



Rep. André M. Thapedi

Filed: 3/23/2010

09600HB5409ham001

LRB096 18556 RPM 39528 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 estate transaction, from a principal such as a title
10 insurance company or similar entity, setting forth in writing
11 the extent of the principal's responsibility for intentional
12 misconduct or errors in closing the real estate transaction on
13 the part of a settlement agent, such as a title insurance agent
14 or other settlement service provider.

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

23 (215 ILCS 155/16) (from Ch. 73, par. 1416)

24 Sec. 16. Title insurance agents.

25 (a) No person, firm, partnership, association, corporation

1 or other legal entity shall act as or hold itself out to be a
2 title insurance agent unless duly registered by a title
3 insurance company with the Secretary.

4 (b) Each application for registration shall be made on a
5 form specified by the Secretary and prepared in duplicate by
6 each title insurance company which the agent represents. The
7 title insurance company shall retain the copy of the
8 application and forward the original to the Secretary with the
9 appropriate fee.

10 (c) Every applicant for registration, except a firm,
11 partnership, association or corporation, must be 18 years or
12 more of age.

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18 suspended by the Secretary or voluntarily withdrawn by the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

20 (e) Funds deposited in connection with any escrows,
21 settlements, or closings shall be deposited in a separate
22 fiduciary trust account or accounts in a bank or other
23 financial institution insured by an agency of the federal
24 government unless the instructions provide otherwise. The
25 funds shall be the property of the person or persons entitled
26 thereto under the provisions of the escrow, settlement, or

1 closing and shall be segregated by escrow, settlement, or
2 closing in the records of the escrow agent. The funds shall not
3 be subject to any debts of the escrowee and shall be used only
4 in accordance with the terms of the individual escrow,
5 settlement, or closing under which the funds were accepted.

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

10 The escrow agent shall maintain separate records of all
11 receipts and disbursements of escrow, settlement, or closing
12 funds.

13 The escrow agent shall comply with any rules adopted by the
14 Secretary pertaining to escrow, settlement, or closing
15 transactions.

16 (f) A title insurance agent shall not act as an escrow
17 agent in a nonresidential real property transaction where the
18 amount of settlement funds on deposit with the escrow agent is
19 less than \$2,000,000 or in a residential real property
20 transaction unless the title insurance agent, title insurance
21 company, or another authorized title insurance agent has
22 committed for the issuance of title insurance in that
23 transaction and the title insurance agent is authorized to act
24 as an escrow agent on behalf of the title insurance company for
25 which the commitment for title insurance has been issued. The
26 authorization under the preceding sentence shall be given

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

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

23 (h) A title insurance company shall be liable for the acts
24 or omissions of its title insurance agent as an escrow agent if
25 the title insurance company has authorized the title insurance
26 agent under subsections (f) and (g) of this Section 16 and only

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

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

23 (215 ILCS 155/16.1 new)

24 Sec. 16.1. Closing or settlement protection.

25 (a) Notwithstanding the provisions of item (iii) of

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

22 (b) Unless otherwise agreed to between a title insurance
23 company and a protected person or entity, a closing protection
24 letter under this Section shall indemnify all parties to a real
25 property transaction against actual loss, not to exceed the
26 amount of the settlement funds deposited with the escrow agent.

1 The closing protection letter shall in any event indemnify all
2 parties to a real property transaction when such losses arise
3 out of:

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

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

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

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

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

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

24 (4) Failure of the escrow agent to comply with written
25 closing instructions to the extent that such instructions
26 require a determination by the escrow agent of the

1 validity, enforceability, or effectiveness of any document
2 described in subitem (B) of item (1) of subsection (b) of
3 this Section.

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

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

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

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

22 (d) The entire fee for the closing protection letter shall
23 be remitted by the title insurance agent to the title insurance
24 company. Title insurance agents shall not charge the parties
25 any additional amount for closing protection letters issued
26 under this Section.

1 (e) This Section shall not apply to the authority of a
2 title insurance company and title insurance agent to act as an
3 escrow agent under subsection (g) of Section 17 of this Act."