

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 Sections 3 and 16 and by adding Section 16.1 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 ~~reports,~~
4 ~~binders or commitments to insure and policies,~~ and endorsements
5 of the title insurance company; in its behalf, provided,
6 however, the term "title insurance agent" shall not include
7 officers and salaried employees of any title insurance company.

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

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

1 (6) "Financial interest" is any ownership interest, legal
2 or beneficial, except ownership of publicly traded stock.

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

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

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

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

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

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

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

26 (13) "Insured closing letter" or "closing protection

1 letter" means an indemnification or undertaking to a party to a
2 real property ~~estate~~ transaction, from a principal such as a
3 title insurance company ~~or similar entity~~, setting forth in
4 writing the extent of the principal's responsibility for
5 intentional misconduct or errors in closing the real property
6 ~~estate~~ transaction on the part of a settlement agent, such as a
7 title insurance agent or other settlement service provider, and
8 includes protection afforded pursuant to subsections (f), (g),
9 and (h) of Section 16 and Section 16.1 of this Act even if such
10 protection is afforded by contract.

11 (14) "Residential real property" means a building or
12 buildings consisting of one to 4 residential units or a
13 residential condominium unit where at least one of the
14 residential units or condominium units is occupied or intended
15 to be occupied as a residence by the purchaser or borrower, or
16 in the event that the purchaser or borrower is the trustee of a
17 trust, by a beneficiary of that trust.

18 (Source: P.A. 94-893, eff. 6-20-06; 95-570, eff. 8-31-07.)

19 (215 ILCS 155/16) (from Ch. 73, par. 1416)

20 Sec. 16. Title insurance agents.

21 (a) No person, firm, partnership, association, corporation
22 or other legal entity shall act as or hold itself out to be a
23 title insurance agent unless duly registered by a title
24 insurance company with the Secretary.

25 (b) Each application for registration shall be made on a

1 form specified by the Secretary and prepared in duplicate by
2 each title insurance company which the agent represents. The
3 title insurance company shall retain the copy of the
4 application and forward the original to the Secretary with the
5 appropriate fee.

6 (c) Every applicant for registration, except a firm,
7 partnership, association or corporation, must be 18 years or
8 more of age.

9 (d) Registration shall be made annually by a filing with
10 the Secretary; supplemental registrations for new title
11 insurance agents to be added between annual filings shall be
12 made from time to time in the manner provided by the Secretary;
13 registrations shall remain in effect unless revoked or
14 suspended by the Secretary or voluntarily withdrawn by the
15 registrant or the title insurance company.

16 (e) Funds deposited in connection with any escrows,
17 settlements, or closings shall be deposited in a separate
18 fiduciary trust account or accounts in a bank or other
19 financial institution insured by an agency of the federal
20 government unless the instructions provide otherwise. The
21 funds shall be the property of the person or persons entitled
22 thereto under the provisions of the escrow, settlement, or
23 closing and shall be segregated by escrow, settlement, or
24 closing in the records of the escrow agent. The funds shall not
25 be subject to any debts of the escrowee and shall be used only
26 in accordance with the terms of the individual escrow,

1 settlement, or closing under which the funds were accepted.

2 Interest received on funds deposited with the escrow agent
3 in connection with any escrow, settlement, or closing shall be
4 paid to the depositing party unless the instructions provide
5 otherwise.

6 The escrow agent shall maintain separate records of all
7 receipts and disbursements of escrow, settlement, or closing
8 funds.

9 The escrow agent shall comply with any rules adopted by the
10 Secretary pertaining to escrow, settlement, or closing
11 transactions.

12 (f) A title insurance agent shall not act as an escrow
13 agent in a nonresidential real property transaction where the
14 amount of settlement funds on deposit with the escrow agent is
15 less than \$2,000,000 or in a residential real property
16 transaction unless the title insurance agent, title insurance
17 company, or another authorized title insurance agent has
18 committed for the issuance of title insurance in that
19 transaction and the title insurance agent is authorized to act
20 as an escrow agent on behalf of the title insurance company for
21 which the commitment for title insurance has been issued. The
22 authorization under the preceding sentence shall be given
23 either (1) by an agency contract with the title insurance
24 company which contract, in compliance with the requirements set
25 forth in subsection (g) of this Section, authorizes the title
26 insurance agent to act as an escrow agent on behalf of the

1 title insurance company or (2) by a closing protection letter
2 in compliance with the requirements set forth in Section 16.1
3 of this Act, issued by the title insurance company to the
4 seller, buyer, borrower, and lender. A closing protection
5 letter shall not be issued by a title insurance agent. The
6 provisions of this subsection (f) shall not apply to the
7 authority of a title insurance agent to act as an escrow agent
8 under subsection (g) of Section 17 of this Act.

9 (g) If an agency contract between the title insurance
10 company and the title insurance agent is the source of the
11 authority under subsection (f) of this Section for a title
12 insurance agent to act as escrow agent for a real property
13 transaction, then the agency contract shall provide for no less
14 protection from the title insurance company to all parties to
15 the real property transaction than the title insurance company
16 would have provided to those parties had the title insurance
17 company issued a closing protection letter in conformity with
18 Section 16.1 of this Act.

19 (h) A title insurance company shall be liable for the acts
20 or omissions of its title insurance agent as an escrow agent if
21 the title insurance company has authorized the title insurance
22 agent under subsections (f) and (g) of this Section 16 and only
23 to the extent of the liability undertaken by the title
24 insurance company in the agency agreement or closing protection
25 letter. The liability, if any, of the title insurance agent to
26 the title insurance company for acts and omissions of the title

1 insurance agent as an escrow agent shall not be limited or
2 otherwise modified because the title insurance company has
3 provided closing protection to a party or parties to a real
4 property transaction escrow, settlement, or closing. The
5 escrow agent shall not charge a fee for protection provided by
6 a title insurance company to parties to real property
7 transactions under subsections (f) and (g) of this Section 16
8 and Section 16.1, but shall collect from the parties the fee
9 charged by the title insurance company and shall promptly remit
10 the fee to the title insurance company. The title insurance
11 company may charge the parties a reasonable fee for protection
12 provided pursuant to subsections (f) and (g) of this Section 16
13 and Section 16.1 and shall not pay any portion of the fee to
14 the escrow agent. The payment of any portion of the fee to the
15 escrow agent by the title insurance company, shall be deemed a
16 prohibited inducement or compensation in violation of Section
17 24 of this Act.

18 (i) The Secretary shall adopt and amend such rules as may
19 be required for the proper administration and enforcement of
20 this Section 16 consistent with the federal Real Estate
21 Settlement Procedures Act and Section 24 of this Act.

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

23 (215 ILCS 155/16.1 new)

24 Sec. 16.1. Closing or settlement protection.

25 (a) Notwithstanding the provisions of item (iii) of

1 paragraph (B) of subsection (1) and subsections (3) and (8) of
2 Section 3 and Section 16 of this Act, a title insurance company
3 or title insurance agent is not authorized to act as an escrow
4 agent in a nonresidential real property transaction where the
5 amount of settlement funds on deposit with the escrow agent is
6 less than \$2,000,000 or in a residential real property
7 transaction unless as part of the same transaction a
8 commitment, binder, or title insurance policy and closing
9 protection letters protecting the buyer's or borrower's,
10 lender's, and seller's interests have been issued by the title
11 insurance company on whose behalf the commitment, binder, or
12 title insurance policy has been issued. Closing protection
13 letters are not required when the authorization for the title
14 insurance agent to act as an escrow agent is given by an agency
15 contract with the title insurance company pursuant to
16 subsections (f), (g), and (h) of Section 16 of this Act, but
17 shall be issued by the title insurance company upon the request
18 of a party to a nonresidential real property transaction where
19 the amount of settlement funds on deposit with the escrow agent
20 is less than \$2,000,000 or in a residential real property
21 transaction.

22 (b) Unless otherwise agreed to between a title insurance
23 company and a protected person or entity, a closing protection
24 letter under this Section shall indemnify all parties to a real
25 property transaction against actual loss, not to exceed the
26 amount of the settlement funds deposited with the escrow agent.

1 The closing protection letter shall in any event indemnify all
2 parties to a real property transaction when such losses arise
3 out of:

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

17 (2) fraud, dishonesty, or negligence of the escrow
18 agent in handling funds or documents in connection with
19 closings to the extent that the fraud, dishonesty, or
20 negligence relates to the status of the title to the
21 interest in land or to the validity, enforceability, and
22 priority of the lien of a mortgage on an interest in land
23 or, in the case of a seller, to the extent that the fraud,
24 dishonesty, or negligence relates to funds paid to or on
25 behalf of, or which should have been paid to or on behalf
26 of, the seller.

1 (c) The indemnification under a closing protection letter
2 may include limitations on the liability of the title insurance
3 company for any of the following:

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

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

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

24 (4) Failure of the escrow agent to comply with written
25 closing instructions to the extent that such instructions
26 require a determination by the escrow agent of the

1 validity, enforceability, or effectiveness of any document
2 described in subitem (B) of item (1) of subsection (b) of
3 this Section.

4 (5) Fraud, dishonesty, or negligence of an employee,
5 agent, attorney, or broker, who is not also the escrow
6 agent or an independent contract closer of the escrow
7 agent, of the indemnified party to the real property
8 transaction.

9 (6) The settlement or release of any claim by the
10 indemnified party to the real property transaction without
11 the written consent of the title insurance company.

12 (7) Any matters created, suffered, assumed, or agreed
13 to by, or known to, the indemnified party to the real
14 property transaction without the written consent of the
15 title insurance company.

16 The closing protection letter may also include reasonable
17 additional provisions concerning the dollar amount of
18 protection, provided such limit is not less than the amount
19 deposited with the escrow agent, arbitration, subrogation,
20 claim notices, and other conditions and limitations that do not
21 materially impair the protection required by this Section 16.1.

22 (d) This Section shall not apply to the authority of a
23 title insurance company and title insurance agent to act as an
24 escrow agent under subsection (g) of Section 17 of this Act.

25 (e) The Secretary shall adopt and amend such rules as may
26 be required for the proper administration and enforcement of

1 this Section 16.1 consistent with the federal Real Estate
2 Settlement Procedures Act and Section 24 of this Act.

3 Section 99. Effective date. This Act takes effect January
4 1, 2011.