

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 Section 3 and by adding Section 17.1 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 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, or a similar undertaking given by  
7 a title insurance company or an independent escrowee to a party  
8 to a real property transaction which indemnifies the party  
9 against the intentional misconduct or errors in closing the  
10 real property transaction on the part of the title insurance  
11 company or independent escrowee and includes protection  
12 afforded pursuant to subsections (f), (g), and (h) of Section  
13 16, ~~and~~ Section 16.1, and Section 17.1 of this Act even if such  
14 protection is afforded by contract.

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

22 (15) "Financial institution" means any bank subject to the  
23 Illinois Banking Act, any savings and loan association subject  
24 to the Illinois Savings and Loan Act of 1985, any savings bank  
25 subject to the Savings Bank Act, any credit union subject to  
26 the Illinois Credit Union Act, and any federally chartered

1 commercial bank, savings and loan association, savings bank, or  
2 credit union organized and operated in this State pursuant to  
3 the laws of the United States.

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

5 (215 ILCS 155/17.1 new)

6 Sec. 17.1. Independent escrowee prohibitions;  
7 indemnification under a closing protection letter.

8 (a) Notwithstanding the provisions of item (iii) of  
9 paragraph (B) of subsection (1) and subsection (9) of Section 3  
10 of this Act, an independent escrowee is not authorized to act  
11 pursuant to subsection (9) of Section 3 of this Act in a  
12 nonresidential real property transaction where the amount of  
13 settlement funds on deposit with the escrow agent is less than  
14 \$2,000,000 or in a residential real property transaction  
15 unless, as part of the same transaction, closing protection  
16 letters protecting the buyer's or borrower's, lender's, and  
17 seller's interests have been issued by the independent  
18 escrowee.

19 (b) Unless otherwise agreed to between an independent  
20 escrowee and a protected person or entity, a closing protection  
21 letter under this Section shall indemnify all parties to a real  
22 property transaction against actual loss, not to exceed the  
23 amount of the settlement funds deposited with the independent  
24 escrowee. The closing protection letter shall in any event  
25 indemnify all parties to a real property transaction when such



1 losses arise out of:

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

15 (2) fraud, dishonesty, or negligence of the  
16 independent escrowee in handling funds or documents in  
17 connection with closings to the extent that the fraud,  
18 dishonesty, or negligence relates to the status of the  
19 title to the interest in land or to the validity,  
20 enforceability, and priority of the lien of a mortgage on  
21 an interest in land or, in the case of a seller, to the  
22 extent that the fraud, dishonesty, or negligence relates to  
23 funds paid to or on behalf of, or which should have been  
24 paid to or on behalf of, the seller.

25 (c) The indemnification under a closing protection letter  
26 may include limitations on the liability of the independent

1 escrowee for any of the following:

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

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

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

23 (4) Failure of the independent escrowee to comply with  
24 written closing instructions to the extent that such  
25 instructions require a determination by the independent  
26 escrowee of the validity, enforceability, or effectiveness

1 of any document described in item (B) of paragraph (1) of  
2 subsection (b) of this Section.

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

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

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

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

22 (d) Notwithstanding any provision of this Act to the  
23 contrary, an independent escrowee that issues a closing  
24 protection letter pursuant to this Section shall, in addition  
25 to the deposits required by Section 4 of this Act, file with  
26 and have approved by the Secretary proof of a fidelity bond in

1 the minimum amount of \$2,000,000.

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

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