

TITLE INSURERS MODEL ACT

Drafting Note: This model Act should be adopted concurrently with the Title Insurance Agent Model Act because the Acts contain many complementary provisions and both Acts are required to provide sufficient regulation of title insurance.

Table of Contents

Section 1.	Title and Purpose
Section 2.	Application of Act and Construction with Other Laws
Section 3.	Definitions
Section 4.	Corporate Form Required
Section 5.	Authorized Activities of Title Insurers
Section 6.	Limitations on Powers
Section 7.	Minimum Capital and Surplus Requirements
Section 8.	Single Risk Limit
Section 9.	Admitted Asset Standards
Section 10.	Reserves
Section 11.	Liquidation, Dissolution or Insolvency
Section 12.	Restrictions on Dividends
Section 13.	Diversification Requirement
Section 14.	Direct Operations—Policyholder Treatment
Section 15.	Duties of Insurers Utilizing the Services of Title Insurance Agents
Section 16.	Conditions for Maintaining Escrow and Security Deposit Accounts
Section 17.	Prohibition on Rebate and Fee Splitting
Section 18.	Favored Title Agent or Title Insurer
Section 19.	Premium Rate Filings and Standards
Section 20.	Form Filing
Section 21.	Filing by Rating Bureaus
Section 22.	Record Retention Requirements
Section 23.	Rules and Regulations
Section 24.	Penalties and Liabilities
Section 25.	Violations of the Real Estate Settlement Procedures Act (RESPA)
Section 26.	Severability
Section 27.	Effective Date

Section 1. Title and Purpose

- A. This Act shall be known and may be cited as the [insert state] Title Insurers Act.
- B. The purpose of this Act is to provide for the effective regulation and supervision of title insurance and title insurers licensed to write title insurance this state.

Section 2. Application of Act and Construction with Other Laws

- A. This Act shall apply to all persons engaged in the business of title insurance in this state.
- B. Except as otherwise expressly provided in this Act, and except where the context otherwise requires, all provisions of the insurance code applying to insurance and insurance companies generally shall apply to title insurance and title insurers.

Title Insurers Model Act

- K. "Non-U.S. title insurer" means any title insurer incorporated or organized under the laws of any

Title Insurers Model Act

- (a) Collects or disburses premiums, escrow or security deposits or other funds;
- (b) Handles escrows, settlements or closings;
- (c) Solicits or negotiates title insurance business; or
- (d) Records closing documents.

S. "Title insurance business" or "business of title insurance" means:

- (1) Issuing as insurer or offering to issue as insurer a title insurance policy;
- (2) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:
 - (a) Soliciting or negotiating the issuance of a title insurance policy;
 - (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 escrows, 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; or
- (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.

T. "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.
- U. "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.
- V. "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 U.S. title insurer licensed in this state to transact the business of title insurance.
- W. "Title plant" means a set of records consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

Section 4. Corporate Form Required

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Title Insurers Model Act

Drafting Note: States that recognize "mortgage guarantee" as a separate class, type or kind of insurance may not need to include this subsection.

C. (1)

Title Insurers Model Act

Drafting Note: Most states have a provision for a statutory or unearned premium reserve that was established many years ago. States should consider adopting a revised statutory or unearned premium reserve that more accurately reflects current conditions. When making revisions, please consider the following:

1. It is common for title defects to go undiscovered many years after the issuance of a title insurance policy. The purpose of the statutory or unearned premium reserve is to provide a fund for the payment of these unreported claims. Additionally, the statutory or unearned premium reserve is intended to provide a reserve for "unallocated" loss adjustment expense on all claims. Unallocated loss adjustment expense consists of company overhead expenses needed to administer open and unreported claims.
2. When establishing statutory or unearned premium reserve requirements for title insurers domiciled in your state, keep in mind that there can be a wide difference among insurers as to the correct reserve requirement. For individual insurers, reserve requirements can change over time due to varying exposure to risk.
3. There is a built-in safety provision in case the statutory or unearned premium reserve is inadequate for a particular insurer. Insurers are required under the Title Insurers Model Act to provide a supplemental reserve, backed up by an actuarial opinion that will make the total reserve adequate for the state's unearned premium. The supplemental reserve is to be set at a level that will make the total reserve adequate for the state's unearned premium.

B.

- B. In determining whether prior approval may be given, the commissioner shall consider:
- (1)

Section 15. Duties of Title Insurers Utilizing the Services of Title Insurance Agents

- A. The title insurer shall not accept business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of responsibilities.

Drafting Note States adopting the companion Title Insurance Agent Model Act may wish to cross reference Section 8 of the agent model which specifies minimum provisions for contracts between title insurers and title insurance agents.

- B. For each title insurance agent under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title insurance agent as of the end of the previous calendar year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31st certified by the agent as being a true and accurate representation of the agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this paragraph.

Section 19. Premium Rate Filings and Standards

- A. No title insurer may charge any rates regulated by the state after the effective date of this Act, except in accordance with the premium rate schedule and manual filed with and approved by the commissioner in accordance with applicable statutes and regulations governing rate filings. The commissioner may provide by regulation for interim use of premium rate schedules in effect prior to the effective date of this Act.
- B. The commissioner may establish rules, including rules providing statistical plans, for use by all title insurers and title insurance agents in the recording and reporting of revenue, loss and expense experience in such form and detail as is necessary to aid him or her in the establishment of rates and fees.
- C. The commissioner may require that the information provided under this section be verified by oath of the insurer's or agent's president or vice president or secretary or actuary, as applicable. The commissioner may further require that the information required under this section be subject to an audit conducted by an independent certified public accountant. The commissioner shall have the authority to establish a minimum threshold level at which an audit would be required.
- D. Information filed with the commissioner relating to the experience of a particular agent shall be kept confidential unless the commissioner finds it in the public interest to disclose the information required of title insurers or title insurance agents under this section.

Section 20. Form Filing

- A. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title insurance agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the commissioner and s

- E. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the commissioner and approved.

Section 21. Filing by Rating Bureaus

- A. A title insurer or title insurance agent may satisfy its obligation to file premium rates, rating manuals and forms as required by this Act by becoming a member of, or a subscriber to, a rate service organization, organized and licensed under the provisions of this code, where the organization makes the filings, and by authorizing the commissioner in writing to accept the filings on the insurer's behalf.
- B. Nothing in this Act shall be construed as requiring any title insurer or title insurance agent to become a member of, or a subscriber to, any rate service organization. Nothing in this Act shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.

Section 22. Record Retention Requirements

Evidence of the examination of title and determination of insurability for business written by a title insurer and records relating to escrow and security deposits shall be preserved and retained by the insurer for as long as appropriate to the circumstances but, in no event, less than [insert amount] years after the title insurance policy has been issued or [insert amount] years after the escrow or security deposit account has been closed. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

Section 23. Rules and Regulations

The commissioner may issue rules, regulations and orders necessary to carry out the provisions of this Act.

Drafting Note States may want to consider developing rules and regulations with standards for title plant security and quality of data maintained by title plants.

Section 24. Penalties and Liabilities

- A. If the commissioner determines that the title insurer or any other person has violated this Act, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the commissioner may order:
 - (1) A penalty not exceeding \$[insert amount] for each violation; and
 - (2) Revocation or suspension of the title insurer's license.
- B. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance code.

Drafting Note Each state should consider whether references to regulations or specific statutory chapters should replace "code" in this subsection.

