



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

TARGET MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ATTORNEYS' TITLE INSURANCE FUND, INC.

AS OF

October 12, 2006

NAIC COMPANY CODE: 50687

NAIC GROUP CODE: 0750

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
PURPOSE AND SCOPE OF EXAMINATION.....	2
COMPANY OPERATIONS	2
POLICY REVIEW	3
AFFILIATED BUSINESS ARRANGEMENTS REVIEW	5
REINSURANCE REVIEW	5
COMMISSIONS REVIEW	5
RATES REVIEW	6
EXAMINATION REPORT SUBMISSION	6

EXECUTIVE SUMMARY

A sample of 100 randomly selected policies and 50 policies in which the loan policy was issued to Attorneys' Mortgage Service (AMS) was reviewed. The following represents general findings, however, specific details are found in each section of the report.

Sample Files Reviewed – 150 Files

- One hundred (100) title policies randomly selected.
- Fifty (50) title policies in which AMS was the insured lender.

EXAMINER: EXAMINATION RESOURCES, LLC

<u>TABLE OF TOTAL VIOLATIONS</u>			
<u>Initial review</u>			
Statute/Rule	Description	Files Reviewed	Number of Violations
624.424(1)(a) F.S.	Failure to calculate the underwriter's retention portion of the premium based on the total risk premium charged by agents on 36 policies, resulting in an understatement of premium on the 2004 Annual Statement and the September 30, 2005 Quarterly Statement.	100	36
624.424(1)(a) F.S.; 690-186.003 (9)(c) F.A.C.	Failure to record premium on the date of issuance as required by Standard Statutory Accounting Principles No. 57 resulting in inaccurate recording of premium and thus incorrectly filed Quarterly and/or Annual Statements. Failure to require timely remittance of retention premium.	100	56
690-186.003 (2)(a), F.A.C.	Failure to apply reissue rates on 4 eligible policies.	100	4
690-186.003 (1), F.A.C.	Failure to apply promulgated rates consistent with the Florida Administrative Code for 6 policies, resulting in premium overcharges of \$842.75. Projected over the 816,275 policies issued during the scope period indicates overcharges of approximately \$6.8 million.	100	6
690-186.003 (2)(b), F.A.C.	Failure to obtain and retain a copy of the prior policy on 22 policies in which reissue rates were applied.	100	22
690-186.003 (9)(a), F.A.C.	Failure to determine the retention premium based on the actual risk premium charged insureds on 42 policies, which resulted in retention undercharges totaling \$2,213.03.	100	42
626.9541(1) (h)3.a., F.S.	Inducements or unearned fees for the referral of title insurance.	50	1

PURPOSE AND SCOPE OF EXAMINATION

Under authorization of the Financial Services Commission, Office of Insurance Regulation, Market Investigations (Office), pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of Attorneys' Title Insurance Fund, Inc. (Company) was performed by Examination Resources, LLC. The scope of this examination was January 1, 2004 through September 30, 2005. The examination began November 7, 2005 and ended October 2, 2006.

The purpose of this examination was to review arrangements with homebuilders, realtors, lenders, title agents, title agencies, and reinsurers; to investigate payments of kickbacks in exchange for business; and, to verify the Company's compliance with Florida Statutes and Administrative Rules. The Company records were examined at 6545 Corporate Centre Boulevard, Orlando, Florida 32822.

This Final Report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company and by its agents. Utilizing the Audit Command Language (ACL) software, 100 policy files were randomly selected for review from data files provided by the Company. Another sample of 50 policy files was randomly selected from the list of policies in which the Company's affiliate, Attorneys' Mortgage Services, LLC (AMS), was the insured lender. Procedures and conduct of the examination were in accordance with the Market Conduct Examiner's Handbook produced by the National Association of Insurance Commissioners.

Error tolerance levels applied are as follows: monetary returns under \$5.00 were waived; zero tolerance levels were applied to all improprieties by the Company which were in violation of Florida Statutes and Administrative Rules.

COMPANY OPERATIONS

Attorneys' Title Insurance Fund, Inc. is a domestic title insurer licensed to conduct business in the State of Florida. The Company provides title insurance policies on both commercial and residential properties in Florida through member agents and agencies.

The Company's rates are mandated by Section 627.782, Florida Statutes, and Rule 69O-186.003, Florida Administrative Code.

Total Direct Premiums Written during the scope of the examination, as reported on the Company's Annual Statements, are broken down as follows:

Year	Total Written Premium (Florida)
2004	396,973,170
2005	331,202,279 *

*As of 09/30/05

POLICY REVIEW

Findings:

The Company wrote approximately 816,275 policies during the examination period. One hundred (100) policies were reviewed. A total of 167 violations were found in 81 policies, while no violations were found in 19 policies.

Violations found were as follows:

1. **Thirty-six (36) violations related to the Company's practice of recording the minimum premium instead of the total risk premium charged for title insurance,** resulting in an understatement of premium in the 2004 Annual Statement and the September 30, 2005 Quarterly Statement. The failure to record the full premium resulted in incorrect filed Annual and Quarterly Statements, which is not in compliance with Section 624.424(1)(a), Florida Statutes. In addition, the failure to report the full premium results in an underpayment of required premium tax.

Corrective Action: The Company should discontinue the practice of recording the minimum premium and record the premium actually charged insureds. A procedure should be implemented to identify and document the premiums actually paid by the insured and maintain those records to substantiate the basis for the quarterly and annual filings. The Company should perform a self audit to determine the full amount of premiums during the scope period and then pay with interest any resulting underpayments in premium tax.

2. **Fifty-six (56) violations related to the Company's practice of recording premium upon receipt of policy information from its member agents instead of at the date of policy issuance as required by Standard Statutory Accounting Principles No. 57.** The failure to record premium on these policies on a timely basis results in an inaccurate recording of premium, and thus incorrectly filed Quarterly and/or Annual Statements based on estimated premium amounts, a violation of Section 624.424(1)(a), Florida Statutes. In addition, the Company failed to require its agents to remit the retention premium on a timely basis, a violation of Rule 69O-186.003(9)(c), Florida Administrative Code. The rule requires the underwriter's retention be remitted on a monthly basis and the Company's agency contracts require the agent to remit the retention within 30 days of collection along with a copy of each premium bearing commitment.

Corrective Action: The Company should require its agents to send notification of commitment and or policy issuance on a monthly basis and remit retention premium within 30 days of collection so that premium can be recorded in a timely and accurate manner.

Company Response: The Company believes that quarterly submission of anticipated premium receipts is an industry practice. The Company also indicated it is now requiring that agents submit the retention premium at the time of closing.

3. **Four (4) violations were due to the Company's failure to apply the reissue rates on eligible policies, as required by Rule 69O-186.003(2)(a), Florida Administrative Code.** The Company applied the reissue rates in determining the retention premium due from the agent, but failed to apply the reissue rates in the premium charged to the insureds.

Corrective Action: The Company should apply reissue rates in determining premium charged the insured on all applicable policies. The Company has since this exam settled a class action suit addressing the issue of reissue rates. The Company has settled with a class that includes all of the files in the examination scope period. In addition to making cash payments, the Company has implemented procedures to effect the application of the reissue rate by agents when applicable.

4. **Six (6) violations were due to the Company's failure to apply rates consistent with the Rule 69O-186.003(1), Florida Administrative Code, resulting in \$842.75 in premium overcharges. Based on information provided to the Office, the Company projects that over the 816,275 policies issued during the scope period that there were average overcharges in the approximate amount of \$6.8 million.**

Corrective Action: The Company should adopt procedures to ensure that premiums charged on all policies written are consistent with promulgated rates. In addition, the Company should submit a plan to the Office for identifying insureds who were overcharged and refunding with interest the amounts overcharged.

5. **Twenty-two (22) violations were due to the Company's failure, as reissuing underwriter, to retain a copy of the prior policy as required by Rule 69O-186.003(2)(b), Florida Administrative Code, on policies meeting requirements for reissue rates.**

Corrective Action: The Company should establish a procedure to obtain and retain a copy of the prior policy on all policies meeting the criteria to support the application of reissue rates. The Company has indicated that since this exam it has implemented such a procedure.

6. **Forty-two (42) violations were due to the Company's failure to determine the appropriate retention premium based on the actual risk premium charged to insureds, a violation of Rule 69O-186.003(9)(a), Florida Administrative Code.** Instead, the Company based the retention on the minimum premium. This failure to determine the appropriate retention premium is not consistent with the aforementioned rule and resulted in total retention undercharges of \$2,213.03.

Corrective Action: The Company should establish procedures to identify the amount of the actual risk premium charged to the insured and require its agents to remit the Company's full retention premium based on the total risk premium charged. The Company has indicated that since this exam it has implemented an aggressive training program of its agents to correct this issue and is encouraging the use of computer software that requires a matching of the risk premium charged the insured on the HUD-1

statement with the risk premium reported to the Company. It has increased its audit staff and has changed its policy processing function to better verify that policies have been accurately rated and the correct retention premium remitted.

AFFILIATED BUSINESS ARRANGEMENTS REVIEW

Findings:

None of the files provided by the Company included the Affiliated Business Arrangement Disclosure to the person being referred. As of January 1, 2003, the Company and Rudd, Inc. each owned 45% interest in Attorneys' Mortgage Services, LLC (AMS) and Attorneys' Mortgage Services, Inc. (AMS, Inc.) owned 10%. AMS provided mortgage banking services primarily in Florida to attorneys and the Company's attorney members and their clients. During the examination period, the Company issued approximately 1,927 title insurance policies in which AMS was the insured lender. A sample of 50 of these policies was reviewed for the purpose of verifying that the affiliated business arrangement between the Company and AMS was disclosed to those AMS borrowers. Affiliated business arrangements are allowed under 12 USC Section 2607(c)(4)(A), with prohibition against kickbacks and unearned fees, as long as the affiliated business arrangement is disclosed to the person being referred. A 2004 capital distribution realized by owners was not commensurate with the percentages of ownership. A condition of 12 USC Section 2607(c)(4)(C), is that the only thing of value received from the affiliated business arrangement is a return based on ownership interest. According to AMS financial statements, a capital distribution of \$160,197 was made in 2004. The Company advised that this distribution was determined based on Rudd's personal tax liability. The Company, Rudd, Inc., and AMS, Inc. each received an amount equal to their ownership interest. However, the Company and AMS, Inc. reinvested their distributions as capital in that same year without receiving any increase in ownership. So, in essence, Rudd, Inc. was the only affiliate that realized a distribution for 2004. This is a violation of Section 626.9541(1)(h)3.a., Florida Statutes, inducements and/or unearned fees for the referral of title insurance.

Corrective Action: The Company should establish a procedure to ensure that Affiliated Business Arrangements are properly disclosed to all persons being referred and that all returns in affiliated business arrangements are commensurate with the party's ownership interest.

REINSURANCE REVIEW

The Company provided an overview of its reinsurance program regarding reinsurance ceded, as well as copies of contracts and a summary of transactions. None of the agreements related to realtors, lenders or homebuilders. No exceptions were noted.

COMMISSIONS REVIEW

A sample of 5 agent agreements and 5 agency agreements was reviewed. No exceptions were noted.

RATES REVIEW

Examiners reviewed the Company's Rate Manual and Rules, which agreed with the promulgated rates consistent with Rule 69O-186.003, Florida Administrative Code. No exceptions were noted.

EXAMINATION FINAL REPORT

The Office hereby issues this Final Report, which is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company and its agents.