

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 866
Economic Matters

(Delegate Feldman)

Finance

Title Insurance - Closing or Settlement Protection Practices - Study

This bill requires the Maryland Insurance Commissioner to (1) study closing or settlement protection practices of the title insurance industry; and (2) make recommendations for changes to these practices. In conducting the study, the Commissioner may consult with any person or entity that the Commissioner determines appropriate. The Commissioner must report to the Senate Finance Committee and the House Economic Matters Committee on the study's findings and recommendations by December 1, 2012.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The bill's study and reporting requirement can be handled within existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In conducting the study, the Commissioner must consider:

- title insurance producer defalcations (a fund misappropriation by a person trusted with its charge) reported to the Maryland Insurance Administration (MIA) by title insurers;

- title insurance producer defalcations discovered by MIA as a result of a complaint received by MIA;
- the extent to which any regulations relating to the on-site review by title insurers of their appointed title insurance producers have addressed the problem of title insurance producer defalcations;
- the availability and affordability of fidelity bonds, escrow bonds, reinsurance, or other coverage to protect title insurers against the theft, misappropriation, or misuse of closing or settlement funds by their appointed title insurance producers, other agents, or employees;
- the manner in which closing or settlement protection is being addressed by other states, the National Association of Insurance Commissioners, and the National Coalition of Insurance Legislators; and
- any other relevant matter, as determined by the Commissioner.

Current Law: The Fraud Division within MIA has the authority to investigate each person suspected of engaging in insurance fraud. The division has the authority to investigate each person suspected of engaging in insurance fraud and must, if appropriate refer a suspected case of insurance fraud to the Office of the Attorney General or the appropriate local State's Attorney to prosecute a person criminally for insurance fraud.

A title insurer must maintain minimum statutory reserves or unearned premium reserves of at least 8% of the title insurance risk premiums written per calendar year. During each of the 20 years following the year in which the contract was issued, the applicable reserve must be reduced by a specified formula, which requires an initial 35% decrease of the aggregate sum on the next July 1. Each title insurer must file with its required annual statement a specified certification as to the adequacy of the title insurer's reserves. The actuarial certification must conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

Generally, when a title insurer accepts a premium for a title insurance policy or mortgage title insurance, the person first accepting the premium must insert the name of each insured in the binder for the title insurance or the title report and, immediately on receipt of the premium, must deliver a specified written notice to the buyer or the buyer's agent or attorney.

Before disbursing any funds, the person required to give this notice must obtain from the buyer, at the time the person delivers the notice, a statement in writing that the buyer has received the notice and whether the buyer wants title insurance. The person required to give the notice must retain the original signed statement of receipt and a copy of the notice for three years and make the documents available for inspection by the Commissioner upon request.

Additional Information

Prior Introductions: None.

Cross File: SB 724 (Senator Kelley) - Finance.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2012
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