

Chapter 740

(House Bill 1470)

AN ACT concerning

Title Insurance – Title Insurers and Title Insurance Producers – Regulation and Reports

FOR the purpose of providing that a title insurance producer independent contractor ~~who is the agent~~ provides certain services that may result in issuance of a title insurance contract by or on behalf of a title insurance producer is not required to file a certain fidelity bond, surety bond, or letter of credit with the Maryland Insurance Commissioner under certain circumstances; prohibiting a title insurance producer from using or accepting the services of a title insurance producer independent contractor unless the title insurance producer independent contractor is covered under the title insurance producer's fidelity bond and surety bond or letter of credit; providing that a title insurance producer that uses the services of a title insurance producer independent contractor is the legal principal of the title insurance producer independent contractor and is liable for certain actions of the title insurance producer independent contractor; requiring any mortgage or deed of trust executed by in a transaction in which a title insurance producer independent contractor ~~as the agent~~ acts for or on behalf of a title insurance producer to include certain information; requiring the Maryland Insurance Commissioner to conduct a certain study, adopt certain regulations, examine a certain rate review and approval process, and report certain information to certain committees of the General Assembly; requiring the Maryland Insurance Administration and the Department of Labor, Licensing, and Regulation to develop a certain document and make it available on their websites, adopt certain regulations, share certain information, and report certain information to certain committees of the General Assembly; altering a certain definition; and generally relating to title insurers and title insurance producers.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 10–101(a) and 10–121(e), (g), and (k)
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 10–101(j), 10–121(n), and 10–121.1
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY adding to

Article – Insurance

Section 10–121(n)

Annotated Code of Maryland

(2003 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

10–101.

(a) In this subtitle the following words have the meanings indicated.

(j) “Title insurance producer independent contractor” means a person that:

(1) is licensed to act as a title insurance producer;

(2) provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contractor for, or on behalf of, a licensed and appointed title insurance producer; and

(3) is not an employee of[, or associated with,] the licensed and appointed title insurance producer.

10–121.

(e) (1) In addition to meeting any of the applicable requirements for a license to act as an insurance producer under this subtitle, a sole proprietor, a limited liability company, a partnership, or a corporate applicant for a license as a title insurance producer shall file with the Commissioner:

(i) a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and

(ii) 1. a blanket surety bond; or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for \$150,000.

(3) The Commissioner may adopt regulations that specify when it is appropriate for a bond or letter of credit to be less than \$150,000.

(4) Notwithstanding paragraph (2) of this subsection, the Commissioner may waive the requirement for a bond or letter of credit if the Commissioner finds that bonds are not generally available or reasonably affordable.

(5) The Commissioner shall make a specific finding that states the reason for accepting a bond or letter of credit for less than \$150,000.

(g) The title insurance producer shall file the bond or letter of credit with the Commissioner:

(1) after the Commissioner notifies the title insurance producer of the approval of the application for a license; and

(2) before the Commissioner issues the license.

(k) (1) (i) Except as provided in paragraph (5) of this subsection, the title insurer shall during each calendar year conduct an on-site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent as designated in the title insurance agency contract between the insurer and the producer.

(ii) The on-site review shall include a review of the title insurance producer's or agency's policy blank inventory and processing operations.

(iii) If the title insurance producer or agency does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance producer or agency.

(2) A written report setting forth the results of the on-site review shall be prepared by the title insurer and is subject to examination under § 2-205 of this article.

(3) If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance producer or agency has engaged in any of the prohibited activities set forth in § 10-126 of this subtitle, the title insurer shall report in writing the suspected violation to the Commissioner and submit a copy of the examination.

(4) The examination required under this section is in addition to any examination conducted by the Commissioner to determine compliance with the accounts maintained for the benefit of the Maryland Affordable Housing Trust under § 22-103 of this article.

(5) The title insurer is not required to perform the on-site review of a title insurance producer for the calendar year during which the title insurance producer is initially appointed if the appointment is made on or after June 30 of that calendar year.

(N) NOTWITHSTANDING SUBSECTIONS (E) AND (G) OF THIS SECTION, A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR WHO ~~IS THE AGENT~~ PROVIDES ESCROW CLOSING OR SETTLEMENT SERVICES THAT MAY RESULT IN THE ISSUANCE OF A TITLE INSURANCE CONTRACT FOR OR ON BEHALF OF A TITLE INSURANCE PRODUCER IS NOT REQUIRED TO FILE A BLANKET FIDELITY BOND, BLANKET SURETY BOND, OR LETTER OF CREDIT WITH THE COMMISSIONER.

[(n)] (O) In addition to any requirements under Title 10, Subtitle 1 of this article, title insurance producers shall comply with this section.

10-121.1.

(A) A title insurance producer may not use or accept the services of a title insurance producer independent contractor unless the title insurance producer independent contractor:

(1) holds an appointment with the title insurer with which the contract of title insurance may be placed; **AND**

(2) IS COVERED UNDER THE TITLE INSURANCE PRODUCER'S:

(I) BLANKET FIDELITY BOND; AND

(II) BLANKET SURETY BOND OR LETTER OF CREDIT.

(B) (1) A TITLE INSURANCE PRODUCER THAT USES THE SERVICES OF A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS:

(I) THE LEGAL PRINCIPAL OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR; AND

(II) LIABLE FOR ALL ACTIONS OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR, INCLUDING UNINTENTIONAL ~~CONDUCT~~ CONDUCT, THAT OCCURS WITHIN THE SCOPE OF THE TITLE INSURANCE PRODUCER'S INDEPENDENT CONTRACTOR'S EMPLOYMENT.

(2) ~~ANY~~ WHEN A MORTGAGE OR DEED OF TRUST IS EXECUTED BY IN A TRANSACTION IN WHICH A TITLE INSURANCE PRODUCER INDEPENDENT

CONTRACTOR IS ACTING AS THE AGENT FOR OR ON BEHALF OF A TITLE INSURANCE PRODUCER SHALL INCLUDE ON PRODUCER, THERE SHALL BE INCLUDED ON OR WITH THE RECORDED MORTGAGE OR DEED OF TRUST THE NAME, ADDRESS, AND LICENSE NUMBER OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR AND THE TITLE INSURANCE PRODUCER FOR WHICH THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS ACTING.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Commissioner shall:

(1) study, in consultation with the title insurance industry, the feasibility of establishing a guaranty fund or other mechanism for compensating consumers and title insurers who have money that is held in escrow in connection with a real estate transaction stolen by a title insurance producer;

(2) adopt regulations specifying the manner in which a title insurer conducts the annual on-site review required under § 10-121(k) of the Insurance Article of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent; and

(3) examine the current rate review and approval process for title insurance premiums, including the appropriateness of including operating expenses as a component of the total rate charged and whether additional factors, such as underwriting losses, loss ratios, and combined ratios, should be considered when reviewing title insurance rates.

(b) On or before December 31, 2010, the Commissioner shall report to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on the status of the regulations and findings of the study and examination required under subsection (a) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Administration and the Department of Labor, Licensing, and Regulation shall:

(1) (i) develop a document, entitled "The Title Insurance Consumer's Bill of Rights", that explains a consumer's rights and responsibilities in a real estate transaction closing;

(ii) make the document available on their websites; and

(iii) adopt regulations requiring that the document be provided to a consumer at the same time that a good faith estimate is given to a consumer in connection with a mortgage loan; and

(2) share information regarding complaints received involving real estate closings and work collaboratively to track any patterns of problem transactions or licensees.

(b) On or before December 31, 2010, the Administration and the Department shall report to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on the status of the document, regulations, and collaboration between the Administration and the Department required under subsection (a) of this section.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.

Approved by the Governor, May 20, 2010.