

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Title Insurance Act is amended by changing
5 Sections 3 and 17 and by adding Section 17.1 as follows:

6 (215 ILCS 155/3) (from Ch. 73, par. 1403)

7 Sec. 3. As used in this Act, the words and phrases
8 following shall have the following meanings unless the context
9 requires otherwise:

10 (1) "Title insurance business" or "business of title
11 insurance" means:

12 (A) Issuing as insurer or offering to issue as insurer
13 title insurance; and

14 (B) Transacting or proposing to transact one or more of
15 the following activities when conducted or performed in
16 contemplation of or in conjunction with the issuance of
17 title insurance;

18 (i) soliciting or negotiating the issuance of
19 title insurance;

20 (ii) guaranteeing, warranting, or otherwise
21 insuring the correctness of title searches for all
22 instruments affecting titles to real property, any
23 interest in real property, cooperative units and

1 proprietary leases, and for all liens or charges
2 affecting the same;

3 (iii) handling of escrows, settlements, or
4 closings;

5 (iv) executing title insurance policies;

6 (v) effecting contracts of reinsurance;

7 (vi) abstracting, searching, or examining titles;

8 or

9 (vii) issuing insured closing letters or closing
10 protection letters;

11 (C) Guaranteeing, warranting, or insuring searches or
12 examinations of title to real property or any interest in
13 real property, with the exception of preparing an
14 attorney's opinion of title; or

15 (D) Guaranteeing or warranting the status of title as
16 to ownership of or liens on real property and personal
17 property by any person other than the principals to the
18 transaction; or

19 (E) Doing or proposing to do any business substantially
20 equivalent to any of the activities listed in this
21 subsection, provided that the preparation of an attorney's
22 opinion of title pursuant to paragraph (1)(C) is not
23 intended to be within the definition of "title insurance
24 business" or "business of title insurance".

25 (1.5) "Title insurance" means insuring, guaranteeing,
26 warranting, or indemnifying owners of real or personal property

1 or the holders of liens or encumbrances thereon or others
2 interested therein against loss or damage suffered by reason of
3 liens, encumbrances upon, defects in, or the unmarketability of
4 the title to the property; the invalidity or unenforceability
5 of any liens or encumbrances thereon; or doing any business in
6 substance equivalent to any of the foregoing. "Warranting" for
7 purpose of this provision shall not include any warranty
8 contained in instruments of encumbrance or conveyance. Title
9 insurance is a single line form of insurance, also known as
10 monoline. An attorney's opinion of title pursuant to paragraph
11 (1)(C) is not intended to be within the definition of "title
12 insurance".

13 (2) "Title insurance company" means any domestic company
14 organized under the laws of this State for the purpose of
15 conducting the business of title insurance and any title
16 insurance company organized under the laws of another State,
17 the District of Columbia or foreign government and authorized
18 to transact the business of title insurance in this State.

19 (3) "Title insurance agent" means a person, firm,
20 partnership, association, corporation or other legal entity
21 registered by a title insurance company and authorized by such
22 company to determine insurability of title in accordance with
23 generally acceptable underwriting rules and standards in
24 reliance on either the public records or a search package
25 prepared from a title plant, or both, and authorized by such
26 title insurance company in addition to do any of the following:

1 act as an escrow agent pursuant to subsections (f), (g), and
2 (h) of Section 16 of this Act, solicit title insurance, collect
3 premiums, or issue title insurance commitments, policies, and
4 endorsements of the title insurance company; provided,
5 however, the term "title insurance agent" shall not include
6 officers and salaried employees of any title insurance company.

7 (4) "Producer of title business" is any person, firm,
8 partnership, association, corporation or other legal entity
9 engaged in this State in the trade, business, occupation or
10 profession of (i) buying or selling interests in real property,
11 (ii) making loans secured by interests in real property, or
12 (iii) acting as broker, agent, attorney, or representative of
13 natural persons or other legal entities that buy or sell
14 interests in real property or that lend money with such
15 interests as security.

16 (5) "Associate" is any firm, association, partnership,
17 corporation or other legal entity organized for profit in which
18 a producer of title business is a director, officer, or partner
19 thereof, or owner of a financial interest, as defined herein,
20 in such entity; any legal entity that controls, is controlled
21 by, or is under common control with a producer of title
22 business; and any natural person or legal entity with whom a
23 producer of title business has any agreement, arrangement, or
24 understanding or pursues any course of conduct the purpose of
25 which is to evade the provisions of this Act.

26 (6) "Financial interest" is any ownership interest, legal

1 or beneficial, except ownership of publicly traded stock.

2 (7) "Refer" means to place or cause to be placed, or to
3 exercise any power or influence over the placing of title
4 business, whether or not the consent or approval of any other
5 person is sought or obtained with respect to the referral.

6 (8) "Escrow Agent" means any title insurance company or any
7 title insurance agent, including independent contractors of
8 either, acting on behalf of a title insurance company, which
9 receives deposits, in trust, of funds or documents, or both,
10 for the purpose of effecting the sale, transfer, encumbrance or
11 lease of real property to be held by such escrow agent until
12 title to the real property that is the subject of the escrow is
13 in a prescribed condition. An escrow agent conducting closings
14 shall be subject to the provisions of paragraphs (1) through
15 (4) of subsection (e) of Section 16 of this Act.

16 (9) "Independent Escrowee" means any firm, person,
17 partnership, association, corporation or other legal entity,
18 other than a title insurance company or a title insurance
19 agent, which receives deposits, in trust, of funds or
20 documents, or both, for the purpose of effecting the sale,
21 transfer, encumbrance or lease of real property to be held by
22 such escrowee until title to the real property that is the
23 subject of the escrow is in a prescribed condition. Federal and
24 State chartered banks, savings and loan associations, credit
25 unions, mortgage bankers, banks or trust companies authorized
26 to do business under the Illinois Corporate Fiduciary Act,

1 licensees under the Consumer Installment Loan Act, real estate
2 brokers licensed pursuant to the Real Estate License Act of
3 2000, as such Acts are now or hereafter amended, and licensed
4 attorneys when engaged in the attorney-client relationship are
5 exempt from the escrow provisions of this Act. "Independent
6 Escrowee" does not include employees or independent
7 contractors of a title insurance company or title insurance
8 agent authorized by a title insurance company to perform
9 closing, escrow, or settlement services.

10 (10) "Single risk" means the insured amount of any title
11 insurance policy, except that where 2 or more title insurance
12 policies are issued simultaneously covering different estates
13 in the same real property, "single risk" means the sum of the
14 insured amounts of all such title insurance policies. Any title
15 insurance policy insuring a mortgage interest, a claim payment
16 under which reduces the insured amount of a fee or leasehold
17 title insurance policy, shall be excluded in computing the
18 amount of a single risk to the extent that the insured amount
19 of the mortgage title insurance policy does not exceed the
20 insured amount of the fee or leasehold title insurance policy.

21 (11) "Department" means the Department of Financial and
22 Professional Regulation.

23 (12) "Secretary" means the Secretary of Financial and
24 Professional Regulation.

25 (13) "Insured closing letter" or "closing protection
26 letter" means an indemnification or undertaking to a party to a

1 real property transaction, from a principal such as a title
2 insurance company, setting forth in writing the extent of the
3 principal's responsibility for intentional misconduct or
4 errors in closing the real property transaction on the part of
5 a settlement agent, such as a title insurance agent or other
6 settlement service provider, or an indemnification or
7 undertaking given by a title insurance company or an
8 independent escrowee setting forth in writing the extent of the
9 title insurance company's or independent escrowee's
10 responsibility to a party to a real property transaction which
11 indemnifies the party against the intentional misconduct or
12 errors in closing the real property transaction on the part of
13 the title insurance company or independent escrowee and
14 includes protection afforded pursuant to subsections (f), (g),
15 and (h) of Section 16, ~~and~~ Section 16.1, subsection (h) of
16 Section 17, and Section 17.1 of this Act even if such
17 protection is afforded by contract.

18 (14) "Residential real property" means a building or
19 buildings consisting of one to 4 residential units or a
20 residential condominium unit where at least one of the
21 residential units or condominium units is occupied or intended
22 to be occupied as a residence by the purchaser or borrower, or
23 in the event that the purchaser or borrower is the trustee of a
24 trust, by a beneficiary of that trust.

25 (15) "Financial institution" means any bank subject to the
26 Illinois Banking Act, any savings and loan association subject

1 to the Illinois Savings and Loan Act of 1985, any savings bank
2 subject to the Savings Bank Act, any credit union subject to
3 the Illinois Credit Union Act, and any federally chartered
4 commercial bank, savings and loan association, savings bank, or
5 credit union organized and operated in this State pursuant to
6 the laws of the United States.

7 (Source: P.A. 98-387, eff. 8-16-13.)

8 (215 ILCS 155/17) (from Ch. 73, par. 1417)

9 Sec. 17. Independent escrowees.

10 (a) Every independent escrowee shall be subject to the same
11 certification and deposit requirements to which title
12 insurance companies are subject under Section 4 of this Act.

13 (b) No person, firm, corporation or other legal entity
14 shall hold itself out to be an independent escrowee unless it
15 has been issued a certificate of authority by the Secretary.

16 (c) Every applicant for a certificate of authority, except
17 a firm, partnership, association or corporation, must be 18
18 years or more of age.

19 (d) Every certificate of authority shall remain in effect
20 one year unless revoked or suspended by the Secretary or
21 voluntarily surrendered by the holder.

22 (e) An independent escrowee may engage in the escrow,
23 settlement, or closing business, or any combination of such
24 business, and operate as an escrow, settlement, or closing
25 agent, provided that:

1 (1) Funds deposited in connection with any escrow,
2 settlement, or closing shall be deposited in a separate
3 fiduciary trust account or accounts in a bank or other
4 financial institution insured by an agency of the federal
5 government unless the instructions provide otherwise. Such
6 funds shall be the property of the person or persons
7 entitled thereto under the provisions of the escrow,
8 settlement, or closing and shall be segregated by escrow,
9 settlement or closing in the records of the independent
10 escrowee. Such funds shall not be subject to any debts of
11 the escrowee and shall be used only in accordance with the
12 terms of the individual escrow, settlement or closing under
13 which the funds were accepted.

14 (2) Interest received on funds deposited with the
15 independent escrowee in connection with any escrow,
16 settlement or closing shall be paid to the depositing party
17 unless the instructions provide otherwise.

18 (3) The independent escrowee shall maintain separate
19 records of all receipt and disbursement of escrow,
20 settlement or closing funds.

21 (4) The independent escrowee shall comply with any
22 rules or regulations promulgated by the Secretary
23 pertaining to escrow, settlement or closing transactions.

24 (f) The Secretary or his authorized representative shall
25 have the power and authority to visit and examine at any time
26 any independent escrowee certified under this Act and to verify

1 and compel compliance with the provisions of this Act.

2 (g) A title insurance company or title insurance agent, not
3 qualified as an independent escrowee, may act in the capacity
4 of an escrow agent when it is supplying an abstract of title,
5 grantor-grantee search, tract search, lien search, tax
6 assessment search, or other limited purpose search to the
7 parties to the transaction even if it is not issuing a title
8 insurance commitment or title insurance policy. A title
9 insurance agent may act as an escrow agent only when
10 specifically authorized in writing on forms prescribed by the
11 Secretary by a title insurance company that has duly registered
12 the agent with the Secretary and only when notice of the
13 authorization is provided to and receipt thereof is
14 acknowledged by the Secretary. The authority granted to a title
15 insurance agent may be limited or revoked at any time by the
16 title insurance company.

17 (h) An independent escrowee may, pursuant to Section 17.1
18 of this Act, issue an insured closing letter if, in addition to
19 complying with the same certification and deposit requirements
20 that title insurance companies are subject to under Section 4
21 of this Act, the independent escrowee:

22 (1) Satisfies the Secretary that it has a minimum
23 capital and surplus of \$2,000,000. The Secretary may
24 provide the forms and standards for this purpose by rule.
25 This paragraph applies only to independent escrowees
26 licensed under this Act for the first time on or after the

1 effective date of this amendatory Act of the 100th General
2 Assembly.

3 (2) Files with and has approved by the Secretary proof
4 of a fidelity bond in the minimum amount of \$2,000,000 per
5 occurrence.

6 (3) Establishes and maintains a statutory closing
7 protection letter reserve for the protection of parties
8 named in warranties of services consisting of a sum of 25%
9 of the closing protection letter revenue received by the
10 independent escrowee on or after the effective date of this
11 amendatory Act of the 100th General Assembly. The reserve
12 shall be reported as a liability of the independent
13 escrowee in its financial statements. Amounts placed in the
14 statutory closing protection letter reserve shall be
15 deducted in determining the net profit of the independent
16 escrowee for the year. Except as provided in this
17 subsection, assets in value equal to the statutory closing
18 protection letter reserve are not subject to distribution
19 among creditors, stockholders, or other owners of the
20 independent escrowee until all claims of parties named in
21 warranties of services have been paid in full and
22 discharged.

23 (4) Releases from the statutory closing protection
24 letter reserve a sum equal to 10% of the amount added to
25 the reserve during a calendar year on July 1 of each of the
26 5 years following the year in which the sum was added and

1 releases from the statutory closing protection letter
2 reserve a sum equal to 3 1/3% of the amount added to the
3 reserve during that year on each succeeding July 1 until
4 the entire amount for that year has been released.

5 The Secretary shall adopt and amend rules as may be
6 required for the proper administration and enforcement of this
7 subsection (h) consistent with the federal Real Estate
8 Settlement and Procedures Act and Section 24 of this Act.

9 (Source: P.A. 94-893, eff. 6-20-06.)

10 (215 ILCS 155/17.1 new)

11 Sec. 17.1. Closing or settlement protection; independent
12 escrowees.

13 (a) Notwithstanding the provisions of item (iii) of
14 paragraph (B) of subsection (1) and subsection (9) of Section 3
15 of this Act, an independent escrowee is not authorized to act
16 pursuant to subsection (9) of Section 3 of this Act in a
17 nonresidential real property transaction where the amount of
18 settlement funds on deposit with the escrow agent is less than
19 \$2,000,000 or in a residential real property transaction
20 unless, as part of the same transaction, closing protection
21 letters protecting the buyer's or borrower's, lender's, and
22 seller's interests have been issued by the independent
23 escrowee.

24 (b) Unless otherwise agreed to between an independent
25 escrowee and a protected person or entity, a closing protection

1 letter under this Section shall indemnify all parties to a real
2 property transaction against actual loss, not to exceed the
3 amount of the settlement funds deposited with the independent
4 escrowee. The closing protection letter shall in any event
5 indemnify all parties to a real property transaction when such
6 losses arise out of:

7 (1) failure of the independent escrowee to comply with
8 written closing instructions to the extent that they relate
9 to (A) the status of the title to an interest in land or
10 the validity, enforceability, and priority of the lien of a
11 mortgage on an interest in land, including the obtaining of
12 documents and the disbursement of funds necessary to
13 establish the status of title or lien or (B) the obtaining
14 of any other document specifically required by a party to
15 the real property transaction, but only to the extent that
16 the failure to obtain such other document affects the
17 status of the title to an interest in land or the validity,
18 enforceability, and priority of the lien of a mortgage on
19 an interest in land; or

20 (2) fraud, dishonesty, or negligence of the
21 independent escrowee in handling funds or documents in
22 connection with closings to the extent that the fraud,
23 dishonesty, or negligence relates to the status of the
24 title to the interest in land or to the validity,
25 enforceability, and priority of the lien of a mortgage on
26 an interest in land or, in the case of a seller, to the

1 extent that the fraud, dishonesty, or negligence relates to
2 funds paid to or on behalf of, or which should have been
3 paid to or on behalf of, the seller.

4 (c) The indemnification under a closing protection letter
5 may include limitations on the liability of the independent
6 escrowee for any of the following:

7 (1) Failure of the independent escrowee to comply with
8 closing instructions that require title insurance
9 protection inconsistent with that set forth in the title
10 insurance commitment for the real property transaction.
11 Instructions that require the removal of specific
12 exceptions to title or compliance with the requirements
13 contained in the title insurance commitment shall not be
14 deemed to be inconsistent.

15 (2) Loss or impairment of funds in the course of
16 collection or while on deposit with a bank due to bank
17 failure, insolvency, or suspension, except such as shall
18 result from failure of the independent escrowee closer to
19 comply with written closing instructions to deposit the
20 funds in a bank that is designated by name by a party to
21 the real property transaction.

22 (3) Mechanics' and materialmen's liens in connection
23 with sale, purchase, lease, or construction loan
24 transactions, except to the extent that protection against
25 such liens is afforded by a title insurance commitment or
26 policy issued by the title insurance agent or title

1 insurance company.

2 (4) Failure of the independent escrowee to comply with
3 written closing instructions to the extent that such
4 instructions require a determination by the independent
5 escrowee of the validity, enforceability, or effectiveness
6 of any document described in item (B) of paragraph (1) of
7 subsection (b) of this Section.

8 (5) Fraud, dishonesty, or negligence of an employee,
9 agent, attorney, or broker, who is not also the independent
10 escrowee or an independent contract closer of the
11 independent escrowee, of the indemnified party to the real
12 property transaction.

13 (6) The settlement or release of any claim by the
14 indemnified party to the real property transaction without
15 the written consent of the independent escrowee.

16 (7) Any matters created, suffered, assumed, or agreed
17 to by, or known to, the indemnified party to the real
18 property transaction without the written consent of the
19 independent escrowee.

20 The closing protection letter may also include reasonable
21 additional provisions concerning the dollar amount of
22 protection, provided the limit is no less than the amount
23 deposited with the independent escrowee, arbitration,
24 subrogation, claim notices, and other conditions and
25 limitations that do not materially impair the protection
26 required by this Section.

1 (d) The Secretary shall adopt and amend rules as may be
2 required for the proper administration and enforcement of this
3 Section consistent with the federal Real Estate Settlement
4 Procedures Act and Section 24 of this Act.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.