



Sen. Iris Y. Martinez

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LRB096 18556 RPM 39833 a

1 AMENDMENT TO HOUSE BILL 5409

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5409 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Title Insurance Act is amended by changing  
5 Sections 3 and 16 and by adding Section 16.1 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

1 title insurance;

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

4 (ii) guaranteeing, warranting, or otherwise  
5 insuring the correctness of title searches for all  
6 instruments affecting titles to real property, any  
7 interest in real property, cooperative units and  
8 proprietary leases, and for all liens or charges  
9 affecting the same;

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

12 (iv) executing title insurance policies;

13 (v) effecting contracts of reinsurance;

14 (vi) abstracting, searching, or examining titles;

15 or

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

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

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

26 (E) Doing or proposing to do any business substantially

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

6 (1.5) "Title insurance" means insuring, guaranteeing,  
7 warranting, or indemnifying owners of real or personal property  
8 or the holders of liens or encumbrances thereon or others  
9 interested therein against loss or damage suffered by reason of  
10 liens, encumbrances upon, defects in, or the unmarketability of  
11 the title to the property; the invalidity or unenforceability  
12 of any liens or encumbrances thereon; or doing any business in  
13 substance equivalent to any of the foregoing. "Warranting" for  
14 purpose of this provision shall not include any warranty  
15 contained in instruments of encumbrance or conveyance. Title  
16 insurance is a single line form of insurance, also known as  
17 monoline. An attorney's opinion of title pursuant to paragraph  
18 (1)(C) is not intended to be within the definition of "title  
19 insurance".

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

26 (3) "Title insurance agent" means a person, firm,

1 partnership, association, corporation or other legal entity  
2 registered by a title insurance company and authorized by such  
3 company to determine insurability of title in accordance with  
4 generally acceptable underwriting rules and standards in  
5 reliance on either the public records or a search package  
6 prepared from a title plant, or both, and authorized by such  
7 title insurance company in addition to do any of the following:  
8 act as an escrow agent pursuant to subsections (f), (g), and  
9 (h) of Section 16 of this Act, solicit title insurance, collect  
10 premiums, or issue title insurance commitments reports,  
11 ~~binders or commitments to insure and policies,~~ and endorsements  
12 of the title insurance company; in its behalf, provided,  
13 however, the term "title insurance agent" shall not include  
14 officers and salaried employees of any title insurance company.

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

24 (5) "Associate" is any firm, association, partnership,  
25 corporation or other legal entity organized for profit in which  
26 a producer of title business is a director, officer, or partner

1       thereof, or owner of a financial interest, as defined herein,  
2       in such entity; any legal entity that controls, is controlled  
3       by, or is under common control with a producer of title  
4       business; and any natural person or legal entity with whom a  
5       producer of title business has any agreement, arrangement, or  
6       understanding or pursues any course of conduct the purpose of  
7       which is to evade the provisions of this Act.

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

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

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

24          (9) "Independent Escrowee" means any firm, person,  
25       partnership, association, corporation or other legal entity,  
26       other than a title insurance company or a title insurance

1 agent, which receives deposits, in trust, of funds or  
2 documents, or both, for the purpose of effecting the sale,  
3 transfer, encumbrance or lease of real property to be held by  
4 such escrowee until title to the real property that is the  
5 subject of the escrow is in a prescribed condition. Federal and  
6 State chartered banks, savings and loan associations, credit  
7 unions, mortgage bankers, banks or trust companies authorized  
8 to do business under the Illinois Corporate Fiduciary Act,  
9 licensees under the Consumer Installment Loan Act, real estate  
10 brokers licensed pursuant to the Real Estate License Act of  
11 2000, as such Acts are now or hereafter amended, and licensed  
12 attorneys when engaged in the attorney-client relationship are  
13 exempt from the escrow provisions of this Act. "Independent  
14 Escrowee" does not include employees or independent  
15 contractors of a title insurance company or title insurance  
16 agent authorized by a title insurance company to perform  
17 closing, escrow, or settlement services.

18 (10) "Single risk" means the insured amount of any title  
19 insurance policy, except that where 2 or more title insurance  
20 policies are issued simultaneously covering different estates  
21 in the same real property, "single risk" means the sum of the  
22 insured amounts of all such title insurance policies. Any title  
23 insurance policy insuring a mortgage interest, a claim payment  
24 under which reduces the insured amount of a fee or leasehold  
25 title insurance policy, shall be excluded in computing the  
26 amount of a single risk to the extent that the insured amount

1 of the mortgage title insurance policy does not exceed the  
2 insured amount of the fee or leasehold title insurance policy.

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

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

7 (13) "Insured closing letter" or "closing protection  
8 letter" means an indemnification or undertaking to a party to a  
9 real property ~~estate~~ transaction, from a principal such as a  
10 title insurance company ~~or similar entity~~, setting forth in  
11 writing the extent of the principal's responsibility for  
12 intentional misconduct or errors in closing the real property  
13 ~~estate~~ transaction on the part of a settlement agent, such as a  
14 title insurance agent or other settlement service provider, and  
15 includes protection afforded pursuant to subsections (f), (g),  
16 and (h) of Section 16 and Section 16.1 of this Act even if such  
17 protection is afforded by contract.

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

25 (Source: P.A. 94-893, eff. 6-20-06; 95-570, eff. 8-31-07.)

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 in duplicate by  
9 each title insurance company which the agent represents. The  
10 title insurance company shall retain the copy of the  
11 application and forward the original to the Secretary with the  
12 appropriate fee.

13 (c) Every applicant for registration, except a firm,  
14 partnership, association or corporation, must be 18 years or  
15 more of age.

16 (d) Registration shall be made annually by a filing with  
17 the Secretary; supplemental registrations for new title  
18 insurance agents to be added between annual filings shall be  
19 made from time to time in the manner provided by the Secretary;  
20 registrations shall remain in effect unless revoked or  
21 suspended by the Secretary or voluntarily withdrawn by the  
22 registrant or the title insurance company.

23 (e) Funds deposited in connection with any escrows,  
24 settlements, or closings shall be deposited in a separate  
25 fiduciary trust account or accounts in a bank or other  
26 financial institution insured by an agency of the federal



1 government unless the instructions provide otherwise. The  
2 funds shall be the property of the person or persons entitled  
3 thereto under the provisions of the escrow, settlement, or  
4 closing and shall be segregated by escrow, settlement, or  
5 closing in the records of the escrow agent. The funds shall not  
6 be subject to any debts of the escrowee and shall be used only  
7 in accordance with the terms of the individual escrow,  
8 settlement, or closing under which the funds were accepted.

9 Interest received on funds deposited with the escrow agent  
10 in connection with any escrow, settlement, or closing shall be  
11 paid to the depositing party unless the instructions provide  
12 otherwise.

13 The escrow agent shall maintain separate records of all  
14 receipts and disbursements of escrow, settlement, or closing  
15 funds.

16 The escrow agent shall comply with any rules adopted by the  
17 Secretary pertaining to escrow, settlement, or closing  
18 transactions.

19 (f) A title insurance agent shall not act as an escrow  
20 agent in a nonresidential real property transaction where the  
21 amount of settlement funds on deposit with the escrow agent is  
22 less than \$2,000,000 or in a residential real property  
23 transaction unless the title insurance agent, title insurance  
24 company, or another authorized title insurance agent has  
25 committed for the issuance of title insurance in that  
26 transaction and the title insurance agent is authorized to act

1 as an escrow agent on behalf of the title insurance company for  
2 which the commitment for title insurance has been issued. The  
3 authorization under the preceding sentence shall be given  
4 either (1) by an agency contract with the title insurance  
5 company which contract, in compliance with the requirements set  
6 forth in subsection (g) of this Section, authorizes the title  
7 insurance agent to act as an escrow agent on behalf of the  
8 title insurance company or (2) by a closing protection letter  
9 in compliance with the requirements set forth in Section 16.1  
10 of this Act, issued by the title insurance company to the  
11 seller, buyer, borrower, and lender. A closing protection  
12 letter shall not be issued by a title insurance agent. The  
13 provisions of this subsection (f) shall not apply to the  
14 authority of a title insurance agent to act as an escrow agent  
15 under subsection (g) of Section 17 of this Act.

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

26 (h) A title insurance company shall be liable for the acts

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

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

1 (215 ILCS 155/16.1 new)

2 Sec. 16.1. Closing or settlement protection.

3 (a) Notwithstanding the provisions of item (iii) of  
4 paragraph (B) of subsection (1) and subsections (3) and (8) of  
5 Section 3 and Section 16 of this Act, a title insurance company  
6 or title insurance agent is not authorized to act as an escrow  
7 agent in a nonresidential real property transaction where the  
8 amount of settlement funds on deposit with the escrow agent is  
9 less than \$2,000,000 or in a residential real property  
10 transaction unless as part of the same transaction a  
11 commitment, binder, or title insurance policy and closing  
12 protection letters protecting the buyer's or borrower's,  
13 lender's, and seller's interests have been issued by the title  
14 insurance company on whose behalf the commitment, binder, or  
15 title insurance policy has been issued. Closing protection  
16 letters are not required when the authorization for the title  
17 insurance agent to act as an escrow agent is given by an agency  
18 contract with the title insurance company pursuant to  
19 subsections (f), (g), and (h) of Section 16 of this Act, but  
20 shall be issued by the title insurance company upon the request  
21 of a party to a nonresidential real property transaction where  
22 the amount of settlement funds on deposit with the escrow agent  
23 is less than \$2,000,000 or in a residential real property  
24 transaction.

25 (b) Unless otherwise agreed to between a title insurance  
26 company and a protected person or entity, a closing protection

1 letter under this Section shall indemnify all parties to a real  
2 property transaction against actual loss, not to exceed the  
3 amount of the settlement funds deposited with the escrow agent.  
4 The closing protection letter shall in any event indemnify all  
5 parties to a real property transaction when such losses arise  
6 out of:

7 (1) failure of the escrow agent to comply with written  
8 closing instructions to the extent that they relate to (A)  
9 the status of the title to an interest in land or the  
10 validity, enforceability, and priority of the lien of a  
11 mortgage on an interest in land, including the obtaining of  
12 documents and the disbursement of funds necessary to  
13 establish the status of title or lien or (B) the obtaining  
14 of any other document specifically required by a party to  
15 the real property transaction, but only to the extent that  
16 the failure to obtain such other document affects the  
17 status of the title to an interest in land or the validity,  
18 enforceability, and priority of the lien of a mortgage on  
19 an interest in land; or

20 (2) fraud, dishonesty, or negligence of the escrow  
21 agent in handling funds or documents in connection with  
22 closings to the extent that the fraud, dishonesty, or  
23 negligence relates to the status of the title to the  
24 interest in land or to the validity, enforceability, and  
25 priority of the lien of a mortgage on an interest in land  
26 or, in the case of a seller, to the extent that the fraud,

1       dishonesty, or negligence relates to funds paid to or on  
2       behalf of, or which should have been paid to or on behalf  
3       of, the seller.

4       (c) The indemnification under a closing protection letter  
5       may include limitations on the liability of the title insurance  
6       company for any of the following:

7           (1) Failure of the escrow agent to comply with closing  
8           instructions that require title insurance protection  
9           inconsistent with that set forth in the title insurance  
10          commitment for the real property transaction. Instructions  
11          that require the removal of specific exceptions to title or  
12          compliance with the requirements contained in the title  
13          insurance commitment shall not be deemed to be  
14          inconsistent.

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

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

1           (4) Failure of the escrow agent to comply with written  
2           closing instructions to the extent that such instructions  
3           require a determination by the escrow agent of the  
4           validity, enforceability, or effectiveness of any document  
5           described in subitem (B) of item (1) of subsection (b) of  
6           this Section.

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

12           (6) The settlement or release of any claim by the  
13           indemnified party to the real property transaction without  
14           the written consent of the title insurance company.

15           (7) Any matters created, suffered, assumed, or agreed  
16           to by, or known to, the indemnified party to the real  
17           property transaction without the written consent of the  
18           title insurance company.

19           The closing protection letter may also include reasonable  
20           additional provisions concerning the dollar amount of  
21           protection, provided such limit is not less than the amount  
22           deposited with the escrow agent, arbitration, subrogation,  
23           claim notices, and other conditions and limitations that do not  
24           materially impair the protection required by this Section 16.1.

25           (d) This Section shall not apply to the authority of a  
26           title insurance company and title insurance agent to act as an

1 escrow agent under subsection (g) of Section 17 of this Act.".