

# CHAPTER 361

(Senate Bill 86)

AN ACT concerning

## **Title Insurance Producers – Regulation and Requirements**

FOR the purpose of specifying that, with certain exceptions, only a licensed title insurance producer may ~~have~~ exercise control over ~~or custody of~~ certain money; increasing the amount of a certain fidelity bond and a certain surety bond or letter of credit that certain applicants for a license to act as a title insurance producer must file with the Maryland Insurance Commissioner; making certain conforming changes; ~~requiring the Commissioner to adopt certain regulations~~ requiring the Commission to Study the Title Insurance Industry in Maryland to examine the adequacy of a certain blanket surety bond or letter of credit and to make a certain determination under certain circumstances; defining a certain term; providing for the effective dates of this Act; providing for the application of certain provisions of this Act; and generally relating to title insurance producers.

BY repealing and reenacting, with amendments,  
Article – Insurance  
Section 10–121  
Annotated Code of Maryland  
(2003 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,  
Article – Insurance  
Section 10–121(e) and (f)  
Annotated Code of Maryland  
(2003 Replacement Volume and 2008 Supplement)  
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,  
Chapter 356 of the Acts of the General Assembly of 2008  
Section 1(g)

BY repealing and reenacting, with amendments,  
Chapter 357 of the Acts of the General Assembly of 2008  
Section 1(g)

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

**Article – Insurance**

10–121.

**(A) (1) IN THIS SUBSECTION, “TRUST MONEY” MEANS A DEPOSIT, PAYMENT, OR OTHER MONEY THAT A PERSON ENTRUSTS TO ANOTHER PERSON A LICENSED TITLE INSURANCE PRODUCER IN CONNECTION WITH THE PROVISION OF ESCROW, CLOSING, OR REAL ESTATE SETTLEMENT SERVICES.**

**(2) ~~ONLY~~ EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ONLY A LICENSED TITLE INSURANCE PRODUCER MAY ~~HAVE~~ EXERCISE CONTROL OVER ~~OR~~ CUSTODY OF MONEY RECEIVED OR HELD IN ESCROW OR IN TRUST MONEY.**

**(3) THIS SUBSECTION DOES NOT APPLY TO TRUST MONEY THAT IS ENTRUSTED TO:**

**(I) A LAW FIRM AS DEFINED IN § 10–125 OF THIS SUBTITLE;**  
**OR**

**(II) A TITLE INSURER.**

**[(a)] (B)** A title insurance producer may not convert or misappropriate money received or held in escrow or trust while:

- (1) acting as a title insurance producer; or
- (2) providing any escrow, closing, or settlement services.

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

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

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

- 1. is a stockholder of the corporation;
- 2. does not manage or have day-to-day control over the operation of the corporation; and

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

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

~~[(c)]~~ **(D)** (1) When the application of a partnership for a license as a title insurance producer is submitted, the Commissioner shall investigate the character of each partner of the partnership applicant.

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

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

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

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

(ii) 1. a blanket surety bond; or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for ~~[\$100,000]~~ **\$250,000**.

(3) The Commissioner may adopt regulations that specify when it is appropriate for a bond or letter of credit to be less than ~~[\$100,000]~~ **\$250,000**.

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

(5) The Commissioner shall make a specific finding that states the reason for accepting a bond or letter of credit for less than ~~[\$100,000]~~ **\$250,000**.

**[(e)] (F)** (1) The surety bond or letter of credit shall be for the benefit of any person that suffers a loss if the title insurance producer converts or misappropriates money received or held in escrow or trust while:

- (i) acting as a title insurance producer; or
- (ii) providing any escrow, closing, or settlement services.

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

(3) The total liability of the surety insurer under each bond or letter of credit may not exceed ~~[\$100,000]~~ **\$250,000**.

**[(f)] (G)** The title insurance producer shall file the bond or letter of credit with the Commissioner:

- (1) after the Commissioner notifies the title insurance producer of the approval of the application for a license; and
- (2) before the Commissioner issues the license.

**[(g)] (H)** (1) Each bond or letter of credit shall remain in force until:

- (i) the surety insurer is released from liability by the Commissioner; or
- (ii) the bond or letter of credit is canceled by the surety insurer.

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

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

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

**[(h)] (I)** Before the Commissioner renews the license of a title insurance producer, the title insurance producer shall submit satisfactory evidence of compliance with this section.

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

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

(i) the court lifts the restraining order; or

(ii) the charges are dismissed or adjudicated.

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

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

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

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

(3) If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance producer or agency has engaged in any of the prohibited activities set forth in § 10-126 of this subtitle, the title insurer shall report in writing the suspected violation to the Commissioner and submit a copy of the examination.

(4) The examination required under this section is in addition to any examination conducted by the Commissioner to determine compliance with the accounts maintained for the benefit of the Maryland Affordable Housing Trust under § 22-103 of this article.

(5) The title insurer is not required to perform the on-site review of a title insurance producer for the calendar year during which the title insurance

producer is initially appointed if the appointment is made on or after June 30 of that calendar year.

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

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

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

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

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

[(m)] (N) In addition to any requirements under Title 10, Subtitle 1 of this article, title insurance producers shall comply with this section.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

**Article - Insurance**

10-121.

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

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

(ii) 1. a blanket surety bond; or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for [\$100,000] **\$150,000.**

(3) The Commissioner may adopt regulations that specify when it is appropriate for a bond or letter of credit to be less than [\$100,000] **\$150,000.**

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

(5) The Commissioner shall make a specific finding that states the reason for accepting a bond or letter of credit for less than [\$100,000] **\$150,000.**

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

(i) acting as a title insurance producer; or

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

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

(3) The total liability of the surety insurer under each bond or letter of credit may not exceed [\$100,000] **\$150,000.**

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

### **Chapter 356 of the Acts of 2008**

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(g) In order to develop recommendations, the Commission shall:

(1) review State laws relating to the title insurance industry;

(2) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;

(3) identify title insurance industry issues that affect consumers in Maryland;

- (4) examine the rate-setting factors for title insurance premiums;
- (5) examine how rates and services in a title plant state compare to those in Maryland;
- (6) identify ways to improve consumer education about the title insurance industry;
- (7) study whether mechanics' liens on properties scheduled for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
- (8) review the time limits, subsequent to closing, for the issuance of title insurance policies;
- (9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of these arrangements on title insurance premium rates; [and]
- (10) (I) EXAMINE THE ADEQUACY OF THE BLANKET SURETY BOND OR LETTER OF CREDIT REQUIRED UNDER § 10-121(E) OF THE INSURANCE ARTICLE TO PROTECT CONSUMERS WHO SUFFER A LOSS FROM THE CONVERSION OR MISAPPROPRIATION BY A TITLE INSURANCE PRODUCER OF MONEY RECEIVED OR HELD IN ESCROW OR TRUST; AND**
- (II) IF THE COMMISSION FINDS THAT AN INCREASE IN THE AMOUNT OF THE BLANKET SURETY BOND OR LETTER OF CREDIT IS WARRANTED, DETERMINE THE IMPACT OF THE ADDITIONAL COST ON TITLE INSURANCE PRODUCERS; AND**
- ~~(10)~~ (11) study any other issue with significant impact on the title insurance industry.

**Chapter 357 of the Acts of 2008**

**SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:**

- (g) In order to develop recommendations, the Commission shall:
  - (1) review State laws relating to the title insurance industry;
  - (2) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;



(3) identify title insurance industry issues that affect consumers in Maryland;

(4) examine the rate-setting factors for title insurance premiums;

(5) examine how rates and services in a title plant state compare to those in Maryland;

(6) identify ways to improve consumer education about the title insurance industry;

(7) study whether mechanics' liens on properties scheduled for settlement have an impact on the timeliness of settlements or on title insurance premium rates;

(8) review the time limits, subsequent to closing, for the issuance of title insurance policies;

(9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of these arrangements on title insurance premium rates; [and]

**(10) (I) EXAMINE THE ADEQUACY OF THE BLANKET SURETY BOND OR LETTER OF CREDIT REQUIRED UNDER § 10-121(E) OF THE INSURANCE ARTICLE TO PROTECT CONSUMERS WHO SUFFER A LOSS FROM THE CONVERSION OR MISAPPROPRIATION BY A TITLE INSURANCE PRODUCER OF MONEY RECEIVED OR HELD IN ESCROW OR TRUST; AND**

**(II) IF THE COMMISSION FINDS THAT AN INCREASE IN THE AMOUNT OF THE BLANKET SURETY BOND OR LETTER OF CREDIT IS WARRANTED, DETERMINE THE IMPACT OF THE ADDITIONAL COST ON TITLE INSURANCE PRODUCERS; AND**

~~[(10)]~~ **(11)** study any other issue with significant impact on the title insurance industry.

SECTION 4. AND BE IT FURTHER ENACTED, That the increase in the amount of the fidelity bond and the blanket surety bond or letter of credit required for licensing as a title insurance producer under § 10-121(e) of the Insurance Article, as enacted by Section 2 of this Act, shall apply to all title insurance producer licenses issued or renewed on or after October 1, 2009.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2009.

SECTION ~~2~~ 6. AND BE IT FURTHER ENACTED, That, except as provided in Section 5 of this Act, this Act shall take effect June 1, 2009.

**Approved by the Governor, May 7, 2009.**