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Chairman Linda W. Cropp
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To regulate the provision, and protect consumers in the purchase, of title insurance in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Title Insurance Act of 2005”.

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25

26 Initial Considerations raised by DC Land Title Association (“DCLTA”):

27

28 a) The current structure proposed would require title agents to have two licenses, one

29 under this new, proposed legislation and one as a “Producer” (Title 31-1131 et. seq.).

30 We see no regulatory advantage to requiring this dual license requirement. Rather

31 than try to shoehorn the new legislation into a sub-section of the Producer statutes,

32 we suggest that the new act stand alone, because of title insurance’s dissimilarity with

33 other insurance products. Those provisions of the Producer statute that need to be

34 restated in this Title Insurance Act would include, initial examination, continuing

35 education, etc. Specifically, these provisions of the Producer Act would be

36 incorporated into this Title Insurance Act:

37

38 31-1131.05, 05a, 06, 07a, 07b, 08, 08a, 09, 12, and 16

39

40 b) DCLTA would counsel against the District trying to restate “RESPA-like” provisions

41 as local law. As pointed out in the recent GAO report, RESPA is a constantly

42 evolving area of the law, with much discussion of proposed changes. If changes to

43 occur at the federal level, the District would be committing itself to constantly

44 monitoring that situation to effect parallel changes. Nor would eliminating a

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1 restatement reduce DISB or the District’s ability to enforce RESPA provisions, if the
2 resources are available, because, in section 401 of this Title Insurance Act, the
3 federal RESPA provisions are specifically incorporated by reference and authority is
4 conferred to the District to enforce Federal RESPA provisions. Under RESPA Section
5 2614, this is specifically permitted. So, why try to restate those provisions in this
6 legislation? Note also that HUD has increased its investigative staff and also uses an
7 outside private investigative resource. A recent article in *The Legal Description*, an
8 excellent trade newspaper, underscored HUD’s stepped-up enforcement resources:
9

10 “HUD Plans to Triple Responses to RESPA Complaints”.
11 A probe of HUD’s latest budget documents reveals that the
12 RESPA office pals to triple the number of RESPA complaints and
13 inquiries it responds to in 2007 and 2008. WHEN HUD released its
14 budget for FY 2008, the plan for the RESPA division included a
15 broad increase in the number of complaints it hopes to respond to
16 over the course of the next two years. In 2006, the RESPA office
17 had set a goal of responding to 1,000 complaints and inquiries, but
18 the final count ended up being 1,355, a surprising overshoot.”
19

20 c) More time may be necessary to come into compliance after Effective
21 Date of Act and the filing of the application should satisfy this
22 requirement (in case government is unable to process licenses in time
23 and agents find themselves in “limbo”.
24

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25 d) This is a complex, large piece of legislation. DCLTA hopes that the
26 DISB will afford DCLTA an opportunity to visit with the office, to
27 expound on the issues raised in this red-line. There are important
28 issues to be considered to ensure that this legislation provides the
29 intended results. This may take time, but the alternative could be to
30 create a structure that could inhibit business and/or be impossible to
31 administer or enforce.
32

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33 **TITLE I. DEFINITIONS**

34 **Sec. 101. Definitions.**

35 For the purposes of this act, the term:

36 (1) “Abstract of title” means a written history, synopsis, or summary of the recorded
37 instruments affecting a title to real property.

38 (2) “Affiliate” means, with respect to a person, another person that directly, or indirectly

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1 through one or more intermediaries, controls, is controlled by, or is under common control with
2 the person.

3 (3) DCLTA's position is that RESPA should remain a federal statute and not legislated
4 locally; therefor, the definition of "Associate" would not be necessary.

5 (4) "Bona fide employee" means, with respect to a title insurer or title insurance agent,
6 an individual who devotes substantially all of his or her time to performing services on behalf of
7 the title insurer or title insurance agent and whose compensation for the services performed on
8 behalf of the title insurer or title insurance agent is in the form of salary or its equivalent paid by
9 the title insurer or title insurance agent.

10 (5) "Commissioner" means the Commissioner of the Department.

11 (6) "Control" (including the terms "controlling", "controlled by", and "under common
12 control with") means the direct or indirect possession of the power to direct or cause the
13 direction of the management and policies of a person by another person, whether through the
14 ownership of voting securities, by contract other than a commercial contract for goods or
15 nonmanagement services, or otherwise, unless the power is the result of an official position or
16 corporate office held by the other person. Control shall be presumed to exist if the other person
17 directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing,
18 10% or more of the voting securities of the person. This presumption may be rebutted by a
19 showing that control does not exist in fact. The Commissioner may determine, after furnishing
20 all persons in interest notice and an opportunity to be heard and making specific findings of fact
21 to support the determination, that control exists in fact, notwithstanding the absence of a
22 presumption of control.

Deleted: "Associate" means, with respect to a producer:[¶]
(A) A business organized for profit in which the producer is a director, officer, partner, employee, or owner of a financial interest;[¶]
(B) An employee of the producer;[¶]
(C) A franchiser or franchisee of the producer;[¶]
(D) A spouse, parent, or child of the producer, if the producer is a natural person;[¶]
(E) A person, other than a natural person, that controls, is controlled by, or is under common control with, the producer; and[¶]
(F) A person with whom the producer or an associate of the producer has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.[¶]
[NOTE: There was some question expressed by an industry rep regarding the definition of "associate". In the Act, the definition is used for controlled business only. The definition of "associate" in RESPA is: "one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business." If there is still a question regarding the definition, perhaps ... [16]

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[NOTE: There was some question expressed by an industry rep regarding the definition of "associate". In the Act, the definition is used for controlled business only. The definition of "associate" in RESPA is: "one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partn ... [17]

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(7) If we do not restate RESPA-like provisions, we may be able to delete this definition “Controlled business” means the portion of a title insurance agent’s business written in the District of Columbia that was referred to it by a Referral Source, or by an associate of a Referral Source, where the Referral Source has a financial interest in the title insurance agent.

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(8) “Department” means the Department of Insurance, Securities, and Banking, established by section 3 of the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-102).

(9) “Direct operations” means the portion of a title insurer’s operations that is attributable to business written by a bona fide employee. [NOTE: There was some concern/question expressed regarding this definition by industry reviewer. This definition is used in the Act only with respect to the diversification provision which only applies to domestic insurers (see 211)]

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(10) “Domestic title insurer” means a company incorporated or organized under the laws of the District of Columbia for the purpose of performing, as insurer, title insurance business.

(11) “Escrow” means written instruments, money, or other items deposited by a party with a depository, escrow agent, or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event.

(12) “Escrow, settlement, or closing fee” means the consideration for supervising or handling the execution, delivery, or recording of transfer and lien documents and for disbursing funds; provided, the term “escrow, settlement, or closing fee” does not include solely the physical delivery of documents and services ancillary to delivery and recording. [NOTE: Industry reps wanted delivery and recording deleted, but seemed okay with the new “provided”

1 clause.]

2 (13) “Financial interest” ~~*** NEEDED?***~~ means a direct or indirect interest, legal or
3 beneficial, where the holder is or will be entitled to 5% or more of the net profits or net worth of
4 the entity in which the interest is held.

5 (14) “Net retained liability” ~~*** NEEDED??***~~ means the total liability retained by a
6 title insurer for a single risk, after taking into account any ceded liability or collateral that has
7 been approved by the Commissioner.

8 (15) “Non-U.S. title insurer” means a company incorporated or organized under the laws
9 of a foreign nation or a state, province, or territory of a foreign nation for the purpose of
10 performing, as insurer, title insurance business.

11 (16) “Out-of-state title insurer” means a company incorporated or organized under the
12 laws of a state or jurisdiction of the United States other than the District of Columbia for the
13 purpose of performing, as insurer, title insurance business.

14 (17) “Person” means a natural person, partnership, association, cooperative, corporation,
15 trust, limited liability company, or other legal entity.

Deleted: Producer

16 (18) (A) “Referral Source” means a person engaged in the District of Columbia in the
17 trade, business, occupation, or profession of:

- 18 (i) Buying or selling interests in real property;
- 19 (ii) Making loans secured by interests in real property; or
- 20 (iii) Acting as broker, agent, representative, or attorney of a person who:
 - 21 (I) Buys or sells an interest in real property; or
 - 22 (II) Lends or borrows money with the interest in real property as

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1 security.

2 (B) The term “Referral Source” includes the officer, directors, and owners of 5%
3 or more of the equity or capital of a person described in paragraph (A) of this subsection.

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4 [NOTE: The word “producer” needs to be changed or modified, to avoid confusion with insurance
5 producers; perhaps it could be changed to the term “real estate producer”] [NOTE: The
6 Department stated to industry reps that it would consider replacing this definition with the
7 definition used in Maryland law.]

8 (19) “Qualified financial institution” means an institution that is: *** REVIEW
9 MORE?***

10 (A) Organized (or, in the case of a United States branch or agency office of a
11 non-U.S. banking organization, licensed) under the laws of the United States, a state, the District
12 of Columbia, or another jurisdiction of the United States and granted authority to operate with
13 fiduciary powers;

14 (B) Regulated, supervised, and examined by an authority of the United States, a
15 state, the District of Columbia, or another jurisdiction of the United States having regulatory
16 authority over banks and trust companies;

17 (C) Insured by the appropriate federal entity; and

18 (D) Qualified under any additional rules established by the Commissioner.

19 ***over-broad *** limitations on these rules, such as requiring deposits into DC Banks, similar
20 to rental housing security deposits***

21 [NOTE: Some concern/question expressed by industry reps with the definition of “qualified
22 financial institution”. I don’t see a problem with it. It is used in the Act for the escrow

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provisions and the provisions related to contracts with insurers.]

(20) “Referral” means the recommendation of, or exercise of influence over the placement of title insurance business, whether or not the consent or approval of a person is sought or obtained with respect to the referral.

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Deleted: direction

(21) “Indemnity deposit” means funds or other property received by a title insurer or title insurance agent 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.

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(22) “Subsidiary” means an affiliate controlled by a person directly or indirectly through one or more intermediaries.

(23) “Title insurance agent” means a person, other than a bona fide employee of a title insurer, that 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:

Deleted: report

(A) Determining insurability including underwriting and risk-taking decisions and issuing title insurance commitments or policies based upon the performance or review of a search or abstract of title; and

Deleted: reports

(B) Performing one or more of the following functions:

(i) Collecting or disbursing premiums, escrows, indemnity deposits, or other funds;

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(ii) Handling escrows, settlements, or closings;

(iii) Soliciting or negotiating title insurance business; or

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- (iv) Recording closing documents
- (v) Overseeing the execution of settlement documents, although acting as an independent contractor

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(C) “Title Insurance Agent” does not include:

- (i) a financial institution as defined in that does not solicit, procure, or negotiate title insurance contracts for compensation and its employees or conduct title insurance business.
- (ii) a bona fide employee of an abstracting company, ;

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(24) “Title insurance business” means:

(A) Issuing as an insurer, or offering to issue as an insurer, a title insurance

policy;

(B) Transacting (language about “proposing” deleted as too broad), any of the

following activities when conducted or performed in (language about “contemplation” deleted as too broad) conjunction with the issuance of a title insurance policy by the person who is transacting or performing the activities:

Deleted: or proposing to transact

Deleted: contemplation of or in

- (i) Soliciting or negotiating the issuance of a title insurance policy;
- (ii) Issuing commitments or endorsements affecting titles to real property,

Deleted: Guaranteeing, warranting, or otherwise insuring the correctness of title searches for instruments

interests in real property, cooperative units, or proprietary leases, or liens or charges affecting the foregoing;

- (iii) Handling escrows, settlements, or closings;
- (iv) Executing title insurance policies;

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(v) procuring or furnishing information relating to real or personal property or title thereto.
(v) Effecting contracts of reinsurance; or
(vi) Abstracting, searching, or examining titles;
(C) Guaranteeing, warranting, or insuring searches or examinations of title to real or personal property or an interest in real or personal property;

(D) Guaranteeing or warranting the status of title as to ownership of, or liens on, real property [or personal property] by a person other than the principals to the transaction; or
[Q: Should we delete the phrase “personal property” DCLTA says do NOT delete because it contemplates co-op apartment and UCC coverage, which is from the Model Act. Why is it included?]

(E) Doing or proposing to do business substantially equivalent to an activity listed in this subsection in a manner designed to evade the provisions of this act.

(25) “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, DCLTA wants to include possible coverages for co-ops, UCC policies an other interests related to personal property against loss or damage arising from any of the following conditions and not excepted or excluded:

Deleted: [or personal property]

(A) Defects in or liens or encumbrances on the insured title; :DCLTA why not to insure in connection with personal property and to issue Homeowner’s Policy and other post-policy coverages, such as gap coverage in 2006 Policies]

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(B) Unmarketability of the insured title;

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1 (C) Invalidity, lack of priority, or unenforceability of liens or encumbrances on
2 the property;

3 (D) Lack of legal right of access to the property; or

4 (E) Unenforceability of rights in title to the property and other matters affecting
5 the title to or right to use and enjoyment of the property.

6 (F) Matters set forth in documents approved by the American Land Title
7 Association and documents filed by insurers.

8 (G) Matters insuring the correctness of title

9 -
10 (26) “Title insurance commitment” means a preliminary report or binder issued prior to
11 the issuance of a title insurance policy containing the terms, conditions, exceptions, and any
12 other matters, under which the title insurer is willing to issue its title insurance policy. *[Q: Why*
13 *does the Model Act contain the bracketed phrase, “incorporated by reference”? What if the*
14 *matter is actually in the document? I think it should be deleted, but I was not sure if it had*
15 *some relevance I was not aware of.] Note: A title insurance commitment or title insurance
16 policy is not an abstract of title or representation of title.*

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Deleted: incorporated by reference
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17 (27) The concept of “title insurance sub-agent” does not exist in DC and has not
18 existed for many years.

Deleted: “Title insurance 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 based upon the performance or review of a search or abstract of title; provided, the performance of actual legal services such as title examination or closing services by an attorney shall not render the attorney a sub-agent.¶
[NOTE: There was a concern that the use of sub-agents would somehow implicate a RESPA violation. This issue should be further explored.]

19 (28) “Title insurer” means a domestic title insurer, out-of-state title insurer, or non-U.S.
20 title insurer.

21 (29) “Title plant” means a set of records consisting of documents, maps, surveys, or
22 entries affecting title to real property or an interest in or encumbrance on real property, which

Inserted: ¶
[NOTE: There was a concern that the use of sub-agents would somehow implicate a RESPA violation. This issue should be further explored.]

1 have been filed or recorded in the jurisdiction for which the title plant is established or
2 maintained.

3 (30) “Underwrite” means to accept or reject, or have the authority to accept or reject, risk
4 on behalf of a title insurer.

5 (31) “Law firm” means an association of attorneys who are admitted to practice before
6 the District of Columbia Court of Appeals who:

7 (i) are primarily engaged in the practice of law; and

8 (ii) conduct title insurance business only as an incident to the practice of law.

9 “Law firm” includes a sole practitioner admitted to practice before the District of Columbia
10 Court of Appeals.

11 (32) “Records” and “Copies” shall include electronic records.

12 (33) “Activation Date” shall be the later to occur of the Effective Date of this
13 legislation and the date when applicable application materials or forms are made available by the
14 Commissioner.

15
16 **TITLE II. TITLE INSURANCE AND TITLE INSURERS.**

17 **Sec. 201. Licensing requirement; required corporate form.**

18 (a) No person shall engage, as an insurer, in title insurance business related to property
19 located in the District of Columbia unless the person is licensed as a title insurer under this act.

20 (b) No person shall be licensed as a domestic title insurer under this act unless the person
21 is organized on the stock plan and establishes and maintains the capital and surplus levels
22 required by section 205. [Should this apply only to domestic licensees?] DCLTA: this should

1 apply only to domestic licensees. Otherwise we are invading the domain of the domestic
2 regulator. It would be impossible for an insurer to comply with different regulations on this
3 issue throughout the country.

4 (c) To qualify for a domestic (we say domestic, because the national underwriters have
5 thousands of officers, etc. and, if they pass muster with their respective domestic regulators, DC
6 should accept that approval) title insurer license, an applicant shall satisfy the Commissioner
7 that the applicant, including its members, officers, directors, and principals, is of good moral
8 character and has sufficient financial responsibility, business experience, and general fitness to:

- 9 (1) Engage in title insurance business as a title insurer; and
10 (2) Warrant the belief that the title insurance business will be conducted lawfully,
11 honestly, fairly, and efficiently.

12 (d) To apply for a title insurer license, an applicant shall:

- 13 (1) Complete, sign, and submit to the Commissioner an application on a form
14 prescribed by the Commissioner, with such supporting information and documents as the
15 Commissioner may require;
16 (2) Comply with all conditions and provisions of the application for licensure.

17 (e) Except as otherwise authorized by section 202, no insurer that transacts or is licensed
18 to transact any class, type, or kind of business other than title insurance business shall be eligible
19 for the issuance or renewal of a license to transact title insurance business in the District of
20 Columbia nor shall title insurance be transacted, underwritten, or issued by any insurer
21 transacting or licensed to transact any other class, type, or kind of business. **[NOTE: This**
22 **provision is part of the Model Act. Do we want this restriction?]** DCLTA suggests that this

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monocline language is consistent with other States and should remain in.

Sec. 202. Authorized activities of title insurers.

(a) Unless otherwise limited by this act, a title insurer licensed under this act may:

- (1) Perform title insurance business;
- (2) Reinsure title insurance policies;
- (3) Perform ancillary activities, unless prohibited by the Commissioner.

Ancillary activities shall include but not limited to, examining titles to real property and interests in real property and procuring and furnishing related information and information about relevant personal property, when not in conjunction with, the issuance of a title insurance policy

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by that person;

(4) To the extent such coverage is lawful within the District of Columbia and as otherwise restricted by subsection (b) of this section, issue closing or settlement indemnity protection to a proposed insured if the title insurer issues a preliminary report, commitment, or title insurance policy; and

Deleted: binder

Deleted: required by the Commissioner and may indemnify a proposed insured only against loss of settlement funds and only because of the following acts of a title insurer's named title insurance agent:
(A) Theft of settlement funds; or
(B) Failure to comply with written closing instructions by the proposed insured when such instructions are agreed to by the title insurance agent and such instructions

(5) Operate as an escrow, security, settlement, or closing agent, as set forth in section 215.

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Deleted: [Q: What does the bracketed phrase — which is from the Model Act— mean here? Does it modify the phrase “closing instructions”? If so, it should be moved.]

(b) (1) The closing or settlement protection authorized under subsection (a)(4) of this section shall conform to the terms of coverage and form of instrument filed by the insurer with the Commissioner.

(2) The Commissioner may approve a proposed charge, for providing the closing or settlement protection described in subsection (a)(4) of this section. [NOTE: Industry reps suggested that something along the lines of the following sentence be added or perhaps

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1 substituted for the prior sentence: “A title insurer shall include in each of its rate filings a charge
2 for the issuance of a closing or settlement protection letter, if a protection letter is offered to
3 insureds.”]

4 (3) Deleted because it interferes with ability to issue Insured Closing Letters.

Deleted: A title insurer shall not provide any coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services other than the coverage described in subsection (a)(4) of this section.

5 **Sec. 203. Regulation of practices.**

6 The Commissioner may adopt rules, regulations, and requirements relating to the
7 practices of persons acting in the capacity of title insurers. These persons may include title
8 insurers, employees of title insurers, and persons acting on behalf of title insurers, but shall not
9 include persons performing solely clerical functions.

10 **Sec. 204. Prohibition on certain guarantees.**

11 A title insurer shall not guarantee payment of the principal or interest of bonds or
12 mortgages.

13 **Sec. 205. Minimum capital and surplus requirements.**

14 (a) In order to be licensed as a title insurer in the District of Columbia, a person shall
15 establish a minimum paid-in capital of not less than \$1,000,000 [insert amount] and, in
16 addition, paid-in initial surplus of at least \$1,000,000 [insert amount].

Deleted:

17 (b) Throughout the term of its licensure, a title insurer licensed in the District of
18 Columbia shall maintain a minimum paid-in capital of not less than \$ 1,000,000 [insert
19 amount] and, in addition, paid-in surplus of at least \$1,000,000 [insert amount]. ***[Q: What***
20 ***should the amounts above be set at? Some standards from other states are set out in the***

1 *footnote.]*¹

2 (c) If the capital and surplus required of a title insurer prior to the effective date of this
3 act was less than that required by subsection (b) of this section, a person lawfully operating as a
4 title insurer in the District of Columbia prior to the effective date of this act shall have 2 years
5 after the effective date of this act to comply with the requirements of subsection (b) of this ***
6 nice phase-in language to use later. section. *[NOTE: Depending on whether there are current*
7 *capital and surplus requirements in place, this provision may need to be modified.]*

8 **Sec. 206. Single risk limit.**

9 (a) The net retained liability of a title insurer for a single risk related to a property,
10 whether assumed directly or as reinsurance, shall not exceed the aggregate of 50% of surplus as
11 regards policyholders plus the unearned premium reserve less the company's investment in title
12 plants, all as shown in the most recent annual statement of the title insurer on file with the
13 Commissioner. *[Q: What does the phrase "as regards policyholders" mean here?]* *[NOTE:*
14 *There was a concern by industry reps that this calculation might create difficulties, though*
15 *this didn't seem like a big issue.] DCLTA: this is in all insurance statutes and appears on*
16 *insurer's annual reports on page 3, line 30.*

17 (b) For the purposes of this section:

18 (1) A single risk shall be the insured amount of a title insurance policy; except,
19 where 2 or more title insurance policies are issued simultaneously covering different estates in

¹ State	Capital	Surplus
DC	1M (26-1316)	n/a
PA	500,000	50% of capital
NE	1M	1M
MO	400,000	400,000
MD	750,000	150% of capital at start; 100% of capital during operation

1 the same real property, a single risk shall be the sum of the insured amounts of all the title
2 insurance policies; and *[Q: Why does this Model Act provision state that the policies must be*
3 *issued simultaneously to count as one risk? Wouldn't the effect be the same if they were*
4 *issued, say, a week apart? Should we delete the word "simultaneously"?)* **DCLTA response:**
5 **simultaneous is a term of art in the industry and refers to multiple policies being issued about**
6 **the same time. It is fine as drafted.**

7 (2) A policy under which a claim payment reduces the amount of insurance under
8 one or more other title insurance policies shall be included in computing the single risk sum only
9 to the extent that its amount exceeds the aggregate amount of the policy or policies whose
10 amount of insurance is reduced.

11 **Sec. 207. Admitted asset standards; investments in title plants. This should be**
12 **limited to domestic insurers. Invades domain of foreign state regulators. Insurers cannot**
13 **be bound by how much they have invested in plants.**

14 (a) The general investment provisions of subchapter 1 of chapter 13A of title 31 of the
15 D.C. Official Code shall apply to domestic title insurers, except that an investment in a title plant
16 or plants in an amount equal to the actual cost shall be allowed as an admitted asset for domestic
17 title insurers.

18 (b) The aggregate amount of a domestic title insurer's investment in title plants shall not
19 exceed the lesser of 20% of admitted assets or 40% of surplus to policyholders, as shown on the
20 most recent annual statement of the title insurer on file with the Commissioner. *[Q: This*
21 *provision is from the Model Act. Does it really mean that the investment in the title plant*

VA \$1M \$3M

1 *cannot be greater than these amounts, or does it mean that the costs of the title plant cannot*
2 *be applied above these amounts when examining a company's financial condition?]*

Deleted: .

3 **Sec. 208. Reserves**

4 (a) The general provisions of the insurance code requiring the establishment of reserves
5 sufficient to cover all known and unknown liabilities including allocated and unallocated loss
6 adjustment expense, shall apply to domestic title insurers. *[Q: This provision is from the Model*
7 *Act. Does the DC Code have general provisions covering insurer reserves?]*

8 (b) A domestic title insurer shall establish and maintain:

9 (1) A known claim reserve in an amount estimated to be sufficient to cover all
10 unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance
11 policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title,
12 and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer
13 may be liable, and for which the insurer has received notice by or on behalf of the insured, holder
14 of a guarantee, or escrow or security depositor.

15 (2) An unearned premium reserve as follows:

16 (A) If the title insurer is an out-of-state or non-U.S. title insurer, the
17 unearned premium reserve shall consist of the amount of unearned premium reserve (or its
18 equivalent) required by the laws of the domiciliary state of the title insurer; or (DCLTA notes:
19 there is contemplation of a different treatment between domestic and foreign insurers, consistent
20 with our comments above that certain restrictions apply only to domestic insurers.

21 (B) If the title insurer is a domestic title insurer, the unearned premium
22 reserve:

- 1 (i) Shall consist of:
- 2 (I) The amount of the unearned premium or reinsurance
- 3 reserve (or their equivalents) held by the title insurer on the effective date of this act, which shall
- 4 be released from reserve in accordance with the law in effect at the time such sums were added
- 5 to the reserve [*Q: Did DC regulate this at all before? If not, this legislation should say that the*
- 6 *reserve can be released in accordance with the schedule below.*]; and
- 7 (II) Out of total charges for title insurance policies written
- 8 or assumed commencing with the effective date of this act, and until [December 31, ____], an
- 9 amount equal to [insert amount] of the sum of the following items set forth in the title insurer's
- 10 most recent annual statement on file with the Commissioner:
- 11 (a) Direct premiums written;
- 12 (b) Escrow and settlement service fees;
- 13 (c) Other title fees and service charges including
- 14 fees for closing protection letters; and
- 15 (d) Premiums for reinsurance assumed less
- 16 premiums for reinsurance ceded during year.
- 17 (III) Out of total charges for title insurance policies
- 18 and guarantees written on or after [January 1, ____], an amount equal to the sum of the following
- 19 items, as set forth in the title insurer's most recent annual statement on file with the
- 20 Commissioner:
- 21 (a) For each title insurance policy on a single
- 22 risk written or assumed after [January 1, ____], [insert amount] per \$1,000 of net retained

1 liability for policies under \$500,000 and [insert amount] per \$1,000 of net retained liability for
2 policies of \$500,000 or greater; and

3 (b) [Insert amount] of escrow, settlement, and
4 closing fees collected in contemplation of the issuance of title insurance policies or guarantees;
5 and

6 *[NOTE: It is not clear to me why there are two different standards in (II) and (III) above,*
7 *depending on the date. Should we collapse it into one standard? What should the amounts*
8 *be? The dates will need to be changed.]*

9 (ii) Shall be subject to the following provisions:

10 (I) The aggregate of the amounts set aside in the title
11 insurer's reserves in any calendar year pursuant to subsections (b)(2)(B)(i)(II) and (III) shall be
12 released from the reserve and restored to net profits over a period of 20 years pursuant to the
13 following formula: 35% of the aggregate sum on July 1 of the year next succeeding the year of
14 addition; 15% of the aggregate sum on July 1 of each of the succeeding 2 years; 10% of the
15 aggregate sum on July 1 of the next succeeding year; 3% of the aggregate sum on July 1 of each
16 of the next 3 succeeding years; 2% of the aggregate sum on July 1 of each of the next 3
17 succeeding years; and 1% of the aggregate sum on July 1 of each of the next succeeding 10
18 years.

19 (II) The insurer shall calculate an adjusted unearned
20 premium reserve as of the effective date of this act. The adjusted reserve shall be calculated as if

1 subsections (b)(2)(B)(i)(II) and (III)² and (b)(2)(B)(ii) of this section had been in effect for all
2 years beginning 20 years prior to the effective date of this act. For the purposes of this
3 calculation, the balance of the reserve as of that date shall be deemed to be zero. If the adjusted
4 reserve so calculated exceeds the aggregate amount set aside in an unearned premium reserve (or
5 its equivalent) by the title insurer on the effective date of this act, the title insurer shall, out of
6 total charges for policies of title insurance, increase its unearned premium reserve by an amount
7 equal to one-sixth of that excess in each of the succeeding 6 years, commencing with the
8 calendar year that includes the effective date of this act, until the entire excess has been added.

9 (III) The aggregate of the amounts set aside in the title
10 insurer's reserves in any calendar year as adjustments to the insurer's statutory or unearned
11 premium reserve pursuant to subsection (b)(2)(B)(ii)(II) of this section shall be released from the
12 reserve and restored to net profits, or equity if the additions required by subsection
13 (b)(2)(B)(ii)(II) of this section reduced equity directly, over a period not exceeding 10 years
14 pursuant to the following schedule:

15 (a) Amounts set aside in the first calendar year
16 after the effective date of this act shall be released equally over 10 years.

17 (b) Amounts set aside in the second calendar year
18 after the effective date of this act shall be released equally over 9 years.

19 (c) Amounts set aside in the third calendar year
20 after the effective date of this act shall be released equally over 8 years.

21 (d) Amounts set aside in the fourth calendar

² *NOTE: These section references are from the Model Act and are not compatible in this context. We will need to*

1 year after the effective date of this act shall be released equally over 7 years.

2 (e) Amounts set aside in the fifth calendar

3 year after the effective date of this act shall be released equally over 6 years.

4 (f) Amounts set aside in the sixth calendar

5 year after the effective date of this act shall be released equally over 5 years.

6 (3) A supplemental reserve consisting of any other reserves necessary, when
7 taken in combination with the reserves required by paragraphs (1) and (2) of this subsection, to
8 cover the company's liabilities with respect to all losses, claims, and loss adjusted expenses;
9 provided, the supplemental reserve required under this paragraph shall be phased in as follows:
10 25% of the otherwise applicable supplemental reserve shall be required until [December 31,
11 2006]; 50% of the otherwise applicable supplemental reserve shall be required until [December
12 31, 2007]; and, 75% of the otherwise applicable supplemental reserve shall be required until
13 [December 31, 2008].

14 (c) Each domestic title insurer subject to the provisions of this act shall file with its
15 annual statement required under section 219(b) an evaluation of the adequacy of the title
16 insurer's reserves, which shall include a comparison of total reserves to a projection of ultimate
17 losses not yet paid, by a member in good standing of the American Academy of Actuaries. The
18 evaluation shall be certified by the actuary and shall conform to the National Association of
19 Insurance Commissioners' annual statement instructions for title insurers. Need confidentiality
20 provision.

choose one or the other (although if we collapse the standards, the issue will go away).

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1 **Sec. 209. Liquidation, dissolution, or insolvency of Domestic Insurers DCLTA:**
2 **this should be prerogative of state of domicile., DISB's financial people probably know**
3 **NAIC's work on this issue.**

Deleted: .

4 (a) The rehabilitation and liquidation provisions of chapter 13 of title 31 of the D.C.
5 Official Code shall apply to all domestic title insurers subject to this act, except as otherwise
6 provided in this section. In applying the provisions of chapter 13 of title 31 of the D.C. Official
7 Code, the court shall consider the unique aspects of title insurance and shall have broad authority
8 to fashion relief that provides for the maximum protection of title insurance policyholders.

9 (b) Security deposit and escrow funds held by or on behalf of a domestic title insurer
10 shall not become general assets and shall be administered as secured claims as defined in section
11 31-1301(18) of the D.C. Official Code.

12 (c) Title insurance policies issued by a domestic insurer that are in force at the time an
13 order of liquidation is entered shall not be canceled except upon a showing to the court of good
14 cause by the liquidator. The determination of good cause shall be within the discretion of the
15 court. In making this determination, the court shall consider the unique aspects of title insurance
16 and all other relevant circumstances.

17 (d) The court may set appropriate dates by which potential claimants shall file their
18 claims with the liquidator as to a domestic insurer. The court may set different dates for claims
19 based upon a title insurance policy than for all other claims. In setting dates, the court shall
20 consider the unique aspects of title insurance and all other relevant circumstances.

21 (e) As of the date of an order of insolvency or liquidation, all premiums paid, due, or to
22 become due under policies of the domestic title insurer shall be fully earned. It shall be the

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1 obligation of agents, insureds, or representatives of the domestic title insurer to pay fully earned
2 premiums to the liquidator or rehabilitator.

3 **Sec. 210. Restrictions on dividends.**

4 A domestic title insurer shall not declare or distribute a dividend to shareholders without
5 the prior written approval of the Commissioner except if a declaration or distribution would be
6 permitted under [insert section of insurance code governing extraordinary dividends] for insurers
7 other than life insurers. [*Q: Does the DC Code have a provision dealing with dividends? If*

8 *not, how should this provision be handled?*] [NOTE: The Department needs to decide (and
9 make clear in the legislation) whether this provision, and other restrictive provisions, will
10 apply only to domestic title insurers or will apply to all title insurers operating in the
11 District (such as for the notice requirements, which presumably apply to all insurers).]

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12 **DCLTA: this should only apply to domestic insurers and not invade domain of other**
13 **states' regulators.**

14 **Sec. 211. Diversification requirement.**

15 (a) A domestic title insurer shall not, without the prior written approval of the
16 Commissioner, accept:

17 (1) Additional business from a title insurance agent that is not an affiliate of the
18 title insurer if, when added to other title insurance business written through the title insurance
19 agent during the same calendar year, the title insurance agent's aggregate premiums written on
20 behalf of the title insurer will exceed 20% of the title insurer's gross premiums written during the
21 prior calendar year, as shown on the title insurer's most recent annual statement on file with the
22 Commissioner; or

1 (2) Additional direct operations business from a single source if, when added to
2 other direct operations business from the single source during the same calendar year, the
3 aggregate premiums written on the direct operations business of the single source will exceed
4 20% of the title insurer's gross premiums written during the prior calendar year as shown on the
5 title insurer's most recent annual statement on file with the Commissioner. For the purposes of
6 this paragraph, a "single source" means a person that refers business to the title insurer and any
7 other person that controls, is controlled by, or is under common control with, the person.

8 (b) In determining whether to give prior approval to a domestic title insurer to accept
9 additional business that would otherwise be prohibited under subsection (a) of this section, the
10 Commissioner shall consider:

11 (1) The potential that the acceptance of additional business from the title
12 insurance agent or source may adversely affect the financial solidity of the title insurer;

13 (2) The availability of competing title insurance agents or additional sources in
14 the territories in which the title insurer accepts risks;

15 (3) The number of years the title insurer has been in business;

16 (4) Reinsurance arrangements mitigating the concentration of business from the
17 title insurance agent or source;

18 (5) The comparative profitability of the title insurance agent's or source's book
19 of business;

20 (6) The degree of oversight of the title insurance agent's operations exercised by
21 the title insurer; and

22 (7) Any other circumstances deemed by the Commissioner to be appropriate.

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1 **Sec. 212. Notice to policyholders and potential policyholders.**

2 (a) If a title commitment is issued to issue an owner’s policy covering the resale of
3 owner-occupied residential property, the report shall be furnished to the purchaser-mortgagor or
4 its representative on or before closing. The commitment shall be accompanied by the following
5 statement in bold type:

Deleted: insurance report includes an offer to

Deleted: as soon as reasonably possible before closing. If the report cannot be delivered prior to the day of closing, the title insurer shall document the reasons for the delay and provide the documentation with the report.

Deleted: report furnished to the purchaser-mortgagor shall include the following

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6 **“Please read the exceptions and the terms shown or referred to herein**
7 **carefully. The exceptions are meant to provide you with notice of matters**
8 **which are not covered under the terms of the title insurance policy and**
9 **should be carefully considered.**
10 **It is important to note that this form is not a written representation of the**
11 **condition of title and may not list all liens, defects, and encumbrances**
12 **affecting title to the land.”**

13 (b) A title insurer issuing a lender’s title insurance policy in conjunction with a
14 mortgage loan made simultaneously with the purchase of all or part of the residential, owner-
15 occupied real estate securing the loan, where no owner’s title insurance policy has been
16 requested, shall give written notice, on a form prescribed or approved by the Commissioner, to
17 the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a
18 lender’s title insurance policy is to be issued protecting the mortgagee-lender, and that the policy
19 does not provide title insurance protection to the purchaser-mortgagor as the owner of the
20 property being purchased. The notice shall explain what a title policy insures against and what
21 possible exposures exist for the purchaser-mortgagor that could be insured against through the
22 purchase of an owner’s policy. The notice shall also explain that the purchaser-mortgagor may

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1 obtain an owner’s title insurance policy protecting the property owner at a specified cost, or at an
2 approximate cost if the proposed coverages or amount of insurance is not then known. A copy of
3 the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file
4 at least 5 years after the effective date of the lender’s title insurance policy.

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(A) S
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Deleted: (B) Contains the provisions sets forth in section 310.¶
(2) A title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.¶

Sec. 213. Duties of title insurers utilizing the services of title insurance agents.

6 (a) (1) A title insurer shall not accept business from a title insurance agent unless
7 there is a written contract between the title insurer and title insurance agent that sets forth the
8 responsibilities of each party and, where both parties share responsibility for a particular
9 function, specifies the division of responsibilities between the parties.

Deleted: (1) Within 30 days after executing a contract with a title insurance agent, a title insurer shall provide written notification of the appointment of the title insurance agent to the Commissioner. A notice of appointment shall be made on a form promulgated by the Commissioner.¶
(2) Within 30 days after terminating a contract with a title insurance agent, the title insurer shall provide written notification to the Commissioner of the termination and the reason for the termination. A notice of termination shall be made on a form promulgated by the Commissioner.

10 (b) Instead of all this, require the insurers to keep the lists, which are already
11 reviewable by the DISB.

12 (c) Not present practice nor feasible. Agents may represent multiple underwriters.

13 (d) A title insurer shall conduct reviews (need not be annual, need not be on-site since
14 much is now electronic) of the underwriting, claims, and escrow practices of each title insurance
15 agent in accordance with the contract between the title insurance agent and the insurer. If a title

Deleted: (1) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of the financial condition of the title insurance agent as of the end of the previous calendar year. The statement of financial condition shall include (... [18])

16 insurance agent does not maintain separate bank or trust accounts for each title insurer it
17 represents, the title insurer shall verify that the funds held on the title insurer’s behalf are
18 reasonably ascertainable from the books of account and records of the title insurance agent.

Deleted: (2) An attorney actively engaged in the practice of law sh (... [19])

19 (e) A title insurer shall maintain an inventory of all policy forms or policy numbers
20 allocated to each title insurance agent.

Inserted: ¶
[NOTE: Industry reps would also (... [20])

21 (f) A title insurer shall not contract with a person to act in the capacity of a title
22 insurance agent with respect to property located in the District of Columbia unless the person is

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Deleted: an on-site
Deleted: under contract with the title insurer. The on-site review shall (... [21])
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Inserted: [NOTE: Industry reps want to modify the audit requirement, (... [23])
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1 licensed as a title insurance agent in the District of Columbia.

2 (g) A title insurer shall have on file proof that each title insurance agent of the title
3 insurer is licensed by the District of Columbia.

4 **Sec. 214. Board composition.**

5 A [domestic? DCLTA says "yes". DC should not get involved in the business of
6 national underwriters] title insurer shall not appoint to its board of directors an officer, director,
7 employee, controlling shareholder, or a title insurance agent who wrote 1% or more of the title
8 insurer's direct premiums during the previous calendar year as shown on the title insurer's most
9 recent annual statement on file with the Commissioner. This subsection shall not apply to
10 relationships governed by the holding company provisions of chapter 7 of title 31 of the D.C.
11 Official Code.

12 **Sec. 215. Provision of escrow, settlement, closing, and security deposit services.**

13 (a) A title insurer may operate as an escrow, security deposit, settlement, or closing
14 agent; provided:

15 (1) All funds deposited with the title insurer in connection with an escrow,
16 settlement, closing, or security deposit shall be submitted for collection to or deposited in a
17 separate fiduciary trust account or accounts in a qualified financial institution no later than the
18 close of the next business day after the funds are deposited with the title insurer, in accordance
19 with the following requirements:

20 (A) The funds shall be the property of the person or persons entitled to
21 them under the provisions of the escrow, settlement, closing, or security deposit agreement and
22 shall be segregated for each depository by escrow, settlement, closing, or security deposit in the

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1 records of the title insurer in a manner that permits the funds to be identified on an individual
2 basis.

3 (B) The funds shall be applied only in accordance with the terms of the
4 individual instructions or agreement under which the funds were accepted.

5 (2) Funds held in an escrow account shall be disbursed only pursuant to a written
6 instruction or agreement specifying how and to whom such funds may be disbursed.

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

Deleted: security

9 (A) What actions the indemnitor shall take to satisfy his or her obligation
10 under the agreement;

11 (B) The duties of the title insurer with respect to disposition of the funds
12 held, including a requirement to maintain evidence of the disposition of the title exception before
13 a balance may be paid over to the depositing party or his or her designee; and

14 (C) overly broad Any other provisions the Commissioner may
15 require.

16 (4) Any interest received on funds deposited in connection with an escrow,
17 settlement, closing, or security deposit may be retained, net of administrative costs, by the title
18 insurer or title insurance agent, as compensation for the administration of the escrow, settlement,
19 closing or security deposit, unless the instructions for the funds or a governing statute provides
20 otherwise.

Deleted: shall be paid

Deleted: to the depositing party

21 (5) Disbursements may be made out of an escrow, settlement, or closing account
22 only if:

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1 (A) Deposits in amounts at least equal to the disbursement have first been
2 made;

3 (B) The deposits directly relate to the transaction disbursed against; and

4 (C) The deposits are in one of the following forms:

5 (i) Cash;

6 (ii) Wire transfers such that the funds are unconditionally received
7 by the title insurer or the title insurer's depository;

8 (iii) Checks, drafts, negotiable orders of withdrawal, money
9 orders, or other items that have been finally paid before a disbursement;

10 (iv) Depository checks, including certified checks, governed by
11 the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq.*; or

12 (v) Credit transfers through the Automated Clearing House that
13 have been deemed available by the depository institution receiving the credits, if the credits
14 conform to the operating rules of the National Automated Clearing House Association.

15 harmful to insurers

16 (c) Nothing in this section shall be deemed to amend, alter, or supersede District law
17 regarding an escrow holder's duties and obligations.

18 Not necessary and invasive of contract rights

19 **Sec. 216. Prohibition of rebate and fee splitting.**

20 (a) DCLTA counsels AGAINST enactment of RESPA legislation No insurer (this is
21 the insurer section, why are we now dealing with "no person"?) shall give or receive, directly or
22 indirectly, consideration for the referral of title insurance business, escrow services, or any other

Deleted: (b) Nothing in this section shall prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties to the transaction consent in writing.

Deleted: (d) The Commissioner may prescribe a standard agreement for escrow, settlement, closing, or security deposit funds.

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business or service provided by a title insurer to any person other than an insurer or to a title insurance agent, nor shall any consideration be given or received if prohibited by RESPA.

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***There are values to referral fees paid on non-residential matters. 35 States recognize that value.

Deleted: unless such consideration is authorized by section 104(d)(2)(iv) of the Gramm-Leach-Bliley Act or section 14.50, 208.85, 343.50, or 536.50 of title 12 of the Code of Federal Regulations and not otherwise prohibited by federal law or regulation. [The exemption for GLB and the CFR sections is suggested by an update to the Model Act, but I think RESPA may still prohibit the referral payments.]

Deleted:

[Optional subsection (b)]

(b) If a title insurer may be in violation of the prohibitions or limitations of this section, another title insurer shall have a cause of action against the violating title insurer or recipient of the consideration and, upon establishing the existence of a violation, shall be entitled to injunctive relief as the court may deem necessary or desirable to prevent violations of this section in the future. In any action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.]

[NOTE: This subsection, which is in the Model Act, allows one title insurer to sue another to enforce the no rebate/fee splitting provision. My inclination is to delete this section; this would be something the Department or OAG would enforce.] DCLTA suggests retaining the provision. It may be only the threat of a lawsuit by another insurer that prompts and insurer to comply, especially if DC may lack the resources to enforce.

Deleted: NOTE: Industry rep from LandAmerica was in favor of this provision.]

Inserted: NOTE: Industry rep from LandAmerica was in favor of this provision.]

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Sec. 217. Prohibition on favored agents.

DCLTA submits that this is overly broad. A title insurer shall not participate in a transaction in which it has actual knowledge that, a Referral Source requires, directly or indirectly, or through a trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing another person a loan, loan extension, credit, sale, property, contract, lease, or service, that the other person shall place a title insurance policy

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1 with the title insurer or through a particular title insurance agent.

2 **Sec. 218. Rate and form filings.**

3 (a) (1) A title insurer shall file with the Department each rate, rate schedule, rating
4 manual, and form (and modifications to each rate, rate schedule, rating manual, or form) that the
5 title insurer intends to charge or use in the District of Columbia (or intends to deliver to a title
6 insurance agent in the District of Columbia for the use of the title insurance agent), with such
7 other documentation as the Commissioner may require. The Commissioner may, within 30 days
8 after the filing of a rate, rate schedule, rating manual, or form (or a modification to a rate, rate
9 schedule, rating manual or form) disapprove the rate, rate schedule, rating manual, or form (or a
10 portion of the rate, rate schedule, rating manual, or form), if a rate charged or to be charged

11 appears by reasonable assumptions to be excessive, confiscatory or discriminatory (this is
12 language from other states.... The deleted language has not been used and is to subjective. You
13 already have “excessive” in your standards. or 30 days have elapsed after the filing and the
14 term, condition, or exception has not been disapproved by the Commissioner.

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Deleted: in relation to benefits, or if the filed document contains a provision which is unjust, unfair, inequitable, misleading, or deceptive

15 If the Commissioner notifies the title insurer that the rate, rate schedule, rating manual, or form
16 (or portion thereof) has been disapproved, it shall be unlawful for the title insurer or a title
17 insurance agent representing the title insurer to charge the disapproved rate or continue to use the
18 disapproved provision. The Commissioner shall specify the reason for disapproval and state that
19 a hearing shall be granted upon request in writing by the title insurer.

Deleted: After

20 (2) Paragraph (1) of this subsection shall apply to a rate service organization that
21 intends to deliver or issue for delivery, or permit any of its title insurance agents to deliver or
22 issue for delivery, in the District of Columbia a rate, rate schedule, rating manual, or form (or

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1 modification thereto).

2 (3) DCLTA would prefer not to permit Agents to file rates.

Deleted: A title insurance agent may file a rate, rate schedule, rating manual, or form (or modification thereof) with the Commissioner under paragraph (1) of this subsection, pursuant to the same procedures and standard of review set forth in paragraph (1).¶

3 (b) A title insurer shall not charge a rate or use a rate schedule, rating manual, or form
4 required to be filed under this section unless it has been filed with the Commissioner and
5 approved by the Commissioner or 30 days have elapsed after the filing and it has not been
6 disapproved by the Commissioner.

7 (c) A rate service organization shall not deliver or issue for delivery, or permit any of its
8 title insurance agents to deliver or issue for delivery, in the District of Columbia, a rate, rate
9 schedule, rating manual, or form required to be filed under this section unless it has been filed
10 with the Commissioner and approved by the Commissioner or 30 days have elapsed after the
11 filing and it has not been disapproved by the Commissioner.

12 (d) (1) ALTA forms???? No term or condition related to insurance coverage
13 provided by a title insurance policy ~~shall be included in a title insurance policy by a title insurer~~
14 or a title insurance agent until it has been filed with the Commissioner by the title insurer ~~or a~~
15 rate service organization and approved *** what happens if DISB delays approving an ALTA
16 form? Just incorporate ALTA forms by reference, maybe? by the Commissioner or 30 days have
17 elapsed after the filing and the term, condition, or exception has not been disapproved by the
18 Commissioner.

Deleted: or an exception to the coverage, except one ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured,

Deleted: or title insurance agent

19 (2) The Commissioner may, within 30 days after the filing of a term, condition,
20 or exception (or a modification to a term, condition, or exception) disapprove the term,
21 condition, or exception (or a portion of the term, condition, or exception), if the term, condition,
22 or exception contains a provision which is unjust, unfair, inequitable, misleading, or deceptive.

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1 After the Commissioner notifies the filer that the term, condition, or exception (or portion of the
2 term, condition, or exception) has been disapproved, it shall be unlawful for the title insurer, title
3 insurance agent, or rate service organization to use the disapproved provision. The
4 Commissioner shall specify the reason for disapproval and state that a hearing shall be granted
5 upon request in writing by the filer.

6 (e) Forms covered by this section shall include:

7 (1) Title insurance policies, including standard form endorsements; and

8 (2) Title insurance commitments issued prior to the issuance of a title insurance
9 policy. **** these have a myriad of forms.

Deleted: reports

10 (f) (1) After notice and an opportunity to be heard are given to a title insurer, ~~or~~

Deleted: title insurance agent

11 rate service organization which submitted a rate, rate schedule, rating manual, or form for
12 approval, the Commissioner may withdraw approval of the rate, rate schedule, rating manual, or
13 form on finding that the use of the rate, rate schedule, rating manual, or form is contrary to this
14 act or a regulation promulgated under this act.

15 (2) After notice and an opportunity to be heard are given to a title insurer, title
16 insurance agent, or rate service organization which submitted a term, condition, or exception for
17 approval, the Commissioner may withdraw approval of the term, condition, or exception on
18 finding that the use of the term, condition, or exception is contrary to this act or a regulation
19 promulgated under this act.

20
21 (h) (1) A title insurer may satisfy its obligation to file a rate, rate schedule, rating
22 manual, or forms as required by this section by becoming a member of, or a subscriber to, a rate

Deleted: (g) An approved policy form or endorsement providing coverage for which no identifiable premium is assessed shall be incorporated into every applicable title insurance policy. The insurer shall disclose any additional coverage to the insured. The provisions of this section shall not eliminate any underwriting standard or conditions relating to the approved policy forms or endorsements. [Q: This subsection is from the Model Act. What does it mean?]

1 service organization organized and licensed under the provisions of this code, if the organization
2 makes the required filings, and by authorizing the Commissioner in writing to accept the filings
3 on the title insurer's behalf. *[Q: Is there a provision in the DC Code for organizing and*
4 *licensing rate service organizations; if not, this section must be revised.]*

5 (2) Nothing in this subsection shall require a title insurer to become a member of,
6 or a subscriber to, a rate service organization.

7 (3) Nothing in this subsection shall prohibit the filing of deviations from rate
8 service organization filings by a member or subscriber of the organization.

9 **Sec. 219. Reporting of information; examination of title insurers.**

10 (a) The Commissioner may, during normal business hours, examine, audit, and inspect
11 any and all books and records of a title insurer.

12 (b) A title insurer shall prepare and file with the Commissioner (and, where appropriate,
13 the National Association of Insurance Commissioners ("NAIC")) the reports required by
14 chapters 3 and 19 of title 31 of the D.C. Official Code. A title insurer shall also prepare and file
15 NAIC's quarterly statements for title insurers with the Commissioner and NAIC.

16 (c) A title insurer shall be subject to examination under chapter 14 of title 31 of the D.C.
17 Official Code.

18 (d) The Commissioner may establish rules, including rules providing statistical plans, for
19 use by all title insurers in the recording and reporting of revenue, loss, and expense experience.

20 (e) The Commissioner may require that the information provided under this section be
21 verified by oath of the title insurer's president, vice president, secretary, or actuary.

22 (f) The Commissioner may require that the information required under this section be

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1 subject to an audit conducted by an independent certified public accountant.

2 (g) In addition to the confidentiality protections contained in chapters 3, 14, and 19,

3 [NOTE: Need to add cites to specific statutory sections], information filed with the

4 Commissioner relating to a particular title insurance agent shall be kept confidential unless the

5 Commissioner finds that it is in the public interest to disclose the information.

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6 **Sec. 220. Record retention requirements.**

7 Evidence of the examination of title and determination of insurability for title insurance

8 business written by a title insurer and records relating to escrow and security deposits shall be

9 preserved and retained by the title insurer for as long as appropriate under the circumstances but,

10 in no event, less than [insert amount] five (5) years after the title insurance policy has been

11 issued or [insert amount] years after the escrow or security deposit account has been closed.

12 This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has

13 complied with this section. *[Q: How many years should we require the documents to be*

14 *retained for?]*

15 **TITLE III. TITLE INSURANCE AGENTS.**

16 **Sec. 301. Licensing requirements; licensing of employees.**

17 (a) No person, other than a bonafide employee of an insurer, shall act in the capacity of

18 a title insurance agent with respect to property located in the District of Columbia unless the

19 person is licensed hereunder.

Deleted: as an insurance producer, authorized to engage in the title line of insurance, under the Producer Licensing Act of 2002.

20 (b) An individual employed by a licensed title insurance agent to whom the agent

21 delegates authority to as a title insurance agent, on that agent's behalf shall be either separately

Deleted: act

22 licensed or named on the employing agent's license. The Commissioner may require that each

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1 such individual be separately licensed.

2 **Sec. 302. Regulation of practices.**

3 The Commissioner may adopt rules, regulations, and requirements relating to the
4 practices of persons acting in the capacity of title insurance agents. These persons may include
5 title insurance agents, employees of title insurance agents, and persons acting on behalf of title
6 insurance agents, but shall not include persons performing solely clerical functions or employees
7 of an insurer or title examiner who have no authority to sign abstracts on behalf of a title
8 insurance agent.

9 *****. Examination? Exemption from requirements for people who submit a
10 certificate from underwriter that they have had binder/policy-signing authority for 5 years prior
11 to effective date of act.

12 **Sec. 303. Required disclosures.**

13 (a) A title insurance agent shall:

14 [NOTE: This provision was deleted based on the suggestion of industry reps, and the
15 representation that this was not required in other jurisdictions.]

16 (1) Exclude or eliminate the word “insurer” or “underwriter” or similar term from
17 its agency’s name; and

18 (2) Provide, in a timely fashion, each title insurer with which it places business
19 any information the title insurer requests in order to comply with the reporting requirements of
20 this act or the Commissioner.

Deleted: (1) Disclose on all correspondence that the title insurance agent is acting as a title insurance agent for a particular named underwriter [title insurer?]; and [NOTE: The term “underwriter” is not generally used in the Model Act, but it is used here. I think it should be replaced with “title insurer” for consistency, unless there is a distinction that is being made here by using the term “underwriter” instead of “title insurer”.]

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21 **Sec. 304. Required insurance.**

22 (a) (1) A title insurance agent [and each person required to be licensed performing

Deleted: (b) A title insurance agent licensed in the District of Columbia prior to the effective date of this act shall have 90 days after the effective date of this act to comply with the requirements of this subsection. [Q: Are title insurance agents licensed in any way now? If not, this section will need to be reworded.]

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1 title search functions on behalf of a title insurance agent] [NOTE: Industry reps want bracketed
2 phrase deleted. Still need to make a decision on this issue.] shall maintain the following for the
3 benefit of the title insurer [only for the benefit of the insurer?] in amounts commensurate with
4 the average exposure of the title insurance agent or person, under terms and conditions, and from
5 insurers, acceptable to the Commissioner:

6 (A) An errors and omission policy which shall include coverage for a title
7 insurance agent's delegation of title insurance agent functions in an amount not less than
8 \$500,000.00; and [NOTE: How much? \$500,000 was suggested.]

9 (B) Fidelity coverage if the title insurance agent or person handles
10 escrows or indemnity deposits. [NOTE: It was recommended that this provision be modified so
11 that it applies only to agents with employees; that seems reasonable.]

Deleted: security

12 (2) The Commissioner may adopt rules specifying acceptable alternatives to the
13 preceding insurance requirements.

Deleted: The availability of closing or settlement protection shall not be an acceptable alternative to the requirements of this subsection.

14 (3) This subsection shall not apply to law firms.

15 (b) If a title insurance agent delegates a title search to a third party, such as an abstract
16 company:

17 (1) The title insurance agent shall first obtain proof that the third party is:

18 (A) Covered by or maintains the errors and omissions coverage
19 required by subsection (a) of this section; and

20 (B) Operating in compliance with any rules and regulations established
21 by the Commissioner; and [NOTE: Industry reps recommended deleting this provision, since
22 they are not in a position to show that agent is complying with all laws. Seems like a reasonable

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1 argument. An alternative would be to have the third party sign a form saying they are in
2 compliance.]

3 (2) The third party shall provide the title insurance agent and the title insurer who
4 the title insurance agent is representing with access to and the right to copy all accounts and
5 records maintained by the third party with respect to business placed with the title insurer
6 through the title insurance agent.

7 **Sec. 305. Required filings.**

8 A title insurance agent shall not charge a rate or use a rate schedule, rating manual, form,
9 term, condition, or exception required to be filed under section 218 unless such, (delete "it"
10 because we don't want it to refer to "agent") has been filed with the Commissioner under
11 section 218 and approved by the Commissioner or 30 days have elapsed after the filing and it has
12 not been disapproved by the Commissioner.

Deleted: it

13 **Sec. 306. Reporting of information; access to and retention of records;**
14 **examinations.**

15 (a) The Commissioner may, during normal business hours, examine, and inspect the,
16 books and financial records of a title insurance agent. This subsection shall not apply to law
17 firms (confidentiality).

Deleted: audit,

Deleted: any and all

18 (b) Commissioner already has the right to review under Section 312. Delete not in VA
19 or in MD code either. A title insurance agent shall prepare and file with the Commissioner an
20 annual report containing the following information: *[Q: Do we want to require title insurance*
21 *agents to file an annual report. If so, what information do we want to require to be included*
22 *in the annual report?]*

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1 (c) What is this? A title insurance agent shall be subject to examination under chapter 14
2 of title 31 of the D.C. Official Code (is this the Law on Examinations? ****).

3 (d) The Commissioner may establish rules, including rules providing statistical plans, for
4 use by all title insurance agents in the recording and reporting of revenue, loss, and expense
5 experience. Why do we need this?

6 (e) The Commissioner may require that the information provided under this section be
7 verified by oath of the title insurance agent or an office, employee, or accountant of the title
8 insurance agent. The Commissioner may further require that the information required under this
9 section be subject to a review conducted by an accountant or an insurer. Cost???. Only if
10 malfeasance noticed?

Deleted: n audit

Deleted: independent certified public

11 (f) A title insurance agent shall maintain sufficient records of its affairs, including its
12 escrow operations and escrow trust accounts, so that the Commissioner may adequately ensure
13 that the title insurance agent is in compliance with all provisions of this act. The Commissioner
14 may prescribe not more than 3 years???? the specific record entries and documents that shall be
15 kept, and the length of time for which the records shall be maintained. *[Q: Are there any*
16 *current general record retention requirements?]*

17 (g) Information filed with the Commissioner relating to the experience of a particular
18 title insurance agent shall be kept confidential unless the Commissioner finds that it is in the
19 public interest to disclose the information after

20 (i) considering the very confidential nature of the information and the importance
21 of maintaining the confidentiality of such information to the integrity and
22 competitiveness of the title industry and

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(ii) affords the title insurance agent and title insurer fifteen (15) days written notice of the Commissioner’s intent to disclose.

Sec. 307. Prohibition of rebate and fee splitting.

(a) DCLTA counsels AGAINST enactment of RESPA legislation No title insurance agent shall give or receive, directly or indirectly, consideration for the referral of title insurance business, escrow services, or any other business or service provided by a title insurer to any person other than to an insurer or to a title insurance agent, nor shall any consideration be given or received if prohibited by RESPA. ****There are values to referral fees paid on non-residential matters. 35 States recognize that value.

Deleted: No person shall provide or receive, directly or indirectly, consideration for the referral of title insurance business, escrow services, or for another service or business provided by a title insurance agent

[Optional Subsection B]

[DCLTA approves this optional subsection (b) If a title insurance agent may be in violation of the prohibitions or limitations of this section, another title insurance agent shall have a cause of action against the violating title insurance agent or recipient of the consideration and, upon establishing the existence of a violation, shall be entitled to injunctive relief as the court may deem necessary or desirable to prevent violations of this section in the future. In any action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.]

Deleted:

[NOTE: This subsection, which is an optional subsection in the Model Act, allows one title insurance agent to sue another to enforce the no rebate/fee splitting provision. My inclination is to delete this section; this would be something the Department or OAG would enforce.]

[NOTE: Industry reps like this provision.]

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1 **Sec. 308. Controlled business.**

2 (a) why these provisions? DCLTA counsels against RESPA-like provisions.
3 There are already disclosures require by RESPA Not in MD or VA either.

4 **Sec. 309. Prohibition on favored agents. Overly broad**

5 A title insurance agent shall not participate in a transaction in which the agent has actual
6 knowledge that a referral source, requires, directly or indirectly, or through a trustee, director,
7 officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or
8 furnishing a person a loan, loan extension, credit, sale, property, contract, lease, or service, that
9 the person shall place a title insurance policy with a particular title insurer or through a particular
10 title insurance agent.
11

12 **Sec. 310. Required provisions of contract with title insurer.**

13 [NOTE: Industry reps argued that the required provisions are too numerous and
14 unnecessary overall (an argument that appears to have merit). The Department agreed
15 that it would review the provisions and might limit them only to provisions that protect
16 consumers. It was suggested that the provisions in Louisiana and Nebraska be considered.]

17 DCLTA: DISB would be ill-advised to dictate what contract provisions should exist in the
18 industry. There are national contracts negotiated and neither the insurers nor the builders should
19 be obligated to review each state's statutes to ensure that a clause is/is not present. Specific
20 problems also exist in this section 310, i.e. speaks of separate escrow accounts for each insurer.
21 DCLTA counsels eliminating Section 310 entirely., but, failing that, DCLTA would like to
22 examine EACH provision with DISB. There are many problems, one being that this might limit
23 the insurers's ability to terminate agents unless the insurer could provide legal cause for
24 termination.

25 [NOTE: It also may make sense to determine whether certain provisions, even if
26 maintained in the Act, belong in this section. For example, under paragraph (5), agents
27 must maintain separate records for each insurer and provide them access. Why is this a
28 contractual requirement, instead of being a substantive obligation placed on the agent by
29 law (i.e., having a separate section of the act stating: "A title insurance agent shall miainta
30 separate records of title insurance business for each title insurer and the title insurance
31 agent shall provide to each title insurer access to and a right to copy all accounts and
32 records related to its title insurance business in a form acceptable to the title insurer."]
33

34 (a) A title insurance agent shall not place business with a title insurer unless there is
35

Deleted: Before a title insurance agent may commence a transaction involving controlled business, the title insurance agent shall ensure that its customer has been provided with a disclosure of the existence of the controlled business arrangement and a written estimate of the charge or range of charges generally made for the title insurance business services provided by the title insurance agent.¶

(b) The Commissioner may, under section 404, adopt rules requiring a title insurance agent to record and report information on:¶

(1) The owners of the title insurance agent.¶

(2) The title insurance agent's ownership interests in other persons;¶

(3) Those persons, if any, that have a financial interest in the title insurance agent and who the title insurance agent knows or has reason to believe are producers or associates of producers; and¶

(4) Material transactions among the title insurance agent and the parties described in paragraphs (1), (2), and (3) of this subsection.¶

[NOTE: We need to decide whether any of these optional subsection (c)s is needed.]¶

[NOTE: Industry reps want first optional subsection (c).]¶

[First Optional Subsection (c)]¶

(c) (1) Nothing in this act shall be construed as prohibiting controlled business arrangements if:¶ ... [24]

Inserted: ¶
[NOTE: Industry reps want first optional subsection (c).]

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Inserted: [Section 304(a)]

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Deleted: producer or other person

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1 in force a written contract between the title insurance agent and title insurer that sets forth the
2 responsibilities of each party (and where both parties share responsibility for a particular
3 function, specifies the division of such responsibilities) and contains the following provisions:

4 (1)
5 (2) The title insurance agent shall render accounts to the title insurer detailing all
6 transactions and shall remit all funds due under the contract to the title insurer by the
7 earlier of the following:

8 (A) why is government getting involved in this?Forty-five days after the
9 end of the month in which the policy becomes effective; or

10 (B) Within the time specified by the contract.

11 (3) All funds collected for the account of a title insurer by a title insurance agent
12 shall be held in a fiduciary capacity in a bank that is a qualified financial institution note
13 definition. Commissioner can later define what is a “qualified institution”? i.e. only banks that
14 have physical branches in DC., and a separate and exclusive account shall be established and
15 maintained for each underwriter [title insurer?] represented by the title insurance agent. *[NOTE:*

16 *Again, the Model Act generally uses the term “title insurer” rather than “underwriter”. If*
17 *there’s no distinction that you see that they’re trying to make by using the word “underwriter”*
18 *here, I will change it to “title insurer” for consistency and clarity.] [NOTE: Industry reps*

19 want a requirement that premiums be remitted within 60 or 90 days. If this is added, it
20 should probably go in a different section as a basic requirement of engaging in title
21 insurance agent business.] Again, why can’t this just be handled in Agency Agreements?

22 (4) At the title insurer’s request, the title insurance agent, its successor in interest,

Deleted: (A) The title insurer may terminate the contract upon written notice under the following circumstances:¶
(i) Fraud, insolvency, or bankruptcy of the title insurance agent;¶
(ii) Appointment of a receiver or conservator for the title insurance agent;¶
(iii) Cancellation of the title insurance agent’s license or permit to do business in any jurisdiction;¶
(iv) Commencement of legal proceedings by the District or other jurisdiction, which if successful, would lead to cancellation of the title insurance agent’s license or permit to do business;¶
(v) Material breach of a provision of the contract; or¶
(vi) Notice of cancellation has been provided in accordance with contract termination requirements; and¶
(B) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting related to the title insurer; provided, nothing in this provision shall relieve the title insurance agent or title insurer of any other contractual obligation.¶

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1 transferee, or receiver shall provide access to and the right to copy all escrow files and
2 underwriting files involving a transaction in which a title insurance report or policy of the title
3 insurer is or is to be issued. Again, why legislate this? Not already in Agency contract?

4 ***[Q: Is the above provision okay, given the drafting note from the Model Act below?]***

5 *[Drafting Note (from Model Act): A possible conflict may exist in certain jurisdictions*
6 *between the title insurance agent's fiduciary duty as the escrow holder to maintain the*
7 *confidentiality of the information contained in the escrow files and the Section 8D*
8 *requirement that the title insurance agent provide the title insurer access to and a right to*
9 *copy the escrow files. If so, states may wish to adopt rules or regulations or establish*
10 *requirements addressing the title insurance agent's need to recognize and address*
11 *possible conflict.]*

12
13 (5) Separate records of title insurance business written by the title insurance
14 agent shall be maintained for each title insurer, and the title insurer shall have access to and a
15 right to copy all accounts and records related to its title insurance business in a form acceptable
16 to the title insurer.

17 (6) The contract may not be assigned in whole or in part by the title insurance
18 agent without the express written consent of the title insurer. Why in law? What about a merger
19 or something that both insurer and Agent are involved in and agree to?

20 (7) Already in Agency Contract? The title insurance agent shall immediately
21 report and forward to the title insurer all title-related escrow claims and title claims reported to
22 the title insurance agent by a policyholder or another person; provided, if the contract permits the
23 title insurance agent to settle claims on behalf of the title insurer:

24 (A) Why legislate? A copy of the claim file shall be sent to the title
25 insurer at its request or as soon as it becomes known that the claim:

26 (i) Has the potential to exceed an amount established by the title

1 insurer;

2 (ii) Involves a coverage dispute;

3 (iii) May exceed the title insurance agent's claims settlement

4 authority;

5 (iv) Is open for more than 6 months; or

6 (v) Is closed by payment exceeding an amount established by the

7 title insurer;

8 (B) All title and title-related escrow claims files settled by the title

9 insurance agent shall be the property of the title insurer ?????????????why is this here, being

10 legislated?; and

11 (C) Any settlement authority granted to the title insurance agent may be

12 terminated immediately upon the title insurer's written notice to the title insurance agent or upon

13 the termination of the contract. The title insurer may suspend the settlement authority during the

14 pendency of a dispute regarding the cause for termination. Nothing in this paragraph shall relieve

15 the title insurance agent or title insurer of any other contractual obligation.

16 (8) The title insurance agent shall not:

17 (A) Bind reinsurance or retrocessions on behalf of the title insurer;

18 (B) ???? Serve on a title insurer's board of directors if the agent wrote

19 1% or more of the title insurer's direct premiums written during the previous calendar year, as

20 shown on the title insurer's most recent annual statement on file with the Commissioner. This

21 paragraph shall not apply to relationships governed by the holding company provisions of

22 chapter 7 of title 31 of the D.C. Official Code. [NOTE: Does this apply only to domestic

1 insurers?]

2 (C) why not? Jointly employ an individual who is employed with the title
3 insurer unless the title insurer and the title insurance agent are affiliated or otherwise under
4 common control as defined by section 31-701(2) of the D.C. Official Code; or

5 ----- (9) The title insurance agent shall maintain an inventory of all policy forms or
6 policy numbers assigned to the title insurance agent by the title insurer.

Deleted: (D) Appoint a title insurance sub-agent.¶

7 (10) The title insurance agent shall annually, concurrent with the renewal date of
8 its contract, furnish the title insurer with proof that the title insurance agent is licensed as a title
9 insurance agent under this act.

10 (11) [NOTE: Industry reps want to delete this paragraph based on the argument
11 that an agent cannot realistically be responsible for proving that a third party is in compliance
12 with the rules and regulations. This seems like a reasonable objection.]

Deleted: If the title insurance agent delegates a title search to a third party, such as an abstract company, the agent shall first obtain proof that the third party is operating in compliance with any rules and regulations established by the Commissioner.

13 (12) why legislate? The title insurance agent shall provide the insurer with
14 access to and the right to copy all accounts and records maintained by the title insurance agent
15 with respect to business placed with the title insurer.

16 (13) why legislate? Specific terms of the title insurance agent's compensation.

17 (14) why legislate? Appropriate guidelines relating to:

18 (A) The basis of the rates to be charged;

19 (B) The types of risks which may be written;

20 (C) Maximum limits of liability;

21 (D) Territorial limitations;

22 (E) Title searches and examinations; and

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1 (F) Underwriting.
2 (15) Where electronic claims files exist, a provision addressing the immediate
3 transmission of data.

4 (b) DCLTA counsels to eliminate this provision For each title insurance agent under
5 contract with the title insurer, the title insurer shall have on file a statement of financial condition
6 of the title insurance agent as of the end of the previous calendar year setting forth an income
7 statement of title insurance business done during the preceding year by the title insurance agent
8 and a balance sheet showing the condition of the title insurance agent’s affairs as of the prior
9 December 31. The statement shall be certified by the title insurance agent as being a true and
10 accurate representation of the title insurance agent’s financial condition. An attorney actively
11 engaged in the practice of law shall be exempt from the requirements of this subsection, except if
12 the attorney engages primarily in legal practice related to title insurance business.

13 [NOTE: Again, industry reps want to add a requirement that the report be provided to the insurer
14 by the agent; apparently they’ve had trouble getting them in the past. Seems reasonable. Might
15 make it part of section 303, Required Disclosures] Who wants this? Why legislate it?

16 **Sec. 311. Policyholder treatment.**

17 (a) When constituting an offer to issue an owner’s title insurance policy covering the
18 resale of owner-occupied residential property, a title insurance agent shall furnish a title
19 insurance commitment to the purchaser-mortgagor or its representative at or before closing.

20 [NOTE: Industry reps want to say “no later than at time of closing”.] The commitment
21 furnished to the purchaser-mortgagor be accompanied by (ALTA forms do not permit adding
22 language the following statement in bold type:

Deleted: report

Deleted: shall be furnished

Deleted: as soon as reasonably possible prior to closing

Deleted: [If the

Deleted: report

Deleted: commitment cannot be delivered prior to the day of closing, the title insurer shall document the reasons for the delay and shall present the documentation of reasons to the purchaser-mortgagor with the title insurance report.] [NOTE: Industry reps want to delete the prior sentence. Apparently, only Nebraska has it. It seems reasonable to delete the provision, as it does seem somewhat burdensome and in the end will anything other than stock reasons such as “administrative delay” be given.]

Inserted: commitment

Inserted:] [NOTE: Industry reps want to delete the prior sentence. Apparently, only Nebraska has it. It seems reasonable to delete the provision, as it does seem somewhat burdensome and in the end will anything other than stock reasons such as “administrative delay” be given.]

Deleted: report

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1 **“Please read the exceptions and the terms shown or referred to herein**
2 **carefully. The exceptions are meant to provide you with notice of matters**
3 **which are not covered under the terms of the title insurance policy and**
4 **should be carefully considered.**
5 **It is important to note that this form is not a written representation of the**
6 **condition of title and may not list all liens, defects, and encumbrances**
7 **affecting title to the land.”**

8 (b) A title insurance agent issuing a lender’s title insurance policy in conjunction with a
9 mortgage loan made simultaneously with the purchase of all or part of owner-occupied,
10 residential real estate securing the loan, shall give written notice, on a form prescribed or
11 approved by the Commissioner, to the purchaser-mortgagor at the time the commitment is
12 prepared. The notice shall explain that a lender’s title insurance policy protects the mortgagee-
13 lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor
14 as the owner of the property being purchased. The notice shall explain what a title policy insures
15 against and what possible exposures exist for the purchaser-mortgagor that could be insured
16 against through the purchase of an owner’s policy. The notice shall also explain that the
17 purchaser-mortgagor may obtain an owner’s title insurance policy protecting the property owner
18 at a specified cost or an approximate cost if the proposed coverages or amount of insurance is not
19 then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the
20 relevant underwriting file at least 5 years after the effective date of the lender’s title insurance
21 policy. [NOTE: Industry reps wanted to limit the notice requirement to sales of 1-4 family
22 houses, and asked the Department to review Virginia’s requirement.] [NOTE: Industry reps also

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1 questioned the 5-year retention requirement as potentially too long and suggested that the term
2 be consistent with the general requirement for maintaining records. Note: Virginia has a five-
3 year requirement.]

4 **Sec. 312. Provision of escrow, settlement, closing, and security deposit services.**

5 (a) A title insurance agent may operate as an escrow, settlement, closing, or security
6 deposit agent; provided:

7 (1) All funds deposited with the title insurance agent in connection with an
8 escrow, settlement, closing, or indemnity deposit shall be submitted for collection to or
9 deposited in a separate fiduciary trust account or accounts in a qualified financial institution

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10 ***note comments re: qualified financial institution **** at the earliest opportunity and as soon
11 as practicable, ** there may be impediments to doing this, contract not fully ratified*** check
12 delivered with instructions to deposit at a later date*** what if you are a day late, you go to
13 jail?, in accordance with the following requirements:

Deleted: no later than the close of the next business day

14 (A) The funds shall be the property of the person or persons entitled to
15 them under the provisions of the escrow, settlement, closing, or security deposit agreement and
16 shall be segregated for each depository by escrow, settlement, closing, or indemnity deposit in
17 the records of the title insurance agent in a manner that permits the funds to be identified on an
18 individual basis; and

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19 (B) The funds shall be applied only in accordance with the terms of the
20 individual instructions or agreements under which the funds were accepted.

21 (C) Nothing herein shall preclude a title insurance agent from pooling
22 funds attributed to multiple insurers; provided, that such is permitted in the contract between the

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1 | title insurance agent and the respective insurers.

2 | (2) Funds held in an escrow account shall be disbursed only pursuant to a written
3 | instruction or agreement specifying how and to whom such funds may be disbursed.

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

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6 | (A) What actions the indemnitor shall take to satisfy his or her obligation
7 | under the agreement;

8 | (B) The duties of the title insurance agent with respect to disposition of
9 | the funds held, including a requirement to maintain evidence of the disposition of the title
10 | exception before a balance may be paid over to the depositing party or his or her designee; and

11 | (C) Any other provisions the Commissioner may require.

12 | [NOTE: Industry reps said that this interest provision was not practical, particularly because
13 | funds are held in a pooled account. If DISB absolutely needs to keep it in, there is the “unless”
14 | clause. .]

Deleted: (4) Interest received on funds deposited in connection with an escrow, settlement, closing, or security deposit shall be paid, net of administrative costs, to the person whose money was deposited, unless the instructions for the funds or a governing statute provides otherwise.

15 | [NOTE: Industry reps want a requirement that the funds cannot be put at risk.] How can
16 | someone legitimately put it at risk if it is an escrow account? Aren't there sufficient laws already
17 | that prevent this?

Inserted: [NOTE: Industry reps said that this interest provision was not practical, particularly because funds are held in a pooled account

18 | (5) Disbursements may be made out of an escrow, settlement, or closing account
19 | only if:

20 | (A) Deposits in amounts at least equal to the disbursement have first been
21 | made;

22 | (B) The deposits directly relate to the transaction disbursed against; and

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(C) The deposits are in one of the following forms:

- (i) Cash;
- (ii) Wire transfers such that the funds are unconditionally received by the title insurance agent or the title insurance agent's depository;
- (iii) Checks, drafts, negotiable orders of withdrawal, money orders, or any other items that have been finally paid before a disbursement;
- (iv) Depository checks, including certified checks, governed by the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. § 4001, et seq.; or
- (v) Credit transfers through the Automated Clearing House that have been deemed available by the depository institution receiving the credits, if the credits conform to the operating rules of the National Automated Clearing House Association.

Deleted: an annual audit made

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Deleted: within 90 days after the close of the previous calendar year

Deleted: audit

Deleted: shall be

Deleted: certified public

Deleted: a calendar year basis at the title insurance agent's expense

Deleted: The title insurance agent shall provide a copy of the audit report to each title insurer which it represents. The Commissioner may promulgate regulations setting forth the minimum threshold level at which an audit shall be required, the standards of audit, and the form of

Deleted: audit report.

Deleted: n attorney and who issues title insurance policies as part of his or her legal representation of clients

Deleted: ; provided, the title insurer may, at its expense, conduct or cause to be conducted an annual audit of the escrow, settlement, closing, and security deposit accounts of the attorney; provided further, an attorney who is primarily in the business of title insurance shall not be exempt from the requirements of this paragraph. [NOTE: Industry reps did not want attorneys t

Inserted: [NOTE: Industry reps did not want attorneys t

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Deleted: Commissioner may require a

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Deleted: If a title insurance agent is appointed by 2 or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, settlement, closing, or security d{ ... [25]

(6) (A) No. unreasonable cost to agent. A title insurance agent shall have periodic reviews of its escrow, settlement, closing, and indemnity deposit accounts. The review may be conducted by an accountant on by an insurer, DISB already has authority to review these reports.

[NOTE: Industry reps said that 90 days is not enough.]
[NOTE: Industry reps want the statute to say that title insurers, in addition to CPAs, have the authority to perform the required audit.]

(B) A title insurance agent who is a law firm shall be exempt from the requirements of this paragraph.

(C) deleted

(7) why legislate?

1 **TITLE IV. MISCELLANEOUS PROVISIONS.**

2 **Sec. 401. Violations of the Real Estate Settlement Procedures Act.**

3 The Commissioner or Attorney General may bring an action in a court of competent
4 jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607,
5 as amended. OK, if we have this provision, why restate the provisions of RESPA here?

6 **Sec. 402. Penalties and liabilities.**

7 (a) If the Commissioner determines that a title insurer, title insurance agent, or other
8 person has violated this act, or a regulation or order promulgated under this act, the
9 Commissioner may, after notice and opportunity to be heard, order:

- 10 (1) A penalty not exceeding that set forth in RESPA,
11 (2) Revocation or suspension of the title insurer or title insurance agent's license.

Deleted: \$ [insert amount] for each violation; and [Q: What should this amount be set at?]

12 (b) If an order of rehabilitation or liquidation of a title insurer has been entered pursuant
13 to the liquidation and rehabilitation provisions of chapter 13 of title 31 of the D.C. Official Code,
14 and the receiver appointed under that order determines that a title insurance agent or other person
15 has not complied with this act, or a regulation or order promulgated under this act, and the title
16 insurer suffered any resulting loss or damage, the receiver may maintain a civil action for
17 recovery of damages or other appropriate sanctions for the benefit of the title insurer and its
18 policyholders and creditors.

19 (c) Nothing contained in this section shall affect the right of the Commissioner or other
20 official or agency of the District of Columbia government to impose other penalties provided for
21 under the laws of the District of Columbia.

22 (d) Nothing in this section shall limit or restrict the rights of policyholders, claimants, or

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1 creditors.

2 **Sec. 403. Applicability.**

3 (a) (1) This act shall apply to all activities, agreements, and transactions of a title

4 insurer or title insurance agent engaged in or entered into 180 days after the activation date.

Deleted: after the effective date of this act.

5 (2) A title insurance agent shall amend all existing agreements to comply with

6 section 8 [Contracts with Insurers provisions] within 180 days after the activation date.

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Deleted: effective date of this act

7 (b) Except as otherwise expressly provided in this act, and except where the context

8 otherwise requires, all provisions of the laws of the District of Columbia applying to insurance

9 and insurance companies generally shall apply to title insurance, title insurers, and title insurance

10 agents. DCLTA: this is stand-alone legislation. A broad-brush incorporation by reference may

11 have unintended results. Why is this needed? Why not delete?

12 **Sec. 404. Rules and regulations.**

13 The Commissioner may, pursuant to title 1 of the District of Columbia Administrative

14 Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.),

15 issue rules, regulations, and orders to carry out the provisions of this act.

16 **Sec. 405. Fiscal impact statement.**

17 The Council adopts the fiscal impact statement in the committee report as the fiscal

18 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,

19 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

20 **Sec. 406. Effective date.**

21 This act shall take effect following approval by the Mayor (or in the event of veto by the

22 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as

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1 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
2 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
3 Columbia Register.

4 DCLTA Continuing Ed Requirements? MD (8 hours/year?) and VA: 16 hours/per 2 yrs?
5 Average of NE States is 8-12/year

6
7

8 **Add to producer act**

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9 (8) Title insurance, consisting of insurance coverage for, or indemnification of,
10 owners of, or other persons lawfully interested in, real or personal property or an interest in real
11 property, against loss or damage arising from any of the following conditions existing on or
12 before the policy date and not excepted or excluded: _____ (A) Defects in, or liens or
13 encumbrances on, the insured title;

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14 _____ (B) Unmarketability of insured title;

15 _____ (C) Invalidity, lack of priority, or unenforceability of liens or
16 encumbrances on the property;

17 _____ (D) Lack of legal right of access to the property; or

18 _____ (E) Unenforceability of rights in title to the property;
19

20 ADD TO DCMR Producer regulations

21 Amend 100.2 to add title

22 Amend 105.1 to add fee for title

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TITLE I. definitions..... 2

Sec. 101. Definitions..... 2

Title ii. Title INSURANCE AND TITLE insurers. 2

Page 2: [3] Deleted 4/19/2007 1:15 PM

Sec. 201. Licensing requirement; required corporate form. 2

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Sec. 202. Authorized activities of title insurers. 2

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Sec. 209. Liquidation, dissolution, or insolvency. 2

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Sec. 203. Regulation of practices. 2

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Sec. 204. Prohibition on certain guarantees. 2

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Sec. 205. Minimum capital and surplus requirements. 2

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Sec. 208. Reserves. 2

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Sec. 206. Single risk limit. 2

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Sec. 207. Admitted asset standards; investments in title plants. 2

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Sec. 210. Restrictions on dividends. 2

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Sec. 211. Diversification requirement. 2

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Sec. 212. Notice to policyholders and potential policyholders. 2

Sec. 213. Duties of title insurers utilizing the services of title insurance agents. 2

“Associate” means, with respect to a producer:

- (A) A business organized for profit in which the producer is a director, officer, partner, employee, or owner of a financial interest;
- (B) An employee of the producer;
- (C) A franchiser or franchisee of the producer;
- (D) A spouse, parent, or child of the producer, if the producer is a natural person;
- (E) A person, other than a natural person, that controls, is controlled by, or is under common control with, the producer; and
- (F) A person with whom the producer or an associate of the producer has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.

[NOTE: There was some question expressed by an industry rep regarding the definition of “associate”. In the Act, the definition is used for controlled business only. The definition of “associate” in RESPA is: “ one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of

which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.” If there is still a question regarding the definition, perhaps it could be moved to the controlled business section and the definition could be similar to those for “required use” and “return on ownership interest” in that section — that is, “associated” would be defined by reference to the RESPA definition.]

[NOTE: There was some question expressed by an industry rep regarding the definition of “associate”. In the Act, the definition is used for controlled business only. The definition of “associate” in RESPA is: “ one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.” If there is still a question regarding the definition, perhaps it could be moved to the controlled business section and the definition could be similar to those for “required use” and “return on ownership interest” in that section — that is, “associated” would be defined by reference to the RESPA definition.]

(1) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of the financial condition of the title insurance agent as of the end of the previous calendar year. The statement of financial condition shall include an

income statement of the title insurance business done by the title insurance agent during the preceding year and a balance sheet showing the condition of the title insurance agent's affairs as of the prior December 31. The statement shall be certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition.

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(2) An attorney actively engaged in the practice of law shall be exempt from the requirements of this subsection, except if the attorney engages primarily in legal practice related to title insurance business.

[NOTE: Industry reps would also like to add requirement that the title insurance agent shall provide the statement to the insurer, because they have had difficulties getting this information from agents in the past. This seems like a reasonable request.]

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[NOTE: Industry reps would also like to add requirement that the title insurance agent shall provide the statement to the insurer, because they have had difficulties getting this information from agents in the past. This seems like a reasonable request.]

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under contract with the title insurer. The on-site review shall include a review of the title insurance agent's policy blank inventory and processing operations

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[NOTE: Industry reps want to modify the audit requirement, noting that some insurers have their own formulas to determine when to conduct audits, and under those formulas an audit might not be conducted annually of each agent. One option considered was to allow the insurer to submit an alternate audit plan to the Department, and the plan could

be subject to approval by the Commissioner; this option seems reasonable, if it is workable. The Department said it would also look at Maryland and Virginia provisions; this still needs to be done.]

[NOTE: Industry reps want to modify the audit requirement, noting that some insurers have their own formulas to determine when to conduct audits, and under those formulas an audit might not be conducted annually of each agent. One option considered was to allow the insurer to submit an alternate audit plan to the Department, and the plan could be subject to approval by the Commissioner; this option seems reasonable, if it is workable. The Department said it would also look at Maryland and Virginia provisions; this still needs to be done.]

Before a title insurance agent may commence a transaction involving controlled business, the title insurance agent shall ensure that its customer has been provided with a disclosure of the existence of the controlled business arrangement and a written estimate of the charge or range of charges generally made for the title insurance business services provided by the title insurance agent.

(b) The Commissioner may, under section 404, adopt rules requiring a title insurance agent to record and report information on:

- (1) The owners of the title insurance agent;
- (2) The title insurance agent's ownership interests in other persons;
- (3) Those persons, if any, that have a financial interest in the title

insurance agent and who the title insurance agent knows or has reason to believe are producers or associates of producers; and

(4) Material transactions among the title insurance agent and the parties described in paragraphs (1), (2), and (3) of this subsection.

[NOTE: We need to decide whether any of these optional subsection (c)s is needed.]

[NOTE: Industry reps want first optional subsection (c).]

[First Optional Subsection (c)]

(c) (1) Nothing in this act shall be construed as prohibiting controlled business arrangements if:

(A) The title insurance agent or party making a referral constituting controlled business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(B) The person being referred is not required to use a specified title insurance agent or insurer; and

(C) 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.

(2) For the 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, 12 U.S.C. § 2607, as amended and Regulation X, 24 C.F.R. § 3500 et seq.

[Second Optional Subsection (c)]

[(c) 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:

(1) The title insurance agent knows or has reason to believe that the transaction will constitute controlled business; and

(2) When added to other controlled business written by the title insurance agent during the same calendar year, the aggregate controlled premiums written will exceed 20% of the title insurance agent's gross premiums written during the preceding calendar year; provided, the 20% limitation shall be 80% in the first year after the effective date of this act, 60% in the second calendar year after the effective date of this act, and 40% in the third calendar year after the effective date of this act.]

[Third Optional Subsection (c)]

[(c) (1) In addition to the requirements of section (3)(d) [Section 304(a)], the Commissioner shall require a title insurance agent to maintain for the benefit of the title insurer, insured, or the depositor, pursuant to terms and conditions to be prescribed by the Commissioner, in amounts commensurate with the agent's average exposure and the volume and nature of its business, a sufficient net worth to ensure the agent's solvency and commitment to the purpose of being a bona-fide title insurance agent.

(2) In determining the amounts and terms and conditions of the requirement described in paragraph (1) of this subsection, the Commissioner may promulgate rules that:

(A) Specify acceptable alternatives to the net worth requirements; and

(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 50 annual transactions or less than \$5 million in title insurance policies face value, or other amounts the commissioner may deem appropriate) or by virtue of individual circumstances that show that the requirements would pose an undue hardship on the title insurance agent and that the title insurance agent's conduct will be bona-fide and its services needed and desirable.

(3) The commissioner shall require each title insurance agent to perform through its bona-fide employees the core title services listed below in order to receive compensation for the services it renders:

(A) The evaluation of a title search or abstract to determine the insurability of title;

(B) The clearance of underwriting objections; and

(C) Issuing and assuming responsibility for the issuance of the title insurance policy and, where customary, issuance of a title commitment.]

[NOTE: We need to decide if any of the subsection (c) options is necessary. Drafting Note (from Model Act): Controlled title insurance business may or may not raise concerns and issues in a particular state and therefore, each state should decide whether and how to address this issue. The First, Second and

Third Optional Subsections present three approaches. Their language should not be read to preclude other approaches or to suggest that any particular provision is necessarily desirable. Because in the Third Optional Subsection, the particular requirements that are appropriate are likely to vary from state to state, and possibly within areas of a single state, this provision is intended to permit the commissioner to set appropriate levels for net worth requirements with due regard for the prevailing circumstances and factors in each state or area.

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

(b) Nothing in this section shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction if all parties to the transaction consent in writing.

(c) Nothing in this section shall be construed to amend, alter, or supersede the laws of the District of Columbia regarding an escrow holder's duties and obligations.

(d) The Commissioner may prescribe a standard agreement for escrow, settlement, closing, or security deposit funds.