STATE OF NEW JERSEY

REAL ESTATE TITLE INSURANCE STUDY COMMISSION

REPORT

TO THE

LEGISLATURE

(PURSUANT TO ACR 77 OF 1972)

MARCH, 1974

LETTER OF TRANSMITTAL

MARCH, 1974

The Honorable, The Members Of The Senate and
General Assembly

Ladies and Gentlemen:

The Real Estate Title Insurance Study Commission created pursuant to Assembly Concurrent Resolution 77 of 1972 herewith respectfully submits its final report in compliance with the terms of the Resolution.

(s) WILLIAM J. HAMILTON, JR.
WILLIAM J. HAMILTON, JR.
CHAIRMAN

(s) RICHARD R. STOUT
RICHARD R. STOUT

(s)
JOSEPH A. MARESSA

(s) JOHN L. MILLER
JOHN L. MILLER

(s) PHILIP A. KALTENBACHER
PHILIP A. KALTENBACHER

(s) MICHAEL M. HORN *
MICHAEL M. HORN

(s) FRANK J. McDONOUGH
FRANK J. McDONOUGH

(s) KENNETH R. STEIN *
KENNETH R. STEIN

(s) KENNETH L. WALKER, JR.
KENNETH L. WALKER, JR.

* Assemblyman Horn and Ken Stein have submitted a joint partial dissent to the report, which may be found in Appendix A.

TABLE OF CONTENTS

REAL ESTATE TITLE INSURANCE STUDY COMMISSION

MEMBERS

Assemblyman William J. Hamilton, Jr., Chairman
District 7A (Part of Middlesex County)

Senator Richard R. Stout
District 5 (Monmouth County)

Senator Joseph A. Maressa
District 3B (Parts of Gloucester and Camden Counties)

Senator John L. Miller
District 3C (Part of Camden County)

Assemblyman Philip A. Kaltenbacher
District 11E (Part of Essex County)

Assemblyman Michael M. Horn
District 14C (Part of Passaic County)

Frank J. McDonough
Camden (Camden County)

Kenneth R. Stein
Newark (Essex County)

Kenneth L. Walker, Jr.
Shrewsbury (Monmouth County)

Peter P. Guzzo
Secretary

INTRODUCTION

This Commission was formed pursuant to Assembly Concurrent Resolution 77 of 1972 (filed February 16, 1973), with a broad authorization to study the real estate title insurance industry and all aspects of its practices and operations within the State. This included, without limitation, the payment of fees and commissions in connection with the placement of orders for title insurance; the methods and considerations involved in establishing premium rates and title examination charges; the feasibility of establishing a rating bureau for the industry; consideration of the need for the licensing and regulation of the industry including the possible need for licensing abstract companies; and other aspects of the practices and operations of the industry within the State. The full text of the resolution may be found in Appendix C. While this Commission was authorized to study many aspects of the title insurance industry, it may be noted here that it ultimately concerned itself with what it believed to be those areas of utmost concern in protecting the public interest.

ACR 77 was introduced April 10, 1972; it was passed by the Assembly on June 29, 1972, and by the Senate on January 29, 1973. Appointments to this Commission were completed soon thereafter, and the Commission organized at a meeting held March 12, 1973, in the State House. In arriving at its findings and recommendations, this Commission was materially assisted by -- and wishes to extend its thanks to --

the Honorable W. Morgan Shumake, former Deputy Commissioner, and Miss Kay Fern, of the New Jersey State Department of Insurance; members of the New Jersey State Bar Association; and members of the New Jersey Land Title Insurance Association. The Commission also expresses its thanks to Peter P. Guzzo, Research Associate in the Division of Research and Information, Legislative Services Agency, for serving as Commission secretary.

Immediate attention was given to the following areas of possible study and pressing concern to the public interest:

1. The degree of regulation of the title insurance industry in other states;

2. Activities on the federal level, including recently proposed Federal Housing Administration and Veterans Administration regulations;

3. Commissions in connection with the placement of title insurance, their cost, and the possible regulation thereof;

4. Tie-in arrangements between title companies and abstract lawyers, banks and real estate brokers;

5. Loss ratios and the rate making process;

6. The selling of title insurance by independent agents;

7. Operations and practices of title insurance companies and the possibility of the unauthorized practice of law;

8. The feasibility of revamping the entire conveyancing system to reduce costs, e.g., the"Torrens System";

9. The nature of title insurance companies in the State, as profit or non-profit corporations, and fiscal data on their operations;

10. Initial or starter title searches and practices relative to subsequent use of such searches; and

11. Forms employed by title insurance companies.

BACKGROUND

The work of this Commission between March 12, 1973, and the date of this Report was undertaken against a background of developing interest, both in this State and on the federal level, in reducing mortgage settlement costs and in standardizing these costs for all geographic areas. When title insurance is required, it is naturally involved as part of the settlement costs.

In January of 1972, the U.S. Department of Housing and Urban Development and the Veterans Administration issued a Report On Mortgage Settlement Costs. Among the findings and conclusions discussed in the aforementioned report -- and of immediate concern to the title insurance industry -- are the following:

1. State regulation of title insurance and other title related costs is essential but presently is largely ineffective.

2. Competitive forces in the conveyancing industry manifest themselves in an elaborate system of referral fees, kickbacks, rebates, commissions and the like as inducements to those firms and individuals who direct the placement of business. These practices are widely employed, rarely inure to the benefit of the home buyer, and generally increase total settlement costs.

3. Settlement charges often are based on factors unrelated to the cost of providing the services. The overall level of charges tends to be significantly lower

when the charge for a service is not directly related to the sales price of the property.

Prior to the creation of this Commission, Assembly Bill No. 1393, designated "The Title Insurance Act," had been introduced on July 17, 1972, several months after ACR 77, and referred to the Assembly Insurance Committee. This bill, since reintroduced in the 1974 Legislative Session as Assembly Bill No. 577, is based on the American Land Title Association's proposed model title insurance code, and represents a recognition by the industry that there is a need for State regulation of certain practices of the title insurance industry.

The State Department of Insurance has never been responsible for regulating the title insurance industry. Consequently, by 1970 there was a growing concern for broadening the powers of the Commissioner of Insurance so that title rates could be adequately governed, rate-fixing powers authorized, and other strong administrative controls over title insurance companies required. A title insurance advisory committee was formed and the industry's model bill, introduced subsequently as Assembly Bill No. 1393, was discussed and proposed for introduction in July of 1972. Although introduced as such, it was -- as is Assembly Bill No. 577 -- only a skeletal outline of needed regulations of the title insurance industry.

The above-mentioned trends converged in the creation of this Commission. ACR 77 was on the board for a vote in the General Assembly and was actually called for a vote several days after the introduction of Assembly Bill No. 1393. At the request of the sponsor of said bill, ACR 77 was held in order

to enable a review of Assembly Bill No. 1393 to be completed to see whether passage of the latter bill would obviate the need for the passage of ACR 77 and the formation of a Real Estate Title Insurance Study Commission. Eventually it was decided that a study of the title insurance industry was broad enough to merit a separate commission.

Although this Commission was not charged to consider any proposed bills, after starting its deliberations it decided that the most logical and thorough approach would be to combine its recommendations with those sections of Assembly Bill No. 1393, which it felt to be adequate, and produce a new bill. However, before the Commission could finalize its work, the 1972-1973 Legislative Session ended its regularly scheduled meetings. Consequently, the Commission members decided to present their finished product to the 1974-1975 Legislature as "The Title Insurance Act of 1974."

PROCEDURE

This Commission, being established without appropriation or other specific allocation of funds for operating purposes, was from its inception aware that it would be unable to conduct any detailed technical surveys or develop original statistical data on its own. In all such matters, including the preparation of this report, the Commission was able to rely upon existing studies and previously published research -- such as the HUD-VA Report; upon such expert testimony as it was able to obtain through public

hearings; and upon the experience of other states in regulating the title insurance industry, as well as the expertise possessed by members of the Commission. Consequently, this Commission saw its obligation as one of combing all existing studies and various statutory regulations extant in other jurisdictions; deliberating among itself and with various experts in our State Department of Insurance and in other states; and seeking general input at a public hearing -- with the end responsibility to determine if -- and what type of -- regulation of the title insurance industry is needed.

The existence of Assembly Bill No. 1393 constituted an important starting point for the Commission's work. This bill, as mentioned above, is the American Land Title Association's proposed model code, and the Commission had the advantage of the Association's collective input -- as well as revisions as they came out over the course of this Commission's study -- to serve as a reference point.

The May 10 public hearing constituted one of the more important resources of the Commission's work. Coming as it did in the midst of the Commission's schedule of working meetings, it gave the Commission a chance to see if its areas of concern were the same as those of the general public and anyone involved directly or indirectly in the title insurance industry.

TITLE INSURANCE

Title insurance has the distinction of being the only form of insurance invented in the United States, being used in Pennsylvania as early as 1853. By the end of World War II, title insurance was being written throughout the United

States, with established companies located in nearly all big cities. However, title insurance, unlike other types of insurance, generally has escaped comprehensive regulation by the states. The federal government, having delegated primary responsibility for regulation of the insurance industry to the states, has not filled this regulation void.

Title related costs are included -- when title insurance is to be used -- as part of a title closing, i.e., the formal transaction in which ownership of real property passes from the seller to the buyer. A title examination arises from the lender's and purchaser's need for assurance that the seller -- in fact -- owns the land and is able to convey it free from any objectionable encumbrances or restrictions. In addition to the basic methods of establishing clear title, title insurance may be used to supplement a lawyer's opinion or a commercial abstract plus a lawyer's opinion; or, title insurance alone may be used for establishing clear title. In this case, the title company makes its own search and examination, often utilizing its own title plant.

Title insurance's primary purpose is loss avoidance and the elimination of risk. Coverage is meant to protect against the possibility of loss occurring by reason of defects existent at the time the policy was issued, for which no exception was taken, which may cloud or invalidate the title. A title insurance policy usually contains four parts:

1) agreement of insurance; 2) a schedule describing the subject matter of insurance; 3) a schedule of exceptions; and 4) conditions of policy. Risks usually covered by title insurance policies are:

1. Errors in the title examination, i.e., negligence or fraud by an employee or agent of the company in making the title search and analyzing its results.

2. A few known defects (usually covered), i.e., setback requirements, restrictive covenants, easements, possibilities of reverter, rights of reentry, and slight encroachments made by improvements on neighboring land.

3. Defects that would be disclosed by an examination which the company intentionally does not make, i.e., a back search of title of more than 60 years.

4. Some hidden defects not disclosed by a competent examination of public records, physical inspection of the premises, or surveys, i.e., forgery, or, failure to note a marriage.

5. Marketability.

Risks usually not covered in title insurance policies are:

1. Defects disclosed by the title examination (and listed as exceptions).

2. Defects that physical inspection and survey of the premises would disclose.

3. Defects created subsequent to the date of the policy.

4. Defects of which the insured was aware or which he assumed prior to the date of the policy.

5. Restrictions of any government police power regulation on the use and enjoyment of the premises.

Title insurance is different from casualty insurance in that it envisions no fixed term, and only one premium is paid by the insured when the policy goes into effect. It may be obtained by both the owner and the mortgagee, i.e., there are two basic kinds of policies -- one protecting the owner's equity and the other protecting the mortgagee's interest. While usually a mortgagor is required to provide the coverage for the mortgagee, the option to buy an owner's policy is generally left to the buyer's discretion. The agreement to insure is a simple declaration of the company's intention to indemnify the insured against specifically defined title losses. The company's charge is a fixed rate usually based on the value of the property or the mortgage amount, depending on whether the policy is for the owner or mortgagee. The right to file a claim under the policy does not begin to run until a loss is sustained.

SYNOPSIS OF VARIOUS STATUTORY REGULATIONS OF THE TITLE INSURANCE INDUSTRY

Statutory insurance regulations can be classified into two categories:

1. Legislation to protect the insurer's solvency;

2. Legislation to provide equitable treatment of the policyholders by the insurer.

With regard to title insurance, some states subject title insurers to the same comprehensive regulations applied to other insurers under the general insurance code. Many states have achieved little more than superficial and uneven regulation of title insurers, while other states (apparently) have no machinery with which to carry out effective regulation of title insurers.

The usual legislative scheme exempts title insurance from the strictures of the general insurance code and covers the business in a less comprehensive chapter. In New Jersey, title insurance is specifically excluded from rate regulation by the State, and legislative records fail to disclose why.

Substantive state regulation of title insurance focuses primarily on the insurer's solvency, i.e., requiring minimum capitalization and reserve funds, and regulating investment practices in some way. Some states regulate the amount of capital that can be invested in a title plant. Other states specify that all reserve and guarantee funds should be set aside before dividends can be distributed. There are some states which also limit the size of a single-risk a title insurer may accept.

The public interest in maintaining the solvency of insurers led to the adoption of single-risk legislation to regulate many types of insurance carriers. It has been suggested

that because title insurers rarely suffer a loss, there has been little attempt to restrict the size of risks a title company may accept. Virginia is one of the few states which have applied single-risk limits to title insurance companies.

While these types of regulations protect the policyholder against the possibility of his insurer's insolvency, there is a paucity of regulations concerning the policyholder's position vis-à-vis that of the insurer. Although the casualty insurer's premium rates are invariably controlled, only fifteen states (according to a 1967 survey) require the title insurer to file rate schedules with their respective departments of insurance; three other states (according to this same survey) regulate rates by providing only that premiums shall not be unreasonable.

Another problem that has escaped legislative attention is the misconception entertained by many homeowners who neglect to purchase a fee policy in the belief that the mortgage policy protects their personal interests. This misconception is more the fault of the homeowner's attorney than the title insurer since the insurer would be more than willing to sell a second policy. Nevertheless, at least some states have adopted corrective legislation. New Jersey, for one, requires a company issuing a mortgagee policy of title insurance to obtain from the mortgagor a statement in writing that the mortgagor has been advised -- among other things -- of his right and opportunity to obtain title insurance in his own

favor if the same has not already been ordered or obtained. (P.L. 1964, c. 100; C. 46:10A-3, 4 and 5.)

Undoubtedly, the legislative action that would most directly affect the homeowner is rate regulation. Few states have apparently attempted this. Some writers attribute this reluctance to a fear that title insurance rates cannot be regulated appropriately or to a belief that such regulation is unnecessary. However, all students of this subject agree that rate regulation involves three factors:

1. The degree of risk assumed by the insurer;
2. Other costs of transacting business;
3. The title insurer's level of profit.

Rate regulation statutes can be ineffective. Some states regulating rates encourage administrative inertia by providing that filed rates will be final unless disapproved within a specified period. By placing the burden of action on the insurance commissioner, however, these statutes increase the probability that some rates will be accepted merely because of the administrative workload.

Overall, Texas and Pennsylvania have been singled out by students of title insurance regulations as those states which make a concerted effort to regulate title insurance comprehensively. The Texas "Title Insurance Act" (Texas Ins. Code, Art. 9) reserves to the State Board of Insurance of the State of Texas the power to promulgate rates, and to control and approve the policy form. The Board also regulates the size of the risk a company can accept and requires the insurer to deposit a reserve with the Board to guard against insolvency.

The Pennsylvania " Insurance Company Law of 1921" was amended in 1967 to insert a new article to read: "Article VII. Title Insurance Companies." This act, like the Texas act, provides for the comprehensive regulation of the title insurance industry, i.e., setting up capital, surplus and reserve requirements; providing for a maximum single risk provision; and fixing rates on the basis of specific statutory criteria.

FINDINGS AND RECOMMENDATIONS

This Commission agrees that regulation of the title insurance industry within a framework of law is necessary. Title insurance -- once a rarity in real estate sales prior to World War II -- is virtually mandatory today, adding another cost to closing fees. Regulations of the industry is necessary to protect the public and guarantee that title insurance premiums are fairly arrived at.

To achieve this end, and after an exhaustive review of all existing insurance provisions of Title 17 of the Revised Statutes, as well as other applicable State laws; other statutory regulations of the title insurance industry; and of the proposed provisions contained in Assembly Bill No. 1393 of 1972, this Commission recommends adoption and enactment of the "The Title Insurance Act of 1974," included in Appendix A of this report.

Among the major recommendations offered are the following:

1. While this Commission was in no way bound to accept (or reject) the provisions of Assembly Bill No. 1393 of 1972 -- since reintroduced in the 1974 Legislative Session as Assembly Bill No. 577 -- decisions to amend, redraft or reject existing provisions were made on a piecemeal basis. Said bill is comprehensive enough to serve as a starting point and skeletal outline for regulating the title insurance industry in this State.

2. Because of the unique provisions governing the financial conditions and financial reporting of title insurance companies; and inasmuch as title insurance rates and the permissible scope of the business of title insurance companies are separate and distinct matters from other insurance companies -- such matters should be dealt with in broader and more definitive provisions in a separate act, instead of amending or supplementing existing statutory provisions.

3. The title insurance industry is one of the last insurance industries to pay cash commissions to persons who procure (title) insurance for a client with a particular title company. Such action would be prohibited by the following recommendation of this Commission -- contained in section 34 of the proposed "Title Insurance Act of 1974":

> A title insurance company or agent of a title insurance company may not pay a commission, consideration or thing of value in any form, for procuring title insurance in a real estate transaction; provided, however, that nothing herein contained shall be construed to prohibit the payment of a commission or other compensation to a regular full time employee of a title insurance company or agent of a title insurance company as part of the regular compensation of such employee.

4. According to Formal Opinion Number 11 of the Unauthorized Practice of Law Committee, appointed by the New Jersey Supreme Court pursuant to the Constitutional power of the Court to regulate the practice of law in this State (Article 6, Section 2, Paragraph 3 of the New Jersey Constitution), published on December 28, 1972, in the New Jersey Law Journal, it constitutes the unlawful practice of law for a title or abstract company to issue a policy of title insurance or provide an abstract of title or search affecting New Jersey land to a person other than the present owner, a prospective buyer, or an attorney for a party interested in the premises; furthermore, a title or abstract company is guilty of the unlawful practice of law when it conducts real estate settlements on its premises without the presence of an attorney for any of the parties to the transaction. For this reason, this Commission recommends a prohibition against the unauthorized practice of law, as contained in section 13 of the proposed "Title Insurance Act of 1974":

> Prohibition against the practice of law. No title insurance company and no title insurance agent shall engage in the practice of law or render legal services, legal advice or legal opinions; prepare or participate in the preparation of instruments of conveyance or other instruments connected with or incident to the creation, conveyance, discharge, release, modification or acknowledgment of an interest in real property or any pledge thereof or lien thereon; or conduct or manage a closing, transaction, settlement or proceeding pursuant to which any interest in real property, or any pledge thereof or lien thereon, is created, conveyed, discharged, released, modified or acknowledged.
>
> Nothing herein contained shall be construed so as to prohibit the use of the premises occupied by a title insurance company or a title insurance agent for (1) a closing, transaction, settlement or proceeding

pursuant to which an interest in real property, or any pledge thereof or lien thereon, is created, discharged, released, modified or acknowledged; (2) the preparation of contract of title insurance or title reinsurance; or (3) the use of said premises as a depository for funds which are to be held, transferred or disbursed as an incident to such a closing, transaction, settlement or proceeding; or (4) the preparation by the title insurance company or a title insurance agent of a closing statement or settlement sheet setting forth and evidencing the receipt and disbursement of the funds which are to be held, transferred, or disbursed as an incident to such a closing, transaction, settlement or proceding, provided such closing statement or settlement sheet is approved in writing by all the parties to such closing, transaction, settlement or proceding.

Nothing herein contained shall be construed so as to permit or authorize acts by a title insurance company or title insurance agent which may now or hereafter be otherwise prohibited by the Supreme Court of the State of New Jersey and statutes in such case enacted and provided or applicable law.

5. As it is the intention of this Commission to prohibit individuals from avoiding or circumventing the prohibition of the payment of a commission, consideration or thing of value in any form, for procuring title insurance, and from being placed within conflict of interest situations -- both of which can arise where an individual acts as an agent with respect to his own customers or clients -- sections 1.o. and 39 are hereby recommended for inclusion in the proposed "Title Insurance Act of 1974":

1.o. "Source" as used in section 39 of this act shall be deemed to include clients and customers of attorneys at law and real estate brokers, where such attorney or broker acts as a title insurance agent in an individual, partnership or corporate capacity.

39. Personal or controlled insurance.

a. If the rates and charges for personal or controlled insurance from any one source so issued in any one calendar year received by a title insurance company or by a title insurance agent shall exceed 25%, or

from all such sources shall exceed 50% of the total rates and charges received by such title insurance company or by such title insurance agent for title insurance issued in the same year, the excess shall be deemed to be unlawful rebate.

b. The commissioner shall have full power and authority and it shall be his duty, to enforce and carry out by regulations, orders or otherwise, the provisions of this section and the full intent thereof. The commissioner may make such reasonable rules and regulations not inconsistent with this act, as may be necessary or proper in the exercise of his powers or for the performance of his duties under this section.

6. The insertion of a provision in section 30 of "The Title Insurance Act of 1974" regulating for the first time the licensing of title insurance agents in the manner provided for agents of insurance companies in Title 17:22-6.6 of the Revised Statutes, is recommended, with additional provisions for their licensing provided therein. This would repeal the provision of P.L. 1944, c. 175, as amended by P.L. 1946, c. 291 (C. 17:22-6.23), which exempts title insurance agents from the requirement of being licensed by the State Commissioner of Insurance.

7. Deletion of the "file and disapproval" rating system provision -- contained in Assembly Bill No. 1393 of 1972 and Assembly Bill No. 577 of 1974 -- for determining title insurance rates, and insertion therein of the necessary provisions to require the "prior approval" rating system -- by the Commissioner of Insurance -- for determining title insurance rates.

8. Since it is not within the purview of this Commission's responsibility, there is no need on the part of this Commission to look into the promulgation of a schedule of fees for title searching.

9. While it is not within the purview of this Commission's responsibility, this Commission does recommend licensing legislation that would require an abstractor to demonstrate his professional skill before he receives his license to search and make a report which will be the basis of title closings and serve as a prelude to the issuance of title insurance. Searchers who have practiced the art for a certain period of time prior to the enactment of such legislation would be admitted as licensed searchers upon their presenting proof of such required practice.

10. Because of the enormous task and time involved, this Commission found it inadvisable at this time to study the feasibility of employing the "Torrens System" in this State as the method -- or one of the methods -- of evidencing titles to land. It is recommended that a separate commission should be created to study the feasibility of employing the "Torrens System," and the cost and process involved in utilizing this system, in New Jersey.

PARTIAL DISSENT TO THE REPORT OF THE REAL ESTATE TITLE STUDY COMMISSION

The undersigned are members of the Real Estate Title Insurance Study Commission, (hereinafter "Commission") created pursuant to Assembly concurrent Resolution No. 77 of 1972. The following statement constitutes a partial dissent to the final report submitted by the Commission.

The area of the within dissent is limited to certain provisions of Section 13 ("Prohibition against the practice of law"). Annexed hereto as Exhibit I is a suggested substitute Section 13 (hereinafter "Substitute Section 13"). Briefly stated, the purpose of Section 13 is to prohibit title insurance companies from engaging in the unauthorized practice of law. The proposed act entitled "The Title Insurance Act of 1974" (hereinafter "Proposed Act") designates certain activities to be engaged in by title insurance companies which acts shall not be construed as the practice of law. More particularly, the Proposed Act provides in part that nothing contained therein shall prohibit "the preparation by the title insurance company or a title insurance agent of a closing statement or settlement sheet setting forth and evidencing the receipt and disbursement of the funds which are to be held, transferred or disbursed as an incident to such a closing, transaction, settlement or proceeding, provided such closing statement or settlement sheet is approved in writing by all the parties to such

closing, transaction, settlement or proceeding".

The undersigned respectfully submit that to permit a title insurance company to prepare a "closing statement" or "settlement sheet" as comtemplated by The Act would be to permit and authorize a title insurance company to engage in the practice of law.

Section 4 of the Commission's Report to the Legislature cites with approval Formal Opinion Number 11 of the Unauthorized Practice of Law Committee appointed by the New Jersey Supreme Court (page 18). Formal Opinion Number 11 states that there is no question but that the practice of law embraces the art of conveyancing and concludes that:

> The present practice of Title companies in conducting closings or settlements without the presence of attorneys, which is part of a system that discourages the presence of attorneys, does constitute the practice of law. Since such practice by a lay corporation or person is not in the public interest, it constitutes the unauthorized practice of law.

It is important to recognize that the preparation of a closing statement or settlement sheet is not a mere ministerial act or mathematical function. The closing statement or settlement sheet is the formal instrument which sets forth with finality the various financial rights and obligations of the parties and is the basis upon which the monies involved in a real estate transaction are ultimately exchanged. In order to prepare such a statement it is necessary to interpret and evaluate the agreement between the parties and the law

applicable thereto. Once such interpretation and evaluation has been made and the rights of the parties determined, it is required that the draftsmen of the closing statement translate the rights and obligations of the parties into the various credits and debits which constitutes the closing statement. The closing statement is in every sense a formal written instrument which is executed by and binding upon the parties.

The fact that the closing statement does not pose sophisticated questions of law in many routine closings should not detract from the importance of the instrument. The fact that a closing statement is ultimately approved by the parties to the transaction does not give sanctity to the instrument if its preparation constitutes an improper act. Further, while it may be contended that preparation of the closing statement by the title insurer is a practical convenience, surely it is not intended that substantial legal rights be impaired or an unlawful act be tolerated in the name of convenience.

The purpose of a title insurance company is to guarantee and indemnify owners of various interests in real estate. The title insurance company is of course authorized to issue such contracts of guarantee and indemnity and is further authorized to search titles and to engage in other underwriting and investigatory functions in order to evaluate its risks. It is clear that the preparation of a title closing statement is not a direct function of title insurance nor is it an aid to the title insurance company in evaluating or underwriting its risks. Rather, the preparation of the title closing statement is part of the documentation of the financial rights and

obligations of the parties. It is clearly the practice of law.

The function of a title insurance company is an important one in the field of real estate economics. However it is also in the public interest to encourage parties to a real estate transaction to seek independent counsel and to avoid leading a layman into believing that he is fully protected merely because a title insurance company places its imprimatur on the title closing statement.

We urge that the Proposed Act be amended so as to include Substitute Section 13 in the place of the present Section 13.

(s) MICHAEL M. HORN
MICHAEL M. HORN

(s) KENNETH R. STEIN
KENNETH R. STEIN

SUBSTITUTE SECTION 13

13. Prohibition against the practice of law.

a. No title insurance company and no title insurance agent shall: (i) engage in the practice of law or render legal services, legal advice or legal opinions; (ii) prepare or participate in the preparation of agreements of sale or exchange, instruments of conveyance or other instruments connected with or incident to the creation, conveyance, exchange, discharge, release, modification or acknowledgment of an interest in real property or any pledge thereof or lien thereon; or ; (iii) conduct or manage a closing, transaction, settlement or proceeding pursuant to which any interest in real property, or any pledge thereof or lien thereon, is created, conveyed, exchanged, discharged, released, modified or acknowledged or agreed to be created, conveyed, exchanged, discharged released, modified or acknowledged.

b. Nothing herein contained shall be construed so as to prohibit: (i) the use of the premises occupied by a title insurance company or a title insurance agent for a closing, transaction, settlement or proceeding pursuant to which an interest in real property, or any pledge thereof or lien thereon, is created, discharged, released, modified or acknowledged; (ii) the preparation of a contract of title insurance or title reinsurance, or; (iii) the use of a title insurance company or a title insurance agent as a depository for funds which are to be held, transferred or disbursed as an incident to such a closing, transaction, settlement or proceeding.

c. Nothing herein contained shall be construed so as to permit or authorize acts by a title insurance company or title insurance agent which may now or hereafter be otherwise prohibited by the Supreme Court of the State of New Jersey and statutes in such case enacted and provided or applicable law.

APPENDIX B

AN ACT providing for the licensing, qualification, regulation, examination, suspension and dissolution of title insurance companies, the examination and regulation of rates and rating organizations for title insurance, the regulation of agents and applicants for title insurance, prohibiting the payment of commissions for procuring title insurance, prescribing the terms and conditions upon which foreign title insurance companies may be admitted or may continue to do title insurance business within the State, a prohibition against the practice of law, a prohibition on personal or controlled insurance imposing penalties, repealing inconsistent laws and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

CONTENTS

H. Mergers, Consolidations and Acquisitions

27. Mergers and consolidations of title insurance companies.

28. Corporate acquisitions other than by merger or consolidation.

29. Purchase or acquisition of controlling stock.

I. Agents

30. Title insurance agents; names to be certified to commissioner; application and examination for a license.

31. Title insurance agents; books and records.

32. Title insurance agents, replies to inquiries by commissioner.

33. Title insurance agents; certain names prohibited.

J. Commissions and Rebates

34. Commissions; no right to pay.

35. Rebates or reduced fees.

36. Examination of records.

37. Additional penalty.

38. Permitted division of fees.

39. Personal and controlled insurance.

K. Rates, Rating Organizations and Rate Making Procedures

40. General provisions.

41. Rate filing.

42. Justification for rates.

43. Proposing of rates.

44. Approval or disapproval of filings.

45. Title insurance rating organizations.

46. Deviations.

47. Appeal by minority.

48. Rate administration, authority and duties of commissioner; rules and regulations.

A. Preliminary Provisions

1. Certain words defined. As used in this act:

a. "Title insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said property, guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing

in a manner designed to evade the provisions of this act.

b. The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of the title insurance, including abstracting, examination of title, solicitation, negotiation preliminary to execution of a contract of title insurance, and execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this act.

c. "Title insurance company" means any domestic company organized under the provisions of this act for the purpose of insuring titles to real estate, any title insurance company organized under the laws of another state or foreign government and licensed to insure titles to real estate within this State pursuant to section 25 of this act, and any domestic or foreign company having the power and authorized to insure title to real estate within this State as of the effective date of this act and which meets the requirements of this act.

d. "Applicants for insurance" shall be deemed to include all those, whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance, and who at the time of such application are not agents for a title insurance company.

e. "Premium" for title insurance means that portion of the fee charged by a title insurance company, agent of a

title insurance company or approved attorney of a title insurance company, or any of them, to an insured or to an applicant for insurance, for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy.

f. "Fee" for title insurance means and includes the premium for the assumption of the insurance risk, charges for abstracting or searching, examination, determining insurability, and every other charge, whether denominated premium or otherwise, made by a title insurance company, agent of a title insurance company, or any of them, but the term "fee" shall not include any charges paid to and retained by an attorney at law whether or not he is acting as an agent of a title insurance company or an approved attorney.

g. "Commissioner" means the Commissioner of Insurance of the State of New Jersey.

h. "Approved attorney" means an attorney at law, who is not an employee of a title insurance company or of a title insurance agent, upon whose examination of title and report thereon a title insurance company may issue a policy of title insurance.

i. "Title insurance agent" means a person, firm, association, corporation, cooperative or joint-stock company authorized in writing by a title insurance company to solicit insurance risks and collect fees in its behalf and who in the regular course of business as such agent examines title to real estate, determines insurability in accordance with underwriting rules and standards prescribed by such title insurance company, and issues a title report, binder, or commitment to insure, and policy based upon the examination performed by such agent and determination of insurability as aforesaid. Provided, however, the term "title insurance agent" shall not include officers and salaried employees of any title insurance company authorized to do a title insurance business within this State.

j. "Single insurance risk" means the insured amount of any policy or contract of title insurance issued by a title

insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts. However, any such policy or contract that insures a mortgage interest that is expected in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.

k. "Net retained liability" means the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with paragraph j. of this section, after the purchase of reinsurance.

l. "Foreign title insurance company" means a title insurance company organized under the laws of any other state of the United States.

m. "Alien title insurance company" means any title insurance company incorporated or organized under the laws of any foreign nation or of any province or territory thereof, not included under the definition of "Foreign title insurance company."

n. "Personal or controlled insurance" means a policy of title insurance where the source or origination of the application for insurance or where the insured or one of the insureds under such policy is, or the loss thereunder is payable to:

(1) the title insurance company issuing such policy, or (a) any person or corporation directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such title insurance company, or (b) any corporation which is directly or indirectly controlled by a person or corporation which also controls the title insurance company as described in paragraph (1) (a)

of this subsection, or (c) any corporation making consolidated returns for United States income tax purposes with such title insurance company or any corporation described in paragraphs (1)(a) and (1)(b) of this subsection; or

(2) the title insurance agent issuing such policy, or

(a) if such title insurance agent is a natural person,

(i) his spouse, his employer or his employer's spouse; or

(ii) any person related to him or the persons mentioned in subparagraph (i) of paragraph (2)(a) of this subsection within the second degree by blood or marriage; or

(iii) if his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation; or

(iv) if his employer is a partnership or association, any person owning an interest in such partnership or association.

(b) If such title insurance agent is a corporation,

(i) any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation; or

(ii) any corporation which is directly or indirectly controlled by a person who also controls the title insurance agent as described in subparagraph (i) of paragraph (2)(b) of this subsection; or

(iii) any corporation making consolidated returns for United States income tax purposes with any corporation described in subparagraph (i) or (ii) of paragraph (2)(b)of this subsection.

o. "Source" means and includes clients and customers of attorneys at law and real estate brokers, where such attorney or broker acts as a title insurance agent in an individual, partnership or corporate capacity.

2. Short title. This act shall be known and may be cited as "The Title Insurance Act of 1974."

3. Application of act. The provisions of this act shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title

insurance, policyholders and to all persons and business entities engaged in the business of title insurance.

4. Severability. The provisions of this act shall be severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of this act.

5. Compliance with act required. On and after the effective date of this act, only a title insurance company shall underwrite or issue a policy of title insurance. No person, firm, association, corporation, cooperative, joint-stock company or trust shall engage in the business of title insurance in this State unless authorized to transact such a business by the provisions of this act.

B. Title Insurance Company

6. Corporate form required. A title insurance company shall be organized as a stock corporation as provided in R.S. 17:17-2 except as hereinafter specified in this act.

7. Financial requirement:

a. Every title insurance company shall have a minimum capital, which shall be paid in and maintained, of not less than $250,000.00 and, in addition, paid-in surplus of at least $125,000.00.

b. Every title insurance company shall, prior to the issuance of any policy of title insurance in this State, have on deposit with the Commissioner of Insurance of the state of its domicile or in segregated funds if permitted by the company's state of domicile the sum of $100,000.00 as a guarantee fund for the security and protection of its policyholders wherever situated, or beneficiaries under such policies. The amount of such deposit shall be increased by the sum of $50,000.00 for each state or territorial subdivision of the United

States, other than the state of its domicile, in which it shall be or become qualified to engage in the business of title insurance, less the amount required by and deposited in such other states or territorial subdivisions. When the aggregate of amounts so deposited in this or such other states or territorial subdivisions has reached the sum of $250,000.00 no further deposit shall be required of such title insurance company as a condition of its qualification to engage in the business of title insurance in this State.

In the event any company is unable to make the deposits herein required in the state of its domicile by reason of a lack of statutory authority for such deposits, then such deposits may be made with the commissioner of this State.

c. The deposit required to be made by subsection b. of this section may be made in lawful money of the United States or in the classes of investments authorized by section 21 of this act for the investment of the capital of title insurance companies.

d. Assets deposited pursuant to subsection b. of this section may, with the approval of the commissioner, be exchanged from time to time for other assets of like value.

e. As long as the capital of the depositing title insurance company remains unimpaired, it shall receive the income, interest and dividends on any assets deposited.

f. Any title insurance company which has deposited assets pursuant to subsection b. of this section may, with the approval of the commissioner, withdraw any part of the assets so deposited; provided, however, that should said title insurance company continue to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposit below the amount required by subsection b. of this section.

g. Deposits made pursuant to subsection b. of this section shall be used solely for the security and protection of the insureds under the policies and contracts of insurance issued or reinsurance assumed by such title insurance company. In the event of insolvency or dissolution of such title insurance company, such deposits shall continue to be retained by the commissioner until such time as all outstanding liabilities created by such policies, contracts, or reinsurance agreements have been discharged by reinsurance or otherwise. Such deposits, or so much thereof as shall be necessary, may be used by or with the written approval of the commissioner in the payment of claims arising under such policies, contracts or reinsurance agreements or to purchase reinsurance thereof. Any amounts then remaining with the commissioner shall be applied first to the payment of other obligations of such title insurance company, and second shall be distributed to the stockholders of such title insurance company. The actions of the commissioner shall be subject to judicial review as provided in section 58 of this act.

h. If, with respect to any title insurance company as defined in subsection c. of section 1 of this act, this section 7 requires a greater amount of capital or surplus or deposit than required of such title insurance company immediately prior to the effective date of this act, such title insurance company shall have the period ending July 1, 5 years after the effective date of this act within which to comply with any such increased requirement.

8. Procedure when capital impaired:

a. If, for any reason, the capital of a domestic title insurance company becomes impaired and such impairment shall not be eliminated within 30 days from its inception, the

company shall forthwith give written notice thereof to the commissioner. The commissioner, upon receipt of such notice or upon otherwise discovering an impairment of capital, shall determine the amount of such impairment and issue a written requisition to the company to eliminate the impairment within such period as he shall designate not more than 60 days from the service of the requisition. He may also by official order prohibit the company from issuing ary policies or contracts of title insurance while such impairment exists.

b. Such title insurance company, with the consent and approval of the commissioner, may authorize new or additional shares of stock, and issue certificates therefor, and dispose of the same at not less than their par value for an amount sufficient, at least, to make up the capital impairment, or the commissioner may, in his discretion permit such company to reduce its capital and the par value of its shares, but the capital shall at no time be reduced to an amount less than that required by law for the organization of any such company, after making due allowance for the number of states or territorial subdivisions of the United States in which said company shall retain its qualification to engage in the business of title insurance. In fixing such reduced capital, not less than $125,000.00 nor more than 33 1/3% of the net assets existing at the time of such capital reduction shall be designated as surplus; nor shall any part of such assets be distributed to stockholders. When the amount of capital prescribed by the commissioner has been established, such title insurance company shall so notify the commissioner, who, upon being satisfied that the impairment no longer exists and is not likely to recur, shall give written approval authorizing such title insurance

company to resume issuance of policies or contracts of title insurance, in the state of its domicile, and reinsurance agreements with respect thereto.

c. If the capital of any title insurance company other than a domestic company authorized to do business in this State is found so impaired, the commissioner, may after notice and hearing, revoke its license to transact business in this State.

9. Determination of insurability required. No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than 15 years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company may, in the regular course of business, establish a system whereby all or part of these writings are recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This section shall not apply to a company assuming no primary liability in a contract of reinsurance, or a company acting as a coinsurer if one of the other coinsuring companies has complied with this section.

10. Power to insure titles to real estate. Every title insurance company shall have the power to do the kinds of business defined in subsections a. and b. of section 1 of this act, and to make searches, abstracts, examine titles

to real property and chattels, procure and furnish information in relation thereto, and to provide any other services related to the land title business.

11. Prohibition upon guaranteeing mortgages and completion. A title insurance company shall not, in any manner whatsoever, guarantee the payment of the principal or the interest of bonds or other obligations secured by mortgages upon real property; nor shall a title insurance company, in any manner whatsoever guarantee the completion of any building, structure or project.

12. Prohibition against transacting other kinds of insurance; prohibition against other kinds of insurance companies transacting title insurance. A title insurance company shall not transact, underwrite or issue any kind of insurance other than title insurance; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance.

13. Prohibition against the practice of law.

a. No title insurance company and no title insurance agent shall engage in the practice of law or render legal services, legal advice or legal opinions; prepare or participate in the preparation of instruments of conveyance or other instruments connected with or incident to the creation, conveyance, discharge, release, modification or acknowledgment of an interest in real property or any pledge thereof or lien thereon; or conduct or manage a closing, transaction, settlement or proceeding pursuant to which any interest in real property, or any pledge thereof or lien thereon, is created, conveyed, discharged, released, modified or acknowledged.

b. Nothing herein contained shall be construed so as to prohibit the use of the premises occupied by a title insurance company or a title insurance agent for (1) a

closing, transaction, settlement or proceeding pursuant to which an interest in real property, or any pledge thereof or lien thereon, is created, discharged, released, modified or acknowledged; (2) the preparation of a contract of title insurance or title reinsurance; (3) the use of said premises as a depository for funds which are to be held, transferred or disbursed as an incident to such a closing, transaction, settlement or proceeding; or (4) the preparation by the title insurance company or a title insurance agent of a closing statement or settlement sheet setting forth and evidencing the receipt and disbursement of the funds which are to be held, transferred, or disbursed as an incident to such a closing, transaction, settlement or proceding, provided such closing statement or settlement sheet is approved in writing by all the parties to such closing, transaction, settlement or proceding.

c. Nothing herein contained shall be construed so as to permit or authorize acts by a title insurance company or title insurance agent which may now or hereafter be otherwise prohibited by the Supreme Court of the State of New Jersey and statutes in such case enacted and provided or applicable law.

C. Reserves

14. Unearned premium reserve.

a. Every domestic insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall, at all times for all purposes, be deemed and shall constitute the unearned portions of premiums due or received and shall be charged as a reserve liability of such title insurance company in determining its financial condition.

b. The unearned premium reserve shall be retained and held by such title insurance company for the protection

of the policyholders' interest until released as prescribed in section 15f. of this act in policies which have not expired. Except as provided in section 17 of this act, assets equal to the amount of such reserve shall not be subject to distribution among creditors or stockholders of such title insurance company until all claims of policyholders or holders of other title insurance contracts or agreements of such title insurance company have been paid in full and all liability on the policies or other title insurance

contracts or agreements, whether contingent or actual, has been discharged or lawfully reinsured. Income from the investment of the amount of such reserve shall be the property of the title insurance company.

15. Amount of unearned premium reserve; release thereof.

a. The unearned premium reserve of every domestic title insurance company shall consist of:

(1) The amount of the reserve held as of the effective date of this act, pursuant to or under permission granted by P. L. 1938, c. 289, s. 6, as amended by P. L. 1949, c. 180, s. 1 (C. 17:18-13); and

(2) The amount of all additions required to be made to such reserve by this section, less the withdrawals therefrom as required by this section.

b. After the effective date of this act, every domestic title insurance company shall add to its unearned premium reserve, in respect to each policy or reinsurance agreement issued by it, a sum of money out of the fees due or received for such title insurance made by it and deemed to be unearned portions of such fees, a sum equal to $1.50 for each such policy or contract or agreement, plus $0.12 1/2 for each $1,000.00 face amount of net retained liability, as defined in subparagraph k. of section 1, of this act, and shall separately record the aggregate amounts so set aside and reserved in respect to such policies, contracts or agreements written in each calendar year.

c. No such reserves shall be required for a policy or contract that insures a mortgage interest which is excepted in a simultaneously issued owner's policy or contract covering the same estate in land and which does not exceed the insured amount of such owner's policy or contract.

d. The amounts set aside as additions to the unearned premium reserve shall be deducted in determining net profits of any title insurance company.

e. For the purpose of determining the amounts of the unearned premium reserve that shall be withdrawn pursuant to paragraph f. of this section, and the interest of the policyholders therein under section 17 of this act, all policies, contracts of title insurance or reinsurance agreements of title insurance shall be considered as dated on July 1 of the year of issue.

f. The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subparagraph b. of this section shall be released from said reserve and restored to net income in years of release pursuant to the following formula:

one-twentieth of such aggregate sum on July 1 of each of the years next succeeding the year of addition to the reserve for a period of 20 years until the entire sum shall have been so released and restored to net profits.

The reserve held at the effective date of this act referred to in subsection a. (1) of this section shall continue to be released as provided in this section; provided, however, that the aggregate of the reserve created by said statutes shall continue to be presumed to have been established out of income in 20 equal annual additions over the 20 years preceding the year in which this act becomes effective, whether or not such title insurance company had been in existence for that period.

g. If substantially the entire outstanding liability under all policies, contracts of title insurance or reinsurance agreements of any title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this State, shall constitute, in its entirety, unearned portions

of original premiums and be added to its unearned reserve and deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less, however, than 2/3 of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance.

16. Maintenance of the unearned premium reserve. If by reason of any cause, other than depreciation in the market value of investments, the amount of the assets of a title insurance company held as investments of its unearned premium reserve should on any date be less than the amount required to be maintained by law in such reserve, and the deficiency shall not be promptly cured, such title insurance company shall forthwith give written notice thereof to the commissioner and shall make no further policies, contracts of title insurance or reinsurance agreements of title insurance until the deficiency shall have been eliminated and until it shall have received written approval from the commissioner authorizing it to again issue such policies, contracts of title insurance or agreements.

17. Use of the unearned premium reserve on liquidation, dissolution or insolvency.

a. If a title insurance company becomes insolvent, or is in the process of liquidation or dissolution, or in the possession of the commissioner:

(1) such amount of the assets of such title insurance company equal to the unearned premium reserve then remaining as is necessary may be used by or with the written approval of the commissioner, to pay for reinsurance of the liability of such title insurance company upon all outstanding policies or contracts or reinsurance agreements of title insurance, as to which claims for losses by the holders are not then

pending, the balance, if any, of assets equal to the unearned premium reserve fund then remaining, then to be transferred to the general assets of the title insurance company;

(2) the assets other than the unearned premium reserve shall be available to pay claims for losses sustained by holders of policies then pending or arising up to the time reinsurance is effected. In the event that claims for losses are in excess of such other assets of the title insurance company, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve, to the extent of such surplus, if any.

b. In the event that reinsurance is not obtained, the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held by the commissioner for 20 years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of such fund shall, at expiration of 20 years, revert to the general assets of the title insurance company.

18. Reserve for unpaid losses and loss expense.

a. Each domestic title insurance company shall at all times establish and maintain, in addition to other reserves, a reserve:

(1) against unpaid losses, and (2) against loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from or on behalf of the insured, of a title defect in or lien or adverse claim against the title insured, that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of the items so estimated shall be the total amounts of the

reserves against unpaid losses and loss expenses of such title insurance company.

b. The amounts so estimated may be revised from time to time as circumstances warrant, but shall be redetermined at least once each year.

c. The amounts set aside in such reserves in any year shall be deducted in determining the net profits for such year of any title insurance company.

D. Limit on Net Retention

19. Net retained liability. The net retained liability of any title insurance company under any single insurance risk as defined in subsections j. and k. of section 1 of this act shall not exceed the net amount remaining after deducting from the sum of its capital, surplus, unearned premium reserve and voluntary reserves, the value, if any, assigned in such summation to its title plants, all as shown in its most recent report on file with the commissioner. The same limitation shall apply to any secondary risk assumed by means of reinsurance or to any policy of excess coinsurance.

Nothing in this section is intended to limit the amount of a single insurance risk, as defined in subsection j. of section 1 of this act, that may be written or assumed by a title insurance company, provided it shall cede to one or more other title insurance companies, on or before the effective date of such writing or assumption, such portion, or portions, of the said risk as shall be sufficient to bring its net retained liability thereunder within the limits hereinabove set forth; and provided, further, that each such cession of risk shall also be within the limits of this section as applied to the sum of the capital, surplus, unearned premium reserve and voluntary reserves, less the value, if any, assigned in such summation to the title plants of the assuming and reinsuring title insurance company, as shown by its most recent report on file with the

supervisory agency in the state of its domicile.

E. Reinsurance

20. Power to reinsure. Any title insurance company authorized to engage in the business of title insurance in this State may cede reinsurance of all or any part of its liability under one or more of its policies or contracts or reinsurance agreements to any title insurance company authorized to engage in the business of title insurance in this or any other state; provided, however, that no larger amount of reinsurance shall be ceded to any title insurance company on a single policy, or contract of title insurance, or on any single title insurance risk as defined in subsection j. of section 1 of this act, than such title insurance company would be permitted to retain if authorized to engage in the business of title insurance in this State. It may also reinsure policies of title insurance issued by other companies on risks whether located in this State or elsewhere. Any domestic title insurance company or any foreign title insurance company authorized to transact business in this State shall pay to this State taxes required on all business taxable within this State and reinsured, as provided in this section, with any foreign company not authorized to do business within this State. Issuance of contracts of reinsurance by a title insurance company not authorized to engage in the business of title insurance in this State, but authorized to engage in the business of title insurance in any of the United States, reinsuring a title insurance company authorized to engage in the business of title insurance in this State on real property located in this State, shall not of itself constitute the doing of business in this state by such reinsuring company.

F. Investments

21. Minimum capital. An amount equivalent to the minimum capital requirements as defined in subsection a. of section 7 shall be retained as cash on hand or on deposit in banks, or shall be invested in the following classes of investments; provided, however, that the aggregate invested at any time in those classes of investments set forth in subsections g., h., i. and p. of this section shall not, without written approval of the commissioner, exceed 50% of the sum of the capital and surplus of such title insurance company as shown by its most recent statement on file with said commissioner:

a. Government obligations. Bonds, notes or obligations issued, assumed or guaranteed by the United States, or by any state, district or territory of the United States, or the Commonwealth of Puerto Rico.

b. Governmental subdivisions or public instrumentality obligations. Valid and legally authorized bonds, notes or obligations issued, assumed or guaranteed by:

(1) any city, town, county, borough, township, municipality, school district, poor district, water, sewer, drainage, road or other governmental district or division located in the United States or any state, district or territory thereof and the Commonwealth of Puerto Rico; or by

(2) any public instrumentality other than a municipal authority of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such bonds or other evidences of indebtedness of such instrumentality are payable, as to principal and interest, from taxes levied or by law required to be levied, upon all taxable property or all taxable income within the jurisdiction of the governmental unit or units of which it is an instrumentality, or from revenue pledged or otherwise appropriated or by law required to be provided for the

purpose of such payment;

(3) any municipal authority issued pursuant to the laws of the State relating to the creation or operation of municipal authorities, if the obligations are not in default as to principal or interest and if the project for which the obligations were issued is under lease to a school district or school districts or if the obligations are not in default as to principal or interest and if the project for which the obligations were issued is under lease to a municipality or municipalities or subject to a service contract with a municipality or municipalities, pursuant to which the municipal authority will receive lease rentals or service charges available for fixed charges on the obligations, which will average not less than 1 1/5 times the average annual fixed charges of such obligations over the life thereof, or if the obligations are not in default as to principal or interest and if for a period of 5 fiscal years next preceding the date of acquisition, the income of such authority available for fixed charges has averaged not less than 1 1/5 times average annual fixed charges of such obligations over the life of such obligations. As used in this clause, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt. In computing such income available for fixed charges for the purposes of this section, the income so available of any corporation acquired by any municipal authority may be included, such income to be calculated

as though such corporation had been operated by a municipal authority and an equivalent amount of bonded debt were outstanding.

The eligibility for investment purposes of obligations of each project of a municipal authority shall be separately considered hereunder.

c. Public utility obligations. Bonds, notes or obligations issued, assumed or guaranteed by any solvent public utility corporation or public utility business trust, incorporated or existing under the laws of the United States or of any state, district or territory thereof.

d. Other corporate obligations. Bonds, notes or obligations issued, assumed or guaranteed by any other corporation, including railroads, or business trust, incorporated or existing under the laws of the United States, or of any state, district or territory thereof, whose income available for fixed charges for the period of 5 fiscal years next preceding the date of investment shall have averaged not less than 1 1/2 times its average annual fixed charges applicable to such period. As used in this subsection, the term "income available for fixed charges" shall mean income, after deducting operating and maintenance expenses, depreciation and depletion, and taxes other than Federal or State income taxes, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the corporation or business trust, and the term "fixed charges" shall include interest on funded or unfunded debt and amortization of debt discount and expense. If income is determined in reliance upon consolidated income statements of parent and subsidiary corporations or business trusts, such income shall be determined after provision for Federal and State income taxes

of subsidiaries, and after proper allowance for minority stock interest, if any, and the required coverage of fixed charges, shall be computed on a basis including fixed charges and preferred dividends of subsidiaries, other than those payable by subsidiaries to the parent corporation or business trust, or to any other such subsidiaries. In applying an income test under this section to any issuing, assuming or guaranteeing corporation or business trust, whether or not in legal existence during the whole or the 5-year period next preceding the date of the investment, which has at any time or times after the beginning of such period acquired the assets or the outstanding shares of capital stock of any other corporation or business trust by purchase, merger, consolidation or otherwise, substantially as an entirety, or has been reorganized pursuant to the bankruptcy law, the income of such other predecessor or constituent corporation or business trust or of the corporation or business trust so reorganized, available for interest and dividends for such portion of such period as shall have preceded acquisition or reorganization may be included in the income of such issuing, assuming or guaranteeing corporation or business trust for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated income statements covering such portion of such period, and giving effect to all stock or shares outstanding and all fixed charges existing immediately after acquisition or reorganization.

e. Trustees', receivers' or equipment trust obligations.

(1) Certificates, notes or obligations issued by trustees or receivers of any corporation or business trust created or existing under the laws of the United States or of any state, district or territory thereof which, or the assets of which, are being administered under the direction

of any court having jurisdiction, if such obligation is adequately secured as to principal and interest.

(2) Equipment trust obligations or certificates, which are adequately secured, or other adequately secured instruments, evidencing an interest in transportation equipment, wholly or in part within the United States, and a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment.

f. Acceptances and bills of exchange. Bank and bankers acceptances, and other bills of exchange of the kind and maturities made eligible pursuant to law for purchase in the open market by Federal Reserve Banks.

g. Real estate loans. Ground rents and bonds, notes or other evidences of indebtedness, secured by first mortgages or trust deeds upon unencumbered and improved real property located in any state, district or territory of the United States, and in investments in the equity of the seller under contracts for deeds covering the entire balance due on bona fide sales of such real property; provided that a loan guaranteed or insured in full by the Administrator of Veterans' Affairs pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended may be subject to a prior encumbrance. Real property shall not be considered to be encumbered within the meaning of this section by reason of the existence of instruments reserving mineral, oil, water or timber rights, rights-of-way, sewer rights, rights in walls or driveways, by reason of liens inferior to the lien securing the loan of the insurance company, or liens for taxes or assessments not yet delinquent, or by reason of building restrictions or other restrictive convenants or by reason of any lease under which rents or profits are reserved to the owner, if, in any event, the

security for such loan is a first lien upon such real property, and if there is no condition or right of re-entry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed. No mortgage or trust deed, loan or investment in a seller's equity under a contract for deed made or acquired by the insurance company on any one property shall at the date of investment exceed 2/3 of the value of the real property securing the loan, or subject to such contract; provided that such limitation in respect to value shall not apply to a loan which is:

(1) insured by, or for which a commitment to insure has been made by, the Federal Housing Administrator or commissioner pursuant to the provisions of the Federal National Housing Act, as heretofore or hereafter amended;

(2) guaranteed by the Administrator of Veterans' Affairs pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended, except, that if only a portion of a loan is so guaranteed, such limitation shall apply to the portion not so guaranteed;

(3) insured by the administrator pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended;

(4) upon real estate under lease to a corporation or business trust, incorporated or existing under the laws of the United States or any state, district or territory thereof, whose income available for fixed charges for the period of 5 fiscal years next preceding the date of investment, shall have averaged not less than 1 1/2 times its average annual fixed charges applicable to such period, if there is pledged and assigned, as additional security for the loan, and for application thereon, sufficient of the rentals payable under the lease to provide for repayment of the loan within the

unexpired term of the lease;

(5) upon such terms that the principal thereof will be amortized by repayments of principal at least once in each year in amounts sufficient to repay the loan within a period of not more than 30 years, and such loan is upon improved real estate, and at the date of investment does not exceed 3/4 of the value of the real estate securing the loan.

h. Purchase money securities. Purchase money mortgages or like securities received by it upon the sale or exchange of real property, acquired pursuant to subsection p. of this section.

i. Federal Housing Administrators debentures. Debentures issued by the Federal Housing Administrator or commissioner in settlement of claims pursuant to the Federal National Housing Act as heretofore or hereafter amended.

j. National Mortgage Association securities. Securities of national mortgage associations or similar national mortgage credit institutions organized under the Federal Housing Act, as heretofore or hereafter amended.

k. Federal Land Bank, Federal Intermediate Credit Bank and Bank for Cooperatives Securities. Bonds, debentures and other obligations of Federal Land Banks or Federal Intermediate Credit Banks issued pursuant to the Federal Farm Loan Act, as heretofore or hereafter amended, or of Banks for Cooperatives issued pursuant to the Farm Credit Act of 1933, as heretofore or hereafter amended.

l. Loans upon leaseholds. Loans upon leasehold estates on unencumbered real estate located in any state, district or territory of the United States; provided that no such loan shall exceed 2/3 of the value of the leasehold at the date of investment, unless:

(1) such loan is guaranteed or insured by, or for which a commitment to guarantee or insure such loan has been made by, the Federal Housing Administrator or commissioner, pursuant to the provisions of the Federal National Housing Act, as heretofore or hereafter amended; or

(2) such leasehold is of improved real estate and such loan provides for amortization by repayments of principal at least once in each year in amounts sufficient to repay the loan within a period of 4/5 of the unexpired term of the leasehold, but within a period of not more than 30 years, and does not exceed 3/4 of the value of the leasehold at the date of investment; or

(3) such real estate is under lease to a corporation or business trust, incorporated or existing under the laws of the United States or any state, district or territory thereof, whose income available for the fixed charges for the period of 5 fiscal years next preceding the date of investment shall have averaged not less than 1 1/2 times its average annual fixed charges applicable to such period, if there is pledged and assigned as additional security for the loan and for application thereon sufficient of the rentals payable under such lease to provide for repayment of the loan within the unexpired term of the lease. Provided further, that the terms of any such loan shall require repayments of principal at least once in each year in amounts sufficient to repay the loan within the term of the leasehold, unexpired at the date of investment, unless a shorter period is required under subparagaph (2).

m. Savings and loan shares. Shares of any Federal Savings and Loan Association, or of any building and loan or savings and loan association, to the extent that the withdrawal or repurchasable value of such shares is insured by the Federal Savings and Loan Insurance Corporation, under

the Federal National Housing Act, as heretofore or hereafter amended, and shares of any building and loan or savings association to the extent that the withdrawal or repurchasable value of such shares is insured by a state regulated and supervised savings and loan insurance corporation.

n. Federal Savings and Loan Insurance Corporation obligations. Bonds, notes or obligations issued, assumed or guaranteed by the Federal Savings and Loan Insurance Corporation, under the provisions of the Federal National Housing Act, as heretofore or hereafter amended.

o. Federal Home Loan Bank obligations. Bonds, notes or obligations issued, assumed or guaranteed by the Federal Home Loan Bank or issued, assumed or guaranteed by the Federal Home Loan Bank Board under the provisions of the Federal Home Loan Bank Act, as heretofore or hereafter amended.

p. Real estate; right to acquire. It shall be lawful for any title insurance company organized under the laws of this State to purchase, receive, hold and convey real estate or any interest therein:

(1) required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(2) acquired in connection with a claim under a policy of title insurance;

(3) acquired in satisfaction or on account of loans, mortgages, liens, judgments or decrees, previously owing to it in the course of its business;

(4) acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(5) reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under subparagraphs (1), (2), (3), or (4) of this subsection.

Provided, however, that no title insurance company shall continue to hold any real estate acquired by it under subparagraph (2), (3), or (4) for more than 5 years from the date of acquisition thereof, unless it shall obtain the written approval of the commissioner to hold such real estate for a longer period of time.

22. Funds in excess of minimum capital, other than unearned premium reserve. Funds over and above minimum capital, other than the unearned premium reserve, may be retained as cash on hand or on deposit in banks, or may be invested in the following classes of investments:

a. Any of the classes of investments authorized in section 21 of this act; provided, however, that the amount invested at any time in those classes of investments set forth in subsections g., h., l. and p. of section 21, when valued at cost, shall not, without written approval of the commissioner, exceed 50% of the sum of the capital and surplus of such title insurance company as shown by its most recent statement on file with said commissioner.

b. Corporate stock or shares of any solvent corporation incorporated under the laws of the United States or any state, district or territory thereof, the Commonwealth of Puerto Rico, or of the Dominion of Canada or any province thereof, including the stock of another title insurance company.

c. Corporate obligations. Bonds, notes or obligations issued, assumed or guaranteed by any solvent corporation or business trust, incorporated or existing under the laws of the United States or any state, district or territory thereof,

the Commonwealth of Puerto Rico, or of the Dominion of Canada or any province thereof.

d. Canadian governmental subdivision obligations. Valid and legally authorized bonds, notes or obligations issued, assumed or guaranteed by any province, county, city, town, village, municipality or political subdivision of the Dominion of Canada.

e. Other loans and investments. Loans or investments not qualifying or permitted under the preceding subsections of this section to an amount not exceeding 25% of the amount of the surplus of a title insurance company as shown by its most recent statement on file with the commissioner.

f. Title plant. Provided it shall at all times comply with the minimum capital investment requirements of section 21, a title insurance company may invest in title plants. The title plants shall be considered assets at the fair value thereof. In determining the fair value of a title plant, no value shall be attributed to furniture and fixtures, and the real estate in which the title plant is housed shall be carried as real estate. The value of title abstracts, title briefs, copies of conveyances or other documents, indices and other records comprising the title plant shall be determined by considering the expenses incurring in obtaining them, the age thereof, the cost of replacements less depreciation, and all other relevant factors. Once the value of a title plant shall have been determined, hereunder, such value may be increased only by the acquisition of another title plant by purchase, consolidation or merger; in no event shall the value of the title plant be increased by additions made thereto as part of the normal course of abstracting and insuring titles to real estate. Subject to the above limitations and with the approval of the commissioner, a title insurance company

may enter into agreements with one or more title insurance companies authorized to do business in this State, whereby such companies shall participate in the ownership, management and control of a title plant to service the needs of all such companies or such companies may hold stock of a corporation owning and operating a title plant for such purposes.

23. Unearned premium reserve. The unearned premium reserve of a title insurance company may be held as cash on hand or on deposit in banks, or shall be invested only in those classes of investments authorized by subsections a. through f., i., j., k., m., n. and o. of section 21 of this act, except that not more than 25% of such reserve may be invested in preferred or guaranteed stock or shares of any solvent corporation or business trust, incorporated or existing under the laws of the United States, or of any state, district or territory thereof, whose net earnings available for its fixed charges during each of the 2 years next preceding the date of such investment have been, and during the 5 years next preceding such date shall have averaged, not less than 1 1/2 times the sum of its average annual fixed charges, if any, as such fixed charges are defined in subsection d. of section 21 of this act and its average annual preferred dividend requirements. For the purpose of this section such computation shall refer to the calendar or other fiscal year or years of such solvent corporation and the term "preferred dividend requirements" shall include cumulative and noncumulative dividends.

24. Investments acquired before effective date. Any investment of a title insurance company lawfully acquired before the effective date of this act and which but for this section would be considered ineligible as an investment on such effective date shall be disposed of within 5 years from such effective date. The commissioner, upon application

and proof that forced sale of any such investment would be contrary to the best interests of the title insurance company and its policyholders, may extend the period for sale or disposal of such investment for a further reasonable time, in no event to exceed 3 years.

G. Foreign and Alien Companies

25. Requisites for foreign and alien title insurance companies to do business. Any title insurance company organized under the laws of another state or foreign government shall be licensed to transact a title insurance business within this State only if such company is and remains of the same standard of solvency and complies with other requirements fixed by the laws of this State for title insurance companies organized and authorized to transact the business of title insurance pursuant to the laws of this State. No title insurance company shall be admitted and authorized to do business until:

a. It has filed with the commissioner a certified copy of its charter, a statement of its financial condition and business, signed and sworn to by its proper officers, and copies of forms of all policies it proposes to issue in this State, with such other information as the commissioner may require; and

b. It has satisfied the commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact. That it has the requisite amount of capital, fully paid up and unimpaired; and

c. It shall, by a duly executed instrument filed in his office, constitute and appoint the commissioner or his successor its true lawful attorney, upon whom all lawful processes in any action, rule, order or legal proceeding against it may be served; and therein shall agree that any

lawful process against it which may be served upon him as its said attorney shall be of the same force and validity as if served on the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company remains outstanding in this State.

26. Foreign and alien title insurance companies. No title insurance company not incorporated or organized under the laws of this State, but authorized to transact business herein, shall make, write, place or cause to be made, written or placed any policy or contract of insurance covering real property in this State except:

a. Through a title insurance agent as defined in section 1 of this act who or which is a resident of this State or maintains his, her or its principal place of business in this State; or

b. Through a bona fide branch office located in this State and under the direction and control of such title insurance company, all expenses of which branch office, including compensation of all employees, are paid by such title insurance company; or

c. Through a subsidiary title insurance company having its principal place of business in this State. This section shall not be applicable to contracts of reinsurance, or to policies of excess coinsurance.

H. Mergers, Consolidations and Acquisitions

27. Mergers and consolidations of title insurance companies.

a. A title insurance company organized and incorporated under the laws of this State may merge, be merged by or consolidate with, one or more title insurance companies whether or not so incorporated, by complying with chapter 27 of Title 17 of the Revised Statutes as amended and supplemented but subject to the following:

(1) No such merger or consolidation shall be effectuated unless in advance thereof, the plans and agreement therefor have been filed with the commissioner. The commissioner shall examine the terms and conditions of such merger or consolidation, and of any exchange of shares or securities pursuant thereto, after holding a hearing at which all persons or parties to whom it is proposed to issue shares or securities in such exchange shall have the right to appear. After such hearing, the commissioner shall either approve or disapprove the fairness of such terms and conditions of exchange. The commissioner shall give such approval within a reasonable time after filing of a plan or agreement unless he finds such plan or agreement:

(a.) is contrary to law; or

(b.) inequitable to the stockholders of such title insurance company; or

(c.) would substantially reduce the security of and services to be rendered to policyholders of the domestic title insurance company in this State or elsewhere.

(2) Where such merger or consolidation involves a parent company absorbing a wholly-owned subsidiary, the commissioner may, in his discretion, dispense with the holding of a hearing.

b. No director, officer, agent or employee of any title insurance company party to such acquisition shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

c. If the commissioner does not approve any such plan or agreement he shall notify the title insurance company in writing specifying in detail his reasons therefor.

28. Corporate acquisitions other than by merger or consolidation.

a. A title insurance company organized and incorporated

under the laws of this State may issue stock in exchange for all or any part of the assets or stock of a domestic or foreign title insurance company, abstract company or title insurance agent if, in advance thereof, a plan or agreement of acquisition shall have been filed with the commissioner. The commissioner shall examine the terms and conditions of such plan or agreement of acquisition, and of any exchange or shares or securities pursuant thereto, after holding a hearing at which all persons or parties to whom it is proposed to issue shares or securities in such exchange shall have the right to appear. After such hearing, the commissioner shall either approve or disapprove the fairness of such terms and conditions of such acquisition and exchange. The commissioner shall give such approval within a reasonable time after filing of a plan or agreement unless he finds such plan or agreement:

(1) is contrary to law; or

(2) inequitable to the stockholders or any title insurance or abstract company involved; or

(3) would substantially reduce the security of and services to be rendered to policyholders of the domestic title insurance company in this State or elsewhere.

b. No director, officer, agent or employee of any title insurance company or abstract company party to such acquisition shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

c. If the commissioner does not approve any such plan or agreement, he shall notify the title insurance company in writing specifying in detail his reasons therefor.

29. Purchase or acquisition of controlling stock.

a. In the event any person or persons, corporation or corporations propose to purchase or acquire the controlling capital stock of any domestic title insurance company, such person or persons, corporation or corporations, shall first make application to the commissioner for approval of such purchase or acquisition. The application shall contain the name and address of the proposed new owner or owners of the controlling stock, and the commissioner shall approve the proposed purchase or acquisition only after he has become satisfied that such purchase or acquisition will not result in violation of the anti-rebate provisions as defined herein by section 35 of this act, and that the proposed new owner or owners of the controlling stock are qualified by character, experience and financial responsibility to control and operate the title insurance company in a lawful and proper manner; and that the interest of the title insurance company's stockholders and policyholders and the interest of the public generally will not be jeopardized by the proposed change in ownership and management. If the commissioner does not, by affirmative action, approve or disapprove the proposed purchase or acquisition within 30 days after the date on which such application was so filed with him, the proposed purchase or acquisition shall be deemed to be approved at the expiration of such 30 day period.

b. No such purchase or acquisition of a domestic title insurance company shall be effectuated unless approved as provided in subsection a. above.

c. In event the commissioner disapproves the proposed purchase or acquisition, he shall give written notice thereof to the person or persons, corporation or corporations, so applying for approval, setting forth in detail the reasons for disapproval.

I. Agents

30. Title insurance agents; names to be certified to commissioner; application and examination for a license.

a. Every title insurance company authorized to transact business within this State shall certify annually to the commissioner the names of all title insurance agents representing it in this State.

b. Title insurance agents shall be licensed in the manner provided for agents of insurance companies in section 6 of P.L. 1944, c. 175 (C.17:22-6.6); provided, however, that:

(1) All applicants for a title insurance agent's license shall be required to qualify for such license by taking an examination of sufficient scope to satisfy the commissioner that the applicant has sufficient knowledge of, and is reasonably familiar with, the title insurance laws of this State and with the provisions, terms and conditions of title insurance, including a knowledge of the examination and evaluation of titles, and has an adequate understanding of the duties and obligations of a title insurance agent; and

(2) If the applicant for a title insurance agent's license is a firm, association, corporation, cooperative or joint stock company, the members, officers and employees of the applicant who intend to exercise the power and perform the duties of the agency, shall be required to take the examination required of applicants by subsection b. (1) of this section; provided, however, those employees performing only clerical functions not requiring the knowledge and understanding of title insurance agents shall not be required to take said examination; and

(3) Any applicant for a title insurance agent's license who has had at least 2 years experience as a title insurance agent, prior to the effective date of this act, shall not be required to take an examination for such license if

application for the issuance of such license is filed with the commissioner within a period of 6 months immediately following the effective date of this act.

c. Licenses of title insurance agents shall expire annually at midnight of June 30 unless sooner terminated as a result of business relations between the company and the agent, or unless revoked by the commissioner.

d. Title insurance agents' licenses shall be renewed annually on the filing of an application containing such information as the commissioner deems necessary.

e. The commissioner may, upon application to him by a person, firm, association, corporation, cooperative or joint stock company, grant to such applicant a temporary license as title insurance agent. Such license shall remain in force and effect for a period of 6 months or until the expiration of 60 days after the next regularly scheduled examination for applicants for a title insurance agents license, whichever period is the longer. In the event of the failure of the applicant to qualify for a regular title insurance agents' license as provided in this section, no renewal or extension may be granted to any temporary license held by said applicant.

f. No bank, trust company, bank and trust company or other lending institution, mortgage service, mortgage brokerage or mortgage guaranty company or any officer or employee of any of the foregoing shall be licensed as or permitted to act as an agent for a title insurance company.

31. Title Insurance agents; books and records.

a. Every title insurance agent shall keep his, her or its books of account and record and vouchers pertaining to the business of title insurance in such a manner that the commissioner, or his authorized representatives, may readily ascertain from time to time whether the agent has complied with all the provisions of this act.

b. Every title insurance agent shall maintain a separate record of all receipts and disbursements as a depository for funds as permitted in section 13b. of this act and shall not commingle any such funds with agent's own funds or with funds held by agent in any other capacity.

c. Every title insurance agent shall obtain and maintain a fidelity bond, in the form and amount required by the commissioner, for said agent and for each officer or employee of said agent where such agent may act as a depository for funds as permitted in section 13b. of this act.

d. If at any time the commissioner shall determine that an agent has failed to comply with any of the provisions of this section, the commissioner may direct that such agent cease writing new insurance until such provisions are complied with.

32. Title insurance agents; replies to inquiries by commissioner. Every title insurance agent shall reply, in writing, promptly, with a copy thereof to each title insurance company for which said agent is acting, to any inquiry of the commissioner relative to the business of title insurance. A copy of any inquiry sent by the commissioner to any agent relative to said agent's conduct of the business of title insurance shall also be sent by the commissioner to each title insurance company for which said agent is acting.

33. Title insurance agents; certain names prohibited. After the effective date of this act no agent for a title insurance company shall adopt or use a firm name containing the words "title," "title company," "title insurance company," "guaranty," "guarantee," "guaranty company," or "guarantee company" or similar combination thereof; except that the

word title may be used in combination with the word "agent or agency" in letters of the same size and character.

J. Commissions and Rebates

34. Commissions; no right to pay. A title insurance company or agent of a title insurance company may not pay a commission, consideration or thing of value in any form, for procuring title insurance in a real estate transaction; provided, however, that nothing herein contained shall be construed to prohibit the payment of a commission or other compensation to a regular full time employee of a title insurance company or agent of a title insurance company as part of the regular compensation of such employee.

35. Rebates or reduced fees. No title insurance company and no title insurance agent shall make any rebate of any portion of the fee or charge established pursuant to section 41 of this act.

No title insurance company and no title insurance agent shall quote any fee or make any charge for a title insurance policy to any person which is less than that currently available to others for the same type of title insurance policy in a like amount and involving the same factors as set forth in the schedule of fees and charges established pursuant to section 41 of this act. The amount by which any fee or charge is less than that prescribed by the schedule of fees and charges established pursuant to section 41 of this act is an unlawful rebate.

36. Examination of records. The commissioner, if he has reason to believe that any title insurance agent has violated or is violating any of the provisions of sections 34 and 35 of this act, shall forthwith examine said title insurance agent's books of account and record and vouchers pertaining to the business of title insurance, and any said title insurance agent so examined shall pay to the commissioner the cost of such examination on demand.

37. Additional penalty. Every title insurance company and every title insurance agent which pays any commission, consideration or thing of value in any form for procuring title insurance in a real estate transaction in violation of section 34 of this act, or makes any unlawful rebate, in violation of section 35 of this act may be liable to the State of New Jersey for a penalty not exceeding five times the amount of such commission, consideration or thing of value in any form, or unlawful rebate in addition to any other penalty imposed by law.

38. Permitted division of fees. Nothing in this act prohibits the division of fees and charges between or among two or more title insurance companies or between or among one or more title insurance companies and one or more title insurance agents, or between or among two or more title insurance agents.

39. Personal or controlled insurance.

a. If the rates and charges for personal or controlled insurance from any one source so issued in any one calendar year received by a title insurance company or by a title insurance agent shall exceed 25%, or from all such sources shall exceed 50% of the total rates and charges received by such title insurance company or by such title insurance agent for title insurance issued in the same year, the excess shall be deemed to be unlawful rebate.

b. The commissioner shall have full power and authority and it shall be his duty, to enforce and carry out by regulations, orders or otherwise, the provisions of this section and the full intent thereof. The commissioner may make such reasonable rules and regulations not inconsistent with this act, as may be necessary or proper in the exercise of his powers or for the performance of his duties under this section.

K. Rates, Rating Organizations and Rate Making Procedure

40. General provisions. The purposes of sections 41 to 52, inclusive, of this act are to promote the public welfare by regulating title insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory and to authorize cooperative action between or among title insurance companies in rate making and other matters within the scope of said sections. Nothing herein is intended to prohibit or discourage reasonable competition, or to prohibit or discourage, except to the extent necessary to accomplish the purposes stated above, uniformity in title insurance rates, rating systems and rating plans and practices. The provisions of sections 41 to 52, inclusive, shall be literally interpreted to make effective the purposes thereof as outlined in this section.

41. Rate filing.

a. Every title insurance company shall file with the commissioner its schedule of fees, every manual of classifications, rules and plans pertaining thereto, and every modification of any of the foregoing which it proposes to use in this State. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

b. A title insurance company may satisfy its obligations to make such filings by becoming a member of, or a subscriber to, a licensed title insurance rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf.

c. The commissioner shall make such review of the filing as may be necessary to carry out the provisions of this act.

d. Beginning 90 days after the effective date of this act, no title insurance company or agent of a title insurance company shall charge any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company as provided in this act.

e. The commissioner shall not have the power to regulate, or require the filing of, rates or fees for reinsurance contracts or agreements, or policies of excess coinsurance.

42. Justification for rates. A rate filing shall be accompanied by a statement of the title insurance company or title insurance rating organization making the filing, setting forth the basis upon which the rate was fixed and the fees are to be computed. Any filing may be justified by:

(1) the experience or judgment of the title insurance company or title insurance rating organization making the filing;

(2) its interpretation of any statistical data relied upon;

(3) the experience of other title insurance companies or title insurance rating organizations; or

(4) any other factors which the title insurance company or title insurance rating organization deem relevant.

The statement and justification shall be open to public inspection after the rate to which it applies becomes effective.

43. Proposing of rates.

a. Every title insurance company that shall propose its own rates, and every title insurance rating organization, shall propose rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which

do not unfairly discriminate between risks in this State which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(1) the desirability for stability of rate structures;

(2) the necessity, by encouraging growth in assets of title insurance companies in periods of high business activity, of assuring the financial solvency of title insurance companies in periods of economic depression; and

(3) the necessity for paying dividends on the capital stock of title insurance companies sufficient to induce capital to be invested therein.

b. Every title insurance company that shall propose its own rates, and every title insurance rating organization, shall adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rates.

c. Rates within each rate classification may, at the discretion of the title insurance company that files its own rates, or at the discretion of the title insurance rating organization, be less than the cost of the expense elements in the case of smaller insurances, and the excess may be charged against the larger insurances without rendering the rates unfairly discriminatory.

44. Approval or disapproval of filings.

a. If the commissioner shall find in his review of rate filings that said filings provide for, result in, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this State involving essentially the same hazards and expense elements, he shall approve such rates, and such approval shall continue in effect until the commissioner shall

issue an order of disapproval pursuant to the requirements and procedure provided for in subsections b. and c. of this section.

b. Upon the review at any time by the commissioner of a rate filing, he shall, before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurance company and title insurance rating organization which made such filing, and if, after such hearing, he finds that such filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that it so fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective if the filing or a part thereof has become effective under the provisions of section 41 of this act. A title insurance company or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 46 of this act in the case of deviation filing. Copies of said order shall be sent to every title insurance company and title insurance rating organization affected. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

c. Any person or organization aggrieved with respect to any filing which is in effect, may make written application to the commissioner for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that

the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the commissioner finds that the filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that such filing or a part thereof fails to meet the requirements of this act, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such title insurance company and title insurance rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

d. No filing nor any modification thereof shall be disapproved if the rates in connection therewith meet the requirements of this act.

45. Title insurance rating organizations.

a. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this State, may make application to the commissioner for license as a rating organization for title insurance companies, and shall file therewith:

(1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(2) a list of its members and subscribers;

(3) the name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(4) a statement of its qualifications as a title insurance rating organization.

If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, conform to the requirements of law, he shall issue a license authorizing the applicant to act as a rating organization for title insurance. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for 3 years unless sooner suspended or revoked by the commissioner or withdrawn by the licensee. The fee for said license shall be $25.00. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirement of this subsection. Every rating organization shall notify the commissioner promptly of every change in:

(1) its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) its list of members and subscribers; and

(3) the names and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

b. Subject to rules and regulations which have been approved by the commissioner as reasonable, each title insurance rating organization shall permit any title insurance company not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall at the request of any subscriber or any such title insurance company, be reviewed by the commissioner at a hearing held upon at least 10 days written notice to such rating organization and to such subscriber. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an application of a title insurance company for subscribership within 30 days after it was made, the title insurance company may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the title insurance company has been refused admittance to the title insurance rating organization as a subscriber without justification, he shall order said rating organization to admit the title insurance company as a subscriber. If he finds that the action of the title insurance rating organization was justified, he shall make an order affirming its action.

c. Cooperation among title insurance rating organizations, or among such rating organizations and title insurance companies, and concert of action among title

insurance companies under the same general management and control in rate making or in other matters within the scope of this act is hereby authorized, provided the filings resulting therefrom are subject to all the provisions of this act which are applicable to filing generally. The commissioner may review such activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring the discontinuance of such activity or practice.

46. Deviations. Every member of or subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurance company which is a member of or subscriber to such a rating organization may file with the commissioner a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the commissioner to be a proper rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating organization. Any such deviation filing shall be on file for a waiting period of 15 days before it becomes effective. Extension of such waiting period may be made in the same

manner that such period is extended in the case of rate filings. The commissioner may authorize a deviation filing or any part thereof to become effective before the expiration of the waiting period or any extension thereof. Deviation filings shall be subject to the provisions of section 44 of this act. Each deviation shall be effective for at least 1 year unless terminated sooner with the approval of the commissioner, or in accordance with the provisions of section 44 of this act.

47. Appeal by minority. Any member of or subscriber to a title insurance rating organization may appeal to the commissioner from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the commissioner shall, after a hearing held upon not less than 10 days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within 30 days. If such appeal is from the action or decision of the title insurance rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing said rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, he shall approve the action of said

rating organization or such modification thereof as shall have been suggested by the appellant if either be made in accordance with this act.

The failure of a title insurance rating organization to take action or make a decision within 30 days after submission to it of a proposal under this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of said rating organization to make a filing on behalf of such member of subscriber which is based on a system of expense allocation which differs, in accordance with the right granted in subsection c. of section 43 of this act from the system of expense allocation included in a filing made by said rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the commissioner shall apply the standards set forth in section 43 of this act.

48. Rate administration; authority and duties of commissioner; rules and regulations.

a. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time, and which shall be used thereafter by each title insurance company, in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurance companies may be made available, at least annually, in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in this article. Such rules and

plans may also provide for the recording of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of country-wide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. Such rules and plans shall not place an unreasonable burden of expense on any title insurance company. No title insurance company shall be required to record or report its expense and loss experience on a classification basis that is inconsistent with the rating system filed by it, nor shall any title insurance company be required to report its experience to any agency of which it is not a member or subscriber. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to title insurance companies and rating organizations.

b. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

c. In order to further uniform administration of rate regulatory laws, the commissioner and every title insurance company and rating organization may exchange information and experience data with insurance supervisory officials, title insurance companies and rating organizations in other states, and may consult with them with respect to rate making and the application of rating systems.

rating organization or such modification thereof as shall have been suggested by the appellant if either be made in accordance with this act.

The failure of a title insurance rating organization to take action or make a decision within 30 days after submission to it of a proposal under this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of said rating organization to make a filing on behalf of such member of subscriber which is based on a system of expense allocation which differs, in accordance with the right granted in subsection c. of section 43 of this act from the system of expense allocation included in a filing made by said rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the commissioner shall apply the standards set forth in section 43 of this act.

48. Rate administration; authority and duties of commissioner; rules and regulations.

a. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time, and which shall be used thereafter by each title insurance company, in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurance companies may be made available, at least annually, in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in this article. Such rules and

plans may also provide for the recording of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of country-wide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. Such rules and plans shall not place an unreasonable burden of expense on any title insurance company. No title insurance company shall be required to record or report its expense and loss experience on a classification basis that is inconsistent with the rating system filed by it, nor shall any title insurance company be required to report its experience to any agency of which it is not a member or subscriber. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to title insurance companies and rating organizations.

b. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

c. In order to further uniform administration of rate regulatory laws, the commissioner and every title insurance company and rating organization may exchange information and experience data with insurance supervisory officials, title insurance companies and rating organizations in other states, and may consult with them with respect to rate making and the application of rating systems.

d. In addition to any powers hereinbefore expressly enumerated in this act, the commissioner shall have full power and authority, and it shall be his duty, to enforce and carry out by regulations, orders or otherwise, all and singular the provisions of this article and the full intent thereof. The commissioner may make such reasonable rules and regulations not inconsistent with this act, as may be necessary or proper in the exercise of his powers or for the performance of his duties under this article.

49. False or misleading information. No title insurance company or title insurance agent shall willfully withhold information from, or knowingly give false or misleading information to the commissioner, or to any title insurance rating organization, of which the title insurance company is a member or subscriber, which will affect the rates or fees chargeable under this act.

50. Penalties. The commissioner may, if he finds that any title insurance rating organization, title insurance company, or title insurance agent has violated any provision of this act, impose a penalty of not more than $50.00 for each such violation, but if he finds such violation to be willful, he may impose a penalty of not more than $500.00 for each such violation. Such penalties may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any title insurance rating organization, title insurance company, or title insurance agent that fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof, which the commissioner may grant. The commissioner shall not suspend the license of any such rating organization, company or agent for failure to comply with an order until the time prescribed for an appeal therefrom has expired, or, if an appeal has been taken, until such order has been affirmed.

The commissioner may determine when a suspension of license shall become effective, and it shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, reversed. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days written notice to such person or organization, specifying the alleged violation.

51. Hearing procedure.

a. Any title insurance company, title insurance rating organization or person aggrieved by any action of the commissioner, or by any rule or regulation adopted and promulgated by the commissioner, shall have the right to file a complaint with the commissioner and to have a hearing thereon before the commissioner. Pending such hearing and the decision thereon, the commissioner may suspend or postpone the effective date of such action, rule or regulation.

b. All hearings provided for in this act shall be conducted, and the decision of the commissioner on the issue or filing involved shall be rendered, in accordance with the provisions of P. L. 1958, c. 68 (C.17:1-8.5 et seq.).

52. Existing filings and hearings continued. All title insurance manuals of classifications, rules and rates, rating plans and modifications thereof filed under any repealed act shall be deemed to have been filed under this act, and all title insurance rating organizations licensed under such repealed act shall be deemed to have been licensed under this act. All hearings and investigations pending under such repealed act shall be deemed to

have been initiated under and shall be continued under this act.

L. Policy Forms

53. Forms of policies and other contracts of title insurance. Every title insurance company shall file with the commissioner all forms of title policies and other contracts of title insurance before the same shall be issued. Any such filing may be made by a title insurance rating organization in behalf of all of its members or subscribers. In no event shall any title insurance company issue any such form of policy or contract until 30 days after it shall have been filed with the commissioner unless it shall have received earlier approval by the commissioner. Unless the commissioner shall disapprove a form of title policy or contract of title insurance within 30 days from the date of its filing, such filing shall be deemed to have been approved. Forms of title policies and other contracts of insurance, as used in this section, shall be deemed to include preliminary reports of title, binders for insurance and policies of insurance or guaranty, together with all the terms and conditions of insurance coverage or guaranty that relate to title to any interst in real property and which shall be offered by a title insurance company. They shall, however, specifically exclude reinsurance contracts or agreements, all specific defects in title that may be ascertained from an examination of the risk and expected in such reports, binders or policies, together with any affirmative assurances of the title insurance company with respect to such defects whether given by endorsement or otherwise, and such further exception from coverage by reason of limitations upon the examination of the risk imposed by an applicant for insurance or through failure of an

applicant for insurance to provide the data requisite to a judgment of insurability.

M. Annual Statements, Records, Examinations

54. Annual statements of title insurance companies; form and contents.

a. Every title insurance company which is authorized to do a title insurance business in this State, shall file in the office of the commissioner annually, on or before March 1, a statement, to be known as its annual statement, executed in duplicate, verified by the oath of at least two of its principal officers, showing its condition on December 31 then next preceding. Such statement shall be in such form and shall contain such matters as the commissioner shall prescribe.

b. The commissioner shall from time to time prescribe the form of such annual statement as shall seem to him best adapted to elicit a true exhibit of the condition of each such title insurer, in respect to every matter which he may deem material. He shall cause to be prepared and furnished to every title insurance company uniform printed forms of the statements and schedules required by him.

55. Records. Every domestic title insurance company shall, except as hereinafter provided, keep and maintain at its principal office in this State: a. its charter and bylaws, b. its books of account, c. a record containing the names and addresses of its stockholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof, and d. the minutes of any meetings of its stockholders, board of directors and committees thereof.

A domestic title insurance company may keep and maintain its books of account without this State if, in accordance with a plan adopted by its board of directors or trustees and approved by the commissioner, it maintains in this State

suitable records in lieu thereof; provided, however, that the commissioner may after notice and hearing direct such title insurance company to return all or any of its books of account to this State if such return is reasonably necessary to protect the interest of the people of this State or to permit their inspection in this State by a director or stockholder who has shown to the satisfaction of the commissioner that he has made an application to such title insurance company for inspection of such books in good faith and for a necessary and legitimate purpose, and that such title insurance company has either declined to permit such inspection or to agree to pay any additional expenses reasonably to be incurred by the applicant, or his agent or attorney, in connection with the inspection of such books as a result of their maintenance without this State. If in the judgment of the commissioner delay in the return of any or all books of account of such title insurance company may be hazardous, or may cause irreparable injury, to the people of this State or to the policyholders of such title insurance company, he may direct the return thereof without notice and hearing.

56. Commissioner may require special reports. The commissioner may also address to any authorized title insurance company or its officers any inquiry in relation to its transaction or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate.

57. Examination of title insurance companies; when authorized or required.

a. The commissioner may make an examination into the affairs of any title insurance company authorized to do a title insurance business in this State as often as he deems it expedient for the protection of the interest of the people of this State.

b. The commissioner shall make an examination into the affairs of every authorized domestic title insurance company at least once in every 3 years and every title insurance rating organization at least once in every 5 years.

N. Other Provisions

58. Judicial review of commissioner's action. If any title insurance company, title insurance agent, or title insurance rating organization be dissatisfied with any decision, regulation, order, rate, rule, act or administrative ruling adopted by the commissioner, such title insurance company, title insurance agent or title insurance rating organization, may appeal therefrom to the Superior Court, Appellate Division.

59. Other sections applicable. In addition to the provisions of this act, only the following provisions of the laws governing insurance companies as presently enacted and hereinafter amended, except as they are inconsistent with the provisions of this act, shall apply to the business of title insurance to title insurance companies, which shall be considered as within the class of insurance companies regulated by such provisions solely for the limited purpose of being subject to such provisions:

P.L. 1970, c. 12 (C.17:1C-1 to 17:1C-18)

P.L. 1948, c. 266 (C.17:3A-1 to 17:3A-7)

R.S. 17:17-1, 17:17-4, 17:17-5, 17:17-8 and 17:17-10

P.L. 1948, c. 157 (C.17:17A-1 to 17:17A-4)

P.L. 1965, c. 57 (C.17:17B-1 to 17:17B-8)

R.S. 17:18-1, 17:18-2, 17:18-4 and 17:18-10

R.S. 17:19-1 to 17:19-7

R.S. 17:20-4 and 17:20-5

P.L. 1966, c. 85 (C.17:20-6)

R.S. 17:21-1 to 17:21-3

P.L. 1960, c. 32, ss. 3, 4, 5 (C.17:22-6.37 to 17:22-6.39)

R.S. 17:23-2, 17:23-4 and 17:23-5

P.L. 1958, c. 15 (C.17:23-6, 17:23-7)

R.S. 17:24-5, 17:24-12

P.L. 1949, c. 248 (C.17:24-13 to 17:24-16)

R.S. 17:25-7

R.S. 17:26-1 to 17:26-3

R.S. 17:27-1 to 17:27-5

R.S. 17:32-1, 17:32-2, 17:32-4, 17:32-8 to 17:32-10

R.S. 17:32-13 and 17:32-14

P.L. 1950, c. 231 (C.17:32-15)

P.L. 1968, c. 234 (C.17:32-16 to 17:32-20).

60. Repealer. All laws and parts of laws in conflict with the provisions of this act are hereby repealed insofar as they may be or have been applicable to the business of title insurance, title insurance companies, title insurance agents, or title insurance rating organizations; and, in case conflict should develop, the provisions of this act shall control and be effective.

61. Effect of this act. The repeal by this act of any provision of law shall not revive any law heretofore repealed or superseded, nor shall this act affect any act done, liability incurred, or any right accrued or established, or any suit or prosecution, civil or criminal, pending or to be instituted to enforce any right or penalty or punish any offense under the authority of the repealed laws.

No provision of the insurance laws of this State, except as contained or referred to in this act, shall be applicable to title insurance companies, title insurance agents, title insurance rating organizations or the business of title insurance, and no law hereafter enacted shall apply to title

insurance companies, title insurance agents, title insurance rating organizations or the business of title insurance unless specified to be or become so applicable.

62. Effective date. The provisions of this act shall take effect on January 1 next succeeding enactment.

STATEMENT

This bill would supplement Title 17 of the Revised Statutes by adding to the insurance laws of this State -- for the first time -- a comprehensive body of law which makes the State Department of Insurance responsible for regulating the title insurance industry in New Jersey. The proposed "Title Insurance Act of 1974" provides for -- among other things: the licensing, qualification, regulation, examination, suspension and dissolution of title insurance companies; the examination and regulation of rates and rating organizations for title insurance; the regulation of agents and applicants for title insurance; a prohibition on the payment of commissions for procuring title insurance; prescribing the terms and conditions upon which foreign title insurance companies may be admitted or may continue to do title insurance business within the State; a prohibition against the practice of law; a prohibition against personal and controlled insurance -- as defined in this bill; and the imposition of penalties for violating the aforesaid provisions.

Among the major provisions of this bill -- recommended by the New Jersey Legislative Real Estate Title Insurance Study Commission -- are: a prohibition on the payment of commissions to attorneys at law or licensed real estate brokers for procuring title insurance for a client with a particular title company. The title insurance industry is now one of the last insurance industries to pay cash commissions for the procurement of insurance with a particular title company; a prohibition against the practice of law as contained in section 13 of this bill. Section 13 is patterned after "Formal Opinion Number 11 of the Unauthorized Practice of Law Committee," appointed by the New Jersey Supreme Court. This opinion states -- among other things -- that a title or abstract company is guilty of the unlawful practice of law when it conducts real estate settlements on its premises without the presence of an attorney for any of the parties of this transaction; to prohibit attorneys

or brokers from avoiding or circumventing the prohibition of the payment of a commission, consideration or thing of value in any form, for procuring title insurance, and from being placed within conflict of interest situations -- both of which can arise where an attorney or broker acts as an agent with respect to his own customers or clients, section 39 of this bill prohibits personal or controlled insurance -- as defined in this bill; the establishment of a "prior approval" rating system for the title insurance industry, by the State Department of Insurance, for determining title insurance rates. Other provisions of this bill are set forth in the recommendations found in the Real Estate Title Insurance Study Commission's Report.