



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3374

Introduced 2/10/2010, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

215 ILCS 155/16.1 new

Amends the Title Insurance Act. Provides that a title insurance company or title insurance agent is not authorized to act as an escrow agent in a residential real property transaction unless a commitment, binder, or title insurance policy and closing protection letters have been issued. Provides that closing protection letters shall indemnify the parties in a real property transaction against actual loss, not to exceed the amount of the settlement funds deposited with the escrow agent, when the loss arises out of certain circumstances. Sets forth the circumstances under which indemnification under a closing protection letter may include limitations on the liability of the title insurance. Provides that when a title insurance company reimburses the indemnified party, the company shall be subrogated to all the rights and remedies that the indemnified party would have had. Provides that an indemnified party may demand arbitration for a claim if the title insurance policy for the transaction is less than \$2,000,000; if the policy is more than \$2,000,000, then arbitration must be agreed to by both the title insurance company and the indemnified party. Makes other changes. Effective immediately.

LRB096 17642 RPM 33000 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 adding
5 Section 16.1 as follows:

6 (215 ILCS 155/16.1 new)

7 Sec. 16.1. Closing or settlement protection.

8 (a) Notwithstanding the provisions of this Act set forth in
9 subparagraph (iii) of paragraph (B) of item (1) of Section 3,
10 items (3) and (8) of Section 3, and Section 16, a title
11 insurance company or title insurance agent is not authorized to
12 act as an escrow agent in a residential real property
13 transaction unless, as part of the same transaction, a
14 commitment, binder, or title insurance policy and closing
15 protection letters protecting the buyer's or borrower's and the
16 seller's interests have been issued by the title insurance
17 company on whose behalf the commitment, binder, or title
18 insurance policy has been issued.

19 (b) Closing protection letters under this Section shall
20 indemnify the parties in a real property transaction against
21 actual loss, not to exceed the amount of the settlement funds
22 deposited with the escrow agent, when the loss arises out of:

23 (1) failure of the escrow agent to comply with written

1 closing instructions to the extent that they relate to (A)
2 the status of the title to an interest in land or the
3 validity, enforceability, and priority of the lien of a
4 mortgage on an interest in land, including the obtaining of
5 documents and the disbursement of funds necessary to
6 establish the status of the title or lien or (B) the
7 obtaining of any other document specifically required by a
8 party to the real property transaction, but only to the
9 extent that the failure to obtain such other document
10 affects the status of the title to an interest in land or
11 the validity, enforceability, and priority of the lien of a
12 mortgage on an interest in land and not to the extent that
13 the written closing instructions require a determination
14 of the validity, enforceability, or the effectiveness of
15 the other document; or

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

26 (c) The indemnification under a closing protection letter

1 may include limitations on the liability of the title insurance
2 company for any of the following:

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

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

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

22 (4) Defects, liens, encumbrances, or other matters in
23 connection with a party's purchase, lease, or loan
24 transactions, except to the extent that protection against
25 those defects, liens, encumbrances, or other matters is
26 afforded by a policy of title insurance not inconsistent

1 with the closing instructions.

2 (5) Fraud, dishonesty, or negligence of an employee,
3 agent, attorney, or broker, who is not also the escrow
4 agent, of the indemnified party to the real property
5 transaction.

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

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

13 (d) When the title insurance company shall have reimbursed
14 the indemnified party to the real property transaction pursuant
15 to the closing protection letter, it shall be subrogated to all
16 rights and remedies that the party would have had against any
17 person or property had that party not been so reimbursed.
18 Liability of the title insurance company for reimbursement
19 shall be reduced to the extent that the indemnified party to
20 the real property transaction knowingly and voluntarily
21 impairs the value of this right of subrogation.

22 (e) The escrow agent is the title insurance company's agent
23 only for the limited purpose of issuing title insurance
24 policies. The escrow agent is not the title insurance company's
25 agent for the purpose of providing other closing or settlement
26 services. The title insurance company's liability for losses

1 arising from any other closing or settlement services is
2 strictly limited to the protection expressly provided in the
3 closing protection letter. Any liability of the title insurance
4 company for loss does not include liability for loss resulting
5 from the negligence, fraud, or bad faith of any party to a real
6 estate transaction other than an escrow agent, the lack of
7 creditworthiness of any borrower connected with a real estate
8 transaction, or the failure of any collateral to adequately
9 secure a loan connected with a real estate transaction.
10 However, this letter does not affect the title insurance
11 company's liability with respect to its title insurance
12 binders, commitments, or policies.

13 (f) Either the title insurance company or an indemnified
14 party to the real property transaction may demand that any
15 claim arising under the closing protection letter be submitted
16 to arbitration pursuant to the Title Insurance Arbitration
17 Rules of the American Land Title Association, unless an
18 indemnified party to the real property transaction has a policy
19 of title insurance for the applicable transaction with an
20 amount of insurance greater than \$2,000,000. If an indemnified
21 party to the real property transaction has a policy of title
22 insurance for the applicable transaction with an amount of
23 insurance greater than \$2,000,000, then a claim arising under
24 the closing protection letter may be submitted to arbitration
25 only when agreed to by both the title insurance company and the
26 indemnified party.

1 (g) An indemnified party to the real property transaction
2 must promptly send written notice of a claim under the closing
3 protection letter to the title insurance company. The title
4 insurance company shall not be liable for a loss if the written
5 notice of a matter that the party believes is compensable under
6 the closing protection letter is not received within 90 days
7 after the date of closing.

8 (h) The protections set forth in the provisions of this
9 Section extend only to real property transactions in this
10 State. The closing protection letter may also include
11 reasonable additional provisions concerning arbitration,
12 subrogation, claim notices, and other conditions and
13 limitations that do not materially impair the coverages
14 required by this Section 16.1.

15 (i) Notwithstanding Section 19 of this Act, a title
16 insurance company is expressly authorized to collect a charge
17 for the issuance of closing protection letters. In such cases,
18 the following provisions shall apply:

19 (1) The charge for issuance of a closing protection
20 letter in a residential real property transaction
21 indemnifying a buyer of an interest in real property or a
22 lender, secured by a mortgage, including any other security
23 instrument, of an interest in real property who purchases
24 title insurance shall be not less than \$25.

25 (2) The charge for issuance of a closing or settlement
26 protection letter in a residential real property

1 transaction indemnifying a seller of an interest in real
2 property, a refinancing borrower, or a buyer who does not
3 purchase title insurance shall be not less than \$50.

4 (3) The entire charge for the closing protection letter
5 shall be remitted by the title insurance agent to the title
6 insurance company. Title insurance agents shall not charge
7 the parties any additional amount for closing protection
8 letters issued under this Section.

9 (j) Except as provided under this Section and Section 3 of
10 this Act, a title insurance company shall not provide any other
11 coverage that purports to indemnify against the improper acts
12 or omissions of a person with regard to escrow, settlement, or
13 closing services.

14 (k) This Section shall not apply to the authority of a
15 title insurance company and title insurance agent to act as an
16 escrow agent under subsection (g) of Section 17 of this Act.

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