

Title Insurance Agent Model Act

- L. “Qualified financial institution” means an institution that is:
- (1) Organized or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;
 - (2) Regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies;
 - (3) Insured by the appropriate federal entity; and
 - (4) Qualified under any additional rules established by the commissioner.
- M. “Referral” means the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral.
- N. “Security” or “security deposit” means funds or other property received by the title insurance agent as collateral to secure an indemnitor’s obligation under an indemnity agreement pursuant to which a title 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.
- O. “Title insurance agent” or “agent” means an authorized person, other than a bona fide employee

- (b) 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;
 - (c) Handling of escrow, settlements or closings;
 - (d) Executing title insurance policies;
 - (e) Effecting contracts of reinsurance; or
 - (f) Abstracting, searching or examining titles;
- (3) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property;
 - (4) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or
 - (5) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection in a manner designed to evade the provisions of this Act.
- Q. "Title insurance policy" or "policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:
- (1) Defects in or liens or encumbrances on the insured title;
 - (2) Unmarketability of the insured title;
 - (3) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;
 - (4) Lack of legal right of access to the land; or
 - (5) Unenforceability of rights in title to the land.
- R. "Title insurance report" or "report" means a preliminary report, commitment or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy.
- S. "Title insurance sub-agent" or "sub-agent" means a person, other than a bona fide employee of a title insurance agent who, on behalf of the title insurance agent, determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title, provided that the performance of actual legal services such as title examination or closing services by a licensed attorney does not render the attorney a sub-agent.

- (a) An errors and omission policy which includes coverage for an agent's delegation

person who accepts deposits from the public in an area where such transactions are routinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

Drafting Note: The last sentence of this paragraph further limits the referral for customers of personal, family and household insurance products, such as title insurance sold to individuals or families, as a result of Section 305 of the Gramm-Leach-Bliley Act and the subsequent adoption of regulations by the federal banking regulators at 12 CFR 14.50, 208.85, 343.50 and 536.50. The language in the paragraph was adopted by the NAIC in 2003.

- (2) The person being referred is not required to use a specified title insurance agent or insurer; and
- (3) The only thing of value that is received by the title insurance agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607, as amended and Regulation X, 24 C.F.R. § 3500 et seq.

Drafting Note: See drafting note following Third Optional Subsection D.

[Second Optional Subsection D]

- [D. (1) A title insurance agent shall not accept an order for or issue a title insurance policy or guarantee or provide services to an applicant for title insurance or receive or retain any money in connection with a title insurance transaction, if:
 - (a) The title insurance agent knows or has reason to believe that the transaction will constitute controlled business; and
 - (b) When added to other controlled business written by the title insurance agent during the same calendar year, the aggregate controlled premiums written will exceed twenty percent (20%) of the title insurance agent's gross premiums written during the preceding calendar year. However, the twenty percent (20%) limitation shall be eighty percent (80%) in the first year after the effective date of this Act, sixty percent (60%) in the second calendar year after the effective date of this Act and forty percent (40%) in the third calendar year.

- (b) Exempt certain persons from complying with all or a portion of these requirements by virtue of their actual or expected volume of business (e.g., less than fifty (50) annual transactions or less than \$5,000,000 in title insurance policies) (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)

- (c) Notice of cancellation has been provided in accordance with contract termination

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- (4) Appoint a title insurance sub-agent.
- K. The contract shall include specific terms of an agent's compensation.
- L. The title insurance agent shall mainta

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Section 11. Record Retention Requirements

The title insurance agent shall maintain sufficient records of its affairs, including its escrow operations and escrow trust accounts, so that the commissioner may adequately ensure that the title insurance agent is in compliance with all provisions of this Act. The commissioner may prescribe the specific record entries and documents to be kept, and the length of time for which the records must be maintained.

Drafting Note: States should ensure that their record-keeping requirements for the title insurance agency operations of depository institutions do not place the depository institutions in a position where they cannot comply with both the state requirements and the record-keeping requirements of the institution's primary functional regulator.

Section 12. Application of Other Insurance Code Sections to Title Insurance Agents

A title insurance agent shall be subject to all other applicable provisions of the insurance code unless specifically addressed by this Act and other state and federal law.

Section 13. Rules and Regulations

The commissioner may issue rules, regulations and orders necessary t

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