

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 26 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, and includes protection afforded
7 pursuant to subsections (f), (g), and (h) of Section 16 and
8 Section 16.1 of this Act even if such protection is afforded by
9 contract.

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

17 (15) "Financial institution" means any bank subject to the
18 Illinois Banking Act, any savings and loan association subject
19 to the Illinois Savings and Loan Act of 1985, any savings bank
20 subject to the Savings Bank Act, any credit union subject to
21 the Illinois Credit Union Act, and any federally chartered
22 commercial bank, savings and loan association, savings bank, or
23 credit union organized and operated in this State pursuant to
24 the laws of the United States.

25 (Source: P.A. 95-570, eff. 8-31-07; 96-1454, eff. 1-1-11.)

1 (215 ILCS 155/26)

2 Sec. 26. Settlement funds.

3 (a) A title insurance company, title insurance agent, or
4 independent escrowee shall not make disbursements in
5 connection with any escrows, settlements, or closings out of a
6 fiduciary trust account or accounts unless the funds in the
7 aggregate amount of \$50,000 or greater received from any single
8 party to the transaction are good funds as defined in
9 paragraphs (2), (6), or (7) of subsection (c) of this Section;
10 or are collected funds as defined in subsection (d) of this
11 Section.

12 For the purposes of this subsection (a), where funds in the
13 aggregate amount of \$50,000 or greater are received from any
14 purchaser of residential real property, as defined in paragraph
15 (14) of Section 3 of this Act, the aggregate amount may consist
16 of good funds of less than \$50,000 per paragraph, as defined in
17 paragraphs (3) and (5) of subsection (c) of this Section and of
18 up to \$5,000 in good funds, as defined in paragraph (4) of
19 subsection (c) of this Section.

20 (a-5) In addition to the good funds disbursement
21 authorization set forth in subsection (a) of this Section, a
22 title insurance company, title insurance agent, or independent
23 escrowee is authorized to make disbursements in connection with
24 any escrows, settlements, or closings out of a fiduciary trust
25 account or accounts where the funds in the aggregate amount of
26 \$50,000 or greater are received from any single party to the

1 transaction if:

2 (1) the funds are transferred by a cashier's check,
3 teller's check, or certified check, as defined in the
4 Uniform Commercial Code, that is drawn on or issued by a
5 financial institution, as defined in this Act; and

6 (2) the title insurance company, title insurance
7 agent, or independent escrowee and the financial
8 institution, as defined in this Act, are known to each
9 other and agree to the use of cashier's checks, teller's
10 checks, or certified checks as good funds under item (3) of
11 subsection (c) of this Section.

12 (b) A title insurance company or title insurance agent
13 shall not make disbursements in connection with any escrows,
14 settlements, or closings out of a fiduciary trust account or
15 accounts unless the funds in the amount of less than \$50,000
16 received from any single party to the transaction are collected
17 funds or good funds as defined in subsection (c) of this
18 Section.

19 (c) "Good funds" means funds in one of the following forms:

20 (1) lawful money of the United States;

21 (2) wired funds unconditionally held by and credited to
22 the fiduciary trust account of the title insurance company,
23 the title insurance agent, or independent escrowee;

24 (3) cashier's checks, certified checks, bank money
25 orders, official bank checks, or teller's checks drawn on
26 or issued by a financial institution ~~chartered under the~~

1 ~~laws of any state or the United States~~ and unconditionally
2 held by the title insurance company, title insurance agent,
3 or independent escrowee;

4 (4) a personal check or checks in an aggregate amount
5 not exceeding \$5,000 per closing, provided that the title
6 insurance company, title insurance agent, or independent
7 escrowee has reasonable grounds to believe that sufficient
8 funds are available for withdrawal in the account upon
9 which the check is drawn at the time of disbursement;

10 (5) a check drawn on the trust account of any lawyer or
11 real estate broker licensed under the laws of any state,
12 provided that the title insurance company, title insurance
13 agent, or independent escrowee has reasonable grounds to
14 believe that sufficient funds are available for withdrawal
15 in the account upon which the check is drawn at the time of
16 disbursement;

17 (6) a check issued by this State, the United States, or
18 a political subdivision of this State or the United States;
19 or

20 (7) a check drawn on the fiduciary trust account of a
21 title insurance company or title insurance agent, provided
22 that the title insurance company, title insurance agent, or
23 independent escrowee has reasonable grounds to believe
24 that sufficient funds are available for withdrawal in the
25 account upon which the check is drawn at the time of
26 disbursement.

1 (d) "Collected funds" means funds deposited, finally
2 settled, and credited to the title insurance company, title
3 insurance agent, or independent escrowee's fiduciary trust
4 account.

5 (e) A purchaser, a seller, or a lender is each considered a
6 single party to the transaction for the purposes of this
7 Section, regardless of the number of people or entities making
8 up the purchaser, seller, or lender.

9 (Source: P.A. 96-645, eff. 1-1-10; 96-1457, eff. 1-1-11.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.