Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1470 (Delegate Rudolph, *et al.*)
Economic Matters Finance

Title Insurance - Title Insurers and Title Insurance Producers - Regulation and Reports

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This bill exempts a title insurance producer independent contractor from having to file a blanket fidelity bond, blanket surety bond, or letter of credit with the Insurance Commissioner, notwithstanding other provisions of law. The bill also prohibits a title insurance producer from using or accepting the services of an independent contractor unless the contractor is covered by the producer's fidelity bond, surety bond, or letter of credit. The bill expressly states that a producer is the legal principal of the title insurance producer independent contractor and is liable for all of the contractor's actions, including unintentional conduct that occurs within the scope of employment. The bill requires specified contact information to be included on or with a mortgage or deed of trust when executed in a transaction in which a title insurance producer independent contractor is acting for or on behalf of a producer.

The Insurance Commissioner must adopt regulations and report on a specified study by December 31, 2010. The Maryland Insurance Administration (MIA) and the Department of Labor, Licensing, and Regulation (DLLR) must develop "The Title Insurance Consumer's Bill of Rights" and report on the document, collaboration, and related regulations by December 31, 2010.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill's requirements can be handled with the existing budgeted resources of MIA and DLLR. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill requires the Maryland Insurance Commissioner to study, in consultation with the title insurance industry, the feasibility of establishing a guaranty fund or other mechanism for compensating consumers and title insurers with funds held in escrow in connection with a real estate transaction stolen by a title insurance producer. The Commissioner must adopt regulations that specify the manner in which a title insurer conducts the required annual on-site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent.

The bill requires the Commissioner to examine the current rate review and approval process for title insurance premiums, including the appropriateness of including operating expenses as a component of the total rate charged and whether additional factors, such as underwriting losses, loss ratios, and combined ratios, should be considered when reviewing title insurance rates. By December 31, 2010, the Commissioner must report to the Senate Finance Committee and the House Economic Matters Committee, on the status of the regulations and findings of the study and examination required under the bill.

Under the bill, MIA and DLLR must develop a document, titled "The Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The document must be made available to the public on MIA and DLLR web sites. MIA and DLLR must adopt regulations that require the document to be provided to a consumer at the same time that a good faith estimate is given to a consumer in connection with a mortgage loan.

The bill further requires MIA and DLLR to share information regarding complaints received involving real estate closings and work collaboratively to track any patterns of problem transactions or licensees. By December 31, 2010, MIA and DLLR must report to the Senate Finance Committee and the House Economic Matters Committee on the status of the document, regulations, and collaboration between MIA and DLLR.

Current Law: A "title insurance producer independent contractor" is defined as a person that:

- is licensed to act as a title insurance producer;

- provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contractor for, or on behalf of, a licensed and appointed title insurance producer; and
- is not an employee of, or associated with, the licensed and appointed title insurance producer.

A sole proprietorship, limited liability company, partnership, or a corporate applicant for a title insurance producer's license must file a blanket fidelity bond and a blanket surety bond or letter of credit with the Commissioner. Unless otherwise approved by the Commissioner, each bond or letter of credit must be for $150,000. The surety bond or letter of credit is for the benefit of any person that suffers a loss if the title insurance producer converts or misappropriates money held in escrow or trust while (1) acting as a title insurance producer; or (2) providing any escrow, closing, or settlement services. Alternatively, the fidelity bond is for the benefit of an employer of a title insurance producer who suffers any loss. The total liability of the surety insurer under each bond or letter of credit may not exceed $150,000.

Except as otherwise established, a title insurer must conduct an annual on-site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent. The on-site review must include a review of the title insurance producer's or agency's policy blank inventory and processing operations. If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance producer or agency has engaged in any prohibited activities, the title insurer must report the suspected violation in writing to the Commissioner and submit a copy of the examination.

A title insurance producer is prohibited from using or accepting the services of a title insurance producer independent contractor unless the title insurance producer independent contractor holds an appointment with the title insurer with which the contract of title insurance may be placed.

Background: Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland. The commission was required to:

- review State laws relating to the title insurance industry;
- review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
- identify title insurance issues that affect State consumers;
- examine the rate-setting factors for title insurance premiums;
- examine how rates and services in a title plant state compare to those in Maryland;

- identify ways to improve consumer education about the title insurance industry;
- study whether mechanics' liens on properties scheduled for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
- review the time limits, subsequent to closing, for the issuance of title insurance policies;
- study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of those arrangements on title insurance rates; and
- study any other issue with significant impact on the title insurance industry.

In addition, Chapter 361 of 2009 required the commission to examine the adequacy of the blanket surety bond or letter of credit required under the Insurance Article and the impact of raising the bonding requirements on title insurance producers. The commission held eight meetings, including two public hearings, and solicited testimony and presentations to fully study each of its charges. The bill's provisions incorporate six of the seven commission recommendations.

Additional Information

Prior Introductions: None.

Cross File: SB 1050 (Senator Kelley) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation (Office of the Commissioner of Financial Regulation); Maryland Insurance Administration; Department of Legislative Services

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