

LEGISLATIVE BILL 155

Approved by the Governor April 9, 2004

Introduced by Quandahl, 31

AN ACT relating to real property; to amend sections 44-1993, 44-19,106, and 76-238, Reissue Revised Statutes of Nebraska, section 44-1984, Revised Statutes Supplement, 2002, and section 44-19,116, Revised Statutes Supplement, 2003; to change provisions relating to coverage issued by title insurers; to provide liability for title insurers; to require disclosures by title insurance agents; to eliminate audit requirements; to provide for enforcement of the Title Insurance Agent Act; to change and eliminate provisions relating to agricultural leases, mortgages, deeds, and other instruments affecting real estate; to repeal the original sections; and to outright repeal sections 76-261 to 76-263 and 76-265, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-1984, Revised Statutes Supplement, 2002, is amended to read:

44-1984. (1) No insurer that transacts any line of business other than title insurance shall be eligible for the issuance or renewal of a certificate of authority to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or authorized to transact any other line of business.

(2)(a) Notwithstanding subsection (1) of this section, and to the extent such coverage is lawful within this state, a title insurer shall issue closing or settlement protection covering a proposed insured if the title insurer issues a title insurance commitment or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and shall indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance agent:

(i) Theft of settlement funds; and

(ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

(b) The director may prescribe or approve a required charge for providing the coverage.

(c) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

Sec. 2. Section 44-1993, Reissue Revised Statutes of Nebraska, is amended to read:

44-1993. (1) A title insurer shall not accept title insurance business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of responsibilities.

(2) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(3) A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title insurance agent which shall include a review of the title insurance agent's title insurance policy form inventory and processing operations. If the title insurance agent does not maintain separate financial institution or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

(4) Within thirty days after executing or terminating a contract with a title insurance agent, a title insurer shall provide written

notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title insurance agent shall be made on a form prescribed or approved by the director.

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

(6) A title insurer shall have on file proof that each title insurance agent is licensed by this state.

(7) A title insurer shall establish the underwriting guidelines and, when applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

(8) (a) A title insurer is liable for the defalcation, conversion, or misappropriation by a title insurance agent appointed by or under written contract with such title insurer of escrow, settlement, closing, or security deposit funds handled by such title insurance agent in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy by such title insurer. However, if no such title insurance commitment or title insurance policy was issued, each title insurer which appointed or maintained a written contract with such title insurance agent at the time of the discovery of the defalcation, conversion, or misappropriation shares in the liability for the defalcation, conversion, or misappropriation in the same proportion that the premium remitted to the title insurer by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation bears to the total premium remitted to all title insurers by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation.

(b) For purposes of this subsection, title insurance agent includes (i) a person with whom a title insurer maintains a title insurance agency agreement and (ii) an employer or employee of a title insurance agent or of a person with whom a title insurer maintains a title insurance agency agreement.

Sec. 3. Section 44-19,106, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,106. Sections 44-19,106 to 44-19,123 and section 5 of this act shall be known and may be cited as the Title Insurance Agent Act.

Sec. 4. Section 44-19,116, Revised Statutes Supplement, 2003, is amended to read:

44-19,116. (1) (a) A title insurance agent may operate as an escrow, security, settlement, or closing agent subject to the requirements of subdivisions (b) through ~~(e)~~ (f) of this subsection.

(b) All funds deposited with the title insurance agent in connection with an escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day in accordance with the following requirements:

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

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

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

(d) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

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

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

(iii) Any other provisions the director may require.

(e) (i) Disbursements may be made out of an escrow, settlement, or closing account only if funds in an amount at least equal to the disbursement have first been received and if the funds received are in one of the following forms:

(A) Lawful money of the United States;

(B) Wired funds when unconditionally held by the title insurance agent;

(C) Cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the title insurance agent; and

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class.

(ii) For purposes of this subdivision, federally insured financial institution means an institution in which monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(f) A title insurance agent who holds funds relating to an exchange under section 1031 of the Internal Revenue Code shall provide written disclosure, at or before closing, to the person whose funds are being held, on a separate paper with no other information on the paper, which states that:

(i) Such services performed by a title insurance agent are not regulated by the Department of Banking and Finance, the Department of Insurance, or any other agency of the State of Nebraska or by any agency of the United States Government;

(ii) The safety and security of such funds is not guaranteed by any agency of the State of Nebraska or of the United States Government or otherwise protected by law; and

(iii) The owner of such funds should satisfy himself or herself as to the safety and security of such funds.

~~(2) On and after January 1, 2004, every title insurance agent shall have an annual audit made of its escrow, settlement, closing, and security deposit accounts, conducted by a certified public accountant on a calendar year basis at its expense within ninety days after the close of the previous calendar year. The title insurance agent shall provide a copy of the audit report to each title insurer which it represents. The director may adopt and promulgate rules and regulations setting forth the minimum threshold level at which an audit would be required, the standards of audit, and the form of audit report required. The director may also require a title insurance agent to provide a copy of its audit report to the director. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer may, at its expense, conduct or cause to be conducted an annual audit of the escrow, settlement, closing, and security deposit accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection.~~

~~(3) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing, or settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.~~

~~(4) (3) Nothing in the Title Insurance Agent Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction if all parties consent to the transaction in writing.~~

~~(5) (4) Nothing in this section is intended to amend, alter, or supersede other sections of the act or the laws of this state or the United States regarding an escrow holder's duties and obligations.~~

~~(6) (5) The director may prescribe a standard agreement for escrow, settlement, closing, or security deposit funds.~~

Sec. 5. Whenever the director has reasonable cause to believe that a title insurance agent is violating the Title Insurance Agent Act or any rules and regulations adopted and promulgated thereunder, the director may, without notice, and before a hearing, issue a summary cease and desist order. At the same time the order is issued, the director shall serve notice to the title insurance agent of the reasons for such order and that the title insurance agent may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director. Any title insurance agent aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act. In the event of noncompliance with a summary cease and desist order, the director may cause a complaint to be filed in the district court to enforce the order.

Sec. 6. Section 76-238, Reissue Revised Statutes of Nebraska, is

amended to read:

76-238. (1) All deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect and be in force from and after the time of delivering ~~the same~~ such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All ~~+~~ and all such deeds, mortgages and other instruments shall be adjudged ~~are~~ void as to all ~~such~~ creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments ~~shall be first recorded~~ are recorded prior to such instruments. However, ~~+~~ PROVIDED, that such deeds, mortgages and other instruments shall be ~~are~~ valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after the effective date of this act; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:

(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units for nonresidential purposes.

Sec. 7. Original sections 44-1993, 44-19,106, and 76-238, Reissue Revised Statutes of Nebraska, section 44-1984, Revised Statutes Supplement, 2002, and section 44-19,116, Revised Statutes Supplement, 2003, are repealed.

Sec. 8. The following sections are outright repealed: Sections 76-261 to 76-263 and 76-265, Reissue Revised Statutes of Nebraska.