

2010 -- S 2395

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO INSURANCE -- RHODE ISLAND TITLE INSURERS

Introduced By: Senator David E. Bates

Date Introduced: February 11, 2010

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 2.6

4 RHODE ISLAND TITLE INSURERS ACT

5 **27-2.6-1. Title and purpose.** – (a) This chapter shall be known and may be cited as the
6 "Rhode Island Title Insurers Act."

7 (b) The purpose of this chapter is to provide for the effective regulation and supervision
8 of title insurance and title insurers licensed to issue title insurance in this state.

9 **27-2.6-2. Application of act and construction with other laws.** – (a) This chapter shall
10 apply to all persons engaged in the business of title insurance in this state.

11 (b) Except where the context otherwise requires, all provisions of the Rhode Island
12 insurance general laws pertaining to insurance and insurance companies shall apply to title
13 insurance insurers.

14 **27-2.6-3. Definitions.** – As used in this chapter:

15 (1) "Abstract of title" or "abstract" means a written history, synopsis or summary of the
16 recorded instruments affecting the title to real property.

17 (2) "Affiliate" means a specific person that directly, or indirectly through one or more
18 intermediaries, controls, or is controlled by or is under common control with the person specified.

19 (3) "Bona fide employee of the title insurer or title insurance agent" means an individual

1 who devotes substantially all of his or her time to performing services on behalf of a title insurer
2 or title insurance agent and whose compensation for those services is in the form of salary or its
3 equivalent paid by the title insurer or title insurance agent.

4 (4) "Commissioner" means the director of the department of business regulation, or his or
5 her designee or the commissioner, director or superintendent of insurance in any other state.

6 (5) "Control" (including the terms "controlling," "controlled by" and "under common
7 control with") means the possession, direct or indirect, of the power to direct or cause the
8 direction of the management and policies of a person, whether through the ownership of voting
9 securities, by contract other than a commercial contract for goods or nonmanagement services, or
10 otherwise, unless the power is the result of an official position or corporate office held by the
11 person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds
12 with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting
13 securities of another person. This presumption may be rebutted by a showing that control does not
14 exist in fact. The commissioner may determine, after furnishing all persons in interest notice and
15 opportunity to be heard and making specific findings of fact to support the determination, that
16 control exists in fact, notwithstanding the absence of a presumption to that effect.

17 (6) "Direct operations" means that portion of a title insurer's operations which are
18 attributable to business written by a bona fide employee.

19 (7) "Escrow" means written instruments, money or other items deposited by one party
20 with a depository, escrow agent or escrowee for delivery to another party upon the performance,
21 of a specified condition or the happening of a certain event.

22 (8) "Escrow, settlement or closing fee" means the consideration for supervising or
23 handling the actual execution, delivery or recording of transfer and lien documents and for
24 disbursing funds.

25 (9) "Foreign title insurer" means any title insurer incorporated or organized under the
26 laws of any other state of the United States, the District of Columbia, or any other jurisdiction of
27 the United States.

28 (10) "Net retained liability" means the total liability retained by a title insurer for a single
29 risk, after taking into account any ceded liability and collateral, acceptable to the commissioner,
30 maintained by the insurer.

31 (11) "Non-U.S. title insurer" means any title insurer incorporated or organized under the
32 laws of any foreign nation or any province or territory.

33 (12) "Person" means any natural person, partnership, association, cooperative,
34 corporation, trust or other legal entity.

1 (13) "Producer" means any person, including any officer, director or owner of five
2 percent (5%) or more of the equity or capital of any person, engaged in this state in the trade,
3 business, occupation or profession of:

- 4 (i) Buying or selling interests in real property;
- 5 (ii) Making loans secured by interests in real property; or
- 6 (iii) Acting as broker, agent, representative or attorney or a person who buys or sells any
7 interest in real property or who lends or borrows money with the interest as security.

8 (14) "Qualified financial institution" means an institution that is:

- 9 (i) Organized or (in the case of a United States branch or agency office of a foreign
10 banking organization) licensed under the laws of the United States or any state and has been
11 granted authority to operate with fiduciary powers;
- 12 (ii) Regulated, supervised and examined by federal or state authorities having regulatory
13 authority over banks and trust companies;
- 14 (iii) Insured by the appropriate federal entity; and
- 15 (iv) Qualified under any additional rules established by the commissioner.

16 (15) "Security" or "security deposit" means funds or other property received by the title
17 insurer as collateral to secure and indemnitor's obligation under and indemnity agreement
18 pursuant to which the insurer is granted a perfected security interest in the collateral in exchange
19 for agreeing to provide coverage in a title insurance policy for a specific title exception to
20 coverage.

21 (16) "Subsidiary" means an affiliate controlled by a person directly or indirectly through
22 one or more intermediaries.

23 (17) "Title insurance agent" or "agent" means an authorized person, other than a bona
24 fide employee of the title insurer who, on behalf of the title insurer, performs the following acts,
25 in conjunction with the issuance of a title insurance report or policy:

- 26 (i) Determines insurability and issues title insurance reports or policies, or both, based
27 upon the performance or review of a search or abstract of title; and
- 28 (ii) Performs one or more of the following functions:
 - 29 (A) Collects or disburses premiums, escrow or security deposits or other funds;
 - 30 (B) Handles escrows, settlements or closings;
 - 31 (C) Solicits or negotiates title insurance business; or
 - 32 (D) Records closing documents.

33 (18) "Title insurance business" or "business of title insurance" means":

- 34 (i) Issuing as insurer or offering to issue as insurer, a title insurance policy;

1 (ii) Transacting or proposing to transact by a title insurer any of the following activities
2 when conducted or performed in contemplation of, or in conjunction with, the issuance of a title
3 insurance policy:

4 (A) Soliciting or negotiating the issuance of a title insurance policy;

5 (B) Guaranteeing, warranting or otherwise insuring the correctness of title searches for all
6 instruments affecting titles to real property, any interest in real property, cooperative units and
7 proprietary leases and for all liens or charges affecting the same;

8 (C) Handling of escrows, settlements or closings;

9 (D) Executing title insurance policies;

10 (E) Effecting contracts of reinsurance.

11 (iii) Guaranteeing, warranting or insuring searches or examination of title to real property
12 or any interest in real property;

13 (iv) Guaranteeing or warranting the status of title as to ownership of or liens on real
14 property and personal property by any person other than the principals to the transaction; or

15 (v) Doing or proposing to do any business substantially equivalent to any of the activities
16 listed in this subsection in a manner designed to evade the provisions of this chapter.

17 (19) "Title insurance policy" or "policy" means a contract insuring or indemnifying
18 owners of, or other persons lawfully interested in, real or personal property or any interest in real
19 property, against loss or damage arising from any or all of the following conditions existing and
20 not excepted or excluded:

21 (i) Defects in or liens or encumbrances on the insured title;

22 (ii) Unmarketability of the insured title;

23 (iii) Invalidity, lack of priority or unenforceability of liens or encumbrances on the stated
24 property;

25 (iv) Lack of legal right of access to the land; or

26 (v) Unenforceability of rights in title to the land.

27 (20) "Title insurer" or "insurer" means a company organized under laws of this state for
28 the purpose of transacting the business of title insurance and any foreign or non-United States
29 title insurer licensed in this state to transact the business of title insurance.

30 (21) "Title plant" means a set of records consisting of documents, maps, surveys or
31 entries affecting title to real property or any interest in or encumbrance on the property, which
32 have been filed or recorded in the jurisdiction for which the title plant is established or
33 maintained.

34 **27-2.6-4. Corporate form required.** – [No person other than a domestic, foreign or non-](#)

1 United States title insurer organized on the stock plan licensed under title 27 as a title insurer
2 shall issue a title insurance policy or otherwise transact the business of title insurance in this state.

3 **27-2.6-5. Authorized activities of title insurers.** – Subject to the exceptions and
4 restrictions contained in this chapter, a title insurer shall have the power to:

5 (1) Engage solely in the business of title insurance;

6 (2) Reinsure title insurance policies; and

7 (3) Perform ancillary activities, unless prohibited by the commissioner by regulation,
8 including, examining titles to real property and any interest in real property and procuring and
9 furnishing related information and information about relevant personal property, when not in
10 contemplation of, or in conjunction with, the issuance of a title insurance policy.

11 **27-2.6-6. Limitations on powers.** – (a) No insurer that transacts any class, type or kind
12 of business other than title insurance shall be eligible for the issuance or renewal of a license to
13 transact the business of title insurance in this state nor shall title insurance be transacted,
14 underwritten or issued by any insurer transacting or licensed to transact any other class, type or
15 kind of business.

16 (b) A title insure shall not engage in the business of guaranteeing payment of the
17 principal or the interest of bonds or mortgages.

18 (c)(1) Notwithstanding subsection (a) of this section, and to the extent such coverage is
19 lawful within this state, a title insurer is expressly authorized to issue closing or settlement
20 protection to a proposed insured upon request if the title insurer or its title agent issues a
21 preliminary report, binder or title insurance policy. Such closing or settlement protection shall
22 conform to the terms of coverage and form of instrument as approved by the commissioner and
23 may indemnify a proposed insured solely against loss of settlement funds only because of the
24 following acts of a title insurer's named title insurance agent:

25 (i) Theft of settlement funds; and

26 (ii) Failure to comply with written closing instructions by the proposed insured when
27 agreed to by the title insurance agent relating to title insurance coverage.

28 (2) A title insurer shall not provide any other coverage which purports to indemnify
29 against improper acts or omissions of a person with regard to escrow, settlement, or closing
30 services, except for an insured closing letter in a form approved by the department.

31 **27-2.6-7. Minimum capital and surplus requirements.** – Before being licensed to do
32 insurance business in this state, a title insurer shall establish and maintain a minimum paid-in
33 capital of not less than five hundred thousand dollars (\$500,000) and, in addition, paid-in initial
34 surplus of at least five hundred thousand dollars (\$500,000).

1 **27-2.6-8. Admitted asset standards.** – In determining the financial condition of a title
2 insurer doing business under this chapter, the investment provisions of chapters 27-11 and 27-
3 11.1 shall apply, except that an investment in a title plant or plants in an amount equal to the
4 actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the
5 investment shall not exceed the lesser of twenty percent (20%) of admitted assets or forty percent
6 (40%) of surplus to policyholders, as shown on the most recent annual statement of the title
7 insurer on file with the commissioner.

8 **27-2.6-9. Reserves.** – In determining the financial condition of a title insurer doing
9 business under this chapter, the Rhode Island general laws requiring the establishment of reserves
10 sufficient to cover all known and unknown liabilities including allocated and unallocated loss
11 adjustment expense, shall apply, except that a title insurer shall establish and maintain additional
12 reserves in accordance with regulations promulgated by the insurance commissioner.

13 **27-2.6-10. Liquidation, dissolution or insolvency.** – (a) Chapter 27-14.3 shall apply to
14 all title insurers subject to the Title Insurance Act, except as otherwise provided in this section. In
15 applying the provisions of chapter 27-14.3, the court shall consider the unique aspects of title
16 insurance and shall have broad authority to fashion relief that provides for the maximum
17 protection of the title insurance policyholders.

18 (b) Security and escrow funds held by or on behalf of the title insurer shall not become
19 general assets and shall be administered as secured creditor claims defined in chapter 27-14.3.

20 (c) Title insurance policies that are in force at the time an order of liquidation is entered
21 shall not be canceled except upon a showing to the court of good cause by the liquidator. The
22 determination of good cause shall be within the discretion of the court. In making this
23 determination, the court shall consider the unique aspects of title insurance and all other relevant
24 circumstances.

25 (d) The court may set appropriate dates that potential claimants must file their claims
26 with the liquidator. The court may set different dates for claims based upon the title insurance
27 policy than for all other claims. In setting dates, the court shall consider the unique aspects of title
28 insurance and all other relevant circumstances.

29 (e) As of the date of the order of insolvency or liquidation, all premiums paid, due or to
30 become due under policies of the title insurers, shall be fully earned. It shall be the obligation of
31 agents, insureds or representatives of the title insurer to pay fully earned premium to the
32 liquidator or rehabilitator.

33 **27-2.6-11. Diversification requirement.** – (a) Without the prior written approval of the
34 commissioner, a domestic title insurer shall not accept:

1 (1) Additional business from a title insurance agent that is not an affiliated company with
2 the insurer if, when added to other business written through the title insurance agent during the
3 same calendar year, that agent's aggregate premiums written on behalf of the title insure will
4 exceed twenty percent (20%) of the title insurer's gross premiums written during the prior
5 calendar year, as shown on the title insurer's most recent annual statement on file with the
6 commissioner; or

7 (2) Additional direct operations business from a single source if, when added to other
8 direct operations business from the single source during the same calendar year, the aggregate
9 premiums written on the direct operations business of the single source will exceed twenty
10 percent (20%) of the title insurer's gross premiums written during the prior calendar year as
11 shown on the title insurers most recent annual statement on file with the commissioner. For
12 purposes of this section a "single source" means a person that refers business to the title insurer
13 and any other person that controls, is controlled by, or is under common control with, that person.

14 (b) In determining whether prior approval may be given, the commissioner shall
15 consider:

16 (1) The potential that the acceptance of more business from the title agent or source may
17 adversely affect the financial solvency of the title insurer;

18 (2) The availability of competing title agents or additional sources in the territories in
19 which the title insurer accepts risks;

20 (3) The number of years the title insurer has been in business;

21 (4) Reinsurance arrangements mitigating the concentration of business from the agent or
22 source;

23 (5) The comparative profitability of the agent's or source's book of business;

24 (6) The degree of oversight of the agent's operations exercised by the title insurer; and

25 (7) Any other circumstances deemed by the commissioner to be appropriate.

26 **27-2.6-12. Policyholder treatment.** – (a) When a title insurance report includes an offer
27 to issue an owner's policy covering the resale of owner-occupied residential property, the report
28 shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible
29 prior to closing. If the report cannot be delivered prior to the day of closing, the title insurer or
30 agent shall document the reasons for the delay. The report furnished to the purchaser-mortgagor
31 shall incorporate the following statement on the first page in bold type:

32 **"Please read the exemptions and the terms shown or referred to herein carefully.**
33 **The exemptions are meant to provide you with notice of matters which are not covered**
34 **under the terms of the title insurance policy and should be carefully considered.**

1 It is important to note that this form is not a written representation as to the
2 condition of title and may not list all liens, defects, and encumbrances affecting title to the
3 land."

4 (b) A title insurer issuing a lender's title insurance policy in conjunction with a mortgage
5 loan made simultaneously with the purchase of all or part of the real estate securing the loan,
6 where no owner's title insurance policy has been requested, shall give written notice to the
7 purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a
8 lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy
9 does not provide title insurance protection to the purchaser-mortgagor as the owner of property
10 being purchased. The notice shall explain what title policy insures against and what possible
11 exposures exist for the purchaser-mortgagor that could be insured against through the purchase of
12 an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an
13 owner's title insurance policy protecting the property owner at a specified cost or approximate
14 cost, if the proposed coverages or amount of insurance is not then known. A copy of the notice,
15 signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least five
16 (5) years after the effective date of the policy.

17 **27-2.6-13. Duties of title insurers utilizing the services of title insurance agents. – (a)**

18 The title insurer shall not accept business from a title insurance agent unless there is in force a
19 written contract between the parties which sets forth the responsibilities of each party and, where
20 both parties share responsibility for a particular function, specifies the division of responsibilities.

21 (b) The title insurer shall, on at least a biennial basis, conduct an on-site review of the
22 underwriting, claims and escrow practices of the agent which shall include a review of the agent's
23 policy blank inventory and processing operations.

24 (c) A domestic title insurer shall not appoint to its board of directors and officer, director,
25 employee or controlling shareholder or any title insurance agent who wrote one percent (1%) or
26 more of the title insurer's direct premiums written during the previous calendar year as shown on
27 the tile insurer's most recent annual statement on file with the commissioner. This subsection
28 shall not apply to relationships governed by section 27-35-1 et seq.

29 (d) The title insurer shall maintain an inventory of all policy forms or policy numbers
30 allocated to each title insurance agent.

31 (e) The title insurer shall have on file proof that the title insurance agent is licensed by
32 this state.

33 (f) The title insurer shall establish the underwriting guidelines and, where applicable,
34 limitations on title claims settlement authority to be incorporated into contracts with its title

1 insurance agents.

2 **27-2.6-14. Prohibition of rebate and fee splitting.** – A title insurer or other person shall
3 not give or receive, directly or indirectly, any consideration for the referral of title insurance
4 business or escrow or other service provided by a title insurer. This section does not affect a title
5 insurers ability to pay consideration to persons or entities who provide core services, as defined
6 by Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2607, as amended.

7 **27-2.6-15. Favored agent of title insurer.** – A title insurer shall not participate in any
8 transaction in which it has actual knowledge that a producer or other person requires, directly or
9 indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a condition,
10 agreement or understanding to selling or furnishing any other person a loan, or loan extension,
11 credit, sale, property, contract, lease or service, that the other person shall place a title insurance
12 policy of any kind with the title insurer or through a particular title insurance agent.

13 **27-2.6-16. Premium rate filings and standards.** – No title insurer may charge any rates
14 regulated by the state after the effective date of this act, except in accordance with the premium
15 rate schedule and manuals filed with and approved by the commissioner in accordance with the
16 provisions of chapter 27-44.

17 **27-2.6-17. Form filing.** – (a) A title insurer or authorized rate service organization shall
18 not deliver or issue for delivery or permit any of its authorized title insurance agents to deliver in
19 this state, any policy form, in connection with title insurance written, unless it has been filed with
20 and approved by the commissioner.

21 (b) Forms covered by this section shall include:

22 (1) Title insurance policies, including standard form endorsements; and

23 (2) Title insurance commitments issued prior to the issuance of a title insurance policy;

24 (3) An insurer may use American Land Title Association (ALTA) approved checklists on
25 endorsements.

26 (c) After notice and opportunity to be heard are given to the insurer or rate service
27 organization which submitted a form for approval, the commissioner may withdraw approval of
28 the form on finding that the use of the form is contrary to the legal requirements applicable at the
29 time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety (90)
30 days after notice of withdrawal is given.

31 (d) Any term or condition related to an insurance coverage provided by an approved title
32 insurance policy or any exception to the coverage, except those ascertained from a search and
33 examination of records relating to a title or inspection or survey of a property to be insured, may
34 only be included in the policy after the term, condition or exception has been filed with the

1 commissioner and approved.

2 **27-2.6-18. Filing by rating bureaus.** – (a) A title insurer may satisfy its obligation to file
3 premium rates, rating manuals and forms as required by this chapter by becoming a member of,
4 or a subscriber to, a rate service organization, organized and licensed under the provisions of this
5 code, where the organization makes the filing, and by authorizing the commissioner in writing to
6 accept the filings on the insurer's behalf.

7 (b) Nothing in this chapter shall be construed as requiring a title insurer to become a
8 member of, or a subscriber to, any rate service organization. Nothing in this chapter shall be
9 construed as prohibiting the filing of deviations from rate service organization filings by any
10 member or subscriber.

11 **27-2.6-19. Penalties and liabilities.** – (a) If the commissioner determines that the title
12 insurer or any other person has violated this chapter, or any regulation or order promulgated
13 thereunder, after notice and opportunity to be heard, the commissioner may order:

14 (1) A penalty pursuant to section 42-14-16 for each violation; and

15 (2) Revocation or suspension of the title insurer's license.

16 (b) Nothing contained in this section shall affect the right of the commissioner to impose
17 any other penalties provided for in the insurance code.

18 (c) Nothing contained in this chapter is intended to or shall in any manner limit or restrict
19 the rights of policyholders, claimants and creditors.

20 **27-2.6-20. Violations of the real estate settlement procedures act (RESPA).** – The
21 commissioner or attorney general may bring an action in a court of competent jurisdiction to
22 enjoin violations of RESPA, 12 U.S.C. section 2607, as amended.

23 **27-2.6-21. Severability.** – If any provision of this chapter, or the application of the
24 provision to any person or circumstances shall be held invalid, the remainder of the chapter and
25 the application of the provision to persons or circumstances other than those to which it is held
26 invalid, shall not be affected.

27 SECTION 2. This act shall take effect on January 1, 2011 and shall apply to all
28 transactions entered into after the effective date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- RHODE ISLAND TITLE INSURERS

1 This act would regulate title insurance and title insurers licensed to write title insurance in
2 Rhode Island.

3 This act would take effect on January 1, 2011 and would apply to all transactions entered
4 into after the effective date.

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