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TITLE INSURANCE SECTION

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TITLE INSURANCE AGENT REQUIREMENTS

The Division of Financial Institutions, Title Insurance Section, has received several inquiries concerning title insurance agent requirements. Additionally, the Title Insurance Section has conducted a number of title insurance agent servicing company visits and title insurance company visits to determine the work that is being performed by registered title insurance agents.

Section 3. (3) of the Illinois Title Insurance Act provides:

“Title insurance agent” means a person, firm, partnership, association, corporation or other legal entity registered by a title insurance company and authorized by such company to determine insurability of title in accordance with generally acceptable underwriting rules and standards in reliance on either the public records or a search package prepared from a title plant, or both, and authorized in addition to do any of the following: act as an escrow agent, solicit title insurance, collect premiums, issue title reports, binders or commitments to insure and policies in its behalf, provided, however, the term “title insurance agent” shall not include officers and salaried employees of any title insurance company.”

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The Illinois statutory definition of title insurance agent makes abundantly clear that a title insurance agent may “act as an escrow agent, solicit title insurance, collect premiums, issue title reports, binders or commitments to insure and policies” on behalf of its principal, but that none of these activities, separately or collectively, will operate to qualify it for registration as a title insurance agent under the Act. There is but a single prerequisite that the Illinois General Assembly had determined will qualify a title insurance agent for registration: authorization by a title insurance company to determine insurability of title in accordance with generally acceptable underwriting rules and standards in reliance on either the public records or a search package prepared from a title plant or both.

While “determination of insurability of title”, as set forth in the statutory definition of title insurance agent, is a single term, it is composed of several distinctly different activities. Determination of insurability of title is composed of all those activities performed “in accordance with generally acceptable underwriting rules and standards”. Most of the title insurance companies authorized to do business in Illinois are corporations which do business on a national or multi-state basis. All of these companies publish manuals for their employees and their authorized title insurance agents. These manuals usually include instructions on the examination of title based on a search package prepared from the public records, a title plant, an abstract of title, or any combination of these, and instructions on the criteria for taking exception to clear title and for the removal of such exceptions. In addition, many of these same title insurance companies as well as title insurance agents participate in the regular programs of instructions on these very same activities produced under the sponsorship of organizations such as the Illinois Land Title Association, the Illinois Institute for Continuing Legal Education (IICLE) as well as similar programs sponsored individually by title insurance companies. All of these instructional manuals, publications and instructional programs collectively form the “generally acceptable” underwriting rules and standards within the State of Illinois.

“Determination of insurability of title” as used in Section 3. (3) of the Act is composed of both the functions of title examination and title clearance, **and it is required that all registered title insurance agents, at minimum, determine insurability of title, which includes engaging in all aspects of the title examination and title clearance functions.**

At the present time, there are numerous programs being used where a title insurance agent has a service agreement with another title insurance agent (“Service Company[ies]”) for support services. While the support services can

include such functions as obtaining the title search, typing, recording documents and closings, the registered title insurance agent must perform its own determination of insurability of title. In determining insurability of title, the title insurance agent must utilize all searches necessary for the issuance of a title insurance commitment or title insurance policy. Service companies and title insurance companies are not to send title insurance agents preliminary title commitments or other products which give the information to the title insurance agent in such a manner as to allow the title insurance agent to issue the commitment without having had to examine title and determine insurability of title. This same rule applies to title insurance companies who have an "Attorney Examining Program". The attorney must utilize all searches necessary for the issuance of a title insurance commitment or title insurance policy and must perform the determination of insurability of title function. Additionally, after the service company or title insurance company prepares the title commitment based exclusively on the title insurance agent's examination of title, the prepared commitment must be returned to the title insurance agent to be reviewed, signed and distributed to the appropriate parties.

In addition to the above, the following previously-stated policies and procedures continue in effect:

Schedule A and Schedule B of all title insurance commitments must contain the name of the licensed title insurance company whose policy is going to be issued on that real estate transaction and the name and mailing address of the registered title insurance agent. In the case where a registered title insurance agent obtains services from a service company also registered as a title insurance agent with the same licensed title insurance company, the service company name and address may also be included on Schedule A and Schedule B, in addition to the names of the licensed title insurance company and the registered title insurance agent;

Schedule A and Schedule B of all title insurance policies must contain the name of the licensed title insurance company and the name and mailing address of the registered title insurance agent. In the case where a registered title insurance agent obtains services from a service company also registered as a title insurance agent with the same licensed title insurance company, the service company name and address may also be included on Schedule A and Schedule B, in addition to the names of the licensed title insurance company and the registered title insurance agent;

The licensed title insurance company name or code (for example, CTI, ATG, FAT, LTIC, etc.) must be included on the HUD-1 and HUD-1A Settlement Statements, preferably at the top of the form as part of the file number, so that the Department can determine the licensed title insurance company involved when it receives a copy of a HUD-1 or HUD-1A Settlement Statement from the consumer in connection with a complaint or inquiry.

In order to give the consumers an accurate disclosure of the fees and parties involved in the real estate transaction, and in compliance with applicable statutes, the HUD-1 or HUD-1A Settlement Statement must disclose the name of the entity/individual receiving the funds. For example, in the case where a registered title insurance agent obtains services from a service company also registered as a title insurance agent with the same licensed title insurance company or receives services directly from the title insurance company, the HUD-1 or HUD-1A Settlement Statement must show the title insurance fees going to the registered title insurance agent, not the service company or title insurance company, regardless of how the collection of fees and payment thereof is actually handled as between the parties. In reviewing several HUD-1 and HUD 1-A Settlement Statements, it was discovered that some of the service companies and title insurance companies show their name as receiving the title fees, not the registered title insurance agent.

The Department requires that the licensed title insurance companies immediately advise their personnel and their registered title insurance agents of the requirements as described in this Bulletin. In order to allow adequate time to disseminate this information and for the title insurance companies and title insurance agents to review their programs, the effective date of this Bulletin is September 15, 2005.

HES/bkf