

TITLE INSURERS MODEL ACT

Drafting Note: This model Act should be adopted concurrently with the Title Insurance Agent Model Act because the Acts contain many complementary provisions and both Acts are required to provide sufficient regulation of title insurance.

Table of Contents

Section 1.	Title and Purpose
Section 2.	Application of Act and Construction with Other Laws
Section 3.	Definitions
Section 4.	Corporate Form Required
Section 5.	Authorized Activities of Title Insurers
Section 6.	Limitations on Powers
Section 7.	Minimum Capital and Surplus Requirements
Section 8.	Single Risk Limit
Section 9.	Admitted Asset Standards
Section 10.	Reserves
Section 11.	Liquidation, Dissolution or Insolvency
Section 12.	Restrictions on Dividends
Section 13.	Diversification Requirement
Section 14.	Direct Operations—Policyholder Treatment
Section 15.	Duties of Insurers Utilizing the Services of Title Insurance Agents
Section 16.	Conditions for Maintaining Escrow and Security Deposit Accounts
Section 17.	Prohibition on Rebate and Fee Splitting
Section 18.	Favored Title Agent or Title Insurer
Section 19.	Premium Rate Filings and Standards
Section 20.	Form Filing
Section 21.	Filing by Rating Bureaus
Section 22.	Record Retention Requirements
Section 23.	Rules and Regulations
Section 24.	Penalties and Liabilities
Section 25.	Violations of the Real Estate Settlement Procedures Act (RESPA)
Section 26.	Severability
Section 27.	Effective Date

Section 1. Title and Purpose

- A. This Act shall be known and may be cited as the [insert state] Title Insurers Act.
- B. The purpose of this Act is to provide for the effective regulation and supervision of title insurance and title insurers licensed to write title insurance this state.

Section 2. Application of Act and Construction with Other Laws

- A. This Act shall apply to all persons engaged in the business of title insurance in this state.
- B. Except as otherwise expressly provided in this Act, and except where the context otherwise requires, all provisions of the insurance code applying to insurance and insurance companies generally shall apply to title insurance and title insurers.

Section 3. Definitions

As used in this Act:

- A. “Abstract of title” or “abstract” means a written history, synopsis or summary of the recorded instruments affecting the title to real property.

- B. “Affiliate” means a specific person that directly, or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with the person specified.
- C. “Bona fide employee” of the title insurer or title insurance agent means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer or title insurance agent and whose compensation for those services is in the form of salary or its equivalent paid by the title insurer or title insurance agent.
- D. “Commissioner” means the insurance commissioner of [insert name of state], or the commissioner’s representatives, or the commissioner, director or superintendent of insurance in any other state.
- E. “Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- F. “Direct operations” means that portion of a title insurer’s operations which are attributable to business written by a bona fide employee.
- G. “Escrow” means written instruments, money or other items deposited by one party with a depository, escrow agent or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event.
- H. “Escrow, settlement or closing fee” means the consideration for supervising or handling the actual execution, delivery or recording of transfer and lien documents and for disbursing funds.
- I. “Foreign title insurer” means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States.
- J. “Net retained liability” means the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the commissioner, maintained by the insurer.
- K. “Non-U.S. title insurer” means any title insurer incorporated or organized under the laws of any foreign nation or any province or territory.
- L. “Person” means any natural person, partnership, association, cooperative, corporation, trust or other legal entity.
- M. “Producer” means any person, including any officer, director or owner of five percent (5%) or more of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:
 - (1) Buying or selling interests in real property;
 - (2) Making loans secured by interests in real property; or
 - (3) Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with the interest as security.

- N. “Qualified financial institution” means an institution that is:
- (1) Organized or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;
 - (2) Regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies;
 - (3) Insured by the appropriate federal entity; and
 - (4) Qualified under any additional rules established by the commissioner.
- O. “Referral” means the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral.
- P. “Security” or “security deposit” means funds or other property received by the title insurer as collateral to secure an indemnitor’s obligation under an indemnity agreement pursuant to which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage.
- Q. “Subsidiary” means an affiliate controlled by a person directly or indirectly through one or more intermediaries.
- R. “Title insurance agent” or “agent” means an authorized person, other than a bona fide employee of the title insurer who, on behalf of the title insurer, performs the following acts, in conjunction with the issuance of a title insurance report or policy:
- (1) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title; and
 - (2) Performs one or more of the following functions:
 - (a) Collects or disburses premiums, escrow or security deposits or other funds;
 - (b) Handles escrows, settlements or closings;
 - (c) Solicits or negotiates title insurance business; or
 - (d) Records closing documents.
- S. “Title insurance business” or “business of title insurance” means:
- (1) Issuing as insurer or offering to issue as insurer a title insurance policy;
 - (2) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:
 - (a) Soliciting or negotiating the issuance of a title insurance policy;
 - (b) Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;
 - (c) Handling of escrows, settlements or closings;

- (d) Executing title insurance policies;
 - (e) Effecting contracts of reinsurance; or
 - (f) Abstracting, searching or examining titles;
- (3) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property; or
 - (4) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or
 - (5) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection in a manner designed to evade the provisions of this Act.
- T. “Title insurance policy” or “policy” means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:
- (1) Defects in or liens or encumbrances on the insured title;
 - (2) Unmarketability of the insured title;
 - (3) Invalidity, lack of priority or unenforceability of liens or encumbrances on the stated property;
 - (4) Lack of legal right of access to the land; or
 - (5) Unenforceability of rights in title to the land.
- U. “Title insurance report” or “report” means a preliminary report, commitment or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy.
- V. “Title insurer” or “insurer” means a company organized under laws of this state for the purpose of transacting the business of title insurance and any foreign or non-U.S. title insurer licensed in this state to transact the business of title insurance.
- W. “Title plant” means a set of records consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

Section 4. Corporate Form Required

No person other than a domestic, foreign or non-U.S. title insurer organized on the stock plan and licensed under Section [insert section] of this code as a title insurer shall issue a title insurance policy or otherwise transact the business of title insurance in this state.

Section 5. Authorized Activities of Title Insurers

Subject to the exceptions and restrictions contained in this Act, a title insurer shall have the power to:

- A. Do only title insurance business;
- B. Reinsure title insurance policies; and

- C. Perform ancillary activities, unless prohibited by the commissioner, including, examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.

Section 6. Limitations on Powers

- A. No insurer that transacts any class, type or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other class, type or kind of business.
- B. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

Drafting Note: States that recognize “mortgage guarantee” as a separate class, type or kind of insurance may not need to include this subsection.

- C. (1) Notwithstanding Subsection A of this section, and to the extent such coverage is lawful within this state, a title insurer is expressly authorized to issue closing or settlement protection to a proposed insured upon request if the title insurer issues a preliminary report, binder or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the commissioner and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer’s named title insurance agent:
 - (a) Theft of settlement funds; and
 - (b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.
- (2) The Commissioner may promulgate or approve a required charge for providing the coverage.
- (3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

Section 7. Minimum Capital and Surplus Requirements

Before being licensed to do an insurance business in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than \$[insert amount] and, in addition, paid-in initial surplus of at least \$[insert amount].

Drafting Note: Each state should insert appropriate amounts, keeping in mind that in most states title insurance is not covered by guaranty funds.

Section 8. Single Risk Limit

- A. The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent (50%) of surplus as regards policyholders plus the statutory premium reserve less the company’s investment in title plants, all as shown in the most recent annual statement of the insurer on file with the commissioner.
- B. For purposes of this Act:
 - (1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

- (2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

Section 9. Admitted Asset Standards

In determining the financial condition of a title insurer doing business under this Act, the general investment provisions of [insert reference to applicable provision of the insurance code governing authorized investments] shall apply, except that an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed the lesser of twenty percent (20%) of admitted assets or forty percent (40%) of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the commissioner.

Section 10. Reserves

In determining the financial condition of a title insurer doing business under this Act, the general provisions of the insurance code requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply, except that a title insurer shall establish and maintain:

- A. A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title, and all unpaid losses, claims and allocated loss adjustment expenses for which the title insurer may be liable, and for which the insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow or security depositor.
- B. A Statutory or Unearned Premium Reserve consisting of:
 - (1) The amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the insurer if the insurer is a foreign or non-U.S. title insurer; or
 - (2) If the insurer is a domestic insurer of this state, a statutory or unearned premium reserve consisting of:
 - (a) The amount of the statutory or unearned premium or reinsurance reserve on the effective date of this Act, which balance shall be released in accordance with the law in effect at the time such sums were added to the reserve; and
 - (b) Out of total charges for policies of title insurance written or assumed commencing with the effective date of this Act, and until December 31, 1997, a title insurer shall add to and set aside in this reserve an amount equal to [insert amount] of the sum of the following items set forth in the title insurer's most recent annual statement on file with the commissioner:
 - (i) Direct premiums written;
 - (ii) Escrow and settlement service fees;
 - (iii) Other title fees and service charges including fees for closing protection letters; and
 - (iv) Premiums for reinsurance assumed less premiums for reinsurance ceded during year.

Drafting Note: Most states have a provision for a statutory or unearned premium reserve that was established many years ago. States should consider adopting a revised statutory or unearned premium reserve that more accurately reflects current conditions. When making revisions, please consider the following:

1. It is common for title defects to go undiscovered many years after the issuance of a title insurance policy. The purpose of the statutory or unearned premium reserve is to provide a fund for the payment of these late-reported claims. Additionally, the statutory or unearned premium reserve is intended to provide a reserve for “unallocated” loss adjustment expense on all claims. Unallocated loss adjustment expense consists of company overhead expenses needed to administer open and unreported claims.
2. When establishing statutory or unearned premium reserve requirements for title insurers domiciled in your state, keep in mind that there can be a wide difference among insurers as to the correct reserve requirement. For individual insurers, reserve requirements can change over time due to varying exposure to risk.
3. There is a built-in safety provision in case the statutory or unearned premium reserve is inadequate for a particular insurer. Insurers are required under the Title Insurers Model Act to provide a supplemental reserve, backed up by an actuarial opinion, that will make up for inadequacies. A statutory or unearned premium reserve that is too high may result in an unfair penalty for a domestic title insurer.

- (c) Additions to the reserve after January 1, 1998 shall be made out of total charges for title insurance policies and guarantees written, equal to the sum of the following items, as set forth in the title insurer’s most recent annual statement on file with the commissioner:
 - (i) For each title insurance policy on a single risk written or assumed after January 1, 1998, [insert amount] per \$1,000 of net retained liability for policies under \$500,000 and [insert amount] per \$1,000 of net retained liability for policies of \$500,000 or greater; and
 - (ii) [Insert amount] of escrow, settlement and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.
- (d) The aggregate of the amounts set aside in this reserve in any calendar year pursuant to Subsections B(2)(b) and B(2)(c) shall be released from the reserve and restored to net profits over a period of twenty (20) years pursuant to the following formula: thirty-five percent (35%) of the aggregate sum on July 1 of the year next succeeding the year of addition; fifteen percent (15%) of the aggregate sum on July 1 of each of the succeeding two (2) years; ten percent (10%) of the aggregate sum on July 1 of the next succeeding year; three percent (3%) of the aggregate sum on July 1 of each of the next three (3) succeeding years; two percent (2%) of the aggregate sum on July 1 of each of the next three (3) succeeding years; and one percent (1%) of the aggregate sum on July 1 of each of the next succeeding ten (10) years.
- (e) The insurer shall calculate an adjusted statutory or unearned premium reserve as of the effective date of this Act. The adjusted reserve shall be calculated as if Subsections B(2)(b) through B(2)(d) of this section had been in effect for all years beginning twenty (20) years prior to the effective date of this Act. For purposes of this calculation, the balance of the reserve as of that date shall be deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the insurer’s annual statement on file with the commissioner on the effective date of this Act, the insurer shall, out of total charges for policies of title insurance, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes the effective date of this Act, until the entire excess has been added.
- (f) The aggregate of the amounts set aside in this reserve in any calendar year as adjustments to the insurer’s statutory or unearned premium reserve pursuant to Subsection B(2)(e) shall be released from the reserve and restored to net profits, or equity if the additions required by Subsection B(2)(e) of this section reduced equity directly, over a period not exceeding ten (10) years pursuant to the following table:

Year of Addition	Release
Year 1*	Equally over 10 years
Year 2	Equally over 9 years
Year 3	Equally over 8 years
Year 4	Equally over 7 years
Year 5	Equally over 6 years
Year 6	Equally over 5 years

* (The calendar year following the effective date of this Act).

- C. A supplemental reserve shall be established consisting of any other reserves necessary, when taken in combination with the reserves required by Subsections A and B of this section, to cover the company's liabilities with respect to all losses, claims and loss adjusted expenses.
- D. Each title insurer subject to the provisions of this Act shall file with its annual statement required under [insert section] a certification by a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer must conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.
- E. [Temporary Provision] The supplemental reserve required under Subsection C of this section shall be phased in as follows: twenty-five percent (25%) of the otherwise applicable supplemental reserve will be required until December 31, 1997; fifty percent (50%) of the otherwise applicable supplemental reserve will be required until December 31, 1998; and, seventy-five percent (75%) of the otherwise applicable supplemental reserve will be required until December 31, 1999.

Section 11. Liquidation, Dissolution or Insolvency

- A. Section [cite insurance rehabilitation and liquidation law] shall apply to all title insurers subject to the Title Insurance Act, except as otherwise provided in this section. In applying the provisions of [cite state's insurance rehabilitation and liquidation law], the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.
- B. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured creditor claims as defined in Section [cite insurance rehabilitation and liquidation law].
- C. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.
- D. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon the title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.
- E. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of agents, insureds or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.

Section 12. Restrictions on Dividends

A title insurer shall only declare or distribute a dividends to shareholders without the prior written approval of the commissioner, as would be permitted under [insert section of insurance code governing extraordinary dividends] for insurers other than life insurers.

Section 13. Diversification Requirement

- A. Without the prior written approval of the commissioner, a domestic title insurer shall not accept:
- (1) Additional business from a title insurance agent that is not an affiliated company with the insurer if, when added to other business written through the title insurance agent during the same calendar year, that agent's aggregate premiums written on behalf of the title insurer will exceed twenty percent (20%) of the title insurer's gross premiums written during the prior calendar year, as shown on the title insurer's most recent annual statement on file with the commissioner; or
 - (2) Additional direct operations business from a single source if, when added to other direct operations business from the single source during the same calendar year, the aggregate premiums written on the direct operations business of the single source will exceed twenty percent (20%) of the title insurer's gross premiums written during the prior calendar year as shown on the title insurers most recent annual statement on file with the commissioner. For purposes of this section a "single source" means a person that refers business to the title insurer and any other person that controls, is controlled by, or is under common control with, that person.
- B. In determining whether prior approval may be given, the commissioner shall consider:
- (1) The potential that the acceptance of more business from the title agent or source may adversely affect the financial solidity of the title insurer;
 - (2) The availability of competing title agents or additional sources in the territories in which the title insurer accepts risks;
 - (3) The number of years the title insurer has been in business;
 - (4) Reinsurance arrangements mitigating the concentration of business from the agent or source;
 - (5) The comparative profitability of the agent's or source's book of business;
 - (6) The degree of oversight of the agent's operations exercised by the title insurer; and
 - (7) Any other circumstances deemed by the commissioner to be appropriate.

Section 14. Direct Operations—Policyholder Treatment

- A. When a title insurance report includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the report shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the report cannot be delivered prior to the day of closing, the title insurer shall document the reasons for the delay. The report furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

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

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

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

Section 15. Duties of Title Insurers Utilizing the Services of Title Insurance Agents

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

Drafting Note: States adopting the companion Title Insurance Agent Model Act may wish to cross reference Section 8 of the agent model which specifies minimum provisions for contracts between title insurers and title insurance agents.

- B. For each title insurance agent under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title insurance agent as of the end of the previous calendar year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31st certified by the agent as being a true and accurate representation of the agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this paragraph.
- C. The title insurer shall, at least annually, conduct an on-site review of the underwriting, claims and escrow practices of the agent which shall include a review of the agent's policy blank inventory and processing operations. If the title agent 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 agent.
- D. Within thirty (30) days of executing or terminating a contract with a title insurance agent, the title insurer shall provide written notification of the appointment or termination and the reason for termination to the commissioner. Notices of appointment of a title insurance agent shall be made on a form promulgated by the commissioner.
- E. A title insurer shall not appoint to its board of directors an officer, director, employee or controlling shareholder of any title insurance agent who wrote one percent (1%) or more of the title insurer's direct premiums written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the commissioner. This subsection shall not apply to relationships governed by [cite state's insurance holding company act.]
- F. The title insurer shall maintain an inventory of all policy forms or policy numbers allocated to each title insurance agent.
- G. The title insurer shall have on file proof that the title insurance agent is licensed by this state.
- H. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

Drafting Note: States may wish to establish *de minimis* standards for this section.

Section 16. Conditions for Maintaining Escrow and Security Deposit Accounts

A title insurer may operate as an escrow, security, settlement or closing agent, provided that:

- A. All funds deposited with the title insurer in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day, in accordance with the following requirements:
 - (1) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer in a manner that permits the funds to be identified on an individual basis; and
 - (2) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.
- B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed.
- C. Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:
 - (1) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;
 - (2) The duties of the title insurer with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and
 - (3) Any other provisions the commissioner may require.
- D. Any interest received on funds deposited in connection with any escrow, settlement, security deposit or closing shall be paid, net of administrative costs, to the depositing party, unless the instructions for the funds or a governing statute provides otherwise.
- E. Disbursements may be made out of an escrow, settlement or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:
 - (1) Cash;
 - (2) Wire transfers such that the funds are unconditionally received by the title insurer or the insurer's depository;
 - (3) Checks, drafts, negotiable orders of withdrawal, money orders and any other item that has been finally paid before any disbursements;
 - (4) A depository check, including a certified check, governed by the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. § 4001, et seq.; or
 - (5) Credit transfers through the Automated Clearing House (ACH) which have been deemed available by the depository institution receiving the credits. The credits must conform to the operating rules set forth by the National Automated Clearing House Association (NACHA).

Drafting Note: States with an existing "good funds" statute should review it to determine if it is sufficient for application to title insurance business. If sufficient, Subsection E should be deleted and a cross-reference to the state good funds statute should be inserted. If the state good funds statute is insufficient, Subsection E should be retained and would be controlling for title insurance transactions.

- F. Nothing in this Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to the transaction in writing.
- G. Nothing in this Act is intended to amend, alter or supersede other sections of this Act, or the laws of this state or the United States, regarding an escrow holder's duties and obligations.
- H. The commissioner may prescribe a standard agreement for escrow, settlement, closing or security deposit funds.

Section 17. Prohibition of Rebate and Fee Splitting

- A. A title insurer or other person shall not give or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other service provided by a title insurer.

[Optional Subsection B]

- [B. Any title insurer doing business in the same county as a title insurer or title insurance agent who may be in violation of the prohibitions or limitations of this section shall have a cause of action against the violating title insurer or title insurance agent or recipient and, upon establishing the existence of a violation, shall be entitled to injunctive relief as the court may deem necessary or desirable to prevent violations of this section in the future. In any action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.]

Drafting Note: "County" in the preceding subsection refers to counties, boroughs or parishes defined by the state.

Section 18. Favored Agent of Title Insurer

A title insurer shall not participate in any transaction in which it knows that a producer or other person requires, directly or indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a condition, agreement or understanding to selling or furnishing any other person a loan, or loan extension, credit, sale, property, contract, lease or service, that the other person shall place a title insurance policy of any kind with the title insurer or through a particular title insurance agent.

Section 19. Premium Rate Filings and Standards

- A. No title insurer may charge any rates regulated by the state after the effective date of this Act, except in accordance with the premium rate schedule and manual filed with and approved by the commissioner in accordance with applicable statutes and regulations governing rate filings. The commissioner may provide by regulation for interim use of premium rate schedules in effect prior to the effective date of this Act.
- B. The commissioner may establish rules, including rules providing statistical plans, for use by all title insurers and title insurance agents in the recording and reporting of revenue, loss and expense experience in such form and detail as is necessary to aid him or her in the establishment of rates and fees.
- C. The commissioner may require that the information provided under this section be verified by oath of the insurer's or agent's president or vice president or secretary or actuary, as applicable. The commissioner may further require that the information required under this section be subject to an audit conducted by an independent certified public accountant. The commissioner shall have the authority to establish a minimum threshold level at which an audit would be required.
- D. Information filed with the commissioner relating to the experience of a particular agent shall be kept confidential unless the commissioner finds it in the public interest to disclose the information required of title insurers or title insurance agents under this section.

Section 20. Form Filing

- A. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title insurance agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the commissioner and approved by the commissioner or thirty (30) days have elapsed and it has not been disapproved as misleading or violative of public policy.
- B. Forms covered by this section shall include:
 - (1) Title insurance policies, including standard form endorsements; and
 - (2) Title insurance reports issued prior to the issuance of a title insurance policy.
- C. After notice and opportunity to be heard are given to the insurer or rate service organization which submitted a form for approval, the commissioner may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety (90) days after notice of withdrawal is given.
- D. An approved policy form or endorsement providing coverage for which no identifiable premium is assessed shall be incorporated into every applicable title insurance policy. The insurer shall disclose any additional coverage to the insured. The provisions of this section shall not operate to eliminate any underwriting standard of conditions relating to the approved policy forms or endorsements.
- E. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the commissioner and approved.

Section 21. Filing by Rating Bureaus

- A. A title insurer or title insurance agent may satisfy its obligation to file premium rates, rating manuals and forms as required by this Act by becoming a member of, or a subscriber to, a rate service organization, organized and licensed under the provisions of this code, where the organization makes the filings, and by authorizing the commissioner in writing to accept the filings on the insurer's behalf.
- B. Nothing in this Act shall be construed as requiring any title insurer or title insurance agent to become a member of, or a subscriber to, any rate service organization. Nothing in this Act shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.

Section 22. Record Retention Requirements

Evidence of the examination of title and determination of insurability for business written by a title insurer and records relating to escrow and security deposits shall be preserved and retained by the insurer for as long as appropriate to the circumstances but, in no event, less than [insert amount] years after the title insurance policy has been issued or [insert amount] years after the escrow or security deposit account has been closed. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

Section 23. Rules and Regulations

The commissioner may issue rules, regulations and orders necessary to carry out the provisions of this Act.

Drafting Note: States may want to consider developing rules and regulations with standards for title plant security and quality of data maintained by title plants.

Section 24. Penalties and Liabilities

- A. If the commissioner determines that the title insurer or any other person has violated this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the commissioner may order:
 - (1) A penalty not exceeding \$[insert amount] for each violation; and
 - (2) Revocation or suspension of the title insurer's license.
- B. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance code.

Drafting Note: Each state should consider whether references to regulations or specific statutory chapters should replace "code" in this subsection.

- C. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.

Section 25. Violations of the Real Estate Settlement Procedures Act (RESPA)

The commissioner or attorney general may bring an action in a court of competent jurisdiction to enjoin violations of RESPA, 12 U.S.C. Section 2607, as amended.

Section 26. Severability

If any provision of this Act, or the application of the provision to any person or circumstance shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 27. Effective Date

This Act shall be effective on [insert date] and applies to all transactions entered into after the effective date, except that:

- A. If the capital and surplus required prior to the effective date of this Act was less than that required by Section 7, a title insurer shall have two (2) years after the effective date of this Act to comply with Section 7; and
- B. Section 10 provides for a multi-year compliance period during which requisite reserves must be established.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1995 Proc. 4th Quarter 11, 33, 997, 1000-1011 (adopted)