



## 96TH GENERAL ASSEMBLY

### State of Illinois

#### 2009 and 2010

##### HB5409

Introduced 2/5/2010, by Rep. André M. Thapedi

#### SYNOPSIS AS INTRODUCED:

215 ILCS 155/3  
215 ILCS 155/16

from Ch. 73, par. 1403  
from Ch. 73, par. 1416

Amends the Title Insurance Act. In the provision concerning definitions, makes changes to the definition of "title insurance agent". Provides that a title insurance agent shall not act as an escrow agent in a real property transaction unless the title insurance agent, title insurance company, or another authorized title insurance agent has committed for the issuance of title insurance and the title insurance agent is authorized to act as an escrow agent on behalf of the title insurance company. Provides that closing protection letters shall indemnify the parties in a real property transaction against actual loss, not to exceed the amount of the settlement funds deposited with the escrow agent, when the loss arises out of certain circumstances. Sets forth the circumstances under which indemnification under a closing protection letter may include limitations on the liability of the title insurance. Provides that a title insurance company shall be liable for the acts or omissions of its title insurance agent as an escrow agent if the title insurance company has authorized the title insurance agent and only to the extent of the liability undertaken by the title insurance company in the agency agreement or closing protection letter. Makes other changes.

LRB096 18556 RPM 33938 b

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 Sections 3 and 16 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 on behalf of the

1 registering title insurance company: act as an escrow agent  
2 under subsections (f), (g), and (h) of Section 16 or subsection  
3 (g) of Section 17 of this Act, solicit title insurance, collect  
4 premiums, issue title reports, binders or commitments to insure  
5 and policies ~~in its behalf~~, provided, however, the term "title  
6 insurance agent" shall not include officers and salaried  
7 employees of any title insurance company.

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

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

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

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

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

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

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

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

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

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

26 (13) "Insured closing letter" or "closing protection

1 letter" means an indemnification or undertaking to a party to a  
2 real estate transaction, from a principal such as a title  
3 insurance company or similar entity, setting forth in writing  
4 the extent of the principal's responsibility for intentional  
5 misconduct or errors in closing the real estate transaction on  
6 the part of a settlement agent, such as a title insurance agent  
7 or other settlement service provider.

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

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

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

17 Sec. 16. Title insurance agents.

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

22 (b) Each application for registration shall be made on a  
23 form specified by the Secretary and prepared in duplicate by  
24 each title insurance company which the agent represents. The  
25 title insurance company shall retain the copy of the



1 application and forward the original to the Secretary with the  
2 appropriate fee.

3 (c) Every applicant for registration, except a firm,  
4 partnership, association or corporation, must be 18 years or  
5 more of age.

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 real property transaction unless the title insurance  
11 agent, title insurance company, or another authorized title  
12 insurance agent has committed for the issuance of title  
13 insurance in that transaction and the title insurance agent is  
14 authorized to act as an escrow agent on behalf of the title  
15 insurance company for which the commitment for title insurance  
16 has been issued. The authorization under the preceding sentence  
17 shall be given either (1) by an agency contract with the title  
18 insurance company which contract authorizes the title  
19 insurance agent to act as an escrow agent on behalf of the  
20 title insurance company or (2) by a closing protection letter  
21 in compliance with the requirements set forth in subsection (g)  
22 of this Section, issued by the title insurance company to the  
23 seller, buyer, borrower, and lender. A closing protection  
24 letter shall not be issued by a title insurance agent. The  
25 provisions of this subsection (f) shall not apply to the  
26 authority of a title insurance agent to act as an escrow agent

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

2 (g) A closing protection letter under this Section shall  
3 indemnify all parties to a real property transaction against  
4 actual loss, not to exceed the amount of the settlement funds  
5 deposited with the escrow agent, when such loss arises out of:

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

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

1 behalf of, or which should have been paid to or on behalf  
2 of, the seller.

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

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

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

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

26 (4) Failure of the escrow agent to comply with written

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

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

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

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

17 The closing protection letter may also include reasonable  
18 additional provisions concerning arbitration, subrogation,  
19 claim notices, and other conditions and limitations that do not  
20 materially impair the coverages required by this Section 16.

21 (i) A title insurance company shall be liable for the acts  
22 or omissions of its title insurance agent as an escrow agent if  
23 the title insurance company has authorized the title insurance  
24 agent under subsections (f), (g), and (h) of this Section 16  
25 and only to the extent of the liability undertaken by the title  
26 insurance company in the agency agreement or closing protection

1 letter. The escrow agent shall not charge a fee for closing  
2 protection letter coverage under subsections (f), (g), and (h)  
3 of this Section 16, but shall collect from the parties the fee  
4 charged by the title insurance company under the following  
5 sentence and shall promptly remit the fee to the title  
6 insurance company. The title insurance company shall charge the  
7 parties a reasonable fee for a closing protection letter issued  
8 pursuant to subsections (f), (g), and (h) of this Section 16  
9 and shall not pay any portion of the fee to the escrow agent.  
10 The failure of the title insurance company to charge the fee  
11 required under the preceding sentence, or the payment of any  
12 portion of the fee to the escrow agent by the title insurance  
13 company, shall be deemed a prohibited inducement or  
14 compensation in violation of Section 24 of this Act.

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