

HOUSE BILL No. 6276

June 22, 2010, Introduced by Reps. Lipton, Polidori, Gonzales, Corriveau, Leland, Segal, Byrum, Constan and Rocca and referred to the Committee on Banking and Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 7304 (MCL 500.7304) and by adding sections 7314
and 7317a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7304. Every title insurer authorized to do business
2 ~~pursuant to~~~~UNDER~~ this code~~ACT~~ may issue title insurance; make,
3 execute, and perfect ~~such~~**TITLE INSURANCE** contracts, agreements,
4 policies, and other instruments as may be required ~~therefor~~**FOR THE**
5 **TITLE INSURANCE**; examine titles to real estate in connection with
6 any transaction in which a policy of title insurance or commitment
7 ~~therefor~~ is being issued and report ~~thereon~~**ON IT**; issue
8 commitments for title insurance policies specifying the

1 requirements for the issuance of ~~such~~ **THE** policies; **AND** act as
 2 escrow agent in any transaction involving the issuance of a title
 3 insurance policy. **A TITLE INSURER THAT DOES NOT CREATE AN ESCROW**
 4 **ACCOUNT OR ACT AS AN ESCROW AGENT IN A TRANSACTION INVOLVING THE**
 5 **ISSUANCE OF A TITLE INSURANCE POLICY, BUT REQUIRES OR PERMITS A**
 6 **PRODUCER TO ACT AS AN ESCROW AGENT, IS RESPONSIBLE FOR THE**
 7 **PRODUCER'S ESCROW ACTIVITIES.** Nothing contained in this chapter
 8 ~~shall be construed to authorize~~ **AUTHORIZES** any title insurer, or
 9 any **TITLE INSURER** officer, director, employee, trustee, agent
 10 **PRODUCER**, or solicitor, ~~thereof~~, to engage in any act or practice
 11 prohibited by ~~Act No. 354 of the Public Acts of 1917, being section~~
 12 ~~450.681 of the Compiled Laws of 1948~~ **SECTION 1 OF 1917 PA 354, MCL**
 13 **450.681**, under a claim that the act or practice is incidental to
 14 the conduct of a business authorized by this chapter, whether or
 15 not a separate charge is made ~~therefor~~ **FOR THAT ACT OR PRACTICE.** It
 16 ~~shall be~~ **IS** unlawful for any title insurer ~~, or any such person,~~ to
 17 suggest to any party to a transaction involving the examination,
 18 insuring, and conveyancing of titles to real estate that the party
 19 does not need to retain for the transaction the professional
 20 services of an independent attorney duly licensed to practice law
 21 in this state.

22 **SEC. 7314. (1) AT THE TIME AN ORDER FOR A TITLE INSURANCE**
 23 **POLICY IS PLACED WITH A TITLE INSURER, THE TITLE INSURER OR THE**
 24 **TITLE INSURANCE PRODUCER SHALL OFFER CLOSING OR SETTLEMENT**
 25 **PROTECTION TO THE LENDER, BORROWER, AND SELLER OF THE PROPERTY AND**
 26 **TO ANY APPLICANT FOR TITLE INSURANCE.**

27 **(2) THE CLOSING OR SETTLEMENT PROTECTION OFFERED PURSUANT TO**

1 THIS SECTION SHALL MEET ALL OF THE FOLLOWING:

2 (A) INDEMNIFY ANY LENDER, BORROWER, SELLER, AND APPLICANT THAT
3 HAS REQUESTED THE PROTECTION, BOTH INDIVIDUALLY AND COLLECTIVELY,
4 AGAINST THE LOSS OF SETTLEMENT FUNDS RESULTING FROM ANY OF THE
5 FOLLOWING ACTS OF THE TITLE INSURER'S NAMED TITLE INSURANCE
6 PRODUCER OR ANYONE ACTING ON THE PRODUCER'S BEHALF:

7 (i) THEFT, MISAPPROPRIATION, FRAUD, OR ANY OTHER FAILURE TO
8 PROPERLY DISBURSE SETTLEMENT, CLOSING, OR ESCROW FUNDS.

9 (ii) FAILURE TO COMPLY WITH ANY APPLICABLE WRITTEN CLOSING
10 INSTRUCTIONS, WHEN AGREED TO BY THE TITLE INSURANCE PRODUCER.

11 (B) COST NOT MORE THAN \$50.00, WHICH COST IS PAYABLE TO THE
12 TITLE INSURER.

13 (3) THE ISSUANCE OF CLOSING OR SETTLEMENT PROTECTION UNDER
14 THIS SECTION IS PART OF THE BUSINESS OF TITLE INSURANCE FOR THE
15 PURPOSE OF SECTION 7304.

16 (4) THE COMMISSIONER MAY ADOPT RULES IN ACCORDANCE WITH THE
17 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
18 24.328, AS THE COMMISSIONER CONSIDERS NECESSARY TO CARRY OUT THE
19 PURPOSES OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, RULES THAT
20 DETAIL THE SPECIFIC LANGUAGE THAT MUST BE INCLUDED IN THE WRITTEN
21 DOCUMENT OFFERING CLOSING OR SETTLEMENT PROTECTION AS PROVIDED FOR
22 IN THIS SECTION.

23 SEC. 7317A. (1) ALL OF THE FOLLOWING APPLY TO A TITLE
24 INSURANCE PRODUCER OR SOLICITOR THAT ESTABLISHES AN ESCROW OR TRUST
25 ACCOUNT:

26 (A) THE ACCOUNT SHALL BE A NONINTEREST-BEARING DEMAND ACCOUNT
27 AND SHALL BE MAINTAINED IN A FEDERALLY INSURED BANK, SAVINGS AND

1 LOAN ASSOCIATION, CREDIT UNION, OR SAVINGS BANK.

2 (B) THE OFFICER OR AGENT SHALL SIGN CHECKS DRAWN ON THE ESCROW
3 OR TRUST ACCOUNT, EVEN IF A COSIGNER IS USED.

4 (C) A SURETY BOND SHALL BE MAINTAINED.

5 (D) DISBURSEMENT OF ESCROW MONEY SHALL BE MADE IN ACCORDANCE
6 WITH THE AGREEMENT SIGNED BY THE PARTIES.

7 (2) MORE THAN 1 ESCROW OR TRUST ACCOUNT MAY BE MAINTAINED BY A
8 PRODUCER. A PRODUCER MAY MAINTAIN NOT MORE THAN \$500.00 OF AN
9 AGENCY'S OWN FUNDS IN AN ESCROW OR TRUST ACCOUNT TO COVER BANK
10 SERVICE, MINIMUM BALANCE, AND OTHER SIMILAR REQUIREMENTS. ALL FUNDS
11 IN AN ESCROW OR TRUST ACCOUNT SHALL BE ACCOUNTED FOR AS PROVIDED IN
12 CHAPTER 12.

13 (3) A TITLE INSURANCE PRODUCER OR SOLICITOR SHALL MAINTAIN A
14 BOOKKEEPING SYSTEM THAT, AT A MINIMUM, HAS ALL OF THE FOLLOWING:

15 (A) A PERMANENT RECORD OR JOURNAL THAT SHOWS THE CHRONOLOGICAL
16 SEQUENCE IN WHICH FUNDS ARE RECEIVED AND DISBURSED. AN ELECTRONIC
17 MEDIA MAY BE USED IF FUNDS CAN BE RETRIEVED AND PRINTED. FOR FUNDS
18 RECEIVED, THE RECORD OR JOURNAL SHALL INCLUDE THE AMOUNT, THE
19 RECEIPT DATE, THE DEPOSIT DATE, THE NAME OF THE PARTY WHO GAVE THE
20 MONEY, AND THE PRINCIPAL'S NAME. FOR DISBURSEMENTS, THE RECORD OR
21 JOURNAL SHALL INCLUDE THE AMOUNT, THE DISBURSEMENT DATE, THE PAYEE,
22 THE CHECK NUMBER, AND THE DISBURSEMENT PURPOSE. FOR BOTH RECEIPT
23 AND DISBURSEMENT, A RUNNING BALANCE SHALL BE SHOWN AFTER EACH
24 ENTRY. IF A SEPARATE RECORD OR JOURNAL IS MAINTAINED FOR AN ESCROW
25 OR TRUST ACCOUNT, A COMBINED BALANCE OF ALL ESCROW OR TRUST
26 ACCOUNTS SHALL ALSO BE MAINTAINED.

27 (B) A RECORD OR LEDGER THAT SHOWS RECEIPTS AND DISBURSEMENTS

1 AS THEY AFFECT A SINGLE, PARTICULAR TRANSACTION BETWEEN A BUYER AND
2 SELLER. FOR FUNDS RECEIVED, THE RECORD OR LEDGER SHALL INCLUDE THE
3 AMOUNT, THE RECEIPT DATE, THE NAMES OF ALL PARTIES TO A
4 TRANSACTION, AND THE PROPERTY ADDRESS OR BRIEF LEGAL DESCRIPTION.
5 FOR DISBURSEMENTS, THE RECORD OR LEDGER SHALL INCLUDE THE AMOUNT,
6 THE DISBURSEMENT DATE, THE PAYEE, AND THE CHECK NUMBER. THE RECORD
7 OR LEDGER SHALL SEGREGATE EACH TRANSACTION.

8 (C) A SYSTEM FOR MAINTAINING ALL RECORDS, JOURNALS, AND
9 LEDGERS FOR A PERIOD OF NOT LESS THAN 5 YEARS.