



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3712

Introduced 2/10/2012, by Sen. Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

215 ILCS 155/16	from Ch. 73, par. 1416
215 ILCS 155/21	from Ch. 73, par. 1421

Amends the Title Insurance Act. Excludes a limited liability company from the requirement that every title insurance agent registration applicant must be 18 years or more of age. Provides that included in every application for registration by a title insurance company, including a firm, partnership, association, limited liability company, or corporation, shall be an affidavit, signed and notarized in front of a notary public, affirming that the applicant and any owner, officer, director, principal, member, or manager has never been convicted or pled guilty to any felony or misdemeanor involving a crime of theft or dishonesty. Provides that no person who has had a conviction or pled guilty to any felony or misdemeanor involving theft or dishonesty shall be registered by a title insurance company, and no such person may serve as an owner, officer, director, principal, or manager of any registered title insurance agent. Includes additional factors whereby the Secretary of Financial and Professional Regulation may refuse to grant or may suspend or revoke any certificate of authority, registration, or license issued pursuant to the Act or impose a fine for a violation of the Act. Effective January 1, 2013.

LRB097 15791 RPM 65709 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 16 and 21 as follows:

6 (215 ILCS 155/16) (from Ch. 73, par. 1416)

7 Sec. 16. Title insurance agents.

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

12 (b) Each application for registration shall be made on a
13 form specified by the Secretary and prepared in duplicate by
14 each title insurance company which the agent represents. The
15 title insurance company shall retain the copy of the
16 application and forward the original to the Secretary with the
17 appropriate fee.

18 (c) Every applicant for registration, except a firm,
19 partnership, association, limited liability company, or
20 corporation, must be 18 years or more of age. Included in every
21 application for registration by a title insurance company,
22 including a firm, partnership, association, limited liability
23 company, or corporation, shall be an affidavit, signed and

1 notarized in front of a notary public, affirming that the
2 applicant and any owner, officer, director, principal, member,
3 or manager has never been convicted or pled guilty to any
4 felony or misdemeanor involving a crime of theft or dishonesty.
5 No person who has had a conviction or pled guilty to any felony
6 or misdemeanor involving theft or dishonesty shall be
7 registered by a title insurance company, and no such person may
8 serve as an owner, officer, director, principal, or manager of
9 any registered title insurance agent.

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

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

1 in accordance with the terms of the individual escrow,
2 settlement, or closing under which the funds were accepted.

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

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

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

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

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

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

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

1 the title insurance company for acts and omissions of the title
2 insurance agent as an escrow agent shall not be limited or
3 otherwise modified because the title insurance company has
4 provided closing protection to a party or parties to a real
5 property transaction escrow, settlement, or closing. The
6 escrow agent shall not charge a fee for protection provided by
7 a title insurance company to parties to real property
8 transactions under subsections (f) and (g) of this Section 16
9 and Section 16.1, but shall collect from the parties the fee
10 charged by the title insurance company and shall promptly remit
11 the fee to the title insurance company. The title insurance
12 company may charge the parties a reasonable fee for protection
13 provided pursuant to subsections (f) and (g) of this Section 16
14 and Section 16.1 and shall not pay any portion of the fee to
15 the escrow agent. The payment of any portion of the fee to the
16 escrow agent by the title insurance company, shall be deemed a
17 prohibited inducement or compensation in violation of Section
18 24 of this Act.

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

23 (Source: P.A. 96-1454, eff. 1-1-11.)

24 (215 ILCS 155/21) (from Ch. 73, par. 1421)

25 Sec. 21. Regulatory action.

1 (a) The Secretary may refuse to grant, and may suspend or
2 revoke, any certificate of authority, registration, or license
3 issued pursuant to this Act or may impose a fine for a
4 violation of this Act if he determines that the holder of or
5 applicant for such certificate, registration or license:

6 (1) has intentionally made a material misstatement or
7 fraudulent misrepresentation in relation to a matter
8 covered by this Act;

9 (2) has misappropriated or tortiously converted to its
10 own use, or illegally withheld, monies held in a fiduciary
11 capacity;

12 (3) has demonstrated untrustworthiness or incompetency
13 in transacting the business of guaranteeing titles to real
14 estate in such a manner as to endanger the public;

15 (4) has materially misrepresented the terms or
16 conditions of contracts or agreements to which it is a
17 party;

18 (5) has paid any commissions, discounts or any part of
19 its premiums, fees or other charges to any person in
20 violation of any State or federal law or regulations or
21 opinion letters issued under the federal Real Estate
22 Settlement Procedures Act of 1974; ~~or~~

23 (6) has failed to comply with the deposit and reserve
24 requirements of this Act or any other requirements of this
25 Act;~~or~~

26 (7) has committed fraud or misrepresentation in

1 applying for or procuring any certificate of authority,
2 registration, or license issued pursuant to this Act;

3 (8) has a conviction or plea of guilty or plea of nolo
4 contendere in this State or any other jurisdiction to (i)
5 any felony or (ii) a misdemeanor, an essential element of
6 which is dishonesty or fraud or larceny, embezzlement, or
7 obtaining money, property, or credit by false pretenses or
8 by means of a confidence game;

9 (9) has been disciplined by another state, the District
10 of Columbia, a territory, foreign nation, a governmental
11 agency, or any entity authorized to impose discipline if at
12 least one of the grounds for that discipline is the same as
13 or equivalent to one of the grounds for which a title
14 insurance company, title insurance agent, or independent
15 escrowee may be disciplined under this Act or if at least
16 one of the grounds for that discipline involves dishonesty;
17 a certified copy of the record of the action by the other
18 state or jurisdiction shall be prima facie evidence
19 thereof;

20 (10) has advertising that is inaccurate, misleading,
21 or contrary to the provisions of this Act;

22 (11) has knowingly and willfully made any substantial
23 misrepresentation or untruthful advertising;

24 (12) has made any false promises of a character likely
25 to influence, persuade, or induce;

26 (13) has failed to account for or remit any money or

1 documents coming into the possession of a title insurance
2 company, title insurance agent, or independent escrowee
3 that belong to others;

4 (14) has engaged in dishonorable, unethical, or
5 unprofessional conduct of a character likely to deceive,
6 defraud, or harm the public;

7 (15) has violated the terms of a disciplinary order
8 issued by the Department;

9 (16) has disregarded or violated any provision of this
10 Act or the published rules adopted by the Department to
11 enforce this Act or has aided or abetted any individual,
12 partnership, registered limited liability partnership,
13 limited liability company, or corporation in disregarding
14 any provision of this Act or the published rules; or

15 (17) has acted as a title insurance company, title
16 insurance agent, or independent escrowee without a
17 certificate of authority, registration, or license after
18 the title insurance company, title insurance agent, or
19 independent escrowee's certificate of authority,
20 registration, or license was inoperative.

21 (b) In every case where a registration or certificate is
22 suspended or revoked, or an application for a registration or
23 certificate or renewal thereof is refused, the Secretary shall
24 serve notice of his action, including a statement of the
25 reasons for his action, as provided by this Act. When a notice
26 of suspension or revocation of a certificate of authority is

1 given to a title insurance company, the Secretary shall also
2 notify all the registered agents of that title insurance
3 company of the Secretary's action.

4 (c) In the case of a refusal to issue or renew a
5 certificate or accept a registration, the applicant or
6 registrant may request in writing, within 30 days after the
7 date of service, a hearing. In the case of a refusal to renew,
8 the expiring registration or certificate shall be deemed to
9 continue in force until 30 days after the service of the notice
10 of refusal to renew, or if a hearing is requested during that
11 period, until a final order is entered pursuant to such
12 hearing.

13 (d) The suspension or revocation of a registration or
14 certificate shall take effect upon service of notice thereof.
15 The holder of any such suspended registration or certificate
16 may request in writing, within 30 days of such service, a
17 hearing.

18 (e) In cases of suspension or revocation of registration
19 pursuant to subsection (a), the Secretary may, in the public
20 interest, issue an order of suspension or revocation which
21 shall take effect upon service of notification thereof. Such
22 order shall become final 60 days from the date of service
23 unless the registrant requests in writing, within such 60 days,
24 a formal hearing thereon. In the event a hearing is requested,
25 the order shall remain temporary until a final order is entered
26 pursuant to such hearing.

1 (f) Hearing shall be held at such time and place as may be
2 designated by the Secretary either in the City of Springfield,
3 the City of Chicago, or in the county in which the principal
4 business office of the affected registrant or certificate
5 holder is located.

6 (g) The suspension or revocation of a registration or
7 certificate or the refusal to issue or renew a registration or
8 certificate shall not in any way limit or terminate the
9 responsibilities of any registrant or certificate holder
10 arising under any policy or contract of title insurance to
11 which it is a party. No new contract or policy of title
12 insurance may be issued, nor may any existing policy or
13 contract to title insurance be renewed by any registrant or
14 certificate holder during any period of suspension or
15 revocation of a registration or certificate.

16 (h) The Secretary may issue a cease and desist order to a
17 title insurance company, agent, or other entity doing business
18 without the required license or registration, when in the
19 opinion of the Secretary, the company, agent, or other entity
20 is violating or is about to violate any provision of this Act
21 or any law or of any rule or condition imposed in writing by
22 the Department.

23 The Secretary may issue the cease and desist order without
24 notice and before a hearing.

25 The Secretary shall have the authority to prescribe rules
26 for the administration of this Section.

1 If it is determined that the Secretary had the authority to
2 issue the cease and desist order, he may issue such orders as
3 may be reasonably necessary to correct, eliminate or remedy
4 such conduct.

5 Any person or company subject to an order pursuant to this
6 Section is entitled to judicial review of the order in
7 accordance with the provisions of the Administrative Review
8 Law.

9 The powers vested in the Secretary by this Section are
10 additional to any and all other powers and remedies vested in
11 the Secretary by law, and nothing in this Section shall be
12 construed as requiring that the Secretary shall employ the
13 powers conferred in this Section instead of or as a condition
14 precedent to the exercise of any other power or remedy vested
15 in the Secretary.

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

17 Section 99. Effective date. This Act takes effect January
18 1, 2013.