

ARKANSAS SENATE
90th General Assembly - Regular Session, 2015
Amendment Form

Subtitle of Senate Bill No. 172

TO ELIMINATE DUPLICATIVE REGULATION BY DEREGULATING FROM COVERAGE UNDER THE ARKANSAS TITLE INSURANCE ACT ATTORNEYS LICENSED AND REGULATED BY THE SUPREME COURT; AND TO DECLARE AN EMERGENCY.

Amendment No. 1 to Senate Bill No. 172

Amend Senate Bill No. 172 as originally introduced:

Delete the title in its entirety and substitute:

"AN ACT TO ELIMINATE DUPLICATIVE LICENSING REQUIREMENTS OF ATTORNEYS WHO ENGAGE IN THE BUSINESS OF TITLE INSURANCE; TO REGULATE TITLE INSURANCE, TITLE INSURANCE AGENCIES AND AGENTS, AND ABSTRACTERS; TO CREATE THE ARKANSAS LAND TITLE COMMISSION TO REGULATE THE BUSINESS OF TITLE INSURANCE AND THE BUSINESS OF ABSTRACTING; TO ABOLISH THE ARKANSAS ABSTRACTERS' BOARD AND TRANSFER ITS DUTIES AND FUND BALANCE TO THE ARKANSAS LAND TITLE COMMISSION; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:

"TO ELIMINATE DUPLICATIVE ATTORNEY TITLE INSURANCE LICENSING REQUIREMENTS; TO TRANSFER REGULATION OF TITLE INSURANCE, TITLE INSURANCE AGENCIES, TITLE INSURANCE AGENTS, AND ABSTRACTERS; AND TO DECLARE AN EMERGENCY."

AND

Delete everything after the enacting clause and substitute the following:

" SECTION 1. DO NOT CODIFY. Arkansas Abstracters' Board abolished – Type 3 transfer to Arkansas Land Title Commission.



(a) The Arkansas Abstracters' Board created by Arkansas Code § 17-11-401 et seq. is abolished, and its powers and duties are transferred by a type 3 transfer, as defined under Arkansas Code § 25-2-106, to the Arkansas Land Title Commission established under this act.

(b) For purposes of this act, the Arkansas Land Title Commission shall be considered a principal department established by Acts 1971, No. 38.

SECTION 2. DO NOT CODIFY. Transfer of certain funds from State Insurance Department to Arkansas Land Title Commission.

(a) On July 1, 2015, all assets, unexpended balances, appropriations, allocations, and other funds held by the State insurance Department or the State Insurance Department Trust Fund that are derived from the Arkansas Title Insurance Act, § 23-103-401 et seq., as determined by the Chief Fiscal Officer of the State shall be transferred on the books of the Chief Fiscal Officer of the State, the Treasurer of State, and Auditor of State to the Arkansas Land Title Commission and the Arkansas Land Title Commission Fund.

(b) The fund balances transferred under this section shall be used by the Arkansas Land Title Commission for the purposes for which the fund balances were collected.

SECTION 3. DO NOT CODIFY. Transition of licenses, certificates of registration, and certificates of authority.

The licenses, certificates of registration, or certificate of authority of an individual granted a title insurance agent license or a certificate of registration or certificate of authority from the Arkansas Abstracters' Board to engage in the business of abstracting before the effective date of this act shall continue in full force and effect subject to the provisions of this act, including without limitation applicable residency requirements, but without the necessity to requalify for the license, certificate of registration, or certificate of authority.

SECTION 4. DO NOT CODIFY. Transition of duties and responsibilities from State Insurance Department.

On the effective date of this act, the Arkansas Land Title Commission shall have the powers and perform the duties previously exercised by the Insurance Commissioner under the Arkansas Title Insurance Act, § 23-103-401 et seq., except that the commissioner's regulation of and rules concerning the licensing and regulation of title insurance agents shall be administered and enforced by the commission until superseded by statute or by rule of the commission.

SECTION 5. Arkansas Code Title 17, Chapter 11, repealed.

Subchapter 1—General Provisions

17-11-101. Title.

This chapter shall be known and may be cited as the "Abstracters' Licensing Law of 1969".

17-11-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Abstract of title" means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters

~~therein contained;~~

~~(2)(A) "Abstract plant" means a set of records in which an entry has been made of all documents or matters which under the law impart constructive notice of matters affecting title to all real property or any interest therein or encumbrances thereon, which have been filed or recorded in the county or district thereof for which a title plant is maintained from earliest records available in the county or district thereof and continually thereafter.~~

~~(B) Such records shall consist of an index or indices in which notations of or references to any documents that describe the property affected thereby are posted, entered, or otherwise included, according to the property described therein or copies or briefs of all documents that describe the property affected thereby which are sorted and filed according to the property described therein;~~

~~(3) "Business of abstracting" means the making, compiling, or selling of abstracts of title or title evidence purporting to be based upon information from an abstract plant;~~

~~(4) "Certificate of authority" means the authorization to engage in the business of abstracting in a county or district thereof in the State of Arkansas granted to a person, firm, or private corporation in possession of an abstract plant; and~~

~~(5) "Registered abstracter" means an individual registered under this act and holding an operative certificate of registration to prepare abstracts of title to real property in any county in this state or any person holding a license to practice law within the State of Arkansas.~~

~~17-11-103. Penalties.~~

~~(a) Any person, firm, partnership, association, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty five dollars (\$25.00) nor more than one hundred dollars (\$100) for each offense. Each succeeding day on which the provisions of this chapter are violated shall be a separate offense.~~

~~(b) If any licensed abstracter shall willfully falsify any public record or information contained therein, he or she shall be guilty of a felony and punished accordingly in addition to his or her civil liability.~~

~~Subchapter 3 — Certification~~

~~17-11-301. Certificate of registration required.~~

~~(a)(1) Every person, firm, or private corporation engaged in the business of abstracting in one (1) county only, shall be or have in its employ a registered abstracter.~~

~~(2) Every person, firm, or private corporation engaged in the business of abstracting in more than one (1) county in this state shall have at least one (1) registered abstracter for each county in which it maintains an abstract office.~~

~~(b) No person shall execute an abstract certificate or otherwise attest to the accuracy of abstracts unless the person is a registered abstracter as defined in this chapter.~~

~~(c)(1) Each person engaged in the business of abstracting who is a registered abstracter may fulfill the requirements of subsection (a) of this section in one (1) county only.~~

~~(2) No registered abstracter may fulfill the requirements of subsection (a) of this section for more than one (1) county or more than one (1) company at any one (1) time.~~

~~17-11-302. Certificate of registration — Application.~~

~~(a) Any person desiring to become a registered abstracter under this chapter shall make application to the Arkansas Abstracters' Board for registration.~~

~~(b) The application shall be in a form prepared by the board and shall contain such information as may be necessary to assist the board in registration and to determine if the applicant is of good moral character.~~

~~(c) Except as provided in subsection (e) of this section, each application shall be accompanied by an examination fee in the sum of twenty-five dollars (\$25.00).~~

~~(d) Thereupon the board shall notify the applicant of the time and place of the next scheduled examination, and notice of the examination shall be given to the applicant by mail.~~

~~(e) Any person authorized to practice law in this state shall be issued a certificate of registration upon application, without examination and payment of fee.~~

~~17-11-303. Certificate of registration — Examination.~~

~~The examination required under this chapter shall be in the form of written interrogatories as may be prescribed by the Arkansas Abstracters' Board to determine the proficiency of the applicant.~~

~~17-11-304. Certificate of registration — Issuance or reapplication.~~

~~(a) If the applicant satisfactorily passes the examinations and is of good moral character, the applicant shall be certified as a registered abstracter, and the certificate provided for shall be issued to him or her. The privileges granted by the certificate shall continue unless revoked, as provided in this chapter, or unless the certificate is otherwise surrendered to the Arkansas Abstracters' Board.~~

~~(b) The certificate shall be in a form prescribed by the board and shall attest that the person possesses the knowledge, skill, ability, and understanding of abstracting and is designated a registered abstracter. The certificate shall be prominently displayed in the abstract office wherein the person is employed.~~

~~(c) An applicant failing to satisfy the board that he or she possesses the qualifications or proficiency to become a registered abstracter may reapply for registration if the application is accompanied by the examination fee provided for in § 17-11-302(c), but no application shall be submitted sooner than six (6) months following the date on which the last previous examination was administered to the applicant.~~

~~(d) Each holder of a certificate shall pay an annual fee to be set by the board.~~

~~17-11-305. Certificate of registration — Temporary.~~

~~(a) The Arkansas Abstracters' Board upon application to it by any person succeeding to the ownership of any abstract plant or business by any means other than by purchase, or any person who by reason of the incapacity of any registered abstracter owner of any abstract plant or business is~~

~~required to assume the operation of the abstract plant or business, may grant to the person without examination a temporary certificate of registration.~~

~~(b) The fee for a temporary certificate of registration shall be fifteen dollars (\$15.00).~~

~~(c) This certificate shall expire six (6) months after its date or upon the expiration of sixty (60) days after the next regularly scheduled examinations which could be taken by the applicant under the rules and regulations of the board, whichever period is longer.~~

~~(d) The board shall notify the applicant by mail of the time and place of the examination.~~

~~17-11-306. Unregistered assistants.~~

~~Nothing in this chapter shall be construed as prohibiting any person, firm, or corporation holding a valid and subsisting certificate of authority from employing such clerical and stenographic assistants as may be necessary in the conduct of its business who are not registered under this chapter.~~

~~17-11-307—17-11-319. [Reserved.]~~

~~17-11-320. Certificate of authority required.~~

~~No person, firm, or corporation shall engage in the business of abstracting in this state until a certificate of authority has been issued to the person, firm, or corporation by the Arkansas Abstracters' Board.~~

~~17-11-321. Certificate of authority—Application—Issuance.~~

~~(a) Any person, firm, or corporation desiring to engage in the business of abstracting in this state shall make application to the Arkansas Abstracters' Board for a certificate of authority.~~

~~(b) The application shall:~~

- ~~(1) Be in a form prepared by the board;~~
- ~~(2) Contain such information as may be necessary to assist the board in determining whether the applicant has complied with the provisions of this chapter; and~~
- ~~(3) Be accompanied by an application fee in the sum of twenty-five dollars (\$25.00).~~

~~(c) The applicant shall furnish proof that:~~

- ~~(1) The applicant has available an abstract plant for each county for which abstracts will be prepared, which abstract plant shall be made available for examination by the board;~~
- ~~(2) The applicant is or has employed a registered abstracter; and~~
- ~~(3) The bond requirements provided for in § 17-11-324 have been complied with.~~

~~(d)(1) When the foregoing things have been done or conditions exist and approved by the board, the board shall issue a certificate of authority in such form as it may prescribe, attesting to the same and indicating the county of this state wherein the applicant may operate.~~

~~(2) The certificate shall be prominently displayed in the office of the applicant.~~

~~17-11-322. Certificate of authority—Expiration—Renewal.~~

~~(a)(1) All certificates of authority issued pursuant to the provisions of this chapter shall expire on the same date, irrespective of when issued.~~

~~(2) Expiration dates of the certificates, either renewal or original, shall be the July 1 following the year from the preceding expiration date.~~

~~(b) Current and subsisting certificates of authority shall be renewed as provided for in this section for a one year period upon payment of a renewal fee in the sum to be set by the Arkansas Abstracters' Board.~~

~~(c)(1)(A) No more than sixty (60) days nor less than thirty (30) days prior to the expiration date of the certificate issued, the board shall cause a notice of expiration and application for renewal to be mailed to each of the holders of the certificates.~~

~~(B) The notice and application shall be in a form prepared by the board.~~

~~(2) Upon determination by the board of the applicant's compliance with this chapter, a renewal certificate of authority shall be issued to the applicant.~~

~~(d)(1)(A) If a holder of a certificate of authority fails to apply for renewal of his or her authority and to pay the fee provided therefor, the board shall cause to be mailed to the holder a notice that his or her certificate has expired and is no longer valid authority for the person to engage in the business of abstracting.~~

~~(B) The notice shall be mailed not more than thirty (30) days following the certificate expiration date.~~

~~(C) The holder shall be granted an additional period of sixty (60) days from the date of mailing the notice within which to file his or her application for renewal.~~

~~(2)(A) The name of any holder failing to renew his or her authority pursuant to the terms of this section shall be stricken from the records of the board.~~

~~(B) Such a person, firm, or corporation shall no longer engage in the business of abstracting in this state until so authorized by the board.~~

~~17-11-323. Access to public records.~~

~~(a)(1) Holders of certificates of authority and their employees in the conduct of the business of abstracting shall have access to the public records in any office of any city or county or of the state.~~

~~(2) They shall be permitted to make memoranda or notations therefrom or copies thereof and to occupy reasonable space with equipment for that purpose, subject to the reasonable regulation of the custodian of the public records and during the business hours of the office, in order to enable certificate holders to make and prepare abstracts and to compile, post, copy, and maintain their books, records, and indices.~~

~~(b) No persons other than the custodian of the records shall remove real estate records from the recorder's office.~~

~~17-11-324. Bond, insurance, or personal surety.~~

~~(a)(1)(A) Before the certificate of authority is issued, the applicant shall file with the Arkansas Abstracters' Board a bond approved by the board conditioned upon the payment by the applicant of any and all damages that may be sustained by or may accrue to any person, firm, or corporation for whom the applicant may compile, make, or furnish abstracts of title by reason of or on account of any error, deficiency, or mistake in any abstract or~~

~~certificate, or any continuation, made or issued by the abstractor over its authorized signature and seal.~~

~~(B) The bond shall be written by a corporate surety or other company issuing such bonds licensed and authorized to do business in this state.~~

~~(2)(A) The bond shall remain in full force and effect for a period of one (1) year and may be renewed annually by a continuation certificate.~~

~~(B) However, no continuation certificate shall operate to increase the penal sum of the bond beyond the limits established in this section.~~

~~(3)(A) The penal sum of the bond shall be dependent upon the aggregate population, according to the latest federal census, of all counties in which the applicant proposes to conduct the business of abstracting, as follows:~~

If the population is:	The penalty of the bond shall be:
Less than 25,000	\$ 5,000
More than 25,000 but less than 50,000	10,000
50,000 but less than 100,000	15,000
100,000 but less than 200,000	20,000
Over 200,000	25,000

~~(B) No person, firm, or corporation shall be required at any time to have in force and effect and filed with the board valid bonds in excess of the penal sum of twenty five thousand dollars (\$25,000).~~

~~(b)(1) In lieu of the bond or bonds provided for in subsection (a) of this section, the applicant may file proof with the board that he or she carries abstractors' liability insurance in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section.~~

~~(2) The proof shall be the filing of the actual policy or a certificate showing the issuance thereof by the insurance company.~~

~~(c)(1) In lieu of bond or bonds or liability insurance provided for in subsections (a) and (b) of this section, the applicant shall have the right to file with the board a personal surety bond in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section, made in favor of any person or client that may suffer a loss for which he or she is liable, which shall be accepted in lieu of the insurance policy.~~

~~(2) The personal bond shall have the signatures of at least three (3) other persons thereon whose total net worth shall be at least three (3) times the total amount of the personal bond.~~

~~(3) The applicant shall pay for the actual cost of the credit reports on the bondsmen.~~

~~17 11 325 — 17 11 339. [Reserved.]~~

~~17 11 340. Revocation of certificates — Grounds.~~

~~(a) The Arkansas Abstractors' Board is authorized, after a hearing as provided in § 17 11 341, to cancel and revoke any certificate of registration issued to any person under the provisions of this chapter:~~

~~(1) For a violation of any of the provisions of this chapter;~~

~~(2) Upon a conviction of the holder of such a certificate of a crime involving moral turpitude; or~~

~~(3) If the board finds the holder to be guilty of habitual carelessness or of fraudulent practices in the conduct of the business of abstracting.~~

~~(b) The board is authorized, after a hearing as provided in § 17-11-341, to cancel and revoke any certificate of authority issued to any person, firm, or corporation under the provisions of this chapter for:~~

~~(1) Failure to furnish the bond or bonds, or other securities, required by § 17-11-324;~~

~~(2) Failure to properly maintain an abstract plant;~~

~~(3) Failure to have employed a registered abstracter as provided in § 17-11-301; or~~

~~(4) Otherwise violating any of the provisions of this chapter.~~

~~17-11-341. Revocation of certificates — Procedure — Appeal.~~

~~(a)(1) Upon a verified complaint being filed with the Arkansas Abstracters' Board or upon the board's own motion filing a complaint charging the holder of a certificate of registration with a violation of any of the provisions of this chapter, or conviction of a crime involving moral turpitude, or with habitual carelessness or fraudulent practices in the conduct of the business of abstracting, or charging the holder of a certificate of authority with failure to furnish the bond or bonds, or other securities, required by § 17-11-324, or with failing to have employed a registered abstracter as provided in § 17-11-301, or with a violation of any of the provisions of this chapter, the board shall immediately notify in writing by registered mail, with return receipt, the holder of the certificate of the filing of the complaint and furnish the holder with a copy of the complaint.~~

~~(2) The board shall at the same time require the holder of the certificate to appear before it on a day fixed by the board, not less than twenty (20) days nor more than forty (40) days from the date of the service of the complaint on the holder of the certificate, and to show cause why the certificate should not be cancelled and revoked.~~

~~(3) Under the hand of its president and the seal of the board, the board may subpoena witnesses and compel their attendance and may require the production of books, papers, and other documents.~~

~~(4) The president or the secretary may administer oaths or affirmations to witnesses appearing before the board.~~

~~(5)(A) If any person refuses to obey any subpoena so issued or refuses to testify or to produce any books, papers, or other documents, the board may present its petition to any court of record, setting forth the facts.~~

~~(B) Thereupon the court shall, in a proper case, issue its subpoena to the person requiring his or her attendance before the court and there to testify or produce such books, papers, and documents as may be deemed necessary and pertinent.~~

~~(6) The holder of the certificate shall be entitled to counsel at any hearing before the board or any other hearing involving revocation of his or her certificate.~~

~~(7) The board shall cause a transcript of any testimony taken to be made by a reporter or stenographer.~~

~~(b)(1)(A) Either the respondent or the complainant may appeal from the decision of the board to the circuit court in the county in which the respondent has his or her or its place of business.~~

~~(B) The appeal shall be taken within thirty (30) days after the decision of the board by causing a written notice of appeal to be served on the secretary of the board and executing a bond to the State of Arkansas, with surety to be approved by the secretary of the board, conditioned to pay all costs that may be adjudged against the appellant.~~

~~(2) Upon an appeal's being taken, the secretary of the board shall immediately make out a return of the proceedings in the matter before the board with its decision thereon and file them together with the bond and all the papers pertaining thereto in his or her possession, including a certified record of testimony taken at the hearing, with the clerk of the court to which the appeal is taken.~~

~~(3) The court shall hear the appeal as a trial de novo, and the costs of the appeal, including the furnishing of the testimony, shall be taxed as the court may direct.~~

~~(4) An appeal shall stay the cancellation of any certificate of registration or certificate of authority until the final decision is had on appeal.~~

~~17-11-342. Seal.~~

~~Any licensee under this chapter shall provide a seal, which shall have stamped on the license the name of the licensee, and shall deposit with the Arkansas Abstracters' Board an impression of the seal and the names of all persons authorized to sign certificates to abstracts on behalf of the licensee.~~

~~17-11-343. Abstract as evidence.~~

~~An abstract or photostat or verbatim copy of any public record, where certified by and impressed with the official seal of any licensed abstracter, shall be admissible in evidence, if otherwise admissible, on behalf of any party litigant in any court in the State of Arkansas and shall be prima facie evidence of the facts recited therein.~~

~~Subchapter 4 — Arkansas Abstracters' Board~~

~~17-11-401. Creation — Members.~~

~~(a) The Arkansas Abstracters' Board is created.~~

~~(b)(1) The board shall consist of five (5) members appointed by the Governor, subject to confirmation by the Senate, for a term of six (6) years.~~

~~(2) Two (2) members shall:~~

~~(A) Be actively involved in the making of abstracts of real estate titles in this state for a period of at least five (5) years before appointment; and~~

~~(B) Serve an initial term of six (6) years;~~

~~(3) Two (2) members shall:~~

~~(A) Be citizens of this state; and~~

~~(B) Serve an initial term of four (4) years; and~~

~~(4) One (1) member shall:~~

~~(A) Be knowledgeable of the abstract business; and~~

~~(B) Serve an initial term of two (2) years.~~

~~(c) A vacancy on the board caused by death, resignation, or otherwise~~

~~shall be filled by appointment of the Governor, subject to confirmation by the Senate.~~

~~(d)(1) A member may be appointed to successive terms.~~

~~(2) No two (2) members shall be appointed from the same county.~~

~~(e)(1) Each member shall serve without compensation.~~

~~(2) However, a member may be entitled to receive travel and expense reimbursement in accordance with § 25-16-901 et seq.~~

~~17-11-402. Organization and proceedings.~~

~~(a) The Arkansas Abstracters' Board shall elect a chair and a secretary treasurer.~~

~~(b) The chair and secretary treasurer of the board shall have the power to administer oaths.~~

~~(c) The board shall have a seal and shall have the power to compel the attendance of witnesses.~~

~~17-11-403. Duties and powers.~~

~~(a)(1) The Arkansas Abstracters' Board shall keep a register and shall record the following information in the register:~~

~~(A) The name and the place of business of each applicant for registration and certification;~~

~~(B) A notation of the action taken by the board on each application for registration and each application for certification;~~

~~(C) The date upon which each certificate of registration and each certificate of authority are issued; and~~

~~(D) Such other information as the board deems appropriate.~~

~~(2) The board shall maintain such other records, registers, and files as may be necessary for the proper administration of its duties under this subchapter.~~

~~(b) The board may adopt rules for the proper administration of its powers and duties and the carrying out of the purposes of this subchapter.~~

SECTION 6. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1255. Arkansas Land Title Commission Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Arkansas Land Title Commission Fund".

(b) The fund shall consist of:

(1) All unexpended balances, appropriations, allocations, and other funds transferred to the fund under this act from the Arkansas Abstracter's Board, the State Insurance Department, and the State Insurance Department Trust Fund;

(2) Licensing and registration fees, fines, penalties, and any other moneys collected by the Arkansas Land Title Commission under the Arkansas Land Title Act, § 23-103-101 et seq.;

(3) Grants, contributions, or other transfers made by a person, organization, or federal or state government entity or official; and

(4) Any other funds provided by law.

(c) The fund shall be used by the commission to administer the Arkansas Land Title Act, § 23-103-101 et seq.

SECTION 7. Arkansas Code § 23-64-101 is amended to read as follows:
23-64-101. Scope of provisions.

This chapter shall apply with respect to any insurer, as to all insurances other than wet marine, ~~and~~ foreign trade insurance, and title insurance.

SECTION 8. Arkansas Code § 23-64-301(b), concerning continuing education requirements for an individual who holds a title insurance license, is repealed.

~~(b) An individual who holds a title insurance license shall complete the minimum number of hours of continuing education courses established by rule of the commissioner.~~

SECTION 9. Arkansas Code § 23-79-102(4), concerning insurance policy provisions that do not apply to title insurance policies, is amended to read as follows:

(4) Title insurance, except that the following apply to this line:

(A) Section 23-79-101(1), §§ 23-79-109 – 23-79-111, 23-79-113, 23-79-116, 23-79-118, 23-79-119, and 23-79-202 – 23-79-205; and

(B) Section 23-79-121, except that the insurer may authorize or require its title agents to provide the policy to the insured and retain a copy of the policy on the insurer's behalf.

SECTION 10. The introductory language of Arkansas Code § 23-79-138(a), concerning information to accompany insurance policies, is amended to read as follows:

(a) The following information shall accompany every policy of life insurance, accident and health insurance, property insurance, or casualty insurance, ~~or title insurance~~ issued and covering risks located, resident, or to be performed in the State of Arkansas:

SECTION 11. Arkansas Code Title 23, Chapter 103, is amended to read as follows:

Chapter 103

~~Title Insurance~~ Arkansas Land Title Act

Subchapter 1 – General Provisions

23-103-101. Title.

This chapter shall be known and may be cited as the "Arkansas Land Title Act".

23-103-102. Legislative findings and intent.

(a) The General Assembly finds that it is necessary to regulate the business of title insurance and the business of abstracting in order to protect the public health, safety, and welfare.

(b) It is the intent of the General Assembly by this chapter to ensure that only persons that meet and maintain minimum standards of competence and conduct and comply with this chapter may perform the business of title insurance and the business of abstracting in this state.

23-103-103. Definitions.

As used in this chapter:

(1)(A) "Abstract of title" means a written, chronological compilation of all of the materials and facts of record affecting the title to a specifically described interest in real property that is certified as accurate by a registered abstracter.

(B) "Abstract of title" includes a continuation of the initial certification of the compilation;

(2)(A) "Abstract plant" means a set of records:

(i) In which an entry has been made of all documents or matters that under the law impart constructive notice of matters affecting the title to any interest in real property that has been filed or recorded in the county or district for which the abstract plant is maintained; and

(ii) That have been continuously maintained from the time of the earliest records available in the county or district.

(B) The records shall consist of an index or indices in which:

(i) Notations of or references to any documents that describe the real property affected are posted, entered, or otherwise included according to the real property described; or

(ii) Copies or briefs of all documents that describe the real property affected are sorted and filed according to the real property described;

(3) "Business of abstracting" means the making, compiling, or selling of abstracts of title or title evidence based upon or purporting to be based upon information from an abstract plant;

(4)(A) "Business of title insurance" means:

(i) Issuing or offering to issue as an insurer or on behalf of a title insurer, a title insurance policy or closing protection letter;

(ii) Transacting or proposing to transact any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy:

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

(b) Executing title insurance commitments or policies;

(c) Effecting contracts of reinsurance;

(d) Underwriting titles; or

(e) Collecting, disbursing, or receiving title insurance premiums, unless incidental to serving as a closing agent; or

(iii) Doing or proposing to do the substantial equivalent of a matter described in this subdivision (4) in a manner designed to evade this chapter.

(B) "Business of title insurance" does not include:

(i) A closing or escrow transaction; or

(ii) The activities of a closing agent or other party performing a closing or escrow transaction;

(5) "Certificate of abstracting authority" means the authorization granted by the Arkansas Land Title Commission to a person,

firm, or private corporation in possession of an abstract plant to engage in the business of abstracting in a county or district in this state;

(6) "Certificate of registration" means the authorization granted by the commission under this chapter to compile and certify abstracts of title in this state;

(7) "Closing" means the collection and disbursement of documents, funds, and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien intended to encumber the title;

(8) "Closing agent" means a person that facilitates a closing;

(9) "Escrow" means:

(A) A deposit of documents or funds, or both, that is held in trust by a closing agent to facilitate a closing; and

(B) The act or process of receiving funds or documents in trust:

(i) For disbursement to facilitate a closing; or

(ii) Under an escrow agreement;

(10) "Person" means an individual or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity;

(11) "Registered abstracter" means a resident of this state who has received a certificate of registration under this chapter to prepare abstracts of title to real property in any county or district in this state;

(12) "Risks" means the danger or hazards of a loss or damage by encumbrance, a defective or invalid title, or adverse claim to title covered under a title insurance policy;

(13) "Title insurance agency" means a person that has an agency contract under § 23-103-404 with a title insurer and is licensed under § 23-103-301 et seq;

(14)(A) "Title insurance agent" means an individual affiliated with a title insurance agency who is authorized on behalf of a title insurer to issue a title insurance commitment or title insurance policy and is:

(i) A resident of this state licensed under § 23-103-301 et seq.; or

(ii) A nonresident individual licensed under § 23-103-301 et seq. who is employed by a title insurance agency.

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

(i) An individual employed by a title insurance agency that does not sell or negotiate title insurance but who performs marketing duties under the supervision of a title insurance agent;

(ii) An individual employed by a title insurance agency that is a closing agent and does not solicit, sell, or negotiate title insurance; or

(iii) A closing agent that provides closing services but does not otherwise engage in the business of title insurance in this state;

(15) "Title insurance commitment" means a document or binder issued before a title insurance policy is issued that contains the requirements, terms, conditions, exceptions, exclusions, and any other matters incorporated by reference under which a title insurer is willing to issue a title insurance policy;

(16) "Title insurance policy" means a contract, including any

coverage, enhancements to coverage, or endorsements, that insures or indemnifies an owner or another person with a lawful interest in personal property or real property against loss or damage arising from risks that existed on, before, or after the policy date and that are not specifically excepted or excluded from coverage, including without limitation:

- (A) Defects, liens, or encumbrances;
- (B) Unmarketability of the insured title;
- (C) Invalidity or unenforceability of liens or

encumbrances;

- (D) Title being vested other than as stated in the policy;
- (E) Lack of a legal right of access to the land that is

part of the insured title in a policy relating to real property;

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

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

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

(17)(A) "Title insurance premium" means the funds paid to a title insurer and its appointed title insurance agency as consideration for the risks assumed by the title insurer under a title insurance policy, including all amounts retained by the title insurance agency under the title insurance agency's contract with the title insurer.

(B) For purposes of calculating premium tax under § 26-57-603, "title insurance premium" means the gross premium upon which the amount retained by the title insurance agency and title insurer is based as specified by the title insurance agency contract required by § 23-103-404.

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

(i) Title search, abstracting, or title examination fees;

(ii) Title opinion fees;

(iii) Document preparation fees;

(iv) Escrow or closing fees;

(v) Notary fees;

(vi) Attorney's fees;

(vii) Fees incurred to cure defects in title;

(viii) Tax report or tax certification fees;

(ix) Title commitment or binder fees;

(x) Title services fees;

(xi) Processing fees;

(xii) Courier fees; and

(xiii) Fees incident to the issuance of a title insurance commitment or policy; and

(18) "Title insurer" means a company authorized under the laws of this state to transact the business of title insurance as an insurer.

23-103-104. Violations.

It is unlawful for a person to:

- (1) Engage in the business of title insurance unless the person is a title insurance agent, title insurance agency, or title insurer;
 - (2) Engage in the business of abstracting unless the person is:
 - (A) A registered abstracter;
 - (B) The holder of a certificate of abstracting authority;
- or
- (C) A clerical or stenographic assistant permitted to work in the business of abstracting under § 23-103-510; or
- (3) Violate this chapter:
 - (A) Individually; or
 - (B) As an officer, agent, or member of a business entity by participating in or being an accessory to a violation of this chapter by the business entity.

23-103-105. Penalties.

In addition to any other penalty or sanction provided by another law of this state, a violation of a statute or rule enforceable by the Arkansas Land Title Commission or the Executive Director of the Arkansas Land Title Commission is punishable by one (1) or more of the following:

- (1) The refusal, suspension, revocation, or nonrenewal of a license, certificate of registration, or certificate of abstracting authority;
- (2) A fine no greater than one thousand dollars (\$1,000) per violation, not to exceed fifty thousand dollars (\$50,000) in any six-month period;
- (3) A temporary or permanent injunction; and
- (4) The sanctions provided in § 23-103-208.

23-103-106. Confidential records.

(a) Except as provided in subsection (c) of this section, the following records of the Arkansas Land Title Commission and the Executive Director of the Arkansas Land Title Commission shall be privileged and confidential, are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall not be exhibited or revealed to the public except as stated in this section or in accordance with the commission's rules:

- (1) Audit or investigative reports filed with the commission or the executive director;
- (2) Records disclosing information obtained from audits or investigations;
- (3) Investigations and reports revealing facts concerning a title insurance agent or title insurance agency or the customers of a title insurance agent or title insurance agency;
- (4) Financial statements submitted to the commission for any purpose; and
- (5) Work papers submitted to the commission as evidence of the requirements for licensure under this chapter.

(b) The executive director shall be the custodian of the commission's records and shall not disclose a record of the commission to:

- (1) Persons other than commission members except as provided by this section; or
- (2) A member of the commission if disclosure would give the member a competitive advantage or disclose a trade secret of a title insurer,

title insurance agency, or holder of a certificate of abstracting authority unless and only to the extent required for the commission to:

(A) Take appropriate action under § 23-103-108; or

(B) Determine the commission's response to a request for production of documents or a subpoena, writ, or other court process.

(c) Confidential records under subsection (a) of this section may be disclosed by the executive director:

(1)(A) Under a validly issued subpoena and in the interest of justice.

(B) The executive director may waive the privilege created by this section and produce audit and investigation reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information disclosed from public dissemination;

(2) If the confidential records contain official actions of the commission or the executive director, and the executive director determines that the disclosure would not give advantage to a competitor or adversely affect the safety and soundness of a title insurance agency; or

(3) To state and federal regulatory agencies with jurisdiction over insurance companies or financial institutions or entities engaged in financial activities.

23-103-107. No civil liability – Exceptions.

(a) Unless a person acted fraudulently or in bad faith, a civil action shall not be filed against the person for supplying any information:

(1) Relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials or their agents and employees;

(2) Relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this chapter; or

(3) Furnished in reports to the Arkansas Land Title Commission, the Executive Director of the Arkansas Land Title Commission, or an organization established to detect and prevent fraudulent insurance acts or the agents, employees, or designees of the organization.

(b) In the absence of fraud or bad faith, the commission and its employees are not subject to liability or suit for publishing a report or bulletin related to the official activities of the commission.

(c) This section does not abrogate or modify a common law or statutory privilege or immunity available to a person.

23-103-108. Rules.

The Arkansas Land Title Commission may promulgate rules to implement this chapter.

Subchapter 2 – Arkansas Land Title Commission

23-103-201. Creation – Members.

(a)(1) The Arkansas Land Title Commission is created, to be composed of the Insurance Commissioner or his or her designee and six (6) commission members appointed by the Governor, subject to confirmation by the Senate.

(2)(A)(i)(a)(1) Four (4) commission members shall be title insurance agents who have been practicing for at least five (5) years before

their appointment who are chosen, except as provided in subdivision (a)(2)(i)(b) of this section, from a list of the names of five (5) members of the Arkansas Land Title Association who qualify to serve on the commission.

(2) After the initial appointments are confirmed, the list shall be submitted to the Governor at least annually by the association on or before January 15.

(b) One (1) practicing title insurance agent may be appointed by the Governor from the state at large.

(ii) The failure to actively practice as a title insurance agent for more than sixty (60) days shall result in automatic disqualification from the commission.

(B)(i) Except for the Governor's one (1) at-large appointment, a vacancy among the practicing title insurance agents shall be filled from the list submitted by the association.

(ii) If necessary to fill a vacancy on the commission, the Governor may request the association to submit additional names of members of the association who are eligible to serve on the commission.

(iii) A practicing title insurance agent shall not be denied the opportunity to submit his or her name for consideration to fill the one (1) at-large appointment to the commission based solely upon membership or lack of membership in the association.

(C) The four (4) commission members who are practicing title insurance agents:

(i) Shall not include more than two (2) residents of the same congressional district;

(ii) Shall be representative of the various title insurance agencies located in this state, including without limitation geographic location, ownership structure, total number of employees, and size of market served; and

(iii) Shall include:

(a) An attorney licensed in Arkansas whose principal place of business is located in a county that is not ranked among the ten (10) most populous counties in the state according to the most recent federal decennial census, unless an attorney who meets these requirements and is willing to serve cannot be found;

(b) A registered abstractor; and

(c) An individual who represents a title insurance agency in an affiliated business arrangement as defined in 12 U.S.C. § 2602(7), as it existed on March 1, 2015.

(3) One (1) commission member shall be a representative of the financial services industry who is familiar with the business of title insurance.

(4) One (1) commission member shall be an attorney licensed and residing in Arkansas who:

(A) Actively practices in the field of real estate law and is familiar with the business of title insurance;

(B) Does not and whose firm does not have an affiliation with or financial interest in a title insurance agency; and

(C) Is appointed by the Governor from a list of two (2) nominees submitted by the Arkansas Bar Association.

(5) No more than one (1) position on the commission shall be held by the same person or representatives of the same entity, affiliate, or holding company.

(6) All commission members shall be full voting members.

(b) The Governor may remove a commission member for cause.

(c) A commission member other than the Insurance Commissioner or his or her designee shall be a resident of the State of Arkansas who is at least thirty (30) years of age.

(d)(1)(A) Initial terms for the commission members who are practicing title insurance agents shall be determined by lot as follows:

(i) One (1) title insurance agent shall serve two (2) years;

(ii) One (1) title insurance agent shall serve three (3) years;

(iii) One (1) title insurance agent shall serve four (4) years; and

(iv) One (1) title insurance agent shall serve five (5) years.

(B) The commission member who represents attorneys shall serve an initial term of two (2) years.

(C) The commission member who represents the financial services industry shall serve an initial term of three (3) years.

(2) The succeeding term of a commission member other than the Insurance Commissioner or his or her designee shall be five (5) years.

(e) Upon expiration of their terms, commission members shall continue to hold office until the appointment and qualification of their successors.

(f) A person shall not serve as a commission member for more than three (3) consecutive terms.

(h) A commission member other than the Insurance Commissioner or his or her designee may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

23-103-202. Meetings – Commission action.

(a) Annually upon the qualification of each newly appointed member of the Arkansas Land Title Commission, the commission shall meet and organize by selecting from its members a chair and vice chair.

(b) A simple majority of commission members shall constitute a quorum to hold commission meetings.

(c) The commission shall meet as often as necessary or desirable in order to conduct its business.

(d)(1) Except as provided by subdivision (d)(2) of this section, the vote of four (4) commission members at a commission meeting is required for commission action.

(2) The imposition of sanctions under this chapter shall require the affirmative vote of the Insurance Commissioner and at least four (4) other commission members at a commission meeting.

23-103-203. Executive Director – Employees.

(a) The Arkansas Land Title Commission shall employ an individual as the Executive Director of the Arkansas Land Title Commission and may employ additional staff to implement and administer this chapter.

(b) The executive director shall:

- (1) Be a resident of this state;
- (2) Have the duties, authority, and responsibilities:
 - (A) Designated by the commission;
 - (B) Specified in § 23-103-205; and
 - (C) Necessary to carry out a duty designated by the commission or specified in § 23-103-205;
- (3) Have not less than five (5) years' experience in the business of title insurance, unless the commission is unable to find a qualified candidate with five years' experience; and
- (4) Not be employed by or have a financial interest in:
 - (i) A company subject to licensure under § 23-103-301 et seq. that is actively engaged in the business of title insurance; or
 - (ii) A title insurer operating in this state under a certificate of authority issued under § 23-63-201.
- (c) The executive director serves at the pleasure of the commission.
- (d) The commission shall fix the salaries of the executive director and commission employees.

23-103-204. Commission powers and duties – Records.

- (a) The Arkansas Land Title Commission:
 - (1) Is charged with the general supervision of persons licensed, registered, or certified under this chapter, the execution of the laws relating to the business of title insurance and the business of abstracting, the implementation and administration of this chapter, and any other duties prescribed by law; and
 - (2) May institute suits or other legal proceedings to enforce this chapter and do all things necessary or convenient to implement and administer this chapter.
- (b) The commission shall maintain written or electronic records containing:
 - (1) A list of the names and addresses of all active and inactive persons that have received a license, certificate of registration, or certificate of abstracting authority under this chapter;
 - (2) A register of each applicant for a license, certificate of registration, or certificate of abstracting authority that includes:
 - (A) The name and place of business of the applicant;
 - (B) The action taken by the commission on each application; and
 - (C) If the application is granted, the date that the license, certificate of registration, or certificate of abstracting authority is issued.
- (c) The commission may:
 - (1) Administer oaths and subpoena witnesses and documents through the Executive Director of the Arkansas Land Title Commission:
 - (A) In cases of administrative adjudication under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
 - (B) For a hearing to determine whether a cease and desist order should be issued under this chapter; or
 - (C) As provided by this chapter;
 - (2) Adopt a seal;
 - (3) Publish in writing or in electronic format the names of all persons who have been sanctioned by the commission and information relative

to the enforcement of this chapter of interest to the public;

(4)(A) Conduct or assist in conducting educational seminars that are open to all holders of a license, certificate of registration, or certificate of abstracting authority under this chapter.

(B) The commission may incur and pay the reasonable and necessary expenses of the educational seminars;

(5) Impose reasonable charges for providing materials and performing related services;

(6) Contract and pay for services to administer this chapter, including without limitation investigation, examination, actuarial, technical, and other professional services; and

(7) Require consent to and conduct criminal background checks on all applicants, licensees, registered abstracters, and holders of certificates of abstracting authority.

(d) A copy of a record or paper of the commission that is certified and authenticated by the commission shall be treated as an original and received in evidence in all courts.

23-103-205. Powers and duties of executive director.

(a) In addition to any other powers or duties conferred by this chapter, the Executive Director of the Arkansas Land Title Commission may:

(1) Cooperate with the State Insurance Department, including without limitation sharing records and information consistent with the purposes of this chapter; and

(2)(A) Obtain a state criminal background check and a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations for all applicants:

(i) Selected for employment as an examiner or otherwise for the Arkansas Land Title Commission or the executive director; or

(ii) For a license, certificate of registration, or certificate of abstracting authority.

(B) The application shall include the applicant's consent to a state criminal background check and a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations.

(C) The commission and executive director shall treat information obtained from a criminal background check under this section as confidential and shall disclose the information only to the applicant.

(b) This section does not modify the confidentiality provisions of § 23-103-106.

23-103-206. Disposition of funds.

Except as otherwise provided in this chapter, all fees, charges, fines, and penalties collected by the Arkansas Land Title Commission shall be deposited into the Arkansas Land Title Commission Fund and used by the commission for the requirements, purposes, and expenses of the commission under this chapter.

23-103-207. Fees.

(a) The Arkansas Land Title Commission shall establish administrative

procedures for setting, charging, and collecting reasonable fees for the operation of the commission.

(b) The commission may direct applicants to pay the actual cost of an examination fee directly to a testing service engaged by the commission to administer an examination.

(c) Fees for a state or federal criminal background check shall not exceed the cost to the commission of the state or federal criminal background check.

23-103-208. Investigation of complaint – Sanctions – Penalties.

(a)(1) The Arkansas Land Title Commission, upon receipt of a verified, written complaint that a violation of this chapter has occurred or upon its own motion, shall cause the Executive Director of the Arkansas Land Title Commission to investigate an alleged violation of this chapter.

(2) The executive director may hire an independent investigator to conduct all or part of the investigation and report his or her findings to the executive director.

(b) If the executive director determines that a prima facie case of a violation of this chapter exists, the executive director shall initiate the procedures for an administrative adjudication under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) If the commission determines that:

(1)(A) Insufficient proof of a violation of this chapter exists, the commission shall dismiss the complaint.

(B) The person that filed the complaint may appeal the decision under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; or

(2) Sufficient proof of a violation of this chapter exists, the commission shall determine an appropriate sanction, if any, including without limitation, one (1) or more of the following sanctions or requirements:

(A) A reprimand or censure;

(B) A suspension, revocation, denial, or refusal to renew a license, certificate of registration, or certificate of abstracting authority;

(C) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(D) Completion of appropriate educational programs or courses;

(E) Successful completion of an appropriate licensing examination;

(F) Conditions or restrictions upon the person's license, certificate of registration, or certificate of abstracting authority; and

(G) Payment of restitution, damages, or other penalties appropriate to the circumstances of the case that would:

(i) Achieve the desired disciplinary purpose;

(ii) Compensate or reimburse an injured party or the commission; or

(iii) Promote the regulation of the business of abstracting or business of title insurance.

(d) The commission may:

(1) Suspend the imposition of a sanction imposed upon appropriate terms and conditions; and

(2) File suit in Pulaski County Circuit Court or the circuit court of the county where a sanctioned holder of a license, certificate of registration, or certificate of abstracting authority resides or does business to collect a penalty assessed under this chapter if the penalty is not paid as ordered by the commission.

23-103-209. Alternate sanction procedure – Citations.

(a) In lieu of the procedure contained in § 23-103-208, the Executive Director of the Arkansas Land Title Commission may issue a citation imposing:

(1) A penalty of not more than one hundred dollars (\$100) to a title insurance agent or registered abstractor who:

(A) Fails to complete annual education requirements; or

(B) Fails to complete post-licensure education requirements by the established deadline; or

(2) A penalty of not more than two hundred fifty dollars (\$250) to a title insurance agent or registered abstractor if the title insurance agent or registered abstractor performs activities that require an active license or certificate of registration while his or her license is expired.

(b) The citation under this section shall include:

(1) The name, title, mailing address on file with the Arkansas Land Title Commission, and license number or number of the certificate of registration of the licensee or registrant;

(2) The specific violation and related statute, regulation, or rule;

(3) The time and date the citation is issued;

(4) The amount of the penalty;

(5) The deadline of thirty (30) days from issuance of the citation and procedure to either:

(A) Pay the citation without further penalty; or

(B) Dispute the citation;

(6) A statement that the amount of the penalty and the findings of the executive director as to the facts are considered accurate, conclusive, finally adjudicated, and nonappealable if a verified written complaint contesting the citation is not filed with the commission within thirty (30) days of the citation's issuance; and

(7) A signature line for the licensee or registrant to accept the penalty without filing a written dispute.

(c) A licensee who is issued a citation under this section shall within thirty (30) days of the issuance of the citation:

(1) Accept the conditions of the citation by signing and returning the citation to the commission accompanied by the penalty payment; or

(2) File a verified written complaint under § 23-103-208 contesting the citation.

(d) The commission may treat the failure to respond within thirty (30) days of the issuance of the citation under this section as a violation of this chapter punishable by the penalties provided in § 23-103-208.

(e)(1) If a licensee or registrant does not dispute the citation under this section by filing a verified complaint under § 23-103-208, the findings contained in the citation are deemed accurate, conclusive, finally adjudicated, and nonappealable.

(2) If a licensee or registrant disputes the citation by timely

filing a verified written complaint with the commission, the licensee or registrant shall be provided a hearing before the commission under § 23-103-208.

(f) The commission may modify or vacate a citation issued under this section with or without a hearing.

23-103-210. Cease and desist orders.

(a) The Arkansas Land Title Commission may after at least ten (10) days' notice and a hearing issue a cease and desist order against a title insurance agent, a registered abstractor, the holder of a certificate of abstracting authority, or an owner, officer, director, or employee of a title insurance agency to restrain:

- (1) A violation of this chapter;
- (2) A criminal or fraudulent act;
- (3) A violation of state or federal law;
- (4) An incompetent, reckless, or dishonest act; or
- (5) An act that jeopardizes the safety or soundness of a title insurance agency, title insurer, or abstract plant.

(b)(1) The cease and desist order issued under this section may be appealed to the Circuit Court of Pulaski County or the circuit court of the county in which a person subject to the cease and desist order resides within thirty (30) days of the order by posting a bond determined by the court to be sufficient to pay all damages which may accrue based upon the facts and circumstances that prompted the issuance of the cease and desist order.

(2) Except as provided in subdivision (b)(1) of this section, the appeal shall be governed by § 25-15-212.

(c) The commission may assess a fine not to exceed one thousand dollars (\$1,000) per day payable to the commission for each day a person refuses or fails to comply with the terms of a cease and desist order issued under this section.

(d) If an appeal of the cease and desist order is not timely filed, the order may not be appealed and is binding upon each person subject to the order until the order is terminated by the commission.

23-103-211. Injunctions.

With the approval of the Arkansas Land Title Commission, the Executive Director of the Arkansas Land Title Commission may seek a temporary or permanent injunction in Pulaski County Circuit Court or the circuit court of the county in which one (1) or more defendants reside against a title insurance agent, a registered abstractor, the holder of a certificate of abstracting authority, or an owner, officer, director, or employee of a title insurance agency to restrain:

- (1) A violation of this chapter;
- (2) A criminal or fraudulent act;
- (3) An act that jeopardizes the safety or soundness of a title insurance agency, title insurer, or abstract plant; or
- (4) A cease and desist order issued under § 23-103-210.

23-103-212. Subpoenas and subpoenas duces tecum.

(a) The Arkansas Land Title Commission through the Executive Director of the Arkansas Land Title Commission may issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum issued under this section may require the production of any book, writing, document, or other paper or electronic record or other evidence that is germane to an investigation or hearing conducted by the commission.

(c)(1) Service of a subpoena issued under this section and the fees and mileage of officers serving the subpoena and of witnesses appearing in answer to the subpoena shall be as provided by law for proceedings in civil cases in the circuit courts of this state.

(2)(A) The executive director shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the commission.

(B) The fees and mileage of officers serving the subpoena and of witness shall be paid by the party requesting the subpoena.

(d)(1) If a person fails to comply with a subpoena or subpoena duces tecum served under this section, the executive director may apply to the circuit court of the county in which the commission is conducting its investigation or hearing for an order to compel the production of the person's testimony, records, or other evidence.

(2) The failure to comply with the subpoena or subpoena duces tecum served under this section is punishable as contempt of court.

Subchapter 3 – Licensing of Title Insurance Agencies and Title Insurance Agents

23-103-301. License required – Authorization for temporary license.

(a) Unless licensed under this chapter, a person shall not issue a title insurance policy, issue a title insurance commitment, transact the business of title insurance, or otherwise act as a title insurance agency or title insurance agent.

(b)(1) A licensee or applicant for licensure under this subchapter shall notify the Arkansas Land Title Commission in writing within thirty (30) days of the filing of a criminal charge, a conviction or plea of guilty or nolo contendere to a crime, or the filing of a bankruptcy proceeding by or against the licensee or applicant.

(2) The failure to so notify the commission under subdivision (b)(1) of this section may result in the immediate suspension, revocation, or denial of a license under this subchapter.

(c) To provide for the continuing temporary operation of a title insurance agency upon the closing of the title insurance agency or if a title insurance agency does not have a licensed title insurance agent due to the death, resignation, termination, or incapacity of its title insurance agents, the commission may issue a temporary license to a title insurance agency under the direction of a person approved by the commission upon the time limitations and other conditions the commission deems appropriate.

(d) If the commission issues a license under this subchapter by mistake or through inadvertence, the commission may:

(1) Revoke the license with or without a hearing; and

(2) Permit the licensee to reapply for a license upon terms the commission deems appropriate.

23-103-302. Issuance or denial of license.

(a) The Arkansas Land Title Commission shall issue a title insurance agency license to an applicant that:

(1) Is authorized to do business in this state;
(2) Designates a title insurance agent responsible for the title insurance agency's compliance with this chapter; and
(3) Pays the application fees prescribed by the commission.

(b) The commission shall issue a title insurance agent license to an applicant who:

(1) Is at least eighteen (18) years of age;
(2) Satisfies the education and experience requirements prescribed by the commission;
(3) Successfully completes the examination administered or approved by the commission;
(4) Demonstrates no record of unprofessional conduct;
(5)(A) Is a resident of this state or of a city or town through which passes the boundary of this state, and has been a resident for not less than the thirty (30) days immediately prior to the date of application for the title insurance agent license.

(B) However, upon written request by the applicant, the commission may waive the thirty-day residency requirement as to any applicant for a title insurance agent license who is a bona fide resident of this state and who furnishes proof satisfactory to the commission that he or she is and intends to be a permanent resident of the state;

(6) Is deemed by the commission to be competent, trustworthy, financially responsible, and of good personal and business reputation;
(7) Consents to and completes a criminal history background check through the Department of Arkansas State Police under § 23-103-311 that is satisfactory to the commission; and

(8) Pays the application and examination fees prescribed by the commission.

(c) The commission shall deny a license to any applicant that does not meet the requirements of this section.

23-103-303. Education and experience requirements.

(a) The Arkansas Land Title Commission shall promulgate rules containing the examination, education, experience, and continuing education requirements, including the standards and procedures for approval of education programs, for persons licensed or to be licensed under this subchapter.

(b) An attorney licensed and in good standing with the Supreme Court to practice law who resides in this state and who submits an affidavit on a form specified by the commission attesting to at least one (1) year of experience in the regular practice of real estate law is exempt from the experience and examination requirements of this subchapter.

(c) Only courses, schools, seminars, and other educational programs approved by the commission satisfy the licensing standards and continuing education requirements of this subchapter.

(d) The continuing education requirements of this subchapter do not apply to:

(1) A licensee over sixty-five (65) years of age; or
(2) An attorney licensed and in good standing with the Supreme Court to practice law who resides in this state.

23-103-304. Application procedure – Licensing examination required.

(a)(1) Applications for licensure under this subchapter shall be submitted on forms prescribed by the Arkansas Land Title Commission.

(2) The commission may require any information and documentation needed to determine if the applicant meets the criteria for licensure.

(3) Each applicant shall pay the application fee and examination fee prescribed by the commission.

(4) All application materials and records submitted to the commission shall be retained by the commission.

(5) Upon notice from the commission that an applicant has provided all required information and documentation to the commission and the process for obtaining a criminal background check has been initiated, the applicant may sit for the examination.

(b)(1) An applicant who successfully completes the examination shall pay within ninety (90) days from the date of the examination the license fee prescribed by the commission.

(2) The applicant's failure to pay the license fee within ninety (90) days from the date of the examination shall:

(A) Invalidate the examination and criminal background check results; and

(B) Require the applicant to reapply as an original applicant for licensure.

23-103-305. License expiration and renewal.

(a) Each license issued under this subchapter shall expire on a date established by the Arkansas Land Title Commission.

(b)(1) A licensee under this subchapter shall complete annually the number of classroom hours of continuing education prescribed by the commission.

(2) If a licensee files for renewal of a license but fails to provide proof of continuing education, the licensee's license is inactive until proof is provided to the commission.

(c)(1) To renew or reactivate a license issued under this subchapter, a licensee shall complete the number of classroom hours of continuing education prescribed by the commission.

(2) The commission may waive all or part of the requirements of subdivision (c)(1) of this section if a licensee is unable to complete the continuing education due to extenuating circumstances.

(d)(1) For each active licensee under this subchapter, the commission shall issue a new license for each ensuing renewal period in the absence of a reason or condition that may warrant the refusal of a license, upon receipt of the:

(A) Written request for license renewal before the expiration of the license upon forms provided by the commission; and

(B) Renewal fee prescribed by the commission.

(2)(A) A licensee who does not wish to engage in the business of title insurance may renew a license on inactive status in the absence of a reason or condition that may warrant the refusal of a license upon receipt of the:

(i) Written request of the applicant before the expiration of the license upon forms provided by the commission; and

(ii) Renewal fee prescribed by the commission.

(B) The commission may limit the number of renewal periods

in which a license may be renewed on inactive status.

(3) An application for renewal filed after the date established by the commission to renew a license is treated as an application to renew an expired license.

(e) A licensee under this subchapter that permits a license to expire within a grace period established by the commission may renew the license without taking an examination if the licensee:

(1) Provides the information required by the commission under this subchapter, including proof of completion of appropriate continuing education requirements; and

(2) Pays the fee required by the commission.

23-103-306. Criminal background check.

(a)(1) The Arkansas Land Title Commission shall require each original applicant, and any renewal applicant for a license issued by the commission to apply to the Identification Bureau of the Department of Arkansas State Police for a criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police.

(2)(A) An applicant may sit for the examination required by this subchapter while awaiting the results of the criminal background check.

(B) A license shall not be issued to an applicant until the commission receives and approves the criminal background check.

(b) The applicant under this subchapter shall sign a release of information to the commission and shall be responsible for the payment of any fee associated with the criminal background check.

(c) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant under this subchapter.

(d) Except as provided in subsection (e) of this section, a person shall not receive or hold a license issued by the commission under this subchapter if the person has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness.

(e)(1) The provisions of subsection (d) of this section may be waived by the commission upon the request of:

(A) An affected applicant for licensure under this subchapter; or

(B) The person holding a license issued under this subchapter subject to sanctions.

(2) Circumstances for which a waiver may be granted include without limitation, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(f)(1) Any information received by the commission from the Identification Bureau of the Department of Arkansas State Police pursuant to

this section shall not be available for examination except by the commission, the affected applicant for licensure or the applicant's authorized representative, or by the person whose license is subject to sanctions or the person's authorized representative.

(2) A record, file, or document shall not be removed from the custody of the Department of Arkansas State Police except as provided to the commission, applicant, or applicant's authorized representative.

(g) Any information made available to the affected applicant for licensure under this subchapter or the person whose license is subject to sanctions shall be information pertaining to that person only.

(h) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check under this section.

(i) The commission may adopt rules and regulations to fully implement this section.

Subchapter 4 - ~~Arkansas Title Insurance Act~~ Regulation of the business of title insurance - Requirements - Prohibited conduct.

23-103-401. Title Authorized activities of title insurers.

This subchapter shall be known and may be cited as the "Arkansas Title Insurance Act".

(a) Subject to the exceptions and restrictions contained in this subchapter, a title insurer may:

(1) Transact only the business of title insurance;

(2) Reinsure title insurance policies; and

(3) Unless prohibited by the Arkansas Land Title Commission or the Insurance Commissioner, perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy, including without limitation:

(A) Underwriting title to and furnishing related information about personal property or real property; and

(B) Procuring and furnishing information about relevant personal property.

(b) A title insurer may issue as an insurer:

(1) Closing protection; or

(2) A title insurance policy, if issued on behalf of the title insurer by a person licensed under § 23-103-301 et seq.

23-103-402. ~~Definitions~~ Title insurers - Limitation of authority - Powers.

As used in this subchapter:

(1) "Closing" means the collection and disbursement of funds and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title;

(2) "Closing agent" means a person that facilitates a closing;

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

(4) "Depository" means a title insurer, title insurance agency,

~~closing agent, or qualified financial institution receiving a deposit of funds or documents;~~

~~(5) "Eserow" means the act or process of providing closing services or services pursuant to an eserow agreement;~~

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

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

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

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

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

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

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

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

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

~~(i) An individual employed by a title insurance agency that does not sell or negotiate title insurance but who performs marketing duties under the supervision of a title insurance agent;~~

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

~~(iii) A closing agent that provides closing services but does not otherwise engage in title insurance business in the State of Arkansas;~~

~~(12)(A) "Title insurance business" means:~~

~~(i) Issuing or offering to issue as an insurer a title insurance policy or closing protection letter;~~

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

~~(a) Guaranteeing, warranting, or otherwise insuring the status of title, liens, encumbrances, or other matters of record;~~

~~(b) Executing title insurance policies;~~

~~(c) Effecting contracts of reinsurance;~~

~~(d) Underwriting titles; or~~

~~(e) Collecting, disbursing, or receiving title insurance premiums, unless incidental to serving as a closing agent; or~~

~~(iii) Doing or proposing to do any business substantially equivalent to the matters described in this subdivision (12) in a manner designed to evade this subchapter.~~

~~(B) "Title insurance business" does not include:~~

~~(i) A closing or escrow; or~~

~~(ii) The activities of a closing agent or other party performing a closing or escrow;~~

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

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

~~(B) Unmarketability of the insured title;~~

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

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

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

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

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

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

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

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

~~(i) Title search, abstracting, or title examination fees;~~

~~(ii) Title opinion fees;~~

~~(iii) Document preparation fees;~~

~~(iv) Escrow or closing fees;~~

~~(v) Notary fees;~~

~~(vi) Attorney's fees;~~

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

~~(viii) Tax report or tax certification fees;~~

~~(ix) Title report fees;~~

~~(x) Processing fees;~~

~~(xi) Courier fees; and~~

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

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

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

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

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

(a)(1) An insurer that transacts any class, type, or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state.

(2) Title insurance shall not be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

(b) A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest on bonds or mortgages.

(c) Notwithstanding subsection (a) of this section:

(1) If the closing services are provided in Arkansas, the closing agent shall give notice of availability of closing protection to all parties to a transaction in which it is contemplated that title insurance may be issued;

(2) Upon written request by a party to a closing with a licensed title insurance agency with which the title insurer has an agency contract or closing agent with which the title insurer is in privity of contract, the title agent shall issue a closing protection letter to the requesting party on behalf of the title insurer;

(3)(A) Except as provided in subdivision (c)(3)(C) of this section, upon written request by a party to a closing conducted by a person that is not a licensed title insurance agency, a title insurer at its discretion may issue closing protection to the requesting party if the title insurer and the closing agent are in privity of contract.

(B) The contract shall:

(i) Affirmatively state that the title insurer will indemnify third parties for the actions of the closing agent to the extent provided in the closing protection letter; and

(ii) Require the closing agent to make its books and records available to the title insurer for each transaction in which a closing protection letter is issued by the title insurer on behalf of the closing agent except to the extent the books and records are privileged under the attorney-client privilege or otherwise.

(C) The contract requirements contained in subdivisions (c)(3)(A) and (B) of this section do not apply if the closing is conducted outside the State of Arkansas and the closing agent is licensed or otherwise authorized to conduct a closing in the state where the closing is conducted;

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

(A) Theft or misappropriation of closing funds; or

(B) Failure to comply with written instructions from the proposed insured when agreed to by the closing agent, title insurer's named

employee, or title insurance agency as it relates to the status of the title to the interest in land or to the validity, enforceability, and priority of the lien of a mortgage or deed of trust on the interest in land;

(5) The form and amount charged by a title insurer for closing protection coverage shall be filed with the department at least twenty (20) days before the first use of closing protection coverage in the market;

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

(7) A title insurance agent or title insurance agency shall not issue a closing protection letter on behalf of a title insurer unless the title insurance agent or title insurance agency contemplates issuing a title insurance policy to a party to the transaction; and

(8) Issuing closing protection is not a violation of § 23-103-401.

23-103-403. Requirement for license Title insurance agents – Examination of records.

~~(a)(1) Except as provided in subdivision (a)(2) of this section and § 23-103-404, only an appointed title insurance agency licensed under § 23-64-101 et seq. shall issue title insurance policies, reports, or otherwise transact title insurance business.~~

~~(2) An appointed title insurance agency licensed under § 23-64-101 et seq. shall not issue closing protection or issue as an insurer a title insurance policy.~~

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

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

During normal business hours, the Arkansas Land Title Commission or title insurer may examine, audit, and inspect all books, records, files, and escrow and operating accounts related to title insurance commitments and title insurance policies maintained by a title insurance agency, or the title insurance agency's successor in interest, transferee, or receiver under this chapter.

23-103-404. Authorized activities of title insurers Title insurance agency contracts.

~~(a) Subject to the exceptions and restrictions contained in this subchapter, a title insurer may:~~

~~(1) Transact only title insurance business;~~
~~(2) Reinsure title insurance policies; and~~
~~(3) Unless prohibited by the Insurance Commissioner, perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title insurance report or title insurance policy including:~~

- ~~(A) Underwriting title to and furnishing related information about personal property or real property; and~~
- ~~(B) Procuring and furnishing information about relevant personal property.~~

~~(b) Only a title insurer may issue closing protection or issue as an insurer a title insurance policy.~~

(a)(1) A person acting in the capacity of a title insurance agency shall not place business with a title insurer, and a title insurer shall not accept business from a title insurance agency, unless a written contract exists between the title insurer and title insurance agency.

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

(3) The written contract shall also contain:

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

(B) The maximum authority or limits of liability;

(C) The territorial limitations;

(D) All terms of compensation for the title insurance

agency;

(E) Requirements for title insurance policy issuance and

funds remittance;

(F) Termination provisions;

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

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

(a) Issuance of the title insurance policy;

(b) The satisfaction of all requirements and conditions of any commitment; or

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

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

(b) The contract under subsection (a) of this section shall not be assigned in whole or in part by the title insurance agency unless as part of a sale of a title insurance agency or its assets and approved in writing by the title insurer.

(c)(1) The title insurer may terminate the contract under subsection (a) of this section upon written notice to the title insurance agency under any of the following circumstances:

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

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

(C) In accordance with any other termination provision of the contract between the title insurer and the title insurance agency.

(2) Unless otherwise agreed in writing by the title insurer, upon the effective date of the title insurer's notice of termination, the title insurance agency shall immediately discontinue conducting the business of title insurance on behalf of the title insurer.

(3) This subsection does not relieve the title insurance agency

or the title insurer of any other contractual obligation.

23-103-405. Title Insurers — Limitation of authority — Powers Minimum search requirements.

~~(a)(1) An insurer that transacts any class, type, or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact title insurance business in this state.~~

~~(2) Title insurance shall not be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.~~

~~(b) A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest on bonds or mortgages.~~

~~(c) Notwithstanding subsection (a) of this section:~~

~~(1) If the closing services are provided in Arkansas, the closing agent shall give notice of availability of closing protection to all parties to a transaction in which it is contemplated that title insurance may be issued;~~

~~(2) Upon written request by a party to a closing with a licensed title insurance agency with which the title insurer has an agency contract or closing agent with which the title insurer is in privity of contract, the title insurer shall issue a closing protection letter to the requesting party;~~

~~(3)(A) Except as provided in subdivision (c)(3)(C) of this section, upon written request by a party to a closing conducted by a person that is not a licensed title insurance agency, the title insurer at its discretion may issue closing protection to the requesting party if the title insurer and the closing agent are in privity of contract.~~

~~(B) The contract shall:~~

~~(i) Affirmatively state that the title insurer will indemnify third parties for the actions of the closing agent to the extent provided in the closing protection letter; and~~

~~(ii) Require the closing agent to make its books and records available to the title insurer for each transaction in which a closing protection letter is issued by the title insurer on behalf of the closing agent except to the extent the books and records are privileged under the attorney-client privilege or otherwise.~~

~~(C) The contract requirements contained in subdivisions (c)(3)(A) and (B) of this section do not apply if the closing is conducted outside the State of Arkansas and the closing agent is licensed or otherwise authorized to conduct a closing in the state where the closing is conducted;~~

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

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

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

~~(5) The form and amount charged by a title insurer for closing~~

~~protection coverage shall be filed with the commissioner at least twenty (20) days before the first use of closing protection coverage in the market;~~

~~(6) Except as provided in this section, a title insurer shall not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow or closing services;~~

~~(7) A title insurer shall not issue a closing protection letter unless the title insurer contemplates issuing a title insurance policy to a party to the transaction; and~~

~~(8) Issuing closing protection is not a violation of § 23-103-404.~~

(a) A title insurance commitment or title insurance policy shall not be issued unless the title insurance agency or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant or files of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the county.

(b) The search under subsection (a) of this section shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding thirty (30) years.

(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

~~23-103-406. Title insurance agents — Examination of records Title insurance agent — Restrictions.~~

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

A title insurance agent shall not:

(1) Bind reinsurance on behalf of the title insurer;

(2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer's board of directors if the title insurance agent wrote five percent (5%) or more of the direct title insurance premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the State Insurance Department, unless the title insurer and the title insurance agent are under common control or ownership;

(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership; or

(4) Issue a title insurance commitment or title insurance policy insuring the interest of an insured in real property in this state unless the title insurance agent is licensed under this chapter and the title insurance commitment or title insurance policy is signed by a title insurance agent licensed under this chapter.

~~23-103-407. Agency contracts Title insurance inventory maintenance.~~

~~(a)(1) A person acting in the capacity of a title insurance agency shall not place business with a title insurer, and a title insurer shall not accept business from a title insurance agency unless a written contract exists between the title insurer and title insurance agency.~~

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

~~(3) The written contract shall also contain:~~

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

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

~~(C) The territorial limitations;~~

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

~~(E) Policies and funds remittance;~~

~~(F) Termination provisions;~~

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

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

~~(a) Issuance of the policy;~~

~~(b) The satisfaction of all requirements and conditions of any report; or~~

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

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

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

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

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

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

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

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

~~(3) This subsection does not relieve the title insurance agency or the title insurer of any other contractual obligation.~~

(a) A title insurer and a title insurance agency shall each maintain an inventory of all numbered policy forms or policy numbers assigned to the title insurance agency by the title insurer.

(b) If title insurance policies are generated electronically by the

title insurer, the title insurer shall maintain the inventory of policy numbers assigned to the title insurance agency.

23-103-408. ~~Minimum search requirements~~ Title insurer – Audit.

~~(a) A title insurance report or title insurance policy shall not be issued unless the title insurance agency or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant or files of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the county.~~

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

~~(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.~~

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

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

(b)(1) The Arkansas Land Title Commission may promulgate rules setting forth the standards of audit and the form of audit required under this section.

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

(3) This second does not modify the prohibitions upon the disclosure of confidential information contained in § 23-103-106.

23-103-409. ~~Title insurance agent~~ insurer – Restrictions.

~~A title insurance agent shall not:~~

~~(1) Bind reinsurance on behalf of the title insurer;~~
~~(2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer's board of directors if the title insurance agent wrote five percent (5%) or more of the direct premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the Insurance Commissioner, unless the title insurer and the title insurance agent are under common control or ownership;~~

~~(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership; or~~

~~(4) Issue a title insurance report or title insurance policy insuring the interest of an insured in real property in this state unless the~~

~~title insurance agent is licensed under this subchapter and the title insurance report or title insurance policy is signed by a title insurance agent licensed under this subchapter.~~

A title insurer shall not:

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

(2) Jointly employ an individual who is employed with the title insurance agency unless the title insurer and the title insurance agency are under common control or ownership; or

(3) Permit a person not properly licensed under this chapter to sell, negotiate, or engage in the business of title insurance on behalf of the title insurer or a title insurance agent or title insurance agency.

23-103-410. Title insurance inventory maintenance Policyholder rights and disclosure.

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

~~(b) If title insurance policies are generated electronically by the title insurer, the title insurer shall maintain the inventory of policy numbers assigned to the title insurance agency.~~

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

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

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

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

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

(b)(1) When an owner's title insurance policy has not been requested, a title insurer or a title insurance agency issuing a title insurance policy

to a lender in conjunction with a mortgage loan involving real property made simultaneously with the purchase of all or part of the real property securing the loan shall give written notice on a form prescribed or approved by the Arkansas Land Title Commission to the purchaser-mortgagor at the closing.

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

(A) That a title insurance policy for the lender involving real property is issued for the protection of the mortgage lender and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the real property being purchased;

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

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

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

(c) The following information shall accompany every title insurance policy issued and covering risks located, resident, or to be performed in this state:

(1) The name, address, and telephone number of the title insurance agency issuing the title insurance policy; and

(2) The address and telephone number, including a toll-free number if available, of the Arkansas Land Title Commission.

23-103-411. Title insurer — Audit Record retention requirements.

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

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

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

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

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

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

(b) The Arkansas Land Title Commission may prescribe the specific records and documents to be kept and the length of time for which the records

shall be maintained.

23-103-412. ~~Title insurer—Restrictions~~ Access to public records.
~~A title insurer shall not:~~

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

~~(2) Jointly employ an individual who is employed with the title insurance agency unless the title insurer and the title insurance agency are under common control or ownership.~~

(a) A person licensed under § 23-103-301 et seq., and a person affiliated with a title insurance agency shall:

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

(2) Be permitted to:

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

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

(b)(1) A person licensed under § 23-103-301 et seq., and a person affiliated with a title insurance agency have the right of access to any instrument filed of record in a city, county, or state office no later than the close of business of the first business day following the day the instrument was filed.

(2) A fee shall not be charged for providing access to the instrument.

(c) As used in this section, "access" means possession of an instrument sufficient to mechanically reproduce the instrument in the office where the instrument is filed.

(d)(1) A person entitled to access under this section that is denied access may petition immediately to a circuit court of competent jurisdiction.

(2) Upon written complaint of a person or an interested party denied a right provided by this section, the circuit court having jurisdiction shall hear the complaint within seven (7) business days of the date the complaint is filed.

(3)(A) In an action or appeal of an action to enforce the rights granted by this section, the court shall assess against a losing party reasonable attorney's fees and other litigation expenses reasonably incurred by a party that has substantially prevailed unless the court finds that the position of the losing party was substantially justified or that other circumstances make an award of attorney's fees and other litigation expenses unjust.

(B) Expenses shall not be assessed against the State of Arkansas or any of its agencies or departments.

(C) If at trial a defendant has substantially prevailed in the action, the court may assess attorney's fees and litigation expenses against a plaintiff only upon a finding that the action was initiated

primarily for frivolous or dilatory purposes.

23-103-413. ~~Policyholder rights and disclosure~~ Fiduciary duties of licensees.

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

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

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

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

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

~~(b)(1) When an owner's title insurance policy has not been requested, a title insurer or a title insurance agency issuing a title insurance policy to a lender in conjunction with a mortgage loan involving real property made simultaneously with the purchase of all or part of the real property securing the loan shall give written notice on a form prescribed or approved by the Insurance Commissioner to the purchaser mortgagor at the closing.~~

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

~~(A) That a title insurance policy for the lender involving real property is issued for the protection of the mortgage lender and that the policy does not provide title insurance protection to the purchaser mortgagor as the owner of the real property being purchased;~~

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

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

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

(a) All funds, fees, moneys, premiums, and return premiums received by a person licensed under this chapter in the person's official capacity shall be held in trust by the licensee and paid when required to the insured, insurer, licensee, or any other person entitled to the funds, fees, moneys, premiums, or return premiums.

(b) A licensee who diverts or misappropriates any part of funds, fees, moneys, premiums, or return premiums held in trust under subsection (a) of this section to the licensee's own use shall, upon conviction, be guilty of

theft of property and shall be punished as provided by law.

~~23-103-414. Record retention requirements~~ Place of business – Maintenance of records.

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

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

(a)(1) A title insurance agency shall have and maintain in this state a place of business accessible to the public where it principally conducts its transactions as a title insurance agency.

(2) The address of the place of business shall appear on the licensee's license, and the licensee shall notify the Arkansas Land Title Commission in writing of a change of address within thirty (30) days of the change of address.

(b) The licensee's license shall be conspicuously displayed in the place of business in a place customarily open to the public.

(c)(1) A licensee shall keep at the licensee's place of business the usual and customary records pertaining to transactions performed under the license.

(2) As used in this subsection, "usual and customary records" includes any documents or information identified by rule under § 23-103-411.

~~23-103-415. Rules promulgated by Insurance Commissioner~~ Appointment of title insurance agent or title insurance agency.

~~The Insurance Commissioner shall issue rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement this subchapter.~~

(a) As used in this section, "appointment" means the notification filed with the Arkansas Land Title Commission that a title insurer has:

(1) Established a contractual title insurance agency relationship with a licensed title insurance agency; or

(2) Approved a licensed title insurance agent that is employed by a title insurance agency with which the insurer has a contractual relationship.

(b)(1)(A) A title insurer that appoints a title insurance agent or title insurance agency in this state shall file with the commission the initial appointment and pay an appointment fee prescribed by the commission.

(2) The appointing title insurer's appointment of a title insurance agent or title insurance agency shall be an indication to the commission that the insurer has reviewed the background and fitness of the principals of the title insurance agent or title insurance agency to be a title insurance agent.

(b) Each appointment shall remain in effect until the title insurance agent's or title insurance agency's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commission by the title insurer or title insurance agency.

~~23-103-416. Penalties – Liabilities~~ Change of name or address.

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

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

~~(B) If the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter, the penalty shall not exceed five thousand dollars (\$5,000) for each act or violation and not exceed an aggregate penalty of fifty thousand dollars (\$50,000) in any six month period; or~~

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

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

~~(c) This section does not affect the right of the commissioner to impose any other penalties provided under § 23-64-101 et seq.~~

(a)(1) If a licensee under this subchapter changes the licensee's name, place of business, or address shown on the licensee's license or loses the license, the licensee shall notify the Arkansas Land Title Commission within thirty (30) days of the change or loss.

(2) Upon receipt of the notice and payment of the applicable fee, the commission shall reissue the license that was changed or lost.

(b) It is the responsibility of each licensee to keep the commission notified of any changes in email address and home and business mailing addresses at all times.

(c) Upon the termination of an appointed or affiliated licensee's employment by or affiliation with a licensed title insurance agency, the title insurance agency shall promptly notify the commission of the termination.

23-103-417. Access to public records Mandatory reporting of fraudulent acts.

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

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

~~(2) Be permitted to:~~

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

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

~~(b)(1) A title insurance agent, a title insurance agency, and a person affiliated with a title insurance agency has the right of access to any instrument filed of record in a city, county, or state office no later than the close of business of the first business day following the day the instrument was filed.~~

~~(2) A fee shall not be charged for providing access to the instrument.~~

~~(c) As used in this section, "access" means possession of an instrument sufficient to mechanically reproduce the instrument in the office where the instrument is filed.~~

~~(d)(1) A person entitled to access under this section that is denied access may petition immediately to a circuit court of competent jurisdiction.~~

~~(2) Upon written complaint of a person or an interested party denied a right provided by this section, the circuit court having jurisdiction shall hear the complaint within seven (7) days of the date the complaint is filed.~~

~~(3)(A) In an action or appeal of an action to enforce the rights granted by this section, the court shall assess against a losing party reasonable attorney's fees and other litigation expenses reasonably incurred by a party that has substantially prevailed unless the court finds that the position of the losing party was substantially justified or that other circumstances make an award of attorney's fees and other litigation expenses unjust.~~

~~(B) Expenses shall not be assessed against the State of Arkansas or any of its agencies or departments.~~

~~(C) If at trial a defendant has substantially prevailed in the action, the court may assess attorney's fees and litigation expenses against a plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.~~

Section 23-66-501 et seq. concerning fraudulent insurance act prevention applies to a title insurance agency and a title insurance agent.

23-103-418. Title insurance agencies – Prohibited conduct.

(a) An appointed title insurance agency licensed under this chapter shall not issue as an insurer:

(1) Closing protection; or

(2) A title insurance policy.

(b) A title insurance agency shall not permit a person not properly licensed under this chapter to sell, negotiate, or engage in the business of title insurance on behalf of a title insurer, title insurance agent, or title insurance agency.

23-103-419. Title insurance agents – Requirements – Prohibited conduct.

(a) A title insurance policy and title insurance commitment covering an insurable interest in title to real property located in this state shall be signed by a title insurance agent who is:

(1) Properly appointed by a title insurer;

(2) Affiliated with a title insurance agency licensed under this subchapter; and

(3) Licensed under this chapter.

(b)(1) A title insurance agent shall be competent, trustworthy, financially responsible, and of good personal and business reputation.

(2) The Arkansas Land Title Commission may require documentation to verify an individual's qualifications for licensure under this subchapter.

(c) The following acts, conduct, or practices are prohibited and may result in disciplinary action by the commission under this chapter:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment;

(2) Violating this chapter or a rule or order adopted under this chapter;

(3) Being convicted of or pleading guilty or nolo contendere to a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness whether or not the imposition of sentence has been deferred or suspended;

(4) Making a substantial misrepresentation;

(5) Failing within a reasonable time to account for or to remit moneys in the licensee's possession that belong to others;

(6) Being convicted of any act involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness;

(7) Acting as a title insurance agent while not affiliated with a licensed title insurance agency;

(8) Advertising in a false, misleading, or deceptive manner;

(9) Being unworthy or incompetent to act as a title insurance agent or on behalf of a title insurance agency in such a manner as to safeguard the interests of the public and the land title industry in this state; or

(10) Any other conduct, whether of the same or a different character from that specified in this section, which constitutes improper, fraudulent, or dishonest dealing.

(d) A title insurance agent shall not:

(1) Permit a person not properly licensed under this chapter to sell, negotiate, or engage in the business of title insurance on behalf of a title insurer, title insurance agent or title insurance agency; or

(2) Issue as an insurer:

(A) Closing protection; or

(B) A title insurance policy.

Subchapter 5. Abstracters

23-103-501. Penalties.

If a licensed abstracter knowingly falsifies a public record or information contained therein, the licensed abstracter shall be guilty of a felony and punished accordingly in addition to the licensed abstracter's civil liability.

23-103-502. Certificate of registration required.

(a)(1) A person, firm, or private corporation engaged in the business of abstracting in only one (1) county in this state, shall be or have in its employ a registered abstracter.

(2) A person, firm, or private corporation engaged in the business of abstracting in more than one (1) county in this state shall have at least one (1) registered abstracter for each county in which it maintains an abstracting office.

(b) A person shall not execute an abstract certificate or otherwise attest to the accuracy of an abstract of title unless the person is a registered abstracter.

(c)(1) Each person engaged in the business of abstracting who is a registered abstracter may fulfill the requirements of subsection (a) of this section in one (1) county only.

(2) A registered abstracter shall not fulfill the requirements of subsection (a) of this section for more than one (1) county or more than one (1) company at any one (1) time.

23-103-503. Certificate of registration – Application.

(a) A person desiring to become a registered abstracter shall make application to the Arkansas Land Title Commission for a certificate of registration.

(b) The application required under this section shall be in a form prepared by the commission and shall contain such information as may be necessary to assist the commission in registration and to determine if the applicant is of good moral character.

(c) Except as provided in subsection (e) of this section, each application required under this section shall be accompanied by an examination fee established by the commission.

(d) Upon receipt of a properly completed application and the fee required under this section, the commission shall notify the applicant of the time and place of the next scheduled examination, and notice of the examination shall be given to the applicant by mail.

(e) A person authorized to practice law in this state shall be issued a certificate of registration upon application without examination or payment of an examination fee.

23-103-504. Certificate of registration – Examination.

The examination required under this subchapter shall be in the form of written interrogatories prescribed by the Arkansas Land Title Commission to determine the proficiency of the applicant.

23-103-505. Certificate of registration – Issuance or reapplication.

(a)(1) If an applicant for a certificate of registration satisfactorily passes the examinations required for obtaining a certificate of registration and is of good moral character, the applicant shall be certified as a registered abstracter, and the certificate of registration shall be issued to him or her.

(2) The privileges granted by the certificate of registration shall continue unless revoked under this chapter or unless the certificate of registration is otherwise surrendered to the Arkansas Land Title Commission.

(b)(1) The certificate of registration shall be in a form prescribed

by the commission and shall attest that the holder of the certificate of registration possesses the knowledge, skill, ability, and understanding of abstracting and is designated a registered abstracter.

(2) The certificate shall be prominently displayed in the abstracting office where the holder of the certificate of registration is employed.

(c) An applicant who fails to satisfy the commission that he or she possesses the qualifications or proficiency to become a registered abstracter may reapply for a certificate of registration if the application is accompanied by the examination fee provided by § 23-103-503, but an application shall not be submitted sooner than thirty (30) days following the date on which the last previous examination was administered to the applicant.

(d) Each holder of a certificate of registration shall pay an annual fee established by the commission.

23-103-506. Temporary certificate of registration.

(a) Upon the application of a person that succeeds to the ownership of an abstract plant by any means other than by purchase or a person who by reason of the incapacity of a registered abstracter who holds a certificate of abstracting authority is required to assume the operation of an abstract plant, the Arkansas Land Title Commission may grant the person without examination a temporary certificate of registration.

(b) The fee for a temporary certificate of registration shall be set by the commission.

(c) The temporary certificate of registration shall expire on the later of:

(1) Six (6) months after the temporary certificate of registration is issued; or

(2) The expiration of sixty (60) days after the next examination for a certificate of registration could have been taken by the applicant under the rules of the commission.

(d) The commission shall notify the applicant by mail of the time and place of the examination required under this section.

23-103-507. Unregistered assistants.

This subchapter does not prohibit a person, firm, or corporation that holds a valid and subsisting certificate of authority from employing clerical and stenographic assistants who are not registered under this subchapter that are deemed necessary to conduct the business of abstracting.

23-103-508. Certificate of abstracting authority required.

A person, firm, or corporation shall not own or operate an abstract plant for engaging in the business of abstracting in this state until a certificate of abstracting authority has been issued to the person, firm, or corporation by the Arkansas Land Title Commission.

23-103-509. Certificate of abstracting authority – Application – Issuance.

(a) A person, firm, or corporation desiring to own or operate an abstract plant for engaging in the business of abstracting in this state shall make application to the Arkansas Land Title Commission for a

certificate of abstracting authority.

(b) The application shall:

(1) Be in a form prepared by the commission;

(2) Contain such information as may be necessary to assist the commission in determining whether the applicant has complied with this chapter; and

(3) Be accompanied by an application fee established by the commission.

(c) The applicant for a certificate of abstracting authority shall furnish proof that:

(1) The applicant has available an abstract plant for each county for which abstracts will be prepared that is available for examination by the commission;

(2) The applicant is or has employed a registered abstracter; and

(3) The bond requirements provided by § 23-103-512 have been met.

(d)(1) If the commission determines the requirements of subsections (a)-(c) of this section have been satisfied, the commission shall issue a certificate of abstracting authority to the applicant that indicates each county of this state in which the applicant may operate.

(2) The certificate of abstracting authority shall be prominently displayed in each office the applicant uses to conduct business under the certificate of abstracting authority.

23-103-510. Certificate of abstracting authority – Expiration – Renewal.

(a) A certificates of abstracting authority issued under this subchapter shall expire on July 1 of the following year.

(b) A certificate of abstracting authority may be renewed under this section for one (1) year upon payment of the renewal fee established by the Arkansas Land Title Commission.

(c)(1)(A) No more than sixty (60) days nor less than thirty (30) days before the expiration date of the a certificate of abstracting authority the commission shall cause a notice of expiration and application for renewal to be mailed to each holder of a certificate of abstracting authority.

(B) The notice and application shall be in a form prepared by the commission.

(2) Upon determination by the commission of the applicant's compliance with this chapter, a renewal certificate of abstracting authority shall be issued to the applicant.

(d)(1)(A) If a holder of a certificate of abstracting authority fails to apply for renewal of his or her certificate of abstracting authority and pay the renewal fee, the commission shall mail a notice to the holder of a certificate of abstracting authority that his or her certificate of abstracting authority has expired and is no longer authority to engage in the business of abstracting.

(B) The notice shall be mailed not more than thirty (30) days following the expiration date of the certificate of abstracting authority.

(C) The holder of a certificate of abstracting authority shall be granted an additional period of sixty (60) days from the date of

mailing the notice within which to file the application for renewal.

(2) If a holder of a certificate of abstracting authority fails to renew his or her certificate of abstracting authority under this section;

(A) The name of the holder of a certificate of abstracting authority shall be stricken from the records of the commission; and

(B) The holder of a certificate of abstracting authority shall no longer engage in the business of abstracting in this state until authorized by the commission.

23-103-511. Access to public records.

(a) A holder of a certificate of abstracting authority and the holder's employees engaged in the business of abstracting shall:

(1) Have access to the public records in any office of any city or county or of the state; and

(2) Be permitted to make memoranda, notations, and copies from the records and to occupy reasonable space including space for equipment in the county recorder's office, subject to reasonable regulation by the county recorder and during the business hours of the office, in order to enable the holder of a certificate of abstracting authority to make and prepare abstracts and to compile, post, copy, and maintain their books, records, and indices.

(b) Only the county recorder shall remove real estate records from the county recorder's office.

23-103-512. Bond, insurance, or personal surety.

(a)(1)(A) Before the certificate of abstracting authority is issued, the applicant shall file with the Arkansas Land Title Commission a bond approved by the commission conditioned upon the payment by the applicant of all damages that may be sustained by or may accrue to any person, firm, or corporation for whom the applicant may compile, make, or furnish abstracts of title by reason of or on account of any error, deficiency, or mistake in an abstract of title.

(B) The bond shall be written by a corporate surety or other company licensed and authorized to do business in this state.

(2)(A) The bond shall remain in full force and effect for a period of one (1) year and may be renewed annually by a continuation certificate.

(B) The continuation certificate authorized under subdivisions (a)(2) of the section shall not operate to increase the penal sum of the bond beyond the limits established in this section.

(3)(A) The penal sum of the bond shall be dependent upon aggregate population, according to the latest federal decennial census, of all counties in which the applicant proposes to conduct the business of abstracting, as follows:

<u>If the population is:</u>	<u>The penalty of the bond shall be:</u>
<u>Less than 25,000</u>	<u>\$ 5,000</u>
<u>More than 25,000 but less than 50,000</u>	<u>10,000</u>
<u>50,000 but less than 100,000</u>	<u>15,000</u>
<u>100,000 but less than 200,000</u>	<u>20,000</u>
<u>Over 200,000</u>	<u>25,000</u>

(B) A person, firm, or corporation shall be required at any time to have in force and effect and filed with the commission valid bonds in excess of the penal sum of twenty-five thousand dollars (\$ 25,000).

(b)(1) In lieu of the bond or bonds provided for in subsection (a) of this section, the applicant may file proof with the commission that he or she carries abstracters' liability insurance in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section.

(2) The proof shall be the filing of the actual policy or a certificate showing the issuance thereof by the insurance company.

(c)(1) In lieu of bond or bonds or liability insurance provided for in subsections (a) and (b) of this section, the applicant shall have the right to file with the commission a personal surety bond in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section, made in favor of any person or client that may suffer a loss for which he or she is liable, which shall be accepted in lieu of the insurance policy.

(2) The personal bond shall have the signatures of at least three (3) other persons thereon whose total net worth shall be at least three (3) times the total amount of the personal bond.

(3) The applicant shall pay for the actual cost of the credit reports on the bondsmen.

23-103-513. Revocation of certificates of registration and certificates of abstracting authority – Grounds.

(a) The Arkansas Land Title Commission is authorized, after a hearing as provided in § 23-103-514, to revoke a certificate of registration issued to any person under this chapter:

(1) For a violation of this chapter;

(2) Upon conviction of the person of a crime involving moral turpitude; or

(3) If the commission finds the person to be guilty of habitual carelessness or of fraudulent practices in conducting the business of abstracting.

(b) The commission is authorized after a hearing as provided in § 23-103-514, to revoke a certificate of abstracting authority issued to any person, firm, or corporation under this subchapter for:

(1) Failure to furnish the bond or bonds, or other securities, required by § 23-103-512;

(2) Failure to properly maintain an abstract plant;

(3) Failure to have employed a registered abstracter as provided in § 23-103-502; or

(4) Otherwise violating this chapter.

23-103-514. Sanctions – Procedure – Appeal.

(a)(1) The Arkansas Land Title Commission shall cause the Executive Director of the Arkansas Land Title Commission to investigate an alleged violation of this chapter upon receipt of a verified, written complaint or upon the its own motion if it has reason to believe any of the following has occurred:

(A) That the holder of a certificate of registration:

(i) Violated a provision of this subchapter applicable to a registered abstracter;

(ii) Was convicted of a crime involving moral

turpitude; or

(iii) Was habitually careless or engaged in fraudulent practices in the business of abstracting; or

(B) That the holder of a certificate of abstracting authority:

(i) Failed to furnish the a bond or other securities required by § 23-103-512;

(ii) Failed to have employed a registered abstracter; or

(iii) Violated of any other provision of this subchapter applicable to the holder of a certificate of abstracting authority.

(2) The executive director may hire an independent investigator to conduct all or part of the investigation and report his or her findings to the executive director.

(b) If the executive director determines that a prima facie case of a violation of this chapter exists, the executive director shall initiate the procedures for an administrative adjudication under the Arkansas Administrative Procedure Act, § 25-15-210 et seq.

(c) If the commission determines that:

(1)(A) Insufficient proof of the alleged violation exists, the commission shall dismiss the complaint.

(B) The person that filed the complaint may appeal the decision under the Arkansas Administrative Procedure Act, § 25-15-210 et seq.; or

(2) Sufficient proof of the alleged violation exists, the commission may impose an appropriate sanction, if any, including without limitation, one (1) or more of the following sanctions or requirements:

(A) A reprimand or censure;

(B) A suspension, revocation, denial, or refusal to renew a certificate of registration or certificate of abstracting authority;

(C) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(D) Completion of appropriate educational programs or courses;

(E) Successful completion of an appropriate examination;

(F) Conditions or restrictions upon the person's certificate of registration or certificate of abstracting authority; and

(G) Payment of restitution, damages, or other penalties appropriate to the circumstances of the case that would:

(i) Achieve the desired disciplinary purpose;

(ii) Compensate or reimburse an injured party or the commission; or

(iii) Promote the regulation of the business of abstracting.

(d) The commission may:

(1) Suspend the imposition of a sanction imposed upon appropriate terms and conditions; and

(2) File suit in Pulaski County Circuit Court or the circuit court of the county where a sanctioned holder of a certificate of registration or certificate of abstracting authority resides or does business to collect a penalty assessed under this chapter if the penalty is not paid

as ordered by the commission.

(e) An appeal shall stay the cancellation of a certificate of registration or certificate of authority until the final decision on appeal.

23-103-515. Seal.

The holder of a certificate of abstracting authority under this subchapter shall:

(1) Provide a seal containing the name of the holder of the certificate of abstracting authority; and

(2) Deposit with the Arkansas Land Title Commission an impression of the seal and the names of all registered abstracters authorized to certify an abstract on behalf of the holder of the certificate of abstracting authority.

23-103-516. Abstract as evidence.

An abstract or photocopy or verbatim copy of a public record certified and impressed with the official seal of a holder of a certificate of abstracting authority shall be admissible in evidence, if otherwise admissible, on behalf of any party litigant in any court in the State of Arkansas and shall be prima facie evidence of the facts recited therein.

SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the continued, uninterrupted regulation of the title insurance industry and abstracters is essential to the well-being of the state; that the transition of funds, resources, and responsibilities required by this act should coincide with the state's fiscal year; and that to provide for the efficient operation and regulation of the title insurance industry and abstracters it is necessary for this act to become effective on July 1, 2015. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hutchinson
DLP/DLP - 03-11-2015 16:31:02
DLP220

Secretary