HB 802

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 802 (Delegate Fulton)
Economic Matters

Title Insurance - Trust Money Protection

This bill holds a title insurer liable for the trust monies converted or misappropriated by its title insurance producer under specified conditions. The bill establishes fees, methods for determining liability of one or more title insurers, and reimbursable loss amounts.

The bill is effective July 1, 2003.

Fiscal Summary

State Effect: In the absence of a response to a request for information from the Maryland Insurance Administration (MIA), it is assumed that enforcement of the bill could be handled with existing budgeted resources. Revenues would not be affected.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill requires a title insurer to reimburse, under specified conditions, a seller, purchaser, borrower, or lender for actual loss of trust money caused by conversion or misappropriation by the title insurer's employee or title insurance producer, or by the producer's agent or employee in connection with a real property closing. The bill prohibits reimbursement for converted or misappropriated funds for: (1) conversion or misappropriation of money or property held for other purposes; (2) failure of a payment recipient to provide an accurate, written payment statement to the title insurer or title insurance producer; (3) a dispute between the parties to a closing about adjustments or the amount due to a payment recipient; (4) negligent delivery of money or excess money to a title insurance producer by a party to a closing; (5) fraud by a party to the closing, or the party's agent; and (6) trust money delivered to a title insurance producer after notice of the termination of the title insurance producer's appointment has been received by MIA.

The bill requires a fee of: (1) $50 in addition to the cost of title insurance for a real estate closing in which a purchaser elects in writing to obtain an owner's title insurance policy and a title insurance premium is collected; or (2) $25 in addition to the cost of title insurance for a real estate closing in which no title insurance policy is issued but trust money protection is otherwise provided. A title insurer may not split fees collected under the bill with a title insurance producer or pay a commission to a producer based on the fees collected under the bill.

Each title insurer must share equally in the liability for the loss protected under the bill if: (1) more than one title insurance commitment is issued; (2) if the title insurer named on the settlement statement is different from the title insurer identified in the title insurance commitment issued; or (3) more than one title insurance policy is issued. If a single title insurance policy is issued, that title insurer is solely liable for the loss, regardless of the number of commitments issued or insurers named in other documents. If a purchaser who has elected to obtain an owner's title insurance policy suffers a loss and neither a title insurance commitment nor a title insurance policy is issued, the insurer with which the converting or misappropriating producer or employee is connected becomes solely liable. If the misappropriating producer holds appointments with more than one insurer, the insurers share equally in the liability for the loss.

The protected party must give prompt written notice of a loss to the title insurer named in the policy at the address provided in MIA's records. If a failure to give prompt notice of a claim prejudices the title insurer named in the policy, the insurer's liability is reduced to the extent of the prejudice.

Reimbursement is limited to the actual loss sustained by the protected party. A title insurer's liability is further limited to the amount of money held in connection with the closing. A title insurer is not liable for special or consequential damages claimed by a protected party. The bill restricts a protected party's claim for damages or reimbursement to the remedies provided under the bill.

The bill requires the person who accepts a title insurance premium to provide notice of the bill's protections to the buyer or the buyer's agent or attorney.

The bill authorizes the Maryland Insurance Commissioner, on or after July 1, 2008, to review the reasonableness of the bill's fees and to modify the fees by regulation after consideration of all relevant factors.

Current Law: In addition to meeting any of the applicable requirements for a license to act as an insurance producer, an applicant for a license as a title insurance producer must file a blanket fidelity bond covering appropriate employees and a blanket surety bond or letter of credit. Unless the Maryland Insurance Commissioner approves a lesser amount, each bond or letter of credit must be for $100,000. The Commissioner may specify, by regulation, when a lesser amount is authorized. The Commissioner may waive the requirement for a bond or letter of credit if bonds are not generally available or reasonably affordable. The Commissioner must make a specific finding that states the reason for accepting a bond or letter of credit for less than $100,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Legislative Services

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