

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 Section 3 and by adding Section 18.1 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 in
26 addition to do any of the following: act as an escrow agent,

1 solicit title insurance, collect premiums, issue title
2 reports, binders or commitments to insure and policies in its
3 behalf, provided, however, the term "title insurance agent"
4 shall not include officers and salaried employees of any title
5 insurance company.

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

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

25 (6) "Financial interest" is any ownership interest, legal
26 or beneficial, except ownership of publicly traded stock.

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

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

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

1 brokers licensed pursuant to the Real Estate License Act of
2 2000, as such Acts are now or hereafter amended, and licensed
3 attorneys when engaged in the attorney-client relationship are
4 exempt from the escrow provisions of this Act. "Independent
5 Escrowee" does not include employees or independent
6 contractors of a title insurance company or title insurance
7 agent authorized by a title insurance company to perform
8 closing, escrow, or settlement services.

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

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

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

24 (13) "Insured closing letter" or "closing protection
25 letter" means an indemnification or undertaking to a party to a
26 real estate transaction, from a principal such as a title

1 insurance company or similar entity, setting forth in writing
2 the extent of the principal's responsibility for intentional
3 misconduct or errors in closing the real estate transaction on
4 the part of a settlement agent, such as a title insurance agent
5 or other settlement service provider.

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

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

14 (215 ILCS 155/18.1 new)

15 Sec. 18.1. Choice of title insurance company. It is
16 declared to be the public policy of this State that a party to
17 a contract for the sale of residential real property who is
18 obligated by the contract to pay for title insurance has the
19 right to choose the title insurance company and title insurance
20 agent that will provide the title insurance. No lender or
21 producer of title business shall, as a condition of making a
22 loan, providing services of any kind, including, but not
23 limited to, services as a broker, agent, lender, attorney, or
24 otherwise, require a party to a contract for the sale of
25 residential real property who is obligated by that contract to

1 furnish and pay for title insurance at their expense, to
2 procure title insurance from a title insurance company or title
3 insurance agent other than a title insurance company or title
4 insurance agent that is chosen by the party paying for the
5 title insurance.

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