

SENATE BILL 40

C4

7lr0068

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Maryland Insurance Administration)**

Requested: September 23, 2016

Introduced and read first time: January 11, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurance Producers – Licensing of Business Entities and On-Site Reviews**

3 FOR the purpose of altering a certain prohibition on converting or misappropriating certain
4 trust money; requiring certain controlling persons and certain trust money
5 controllers to hold a license to act as a title insurance producer and, if applicable, a
6 certain appointment; altering the requirements for a license as a title insurance
7 producer if the applicant is a business entity; requiring the Maryland Insurance
8 Commissioner to make a certain investigation under certain circumstances;
9 repealing requirements for certain officers and other individuals to hold a title
10 insurance producer license under certain circumstances; authorizing a title insurer
11 to limit the scope of a certain on-site review under certain circumstances; defining
12 certain terms; and generally relating to trust money and title insurance producers.

13 BY repealing and reenacting, without amendments,
14 Article – Insurance
15 Section 10–101(a) and (c)
16 Annotated Code of Maryland
17 (2011 Replacement Volume and 2016 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Insurance
20 Section 10–121
21 Annotated Code of Maryland
22 (2011 Replacement Volume and 2016 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Insurance**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10–101.

2 (a) In this subtitle the following words have the meanings indicated.

3 (c) “Business entity” means a corporation, professional association, partnership,
4 limited liability company, limited liability partnership, or other legal entity.

5 10–121.

6 (a) (1) [In this subsection, “trust money” means a deposit, payment, or other
7 money that a person entrusts to a licensed title insurance producer in connection with the
8 provision of escrow, closing, or real estate settlement services.] **IN THIS SECTION THE
9 FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

10 **(2) “CONTROLLING PERSON” MEANS AN INDIVIDUAL WHO EXERCISES
11 DAY–TO–DAY DIRECT CONTROL OVER THE OPERATION OF A TITLE AGENCY DOING
12 BUSINESS IN THE STATE, IRRESPECTIVE OF WHETHER THE PERSON IS AN OFFICER,
13 A MANAGER, OR AN OWNER.**

14 **(3) “ENTITY AUTHORIZATION” MEANS A RESOLUTION OR CONSENT
15 DOCUMENT EXECUTED IN ACCORDANCE WITH THE FORMALITIES AND GOVERNING
16 PROVISIONS OF THE PARTICULAR BUSINESS ENTITY AND VERIFIED UNDER OATH.**

17 **(4) “OWNER” MEANS A PERSON THAT INDIVIDUALLY, OR THROUGH
18 ONE OR MORE OWNERSHIP TIERS, ULTIMATELY HOLDS A 10% OR MORE EQUITY
19 INTEREST IN THE BUSINESS ENTITY APPLYING FOR A TITLE INSURANCE PRODUCER
20 LICENSE OR RENEWAL OF A TITLE INSURANCE PRODUCER LICENSE.**

21 **(5) “TITLE AGENCY” HAS THE MEANING STATED IN § 10–125(A)(4) OF
22 THIS SUBTITLE.**

23 **(6) “TRUST MONEY” MEANS A DEPOSIT, A PAYMENT, OR ANY OTHER
24 MONEY THAT A PERSON ENTRUSTS TO A LICENSED TITLE INSURANCE PRODUCER IN
25 CONNECTION WITH THE PROVISION OF ESCROW, CLOSING, OR REAL ESTATE
26 SETTLEMENT SERVICES RELATING TO PROPERTY WITHIN THE STATE.**

27 **(7) “TRUST MONEY CONTROLLER” MEANS A PERSON WITHIN A TITLE
28 AGENCY WHO HAS DAY–TO–DAY DIRECT CONTROL OVER TRUST MONEY.**

29 **(B) [(2)] (1)** Except as provided in paragraph [(3)] **(2)** of this subsection, only
30 a licensed title insurance producer may exercise control over trust money.

1 **[(3)] (2)** **[This] PARAGRAPH (1) OF THIS** subsection does not apply to
2 trust money that is entrusted to:

3 (i) a law firm as defined in § 10–125 of this subtitle; or

4 (ii) a title insurer.

5 **[(b)] (C)** A **[title insurance producer] PERSON** may not convert or
6 misappropriate money received or held in escrow or trust while:

7 (1) acting as a title insurance producer; or

8 (2) providing any escrow, closing, or settlement services.

9 **[(c) (1)]** If an applicant for a license is a partnership, each partner must hold a
10 license to act as a title insurance producer and, if applicable, an appointment with a title
11 insurer.

12 (2) (i) If an applicant for a license is a corporation, each controlling
13 owner and each officer must hold a license to act as a title insurance producer and, if
14 applicable, an appointment with a title insurer.

15 (ii) For purposes of subparagraph (i) of this paragraph, a person is
16 not considered a controlling owner of a corporation if the person:

17 1. is a stockholder of the corporation;

18 2. does not manage or have day-to-day control over the
19 operation of the corporation; and

20 3. is not an officer, director, or employee of the corporation
21 who in any other way renders services for the corporation for which the person is
22 compensated by the corporation.

23 (3) If an applicant for a license is a limited liability company, each
24 individual who has direct control over its fiscal management and each manager and officer
25 must hold a license to act as a title insurance producer and, if applicable, an appointment
26 with a title insurer.

27 (d) (1) When the application of a partnership for a license as a title insurance
28 producer is submitted, the Commissioner shall investigate the character of each partner of
29 the partnership applicant.

30 (2) When the application of a corporation for a license as a title insurance
31 producer is submitted, the Commissioner shall investigate the character of each controlling
32 owner and each officer and director of the corporate applicant.

(3) When the application of a limited liability company for a license is submitted, the Commissioner shall investigate the character of each individual who has direct control over its fiscal management and each member, manager, officer, and director of the limited liability company applicant.]

(D) (1) EACH CONTROLLING PERSON AND EACH TRUST MONEY CONTROLLER SHALL HOLD A LICENSE TO ACT AS A TITLE INSURANCE PRODUCER AND, IF APPLICABLE, AN APPOINTMENT WITH A TITLE INSURER.

(2) IF AN APPLICANT FOR A LICENSE IS A BUSINESS ENTITY, THE APPLICATION SHALL BE ACCOMPANIED BY AN ENTITY AUTHORIZATION THAT:

(I) IDENTIFIES EACH CONTROLLING PERSON;

(II) DESIGNATES EACH PERSON THAT WILL BE A TRUST MONEY CONTROLLER FOR THE TITLE AGENCY;

(III) IDENTIFIES EACH OWNER; AND

(IV) IDENTIFIES EACH OFFICER, DIRECTOR, MANAGER, GENERAL PARTNER, OR OTHER PERSON DESIGNATED BY THE BUSINESS ENTITY TO ACT AS THE BUSINESS ENTITY'S PRINCIPAL CONTACT WITH THE ADMINISTRATION.

(3) WHEN THE APPLICATION OF A BUSINESS ENTITY FOR A LICENSE AS A TITLE INSURANCE PRODUCER IS SUBMITTED, THE COMMISSIONER SHALL INVESTIGATE THE CHARACTER OF EACH PERSON IDENTIFIED AS A CONTROLLING PERSON AND EACH PERSON IDENTIFIED AS A TRUST MONEY CONTROLLER IN THE ENTITY AUTHORIZATION INCLUDED WITH THE APPLICATION.

(e) (1) In addition to meeting any of the applicable requirements for a license to act as an insurance producer under this subtitle, a [sole proprietor, a limited liability company, a partnership, or a corporate] **BUSINESS ENTITY** applicant for a license as a title insurance producer shall file with the Commissioner:

(i) a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and

(ii) 1. a blanket surety bond; or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for \$150,000.

1 (3) The Commissioner may adopt regulations that specify when it is
2 appropriate for a bond or letter of credit to be less than \$150,000.

3 (4) Notwithstanding paragraph (2) of this subsection, the Commissioner
4 may waive the requirement for a bond or letter of credit if the Commissioner finds that
5 bonds are not generally available or reasonably affordable.

6 (5) The Commissioner shall make a specific finding that states the reason
7 for accepting a bond or letter of credit for less than \$150,000.

8 (f) (1) The surety bond or letter of credit shall be for the benefit of any person
9 that suffers a loss if the title insurance producer converts or misappropriates money
10 received or held in escrow or trust while:

11 (i) acting as a title insurance producer; or

12 (ii) providing any escrow, closing, or settlement services.

13 (2) The fidelity bond shall be for the benefit of the employer of the title
14 insurance producer who suffers any loss as described in paragraph (1) of this subsection.

15 (3) The total liability of the surety insurer under each bond or letter of
16 credit may not exceed \$150,000.

17 (g) The title insurance producer shall file the bond or letter of credit with the
18 Commissioner:

19 (1) after the Commissioner notifies the title insurance producer of the
20 approval of the application for a license; and

21 (2) before the Commissioner issues the license.

22 (h) (1) Each bond or letter of credit shall remain in force until:

23 (i) the surety insurer is released from liability by the Commissioner;
24 or

25 (ii) the bond or letter of credit is canceled by the surety insurer.

26 (2) A surety insurer shall notify the title insurance producer and the
27 Commissioner at least 30 days before canceling a bond or letter of credit.

28 (3) If a surety insurer fails to notify the title insurance producer and the
29 Commissioner as required by paragraph (2) of this subsection, the bond or letter of credit
30 remains in effect until the surety insurer notifies the title insurance producer and the
31 Commissioner.

(4) A cancellation under this subsection does not affect any liability that occurred during the life of the bond or letter of credit and before the date of cancellation.

(i) Before the Commissioner renews the license of a title insurance producer, the title insurance producer shall submit satisfactory evidence of compliance with this section.

(j) (1) If a title insurance producer has been charged with a violation of this section or this article that could result in suspension or revocation of the license of the title insurance producer, the Commissioner may seek an immediate restraining order from a circuit court to prohibit the title insurance producer from providing title insurance, escrow, closing, or settlement services.

(2) A restraining order issued by a court under this subsection is effective until:

(i) the court lifts the restraining order; or

(ii) the charges are dismissed or adjudicated.

(k) (1) (i) Except as provided in paragraph (5) of this subsection, the title insurer shall during each calendar year conduct an on-site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent as designated in the title insurance agency contract between the insurer and the producer.

(ii) The on-site review shall include a review of the title insurance producer's or agency's policy blank inventory and processing operations.

(iii) If the title insurance producer or agency does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance producer or agency.

(IV) SUBJECT TO THE REQUIREMENT UNDER PARAGRAPH (3) OF THIS SUBSECTION TO REPORT SUSPECTED VIOLATIONS THAT THE TITLE INSURER HAS REASONABLE CAUSE TO BELIEVE HAVE OCCURRED, IF THE TITLE INSURANCE PRODUCER OR TITLE AGENCY HOLDS AN APPOINTMENT WITH MORE THAN ONE TITLE INSURER, THE TITLE INSURER MAY LIMIT ITS REVIEW TO FILES, SEPARATELY HELD ACCOUNTS, AND WRITTEN DOCUMENTATION RELATING TO ITS TITLE INSURANCE POLICIES.

(2) A written report setting forth the results of the on-site review shall be prepared by the title insurer and is subject to examination under § 2-205 of this article.

(3) If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance producer or agency has engaged in any of the prohibited

activities set forth in § 10–126 of this subtitle, the title insurer shall report in writing the suspected violation to the Commissioner and submit a copy of the examination.

(4) The examination required under this section is in addition to any examination conducted by the Commissioner to determine compliance with the accounts maintained for the benefit of the Maryland Affordable Housing Trust under § 22–105 of this article.

(5) The title insurer is not required to perform the on–site review of a title insurance producer for the calendar year during which the title insurance producer is initially appointed if the appointment is made on or after June 30 of that calendar year.

(l) (1) A title insurance producer shall notify any title insurer with whom the title insurance producer holds an appointment whenever a person licensed under this subtitle becomes employed by, or associated with, the title insurance producer.

(2) The bonding requirements of this subtitle relating to title insurance producers do not apply to an employee or officer of an authorized title insurer.

(m) (1) A title insurance producer shall notify the Commissioner, and any insurer with whom the title insurance producer holds an appointment, if an individual licensed under this subtitle leaves the employment of or ends an association with the title insurance producer.

(2) The title insurance producer required to provide notice under this subsection shall notify the Commissioner within 5 working days after the day the individual leaves employment or ends the association.

(3) The notice required under this subsection shall be in writing and by certified mail.

(n) Notwithstanding subsections (e) and (g) of this section, a title insurance producer independent contractor who provides escrow closing or settlement services that may result in the issuance of a title insurance contract for or on behalf of a title insurance producer is not required to file a blanket fidelity bond, blanket surety bond, or letter of credit with the Commissioner.

(o) In addition to any requirements under this subtitle, title insurance producers shall comply with this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.