

AN ACT concerning insurance.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Title Insurance Act is amended by changing Sections 16 and 21 as follows:

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

Sec. 16. Title insurance agents.

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

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

(c) Every applicant for registration, except a firm, partnership, association, limited liability company, or corporation, must be 18 years or more of age. Included in every application for registration of a title insurance agent, including a firm, partnership, association, limited liability company, or corporation, shall be an affidavit of the applicant

title insurance agent, signed and notarized in front of a notary public, affirming that the applicant and every owner, officer, director, principal, member, or manager of the applicant has never been convicted or pled guilty to any felony or misdemeanor involving a crime of theft or dishonesty. No person who has had a conviction or pled guilty to any felony or misdemeanor involving theft or dishonesty may be registered by a title insurance company without a separate written notification to the Secretary disclosing the conviction or plea, and no such person may serve as an owner, officer, director, principal, or manager of any registered title insurance agent without the written permission of the Secretary.

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by the Secretary; registrations shall remain in effect unless revoked or suspended by the Secretary or voluntarily withdrawn by the registrant or the title insurance company.

(e) Funds deposited in connection with any escrows, settlements, or closings shall be deposited in a separate fiduciary trust account or accounts in a bank or other financial institution insured by an agency of the federal government unless the instructions provide otherwise. The funds shall be the property of the person or persons entitled

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

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

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

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

(f) A title insurance agent shall not act as an escrow agent in a nonresidential real property transaction where the amount of settlement funds on deposit with the escrow agent is less than \$2,000,000 or in a residential 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 in that transaction and the title insurance agent is authorized to act as an escrow agent on behalf of the title insurance company for which the commitment for title insurance has been issued. The

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

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

(h) 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 under subsections (f) and (g) of this Section 16 and only to the extent of the liability undertaken by the title insurance company in the agency agreement or closing protection letter. The liability, if any, of the title insurance agent to the title insurance company for acts and omissions of the title insurance agent as an escrow agent shall not be limited or otherwise modified because the title insurance company has provided closing protection to a party or parties to a real property transaction escrow, settlement, or closing. The escrow agent shall not charge a fee for protection provided by a title insurance company to parties to real property transactions under subsections (f) and (g) of this Section 16 and Section 16.1, but shall collect from the parties the fee charged by the title insurance company and shall promptly remit the fee to the title insurance company. The title insurance company may charge the parties a reasonable fee for protection provided pursuant to subsections (f) and (g) of this Section 16 and Section 16.1 and shall not pay any portion of the fee to the escrow agent. The payment of any portion of the fee to the escrow agent by the title insurance company, shall be deemed a prohibited inducement or compensation in violation of Section 24 of this Act.

(i) The Secretary shall adopt and amend such rules as may be required for the proper administration and enforcement of this Section 16 consistent with the federal Real Estate Settlement Procedures Act and Section 24 of this Act.

(Source: P.A. 96-1454, eff. 1-1-11.)

(215 ILCS 155/21) (from Ch. 73, par. 1421)

Sec. 21. Regulatory action.

(a) The Secretary may refuse to grant, and may suspend or revoke, any certificate of authority, registration, or license issued pursuant to this Act or may impose a fine for a violation of this Act if he determines that the holder of or applicant for such certificate, registration or license:

(1) has intentionally made a material misstatement or fraudulent misrepresentation in relation to a matter covered by this Act;

(2) has misappropriated or tortiously converted to its own use, or illegally withheld, monies held in a fiduciary capacity;

(3) has demonstrated untrustworthiness or incompetency in transacting the business of guaranteeing titles to real estate in such a manner as to endanger the public;

(4) has materially misrepresented the terms or conditions of contracts or agreements to which it is a party;

(5) has paid any commissions, discounts or any part of its premiums, fees or other charges to any person in violation of any State or federal law or regulations or opinion letters issued under the federal Real Estate Settlement Procedures Act of 1974; ~~or~~

(6) has failed to comply with the deposit and reserve requirements of this Act or any other requirements of this Act;~~;~~

(7) has committed fraud or misrepresentation in applying for or procuring any certificate of authority, registration, or license issued pursuant to this Act;

(8) has a conviction or plea of guilty or plea of nolo contendere in this State or any other jurisdiction to (i) any felony or (ii) a misdemeanor, an essential element of which is dishonesty or fraud or larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game;

(9) has been disciplined by another state, the District of Columbia, a territory, foreign nation, a governmental agency, or any entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for which a title insurance company, title insurance agent, or independent escrowee may be disciplined under this Act or if at least one of the grounds for that discipline involves dishonesty; a certified copy of the record of the action by the other state or jurisdiction shall be prima facie evidence thereof;

(10) has advertising that is inaccurate, misleading, or contrary to the provisions of this Act;

(11) has knowingly and willfully made any substantial

misrepresentation or untruthful advertising;

(12) has made any false promises of a character likely to influence, persuade, or induce;

(13) has knowingly failed to account for or remit any money or documents coming into the possession of a title insurance company, title insurance agent, or independent escrowee that belong to others;

(14) has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(15) has violated the terms of a disciplinary order issued by the Department;

(16) has disregarded or violated any provision of this Act or the published rules adopted by the Department to enforce this Act or has aided or abetted any individual, partnership, registered limited liability partnership, limited liability company, or corporation in disregarding any provision of this Act or the published rules; or

(17) has acted as a title insurance company, title insurance agent, or independent escrowee without a certificate of authority, registration, or license after the title insurance company, title insurance agent, or independent escrowee's certificate of authority, registration, or license was inoperative.

(b) In every case where a registration or certificate is suspended or revoked, or an application for a registration or

certificate or renewal thereof is refused, the Secretary shall serve notice of his action, including a statement of the reasons for his action, as provided by this Act. When a notice of suspension or revocation of a certificate of authority is given to a title insurance company, the Secretary shall also notify all the registered agents of that title insurance company of the Secretary's action.

(c) In the case of a refusal to issue or renew a certificate or accept a registration, the applicant or registrant may request in writing, within 30 days after the date of service, a hearing. In the case of a refusal to renew, the expiring registration or certificate shall be deemed to continue in force until 30 days after the service of the notice of refusal to renew, or if a hearing is requested during that period, until a final order is entered pursuant to such hearing.

(d) The suspension or revocation of a registration or certificate shall take effect upon service of notice thereof. The holder of any such suspended registration or certificate may request in writing, within 30 days of such service, a hearing.

(e) In cases of suspension or revocation of registration pursuant to subsection (a), the Secretary may, in the public interest, issue an order of suspension or revocation which shall take effect upon service of notification thereof. Such order shall become final 60 days from the date of service

unless the registrant requests in writing, within such 60 days, a formal hearing thereon. In the event a hearing is requested, the order shall remain temporary until a final order is entered pursuant to such hearing.

(f) Hearing shall be held at such time and place as may be designated by the Secretary either in the City of Springfield, the City of Chicago, or in the county in which the principal business office of the affected registrant or certificate holder is located.

(g) The suspension or revocation of a registration or certificate or the refusal to issue or renew a registration or certificate shall not in any way limit or terminate the responsibilities of any registrant or certificate holder arising under any policy or contract of title insurance to which it is a party. No new contract or policy of title insurance may be issued, nor may any existing policy or contract to title insurance be renewed by any registrant or certificate holder during any period of suspension or revocation of a registration or certificate.

(h) The Secretary may issue a cease and desist order to a title insurance company, agent, or other entity doing business without the required license or registration, when in the opinion of the Secretary, the company, agent, or other entity is violating or is about to violate any provision of this Act or any law or of any rule or condition imposed in writing by the Department.

The Secretary may issue the cease and desist order without notice and before a hearing.

The Secretary shall have the authority to prescribe rules for the administration of this Section.

If it is determined that the Secretary had the authority to issue the cease and desist order, he may issue such orders as may be reasonably necessary to correct, eliminate or remedy such conduct.

Any person or company subject to an order pursuant to this Section is entitled to judicial review of the order in accordance with the provisions of the Administrative Review Law.

The powers vested in the Secretary by this Section are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this Section shall be construed as requiring that the Secretary shall employ the powers conferred in this Section instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

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

Section 99. Effective date. This Act takes effect January 1, 2014.