates s. 627.7844, F.S., which requires insurers to issue supplemental policies to owners of real property whenever a new “loan policy” is issued. Furthermore, owners of the real property may waive in writing the new loan coverage policies.

Section 3 – Amends 627.7845, F.S., which requires all title searches to begin from the “root of title” pursuant to s. 712.01(2), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
