

IC 27-7-3

Chapter 3. Abstract and Title Insurance

IC 27-7-3-1

Citation

Sec. 1. This chapter shall be known and may be cited as The Indiana Abstract and Title Insurance Law.

(Formerly: Acts 1937, c.104, s.1.) As amended by P.L.252-1985, SEC.247.

IC 27-7-3-2

Definitions

Sec. 2. As used in this chapter and unless a different meaning appears from the context:

(a) The term "title insurance" means a contract of insurance against loss or damage on account of encumbrances upon or defects in the title to real estate.

(b) The term "company" shall mean and include any corporation, domestic or foreign, to which this chapter is applicable.

(c) The term "department" shall mean the department of insurance of the state of Indiana.

(d) The term "commissioner" shall mean the insurance commissioner.

(e) The term "public record" has the meaning set forth in IC 5-14-3-2.

(f) The term "title search" means a search and examination of the public records sufficient to determine:

- (1) ownership of;
- (2) encumbrances on;
- (3) liens on; and
- (4) defects in the title to;

the real estate that is the subject of the search.

(Formerly: Acts 1937, c.104, s.2.) As amended by P.L.252-1985, SEC.248; P.L.68-2002, SEC.1.

IC 27-7-3-3

Title insurance business; authorization of domestic and foreign corporations; application of business corporation law

Sec. 3. (a) Any domestic corporation having:

- (1) among its purposes the insuring against loss or damage on account of encumbrances upon or defects in the title to real estate; and
- (2) a physical office in Indiana;

is hereby authorized to organize under IC 23-1, and any foreign corporation, having among its purposes the insuring against loss or damage on account of encumbrances upon or defects in the title to real estate, is hereby authorized to and may be admitted to do business in this state under IC 23-1. Any domestic or foreign corporation, organized or admitted to do business before or after June 7, 1937, as provided in this section, may engage in business as

a title insurance company by complying with the provisions of this chapter.

(b) A domestic corporation admitted to do business as described in subsection (a) shall provide written notice to the department of insurance and all policyholders of a change in location of the domestic corporation's physical office in Indiana, including the address and telephone number of the new location.

(Formerly: Acts 1937, c.104, s.3.) As amended by P.L.252-1985, SEC.249; P.L.11-2011, SEC.28.

IC 27-7-3-3.5

Requirements applicable to issuers of title insurance

Sec. 3.5. (a) A domestic corporation admitted to do business as described in section 3 of this chapter is subject to the following:

- (1) IC 27-1-6-21.
- (2) IC 27-1-7-11.
- (3) IC 27-9.

(b) A foreign corporation admitted to do business as described in section 3 of this chapter is subject to IC 27-1-17-9.

As added by P.L.11-2011, SEC.29.

IC 27-7-3-4

Corporate rights; powers and privileges

Sec. 4. Every such company shall possess and may exercise all the rights, powers, and privileges conferred upon domestic corporations by IC 23-1 but only to the extent that the same may be necessary, convenient or expedient to accomplish the purposes for which it is organized, and in addition thereto, but subject to the restrictions and limitations contained in this chapter, every such company shall possess and may exercise the power of making insurance to insure against the loss or damage on account of encumbrances upon or defects in the title to real estate. In all things not specifically provided for in this chapter, the provisions of IC 23-1 shall apply.

(Formerly: Acts 1937, c.104, s.4.) As amended by P.L.252-1985, SEC.250.

IC 27-7-3-5

Capital stock

Sec. 5. The capital stock of any company engaged in business under the provisions of this chapter shall be not less than one hundred thousand dollars (\$100,000), which shall be fully paid in.

(Formerly: Acts 1937, c.104, s.5.) As amended by P.L.252-1985, SEC.251.

IC 27-7-3-6

Certificate of authority; requirements; issuance; necessity to do business

Sec. 6. (a) Whenever any such company shall have shown to the department by a sworn statement, verified by the oaths of the president or a vice president and the secretary or an assistant

secretary of the company and bearing the corporate seal of such company, that it has complied with all the requirements of this chapter necessary for beginning business and that it has deposited the amount as required in section 7 of this chapter, the commissioner shall issue a certificate of authority reciting that such company has complied with the provisions of this chapter and is authorized to insure against the loss or damage on account of encumbrances upon or defects in the title to real estate, which certificate shall expire as of midnight of April 30 of each calendar year. The certificate shall be issued under the seal of the department.

(b) No person, firm, partnership, corporation, association, or company shall transact any business of insuring against loss or damage on account of encumbrances upon or defects in the title to real estate until it or they shall have received a certificate of authority as provided for in this section.

(Formerly: Acts 1937, c.104, s.6.) As amended by P.L.252-1985, SEC.252.

IC 27-7-3-7

Deposits; title insurance fund

Sec. 7. Every company described in section 3 of this chapter, before engaging in business, shall deposit with the department the sum of fifty thousand dollars (\$50,000) either out of its capital or surplus. The deposit shall be known as the title insurance fund and must be deposited in securities of the kind and character designated by IC 27-1-13-3(b).

(Formerly: Acts 1937, c.104, s.7.) As amended by P.L.252-1985, SEC.253; P.L.159-1986, SEC.5; P.L.161-1986, SEC.2; P.L.184-1996, SEC.3.

IC 27-7-3-8

Additional deposit to meet requirements of another state; withdrawal

Sec. 8. In the event any such domestic company shall be required by the laws of any other state, country, or province, as a requirement prior to doing such business as defined in this chapter therein, to deposit, with the duly appointed officer of such other state, country, or province or with the department of this state, any securities or cash in excess of the deposit required of the company by this chapter, such company may deposit with the department securities of the character authorized by this chapter sufficient to meet such requirement. The department is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policyholders of the company. Any deposit so made to meet the requirement of any such other state, country, or province shall not be withdrawn by the company except upon filing with the department evidence satisfactory to it that the company has withdrawn from business, and has no unsecured liability outstanding in any such other state, country, or province by which such additional deposit was required, and upon the filing of such evidence, and the approval

of the department, the company may withdraw such additional deposit. Upon the approval of the department, any such domestic company may deposit and use the reserve fund, provided for in section 9 of this chapter, for the purpose of complying with the additional deposit requirement of any other state, country, or province.

(Formerly: Acts 1937, c.104, s.8.) As amended by P.L.252-1985, SEC.254.

IC 27-7-3-9

Title insurance reserve fund

Sec. 9. Every company described in section 3 of this chapter shall annually set apart, accumulate, and maintain, in a fund to be known as the title insurance reserve fund, securities of the kind and character designated by IC 27-1-13-3(b) of the face amount equal to ten percent (10%) of the actual premiums collected during the preceding year by the company on account of such title insurance, until the fund totals fifty thousand dollars (\$50,000). The fund shall be maintained in the treasury of the company as additional security to the holders of policies issued by the company. However, at its option, the company may deposit the title insurance reserve fund with the department in the amount of ten thousand dollars (\$10,000), or any multiple thereof up to fifty thousand dollars (\$50,000). This deposit shall be known as the title insurance reserve fund deposit.

(Formerly: Acts 1937, c.104, s.9.) As amended by P.L.252-1985, SEC.255; P.L.159-1986, SEC.6; P.L.161-1986, SEC.3; P.L.184-1996, SEC.4.

IC 27-7-3-10

Deficiency in title insurance reserve fund

Sec. 10. Whenever the amount of the title insurance reserve fund of any such company shall fall below the amount required in section 9 of this chapter, no further title insurance shall be made or issued by such company until the deficiency has been supplied.

(Formerly: Acts 1937, c.104, s.10.) As amended by P.L.252-1985, SEC.256.

IC 27-7-3-11

Interest on deposited securities

Sec. 11. The department shall permit such companies having on deposit with it stocks or bonds as security to collect the interest accruing on such deposits, delivering to their authorized agents, respectively, the coupons or other evidences of interest as the same become due.

(Formerly: Acts 1937, c.104, s.11.)

IC 27-7-3-12

Foreign corporations; capital and deposit requirements; certificate of authority; rights and privileges

Sec. 12. Every foreign corporation duly authorized to do a title

insurance business in the state in which it is incorporated or organized and admitted to do business in this state under IC 23-1 may be authorized by the department to transact a title insurance business in this state upon filing with the department proof which satisfies it that the corporation has complied with sections 5 and 9 of this chapter and has deposited with the proper official of the state in which it is incorporated or organized, or has deposited with the department, the amount as required by section 7 of this chapter, and that it has complied with the provisions of this chapter. Upon the receipt of such proof, the commissioner may issue to such foreign corporation a certificate of authority as provided for in section 6 of this chapter. A foreign corporation admitted to do business under this chapter shall have the same but no greater rights and privileges than a domestic corporation under this chapter.

(Formerly: Acts 1937, c.104, s.12.) As amended by P.L.252-1985, SEC.257.

IC 27-7-3-13

Examination of company; appointment of examiners; report of examination

Sec. 13. (a) The department may examine into the affairs of any such company doing business in this state under the provisions of this chapter. For such purpose it may appoint as examiners competent persons, and upon such examination the commissioner, his deputy, or any examiner authorized by him may examine under oath the officers and agents of such company and all persons deemed to have material information regarding the company's property or business. Every such company, its officers, and agents shall produce at the office of the company where the same are kept, its books and all papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book or paper in his custody relevant to the examination for the inspection of the commissioner, his deputy, or examiners whenever required, and the officers and agents of such company shall facilitate such examination and aid the examiners in making the same so far as it is within their power to do so.

(b) Upon the conclusion of such examination a full, true, and detailed report of such company shall be made to the department, by the person or persons making the examination, in such form as the department may prescribe.

(Formerly: Acts 1937, c.104, s.13.) As amended by P.L.252-1985, SEC.258.

IC 27-7-3-14

Annual financial statement; effect of certification by certified public accountant

Sec. 14. (a) Every such company doing business in this state shall file with the department on or before March 15 in each year a financial statement for the year ending December 31 immediately preceding on forms furnished by the department. Such statement

shall include a showing that the sum of ten percent (10%) of all actual premiums received by such company, on account of such title insurance business, during the year ending on December 31 prior thereto, as required by section 9 of this chapter, has been duly set apart and is held by such company in said title insurance reserve fund or is held on deposit by the department as provided in section 9 of this chapter. Such statement shall be verified by the oaths of the president or a vice president and the secretary or an assistant secretary.

(b) If the annual statement, as required by this section, shall be certified to by a certified public accountant, then such statement shall be prima facie evidence of the facts stated therein, and the department may in its discretion accept such certified statements in lieu of an examination under this chapter.

(Formerly: Acts 1937, c.104, s.14.) As amended by P.L.252-1985, SEC.259.

IC 27-7-3-15

Collection of charges, fees, and taxes; disposition

Sec. 15. The department shall collect the charges, fees and taxes provided for in this section, and give proper acquittances therefor, and on or before the end of every calendar month shall pay into the state treasury the amounts collected by it during such month, as hereinafter provided:

Fees. Domestic Companies: Every such domestic company shall pay to the department the following stipulated fees: For filing annual statement, twenty dollars (\$20.00); for license to such company, and for each renewal thereof, five dollars (\$5.00); for affixing seal or certifying to any paper, one dollar (\$1.00). The department may require payment of fees on or before the first day of the month next after the same are chargeable.

Fees. Foreign Companies: Every such foreign company shall pay to the department the following stipulated fees: For filing annual statement, twenty dollars (\$20.00); for license to such company, and for each annual renewal thereof, five dollars (\$5.00); for filing withdrawal and cancellation of certificate, twenty dollars (\$20.00); for affixing seal or certifying to any paper, one dollar (\$1.00).

(Formerly: Acts 1937, c.104, s.15.)

IC 27-7-3-15.5

Mortgage transactions and real estate transactions; electronic storage of data on persons involved; closing agents to input data and submit form; duty to provide information; failure to comply; civil penalty; access to data; rules; administrative fee

Sec. 15.5. (a) This section applies to the following transactions:

(1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

(A) is:

- (i) a first lien purchase money mortgage transaction; or
- (ii) a refinancing transaction; and

(B) is closed by a closing agent after December 31, 2009.

- (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:
 - (A) does not involve a mortgage transaction described in subdivision (1); and
 - (B) is closed by a closing agent (as defined in IC 6-1.1-12-43(a)(2)) after December 31, 2011.

(b) For purposes of this subsection, a person described in this subsection is involved in a transaction to which this section applies if the person participates in or assists with, or will participate in or assist with, a transaction to which this section applies. The department shall establish and maintain an electronic system for the collection and storage of the following information, to the extent applicable, concerning a transaction to which this section applies:

(1) In the case of a transaction described in subsection (a)(1), the name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) In the case of a transaction described in subsection (a)(1), the name and license or registration number of any mortgage loan originator who is:

- (A) either licensed or registered under state or federal law as a mortgage loan originator consistent with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V); and
- (B) involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

- (A) principal broker; and
- (B) salesperson or broker-salesperson, if any;

involved in the transaction.

(4) The following information:

- (A) The:
 - (i) name of; and
 - (ii) code assigned by the National Association of Insurance Commissioners (NAIC) to;each title insurance underwriter involved in the transaction.
- (B) The type of title insurance policy issued in connection with the transaction.

(5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

(6) The following information:

- (A) The name and:
 - (i) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or
 - (ii) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.
- (B) The name and registration number (under IC 25-34.1-11-10) of any appraisal management company that performs appraisal management services (as defined in IC 25-34.1-11-3) in connection with the transaction.

(7) In the case of a transaction described in subsection (a)(1),

the name of the creditor and, if the creditor is required to be licensed under IC 24-4.4, the license number of the creditor.

(8) In the case of a transaction described in subsection (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is the subject of the transaction.

(9) In the case of a transaction described in subsection (a)(1)(A)(i), the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

(B) The purchase price of the property that is the subject of the transaction.

(C) The loan amount of the mortgage transaction.

(10) In the case of a transaction described in subsection (a)(2), the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

(B) The purchase price of the property that is the subject of the transaction.

(11) In the case of a transaction described in subsection (a)(1)(A)(ii), the following information:

(A) The name of the borrower in the mortgage transaction.

(B) The loan amount of the refinancing.

(12) The:

(A) name; and

(B) license number, certificate number, registration number, or other code, as appropriate;

of any other person that is involved in a transaction to which this section applies, as the department may prescribe.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

(i) is sufficient to identify the property; and

(ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable, input the applicable information described in subsection (b).

(C) Respond to the following questions, if applicable:

(i) "On what date did you receive the closing instructions from the creditor in the transaction?"

(ii) "On what date did the transaction close?"

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b), other than a person described in subsection (b)(8),

(b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the transaction the person's:

- (1) legal name; and
- (2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). In the case of a transaction described in subsection (a)(1), the person described in subsection (b)(7) shall, with the cooperation of any person involved in the transaction and described in subsection (b)(6)(A) or (b)(6)(B), provide the information described in subsection (b)(6). In the case of a transaction described in subsection (a)(1)(A)(ii), the person described in subsection (b)(7) shall also provide the information described in subsection (b)(11). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B). The closing agent shall determine the information described in subsection (b)(8), (b)(9), and (b)(10) from the HUD-1 settlement statement, or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.

(e) Except for a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

- (1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and
- (2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

- (1) each entity described in IC 4-6-12-4; and
- (2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
 - (2) contained in the data base described in subsection (c)(2)(D);
- except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. Rules adopted by the department under this subsection may establish

procedures for the department to:

- (1) establish;
- (2) collect; and
- (3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

- (1) require the fee to be paid:
 - (A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and
 - (B) by the borrower, the seller, or the buyer in the transaction;
- (2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and
- (3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

As added by P.L.145-2008, SEC.31. Amended by P.L.105-2009, SEC.16; P.L.35-2010, SEC.96; P.L.226-2011, SEC.22.

IC 27-7-3-16

Retirement or withdrawal from business; reinsurance; cancellation of certificate of authority; return of deposit

Sec. 16. (a) Whenever any domestic company desires to retire from the business provided for in this chapter, it shall furnish to the department satisfactory evidence that it no longer has outstanding any liability upon any policy of insurance made by it in the conduct of its business as a title insurance company, or that it has reinsured its outstanding policies with a solvent company, authorized to do business under this chapter in this state, or with a company approved by the department. At the same time the company shall surrender to the department its certificate of authority. If the department is satisfied that there is no outstanding liability upon any policy issued by such company, or, that its outstanding policies have been properly reinsured, then the department shall cancel the surrendered certificate of authority and shall return to the company any and all deposits made by such company under the provisions of this chapter.

(b) Whenever any foreign company desires to withdraw from doing a title insurance business in this state, it shall furnish to the department satisfactory evidence that it no longer has outstanding any liability upon any policy of title insurance made by it in the

conduct of its business in this state, or that it has reinsured its outstanding policies with a solvent company, authorized to do business in this state, or with a company approved by the department. At the same time such company shall surrender to the department its certificate of authority. If the department is satisfied that there is no outstanding liability upon any policy issued by such company in the conduct of its business in this state, or that its outstanding policies have been properly reinsured, then the department shall cancel the surrendered certificate of authority and shall return to the company any and all deposits made with it by such company under the provisions of this chapter.

(Formerly: Acts 1937, c.104, s.16.) As amended by P.L.252-1985, SEC.260.

IC 27-7-3-17

Violations

Sec. 17. A person who recklessly violates this chapter or fails to fulfill any of the requirements of this chapter commits a Class B misdemeanor.

(Formerly: Acts 1937, c.104, s.17.) As amended by Acts 1978, P.L.2, SEC.2724.

IC 27-7-3-18

Exemptions from chapter

Sec. 18. The provisions of this chapter shall not apply to any insurance company organized or desiring to organize under and pursuant to IC 27-1 nor to any person, firm, partnership, corporation, limited liability company, association, or company whose business is the making of abstracts of title to real estate and attaching their certificate thereto and not engaging in the business of making title insurance, nor to any person, firm, partnership, corporation, limited liability company, or association acting as an authorized agent for a duly qualified title insurance company.

(Formerly: Acts 1937, c.104, s.18.) As amended by P.L.252-1985, SEC.261; P.L.8-1993, SEC.425.

IC 27-7-3-19

Construction of chapter

Sec. 19. This chapter shall be deemed to create an additional and separate method for engaging in the business of title insurance, as defined in this chapter, and providing for the incorporation of such companies and their licensing to do such business. This chapter shall not be deemed to alter, amend, or repeal any other statutes of the state of Indiana. No requirements or proceedings shall be necessary for the incorporation and licensing of a title insurance company under this chapter except such as are prescribed in this chapter, any provision of the laws of the state of Indiana or IC 27-1 to the contrary notwithstanding.

(Formerly: Acts 1937, c.104, s.20.) As amended by P.L.252-1985, SEC.262.

IC 27-7-3-20

Limitation on risks

Sec. 20. (a) As used in this section, "any one (1) risk" means a risk or hazard that arises in connection with any one (1) piece or parcel of property, whether or not the policy insures other property.

(b) Any company organized to issue title insurance in Indiana may not expose itself to any one (1) risk in an amount exceeding fifty percent (50%) of the aggregate amount of its total capital and surplus and its reserves other than its loss of claim reserves.

(c) Any risk or portion of any risk that has been reinsured as authorized under IC 27-7, must be deducted in determining the limitation of risk prescribed in this section.

As added by Acts 1982, P.L.162, SEC.2.

IC 27-7-3-21

Requirement of title search

Sec. 21. A company described in section 3 of this chapter that issues a title insurance policy shall perform or cause to be performed a title search for the real estate in conjunction with a mortgage secured by the real estate unless the mortgage meets all of the following requirements:

(1) The principal amount of the mortgage is not more than fifty thousand dollars (\$50,000).

(2) The mortgage is subordinate to a prior mortgage where a title search was conducted and a title policy was issued.

(3) The mortgage is not a reverse mortgage.

As added by P.L.68-2002, SEC.2.