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December 18, 2012

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate  
Maryland General Assembly  
State House, H-107  
100 State Circle  
Annapolis, MD 21401

The Honorable Michael E. Busch  
Speaker of the House of Delegates  
Maryland General Assembly  
State House, H-101  
100 State Circle  
Annapolis, MD 21401

The Honorable Thomas M. Middleton  
Chair, Senate Finance Committee  
3 East, Miller Senate Building  
Annapolis, MD 21401

The Honorable Dereck E. Davis  
Chair, House Economic Matters Committee  
Room 321, House Office Building  
Annapolis, MD 21401

Re: Report of the Study of Closing or Settlement Protection Practices of the Title Insurance Industry  
MSAR No. 9192

Dear Sirs:

Pursuant to House Bill 866, Chapter 683, Acts of 2012 concerning Title Insurance-Closing or Settlement Protection Practices-Study, the Maryland Insurance Administration is enclosing its Report of the Study of Closing or Settlement Protection Practices of the Title Insurance Industry.

Very truly yours,

Therese M. Goldsmith  
Insurance Commissioner

TMG:nje

cc: Senate Finance Committee Members  
House Economic Matters Committee Members  
Tinna D. Quigley, Director of Government Relations  
Victoria Gruber, Esq., President's Chief of Staff  
Kristin Jones, Esq., Speaker's Chief of Staff  
Tamela D. Burt, Committee Counsel, Senate Finance Committee  
Robert K. Smith, Esq., Committee Counsel, House Economic Matters Committee  
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Report of the Study of  
Closing or Settlement Protection Practices  
of the  
Title Insurance Industry

MSAR No. 9192

December 2012

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## **I. EXECUTIVE SUMMARY**

The Maryland Insurance Commissioner (“Commissioner”) was directed to conduct a study of the closing or settlement protection practices of the title insurance industry, including mechanisms for, and associated costs of, compensating consumers, title insurers, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate transaction (the “Study”), and to make recommendations for changes to the closing and settlement protection practices of the title insurance industry in the State. Thefts of escrow funds, known as defalcations, became a nationwide problem after the economic downturn in the real estate market.

In the course of conducting the Study, the Maryland Insurance Administration (“MIA”) gathered data and consulted with relevant organizations, including a number of sources from industry. The MIA conducted a survey of both title insurance companies (“underwriters”) and title insurance producers. Information was gathered about defalcations reported to the MIA by consumers, title insurance producers, and underwriters. Additionally, the MIA considered the practices of other states commonly used to prevent and reduce the effects of defalcations.

In Maryland, underwriters and title insurance producers use a variety of tools, including annual on-site reviews, fidelity and surety bonds, supplementary insurance coverage, and reinsurance to manage the risk of theft of escrow funds, which appear to be an inherent cost of doing business in the title insurance industry. Study results indicate that a substantial majority of underwriters use fidelity and surety bonds, supplementary insurance coverage, or reinsurance to help manage risk.

Although in a minority of states an underwriter may charge a fee for a closing protection letter (“CPL”), the data considered in this Study do not support the need for legislation in Maryland that would permit underwriters to charge consumers a fee for a CPL. Current widespread use of CPLs, which are required by lenders in Maryland in exchange for funding a real estate closing, and for which consumers currently are not charged, protect the real estate buyer or borrower and the buyer’s lender. Maryland consumers are protected by effective enforcement actions and CPLs. The MIA is not aware of any defalcation for which an affected consumer was not made whole. Additionally, surety bonds and title insurance policies protect the seller or third parties to a real estate transaction.

There are other protections for title insurance underwriters, however, that appear ripe for consideration. To better track the scope of an individual underwriter’s risk of exposure to loss resulting from producer defalcations, underwriters could require their appointed title insurance producers to report monthly the total number of transactions and the value of those transactions. Furthermore, an underwriter that has experienced a defalcation within the last five years could be required to submit monthly reports to the Commissioner regarding the steps it is taking to track and manage the limits of its risk exposure. In addition, Maryland could increase the surety bond amount (now \$150,000) to better protect third parties, including underwriters. Virginia requires a surety bond in the amount of \$200,000.

Although the costs of risk management tools vary, the preemptive tool of aggressive on-site reviews by title insurance underwriters appears the most cost-effective. In the MIA’s experience, defalcations typically are not caused by a one-time theft, but are

the result of ongoing, lax business practices, which create an environment vulnerable to theft. The MIA is accepting comments on draft proposed regulations that will set forth detailed requirements for annual on-site reviews and provide standard forms for reporting. These improvements will strengthen the current on-site review process and should reduce the number and severity of defalcations in Maryland.

## **II. STUDY REQUIREMENTS**

During the 2012 Session, the Maryland General Assembly passed House Bill 866, Ch. 683, Acts of 2012,<sup>1</sup> which requires the Insurance Commissioner (“Commissioner”) to study the real estate settlement or closing<sup>2</sup> protection practices of the title insurance industry (the “Study”). The Study was to include a review of mechanisms for, and associated costs of, compensating consumers, underwriters, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate settlement and to report on the findings and recommendations for changes to the State’s real estate settlement protection practices. Chapter 683 required the Commissioner to consider:

- (1) title insurance producer defalcations reported to the Maryland Insurance Administration (“MIA”) by title insurers;<sup>3</sup>
- (2) title insurance producer defalcations discovered by the MIA as a result of a complaint received by the MIA;
- (3) the extent to which any regulations relating to the on-site review by title insurers of their appointed title insurance producers have addressed the problem of title insurance producer defalcations;
- (4) the availability and affordability of fidelity bonds, escrow bonds, reinsurance, or other coverage to protect title insurers against the theft, misappropriation,

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<sup>1</sup> A copy of Chapter 683 is contained in Appendix 1.

<sup>2</sup> In this Report the term “real estate settlement” will be used to mean the meeting or “closing” during which a final transfer of real property becomes effective in a purchase or refinance transaction.

<sup>3</sup> The term “underwriter” is used throughout this report to reference a title insurer.

or misuse of closing or settlement funds by its [sic] appointed title insurance producers, other agents, or employees;

(5) the manner in which closing or settlement protection is being addressed by other states, the National Association of Insurance Commissioners and the National Coalition of Insurance Legislators; and

(6) any other relevant matter, as determined by the Commissioner.

In conducting the Study, the Commissioner may consult with any person or entity that the Commissioner determined appropriate, including representatives of:

- (1) underwriters;
- (2) title insurance producers;
- (3) mortgage lenders;
- (4) the Office of the Attorney General's Division of Consumer Protection;
- (5) the real estate industry; and
- (6) the Maryland Real Estate Commission.

### **III. STUDY PROCEDURES**

#### **A. Industry Surveys**

The MIA conducted a Title Insurance Insurer Survey (“Insurer Survey”), which was distributed to all 19 underwriters authorized to sell title insurance in Maryland, and a Title Insurance Producer Survey (“Producer Survey”), which was distributed to title insurance producer agencies licensed and appointed by underwriters to sell title insurance in the State.<sup>4</sup> The Insurer Survey gathered information about procedures for auditing appointed title insurance producers that are designed to prevent or mitigate defalcations. The Insurer Survey also asked about bonds, insurance, reinsurance, or other forms of coverage used by underwriters to protect against loss caused by producer defalcations.

Each underwriter was contacted and encouraged to respond to the Insurer Survey, resulting in responses from 17 of the 19 authorized underwriters conducting title insurance business in Maryland (89.4% response rate). The 17 underwriters that

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<sup>4</sup> The Insurer Survey is found in Appendix 2 and the Producer Survey in Appendix 3.

responded to the Insurer Survey represent over 98% of the total title insurance premium written in Maryland during the first three quarters of 2012. Nine of the 17 responding underwriters are authorized to do business in all states, including the District of Columbia.

The Producer Survey gathered information about title insurance producer agencies' procedures for handling escrow funds and information about insurance policies, bonds, or letters of credit that provide coverage for losses due to the theft, misappropriation, or misuse of funds in connection with a real estate settlement. The Producer Survey was e-mailed to 768 licensed resident and non-resident title insurance producer agencies. A total of 133 title insurance producer agencies responded, yielding a 17.3% response rate. Responses indicated that title insurance producer agencies hold appointments with an average of 1.7 underwriters. Ninety-four percent of responding agencies stated that they have provided to each respective underwriter a current list of the names of the agency's licensed producers who have appointments with that underwriter. Eighty-seven agencies (65%) perform real estate closings in five or fewer states, while 19 perform closings in 30 or more states.

**B. Additional Consultation**

The MIA identified and reviewed pertinent information from its own complaint files and enforcement action records. The MIA also consulted with representatives of the following State agencies, trade associations, and organizations in connection with the Study:

- (1) American Land Title Association ("ALTA");
- (2) Maryland Land Title Association ("MLTA");
- (3) Division of Financial Regulation of the Department of Labor Licensing and Regulation ("DLLR");

- (4) Division of Consumer Protection of the Office of the Maryland Attorney General (“OAG”);
- (5) Maryland Real Estate Commission (“MREC”);
- (6) National Association of Insurance Commissioners (“NAIC”);
- (7) National Coalition of Insurance Legislators (“NCOIL”); and
- (8) National Conference of State Legislatures (“NCSL”).

Face-to-face meetings were held with representatives from ALTA, MLTA and MREC.

The president of the State’s only domestic underwriter, Security Title Guarantee Corporation of Baltimore, participated in the meeting with MLTA. Consultation with the remaining State agencies and organizations was conducted through correspondence and telephone conversations.

### **C. Research on Activity in Other States**

In addition to conducting its own independent research, the MIA gathered and reviewed information on current or proposed statutory or regulatory activity concerning real estate settlement practices of other states, including but not limited to information provided by the NAIC, ALTA, NCOIL, and NCSL.

The MIA also reviewed a report published in June, 2012 by Demotech, Inc., an independent financial analysis firm, involving challenges to the title insurance industry.<sup>5</sup> The report rated the 50 states’ and the District of Columbia’s conformance with the NAIC’s Title Insurance Agent Model Act (“NAIC Model Act”) on a scale of zero to six. Two states received a rating of six, meaning they had “substantially more regulation” than the NAIC Model Act. Five states received a rating of zero, denoting “limited or no regulation.” The remaining 40 states fell somewhere between these two extremes. With a rating of four, denoting adoption of “the NAIC model Act or substantially equivalent regulation,” Maryland received a higher rating than 31 of the 51 jurisdictions. The

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<sup>5</sup> Demotech, Inc., Escrow Theft: Today’s Challenge in Title Insurance, June 4, 2012 [http://www.demotech.com/pdfs/papers/20120604\\_defalcation\\_study.pdf](http://www.demotech.com/pdfs/papers/20120604_defalcation_study.pdf).

following table outlines the provisions of the NAIC model law and the comparable provisions existing in Maryland law.

**Table 1**

<b>NAIC Model Law Provisions</b>	<b>Comparable Maryland Law</b>
Producer licensing requirements including provisions of good character, competency, and continuing education (for new and renewal licenses)	§ 10-112; <sup>6</sup> § 10-116; § 10-121(i)
Require fidelity bond coverage	§ 10-121(e)
Authorize Commissioner to examine books and records of producers	§ 10-118(c-d)
Prohibit rebating and fee splitting	§§ 27-212, 11-407; § 14-127 <sup>7</sup>
Record retention requirements	§ 10-128.1
Penalties and liabilities for noncompliant activities	§ 10-126; § 10-132
Requirement of producer appointment with title insurer and required provisions of contract with insurer	§ 10-121.1
Subject to required examination by appointed title insurer	§ 10-121(k)
Conditions for providing escrow, closing, or settlement services and maintaining escrow and security deposit accounts	§ 10-121(b); § 22-103
Policyholder treatment	§ 22-102(a)

#### **IV. CONSIDERATIONS**

##### **A. Title Insurance Producer Defalcations Reported by Underwriters**

An underwriter is required to report to the MIA when, as a result of an annual on-site review,<sup>8</sup> it has reasonable cause to suspect that a title insurance producer or agency may be involved in fraudulent, dishonest or improper practices when acting on its behalf.<sup>9</sup> Also, an underwriter is obligated to report to the MIA when it has terminated a

<sup>6</sup> Unless otherwise indicated, all statutory references are to the Insurance Article of the Annotated Code of Maryland.

<sup>7</sup> Real Property Article, Annotated Code of Maryland.

<sup>8</sup> See Section IV.C. below for a discussion of the underwriter annual on-site review.

<sup>9</sup> See § 10-121(k)(3).

title insurance producer or agency for cause, either as the result of the findings of an on-site review or some other determination and action by the underwriter.<sup>10</sup> Underwriters sometimes also receive complaints from consumers, producers or other parties involved with a real estate settlement and refer such complaints to the MIA.

The investigation of an alleged defalcation often involves multiple parties, as the title insurance producer or agency may have a history of escrow theft or misappropriation of funds for a number of real estate settlements. For example, in one case investigated by the MIA, the underwriter notified the MIA that its on-site review of a title agency revealed escrow account discrepancies and that title insurance premiums due had not been forwarded from the agency to the underwriter. Independently, the MIA received a complaint from a consumer regarding the same title insurance agency, alleging that approximately \$7,000 was not disbursed by the agency to a creditor. A second consumer complaint was received about the same title insurance agency, alleging a failure to disburse approximately \$16,000 to the consumer's creditors. The MIA investigated these complaints and the affected parties obtained judgments in court that included recovery of their losses.<sup>11</sup>

Table 2 below details final administrative actions taken by the MIA as a result of notices received from January 1, 2008 through December 31, 2011 from underwriters indicating that a producer had been terminated for cause based on the results of an on-site review and where the MIA's investigation revealed the theft of escrow funds.

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<sup>10</sup> See § 10-118(e).

<sup>11</sup> In addition, the MIA revoked the title insurance producer's and agency's licenses.

**Table 2**

	<b>MIA Order Number<sup>12</sup></b>	<b>Date Report Received</b>	<b>Date Order Issued<sup>13</sup></b>	<b>Amount of Misappropriation</b>
	<b>2008</b>			
1	MIA-2008-05-040 – 043	5/27/08	5/29/08	\$3,000,000
2	MIA-2008--033 – 034	3/19/08	7/21/08	\$1,300,000
			<b>Total</b>	<b>\$4,300,000</b>
	<b>2009</b>	N/A	N/A	<b>\$0</b>
	<b>2010</b>			
3	MIA-2010-03-008	7/31/09	3/2/10	\$630,611
4	MIA-2010-07-014 – 016	1/21/10	7/12/10	\$1,478,761
5	MIA-2010-07-017 – 019	9/20/08	7/12/10	\$34,097
6	MIA-2010-07-020 – 021	6/27/08	7/12/10	\$22,287
			<b>Total</b>	<b>\$ 2,165,756</b>
	<b>2011</b>			
7	MIA-2011-01-028 – 055	12/20/10	1/28/11	\$1,028,500
8	MIA-2011-05-033 – 034	7/13/10	5/23/11	\$51,714
9	MIA-2011-05-038 – 039	10/6/09	5/25/11	\$254,169
10	MIA-2011-06-012 – 015	5/24/11	6/9/11	\$2,400,000
11	MIA-2011-06-016 – 019	1/13/11	6/10/11	\$652,000
12	MIA-2011-07-044 – 045	9/29/10	7/26/11	\$312,000
13	MIA-2011-10-017	7/15/09	10/19/11	\$1,763,000
			<b>Total</b>	<b>\$6,461,383</b>
			<b>4-YEAR</b>	<b>\$12,927,139</b>

<sup>12</sup> MIA Orders are available online at:

<http://www.mdinsurance.state.md.us/sa/jsp/availPubInfo/Orders.jsp?divisionName=Orders&pageName=/sa/jsp/availPubInfo/Orders.jsp>

<sup>13</sup> In some cases, the time between the date that a report is received and the date that an order is issued may be affected by a concurrent state or federal criminal investigation.

As part of its Insurer Survey, the MIA requested information on title insurance producer defalcations during the approximately two-year period from December 1, 2009 through December 31, 2011 (“survey period”). The 17 Insurer Survey respondents reported writing 9,739,317 title insurance policies nationally, of which 212,451 were in Maryland. Twelve of the 17 respondents, representing 88.6% of the national market, reported that they experienced a combined total of 154 defalcations, worth a total of \$120,362,708 nationally, during the survey period. Of that amount, these insurers reported that they paid a total of \$83,164,601 in claims. In connection with 36 (23.4%) of these defalcations, the underwriter filed a claim against the surety bond of the person or entity responsible for the defalcation, and in five instances (3.3%) the underwriter made a claim against its own insurance policy.

For the same period, the 17 underwriters, representing 95.8% of the Maryland market, reported that 16 of the 154 defalcations occurred in Maryland, for which the insurers paid a total of \$14,311,744. In eight of these 16 cases (50%), the insurer filed a claim against the surety bond of the title insurance producer or the person or entity responsible. In two instances (12.5%), the insurer filed a claim against its own insurance policy.

**B. Title Insurance Producer Defalcations Discovered as a Result of a Complaint Received by the MIA**

From January 1, 2008 through December 31, 2011, the MIA received 89 complaints from underwriters, title producers, consumers, DLLR, MREC and the Mortgage Fraud Task Force<sup>14</sup> involving a title insurance producer’s alleged theft,

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<sup>14</sup> The Mortgage Fraud Task Force is a joint state/federal effort that brings together the agencies that regulate the mortgage industry and investigate mortgage fraud to coordinate enforcement actions against those who perpetrate mortgage fraud.

misappropriation, or misuse of escrow funds. The amount of these defalcations ranged from several thousand dollars to millions of dollars of potential losses. To date, the MIA has completed its investigation of 69 of these 89 complaints. All 69 of those closed cases resulted in the revocation of the title insurance producer's or producer agency's license because of defalcations totaling approximately \$17 million. The remaining 20 complaints are open investigations.

**C. Effectiveness of Underwriter On-Site Reviews of Title Insurance Producers**

In Maryland, real estate settlement protection practices include an underwriter's annual on-site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent.<sup>15</sup> If the title insurance producer does not maintain a separate bank or trust account for each underwriter it represents, the underwriter must verify that the underwriter's own escrow funds held by the producer are reasonably ascertainable from the producer's books of account and records. The purpose of the annual on-site review is to provide an underwriter with the opportunity to detect lax business practices by title insurance producers and thereby prevent or detect and mitigate defalcations. Of the 17 underwriters responding to the Insurer Survey, 15 reported that they have written policies and procedures in place for conducting the annual on-site review of their appointed title insurance producers.

Section 10-121(k) requires the underwriter to prepare a written report of each on-site review. If the underwriter has reasonable cause to believe that the title insurance producer has engaged in prohibited activities set forth in § 10-126, such as misappropriating, converting, or unlawfully withholding funds or committing fraudulent

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<sup>15</sup> See § 10-121(k); *see also* 85 OP. ATT'Y GEN. 306 (2000) (Insurance Article requires an underwriter to perform an on-site review of each settlement company it has authorized to conduct real estate settlements).

or dishonest practices, the underwriter must report the suspected violation to the Commissioner and provide the Commissioner with a copy of the on-site review report. From January 1, 2008 through December 31, 2011, the MIA received 24 notices that an underwriter had terminated a producer agency for cause as a result of an annual on-site review that revealed the producer had stolen escrow funds. The MIA has taken final administrative action in 12 of those cases.

Beginning in June 2010, the MIA initiated focused market conduct examinations to monitor compliance with § 10-121(k). To date, the MIA has commenced such focused market conduct examinations for the following companies: The Security Title Guarantee Corporation of Baltimore, Old Republic National Title Insurance Company, First American Title Insurance Company, Fidelity National Title Insurance Company, Stewart Title Guaranty Company, North American Title Insurance Company, Southern Title Insurance Corporation (currently in receivership in the State of Virginia), Ticor Title Insurance Company (no longer licensed; merged into another Fidelity National company), Conestoga Title Insurance Company, National Title Insurance Company of NY, Inc., Title Resources Guaranty Company, Commerce Title Insurance Company (now Premier Title Insurance Company), Westcor Land Title Insurance Company, American Guaranty Title Insurance Company, EnTitle Insurance Company and WFG National Title Insurance Company. Seven of those market conduct examinations have been completed and the MIA is in the process of finalizing the remaining examination reports.

Additionally, the MIA will begin its periodic financial examination of Maryland's only domestic underwriter, Security Title Guarantee Corporation of Baltimore, in mid-2013.

The seven finalized market conduct examinations revealed that most of the underwriters examined were complying, at least in part, with the on-site review requirements of § 10-121(k). MIA's examiners discovered, however, that certain underwriters were failing to review all of their title insurance producers, and in one instance, the underwriter did not conduct the required on-site review of any of its producers. In another instance, MIA examiners determined that the underwriter's on-site review had revealed that a producer lacked sufficient documentation of its financial activities, but the insurer had failed to report this outcome to the MIA, as required. Whenever compliance deficiencies were identified, the MIA directed the underwriter to take corrective action and designated the company for re-examination in approximately one year.

In the MIA's experience, defalcations typically do not occur as a one-time theft, but rather occur over an extended period of time. MIA investigations have revealed that there is a high correlation between the occurrence of a defalcation in Maryland and the lack of rigor in the methodologies used by some underwriters in the annual on-site review of their appointed producer agencies. To establish more consistent and rigorous standards for conducting on-site reviews and reporting the results thereof, the MIA issued draft proposed regulations for public comment on November 20, 2012. The comment period is scheduled to close on December 20, 2012.<sup>16</sup>

The lack of consistency and rigor of some on-site reviews is further supported by various practices reported by title insurance producers in the Producer Survey. Twenty-eight agencies reported having at least one dormant escrow account and seven agencies

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<sup>16</sup> The draft proposed regulations can be found online at <http://www.mdinsurance.state.md.us/sa/docs/documents/insurer/bulletins/bulletin12-28titlereg.pdf>.

reported having a least one escrow account that has been dormant for three or more years. The funds contained in an escrow account should be dispersed promptly to the appropriate party or escheated to the State. Maintaining funds in a dormant escrow account is contrary to the ALTA Standard Procedures and Controls for the Title Industry regarding Escrow Accounting and may be an indication of misappropriation or theft of escrow funds. Only 52 (39%) of the agencies reported having written policies for returning escrow account funds to consumers. The MIA, however, has not received any reports from underwriters indicating that they consider dormant accounts an indication of a potential violation of § 10-126.

Moreover, while the majority of the 133 title producer agencies who responded to the MIA's survey reportedly perform monthly or three-way monthly reconciliations of their escrow accounts, only 63 of the 133 producer agencies have written policies for reconciling escrow accounts.<sup>17</sup> Approximately 60 producer agencies indicated that they routinely commingle residential and commercial escrow accounts and 24 routinely commingle Maryland escrow funds with escrow funds from other states.

MLTA agrees that the statutorily required on-site review of appointed title producers may help to reduce defalcations, but expressed concern about the cost to underwriters to perform such reviews. According to figures provided by MLTA, however, the ten title insurance companies representing approximately 92% of the business written in Maryland in 2011 conducted 712,406 real estate closings from 2008 through 2011 and incurred \$4,779,831 in on-site review expenses for the same period.

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<sup>17</sup> Eighty-five percent of responding agencies (113) perform monthly reconciliations of escrow accounts within 30 days of receiving their bank statements. Ninety-one percent of responding agencies (121) perform monthly three-way reconciliations of bank balance, book balance, and escrow trial balance for each escrow account and include a review for unusual or suspicious activity.

Based upon the information provided by MLTA, the cost of the annual on-site review of the underwriter's appointed producers is equivalent to \$6.71 per real estate closing.

**D. Availability and Affordability of Bonds, Reinsurance, or Other Protection for Underwriters**

*1. Fidelity Bonds and Surety Bonds*

A title insurance producer is required to possess a blanket fidelity bond to cover specific employees and title insurance producer independent contractors ("TIPICs"),<sup>18</sup> as well as a blanket surety bond or letter of credit for \$150,000, unless the Commissioner adopts regulations to approve lesser amounts or waives the requirement for a bond or letter of credit because bonds are not found to be generally available or reasonably affordable.<sup>19</sup> To date, the Commissioner has not adopted such regulations or provided such waivers.

A fidelity bond is a form of insurance protection that covers the bondholder, typically an employer, for losses the employer incurs as a result of fraud or the dishonest acts of employees, such as theft or misappropriation of escrow funds. With respect to employers of title insurance producers, the fidelity bond is for the benefit of the employer in the event that the employer suffers a loss due to a producer employee's conversion or misappropriation of money received or held in escrow or trust while acting as a title insurance producer or providing any escrow, closing, or settlement services.<sup>20</sup> A fidelity

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<sup>18</sup> A title insurance producer independent contractor, or TIPIC, is a person who is licensed to act as an insurance producer and provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contractor for, or on behalf of, a licensed and appointed title insurance producer. A TIPIC is not an employee of the licensed and appointed title insurance producer for whom the TIPIC provides escrow, closing, or settlement services. Section 10-101.

<sup>19</sup> The licensing, bonding, education, experience, and examination requirements applicable to title agencies and title insurance producers do not apply to law firms and attorneys unless the association of attorneys owns, operates, or shares an interest in a title agency or the attorney is employed by a title agency as a title insurance producer. Section 10-125.

<sup>20</sup> Section 10-121(f).

bond also may be purchased by an underwriter for its own benefit for protection against fraud or the dishonest acts of title insurance producers in its employ. The fidelity bond commonly used in the insurance industry is the Standard Form No. 25. Underwriters that utilize independent producers in the sale of title insurance may purchase a rider to the Standard Form No. 25 to protect the underwriter against losses resulting directly from the fraudulent or dishonest acts of its appointed agents.

A surety bond is a contract by which one party agrees to make good the default or debt of another. An underwriter may, and according to the Insurer Survey, in eight of the past 16 defalcations in Maryland did, file a claim against a title insurance producer's surety bond for reimbursement of stolen escrow funds. The surety bond protects third parties, including an underwriter or consumer, against fraud or the dishonest acts of the bonded title insurance producer.

Four underwriters of surety and fidelity bonds in Maryland – Liberty Mutual, NGM, Travelers, and Western Surety – provided the MIA with estimates of the cost of surety and fidelity bonds required by law. According to those underwriters, the annual cost of a \$150,000 bond ranges from approximately \$500 to approximately \$1,500.

## 2. *Errors and Omissions Insurance*

Errors and omissions (“E&O”) insurance is a specialized liability protection against losses not covered by traditional business liability insurance. An E&O policy protects the policyholder from claims if a client, customer, or other party sues for negligent acts, errors, or omissions committed during business activities that result in a financial loss. The owner of a title insurance agency may purchase an E&O policy to cover the owner, employees, and contractors working on behalf of the owner, including

abstractors, notary publics, and TIPICs. If an error affecting clear title to the real property is made by a person covered by an E&O policy and a title insurance policy has been issued, the title insurance policyholder who has suffered a financial loss likely will file a claim against the title insurance policy. If the underwriter is required to pay the claim, the underwriter may take legal action against the person who made the error. The insurer of the E&O policy will pay defense costs related to the legal action and is responsible for any damages, up to the limits of the E&O policy, for which the person is held liable. An E&O policy will not pay for a claim resulting from fraud or the dishonest acts of the covered person.

### 3. *Reinsurance*

Reinsurance is another risk management tool available to underwriters. Typically, an underwriter (a ceding company) and a reinsurer enter into a reinsurance agreement which details the conditions upon which the reinsurer may pay a portion of the claims incurred by the ceding company. Passing some risk to a reinsurer will reduce the ceding company's exposure to risk. The reinsurer is paid a reinsurance premium by the ceding company. Of the 17 underwriters that responded to the Insurer Survey, 15 indicated that they purchased reinsurance. Of these 15, four indicated that their reinsurance agreements would cover theft of escrow funds. Three of these four underwriters indicated that the cap for a loss due to theft of escrow funds was \$100,000,000, with the first \$10,000,000 paid by the underwriter. One underwriter indicated a cap for a loss due to the theft of escrow funds at \$10,000,000.

#### 4. *Other Protection Available to Underwriters*

Crime insurance, sometimes called business fidelity insurance, protects the policyholder against losses due to victimization by criminals, including employee theft or other offenses with the potential to cause financial ruin. A crime insurance policy may provide coverage when the policyholder suffers a loss from embezzlement, theft, forgery, computer fraud, and safe cracking.<sup>21</sup> An underwriter may buy crime insurance to protect against agent or employee theft. Of the 17 underwriters that responded to the Insurer Survey, one indicated that it purchased a \$15,000,000 crime insurance policy with an annual premium of approximately \$157,000.

#### 5. *Summary of Industry Practice*

Of the 17 underwriters responding to the Insurer Survey, 15 reported that they maintain some form of bond or insurance policy to protect against loss caused by theft of escrow funds by an appointed title insurance producer beyond the protection afforded by the surety bond required by law to be purchased by title insurance producers. Of those 15, eight purchased fidelity bonds, three purchased crime bonds, three purchased “bonds” (unspecified), and one purchased crime insurance. Two of the insurers that purchased crime bonds purchased multiple crime bonds for varying amounts of coverage. Additionally, 15 of the 17 insurers reported purchasing reinsurance, with four reporting that their reinsurance agreements provided coverage for loss due to theft of escrow funds.

The MIA is unable to directly compare the coverage and associated costs of these various forms of protection, as the actual terms of bonds and policies vary. However, as

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<sup>21</sup> This non-exclusive list of the types of coverage available under a crime insurance policy is based on a review of crime insurance policies offered in the State.

Table 3 demonstrates, the amount of protection purchased by underwriters ranged from \$150,000 to \$55,000,000 with annual premiums of between \$1,750 and \$1,385,000. In the MIA’s experience, at least some underwriters do not regularly monitor the extent of their potential exposure to loss as a result of possible defalcation.

**Table 3**

<b>Coverage Purchased to Protect Against Loss Caused by Theft of Escrow Funds</b>	<b>Number of Underwriters Purchasing Coverage</b>	<b>Reported Annual Premium for Coverage</b>
Crime Bond	3	\$213,6688 - \$1.3 million
Crime Insurance	1	\$157,000
Fidelity Bond	8	\$1,750 - \$700,000
Bond	3	\$60,000 – 175,000
Reinsurance <sup>22</sup>	4	

**E. Real Estate Settlement Protection Practices in Other States**

States take varied approaches to the regulation of the title insurance industry and have developed a number of tools designed to manage the risk of defalcations. The following information is not intended to provide a comprehensive survey of the title laws of all 50 states.<sup>23</sup> Rather, the practices discussed below are those that appear to be most commonly used by states to prevent and reduce the effects of defalcations.<sup>24</sup>

<sup>22</sup> Fifteen Insurer Survey respondents indicated that they purchased reinsurance. However, only four of the respondents indicated that their reinsurance agreements provide coverage for loss due to theft of escrow funds. The survey did not request information regarding annual premiums for reinsurance.

<sup>23</sup> In March 2010, the NAIC’s Title Insurance Task Force issued a report entitled *Survey of State Insurance Laws Regarding Title Data and Title Matters* that provides a thorough, although dated, overview of state laws and regulations involving title insurance. That report can be found online at [http://www.naic.org/documents/committees\\_c\\_title\\_tf\\_survey\\_state\\_laws.pdf](http://www.naic.org/documents/committees_c_title_tf_survey_state_laws.pdf).

<sup>24</sup> Earlier this year, the NAIC formed a subgroup to develop a white paper on title escrow theft and title insurance fraud. The subgroup was asked to examine ways to mitigate the impact of title insurer and agency insolvencies on policyholders, including the use of blanket lenders' policies and individual owners' policies to replace those issued by insolvent insurers; examining the financial failures of title producers; and promoting the use of closing protection letters. The subgroup is to report its results by the 2013 Summer National Meeting. The subgroup’s work can be followed online at [http://www.naic.org/committees\\_c\\_title\\_tf\\_escrow\\_theft\\_white\\_paper\\_sg.htm](http://www.naic.org/committees_c_title_tf_escrow_theft_white_paper_sg.htm).

## 1. Preventive Measures

Producer Licensing and Continuing Education – Like Maryland, many states require producers selling title insurance to be licensed. A notable exception is New York.<sup>25</sup> The District of Columbia just began to license title insurance producers in 2010.<sup>26</sup> A bill that would have required title insurance producer licensure in Alabama failed this year.<sup>27</sup>

However, Florida strengthened its licensing and continuing education requirements for title insurance producers by requiring attorney-owned title insurance agencies to be licensed by the state.<sup>28</sup> Also, Florida law requires that title insurance producers undergo mandatory, biennial continuing education on title insurance, ethics, and escrow management.<sup>29</sup>

Connecticut, New York and North Carolina are examples of states that, by common law, allow only attorneys to conduct real estate closings. Some argue that this limitation helps to curb defalcations. However, the experience of several states, including Maryland, reveals that many title insurance producer agencies are owned and operated by attorneys and there have been a number of defalcations by members of the bar.<sup>30</sup>

Examination and Audit Requirements – States have a range of requirements regarding oversight of title insurance producers' handling of escrow funds. On the more

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<sup>25</sup> There is legislation pending in New York that would create a comprehensive state approach to title insurance, including the creation of a state title insurance fund and a title guaranty authority. New York Assembly Bill 2015/Senate Bill 2569; Senate Bill 3565/Assembly Bill 4168 (2011).

<sup>26</sup> D.C. CODE § 31-1131.03 (2012).

<sup>27</sup> State of Alabama, Senate Bill 460 (2012).

<sup>28</sup> FLA. STAT. § 626.8417 (2012).

<sup>29</sup> FLA. STAT. § 626.2815 (2012).

<sup>30</sup> See e.g., *MIA v. Valeria Nolita Tomlin*, MIA Case No. 2011-02-037 (Oct. 12, 2011); *MIA v. John J. Dwyer*, MIA Case No. 2011-01-028 (Jan. 28, 2011); *MIA v. Yalonda Michelle Douglas*, MIA Case No. 2009-10-007 and 008 (Oct. 2, 2009).

rigorous end of the spectrum are those states, like Virginia, that require an independent audit by a certified public accountant, which is reviewed by the state insurance regulator.<sup>31</sup> Other states, like Maryland and Missouri, require the underwriter to conduct an annual audit of its authorized title insurance producers, and some states require state regulators to conduct the audits.<sup>32</sup>

The thoroughness of audit procedures is critical to detecting the conditions that may lead to defalcations. Texas has specific audit requirements set forth in Section V of the Texas Basic Manual of Title Insurance.<sup>33</sup> There are states that require monthly reconciliation of accounts, while Texas requires monthly three-way reconciliation, which involves a reconciliation of the bank balance, book balance, and escrow trial balance for each escrow account.<sup>34</sup>

Other Mandated Business Practices – Additional preventive measures required by some states include: (1) the establishment of a fiduciary trust account in which title insurance funds are segregated from other funds; (2) the disbursement of funds only pursuant to written directions; and (3) specific record retention requirements.<sup>35</sup>

## 2. Remedial Measures

Closing Protection Letter (“CPL”)<sup>36</sup> – A CPL generally provides that the underwriter will protect a lender from a loss resulting from negligence, fraud, or dishonesty by the underwriter’s appointed title insurance producer in the handling of the

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<sup>31</sup> See e.g., 14 VA. ADMIN. CODE, § 5-395-50 (2002).

<sup>32</sup> MO. REV. STAT. § 381.023 (2011).

<sup>33</sup> The Texas’ Basic Manual of Title Insurance is available online at <http://www.tdi.texas.gov/title/titem5a.html>.

<sup>34</sup> 28 TEX ADMIN. CODE § 9.1 (2009).

<sup>35</sup> NAIC Title Insurance Task Force, *Survey of State Insurance Laws Regarding Title Data and Title Matters*, (Mar. 22, 2010).

<sup>36</sup> A closing protection letter is also known as an insured closing letter and is not part of the title insurance policy.

lender's funds or documents. The lender also is protected for losses resulting from the underwriter's own actions or the actions of an independent escrow company. A CPL may specify a time limit for the filing of a claim and cap the underwriter's liability to the face amount of the title policy or some other predetermined amount.

While it is common for a lender involved in a real estate transaction to require a CPL, a number of states have enacted statutes that allow or require, under certain circumstances, an underwriter to issue a CPL.<sup>37</sup> The majority of states, including Maryland, do not require an underwriter to issue a CPL. New York's Department of Insurance has issued a bulletin that prohibits the issuance of a CPL that offers coverage for acts that go beyond a title insurance producer's duties.<sup>38</sup> Vermont and Virginia are among states that prohibit the use of a CPL to cover losses that are unrelated to the condition of the title to the property.<sup>39</sup>

Approximately thirteen states permit the underwriter to charge a consumer or lender a fee for the cost of issuing the CPL.<sup>40</sup> Fees range from \$25 to \$50 depending upon the party paying the fee.<sup>41</sup>

Fidelity and Surety Bonding Requirements – Some states require a surety or fidelity bond or an irrevocable letter of credit to protect consumers in a real estate transaction. However, the required amount of these bonds typically is so low as to be

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<sup>37</sup> ALA. CODE, § 27-3-6.1(a) (2011); ARIZ. REV. STAT. ANN. § 6-841.2(A) (2011); CONN. GEN. STAT. § 38a-404 (2012); D.C. CODE § 31-5031.04(c)(1) (2012); FLA. ADMIN. CODE ANN. r. 69O-186.010 (2012); GA. CODE ANN. §§ 33-3-4 and 33-7-8.1 (2012); LA. REV. STAT. ANN. § 22:515(C)(1) (2009); MO. REV. STAT. § 381.058(3)(1) (2000); NEB. REV. STAT. § 44-1984(2)(a) (1997); N.M. CODE R. § 13.14.7.26 (2012); OHIO REV. CODE ANN. § 3953.32 (2007); R.I. GEN LAWS § 27-2.6-6 (2010); S.C. CODE ANN. § 38-75-1010 (2012); and TEX. CODE ANN. INS. ART., § 2702.001 (2005).

<sup>38</sup> N.Y. Ins. Dep't Circular Letter No. 18 (Dec. 14, 1992).

<sup>39</sup> Vt. Ins. Div. Bulletin 108 (Jan. 10, 1996); Va. Bureau of Ins. Administrative Letter 1995-8 (Sept. 4, 1995).

<sup>40</sup> NAIC Title Insurance Task Force, *Survey of State Insurance Laws Regarding Title Data and Title Matters* (Mar. 22, 2010).

<sup>41</sup> See e.g. ALA. CODE § 27-3-6.1 (2011); D.C. CODE § 31-5031.04(c)(3) (2012).

negligible when compared to the amounts of many defalcations. Surety bond requirements range from a low of \$10,000, required by Texas, to a high of \$200,000 required by Virginia.<sup>42</sup> With respect to fidelity bonds, Florida has a \$50,000 minimum requirement for title insurance producers and the state of Washington has a \$200,000 requirement.<sup>43</sup>

Statutory or Common Law Assignment of Liability – Some states have passed laws and others have common law that hold an underwriter liable under agency law principles for a defalcation by a licensed title insurance producer or agency.<sup>44</sup>

Guaranty Funds – Texas has created a guaranty fund specifically for the title insurance industry. The Texas Title Insurance Guaranty Association (“TTIGA”) was established because, unlike Maryland’s Property and Casualty Insurance Guaranty Corporation, the Texas Property and Casualty Insurance Guaranty Association does not cover title insurance underwriters. The purpose of the TTIGA is to protect consumers from insolvent underwriters and title insurance agencies and to cover losses from escrow accounts.<sup>45</sup>

The TTIGA is funded through a \$2.00 per policy fee placed on every title insurance policy sold in the state.<sup>46</sup> The fees are assessed on each owner or lender policy purchased at closing and must be deposited into an escrow or trust account that cannot be commingled with producer or agency operating accounts.<sup>47</sup>

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<sup>42</sup> TEX. INS. CODE ANN. § 2651.101 (2012); VA. CODE ANN. § 55-525.20 (2012).

<sup>43</sup> FLA. STAT. § 626.84198(1)(a); WASH. REV. CODE § 48.29.155(1)(a) (2005).

<sup>44</sup> *See, e.g.* FLA. STAT. § 627.792 (2012).

<sup>45</sup> TEX. INS. CODE ANN. § 2602.002 (2012).

<sup>46</sup> TEX. INS. CODE ANN. § 2602.151 (2012). The amount of the fee is set at least annually by the TTIGA’s Board of Directors (TEX. INS. CODE ANN. § 2602.152 (2012)) and the amount of the current fee is available online at <http://www.ttiga.org/pgf.html>.

<sup>47</sup> *Id.*

In the event of the insolvency of a title insurance company, the TTIGA may assess remaining underwriters to pay the insolvent insurer's claims; the fee is based on written premium.<sup>48</sup> This assessment may be recouped by insurers through an additional fee on each title policy written plus a credit against future premium tax obligations, as determined by the TTIGA's Board of Directors.<sup>49</sup>

Limitation on Commissions – Some states have capped the commissions that may be collected by a title insurance producer. For example, South Carolina passed a bill in 1988 designed to “regulate more stringently the title insurance business in this State.”<sup>50</sup> Included among the provisions governing an underwriter's reserve and reinsurance requirements is a provision that imposes a statutory limit of 60% on title insurance producer commissions.<sup>51</sup> Additionally, Connecticut caps commissions at 60% and Florida provides that a maximum of 70% of title insurance premiums may go to a title insurance producer and 30% of the premium must be retained by the underwriter.<sup>52</sup> New Mexico provides a sliding scale based on the value of the policy; title insurance producers may retain a commission of 50% to 80% of premium.<sup>53</sup>

Consumer Protection Funds – There is a bill pending in Illinois that would establish the Illinois Title Insurance Consumer Protection Fund funded through fees imposed upon “[e]very title insurance company and every independent escrowee” doing business in Illinois.<sup>54</sup> The purpose of the Fund would be to provide restitution to consumers who have suffered financial loss as a result of a real estate settlement.

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<sup>48</sup> TEX. INS. CODE ANN. § 2602.201 (2012).

<sup>49</sup> TEX. INS. CODE ANN. § 2602.210 (2012).

<sup>50</sup> State of South Carolina, Session 107 Senate Bill 1095 (1988).

<sup>51</sup> S.C. CODE ANN. § 38-75-1000 (2011).

<sup>52</sup> CONN. GEN. STAT. § 38a-415(b) (1990); FLA. ADMIN. CODE ANN. r. 69O-186.003 (2002).

<sup>53</sup> N.M. Code R. § 13.14.3.11 (1996).

<sup>54</sup> State of Illinois, Senate Bill 141 (2011).

## **F. Other Relevant Matters**

Chapter 683 also afforded the Commissioner the discretion to identify any other matter relevant to the title insurance industry's real estate settlement protection practices and required the Commissioner to consider each relevant matter identified. The Commissioner considered the following perspectives, offered by other state agencies, trade associations, and organizations in connection with the Study, to be relevant.

### *1. State Agencies' Perspectives*

Division of Consumer Protection of the Office of the Attorney General - The Assistant Attorney General of the Consumer Protection Division confirmed that neither the Consumer Protection Division nor the Mediation Unit of the Office of the Attorney General had received complaints regarding the theft of escrow funds.

Division of Financial Regulation of the Department of Labor Licensing and Regulation - The Director of Enforcement and the Division Commissioner determined that Chapter 683 would not affect the Office of the Commissioner of Financial Regulation. DLLR recommended, however, that the Insurance Commissioner "consider that all Maryland settlements be done through an attorney and utilize the attorney's escrow account" for all settlement and closing funds.

Maryland Real Estate Commission - In a letter to the MIA, the Maryland Real Estate Commission stated that "Maryland is known for being a state with some of the highest closing fees in the country." According to MREC, to "add another fee, so that the insurers can recoup their losses seems counter-productive in these economic times."

### *2. Organizations' Perspectives*

National Association of Insurance Commissioners - The NAIC has formed a title

insurance task force. The information provided by the NAIC with reference to its ongoing study is referenced elsewhere in this report.

National Coalition of Insurance Legislators - The Deputy Executive Director advised that at NCOIL's Fall meeting held in November, 2012, the Property and Casualty Insurance Committee held a special discussion of title insurance regulation and consumer protections. The Committee heard from underwriters, title insurance producers, and the NAIC. The Committee is to examine whether there are any gaps in regulation and protection that may be addressed through model laws. The Committee is scheduled to report its findings at the NCOIL Spring meeting to be held in March 2013.

National Conference of State Legislatures - The NCSL's Program Principal provided the MIA with a list of legislation that had been proposed for the title insurance industry. The list indicated which proposed laws were enacted, failed, or remained pending as of October 19, 2012.

### 3. *Trade Associations' Perspectives*

American Land Title Association - ALTA provided the MIA with a preview of the best practices guideline it is developing for its members. The guideline is intended to establish protocols which, upon implementation, will "protect consumers, ensure quality service, and meet legal and market requirements."

Maryland Land Title Association - MLTA advised that although conducting the annual on-site examination may help to reduce escrow theft, it is costly and may not produce evidence of actual losses. In MLTA's view, enhancing auditing requirements will result in increased closing costs and premiums.

As discussed above, MLTA determined that from 2008 through 2011, it cost ten

title insurance companies, representing 92% of the business written in Maryland in 2011, \$4,779,831 to conduct the annual on-site examinations of their appointed title producer agencies. According to MLTA, the same ten underwriters insured 712,406 transactions during the same time period. MLTA's data indicate that over a four-year period the cost of the annual on-site review of the underwriter's appointed producers is equivalent to \$6.71 per real estate closing.

4. *A Title Insurance Company's Perspective*

Security Title Guarantee Corporation of Baltimore - The President of Security Title, also an MLTA Board Member, supports the MLTA position that a CPL should be required by law and paid for by consumers.

5. *Title Insurance Underwriters' Loss Ratios*

As part of the Study, the MIA undertook an analysis of the losses incurred by the title insurance industry. From 2004 through 2011, the title insurance industry paid out, on average, approximately 7½ cents for each premium dollar collected in Maryland.<sup>55</sup> The 7½ cents included all Maryland claims paid -- not only those claims associated with the theft of escrow funds. Focusing on more recent years, during 2009 and 2010, the title insurance industry in Maryland paid an average of 10½ cents and 14 cents, respectively, in claims for each premium dollar collected; this amount decreased to approximately 11 cents in 2011.<sup>56</sup>

According to the MIA's research, however, certain underwriters experienced a higher loss ratio. In 2010, five of the 17 responding underwriters reported that they paid

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<sup>55</sup> A report published by Demotech, Inc., an independent financial analysis firm, found that for the period 2004 through 2011, the aggregate loss ratio for Maryland's title insurance industry was 7.43%.

<sup>56</sup> According to the Title Insurer Survey, the aggregate loss ratios for the companies writing title insurance business in the State were 10.58% in 2009, 13.82% in 2010, and 11.37% in 2011. The loss ratio is the total amount paid or reserved for claims plus adjustment expenses per dollar of premium collected.

in excess of 20 cents in claims on each premium dollar collected. Three of those five paid in excess of 30 cents in claims on each premium dollar collected. These higher losses, combined with the fact that Producer Survey respondents reported an average commission of 80 cents per premium dollar, means that in 2010 and 2011 certain underwriters were operating at a loss on their Maryland business.

In 2011, two of the 17 responding underwriters reported paying more than 30 cents in claims per premium dollar collected. The loss ratios experienced by the title insurance industry in Maryland are substantially lower than the property and casualty industry. According to the NAIC database, in 2011 the property and casualty insurance industry in Maryland paid approximately 67 cents in claims for each premium dollar collected, excluding loss adjustment expenses, and 71½ cents per premium dollar collected including loss adjustment expenses.<sup>57</sup>

## **V. FINDINGS AND RECOMMENDATIONS**

The MIA was charged with evaluating the State's real estate settlement protection practices, including mechanisms for, and the associated costs of, compensating consumers, underwriters, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate transaction.

In Maryland, underwriters and title insurance producers use a variety of tools, including annual on-site reviews, fidelity and surety bonds, supplementary insurance coverage, and reinsurance to manage the risk of theft of escrow funds. The Insurer Survey indicates that 15 out of the 17 underwriters use fidelity and surety bonds, supplementary insurance coverage, and reinsurance to manage risk.

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<sup>57</sup> These numbers do not include the title insurance industry.

Although in a minority of states an underwriter may charge a fee for a closing protection letter (“CPL”), the data considered in this Study do not support the need for legislation in Maryland that would permit underwriters to charge consumers a fee for a CPL. Current widespread use of CPLs, which are required by lenders in Maryland in exchange for funding a real estate closing, and for which consumers currently are not charged an additional fee, protect the real estate buyer or borrower and the buyer’s lender. Maryland consumers are protected by effective enforcement actions and CPLs. The MIA is not aware of any defalcation for which an affected consumer was not made whole. Additionally, surety bonds and title insurance policies protect the seller or third parties to a real estate transaction.

There are other protections for title insurance underwriters, however, that appear ripe for consideration. To better track the scope of an individual underwriter’s risk of exposure to loss resulting from producer defalcations, underwriters could require their appointed title insurance producers to report monthly the total number of transactions and the value of those transactions. Furthermore, underwriters that have experienced a defalcation within the last five years could be required to submit monthly reports to the Commissioner regarding the steps it is taking to track and manage the limits of its risk exposure. In addition, Maryland could increase the minimum surety bond amount required by statute (now \$150,000) to better protect third parties, including underwriters. Virginia requires a surety bond in the amount of \$200,000.

The costs of these risk management tools vary, but the preemptive tool of aggressive on-site reviews appears the most cost-effective. Defalcations typically are not caused by a one-time theft, but are the result of ongoing, lax business practices, which

create an environment vulnerable to theft. The draft proposed regulations to govern annual on-site reviews, which the MIA expects to finalize in the spring of 2013, will set forth detailed requirements for those reviews and provide standard forms for reporting. These improvements will strengthen the current on-site review process and should reduce the number and severity of defalcations in Maryland.

**VI. LIST OF APPENDICES**

Appendix 1	Chapter 683 (House Bill 866), Acts of 2012
Appendix 2	MIA Title Insurer Survey
Appendix 3	MIA Title Insurance Producer Survey

# Appendix 1

# Chapter 683

(House Bill 866)

AN ACT concerning

## **Title Insurance – Closing or Settlement Protection Practices – Study**

FOR the purpose of requiring ~~certain domestic title insurers to establish and maintain a certain reserve for certain losses arising from closing or settlement protection; authorizing the amount in reserve to be released in certain amounts under certain circumstances; authorizing a domestic title insurer to withdraw the entire reserve under certain circumstances; requiring a certain notice to include certain information about certain closing or settlement protection; authorizing a method to cure a certain failure to obtain a certain notice; requiring a title insurer to provide certain closing or settlement protection to a certain protected party in a certain transaction; requiring the closing or settlement protection to indemnify certain persons against certain actions and failures in connection with certain transactions; limiting the extent of a certain indemnification; prohibiting the indemnification from being provided for certain losses or impairments; requiring certain title insurers to file for approval by the Maryland Insurance Commissioner of a certain premium; establishing a minimum amount of the premium; providing that the premium may not be subject to a certain agreement; authorizing a title insurer to provide a certain statement of coverage; prohibiting a title insurer from providing certain other coverage for a certain indemnification; requiring certain title insurers to file a certain initial premium on or before a certain date; providing for the application of this Act; providing for the effective dates of this Act;~~ the Maryland Insurance Commissioner to study closing or settlement protection practices of the title insurance industry and to make certain recommendations; requiring the Commissioner to consider certain matters in conducting the study; authorizing the Commissioner to consult with certain persons and entities in conducting the study; requiring the Commissioner to report certain findings and recommendations to certain committees of the General Assembly on or before a certain date; and generally relating to title insurance protection a study of closing and settlement protection practices of the title insurance industry.

~~BY adding to~~

~~Article — Insurance  
Section 5-207 and 22-104  
Annotated Code of Maryland  
(2011 Replacement Volume)~~

~~BY repealing and reenacting, with amendments,~~

~~Article — Insurance~~

~~Section 22-102~~  
~~Annotated Code of Maryland~~  
~~(2011 Replacement Volume)~~

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

(a) The Maryland Insurance Commissioner shall:

(1) study closing or settlement protection practices of the title insurance industry, including mechanisms for, and associated costs of, compensating consumers, title insurers, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate transaction; and

(2) make recommendations for changes to the closing and settlement protection practices of the title insurance industry in the State.

(b) In conducting the study, the Commissioner shall consider:

(1) title insurance producer defalcations reported to the Maryland Insurance Administration by title insurers;

(2) title insurance producer defalcations discovered by the Administration as a result of a complaint received by the Administration;

(3) the extent to which any regulations relating to the on-site review by title insurers of their appointed title insurance producers have addressed the problem of title insurance producer defalcations;

(4) the availability and affordability of fidelity bonds, escrow bonds, reinsurance, or other coverage to protect title insurers against the theft, misappropriation, or misuse of closing or settlement funds by its appointed title insurance producers, other agents, or employees;

(5) the manner in which closing or settlement protection is being addressed by other states, the National Association of Insurance Commissioners, and the National Coalition of Insurance Legislators; and

(6) any other relevant matter, as determined by the Commissioner.

(c) In conducting the study, the Commissioner may consult with any person or entity that the Commissioner determines appropriate, including representatives of:

(1) the title insurance industry;

- (2) title insurance producers;
- (3) mortgage lenders;
- (4) the Division of Consumer Protection of the Office of the Attorney General;
- (5) the real estate industry; and
- (6) the Maryland Real Estate Commission.

(d) On or before December 1, 2012, the Commissioner shall report to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on the findings and recommendations of the study conducted by the Commissioner under this section.

#### ~~Article Insurance~~

#### ~~5-207.~~

~~(A) (1) IN ADDITION TO THE RESERVES REQUIRED UNDER § 5-206 OF THIS SUBTITLE, A DOMESTIC TITLE INSURER SHALL SET ASIDE, AS A RESERVE FOR LOSSES ARISING FROM CLOSING AND SETTLEMENT PROTECTION UNDER § 22-104 OF THIS ARTICLE, ONE HALF OF ALL PREMIUMS AND FEES FOR PROVIDING THAT PROTECTION IN THE STATE OR ANY OTHER JURISDICTION UNTIL THE RESERVE HAS A MINIMUM BALANCE OF:~~

~~(I) \$6,000,000 IF THE TITLE INSURER, AS OF THE PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF LESS THAN \$5,000,000;~~

~~(II) \$4,000,000 IF THE TITLE INSURER, AS OF THE PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT LEAST \$5,000,000 AND LESS THAN \$10,000,000; OR~~

~~(III) \$2,000,000 IF THE TITLE INSURER, AS OF THE PRECEDING DECEMBER 31, HAD SURPLUS AS REGARDS POLICYHOLDERS OF AT LEAST \$10,000,000 AND LESS THAN \$15,000,000.~~

~~(2) A DOMESTIC TITLE INSURER WITH SURPLUS AS REGARDS POLICYHOLDERS OF AT LEAST \$15,000,000 MAY NOT BE REQUIRED TO ESTABLISH A RESERVE UNDER THIS SECTION.~~

~~(B) THE AMOUNT SET ASIDE IN RESERVE SHALL BE RELEASED AS FOLLOWS:~~

~~(1) IMMEDIATELY ON THE OCCURRENCE OF A LOSS ARISING UNDER § 22-104 OF THIS ARTICLE IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF THE LOSS; OR~~

~~(2) OVER A 4 YEAR PERIOD, 25% OF THE AGGREGATE AMOUNT OF THE RESERVE DEPOSITED IN THE RESERVE IN EACH OF THE 4 YEARS PRECEDING THE RELEASE AS OF JULY 1 OF THE RELEASE YEAR, LESS ANY AMOUNT NEEDED TO MAINTAIN THE MINIMUM REQUIRED BALANCE.~~

~~(C) A DOMESTIC TITLE INSURER THAT HAS PLACED FUNDS IN RESERVE MAY WITHDRAW THE ENTIRE RESERVE UNDER SUBSECTION (B)(2) OF THIS SECTION IF:~~

~~(1) THE TITLE INSURER MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS OF AT LEAST \$15,000,000;~~

~~(2) A FINAL ORDER OF LIQUIDATION OF THE TITLE INSURER IS ENTERED; OR~~

~~(3) THE TITLE INSURER VOLUNTARILY RELINQUISHES, OR COMPLIES WITH A FINAL ORDER OF SURRENDER OF, ITS CERTIFICATE OF AUTHORITY TO CONDUCT BUSINESS IN THE STATE.~~

~~22-102.~~

~~(a) Except as provided in subsection [(d)] (E) of this section, when, in connection with a real estate transaction that involves a purchase money mortgage or deed of trust on land in the State, a title insurer accepts a premium for a policy that insures the title to the property or the title insurer, its agent, or employee accepts a premium for mortgagee title insurance, the person first accepting the premium:~~

~~(1) shall insert the name of each insured in the binder for the title insurance or the title report; and~~

~~(2) immediately on receipt of the premium, shall deliver to the buyer or agent or attorney of the buyer written notice:~~

~~(i) of the name of each insured under the policy;~~

~~(ii) of the face amount of the policy;~~

~~(iii) of the buyer's right and opportunity to obtain simultaneous title insurance in the buyer's favor;~~

~~(iv) of the additional premium that will be required for purchase of simultaneous title insurance in the buyer's favor;~~

~~(v) that the buyer's title insurance will be subject only to the contingencies and conditions contained in the binder, title report, and policy;~~

~~(vi) of the buyer's right to review a sample of the form of policy in which the contingencies and conditions will be inserted; [and]~~

~~(vii) that contains a clear statement of the contingencies that must be satisfied to make the buyer's policy effective, if the buyer's policy is not effective on payment of the premium; AND~~

~~(VIII) 1. THAT CLOSING OR SETTLEMENT PROTECTION SHALL BE PROVIDED AGAINST THEFT OR MISUSE OF FUNDS BY THE TITLE INSURER OR ITS AGENT OR EMPLOYEE UNDER § 22-104 OF THIS SUBTITLE; AND~~

~~2. OF THE PREMIUM THAT WILL BE CHARGED FOR THIS COVERAGE.~~

~~(b) Before disbursing any funds, the person required to give notice under subsection (a) of this section shall obtain from the buyer, at the time the person delivers the notice, a statement in writing that the buyer has received the notice described in subsection (a) of this section and that the buyer wants or does not want owner's title insurance.~~

~~(e) (1) The person required to give notice under subsection (a) of this section shall retain the original signed statement of receipt required by subsection (b) of this section and a copy of the notice required by subsection (a) of this section for 3 years.~~

~~(2) The statement of receipt and notice shall be available for inspection by the Commissioner on request.~~

~~(d) IF THE PERSON FIRST ACCEPTING THE PREMIUM FAILS TO OBTAIN FROM THE PARTY TO THE CLOSING OR SETTLEMENT THE STATEMENT REQUIRED BY SUBSECTION (B) OF THIS SECTION AT OR BEFORE THE CLOSING OR SETTLEMENT AND DISBURSEMENT OF ANY FUNDS, THE FAILURE TO OBTAIN THE STATEMENT MAY BE CURED AT ANY TIME AFTER THE CLOSING OR SETTLEMENT AND BEFORE ACTUAL OR CONSTRUCTIVE NOTICE OF A POSSIBLE CLAIM THAT WOULD HAVE BEEN COVERED BY CLOSING OR SETTLEMENT PROTECTION UNDER § 22-104 OF THIS SUBTITLE BY SENDING A CERTIFIED LETTER, RETURN RECEIPT REQUESTED, TO THE PARTY AT THE PARTY'S LAST KNOWN ADDRESS.~~

~~(E) This section does not apply to a real estate transaction involving a mortgage or deed of trust securing an extension of credit made:~~

~~(1) solely to acquire an interest in or to carry on a business or commercial enterprise; or~~

~~(2) to any business or commercial organization.~~

~~22-104.~~

~~(A) IN THIS SECTION, "PROTECTED PARTY" MEANS A LENDER, BORROWER, SELLER, OR BUYER WHO IS A PARTY TO A TRANSACTION IN WHICH A TITLE INSURANCE POLICY WILL BE ISSUED.~~

~~(B) A TITLE INSURER SHALL PROVIDE CLOSING OR SETTLEMENT PROTECTION TO A PROTECTED PARTY IN ACCORDANCE WITH THIS SECTION.~~

~~(C) (1) THE CLOSING OR SETTLEMENT PROTECTION SHALL INDEMNIFY A PROTECTED PARTY AGAINST ONLY THE LOSS OF CLOSING OR SETTLEMENT FUNDS BECAUSE OF:~~

~~(i) THEFT OR MISAPPROPRIATION OF SETTLEMENT FUNDS IN CONNECTION WITH A TRANSACTION IN WHICH A TITLE INSURANCE POLICY WILL BE ISSUED BY OR ON BEHALF OF THE TITLE INSURER; OR~~

~~(ii) FAILURE TO COMPLY WITH THE WRITTEN CLOSING INSTRUCTIONS IF AGREED TO BY THE TITLE INSURER OR THE TITLE INSURER'S APPOINTED PRODUCER.~~

~~(2) THE INDEMNIFICATION UNDER PARAGRAPH (1) OF THIS SECTION IS ONLY TO THE EXTENT THAT THE ACTION OR FAILURE RELATES TO THE STATUS OF THE TITLE TO:~~

~~(i) THAT INTEREST IN LAND; OR~~

~~(ii) THE VALIDITY, ENFORCEABILITY, AND PRIORITY OF THE LIEN ON THE MORTGAGE OR DEED OF TRUST ON THAT INTEREST IN LAND.~~

~~(D) INDEMNIFICATION UNDER THIS SECTION MAY NOT BE PROVIDED FOR:~~

~~(1) LOSS OR IMPAIRMENT OF TRUST MONEY IN THE COURSE OF COLLECTION OR WHILE ON DEPOSIT WITH A FINANCIAL INSTITUTION DUE TO~~

~~FAILURE, INSOLVENCY, BANKRUPTCY, OR SUSPENSION OF THE FINANCIAL INSTITUTION;~~

~~(2) LOSS TO A PROTECTED PARTY ARISING FROM FRAUD BY THAT PROTECTED PARTY OR AN EMPLOYEE OR AGENT OF THE PROTECTED PARTY; OR~~

~~(3) LOSS THAT EXCEEDS THE ACTUAL AMOUNT OF FUNDS STOLEN OR MISAPPROPRIATED FROM THE PROTECTED PARTY DEPOSITED WITH THE TITLE INSURER OR PRODUCER IN CONNECTION WITH THE CLOSING.~~

~~(E) (1) EACH TITLE INSURER SHALL FILE FOR APPROVAL BY THE COMMISSIONER A PREMIUM TO BE COLLECTED FOR EACH TRANSACTION AT WHICH CLOSING OR SETTLEMENT PROTECTION IS PROVIDED.~~

~~(2) REGARDLESS OF THE NUMBER OF PROTECTED PARTIES IN THE TRANSACTION, THE PREMIUM SHALL BE AT LEAST \$50.~~

~~(3) THE PREMIUM MAY NOT BE SUBJECT TO AN AGREEMENT REQUIRING A DIVISION OF FEES OR PREMIUMS COLLECTED ON BEHALF OF THE TITLE INSURER.~~

~~(F) A TITLE INSURER OR PRODUCER MAY PROVIDE TO A PROTECTED PARTY A STATEMENT OF COVERAGE THAT IS CONSISTENT WITH THIS SECTION.~~

~~(G) A TITLE INSURER MAY NOT PROVIDE ANY OTHER COVERAGE TO INDEMNIFY AGAINST IMPROPER ACTS OR OMISSIONS OF A PERSON WITH REGARD TO CLOSING OR SETTLEMENT SERVICES.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That on or before August 1, 2012, each domestic title insurer shall file its initial premium for approval by the Maryland Insurance Commissioner under § 22-104(c) of the Insurance Article, as enacted by this Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2012, and shall affect all title insurance policies, closings, and settlements in the State on or after October 1, 2012.~~

~~SECTION 4. 2. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect July 1, 2012.~~

Approved by the Governor, May 22, 2012.

# Appendix 2

Appendix 2

MARTIN O'MALLEY  
Governor

ANTHONY G. BROWN  
Lt. Governor



THERESE M. GOLDSMITH  
Commissioner

KAREN STAKEM HORNIG  
Deputy Commissioner

THOMAS MARSHALL  
Associate Commissioner  
Compliance and Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202  
Direct Dial: 410-468-2217 Fax: 410-468-2245  
Email: [tmarshall@mdinsurance.state.md.us](mailto:tmarshall@mdinsurance.state.md.us)  
1-800-492-6116 TTY: 1-800-735-2258  
[www.mdinsurance.state.md.us](http://www.mdinsurance.state.md.us)

**DATE: August 7, 2012**

**TO: Maryland Title Insurer**

**RE: Attached Survey on the Closing or Settlement Protection Practices - Study**

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Please return the attached completed Survey and certification to Adam Zimmerman by close of business on Friday, **August 24, 2012**. Information may be sent electronically to Mr. Zimmerman at [titlesurvey@mdinsurance.state.md.us](mailto:titlesurvey@mdinsurance.state.md.us) or through the mail to the Maryland Insurance Administration at the address listed in the letterhead above, attention Adam Zimmerman.

Questions may be directed to Thomas Marshall, Associate Commissioner for Compliance and Enforcement at (410) 468-2217 or [tmarshall@mdinsurance.state.md.us](mailto:tmarshall@mdinsurance.state.md.us).

During the 2012 Maryland legislative session, the General Assembly enacted House Bill 866, Ch. 683, Acts 2012, (the "Act") entitled "Title Insurance – Closing or Settlement Protection Practices – Study" for the purpose, as stated in the Act at § 1(a)(1), of requiring the "Maryland Insurance Commissioner to study closing or settlement protection practices of the title insurance industry, including mechanisms for, and associated costs of, compensating consumers, title insurers, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate transaction; and (2) make recommendations for changes to the closing and settlement protection practices of the title insurance industry in the State."

In accordance with the Act, which became effective on July 1, 2012, and pursuant to §2-205 of the Insurance Article, Md. Code Ann., (the "Insurance Article"),<sup>1</sup> and Code of Maryland Regulations ("COMAR") 31.04.20, the Maryland Insurance Administration ("MIA") is conducting a survey of all title insurers authorized to sell title insurance in Maryland. Your participation is mandatory. To the extent that certain data supplied to the Insurance Commissioner is confidential commercial data protected under State Government Article §10-617(d) and Insurance Article §2-209(g), it will not be released except in the aggregate with data from other title insurers in a manner that does not permit an individual title insurer's information to be identified.

Thank you in advance for your immediate attention to this request and your cooperation.

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<sup>1</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

## SURVEY

### Title Insurance – Closing or Settlement Protection Practices Study Due by Close of Business on August 24, 2012

**Please note that, unless otherwise indicated, this Survey applies to Maryland title insurance business only.**

Please respond to the following questions, provide the information requested, and return with the completed Survey the signed Certification Statement for the information provided.

1. Does this title insurer possess a written policy and procedure for the annual audit of each of its appointed producers as required by §10-121(k)?  
 Yes                       No
  - a. If you answered "Yes" to Question # 1, please attach a copy of your written policy and procedure to this Survey.
  - b. If you answered "Yes" to Question #1, was this written policy and procedure in place from December 1, 2009, through December 31, 2011.  Yes       No
    - i. If you answered "No" to Question 1(b), please attach a copy of the policy(ies) and procedure(s) that was /were in place from December 1, 2009, through December 31, 2011.
  - c. If you answered "No" to Question #1, please attach a separate sheet of paper to this Survey explaining the procedure this title insurer utilizes in conducting an annual audit in compliance with the requirement in §10-121(k).
    - i. Was the procedure described in 1(c) in place from December 1, 2009, through December 31, 2011?  Yes       No
2. Has this title insurer been the underwriter for a transaction in which there was a defalcation by an appointed title insurance producer or another person or entity, in any state in which this title insurer does business, between December 1, 2009, and December 31, 2011?  Yes       No
  - a. If you answered "Yes" to Question #2, please complete Schedule A of this Survey.
3. In how many states is this title insurer authorized to do business? \_\_\_\_\_
  - a. Please complete Schedule B of this Survey to identify the States in which business is conducted, the number of appointed title agencies, and the number of appointed title producers.
4. Does this title insurer currently have a written policy and procedure designed to reduce the number and/or severity of defalcations?  Yes  No
  - a. If you answered "Yes" to Question #4, what is the effective date of the policy and procedure? (Month and Year) \_\_\_\_\_
  - b. If you answered "Yes" to Question #4, please attach the referenced policy and procedure to this Survey. Please also include copies of related bulletins, training materials, and updated audit procedures, if any.

- c. If you answered "No" to Question #4, please attach a separate sheet of paper to this Survey containing an explanation of why this title insurer does not have a written policy and procedure designed to reduce the number and/or severity of defalcations.
5. Does this title insurer have a written policy and procedure for the issuance of a Closing Protection Letter?  Yes  No
- a. If you answered "Yes" to Question #5, please attach this title insurer's written policy and procedure for the issuance of a Closing Protection Letter to this Survey.
  - b. If you answered "Yes" to Question #5, what is the effective date of the above-referenced written policy and procedure? (Month and Year) \_\_\_\_\_
  - c. Was the above-referenced written policy and procedure in effect between December 1, 2009, and December 31, 2011?  Yes  No
  - d. If you answered "No" to Question #5, please attach a separate sheet of paper to this Survey explaining the process utilized by this title insurer in connection with the issuance of a Closing Protection Letter.
    - i. When was this process, as described on the separate sheet of paper under (d), implemented? (Month and Year) \_\_\_\_\_
    - ii. Was this process utilized between December 1, 2009, and December 31, 2011?  Yes  No
  - e. Please attach a copy of a Maryland-specific Closing Protection Letter that is utilized by this title insurer.
6. Does this title insurer have a written underwriting standard for the availability of each of the following rates?
- a. Reissue title insurance rate?  Yes  No
  - b. Substitution title insurance rate?  Yes  No
  - c. Simultaneous title insurance rate?  Yes  No
  - d. If you answered "Yes" to a, b, or c of Question #6, please attach a copy of each underwriting standard to this Survey.
  - e. Under this title insurer's underwriting standard for each of the above-listed rates, in what manner is an appointed producer required to inform a consumer of the availability of each rate? (Please explain on the lines below. Please attach a separate sheet of paper if you need additional space.)  

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  - f. If you answered "No" to a, b, or c of Question #6, please explain on a separate sheet of paper this title insurer's underwriting standard for the rate listed above and in what manner consumers are informed of the availability of that particular rate by an appointed producer.

7. Does this title insurer maintain a bond, insurance policy, or any other form of coverage against loss caused specifically by the theft of escrow funds by an appointed producer? \_\_\_Yes \_\_\_No

a. If you answered "Yes" to Question #7, please provide the following information for each form of coverage that the title insurer maintains. If the title insurer maintains more than one form of coverage, please use a separate sheet of paper to report the below-listed information for each form of coverage and attach it to this Survey.

The type of coverage (for example, bond, insurance policy, etc.): \_\_\_\_\_

The carrier's name: \_\_\_\_\_

The dollar amount of the coverage: \_\_\_\_\_

The annual premium amount paid: \_\_\_\_\_

8. Under this title insurer's reinsurance policy, is a loss due to theft of escrow funds covered? \_\_\_ Yes \_\_\_ No

a. If you answered "Yes" to Question #9, is there a dollar amount cap for a loss due to the theft of escrow funds? \_\_\_ Yes \_\_\_ No

i. If there is a dollar amount cap for a loss due to the theft of escrow funds, what is the cap? \$ \_\_\_\_\_

ii. If there is a dollar amount cap for a loss due to the theft of escrow funds, is this cap applied per occurrence or in the aggregate?  
\_\_\_ Per Occurrence \_\_\_ In the Aggregate

b. What is the name of this title insurer's reinsurance carrier?  
\_\_\_\_\_

9. Please provide the Loss Ratio for this title insurer for each of the years 2009, 2010 and 2011 on Schedule C of this Survey.

10. Does this title insurer have a written policy and procedure wherein its appointed agencies and producers must notify it of the sale of insurance including the date of sale and amount of title insurance sold?

\_\_\_Yes \_\_\_No

i. If you answered "Yes" to Question #10, please attach a copy of the policy and procedure to this Survey.

ii. If you answered "No" to Question #10, please explain on a separate sheet of paper this title insurer's procedure for notification from its appointed agencies and producers of the sale of insurance including the date of sale and amount of insurance sold.

11. Please provide a copy of this title insurer's standard Maryland Agency Agreement as an attachment to this Survey.

**Certification of Information**

I certify that I am an officer of the title insurer named below and on whose behalf this Survey was completed, and that the information provided to the Maryland Insurance Commissioner in response to the attached Survey, entitled Title Insurance Closing or Settlement Protection Practices - Study, is, to the best of my knowledge, information and belief, a full, complete, and truthful response. I also certify that I have the authority and have undertaken an adequate inquiry to certify this information.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Title Insurer: \_\_\_\_\_



**QUESTION #3**

**Schedule B**  
**States / Agencies / Producers / Policies**

Please check those states within which this title insurer is authorized to do the business of insurance. Please also include the number of appointed title agencies and appointed title producers as of the date on which you are completing this Survey, and the number of title insurance policies sold in calendar year 2011 for the listed state.

<u>STATE</u>	<u># OF TITLE AGENCIES</u>	<u># OF TITLE PRODUCERS</u>	<u># OF TITLE INSURANCE POLICIES SOLD IN 2011</u>	<u>STATE</u>	<u># OF TITLE AGENCIES</u>	<u># OF TITLE PRODUCERS</u>	<u># OF TITLE INSURANCE POLICIES SOLD IN 2011</u>
AK				MS			
AL				MT			
AR				NC			
AZ				ND			
CA				NE			
CO				NH			
CT				NJ			
DC				NM			
DE				NV			
FL				NY			
GA				OH			
HI				OK			
IA				OR			
ID				PA			
IL				RI			
IN				SC			
KS				SD			
KY				TN			
LA				TX			
MA				UT			
ME				VT			
MD				VA			
MI				WA			
MN				WI			
MO				WV			
				WY			

**QUESTION #9**

**Schedule C**  
**Loss Ratio**

Please provide the loss ratio for this title insurer for 2009, 2010 and 2011.

<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>

# Appendix 3

MARTIN O'MALLEY  
Governor

ANTHONY G. BROWN  
Lt. Governor



THERESE M. GOLDSMITH  
Commissioner

KAREN STAKEM HORNIG  
Deputy Commissioner

THOMAS MARSHALL  
Associate Commissioner  
Compliance and Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202  
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Email: [tmarshall@mdinsurance.state.md.us](mailto:tmarshall@mdinsurance.state.md.us)  
1-800-492-6116 TTY: 1-800-735-2258  
[www.mdinsurance.state.md.us](http://www.mdinsurance.state.md.us)

**DATE: July 16, 2012**

**TO: Maryland Title Insurance Agency / Designated Licensed Responsible Producer**

**RE: Attached Survey on the Closing or Settlement Protection Practices - Study**

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Please return the attached completed Survey and certification to Adam Zimmerman by close of business on **Monday, July 30, 2012**. Information may be sent electronically to Mr. Zimmerman at [titlesurvey@mdinsurance.state.md.us](mailto:titlesurvey@mdinsurance.state.md.us) or through the mail to the Maryland Insurance Administration at the address listed in the letterhead above, attention Adam Zimmerman.

Questions may be directed to Thomas Marshall, Associate Commissioner for Compliance and Enforcement at (410) 468-2217 or [tmarshall@mdinsurance.state.md.us](mailto:tmarshall@mdinsurance.state.md.us).

During the 2012 Maryland legislative session, the General Assembly enacted House Bill 866, Ch. 683, Acts 2012, (the "Act") entitled "Title Insurance – Closing or Settlement Protection Practices – Study" for the purpose, as stated in the Bill at § 1(a)(1), of requiring the "Maryland Insurance Commissioner to study closing or settlement protection practices of the title insurance industry, including mechanisms for, and associated costs of, compensating consumers, title insurers, mortgage lenders, and other parties for monetary losses that result from the theft, misappropriation, or misuse of funds held in escrow by a title insurance producer in connection with a real estate transaction; and (2) make recommendations for changes to the closing and settlement protection practices of the title insurance industry in the State."

In accordance with the Act, which became effective on July 1, 2012, and pursuant to §2-206 of the Insurance Article, Md. Code Ann., (the "Insurance Article"),<sup>1</sup> and Code of Maryland Regulations ("COMAR") 31.04.20, the Maryland Insurance Administration ("MIA") is conducting a survey of all Maryland title insurance agencies. Data supplied to the Insurance Commissioner is confidential commercial data protected under State Government Article §10-617(d), and Insurance Article §2-209(g), except when aggregated with data from other title insurance agencies in a manner that does not permit any individual title insurance agency's information to be identified.

Thank you in advance for your immediate attention to this request and your cooperation.

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<sup>1</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

**SURVEY**

**Title Insurance – Closing or Settlement Protection Practices Study**  
**Due by Close of Business on Monday, July 30, 2012**

**Please note that, unless otherwise indicated, this Survey applies to Maryland title insurance business only.**

Please respond to the following questions, provide the information requested, and return the signed Certification Statement for the information provided.

1. Please enter the number of accounts for each category listed below that are maintained by your title insurance agency as of the date on which you are responding to this Survey.

\_\_\_ # of operating accounts

\_\_\_ # of escrow accounts (also known as trust or recording accounts)

\_\_\_ # of investment interest bearing accounts (also known as sweep accounts)

\_\_\_ # of title insurance premium accounts

\_\_\_ # of release fee (also known as recording fee) accounts

\_\_\_ # of other fiduciary and/or non-fiduciary accounts that are not listed above.

If you have other fiduciary and/or non-fiduciary accounts that are listed above please list them below. If you require additional space, please use a separate sheet of paper and attach it to this Survey.

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2. Does your title insurance agency co-mingle its residential and commercial escrow accounts?

\_\_\_ Yes      \_\_\_ No      \_\_\_ Sometimes (If you answered "Sometimes" please attach a Separate sheet of paper with an explanation of your answer.)

3. Does your title insurance agency co-mingle its Maryland settlement funds with the settlement funds from other states?

\_\_\_ Yes      \_\_\_ No

4. How many dormant escrow accounts does your title insurance agency currently have? For the purpose of this Survey, a dormant escrow account is an escrow account that has a balance but, other than the posting of interest, has had no activity for at least 90 consecutive days.

\_\_\_\_\_ (*# of dormant escrow accounts*)

- a. For each dormant escrow account reported above, please provide the information requested on Schedule A of this Survey and respond to Questions 4(b) and 4(c) below.
- b. Of the number of dormant escrow accounts that you reported above in Question # 4, how many of those dormant escrow accounts have been dormant for three or more years?

\_\_\_\_\_ (*# of dormant escrow accounts that have been dormant for three or more years*)

- c. What is the total current dollar amount in the dormant escrow account(s) that has/have been dormant for 3 or more years? \$ \_\_\_\_\_

5. Since 2006, has your title insurance agency escheated any funds to the State of Maryland?

\_\_\_ Yes      \_\_\_ No

- a. If you answered "Yes" to Question # 5, what is the total dollar amount that your title insurance agency has escheated to the State of Maryland since 2006? \$ \_\_\_\_\_

6. Does your title insurance agency have a written policy and procedure for returning escrowed funds to a consumer?

\_\_\_ Yes      \_\_\_ No

- a. If you answered "Yes" to Question # 6, please attach a copy of your written policy and procedure to this Survey.
- b. If you answered "No" to Question # 6, please explain on a separate sheet of paper how you return escrowed funds to consumers and attach your explanation to this Survey.

7. Does your title insurance agency have a written policy and procedure for informing consumers, prior to closing (also known as settlement), of the availability of the following rates:

- a. Reissue title insurance rates?      \_\_\_ Yes      \_\_\_ No
- b. Substitution title insurance rates?      \_\_\_ Yes      \_\_\_ No
- c. Simultaneous title insurance rates?      \_\_\_ Yes      \_\_\_ No

- d. If you answered "Yes" to (a), (b), (c) or (d) of Question # 7 please attach a copy of each policy and procedure to this Survey.
- e. If you answered "No" to (a), (b), (c), or (d) of Question # 7, please explain on a separate sheet of paper how you inform consumers of the availability of that particular rate and attach your explanation to this Survey.

8. With how many title insurers does your title insurance agency currently hold an appointment?

\_\_\_\_\_ (*number of title insurers*)

- a. Does your title insurance agency maintain separate escrow account for each title insurer with whom it holds an appointment?     Yes     No
  
- b. Does each title insurer with whom you hold an appointment have an up-to-date list of all licensed individuals who are either employed by or associated with your title insurance agency?  
  
     Yes     No     Some do and some do not.
  
- c. Please provide the information requested on Schedule B of this Survey.

9. In addition to the \$150,000.00 blanket fidelity bond or letter of credit and the \$150,000.00 blanket surety bond required under §10-121(e), does your title insurance agency maintain an(y) additional insurance policy(ies), bond(s), or letter(s) of credit that provide(s) coverage for losses due to the theft, misappropriation, or misuse of funds held in escrow by your title insurance agency in connection with a real estate transaction?

Yes     No

a. If you answered "Yes" to Question # 9, please provide the following information for each policy, bond, or letter of credit that your title insurance agency maintains that is in addition to the what is required under § 10-121(e). If your title insurance agency maintains more than one additional policy, bond, or letter of credit, please use a separate sheet of paper to report the below-listed information and attach it to this Survey.

The carrier's name: \_\_\_\_\_

The dollar amount of the coverage: \_\_\_\_\_

The annual premium amount paid: \_\_\_\_\_

10. Does your title insurance agency have a written policy and procedure for reconciling its escrow account(s)?

Yes     No

If you answered "Yes" to Question # 10, please attach a copy of your written policy and procedure to this Survey.

a. If you answered "No" to Question # 10, please explain on a separate sheet of paper how your title insurance agency reconciles its escrow account(s) and attach your explanation to this Survey.

b. Within how many days after your title insurance agency receives its bank statement does it reconcile its escrow account(s)? \_\_\_\_\_ (*number of days*)

c. Does your title insurance agency maintain a separate ledger for bank fees?

Yes     No

d. If your title insurance agency uses any miscellaneous ledgers, please include that information on Schedule C.

e. When reconciling its escrow account(s), does your title insurance agency perform a monthly review of the reconciliation detail for unusual activity or errors?

\_\_\_\_\_ Yes                      \_\_\_\_ No

f. Does your title insurance agency perform a three-way reconciliation each month on each of its escrow accounts to confirm that the monthly ending bank balance, trial balance, and checkbook balance are all equal?

\_\_\_\_\_ Yes                      \_\_\_\_ No

11. In how many states do you conduct real estate closings? \_\_\_\_\_ (*number of states*)

**Certification of Information**

I certify that I am an officer of the title insurance agency named below and on whose behalf this Survey was completed and submitted, and that the information provided to the Maryland Insurance Commissioner in response to the attached Survey, entitled Title Insurance Closing or Settlement Protection Practices - Study, is, to the best of my knowledge, information and belief, a full, complete, and truthful response. I also certify that I have the authority and have undertaken an adequate inquiry to certify this information.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Title Insurance Agency: \_\_\_\_\_





**QUESTION # 10**

**Schedule C**  
**Miscellaneous Ledger Information**

If you require additional space to please use a separate sheet of paper and attach it to this Survey.

Name of the Miscellaneous Ledger	Please explain the purpose of the miscellaneous ledger.