

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/25/09

A Bill

HOUSE BILL 2169

5 By: Representative R. Green
6 By: Senator R. Thompson
7

For An Act To Be Entitled

10 AN ACT TO AMEND THE ARKANSAS TITLE INSURANCE ACT,
11 § 23-103-401 ET SEQ.; TO AMEND THE LAWS AFFECTING
12 TITLE INSURANCE AGENTS AND COMPANIES; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15 TO AMEND THE ARKANSAS TITLE INSURANCE
16 ACT, § 23-103-401 ET SEQ. AND TO AMEND
17 THE LAWS AFFECTING TITLE INSURANCE AND
18 TITLE INSURANCE AGENTS AND COMPANIES.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. Arkansas Code § 23-103-402 is amended to read as follows:*
25 *23-103-402. Definitions.*

26 *As used in this subchapter:*

27 (1) "Closing" means the process of executing documents in a
28 transaction involving either personal or real property, including the
29 transfer of title or creation of a lien on the title, or the collection and
30 disbursement of funds in connection ~~therewith~~ with the transaction;

31 (2) "Closing agent" means a person that facilitates a closing
32 for a fee;

33 (3) "Depositor" means the person providing funds or documents
34 for delivery to a depository in connection with a transaction involving real
35 property;

36 (4) "Depository" means a title insurer, title insurance ~~agent~~



1 agency, or qualified financial institution receiving a deposit of funds or
2 documents;

3 (5) "Escrow" means the act or process of providing closing
4 services or services pursuant to an escrow agreement by a title insurer or
5 title insurance ~~agent~~ agency;

6 (6) "Escrow account" means the demand deposit account maintained
7 by a title insurer or title insurance ~~agent~~ agency at a qualified financial
8 institution into which the title insurer or ~~agent~~ title insurance agency
9 deposits and disburses ~~all~~ funds collected from any person that is or will be
10 a party to a transaction involving real property;

11 ~~(7) "Indemnity agreement" means an agreement by which funds or~~
12 ~~other property are received by the title insurer or the title insurance agent~~
13 ~~as collateral to secure the obligation of a person to indemnify or protect a~~
14 ~~title insurer in exchange for agreeing to provide coverage in a title~~
15 ~~insurance policy;~~

16 ~~(8)(7)~~ (7) "Person" means ~~any natural person,~~ an individual or any
17 partnership, association, cooperative, corporation, firm, trust, limited
18 liability company, or other legal entity;

19 ~~(9)(8)~~ (8) "Qualified financial institution" means a bank, credit
20 union, or savings and loan association regulated, supervised, or examined by
21 ~~Federal~~ federal or state authorities having regulatory authority over banks
22 and trust companies;

23 ~~(10)(9)~~ (9) "Risks" means the danger or hazards of a loss by
24 encumbrance, a defective or invalid title, or adverse claim to title covered
25 under a title insurance policy;

26 (10) "Title insurance agency" means a person that has an agency
27 contract under § 23-103-407 with a title insurer;

28 (11)(A) "Title insurance agent" means ~~a person~~ an individual
29 affiliated with a title insurance agency ~~that~~ who is authorized on behalf of
30 a title insurer to issue a title insurance report or title insurance policy
31 and is:

32 (i) A resident of the State of Arkansas licensed
33 under § 23-64-101 et seq.; or

34 (ii) A nonresident individual licensed under § 23-
35 64-101 et seq. and employed by a resident licensee.

36 (B) "Title insurance agent" does not include:

1 (i) An individual employed by a ~~licensee who~~ title
 2 insurance agency that does not sell or negotiate title insurance but who
 3 performs marketing duties ~~directed to depository institutions or licensed~~
 4 ~~real estate brokers and agents on behalf and under the direction of a~~
 5 licensee under the supervision of a title insurance agent; or

6 (ii) An individual employed by a ~~resident licensee~~
 7 ~~who~~ title insurance agency that is a closing agent and does not solicit,
 8 sell, or negotiate title insurance;

9 (12) "Title insurance business" means:

10 (A) Issuing or offering to issue as an insurer a title
 11 insurance policy or closing protection letter;

12 (B) Transacting or proposing to transact any of the
 13 following activities when conducted or performed in contemplation of or in
 14 conjunction with the issuance of a title insurance report or policy:

15 (i) Guaranteeing, warranting, or otherwise insuring
 16 the status of title, liens, encumbrances, or other matters of record;

17 (ii) Executing title insurance policies;

18 (iii) Effecting contracts of reinsurance;

19 (iv) Underwriting titles; or

20 (v) Collecting, disbursing, or receiving title
 21 insurance premiums; or

22 ~~(vi) Recording closing documents; or~~

23 (C) Doing or proposing to do any business substantially
 24 equivalent to the matters described in this subdivision (12) in a manner
 25 designed to evade ~~the provisions of~~ this subchapter;

26 (13) "Title insurance policy" means a contract, including any
 27 coverage, enhancements to coverage, or endorsements, insuring or indemnifying
 28 owners of, or other persons lawfully interested in, personal or real property
 29 against loss or damage arising from any of the following conditions existing
 30 on, before, or subsequent to the policy date and not specifically excepted or
 31 excluded:

32 (A) Defects in or liens or encumbrances on the insured
 33 title;

34 (B) Unmarketability of the insured title;

35 (C) Invalidity or unenforceability of liens or
 36 encumbrances on the insured title of the personal or real property;

1 (D) Title being vested ~~otherwise~~ other than as stated in
2 the policy;

3 (E) Lack of a legal right of access to the land that is
4 part of the insured title in a policy relating to real property;

5 (F) Lack of priority of the lien of any insured mortgage
6 over any statutory lien for services, labor, or materials as specifically
7 described in the policy;

8 (G) Invalidity or unenforceability of any assignment of an
9 insured mortgage subject to certain conditions; or

10 (H) The priority of any lien or encumbrance over the lien
11 of an insured mortgage;

12 (14)(A) "Title insurance premium" means the funds paid to the
13 title insurer and to ~~its~~ an appointed title insurance ~~agent~~ agency as
14 consideration for the amount of liability assumed by a title insurer under a
15 title insurance policy, including all amounts retained by the title insurance
16 ~~agent~~ agency pursuant to the title insurance ~~agent's~~ agency's contract with
17 the title insurer.

18 (B) "Title insurance premium" does not include charges for
19 the performance of services related or incidental to title insurance or
20 closings that are disclosed to the person charged, including without
21 limitation:

22 (i) Title search, abstracting, or examination of
23 title;

24 (ii) Obtaining a title opinion;

25 (iii) Document preparation fees;

26 (iv) Escrow or closing fees;

27 (v) Notary fees;

28 (vi) Attorney's fees;

29 (vii) Fees incurred to cure defects in title;

30 (viii) Tax report or tax certification fees;

31 (ix) Title report fees;

32 (x) Processing fees;

33 (xi) Courier fees; and

34 (xii) Fees incident to the issuance of a title
35 insurance report or policy;

36 (15) "Title insurance report" means a preliminary report,

1 commitment, or binder issued before the issuance of a title insurance policy
2 containing the requirements, terms, conditions, exceptions, and any other
3 matters incorporated by reference under which a title insurer is willing to
4 issue a title insurance policy;

5 (16) "Title insurer" means a company authorized under the laws
6 of this state to transact title insurance business; and

7 (17) "Underwrite" means the acceptance or rejection of risk on
8 behalf of the title insurer.

9
10 SECTION 2. Arkansas Code § 23-103-403 is amended to read as follows:
11 23-103-403. Requirement for license.

12 (a) ~~Other than a title insurer, only a person authorized as a~~ Only an
13 appointed title insurance agent agency licensed under § 23-64-101 et seq.
14 shall issue title insurance policies, reports, or otherwise transact the
15 business of title insurance.

16 (b) All title insurance policies and reports covering an insurable
17 interest in title to real property located in this state shall be signed by
18 ~~an~~ a title insurance agent:

- 19 (1) Properly appointed by a title insurer;
- 20 (2) Affiliated with a title insurance agency; and
- 21 (3) ~~licensed~~ Licensed in this state under this subchapter.

22
23 SECTION 3. Arkansas Code § 23-103-405 is amended to read as follows:
24 23-103-405. Title insurers – Limitation of authority – Powers.

25 (a)(1) ~~No~~ An insurer that transacts any class, type, or kind of
26 insurance other than title insurance ~~shall be~~ is not eligible for the
27 issuance or renewal of a license to transact title insurance business in this
28 state.

29 (2) ~~No title~~ Title insurance shall not be transacted,
30 underwritten, or issued by any insurer transacting or licensed to transact
31 any other class, type, or kind of business.

32 (b) ~~No~~ A title insurer shall not engage in the business of
33 guaranteeing payment of the principal or the interest on bonds or mortgages.

34 (c)(1) Notwithstanding subsection (a) of this section, a title insurer
35 shall give notice of availability of closing protection to all parties to a
36 transaction in which it is contemplated that title insurance may be issued.

1 (2) Upon written request by a party to a closing with a licensed
2 ~~agent~~ agency with which ~~it~~ the title insurer has an ~~agent~~ agency contract,
3 the insurer shall issue closing protection to the requesting party.

4 (3) The ~~settlement~~ closing protection shall conform to the terms
5 of coverage and form of instrument as may be filed with the Insurance
6 Commissioner and shall indemnify a person solely against loss of closing
7 funds because of the following acts of a closing agent, title insurer's named
8 employee, or title insurance ~~agent~~ agency:

9 (A) Theft or misappropriation of closing funds; or

10 (B) Failure to comply with written instructions from the
11 proposed insured when agreed to by the closing agent, employee, or title
12 insurance ~~agent~~ agency as it relates to the status of the title to the
13 interest in land or to the validity, enforceability, and priority of the lien
14 of a mortgage or deed of trust on the interest in land.

15 (4) The form and amount charged by a title insurer for closing
16 protection coverage shall be filed with the commissioner at least twenty (20)
17 days before the first use of closing protection coverage in the market.

18 (5) Except as provided in this section, a title insurer shall
19 not provide any other coverage that purports to indemnify against improper
20 acts or omissions of a person with regard to escrow or closing services.

21
22 SECTION 4. Arkansas Code § 23-103-406 is amended to read as follows:

23 23-103-406. Title insurance agents – Examination of records.

24 The Insurance Commissioner or title insurer ~~may~~ during normal business
25 hours may examine, audit, and inspect any and all books, records, files, and
26 escrow and operating accounts related to title insurance reports and policies
27 maintained by a title insurance ~~agent~~ agency, its successor in interest,
28 transferee, or receiver ~~as provided~~ under this subchapter.

29
30 SECTION 5. Arkansas Code § 23-103-407 is amended to read as follows:

31 23-103-407. ~~Underwriting~~ Agency contracts.

32 (a)(1) ~~No~~ A person acting in the capacity of a title insurance ~~agent~~
33 agency shall not place business with a title insurer, and ~~no~~ a title insurer
34 shall not accept business from a title insurance ~~agent~~ agency, unless a
35 written contract exists between the title insurer and title insurance ~~agent~~
36 agency.

1 (2) The written contract shall establish the responsibilities of
2 the title insurer and title insurance ~~agent~~ agency and specify the division
3 of the responsibilities if both share responsibility for a particular
4 function.

5 (3) The written contract shall also contain:

6 (A) The types of risks that may be undertaken;

7 (B) The maximum authority or limits of liability;

8 (C) The territorial limitations;

9 (D) All terms of compensation for the title insurance
10 ~~agent~~ agency;

11 (E) Policies and funds remittance;

12 (F) Termination provisions;

13 (G)(i) The date by which all funds and policies due under
14 the contract shall be accounted for to the title insurer.

15 (ii) The date shall be no later than sixty (60) days
16 after:

17 (a) Issuance of the policy;

18 (b) The satisfaction of all requirements and
19 condition of any report; or

20 (c) The time specified in the contract if
21 ~~sooner~~ less than sixty (60) days; and

22 (H) The time in which the title insurance ~~agent~~ agency has
23 to report and forward to the title insurer all claims filed in writing with
24 the title insurance ~~agent~~ agency by policyholders or other claimants.

25 (b) The contract shall not be assigned in whole or in part by the
26 title insurance ~~agent~~ agency unless as part of a sale of a title insurance
27 agency or its assets and approved in writing by the title insurer.

28 (c)(1) The title insurer may terminate the contract upon written
29 notice to the title insurance ~~agent~~ agency under any of the following
30 circumstances:

31 (A) Fraud, insolvency, appointment of a receiver or
32 conservator, bankruptcy, cancellation of the title insurance ~~agent's~~ agency's
33 license or permit to do business, or the commencement of legal proceedings by
34 the state of the domicile of the title insurance ~~agent~~ agency, which if
35 successful, would lead to the cancellation of the title insurance ~~agent's~~
36 agency's permit or license to do business;

1 (B) Material breach of any provision of the contract
2 between the title insurer and the title insurance ~~agent~~ agency; or

3 (C) In accordance with any other termination provision of
4 the contract.

5 (2) Upon the effective date as set forth in the notice of
6 termination from a title insurer, unless otherwise agreed to in writing by
7 the title insurer, the title insurance ~~agent~~ agency shall immediately
8 discontinue all title insurance business on behalf of that title insurer.

9 (3) ~~Nothing in this subsection shall~~ This subsection does not
10 relieve the title insurance ~~agent~~ agency or the title insurer of any other
11 contractual obligation.

12
13 SECTION 6. Arkansas Code § 23-103-408 is amended to read as follows:
14 23-103-408. Minimum search requirements.

15 (a) ~~No~~ A title insurance report or policy shall not be issued unless
16 ~~the title insurer or title insurance~~ agency or title insurance agent has
17 caused to be made a search of the title from the evidence prepared from a
18 title plant or files of the county where the property is located or from the
19 records of the clerk or the ex officio recorder of land records of the county
20 that maintains records relating to real estate and any interest in the
21 county.

22 (b) The search shall include a review of all matters affecting the
23 title to the property or interest to be insured for a continuous period of
24 not less than the immediately ~~preceeding~~ preceding thirty (30) years.

25 (c) ~~No~~ A title insurance policy shall not be issued until the title
26 insurer or title insurance agent has caused to be made a determination of
27 insurability of title in accordance with the title insurer's underwriting
28 practices.

29
30 SECTION 7. Arkansas Code § 23-103-410 is amended to read as follows:
31 23-103-410. Title insurance inventory maintenance.

32 (a) The title insurer and the title insurance ~~agent~~ agency shall each
33 maintain an inventory of all numbered policy forms or policy numbers assigned
34 to the title insurance ~~agent~~ agency by the title insurer.

35 (b) If title insurance policies are generated electronically by the
36 title insurer, the title insurer shall maintain the inventory of policy

1 numbers assigned to the title insurance agency.

2
3 SECTION 8. Arkansas Code § 23-103-411 is amended to read as follows:
4 23-103-411. Title insurer – Audit.

5 (a)(1) At least one (1) time each year, a title insurer shall conduct
6 an on-site audit of the escrow and closing practices related to the issuance
7 of title insurance policies and closing protection letters, escrow accounts,
8 security arrangements, files, underwriting and claims practices, and policy
9 inventory of the title insurance agencies that the title insurer has
10 authorized to issue title insurance reports or policies on its behalf.

11 (2) If the title insurance ~~agent~~ agency fails to maintain
12 separate escrow or trust accounts for each title insurer it represents, the
13 title insurer shall verify that the funds related to closings in which the
14 title insurer's policies are issued are reasonably ascertainable from the
15 books of account and records of the title insurance ~~agent~~ agency.

16 (b)(1) The Insurance Commissioner may promulgate rules setting forth
17 the standards of audit and the form of audit required.

18 (2) The commissioner may also require the title insurer to
19 provide a copy of its audit reports to the commissioner.

20 (3) Any audits shall remain confidential unless introduced as
21 evidence at a hearing or court proceeding involving the title insurance
22 agency or agent.

23
24 SECTION 9. Arkansas Code § 23-103-412 is amended to read as follows:
25 23-103-412. Title insurer – Restrictions.

26 A title insurer shall not:

27 (1) Appoint any director, officer, controlling shareholder, or
28 employee of a title insurance ~~agent~~ agency to serve on the title insurer's
29 board of directors if the title insurance ~~agent~~ agency wrote five percent
30 (5%) or more of the direct premiums of the title insurer written during the
31 previous calendar year as shown on the title insurer's most recent annual
32 statement on file with the Insurance Commissioner, unless the title insurer
33 and the title insurance ~~agent~~ agency are under common control or ownership;
34 or

35 (2) Jointly employ an individual who is employed with the title
36 insurance ~~agent~~ agency unless the title insurer and the title insurance ~~agent~~

1 agency are under common control or ownership.

2

3 SECTION 10. Arkansas Code § 23-103-413 is amended to read as follows:

4 23-103-413. Policyholder rights and disclosure.

5 (a)(1) When a title insurance report includes an offer to issue an
6 owner's title insurance policy covering the resale of owner-occupied
7 residential property, the title insurance report shall be furnished to the
8 purchaser or mortgagor or to the representative of the purchaser-mortgagor as
9 soon as reasonably possible before closing.

10 (2) The title insurance report furnished to the purchaser-
11 mortgagor shall incorporate the following statement on the first page in bold
12 type:

13 "Please read the exceptions and the terms shown or referred to herein
14 carefully. The exceptions are meant to provide you with notice of matters
15 that are not covered under the terms of the title insurance policy and should
16 be carefully considered.

17 This report is a written representation as to the condition of title for
18 purposes of providing title insurance and lists all liens, defects, and
19 encumbrances ~~affecting title to the land that are filed~~ of record within the
20 last thirty (30) years that have not been released of record or that are not
21 statutorily expired.

22 No title insurance agent or any other person other than a licensed Arkansas
23 attorney may provide legal advice concerning the status of title to the
24 property described in the title commitment."

25 (b)(1) When ~~no~~ an owner's title insurance policy has not been
26 requested, a title insurer or a title insurance ~~agent~~ agency issuing a title
27 insurance policy to a lender in conjunction with a mortgage loan involving
28 real property made simultaneously with the purchase of all or part of the
29 real property securing the loan shall give written notice on a form
30 prescribed or approved by the Insurance Commissioner, to the purchaser-
31 mortgagor at the closing.

32 (2) The notice required by subdivision (b)(1) of this section
33 shall explain:

34 (A) That a title insurance policy for the lender involving
35 real property is issued for the protection of the mortgage lender, and that
36 the policy does not provide title insurance protection to the purchaser-

1 mortgagor as the owner of the real property being purchased;

2 (B) The coverage that a title insurance policy relating to
3 real property insures and that risks exist for the purchaser-mortgagor of
4 real property that could be insured through the purchase of an owner's title
5 policy involving real property; and

6 (C) That the purchaser-mortgagor may obtain an owner's
7 title insurance policy at a specified premium.

8 (3) A copy of the notice signed by the purchaser-mortgagor shall
9 be retained in the closing file for at least five (5) years after the
10 effective date of the lender's title insurance policy.

11
12 SECTION 11. Arkansas Code § 23-103-414 is amended to read as follows:
13 23-103-414. Record retention requirements.

14 (a) The title insurer and the title insurance ~~agent~~ agency shall
15 maintain sufficient records of their affairs, including evidence of
16 underwriting title, determination of insurability, and records of their
17 escrow operations and escrow accounts.

18 (b) The Insurance Commissioner may prescribe the specific records and
19 documents to be kept and the length of time for which the records shall be
20 maintained.

21
22 SECTION 12. Arkansas Code § 23-103-416 is amended to read as follows:
23 23-103-416. Penalties – Liabilities.

24 (a) If the Insurance Commissioner determines that a title insurer,
25 title insurance agency, title insurance agent, or any other person has
26 violated this subchapter or any rule or order promulgated under this
27 subchapter, the commissioner may order:

28 (1)(A) Payment of a monetary penalty not to exceed one thousand
29 dollars (\$1,000) for each act or violation and not to exceed an aggregate
30 penalty of ten thousand dollars (\$10,000) unless the title insurer, title
31 insurance agency, title insurance agent, or other person knew or reasonably
32 should have known that the title insurer, title insurance agency, title
33 insurance agent, or other person was in violation of this subchapter.

34 (B) If the title insurer, title insurance agency, title
35 insurance agent, or other person knew or reasonably should have known that
36 the title insurer, title insurance agency, title insurance agent, or other

1 person was in violation of this subchapter, the penalty shall not exceed five
2 thousand dollars (\$5,000) for each act or violation and not exceed an
3 aggregate penalty of fifty thousand dollars (\$50,000) in any six-month
4 period; or

5 (2) Suspension or revocation of the title insurer's, title
6 insurance agency's, title insurance agent's, or other person's license, if
7 the title insurer, title insurance agency, title insurance agent, or other
8 person knew or reasonably should have known that the title insurer, title
9 insurance agency, title insurance agent, or other person was in violation of
10 this subchapter.

11 (b) If an order of rehabilitation or liquidation of the title insurer
12 or of conservation of assets of the title insurer has been entered and the
13 receiver appointed under the order determines that the title insurance agency
14 or title insurance agent or any other person has not complied with this
15 subchapter or any rule or order promulgated under this subchapter and the
16 title insurer suffered any resulting loss or damage, the receiver ~~shall~~ may
17 maintain a civil action for recovery of damages or other appropriate
18 sanctions for the benefit of the title insurer and its policyholders and
19 creditors.

20 (c) ~~Nothing contained in this section shall~~ This section does not
21 affect the right of the commissioner to impose any other penalties provided
22 under § 23-64-101 et seq.

23
24 SECTION 13. Arkansas Code Title 23, Chapter 103, Subchapter 4 is
25 amended to add an additional section to read as follows:

26 23-103-417. Access to public records.

27 (a) A title insurance agent, a title insurance agency, and a person
28 affiliated with a title insurance agency shall:

29 (1) Have free access to the instruments of record affecting real
30 property filed in any city, county, or state office; and

31 (2) Be permitted to:

32 (A) Occupy reasonable space, use equipment, and make
33 memoranda, notations, and copies of instruments of record during the business
34 hours of the city, county, or state office; and

35 (B) Compile, post, copy, and maintain books, records, and
36 indices.

