

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Title Insurance Act is amended by changing Sections 3 and 17 and by adding Section 17.1 as follows:

(215 ILCS 155/3) (from Ch. 73, par. 1403)

Sec. 3. As used in this Act, the words and phrases following shall have the following meanings unless the context requires otherwise:

(1) "Title insurance business" or "business of title insurance" means:

(A) Issuing as insurer or offering to issue as insurer title insurance; and

(B) Transacting or proposing to transact one or more of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of title insurance;

(i) soliciting or negotiating the issuance of title insurance;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and

proprietary leases, and for all liens or charges affecting the same;

(iii) handling of escrows, settlements, or closings;

(iv) executing title insurance policies;

(v) effecting contracts of reinsurance;

(vi) abstracting, searching, or examining titles;

or

(vii) issuing insured closing letters or closing protection letters;

(C) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property, with the exception of preparing an attorney's opinion of title; or

(D) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or

(E) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection, provided that the preparation of an attorney's opinion of title pursuant to paragraph (1)(C) is not intended to be within the definition of "title insurance business" or "business of title insurance".

(1.5) "Title insurance" means insuring, guaranteeing, warranting, or indemnifying owners of real or personal property

or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to the property; the invalidity or unenforceability of any liens or encumbrances thereon; or doing any business in substance equivalent to any of the foregoing. "Warranting" for purpose of this provision shall not include any warranty contained in instruments of encumbrance or conveyance. Title insurance is a single line form of insurance, also known as monoline. An attorney's opinion of title pursuant to paragraph (1) (C) is not intended to be within the definition of "title insurance".

(2) "Title insurance company" means any domestic company organized under the laws of this State for the purpose of conducting the business of title insurance and any title insurance company organized under the laws of another State, the District of Columbia or foreign government and authorized to transact the business of title insurance in this State.

(3) "Title insurance agent" means a person, firm, partnership, association, corporation or other legal entity registered by a title insurance company and authorized by such company to determine insurability of title in accordance with generally acceptable underwriting rules and standards in reliance on either the public records or a search package prepared from a title plant, or both, and authorized by such title insurance company in addition to do any of the following:

act as an escrow agent pursuant to subsections (f), (g), and (h) of Section 16 of this Act, solicit title insurance, collect premiums, or issue title insurance commitments, policies, and endorsements of the title insurance company; provided, however, the term "title insurance agent" shall not include officers and salaried employees of any title insurance company.

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

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

(6) "Financial interest" is any ownership interest, legal

or beneficial, except ownership of publicly traded stock.

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

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

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

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

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

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

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

(13) "Insured closing letter" or "closing protection letter" means an indemnification or undertaking to a party to a

real property transaction, from a principal such as a title insurance company, setting forth in writing the extent of the principal's responsibility for intentional misconduct or errors in closing the real property transaction on the part of a settlement agent, such as a title insurance agent or other settlement service provider, or an indemnification or undertaking given by a title insurance company or an independent escrowee setting forth in writing the extent of the title insurance company's or independent escrowee's responsibility to a party to a real property transaction which indemnifies the party against the intentional misconduct or errors in closing the real property transaction on the part of the title insurance company or independent escrowee and includes protection afforded pursuant to subsections (f), (g), and (h) of Section 16, ~~and~~ Section 16.1, subsection (h) of Section 17, and Section 17.1 of this Act even if such protection is afforded by contract.

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

(15) "Financial institution" means any bank subject to the Illinois Banking Act, any savings and loan association subject

to the Illinois Savings and Loan Act of 1985, any savings bank subject to the Savings Bank Act, any credit union subject to the Illinois Credit Union Act, and any federally chartered commercial bank, savings and loan association, savings bank, or credit union organized and operated in this State pursuant to the laws of the United States.

(Source: P.A. 98-387, eff. 8-16-13.)

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

Sec. 17. Independent escrowees.

(a) Every independent escrowee shall be subject to the same certification and deposit requirements to which title insurance companies are subject under Section 4 of this Act.

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

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

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

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

(1) Funds deposited in connection with any escrow, settlement, or closing shall be deposited in a separate fiduciary trust account or accounts in a bank or other financial institution insured by an agency of the federal government unless the instructions provide otherwise. Such funds shall be the property of the person or persons entitled thereto under the provisions of the escrow, settlement, or closing and shall be segregated by escrow, settlement or closing in the records of the independent escrowee. Such funds shall not be subject to any debts of the escrowee and shall be used only in accordance with the terms of the individual escrow, settlement or closing under which the funds were accepted.

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

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

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

(f) The Secretary or his authorized representative shall have the power and authority to visit and examine at any time any independent escrowee certified under this Act and to verify

and compel compliance with the provisions of this Act.

(g) A title insurance company or title insurance agent, not qualified as an independent escrowee, may act in the capacity of an escrow agent when it is supplying an abstract of title, grantor-grantee search, tract search, lien search, tax assessment search, or other limited purpose search to the parties to the transaction even if it is not issuing a title insurance commitment or title insurance policy. A title insurance agent may act as an escrow agent only when specifically authorized in writing on forms prescribed by the Secretary by a title insurance company that has duly registered the agent with the Secretary and only when notice of the authorization is provided to and receipt thereof is acknowledged by the Secretary. The authority granted to a title insurance agent may be limited or revoked at any time by the title insurance company.

(h) An independent escrowee may, pursuant to Section 17.1 of this Act, issue an insured closing letter if, in addition to complying with the same certification and deposit requirements that title insurance companies are subject to under Section 4 of this Act, the independent escrowee:

(1) Satisfies the Secretary that it has a minimum capital and surplus of \$2,000,000. The Secretary may provide the forms and standards for this purpose by rule. This paragraph applies only to independent escrowees licensed under this Act for the first time on or after the

effective date of this amendatory Act of the 100th General Assembly.

(2) Files with and has approved by the Secretary proof of a fidelity bond in the minimum amount of \$2,000,000 per occurrence.

(3) Establishes and maintains a statutory closing protection letter reserve for the protection of parties named in warranties of services consisting of a sum of 25% of the closing protection letter revenue received by the independent escrowee on or after the effective date of this amendatory Act of the 100th General Assembly. The reserve shall be reported as a liability of the independent escrowee in its financial statements. Amounts placed in the statutory closing protection letter reserve shall be deducted in determining the net profit of the independent escrowee for the year. Except as provided in this subsection, assets in value equal to the statutory closing protection letter reserve are not subject to distribution among creditors, stockholders, or other owners of the independent escrowee until all claims of parties named in warranties of services have been paid in full and discharged.

(4) Releases from the statutory closing protection letter reserve a sum equal to 10% of the amount added to the reserve during a calendar year on July 1 of each of the 5 years following the year in which the sum was added and

releases from the statutory closing protection letter reserve a sum equal to 3 1/3% of the amount added to the reserve during that year on each succeeding July 1 until the entire amount for that year has been released.

The Secretary shall adopt and amend rules as may be required for the proper administration and enforcement of this subsection (h) consistent with the federal Real Estate Settlement and Procedures Act and Section 24 of this Act.

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

(215 ILCS 155/17.1 new)

Sec. 17.1. Closing or settlement protection; independent escrowees.

(a) Notwithstanding the provisions of item (iii) of paragraph (B) of subsection (1) and subsection (9) of Section 3 of this Act, an independent escrowee is not authorized to act pursuant to subsection (9) of Section 3 of this Act in a nonresidential real property transaction where the amount of settlement funds on deposit with the escrow agent is less than \$2,000,000 or in a residential real property transaction unless, as part of the same transaction, closing protection letters protecting the buyer's or borrower's, lender's, and seller's interests have been issued by the independent escrowee.

(b) Unless otherwise agreed to between an independent escrowee and a protected person or entity, a closing protection

letter under this Section shall indemnify all parties to a real property transaction against actual loss, not to exceed the amount of the settlement funds deposited with the independent escrowee. The closing protection letter shall in any event indemnify all parties to a real property transaction when such losses arise out of:

(1) failure of the independent escrowee to comply with written closing instructions to the extent that they relate to (A) the status of the title to an interest in land or the validity, enforceability, and priority of the lien of a mortgage on an interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien or (B) the obtaining of any other document specifically required by a party to the real property transaction, but only to the extent that the failure to obtain such other document affects the status of the title to an interest in land or the validity, enforceability, and priority of the lien of a mortgage on an interest in land; or

(2) fraud, dishonesty, or negligence of the independent escrowee in handling funds or documents in connection with closings to the extent that the fraud, dishonesty, or negligence relates to the status of the title to the interest in land or to the validity, enforceability, and priority of the lien of a mortgage on an interest in land or, in the case of a seller, to the

extent that the fraud, dishonesty, or negligence relates to funds paid to or on behalf of, or which should have been paid to or on behalf of, the seller.

(c) The indemnification under a closing protection letter may include limitations on the liability of the independent escrowee for any of the following:

(1) Failure of the independent escrowee to comply with closing instructions that require title insurance protection inconsistent with that set forth in the title insurance commitment for the real property transaction. Instructions that require the removal of specific exceptions to title or compliance with the requirements contained in the title insurance commitment shall not be deemed to be inconsistent.

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

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

insurance company.

(4) Failure of the independent escrowee to comply with written closing instructions to the extent that such instructions require a determination by the independent escrowee of the validity, enforceability, or effectiveness of any document described in item (B) of paragraph (1) of subsection (b) of this Section.

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

(6) The settlement or release of any claim by the indemnified party to the real property transaction without the written consent of the independent escrowee.

(7) Any matters created, suffered, assumed, or agreed to by, or known to, the indemnified party to the real property transaction without the written consent of the independent escrowee.

The closing protection letter may also include reasonable additional provisions concerning the dollar amount of protection, provided the limit is no less than the amount deposited with the independent escrowee, arbitration, subrogation, claim notices, and other conditions and limitations that do not materially impair the protection required by this Section.

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(d) The Secretary shall adopt and amend rules as may be required for the proper administration and enforcement of this Section consistent with the federal Real Estate Settlement Procedures Act and Section 24 of this Act.

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