



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1319

Introduced 2/20/2007, by Rep. Robert S. Molaro

SYNOPSIS AS INTRODUCED:

215 ILCS 155/3 from Ch. 73, par. 1403
215 ILCS 155/18.1 new
215 ILCS 155/18.2 new
215 ILCS 155/18.3 new

Amends the Title Insurance Act. Creates a definition of "residential real property". Provides that no provider of title insurance shall, as a condition of making a loan, providing services of any kind, including, but not limited to, services as a broker, agent or lender, or otherwise, require a party to a contract for the sale of residential real property who is obligated by that contract to pay for title insurance to procure such insurance from a title insurance company or agent other than a title insurance company or title insurance agent that is chosen by the party paying for such insurance. Provides that unless otherwise agreed by the parties to a contract for the sale of residential real property, in any transaction concerning the sale and purchase of residential real property where the purchaser has obtained purchase money financing that is contemplated to be secured by a lien or liens in the nature of a purchase money mortgage or mortgages, the owner's title insurance policy and the lender's title insurance policy shall be provided by the same title insurance company or title insurance agent. Provides that in any transaction concerning the sale and purchase of residential real property the title insurance company, title insurance agent, escrow agent, and independent escrowee shall disclose in writing to the parties, to their attorneys, or within the contract, all costs and charges that are made by such title insurance company, title insurance agent, escrow agent, or independent escrowee and that are related to settlement services, title insurance, or lender endorsement requirements, not less than 10 days prior to the date of settlement. Provides that any such cost or charge that is not disclosed as provided herein shall not be required to be paid by any party to the transaction. Effective immediately.

LRB095 07310 KBJ 27449 b

1 AN ACT concerning insurance.

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 Section 3 and by adding Sections 18.1, 18.2, and 18.3 as
6 follows:

7 (215 ILCS 155/3) (from Ch. 73, par. 1403)

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

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

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

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

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

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

1 interest in real property, cooperative units and
2 proprietary leases, and for all liens or charges
3 affecting the same;

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

6 (iv) executing title insurance policies;

7 (v) effecting contracts of reinsurance;

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

9 or

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

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

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

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

26 (1.5) "Title insurance" means insuring, guaranteeing,

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

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

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

1 addition to do any of the following: act as an escrow agent,
2 solicit title insurance, collect premiums, issue title
3 reports, binders or commitments to insure and policies in its
4 behalf, provided, however, the term "title insurance agent"
5 shall not include officers and salaried employees of any title
6 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 estate transaction, from a principal such as a title
2 insurance company or similar entity, setting forth in writing
3 the extent of the principal's responsibility for intentional
4 misconduct or errors in closing the real estate transaction on
5 the part of a settlement agent, such as a title insurance agent
6 or other settlement service provider.

7 (14) "Residential real property", as used in Sections 18.1,
8 18.2, and 18.3 of this Act, means a building or buildings
9 consisting of 1 to 4 residential units or a residential
10 condominium unit where at least one of such residential units
11 or condominium units is occupied or intended to be occupied as
12 a residence by the purchaser or borrower or, in the event that
13 the purchaser or borrower is the trustee of a trust, by a
14 beneficiary of that trust.

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

16 (215 ILCS 155/18.1 new)

17 Sec. 18.1. Choice of title insurance company. It is
18 declared to be the public policy of this State that a party to
19 a contract for the sale of residential real property who is
20 obligated by the contract to pay for title insurance has the
21 right to choose the title insurance company and title insurance
22 agent that will provide such title insurance. No provider of
23 title insurance, as that term is defined in this Act, shall, as
24 a condition of making a loan, providing services of any kind,
25 including, but not limited to, services as a broker, agent or

1 lender, or otherwise, require a party to a contract for the
2 sale of residential real property who is obligated by that
3 contract to pay for title insurance to procure such insurance
4 from a title insurance company or agent other than a title
5 insurance company or title insurance agent that is chosen by
6 the party paying for such insurance. Any violation of this
7 Section is subject to the penalties set forth in Section 23 of
8 this Act.

9 (215 ILCS 155/18.2 new)

10 Sec. 18.2. Bifurcation of title insurance policies. Unless
11 otherwise agreed by the parties to a contract for the sale of
12 residential real property, in any transaction concerning the
13 sale and purchase of residential real property where the
14 purchaser has obtained purchase money financing that is
15 contemplated to be secured by a lien or liens in the nature of
16 a purchase money mortgage or mortgages, the owner's title
17 insurance policy and the lender's title insurance policy shall
18 be provided by the same title insurance company or title
19 insurance agent. Any violation of this Section is subject to
20 the penalties set forth in Section 23 of this Act.

21 (215 ILCS 155/18.3 new)

22 Sec. 18.3. Disclosure of title charges. In any transaction
23 concerning the sale and purchase of residential real property
24 the title insurance company, title insurance agent, escrow

1 agent, and independent escrowee shall disclose in writing to
2 the parties, to their attorneys, or within the contract, all
3 costs and charges that are made by such title insurance
4 company, title insurance agent, escrow agent, or independent
5 escrowee and that are related to settlement services, title
6 insurance, or lender endorsement requirements, not less than 10
7 days prior to the date of settlement. Any such cost or charge
8 that is not disclosed as provided herein shall not be required
9 to be paid by any party to the transaction. This Section shall
10 not apply to title insurance policies, nor to costs and charges
11 that are caused by lender requirements that are not made known
12 to the title insurance company, title insurance agent, escrow
13 agent, or independent escrowee until less than 10 days prior to
14 the date of settlement or costs and charges that are required
15 by or caused by a party to the transaction. A violation of this
16 Section shall not be subject to the penalties set forth in
17 Section 23 of this Act.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.