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☛ Details: Miscellaneous committee correspondence and documents

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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

TITLE INSURANCE AGENT MODEL ACT

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

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Section 1. Title and Purpose

- A. This Act shall be known and may be cited as the [insert state] Title Insurance Agent Act.
- B. The purpose of this Act is to provide the state of [insert state] with a comprehensive body of law for the effective regulation and supervision of title insurance agents.

Section 2. Definitions

As used in this Act, unless the context otherwise requires:

- A. "Abstract of title" or "abstract" means a written history, synopsis or summary of the recorded instruments affecting the title to real property.
- B. "Associate" means any:
 - (1) Business organized for profit in which a producer of title business is a director, officer, partner, employee or an owner of a financial interest;
 - (2) Employee of a producer of title business;
 - (3) Franchiser or franchisee of a producer of title business;
 - (4) Spouse, parent or child of a producer of title insurance business who is a natural person;

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- (5) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title business;
 - (6) Person with whom a producer of title insurance business or any associate of the producer has an agreement, arrangement or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to that producer or associate for the referral of business.
- 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 these services is in the form of salary or its equivalent paid by the title insurer or title insurance agent.
- D. "Chattels real" means an interest in real estate less than freehold or fee.
- E. "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.
- F. "Controlled business" means any portion of a title insurance agent's business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title insurance agent.
- G. "Escrow" means written instruments, money or other items deposited by one party with a depository, escrow agent or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event.
- H. "Financial interest" means a direct or indirect interest, legal or beneficial, where the holder is or will be entitled to five percent (5%) or more of the net profits or net worth of the entity in which the interest is held.
- I. "Foreign title insurer" means a 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. "Non-U.S. title insurer" means a title insurer incorporated or organized under the laws of any foreign nation or any foreign province or territory.
- K. "Person" means a natural person, partnership, association, cooperative, corporation, trust or other legal entity.
- L. "Producer" means a person, including an 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 an interest in real property or who lends or borrows money with the interest as security.

- M. "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.
- N. "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.
- O. "Security" or "security deposit" means funds or other property received by the title insurance agent as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which a title 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.
- P. "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 an 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 escrow, settlements or closings;
 - (c) Solicits or negotiates title insurance business; or
 - (d) Records closing documents.
- Q. "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 insurance agent 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;

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- (b) **Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, chattels real, cooperative units and proprietary leases and for all liens or charges affecting the same;**
 - (c) **Handling of escrow, 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 chattels real;**
- (4) **Guaranteeing or warranting the status of title as to ownership of or liens on real property and chattels 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.**
- R. **"Title insurance policy" or "policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or chattels real, 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.**
- S. **"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.**
- T. **"Title insurance sub-agent" or "sub-agent" means a person, other than a bona fide employee of a title insurance agent who, on behalf of the title insurance agent, determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title, provided that the performance of actual legal services such as title examination or closing services by a licensed attorney does not render the attorney a sub-agent.**
- U. **"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.**

- V. "Underwrite" means the authority to accept or reject risk on behalf of the title insurer.

Section 3. Licensing Requirements

- A. A person shall not act in the capacity of a title insurance agent and a title insurer may not contract with any person to act in the capacity of a title insurance agent with respect to risks located in this state unless the person is a licensed title insurance agent in this state or possesses a license acceptable to the commissioner and issued by this state.

Drafting Note: Although a state agency other than the department of insurance might issue a limited license for one or more recognized agent functions, this does not imply a right of a licensed person to perform other agent functions unless lawfully licensed as a title insurance agent under the terms of this Act. For example, a state may wish to require licensing or registration of persons handling escrow accounts.

Drafting Note: States may want to expand this section to include competence, character, and integrity requirements; application procedures; fee requirements; procedures for withdrawal from the state and continuing education requirements. General state insurance licensing laws should also be considered and perhaps cross-referenced or incorporated into this subsection.

- B. An individual employed by a licensed insurance agent to whom the agent delegates authority to act on that agent's behalf shall be either individually licensed or be named on the employing agent's license. Each person named on the license shall possess all qualifications determined by the commissioner to be appropriate. The commissioner may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title insurance agents. These persons may include title insurance agents, employees of title insurance agents, and persons acting on behalf of title insurance agents. This subsection is not intended to include persons performing clerical functions.
- C. (1) Every title insurance agent licensed in this state shall:
- (a) Disclose on all correspondence that the agent is acting in a capacity as agent for a particular named underwriter; and
 - (b) Exclude or eliminate the word "insurer" or "underwriter" or similar term from its agency's name; and
 - (c) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the commissioner.
- (2) A title insurance agent licensed in this state prior to the effective date of this Act shall have ninety (90) days after the effective date of this Act to comply with the requirements of this subsection.
- D. (1) The commissioner shall require the title insurance agent and any delegate performing the title search to maintain the following for the benefit of the title insurer in amounts commensurate with the agent's average exposure, under terms and conditions, and from insurers acceptable to the commissioner:

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- (a) An errors and omission policy which includes coverage for an agent's delegation of any agent functions; and
 - (b) Fidelity coverage if the agent handles escrow or security deposits.
- (2) The commissioner may promulgate rules specifying acceptable alternatives to the preceding insurance requirements. The availability of closing or settlement protection shall not be construed to be an acceptable alternative to the requirements of this subsection.
- E. (1) If the title insurance agent delegates the title search to a third party, such as an abstract company, the agent must first obtain proof that the third party:
- (a) Is covered by or maintains the errors and omissions coverage required by Subsection D; and
 - (b) Is operating in compliance with rules and regulations established by the commissioner; and
- (2) The third party shall provide the agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer.

Section 4. Examination of Title Insurance Agents

The commissioner may, during normal business hours, examine, audit and inspect any and all books and records maintained by a title insurance agent under the provisions of this Act.

Drafting Note: This provision is intended to confer the authority to conduct examinations on an exception basis in the event of regulatory interest in a particular agency. States may wish to add a section requiring the regular periodic examination of agents and specifying the party conducting the examination and the party responsible for the cost of the examination. Such a section should include a hardship provision conferring authority on the commissioner to adopt rules reducing the frequency of periodic audits in the case of small agents.

Section 5. Prohibition of Rebate and Fee Splitting

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

[Optional Subsection B]

- [B. A title insurance agent 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 6. Controlled Business Provisions

- A. Whenever the business to be written constitutes controlled business, prior to commencing the transaction, the title insurance agent shall ensure that its customer has been provided with disclosure of the existence of the controlled business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the agent.
- B. The commissioner may establish rules for use by all title insurance agents in the recording and reporting of the agent's owners and of the agent's ownership interests in other persons or businesses and of material transactions between the parties.
- C. The commissioner may require each title insurance agent to file on forms prescribed by the commissioner, reports setting forth the names and addresses of those persons, if any, that have a financial interest in the agent and who the agent knows or has reason to believe are producers of title insurance business or associates of producers.

[First Optional Subsection D]

- D. Nothing in this act shall be construed as prohibiting controlled business arrangements in the provision of title insurance business so long as:
 - (1) The title insurance agent or party making a referral constituting controlled business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;
 - (2) The person being referred is not required to use a specified title insurance agent or insurer; and
 - (3) The only thing of value that is received by the title insurance agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607, as amended and Regulation X, 24 C.F.R. § 3500 et seq.

Drafting Note: See drafting note following Third Optional Subsection D.

[Second Optional Subsection D]

- D. A title insurance agent shall not accept an order for or issue a title insurance policy or guarantee or provide services to an applicant for title insurance or receive or retain any money in connection with a title insurance transaction, if:
 - (1) The title insurance agent knows or has reason to believe that the transaction will constitute controlled business; and
 - (2) When added to other controlled business written by the title insurance agent during the same calendar year, the aggregate controlled premiums written will exceed twenty percent (20%) of the title insurance agent's gross premiums written during the preceding calendar year. However, the twenty

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percent (20%) limitation shall be eighty percent (80%) in the first year after the effective date of this Act, sixty percent (60%) in the second calendar year after the effective date of this Act and forty percent (40%) in the third calendar year after the effective date of this Act.]

Drafting Note: See drafting note following Third Optional Subsection D.

[Third Optional Subsection D]

- [D. (1) In addition to the requirements of Section 3D, the commissioner shall require the title insurance agent to maintain for the benefit of the title insurer, insured or the depositor, pursuant to terms and conditions to be prescribed by the commissioner, in amounts commensurate with the agent's average exposure and the volume and nature of its business, a sufficient net worth to ensure the agent's solvency and commitment to the purpose of being a bona-fide title insurance agent.
- (2) In determining the precise amounts and terms and conditions of the above-described requirement, the commissioner may promulgate rules that:
- (a) Specify acceptable alternatives to the preceding net worth requirements; and
 - (b) Exempt certain persons from complying with all or a portion of these requirements by virtue of their actual or expected volume of business (e.g., less than fifty (50) annual transactions or less than \$5,000,000 in title insurance policies face value, or other amounts the commissioner may deem appropriate) or by virtue of individual circumstances that show that the requirements would pose an undue hardship on the title insurance agent and that the title insurance agent's conduct will be bona-fide and its services needed and desirable.
- (3) The commissioner shall also require each title insurance agent to perform through its bona-fide employees the core title services listed below in order to receive compensation for the services it renders:
- (a) The evaluation of a title search or abstract to determine the insurability of title;
 - (b) The clearance of underwriting objections; and
 - (c) Issuing and assuming responsibility for the issuance of the title insurance policy, and where customary, issuance of a title commitment.]

Drafting Note: Controlled title insurance business may or may not raise concerns and issues in a particular state and therefore, each state should decide whether and how to address this issue. The First, Second and Third Optional Subsections present three approaches. Their language should not be read to preclude other approaches or to suggest that any particular provision is necessarily desirable. Because in the Third Optional Subsection, the particular requirements that are appropriate are likely to vary from state to state, and possibly within areas of a single state, this provision is intended to permit the commissioner to set appropriate levels for net worth requirements with due regard for the prevailing circumstances and factors in each state or area.

Section 7. Favored Agent of Title Insurer

A title insurance agent shall not participate in any transaction in which it knows that a producer or other person requires, directly or indirectly, or through a 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 particular title insurer or through particular title insurance agent.

Section 8. Required Provisions of Underwriting Contract with Title Insurer

A person, firm, association or corporation acting in the capacity of a title insurance agent shall not place business with a title insurer 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 such responsibilities; and which contains the following minimum provisions:

- A. (1) The title insurer may terminate the contract upon written notice under the following circumstances:
 - (a) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the agent's license or permit to do business or the commencement of legal proceedings by the state of domicile of the agent, which if successful, would lead to cancellation of the agent's permit or license to do business;
 - (b) Material breach of any provision of the contract; or
 - (c) Notice of cancellation has been provided in accordance with contract termination requirements.
- (2) Upon notice of termination, the agent shall immediately discontinue all underwriting. Nothing in this subsection is intended to relieve the title insurance agent or title insurer of any other contractual obligation.
- B. The title insurance agent will render accounts to the title insurer detailing all transactions and remit all funds due under the contract to the title insurer by the earlier of the following:
 - (1) Forty-five (45) days after the end of the month of the effective date of the policy; or
 - (2) Within the time specified by the underwriting contract.
- C. All funds collected for the account of a title insurer by a title insurance agent shall be held in a fiduciary capacity in a bank that is a qualified financial institution. A separate and exclusive account shall be established and maintained for each underwriter represented by the title insurance agent.
- D. At the title insurer's request, the title insurance agent, its successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance report or policy is or is to be issued.

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Drafting Note: A possible conflict may exist in certain jurisdictions between the title insurance agent's fiduciary duty as the escrow holder to maintain the confidentiality of the information contained in the escrow files and the Section 8D requirement that the title insurance agent provide the title insurer access to and a right to copy the escrow files. If so, states may wish to adopt rules or regulations or establish requirements addressing the title insurance agent's need to recognize and address possible conflict.

- E. Separate records of business written by the title insurance agent will be maintained for each title insurer. The title insurer shall have access to and a right to copy all accounts and records related to its business in a form acceptable to the title insurer. The commissioner shall have access to all books, bank accounts and records of the title insurance agent in a form usable to the commissioner. The records shall be retained according to Section [cite appropriate record retention statute] and Section 10 of this Act.
- F. The contract may not be assigned in whole or in part by the title insurance agent without the expressed written consent of the title insurer.
- G. Appropriate guidelines, relating to:
 - (1) The basis of the rates to be charged;
 - (2) The types of risks which may be written;
 - (3) Maximum limits of liability;
 - (4) Territorial limitations;
 - (5) Title searches, and examinations; and
 - (6) Underwriting.
- H. It shall be the duty of the title insurance agent to immediately report and forward to the insurer all title-related escrow claims and title claims reported to the agent by policyholders or another person. However, if the contract permits the title insurance agent to settle claims on behalf of the title insurer:
 - (1) A copy of the claim file shall be sent to the title insurer at its request or as soon as it becomes known that the claim:
 - (a) Has the potential to exceed an amount established by the title insurer;
 - (b) Involves a coverage dispute;
 - (c) May exceed the title insurance agent's claims settlement authority;
 - (d) Is open for more than six (6) months; or
 - (e) Is closed by payment exceeding an amount established by the title insurer;
 - (2) All title and title-related escrow claims files settled by the agent will be the property of the title insurer;

(3) Any settlement authority granted to the title insurance agent may be terminated immediately upon the title insurer's written notice to the title insurance agent or upon the termination of the contract. The title insurer may suspend the settlement authority during the pendency of a dispute regarding the cause for termination. Nothing in this paragraph is intended to relieve the title insurance agent or title insurer of any other contractual obligation.

I. Where electronic claims files are in existence, the contract must address the immediate transmission of the data.

J. The title insurance agent shall not:

(1) Bind reinsurance or retrocessions on behalf of the title insurer;

(2) Permit a director, officer, controlling shareholder or employee to serve on the title insurer's board of directors if the agent 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 the Insurance Holding Company Act.

(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are affiliated or otherwise under common control as defined by Section [insert reference to insurance holding company act]; or

(4) Appoint a title insurance sub-agent.

K. The contract shall include specific terms of an agent's compensation.

L. The title insurance agent shall maintain an inventory of all policy forms or policy numbers assigned to the agent by the title insurer.

Drafting Note: See parallel provision in Section 11.

M. 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.

N. The title insurance agent shall annually, concurrent with the renewal date of its contract, furnish the title insurer with proof that the agent is in compliance with Section 3 of this Act.

O. If the title insurance agent delegates the title search to a third party, such as an abstract company, the agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the commissioner.

- P. The title insurance agent shall provide the insurer with access and the right to copy all accounts and records maintained by the title insurance agent with respect to business placed with the title insurer.

Section 9. Policyholder Treatment

- A. When constituting an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, a title insurance 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 insurance agent 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 10. Conditions for Providing Escrow, Closing, or Settlement Services, and Maintaining Escrow and Security Deposit Accounts

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

- A. All funds deposited with the title insurance agent in connection with an 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 insurance agent 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 insurance agent 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 insurance agent or the agent'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. The title insurance agent shall have an annual audit made of its escrow, settlement, closing and security deposit accounts, conducted by a certified public accountant on a calendar year basis at its expense within ninety (90) days after the close of the previous calendar year. The title insurance agent shall provide a copy of the audit report to each title insurance company which it represents. The commissioner may promulgate regulations setting forth the minimum threshold level at which an audit would be required, the standards of audit and the form of audit report required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this paragraph. However, the title insurer may, at its expense, conduct or cause to be conducted an annual audit of the escrow, settlement, closing and security deposit accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this paragraph. The commissioner may also require the title insurance agent to provide a copy of its audit report to the commissioner.
- G. If the title insurance agent is appointed by two (2) or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.
- H. 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.
- I. Nothing in this section 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.
- J. The commissioner may prescribe a standard agreement for escrow, settlement, closing or security deposit funds.

Section 11. Record Retention Requirements

The title insurance agent shall maintain sufficient records of its affairs, including its escrow operations and escrow trust accounts, so that the commissioner may adequately ensure that the title insurance agent is in compliance with all provisions of this Act. The commissioner may prescribe the specific record entries and documents to be kept, and the length of time for which the records must be maintained.

Section 12. Application of Other Insurance Code Sections to Title Insurance Agents

A title insurance agent shall be subject to all other applicable provisions of the insurance code unless specifically addressed by this Act.

Section 13. Rules and Regulations

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

Section 14. Penalties and Liabilities

A. If the commissioner determines that the title insurance agent 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 insurance agent's license.

B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to [insert state's rehabilitation or liquidation statute], and the receiver appointed under that order determines that the title insurance agent or any other person has not complied with this Act, or any related regulation or order, and the insurer suffered any resulting loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer and its policyholders and creditors.

Drafting Note: If state law does not otherwise provide, amend the bracketed citation in the preceding paragraph to include the rehabilitation or liquidation statute of any reciprocal state. This is intended to codify the standing of a receiver to maintain a civil action in a reciprocal state.

C. 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.

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

Section 15. 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 16. 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 17. Effective Date

This Act shall be effective as of [insert date] and applies to all activities or agreements of the title insurance agent engaged in or entered into after the effective date. The title insurance agent shall amend all existing agreements to comply with Section 8 of this Act within sixty (60) days from its effective date.

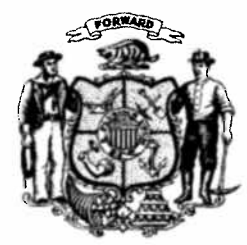
Legislative History (all references are to the Proceedings of the NAIC).

1995 Proc. 2nd Quarter (adopted).

Title Insurance Agent Model Act



WISCONSIN STATE LEGISLATURE



NAIC POLICY STATEMENT ON FINANCIAL REGULATION STANDARDS

Introduction

The safety and soundness of insurance companies operating in the United States is a prime objective of state insurance regulators. In many respects non-domiciliary states rely and depend to a great extent on domiciliary insurance departments to effectively monitor and regulate their domestic companies. To ensure that these concerns and objectives are met, an effective financial surveillance and regulation structure and system is needed. While everyone can agree that this is critical, to date no one has yet defined what constitutes an effective structure and system for financial surveillance and regulation. While the NAIC has done a great deal to foster uniformity and sound regulation through various model laws and regulations and standardized financial reporting formats and instructions as well as the development of a variety of manuals and other tools to assist state insurance departments, a comprehensive pronouncement on all functions and procedures relating to financial regulation has not been done. The objective of the NAIC Committee on Financial Regulation Standards is to establish standards for the NAIC and state insurance departments in this important area.

It is believed that establishing standards for financial regulation will have the following positive results:

- (1) Strengthen state insurance departments through self-evaluation and improvement to meet the prescribed standards.
- (2) Demonstrate to, and obtain from, state administrations and legislative bodies the support and resources needed to maintain an effective system of financial surveillance and regulation.
- (3) Create a national standard for financial regulation which will improve and strengthen the state regulatory system of insurance and the safety and soundness of insurance companies.
- (4) A standard established by the NAIC will, if attained, ensure that each jurisdiction is monitoring and regulating domestic companies operating in other jurisdictions on an admitted or non-admitted basis or as a risk retention group.
- (5) Improve the efficiency of state regulation by eliminating duplicative procedures and activities and unnecessary state-by state variations.

The standards recognize the realities of the diverse circumstances of state insurance departments. Standards for financial regulation have been divided into three major categories—(1) laws and regulations; (2) regulatory practices and procedures; and (3) organizational and personnel practices.

A. Laws and Regulations

1. Examination Authority

The department should have authority to examine companies whenever it is deemed necessary. Such authority should include complete access to the company's books and records and, if necessary, the records of any affiliated company, agent or managing general agent. This authority should extend not only to inspect books and records but also

to examine officers, employees and agents of the company under oath when deemed necessary with respect to transactions directly or indirectly related to the company under examination. The NAIC Model Law on Examinations or substantially similar provisions shall be part of state law.

2. Capital and Surplus Requirement

The department should have the ability to require that insurers have and maintain a minimum level of capital and surplus to transact business. The department should have the authority to require additional capital and surplus based upon the type, volume and nature of insurance business transacted.

3. NAIC Accounting Practices and Procedures

The department should require that all companies reporting to the department file the appropriate NAIC annual statement blank which should be prepared in accordance with the NAIC's instructions handbook and follow those accounting procedures and practices prescribed by the NAIC's Accounting Practices and Procedures Manual.

4. Corrective Action

State law should contain the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition or a substantially similar provision which authorizes the department to order a company to take necessary corrective action or cease and desist certain practices which, if not corrected, could place the company in a hazardous financial condition.

5. Valuation of Investments

The department should require that securities owned by insurance companies be valued in accordance with those standards promulgated by the NAIC's Securities Valuation Office. Other invested assets should be required to be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee.

6. Holding Company Systems

State law should contain the NAIC Model Insurance Holding Company System Regulatory Act or an Act substantially similar and the department should have adopted the NAIC's model regulation relating to this law.

7. Risk Limitation

State law should prescribe the maximum net amount of risk to be retained by a property and liability company for an individual risk based upon the company's capital and surplus which should be no larger than 10% of the company's capital and surplus.

8. Investment Regulations

State statute should require a diversified investment portfolio for all domestic insurers both as to type and issue and include a requirement for liquidity. Foreign companies should be required to substantially comply with these provisions.

9. Admitted Assets

State statute should describe those assets which may be admitted, authorized or allowed as assets in the statutory financial statement of insurers.

10. Liabilities and Reserves

State statute should prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer; including life reserves, active life reserves and unearned premium reserves, and liabilities for claims and losses unpaid and incurred but not reported claims. The NAIC's Standard Valuation Law and Actuarial Opinion and Memorandum Regulation or substantially similar provisions shall be in place.

Note: Requirements for the Standard Valuation Law are effective July 1, 1996 and for the Actuarial Opinion and Memorandum Regulation on January 1, 1997.

11. Reinsurance Ceded

State law should contain the NAIC Model Law on Credit for Reinsurance, the NAIC's Credit for Reinsurance Model Regulation and the 1992 NAIC Life and Health Reinsurance Agreement Model Regulation or substantially similar laws.

Note: Requirements for the Credit for Reinsurance Regulation and the 1992 version of the Life and Health Reinsurance Agreements Model Regulation are effective July 1, 1996. The 1985 version of the latter model will suffice until that date.

12. CPA Audits

State statute or regulation should contain a requirement for annual audits of domestic insurance companies by independent certified public accountants, based on the December 1990 version of the NAIC's Model Rule Requiring Annual Audited Financial Reports.

Note: The requirement for the 1990 version of the regulation is effective July 1, 1996.

13. Actuarial Opinion

State statute or regulation should contain a requirement for an opinion on loss and loss adjustment expense reserves by a qualified actuary or specialist on an annual basis for all domestic property and casualty insurance companies.

14. Receivership

State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent as set forth in the NAIC's Insurers Rehabilitation and Liquidation Model Act.

15. Guaranty Funds

State law should provide for a statutory mechanism, such as that contained in the NAIC's model acts on the subject, to ensure the payment of policyholders obligations subject to appropriate restrictions and limitations when a company is deemed insolvent. Sections 3A and 5H of the Life And Health Insurance Guaranty Association Model Act or substantially similar provisions should be included.

Note: Requirements for the specific life and health guaranty association provisions are effective July 1, 1996.

16. IRIS

State statute should contain a provision similar to the NAIC model act requiring domestic insurance companies to participate in the NAIC Insurance Regulatory Information System (IRIS).

17. Risk Retention Act

State law should contain a provision similar to the NAIC's Model Risk Retention Act for the regulation of risk retention groups and purchasing groups.

18. Producer Controlled Insurers

State statute should contain the NAIC's model law for Business Transacted with Producer Controlled Property/Casualty Insurer Act or a similar provision.

19. Managing General Agents Act

State law shall contain a provision similar to the NAIC's Managing General Agents Act.

Note: Either the 1990 version or the 1993 version meets the requirements for accreditation.

20. Reinsurance Intermediaries Act

State law shall contain a provision similar to the NAIC's Reinsurance Intermediary Model Act.

Note: Either the 1990 version or the 1993 version meets the requirements for accreditation.

21. Diskette Filings

State statute or regulation shall mandate diskette filings, including quarterly statements, for all companies; except states may exempt from this requirement those companies that operate only in their state of domicile.

Note: This requirement is effective July 1, 1996.

22. Risk Based Capital

The Risk Based Capital (RBC) Model Act or provisions substantially similar shall be included in state laws or regulations.

Note: The requirement is effective January 1, 1997.

23. Disclosure of Material Transactions

State law shall contain the Disclosure of Material Transactions Model Act or provisions substantially similar.

Note: This requirement is effective July 1, 1996.

B. Regulatory Practices and Procedures

1. Financial Analysis

- (a) The department should have a sufficient staff of financial analysts with the capacity to effectively review the financial statements as well as other information and data to discern potential and actual financial problems of domestic insurance companies.
- (b) The department should have an intra-department communication and reporting system that assures that all relevant information and data received by the department which may assist in the financial analysis process is directed to the financial analysis staff.
- (c) The internal financial analysis process should provide for levels of review and reporting.
- (d) The financial analysis procedure should be priority-based to ensure that potential problem companies are reviewed promptly. Such a prioritization scheme should utilize the NAIC's Insurance Regulatory Information System or a state's own system, or both.

2. Financial Examinations

- (a) The department should have the resources to examine all domestic companies on a periodic basis which is commensurate with the financial strengths and position of the insurer.
- (b) The department's examination staff should consist of a variety of specialists with training or experience in the following areas or otherwise have available qualified specialists which will permit the department to effectively examine any insurer: computer audit specialist, reinsurance specialist, life and health company examiners, property and liability company examiners, life and health actuarial examiners, property and liability actuarial examiners and property and liability claims examiners.
- (c) The department's procedures for examinations shall provide for supervisory review within the department of examination work papers and reports to ensure that the examination procedures and findings are appropriate and complete and that the examination was conducted in an efficient and timely manner.
- (d) The department's policy and procedures for examinations should follow those that are set forth in the NAIC's Examiners Handbook.
- (e) In scheduling financial examinations the department should follow those procedures set forth in the NAIC's Examiners Handbook and this schedule system should provide for the periodic examination of all domestic companies on a timely basis. This system should accord priority to companies which are having adverse financial trends or otherwise demonstrate a need for examination such as determinations of the NAIC IRIS Examiner Team.
- (f) The department's procedures require that all examination reports which contain material adverse findings be promptly presented to the commissioner or his or her designee for a determination and implementation of appropriate regulatory action.

Accreditation Standards

- (g) The department's reports of examination should be prepared in accordance with the format adopted by the NAIC and should be sent to other states in which the company transacts business in a timely fashion.
3. Other
- (a) The Department should generally follow and observe the procedures set forth in the NAIC's Troubled Insurance Company Handbook.
 - (b) State statute should allow for the sharing of otherwise confidential information, administrative or judicial orders, or other action with other state regulatory officials providing that those officials are required, under their law, to maintain its confidentiality. The department should have an established written policy to cooperate and share all information with respect to domestic companies with other state regulators including committees established by the NAIC which may be reviewing and coordinating regulatory oversight and activities. This policy should also include cooperation and sharing information with respect to domestic companies subject to delinquency proceedings.
 - (c) The Department should establish and implement procedures to insure that regulatory actions taken by the Department be reported to the NAIC's Regulatory Information Retrieval System (RIRS), that investigative information be reported to the NAIC's Special Activities Database (SAD) and that summary information on complaints be reported to the NAIC's Complaints Database Systems (CDS).

Note: Provisions for sharing of confidential information and participating in databases required July 1, 1996.

C. Organizational and Personnel Practices

1. The department should have a policy which requires the professional development of staff through job-related college courses, professional programs or other training programs which are funded by the department.
2. All financial regulation and surveillance activities are the responsibility of an individual who shall report to the commissioner or his designee.
3. The department's staff and contractual staff involved in financial regulation and surveillance should all be periodically evaluated by the department to ensure that job duties and responsibilities are being discharged in a satisfactory manner.
4. The department should establish minimum educational and experience requirements for all professional employees and contractual staff positions in the financial surveillance and regulation area which are commensurate with the duties and responsibilities of the position.
5. The department's pay structure for those positions involved with financial surveillance and regulation should be competitively based to attract and retain qualified personnel.
6. The department's funding should be sufficient to allow for the financial surveillance and regulation staff's participation as appropriate in the meetings and training sessions of the NAIC and meetings relating to the review, coordination and the development and implementation of action for troubled insurers.

Legislative History (all references are to the Proceedings of the NAIC).

1989 Proc. II 13, 21, 33-36 (adopted).

1991 Proc. I 9, 15-16, 77 (voted to add three new models to standards).

1991 Proc. II 25, 52, 75, 82 (voted to add amended model to standards).

1993 Proc. I 44-46 (itemized seven new standards).

1993 Proc. 1st Quarter 2, 4 (March 1993, added seven new standards).

1993 Proc. 1st Quarter 3, 33, 63 (June 1993, added one new standard).

1993 Proc. 2nd Quarter 12, 30, 101-102 (revised two standards and added two new models to standards).

1994 Proc. 2nd Quarter (revised one standard).

1995 Proc. 3rd Quarter (revised due date of eight standards).

Accreditation Standards