

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 31.
INSURANCE AND SECURITIES.

CHAPTER 50B.
TITLE INSURANCE PRODUCERS.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 50B. TITLE INSURANCE PRODUCERS.

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CHAPTER 50B. TITLE INSURANCE PRODUCERS.

§ 31-5041.01. DEFINITIONS.

(a) For the purpose of this chapter, the term:

- (1) "Abstract of title" means a written history, synopsis, or summary of the recorded instruments affecting a title to real property.
- (2) "Affiliate" means, with respect to a person, another person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person.
- (3) "Aggrieved party" means a lender, title insurer, consumer, or the District of Columbia, who shall have suffered economic harm as a result of matters insured under any fidelity coverage required under this chapter.
- (4) "Attorney" means a person who is admitted to practice law in the District of Columbia.
- (5) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.
- (6) "Escrow" means written instruments, money, or other items deposited by a party with a depository, escrow producer, or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event.
- (7) "Escrow Officer" means a person who maintains an escrow or indemnified deposit account.
- (8) "Indemnity" or "indemnity deposit" means funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage.
- (9) "Person" means an individual, partnership, limited liability company, association, cooperative, corporation, trust, or other legal entity.
- (10) "Personal property" means stock ownership in a cooperative housing association.
- (11) "Producer Licensing Act" means Chapter 11A of this title.
- (12) "Qualified financial institution" means an institution that is:
 - (A) Organized or, in the case of a United States branch or agency office of a non-U.S. banking organization, licensed under the laws of the United States, a state, the District of Columbia, or another jurisdiction of the United States and granted authority to operate with fiduciary powers;
 - (B) Regulated, supervised, and examined by an authority of the United States, a state, the District of Columbia, or another jurisdiction of the United States having regulatory authority over banks and trust companies;
 - (C) Insured by the appropriate federal entity; and
 - (D) Qualified under any additional rules established by the Commissioner.
- (13) "RESPA" means the Real Estate Settlement Procedures Act of 1974, approved December 22, 1974 (88 Stat. 1724; 12 U.S.C. § 2601 *et seq.*).
- (14) "Residential property" means real property located in the District of Columbia with one to 4 residential dwelling units in the same or appurtenant structure.
- (15) "Subsidiary" means an affiliate controlled by a person, directly or indirectly, through one or more intermediaries.
- (16) "Title insurance business" or "business of title insurance" means:
 - (A) Issuing as an insurer, or offering to issue as an insurer, a title insurance policy;
 - (B) Engaging in, or proposing to engage in, any of the following activities when conducted or

performed in contemplation of or in conjunction with the issuance of a title insurance policy:

- (i) Soliciting or negotiating the issuance of a title insurance policy;
 - (ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases, and for all liens or charges affecting the same;
 - (iii) Executing title insurance policies;
 - (iv) Effecting contracts of reinsurance; or
 - (v) Abstracting, searching, or examining titles;
- (C) Guaranteeing, warranting; or insuring searches or examinations of title to real property or any interest in real property;
- (D) Guaranteeing or warranting the status of title as to ownership of or liens on real property or personal property by any person other than the principals to the transaction;
- (E) Doing, or holding oneself out to do, business substantially equivalent to any of the activities listed in this paragraph in a manner designed to evade the provisions of this chapter; or
- (F) Matters insuring the correctness or marketability of title.

(17) "Title insurance commitment" means a preliminary report or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and any other matters under which the title insurer is willing to issue its title insurance policy.

(18) "Title insurance policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or an interest in real or personal property against loss or damage arising from any of the following conditions existing on or before the policy date and not expressly excepted or excluded from coverage:

- (A) Defects in, or liens or encumbrances on, the insured title;
- (B) Unmarketability of the insured title;
- (C) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the property;
- (D) Lack of legal right of access to the property; or
- (E) Unenforceability of rights in title to the property and other matters affecting the title to, or right to use and enjoyment of, the property.

(19)(A) "Title insurance producer" or "producer" means a person who is authorized to perform, on behalf of a title insurer, the following acts in conjunction with the issuance of a title insurance commitment or policy covering residential or personal property situated in the District of Columbia:

- (i) Determining insurability and issuing title insurance commitments or policies, or both, based upon the performance or review of a search or abstract of title; and
- (ii) Soliciting or negotiating title insurance business.

(B) The term "title insurance producer" or "producer" shall not include:

- (i) A financial institution (and its employees) that does not solicit, procure, or negotiate title insurance contracts for compensation or conduct title insurance business;
- (ii) An employee of an abstracting company;
- (iii) A person whose activities in the District are limited to advertising, without the intent to solicit insurance in the District, through communications in printed publications or other forms of electronic mass media; provided, that the person does not sell, solicit, or negotiate insurance that would insure risks of persons residing in or located in, or activities to be performed, in the District;
- (iv) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries of the employer; provided, that the employee does not sell, solicit, or negotiate insurance, or receive a commission;
- (v) An employee of a title insurer; provided, that the employee's activities are not focused on transactions in the District of Columbia, his or her primary responsibilities cover multiple states, and his or her involvement in transactions is to coordinate with title insurance producers licensed in the District of Columbia who conduct title insurance business.

(20) "Title insurer" or "insurer" means a company organized under laws of this state for the purpose of transacting the business of title insurance and any foreign or non-U.S. title insurer licensed in the District to transact the business of title insurance.

(21) "Underwrite" means to accept or reject, or have the authority to accept or reject, risk on behalf of a title insurer.

(Sept. 24, 2010, D.C. Law 18-223, § 2122, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2122 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Miscellaneous Notes

Short title: Section 2121 of D.C. Law 18-223 provided that subtitle L of title II of the act may be cited as the "Title Insurance Producer Act of 2010".

§ 31-5041.02. LICENSING REQUIREMENTS.

(a) A person shall not act in the capacity of a title insurance producer and a title insurer shall not contract with any person to act in the capacity of a title insurance producer with respect to risks located in the District unless the person is licensed as a title insurance producer in the District of Columbia in accordance with this chapter.

(b)(1) A title insurance producer licensed in the District shall:

(A) Disclose on all correspondence that the producer is acting as an appointed producer for a particular named underwriter;

(B) Exclude or eliminate the word "insurer" or "underwriter" or similar term from its agency's name; and

(C) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer reasonably requests to comply with reporting requirements of the Commissioner.

(2) A title insurance producer operating in the District of Columbia licensed in the District of Columbia on January 1, 2011, shall have 180 days after January 1, 2011, to comply with the requirements of this subsection.

(c)(1) The Commissioner shall require the title insurance producer to maintain the following coverages for the benefit of the title insurer in amounts commensurate with the producer's average exposure, under terms and conditions, and from insurers, acceptable to the Commissioner:

(A) An errors and omission policy which includes coverage for a title insurance producer's delegation of any title insurance producer functions in an amount of not less than \$500,000; and

(B) Fidelity coverage, if the title insurance producer handles escrow or indemnity deposits, in an amount of not less than \$250,000 against which any aggrieved party may assert a claim.

(2) The Commissioner may promulgate rules specifying acceptable alternatives to the preceding insurance requirements. The availability of closing or settlement protection shall not be an acceptable alternative to the requirements of this subsection.

(d) If the title insurance producer delegates the title search to a third party, such as an abstract company, the title insurance producer shall exercise the appropriate diligence, in good faith, to determine that the third party is covered by or maintains the errors and omissions coverage required by subsection (c) of this section.

(e) All funds collected pursuant to this section shall be deposited into the Securities and Banking Regulatory Trust Fund established by § 31-107(b-2).

(Sept. 24, 2010, D.C. Law 18-223, § 2123, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2123 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.03. EXAMINATION OF OPERATION OF TITLE INSURANCE PRODUCERS.

(a) The Commissioner, during normal business hours, may examine, audit, and inspect any and all books and records required and maintained by a title insurance producer; provided, that trust accounts maintained by attorneys shall be subject to any privilege permitted by law and properly asserted.

(b) The Commissioner may require that the information provided under this section be verified by oath of the title insurance producer or an officer, employee, or accountant of the title insurance producer.

(Sept. 24, 2010, D.C. Law 18-223, § 2124, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2124 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.04. RECORD-RETENTION REQUIREMENTS.

A title insurance producer shall maintain sufficient records of its affairs, including its escrow operations, if any, and escrow trust accounts, if any, so that the Commissioner may adequately ensure that the title insurance producer is in compliance with this chapter. The Commissioner may prescribe the specific record entries and documents to be kept and the length of time for which the records shall be maintained, for a period of not to exceed 3 years, unless otherwise required by the RESPA.

(Sept. 24, 2010, D.C. Law 18-223, § 2125, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2125 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.05. POLICYHOLDER TREATMENT.

(a) Unless otherwise agreed upon in writing, if a title insurance commitment is issued preparatory to issuing an owners title insurance policy covering the sale of owner-occupied residential property of 4 or fewer units, the title insurance producer or insurer shall furnish the title insurance commitment no later than the time of closing. The commitment shall be accompanied by the following statement on the 1st page in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this form is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land."

(b)(1) A title insurance producer or insurer which has been requested to issue a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of residential, owner-occupied property securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the Commissioner, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain:

(A) A lender's title insurance policy is to be issued protecting the mortgage-lender;

(B) The policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased;

(C) What a title policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's policy; and

(D) The purchaser-mortgagor may obtain an owner's title insurance policy protecting the property

owner at a specified cost or approximate cost, if the proposed coverages or amount of insurance is not then known.

(2) A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least 3 years after the effective date of the policy.

(Sept. 24, 2010, D.C. Law 18-223, § 2126, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2126 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.06. CONDITIONS FOR PROVIDING ESCROW, SETTLEMENT, CLOSING, AND INDEMNITY DEPOSIT SERVICES.

(a) All funds deposited with the title insurance producer or insurer in connection with an escrow, settlement, closing, or indemnity deposit shall be submitted for collection to or deposited in a fiduciary trust account in accordance with Chapter 24 of Title 42 unless otherwise agreed upon in writing, and in accordance with the following requirements:

- (1) The funds shall be the property of the person entitled to them under the provisions of the escrow, settlement, indemnity deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, indemnity deposit, or closing in the records of the title insurance producer in a manner that permits the funds to be identified on an individual basis; and
- (2) The funds shall be applied only in accordance with the terms of the individual instructions, settlement statement, or agreements under which the funds were accepted.

(b) Funds held in an indemnity deposit account shall be disbursed only pursuant to a written agreement specifying:

- (1) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;
- (2) The duties of the title insurance producer with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and
- (3) Any other provisions that the Commissioner may require.

(c) Any interest received on funds deposited in connection with any escrow, settlement, indemnity deposit, or closing shall be paid, net of administrative costs, to the depositing party, unless the depositor's written instructions for the funds, a court order, or a governing law provides otherwise.

(d) Disbursements may be made out of an escrow, settlement, or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

- (1) Cash;
- (2) Wire transfers such that the funds are unconditionally received by the title insurance producer, title insurer, or depository of either;
- (3) Checks, drafts, negotiable orders of withdrawal; money orders, and any other item that has been finally paid before any disbursements; provided, that a title insurance producer may accept a check in an amount not to exceed \$3,000 that has not been finally paid before any disbursements;
- (4) A depository check, including a certified check, governed by the provisions of the Expedited Funds Availability Act, approved August 10, 1987 (101 Stat. 635; 12 U.S.C. § 4001 *et seq.*); or
- (5) Credit transfers through the Automated Clearing House which have been deemed available by the depository institution receiving the credit transfers and conform to the operating rules set forth by the National Automated Clearing House Association.

(e) This chapter shall not prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction that does not relate to residential property; provided, that all parties consent to the transaction in writing.

(f) A title insurance producer who maintains or operates fiduciary trust accounts in connection with providing escrow, closing settlement services shall have an annual audit made of its escrow, settlement, closing, and indemnity deposit accounts, conducted by an accountant on a calendar year basis at its expense within 90 days after the close of the previous calendar year. Alternatively, any title insurer, at its

expense, may conduct, or cause to be conducted, an annual audit of the escrow, settlement, closing, and security deposit accounts of the title insurance producer, subject to the rules by the Commissioner as hereinafter set forth. By April 30th of each year, the title insurance producer shall provide a copy of the audit report to each title insurer which it represents or for which it was an appointed producer with the Company. The Commissioner may promulgate rules setting forth the minimum threshold level at which an audit would be required, the standards of audit, and the forms of audit report required. Title insurance producers who are attorneys licensed in any state or the District of Columbia, who are not exclusively in the business of title insurance, and who issue title insurance policies as part of their legal representation of clients shall be exempt from the requirements of this subsection; provided, that the title insurer may, at its expense, conduct, or cause to be conducted, an annual review or audit of the escrow, settlement, closing, and indemnity deposit accounts of the attorney. The Commissioner may also require the title insurance producer or escrow agent to provide a copy of its audit report to the Commissioner.

(g) If the title insurance producer is appointed by 2 or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing settlement services, the title insurance producer shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information to ascertain the safety and security of the funds held by the title insurance producer.

(h) The Commissioner may prescribe standard disclosures that must be included in all agreements for escrow, settlement, closing, or indemnity deposits.

(Sept. 24, 2010, D.C. Law 18-223, § 2127, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2127 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.07. PROHIBITION OF REBATE AND FEE SPLITTING.

(a) In a residential property transaction, a title insurer, or any employee or representative of a title insurer, shall not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any valuable consideration or inducement, whether or not specified or provided for in the policy, except to the extent provided for in an applicable filing with the Commissioner as provided by law.

(b) In a residential property transaction, an insured named in a policy, or any employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or reduction of premium, or any special favor, advantage, valuable consideration, or inducement, as specified in subsection (a) of this section.

(c) This section shall not prohibit:

(1) The payment of commissions or other compensation to domestic or foreign licensed title insurance producers or title insurer employees; or

(2) Any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits.

(Sept. 24, 2010, D.C. Law 18-223, § 2128, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2122 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.08. UNDERWRITING CONTRACT REQUIRED WITH TITLE INSURER.

A person acting in the capacity of a title insurance producer shall not place business with a title insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each

party, and, if both parties share responsibility for a particular function, specifies the division of the responsibilities.

(Sept. 24, 2010, D.C. Law 18-223, § 2129, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2129 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.09. PENALTIES AND LIABILITIES.

(a) If the Commissioner determines that the title insurance producer or any other person has violated this chapter, or any rule or order promulgated under this chapter, after notice and opportunity to be heard, the Commissioner may order:

- (1) A penalty not exceeding \$2,500 for the 1st violation;
- (2) A penalty not exceeding \$5,000 for each successive violation; and
- (3) Revocation or suspension of the title insurance producer's or title insurer's license.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 13 of this title, and the receiver appointed under that order determines that the title insurance producer or any other person has not complied with this chapter, or any related rule or order, and the insurer suffered any resulting loss or damage, the receiver may maintain an action for recovery of damages or other appropriate sanctions for the benefit of the insurer and its policyholders and creditors.

(c) This section shall not affect the right of the Commissioner to impose any other penalties provided for in acts relating to insurance which are codified in this title.

(Sept. 24, 2010, D.C. Law 18-223, § 2130, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2130 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.10. VIOLATIONS OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

The Commissioner or Attorney General for the District of Columbia may bring an action to enjoin or seek remedies for violations of RESPA.

(Sept. 24, 2010, D.C. Law 18-223, § 2131, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2131 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.11. RULES.

The Commissioner, through the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter.

(Sept. 24, 2010, D.C. Law 18-223, § 2132, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2132 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.

§ 31-5041.12. APPLICABILITY; CONSTRUCTION.

(a) This chapter shall:

- (1) Apply to all persons engaged in the business of title insurance in the District;
- (2) Supplement the provisions of Chapter 11A of this title.

(b) This chapter shall not:

- (1) Except as otherwise provided, limit the application of any insurance law codified in this title; or
- (2) Limit or restrict the rights of policyholders, claimants, and creditors.

(c) If there is a conflict between a provision of this chapter and any other act relating to insurance which is codified in this title, including Chapter 11A of this title, this chapter shall apply.

(d) This chapter shall apply as of January 1, 2011, and to all transactions entered into after January 1, 2011.

(Sept. 24, 2010, D.C. Law 18-223, § 2133, 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition, see § 2133 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 18-223, see notes following § 31-5041.01.