



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2738

Introduced 2/16/2016, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

215 ILCS 155/3	from Ch. 73, par. 1403
215 ILCS 155/16	from Ch. 73, par. 1416
215 ILCS 155/17	from Ch. 73, par. 1417

Amends the Title Insurance Act. Makes changes in the definition of "insured closing letter" or "closing protection letter". Provides that a closing protection letter shall not be issued by any person or entity (including an independent escrowee) other than a title insurance company. Effective immediately.

LRB099 18757 EGJ 43141 b

1 AN ACT concerning regulation.

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 adding Section 17 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 title insurance company's ~~principal's~~ responsibility for
4 intentional misconduct or errors in closing the real property
5 transaction on the part of a settlement agent, such as a title
6 insurance agent or other settlement service provider, and
7 includes protection afforded pursuant to subsections (f), (g),
8 and (h) of Section 16 and Section 16.1 of this Act even if such
9 protection is afforded by 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. 98-387, eff. 8-16-13.)

1 (215 ILCS 155/16) (from Ch. 73, par. 1416)

2 Sec. 16. Title insurance agents.

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

7 (b) Each application for registration shall be made on a
8 form specified by the Secretary and prepared by each title
9 insurance company which the agent represents. The title
10 insurance company shall retain the copy of the application and
11 forward a copy to the Secretary.

12 (c) Every applicant for registration, except a firm,
13 partnership, association, limited liability company, or
14 corporation, must be 18 years or more of age. Included in every
15 application for registration of a title insurance agent,
16 including a firm, partnership, association, limited liability
17 company, or corporation, shall be an affidavit of the applicant
18 title insurance agent, signed and notarized in front of a
19 notary public, affirming that the applicant and every owner,
20 officer, director, principal, member, or manager of the
21 applicant has never been convicted or pled guilty to any felony
22 or misdemeanor involving a crime of theft or dishonesty or
23 otherwise accurately disclosing any such felony or misdemeanor
24 involving a crime of theft or dishonesty. No person who has had
25 a conviction or pled guilty to any felony or misdemeanor
26 involving theft or dishonesty may be registered by a title

1 insurance company without a written notification to the
2 Secretary disclosing the conviction or plea, and no such person
3 may serve as an owner, officer, director, principal, or manager
4 of any registered title insurance agent without the written
5 permission of the Secretary.

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

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

25 Interest received on funds deposited with the escrow agent
26 in connection with any escrow, settlement, or closing shall be

1 paid to the depositing party unless the instructions provide
2 otherwise.

3 The escrow agent shall maintain separate records of all
4 receipts and disbursements of escrow, settlement, or closing
5 funds.

6 The escrow agent shall comply with any rules adopted by the
7 Secretary pertaining to escrow, settlement, or closing
8 transactions.

9 (f) A title insurance agent shall not act as an escrow
10 agent in a nonresidential real property transaction where the
11 amount of settlement funds on deposit with the escrow agent is
12 less than \$2,000,000 or in a residential real property
13 transaction unless the title insurance agent, title insurance
14 company, or another authorized title insurance agent has
15 committed for the issuance of title insurance in that
16 transaction and the title insurance agent is authorized to act
17 as an escrow agent on behalf of the title insurance company for
18 which the commitment for title insurance has been issued. The
19 authorization under the preceding sentence shall be given
20 either (1) by an agency contract with the title insurance
21 company which contract, in compliance with the requirements set
22 forth in subsection (g) of this Section, authorizes the title
23 insurance agent to act as an escrow agent on behalf of the
24 title insurance company or (2) by a closing protection letter
25 in compliance with the requirements set forth in Section 16.1
26 of this Act, issued by the title insurance company to the

1 seller, buyer, borrower, and lender. A closing protection
2 letter shall not be issued by a title insurance agent, an
3 independent escrowee, or any other person or entity other than
4 a title insurance company. The provisions of this subsection
5 (f) shall not apply to the authority of a title insurance agent
6 to act as an escrow agent under subsection (g) of Section 17 of
7 this Act.

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

18 (h) A title insurance company shall be liable for the acts
19 or omissions of its title insurance agent as an escrow agent if
20 the title insurance company has authorized the title insurance
21 agent under subsections (f) and (g) of this Section 16 and only
22 to the extent of the liability undertaken by the title
23 insurance company in the agency agreement or closing protection
24 letter. The liability, if any, of the title insurance agent to
25 the title insurance company for acts and omissions of the title
26 insurance agent as an escrow agent shall not be limited or

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

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

21 (Source: P.A. 98-398, eff. 1-1-14; 98-832, eff. 1-1-15; 99-104,
22 eff. 1-1-16.)

23 (215 ILCS 155/17) (from Ch. 73, par. 1417)

24 Sec. 17. Independent escrowees.

25 (a) Every independent escrowee shall be subject to the same

1 certification and deposit requirements to which title
2 insurance companies are subject under Section 4 of this Act.

3 (b) No person, firm, corporation or other legal entity
4 shall hold itself out to be an independent escrowee unless it
5 has been issued a certificate of authority by the Secretary.

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

9 (d) Every certificate of authority shall remain in effect
10 one year unless revoked or suspended by the Secretary or
11 voluntarily surrendered by the holder.

12 (e) An independent escrowee may engage in the escrow,
13 settlement, or closing business, or any combination of such
14 business, and operate as an escrow, settlement, or closing
15 agent, provided that:

16 (1) Funds deposited in connection with any escrow,
17 settlement, or closing 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. Such
21 funds shall be the property of the person or persons
22 entitled thereto under the provisions of the escrow,
23 settlement, or closing and shall be segregated by escrow,
24 settlement or closing in the records of the independent
25 escrowee. Such funds shall not be subject to any debts of
26 the escrowee and shall be used only in accordance with the

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

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

7 (3) The independent escrowee shall maintain separate
8 records of all receipt and disbursement of escrow,
9 settlement or closing funds.

10 (4) The independent escrowee shall comply with any
11 rules or regulations promulgated by the Secretary
12 pertaining to escrow, settlement or closing transactions.

13 (f) The Secretary or his authorized representative shall
14 have the power and authority to visit and examine at any time
15 any independent escrowee certified under this Act and to verify
16 and compel compliance with the provisions of this Act.

17 (g) A title insurance company or title insurance agent, not
18 qualified as an independent escrowee, may act in the capacity
19 of an escrow agent when it is supplying an abstract of title,
20 grantor-grantee search, tract search, lien search, tax
21 assessment search, or other limited purpose search to the
22 parties to the transaction even if it is not issuing a title
23 insurance commitment or title insurance policy. A title
24 insurance agent may act as an escrow agent only when
25 specifically authorized in writing on forms prescribed by the
26 Secretary by a title insurance company that has duly registered

1 the agent with the Secretary and only when notice of the
2 authorization is provided to and receipt thereof is
3 acknowledged by the Secretary. The authority granted to a title
4 insurance agent may be limited or revoked at any time by the
5 title insurance company.

6 (h) A closing protection letter shall not be issued by an
7 independent escrowee.

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

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