

SENATE BILL 724

C4

2lr2354
CF 2lr3115

By: **Senator Kelley**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurance – Closing or Settlement Protection**

3 FOR the purpose of requiring certain domestic title insurers to establish and maintain
4 a certain reserve for certain losses arising from closing or settlement protection;
5 authorizing the amount in reserve to be released in certain amounts under
6 certain circumstances; authorizing a domestic title insurer to withdraw the
7 entire reserve under certain circumstances; requiring a certain notice to include
8 certain information about certain closing or settlement protection; authorizing a
9 method to cure a certain failure to obtain a certain notice; requiring a title
10 insurer to provide certain closing or settlement protection to a certain protected
11 party in a certain transaction; requiring the closing or settlement protection to
12 indemnify certain persons against certain actions and failures in connection
13 with certain transactions; limiting the extent of a certain indemnification;
14 prohibiting the indemnification from being provided for certain losses or
15 impairments; requiring certain title insurers to file for approval by the
16 Maryland Insurance Commissioner of a certain premium; establishing a
17 minimum amount of the premium; providing that the premium may not be
18 subject to a certain agreement; authorizing a title insurer to provide a certain
19 statement of coverage; prohibiting a title insurer from providing certain other
20 coverage for a certain indemnification; requiring certain title insurers to file a
21 certain initial premium on or before a certain date; providing for the application
22 of this Act; providing for the effective dates of this Act; and generally relating to
23 title insurance protection.

24 BY adding to
25 Article – Insurance
26 Section 5–207 and 22–104
27 Annotated Code of Maryland
28 (2011 Replacement Volume)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Insurance
2 Section 22–102
3 Annotated Code of Maryland
4 (2011 Replacement Volume)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Insurance**

8 **5–207.**

9 (A) (1) IN ADDITION TO THE RESERVES REQUIRED UNDER § 5–206 OF
10 THIS SUBTITLE, A DOMESTIC TITLE INSURER SHALL SET ASIDE, AS A RESERVE
11 FOR LOSSES ARISING FROM CLOSING AND SETTLEMENT PROTECTION UNDER
12 § 22–104 OF THIS ARTICLE, ONE–HALF OF ALL PREMIUMS AND FEES FOR
13 PROVIDING THAT PROTECTION IN THE STATE OR ANY OTHER JURISDICTION
14 UNTIL THE RESERVE HAS A MINIMUM BALANCE OF:

15 (I) \$6,000,000 IF THE TITLE INSURER, AS OF THE
16 PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF
17 LESS THAN \$5,000,000;

18 (II) \$4,000,000 IF THE TITLE INSURER, AS OF THE
19 PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT
20 LEAST \$5,000,000 AND LESS THAN \$10,000,000; OR

21 (III) \$2,000,000 IF THE TITLE INSURER, AS OF THE
22 PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT
23 LEAST \$10,000,000 AND LESS THAN \$15,000,000.

24 (2) A DOMESTIC TITLE INSURER WITH SURPLUS AS REGARDS
25 POLICYHOLDERS OF AT LEAST \$15,000,000 MAY NOT BE REQUIRED TO
26 ESTABLISH A RESERVE UNDER THIS SECTION.

27 (B) THE AMOUNT SET ASIDE IN RESERVE SHALL BE RELEASED AS
28 FOLLOWS:

29 (1) IMMEDIATELY ON THE OCCURRENCE OF A LOSS ARISING
30 UNDER § 22–104 OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THE AMOUNT
31 OF THE LOSS; OR

32 (2) OVER A 4–YEAR PERIOD, 25% OF THE AGGREGATE AMOUNT OF
33 THE RESERVE DEPOSITED IN THE RESERVE IN EACH OF THE 4 YEARS

1 PRECEDING THE RELEASE AS OF JULY 1 OF THE RELEASE YEAR, LESS ANY
2 AMOUNT NEEDED TO MAINTAIN THE MINIMUM REQUIRED BALANCE.

3 (C) A DOMESTIC TITLE INSURER THAT HAS PLACED FUNDS IN RESERVE
4 MAY WITHDRAW THE ENTIRE RESERVE UNDER SUBSECTION (B)(2) OF THIS
5 SECTION IF:

6 (1) THE TITLE INSURER MAINTAINS A SURPLUS AS REGARDS
7 POLICYHOLDERS OF AT LEAST \$15,000,000;

8 (2) A FINAL ORDER OF LIQUIDATION OF THE TITLE INSURER IS
9 ENTERED; OR

10 (3) THE TITLE INSURER VOLUNTARILY RELINQUISHES, OR
11 COMPLIES WITH A FINAL ORDER OF SURRENDER OF, ITS CERTIFICATE OF
12 AUTHORITY TO CONDUCT BUSINESS IN THE STATE.

13 22-102.

14 (a) Except as provided in subsection [(d)] (E) of this section, when, in
15 connection with a real estate transaction that involves a purchase money mortgage or
16 deed of trust on land in the State, a title insurer accepts a premium for a policy that
17 insures the title to the property or the title insurer, its agent, or employee accepts a
18 premium for mortgagee title insurance, the person first accepting the premium:

19 (1) shall insert the name of each insured in the binder for the title
20 insurance or the title report; and

21 (2) immediately on receipt of the premium, shall deliver to the buyer
22 or agent or attorney of the buyer written notice:

23 (i) of the name of each insured under the policy;

24 (ii) of the face amount of the policy;

25 (iii) of the buyer's right and opportunity to obtain simultaneous
26 title insurance in the buyer's favor;

27 (iv) of the additional premium that will be required for purchase
28 of simultaneous title insurance in the buyer's favor;

29 (v) that the buyer's title insurance will be subject only to the
30 contingencies and conditions contained in the binder, title report, and policy;

1 (vi) of the buyer's right to review a sample of the form of policy
2 in which the contingencies and conditions will be inserted; [and]

3 (vii) that contains a clear statement of the contingencies that
4 must be satisfied to make the buyer's policy effective, if the buyer's policy is not
5 effective on payment of the premium; AND

6 (VIII) 1. THAT CLOSING OR SETTLEMENT PROTECTION
7 SHALL BE PROVIDED AGAINST THEFT OR MISUSE OF FUNDS BY THE TITLE
8 INSURER OR ITS AGENT OR EMPLOYEE UNDER § 22-104 OF THIS SUBTITLE; AND

9 2. OF THE PREMIUM THAT WILL BE CHARGED FOR
10 THIS COVERAGE.

11 (b) Before disbursing any funds, the person required to give notice under
12 subsection (a) of this section shall obtain from the buyer, at the time the person
13 delivers the notice, a statement in writing that the buyer has received the notice
14 described in subsection (a) of this section and that the buyer wants or does not want
15 owner's title insurance.

16 (c) (1) The person required to give notice under subsection (a) of this
17 section shall retain the original signed statement of receipt required by subsection (b)
18 of this section and a copy of the notice required by subsection (a) of this section for 3
19 years.

20 (2) The statement of receipt and notice shall be available for
21 inspection by the Commissioner on request.

22 (d) IF THE PERSON FIRST ACCEPTING THE PREMIUM FAILS TO OBTAIN
23 FROM THE PARTY TO THE CLOSING OR SETTLEMENT THE STATEMENT
24 REQUIRED BY SUBSECTION (B) OF THIS SECTION AT OR BEFORE THE CLOSING OR
25 OR SETTLEMENT AND DISBURSEMENT OF ANY FUNDS, THE FAILURE TO OBTAIN
26 THE STATEMENT MAY BE CURED AT ANY TIME AFTER THE CLOSING OR
27 SETTLEMENT AND BEFORE ACTUAL OR CONSTRUCTIVE NOTICE OF A POSSIBLE
28 CLAIM THAT WOULD HAVE BEEN COVERED BY CLOSING OR SETTLEMENT
29 PROTECTION UNDER § 22-104 OF THIS SUBTITLE BY SENDING A CERTIFIED
30 LETTER, RETURN RECEIPT REQUESTED, TO THE PARTY AT THE PARTY'S LAST
31 KNOWN ADDRESS.

32 (E) This section does not apply to a real estate transaction involving a
33 mortgage or deed of trust securing an extension of credit made:

34 (1) solely to acquire an interest in or to carry on a business or
35 commercial enterprise; or

1 (2) to any business or commercial organization.

2 **22-104.**

3 **(A) IN THIS SECTION, "PROTECTED PARTY" MEANS A LENDER,**
4 **BORROWER, SELLER, OR BUYER WHO IS A PARTY TO A TRANSACTION IN WHICH A**
5 **TITLE INSURANCE POLICY WILL BE ISSUED.**

6 **(B) A TITLE INSURER SHALL PROVIDE CLOSING OR SETTLEMENT**
7 **PROTECTION TO A PROTECTED PARTY IN ACCORDANCE WITH THIS SECTION.**

8 **(C) (1) THE CLOSING OR SETTLEMENT PROTECTION SHALL**
9 **INDEMNIFY A PROTECTED PARTY AGAINST ONLY THE LOSS OF CLOSING OR**
10 **SETTLEMENT FUNDS BECAUSE OF:**

11 **(I) THEFT OR MISAPPROPRIATION OF SETTLEMENT FUNDS**
12 **IN CONNECTION WITH A TRANSACTION IN WHICH A TITLE INSURANCE POLICY**
13 **WILL BE ISSUED BY OR ON BEHALF OF THE TITLE INSURER; OR**

14 **(II) FAILURE TO COMPLY WITH THE WRITTEN CLOSING**
15 **INSTRUCTIONS IF AGREED TO BY THE TITLE INSURER OR THE TITLE INSURER'S**
16 **APPOINTED PRODUCER.**

17 **(2) THE INDEMNIFICATION UNDER PARAGRAPH (1) OF THIS**
18 **SECTION IS ONLY TO THE EXTENT THAT THE ACTION OR FAILURE RELATES TO**
19 **THE STATUS OF THE TITLE TO:**

20 **(I) THAT INTEREST IN LAND; OR**

21 **(II) THE VALIDITY, ENFORCEABILITY, AND PRIORITY OF THE**
22 **LIEN ON THE MORTGAGE OR DEED OF TRUST ON THAT INTEREST IN LAND.**

23 **(D) INDEMNIFICATION UNDER THIS SECTION MAY NOT BE PROVIDED**
24 **FOR:**

25 **(1) LOSS OR IMPAIRMENT OF TRUST MONEY IN THE COURSE OF**
26 **COLLECTION OR WHILE ON DEPOSIT WITH A FINANCIAL INSTITUTION DUE TO**
27 **FAILURE, INSOLVENCY, BANKRUPTCY, OR SUSPENSION OF THE FINANCIAL**
28 **INSTITUTION;**

29 **(2) LOSS TO A PROTECTED PARTY ARISING FROM FRAUD BY THAT**
30 **PROTECTED PARTY OR AN EMPLOYEE OR AGENT OF THE PROTECTED PARTY; OR**

1 **(3) LOSS THAT EXCEEDS THE ACTUAL AMOUNT OF FUNDS STOLEN**
2 **OR MISAPPROPRIATED FROM THE PROTECTED PARTY DEPOSITED WITH THE**
3 **TITLE INSURER OR PRODUCER IN CONNECTION WITH THE CLOSING.**

4 **(E) (1) EACH TITLE INSURER SHALL FILE FOR APPROVAL BY THE**
5 **COMMISSIONER A PREMIUM TO BE COLLECTED FOR EACH TRANSACTION AT**
6 **WHICH CLOSING OR SETTLEMENT PROTECTION IS PROVIDED.**

7 **(2) REGARDLESS OF THE NUMBER OF PROTECTED PARTIES IN**
8 **THE TRANSACTION, THE PREMIUM SHALL BE AT LEAST \$50.**

9 **(3) THE PREMIUM MAY NOT BE SUBJECT TO AN AGREEMENT**
10 **REQUIRING A DIVISION OF FEES OR PREMIUMS COLLECTED ON BEHALF OF THE**
11 **TITLE INSURER.**

12 **(F) A TITLE INSURER OR PRODUCER MAY PROVIDE TO A PROTECTED**
13 **PARTY A STATEMENT OF COVERAGE THAT IS CONSISTENT WITH THIS SECTION.**

14 **(G) A TITLE INSURER MAY NOT PROVIDE ANY OTHER COVERAGE TO**
15 **INDEMNIFY AGAINST IMPROPER ACTS OR OMISSIONS OF A PERSON WITH**
16 **REGARD TO CLOSING OR SETTLEMENT SERVICES.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That on or before August 1,
18 2012, each domestic title insurer shall file its initial premium for approval by the
19 Maryland Insurance Commissioner under § 22-104(e) of the Insurance Article, as
20 enacted by this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
22 take effect October 1, 2012, and shall affect all title insurance policies, closings, and
23 settlements in the State on or after October 1, 2012.

24 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
25 Section 3 of this Act, this Act shall take effect July 1, 2012.