

**TITLE INSURANCE REPORT**

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TITLE INSURANCE REPORT

I. PREAMBLE

On January 11, 1980, Delegate Luiz Simmons introduced House Bill 586. The purpose of the Bill was to authorize the Commissioner of Insurance to review the expense portions of title insurance rates, to set rates, to authorize the Commissioner to set maximum commission rates, and to require that title insurance rates be reviewed every two years. The Bill was assigned to the Economic Matters Committee. During discussions on the Bill, it appeared that there was a lack of statistical information from which any conclusions could be reached. The Bill was amended in Committee to require the Commissioner in cooperation with the Secretary of Licensing and Regulation, to obtain additional information, and based on that information recommend to the 1981 Session of the General Assembly changes in the law deemed necessary.

II. INTRODUCTION

At the outset it is important to understand the nature of title insurance industry. Some of the basic differences between title insurance and other types of insurance activity are as follows:

- (1) the prevention of losses attributable to matters that have occurred before the date the title insurance policy is issued;
- (2) policies of title insurance have no termination date and no limitation on filing claims, and title insurance premiums are deemed fully earned on the effective date of the coverage, under a statutory basis of accounting; and
- (3) title insurance losses constitute a minor portion of the premium with the major portion going to acquisition underwriting and loss prevention costs.

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If the information filed by the companies in question is not timely filed, a formal examination will be conducted by the Insurance Division examiners.

A summary of the results, as of September 1, 1980, is attached.

As a result of the study, the following recommendations are made:

- (1) the Insurance Commissioner should regulate the commission rates that the title companies pay.
- (2) rate filings should be made on a scheduled basis.
- (3) a clear distinction should be made between cost connected with insurance charges and title examination fees, with some control of the business being granted to the regulator.

A further recommendation is to consider the use of a statistical planning service in order to collect the information on a uniform basis and make comparisons of the statistics on a State as well as on a countrywide basis. Such services have been used by a number of states.

## II. THE NATURE OF THE PROBLEMS IN THE TITLE INSURANCE INDUSTRY

The purpose of this section is to discuss the background of the title insurance industry.

At the outset it is important to understand the nature of the title industry. As opposed to most other kinds of insurance, the primary purpose of title insurance is to provide security to owners and security holders who have an interest in real estate by identifying and eliminating risks and preventing

losses caused by defects in titles arising out of events that occur prior to the date the title insurance policy is issued as well as offering financial indemnity against losses caused by title defects that are unknown at the time that the policy is issued. Title insurance is legally defined as:

"The liability of an insurer under a title insurance policy is for loss or damage by reason of defects in the title to the property or by reason of liens or encumbrances thereon. It has been said to be in the nature of a covenant against encumbrances. It differs, however, from a covenant of warranty and the rules applicable to such a warranty do not apply to a title insurance policy. Ordinarily, no liability arises under such a policy except for an actual loss sustained, but one already in possession claiming to be the owner when a policy of title insurance issues to him may recover thereon although he expends nothing, and hence suffers no loss in reliance on the policy, his loss occurring from a defect in the source of his title. The coverage of title insurance extends to reasonably anticipated implications of ownership which attach to the insured by reason of the record, but does not extend beyond that point."<sup>1</sup>

Between convenances of property there are many things that might occur which may affect the title to that property. Such types of occurrence are numerous, including liens of various kinds, judgments, bankruptcy, change in marital status, as well as other conditions which would affect the interest purported to be conveyed. The possibilities of any of these conditions having arisen are in no way related to the tenure of ownership. The title underwriter's liability covers settlement of any valid claim on the title and furthermore, it covers the cost of legal defense against any claims valid or not, and the underwriter accepts this liability whether the dispute involves matters that are on or off the record.

Any discussion of the title insurance industry is compounded by the fact that the modus operandi of the various

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<sup>1</sup> 44 Am Jur 2nd INSURANCE §1450

companies normally differ throughout the State. In the metropolitan areas where the title insurance company has direct operations or maintains an office, the company itself may search and examine a title, as well as issue the insurance policy through its own staff. On the other hand, in outlining areas where the operations are more limited, the title insurance company will rely upon appointed agents to perform some or all of these functions. When the title insurance company performs the examination itself, it uses what is called "all inclusive rates". On the other hand, when the transaction is conducted in conjunction with an independent agent in which the title company accepts a Certificate of Title from the agent, different rates are used. In many cases the agent in these transactions is an attorney at law licensed under §177(3) of Article 48A. The "all inclusive rates" are somewhat higher than the rates which are utilized with the independent agents. The independent agent's rates are the standard \$3.50 - \$2.50 per \$1,000 rates which have been utilized in Maryland for a number of years. The difficulty in analyzing the "all inclusive rates" is that the title insurance companies perform various services other than insurance activities. This has the effect of shifting expenses between the examination and issuance of policy without any clear record upon which the regulator can monitor expenses. The filed rates of \$3.50 - \$2.50 are for title insurance only and do not include charges for searches, abstracts, or any other settlement services. The title insurers also have

rates for specific kinds of transactions such as assignment of mortgages, binders, lessee policies, mortgage policies, reissue of insurance, rerating policies and rider insurance.

In July of 1980 several leading title insurers in the State of Maryland filed for and were granted approval of a revision in their Standard Owner's Policy Form. This policy form applies only to one to four family dwellings. The new forms are written in simplified language form, which is now optional for use in Maryland.<sup>2</sup> The form is broader in nature than the Standard Owner's Title Insurance Policy which was filed and approved by the Maryland Insurance Division in 1970. The coverage has been expanded to include mechanics' liens and, to a certain extent, surveyors' errors. There is also coverage for certain restrictions, which in the 1970 form was excepted out. Based upon the broader form of coverage and with no requests for a premium increase, these forms were approved in August, 1980 by the Maryland Insurance Division.

Apart from State regulation, the title insurance industry is also indirectly regulated by Federal laws which relate to title business. In 1974 Congress enacted the Real Estate Settlement Procedures Act (RESPA) which prohibits the payment of kickbacks and referral fees in <sup>also</sup> connection with the provision of real estate settlement services.<sup>3</sup> The Federal Home Loan Bank, in their regulations,<sup>4</sup> prohibits savings and loan associations under its jurisdiction from requiring the borrower to use the services of a particular title insurance service as a condition for obtaining a mortgage loan.

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<sup>2</sup>Article 48A, §490D

<sup>3</sup>Real Estate Settlement Procedures Act of 1974 - §8

<sup>4</sup>C.F.R., §563.35(a)

In making any recommendation as to legislation, the unique aspect of controlled business as a phenomenon in the total insurance industry must be considered. As was described in a recent publication by the American Land Title Association on the controlled business problem in the title insurance industry, it was stated:

"The economics of title insurance operations, which involve high fixed costs and require a sufficient volume of business to achieve necessary economics of scale, result in title insurance service providers assigning a great deal of value to every additional transaction. Accordingly, title insurance service providers are subject to intense competitive pressures to obtain business from controllers of business."<sup>5</sup>

As mentioned earlier, the Federal Government has attempted to cure the evil of controlled business by enacting RESPA. Section 8 of that law prohibits rebates. The study points out the Federal legislation has not prevented the practice of the producer of real estate business becoming affiliated or being controlled by a title company. The affiliation is accomplished by the title company establishing a connection, such as a title insurance agency, in which the real estate producer can continue to realize financial benefits without receiving direct referral fees. The study also points out:

"In recent years, entities owned by real estate brokers, mortgage lenders, attorneys or real estate developers have, with increasing frequency, become title insurance agents."<sup>6</sup>

The agency receives commissions from the title insurance company which is, in turn, received by the owners of the agency by way of dividends or other forms of remuneration.

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<sup>5</sup>American Land Title Association, The Controlled Business Problem, Nov. 1979, Page 26.

<sup>6</sup>Id., American Land Title Association, Page 3.

The property buyer, the one who pays the bill, rarely makes the decision which title company's policy to buy. The buyer relies upon the producer of the business whether it be an attorney, real estate broker, lender or other for advice in this respect. The primary reason for the lack of concern on the part of the buyer is that the cost of the total insurance is so miniscule in relation to the entire transaction that it is usually of little concern. The producer is thus able to exercise an undue amount of influence over the selection of the title insurance service provider. This phenomenon of reverse competition is not unique to the title insurance industry. Within the last few years, the Maryland Insurance Division has devoted substantial time and efforts to a similar problem which existed in the credit Life and Health insurance coverage. After litigation, a regulation was promulgated which should correct the abuses which existed due to the reverse competition phenomenon for credit insurance. In order to correct such difficulty, it is normally required that the regulator play a more active role with respect to both the rate filings as well as obtaining jurisdiction over amounts of commission paid. The reverse competition phenomenon which is found in the title insurance area is much more prominent than that in the credit Life and Health area. Because of the tendency of the controlled business to concentrate into fewer hands, the smaller independent insurance service providers are at a greater disadvantage to compete for the marginal business. The small independent companies which are saddled with their high fixed costs of the title plant and related operations are unable to obtain the business which is funneled through to larger companies. The larger companies are in a better

position, because of economies of scale, to pay higher commissions both to controlled as well as independent producers. The smaller independent companies then find themselves having to sustain their high costs without being able to compete by paying higher commissions. Consequently, the independent title insurance service providers are unable to survive on a reduced number of transactions for which they can compete. Any claim of unfair competition by the insurers must be reviewed in light of the McCarran-Ferguson Act.<sup>7</sup>

The regulator is interested in having independent business, most of which are modest in size, develop and thrive because of their ability to provide high quality efficient service within the community.

It is also believed the producers of the real estate business can provide valuable assistance and guidance to buyers and sellers in the fair selection of title insurance services without the receipt of the high commissions which are being received at this time. Whenever the producer of the real estate business has a financial stake in the entity which receives commissions, it is inevitable that there will be a tendency for the control of such business to seek higher remuneration. The Insurance Code and Federal law currently contain sections prohibiting referrals or kickbacks to non-licensed entities, but the Commissioner has no jurisdiction to prohibit such producers of real estate business from incorporating or from holding an Insurance Agent's or Broker's License. For the above reasons, it is recommended that consideration be granted to add or amend several provisions of the insurance laws.

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<sup>7</sup> 15 U.S.C., Sections 1011-1015

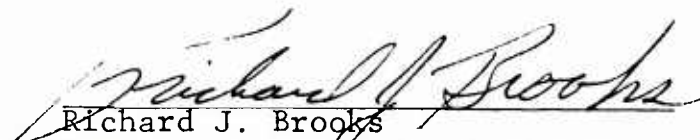
III. CONCLUSION

As a result of this study, the following changes or recommendations are proposed:

- (1) the Legislature granting to the Commissioner the authority to cap commissions at a certain percent.
- (2) requiring title insurance companies to clearly delineate all expenses between title examinations and insurance functions.
- (3) amending the Title Insurance Rating Law to enable the Commissioner to periodically review title insurance rates.

In order to accomplish the recommendations, a bill should read as per attached.

This study was compiled with the assistance of Insurance Division personnel including Eugene A. Graham and George M. Donhouse. It is the product of suggestions from consumers, title insurance experts and industry personnel. The material was compiled by me and in its present form is by no means an exhaustive study of the title insurance industry.

  
Richard J. Brooks  
Deputy Insurance Commissioner

## COMMENTS ON ATTACHED STATISTICAL REPORT

From analyzing the statistical reports received from the title companies, a clear distinction can be made between companies, with one operating with its own personnel to perform title examinations, and one employing outside services. The commission cost is higher when a company receives the services of an outside agency as compared to title work performed by the company's own salaried employees. The companies that operate with its own personnel, however, obtain a higher operating cost for expenses other than commissions.

Another point that showed up from our study is the need for a commission breakdown by agent. From the statistics, one can only see an average commission and not get an overall view of the actual commission range.

In response to our second questionnaire the Insurance Division has only received three replies at the time of this interim report. In one case a flat refusal was made to supply the requested information. Various inquiries have been made by the title companies about the confidential nature of supplying the Insurance Division with the individual names of agents and their commission rates.

UNITED BUSINESS CORP.

<u>DOMESTIC COMPANIES</u>		<u>YEAR</u>	<u>NET TITLE PREMIUMS EARNED</u>	<u>SERVICE CHARGES</u>	<u>NET EARNED REVENUE</u>	<u>COMMISSIONS</u>	<u>OTHER OPERATING EXPENSES</u>	<u>TOTAL EXPENSES</u>	<u>NET OPERATING GAIN OR (LOSS)</u>	<u>PERCENTAGE OF COMMISSIONS TO PREMIUMS EARNED</u>	<u>PERCENTAGE OF COMMISSIONS TO TOTAL EXPENSE</u>
District Realty Title Insurance Corp. Washington, D. C.	1977	1978	1979								
			\$1,688,844	\$115,392	\$1,804,236	\$ 903,534	\$ 721,360	\$1,624,894	\$179,342	53.50	55.61
			2,009,335	124,138	2,133,473	1,088,183	1,028,480	2,116,663	16,810	54.16	51.41
			2,191,346	118,134	2,309,480	1,215,728	1,096,663	2,312,391	( 2,911)	55.48	52.57
The Security Title Guarantee Corp. of Baltimore Baltimore, Md.	1977	1978	1979								
			1,191,889	655,257	1,847,146	550,270	990,538	1,540,808	306,338	46.17	35.71
			1,262,804	574,426	1,837,230	656,042	1,006,273	1,662,315	174,915	51.95	39.47
			1,482,314	597,667	2,079,981	822,686	1,036,572	1,859,258	220,723	55.50	44.2
The Title Guarantee Company Baltimore, Md.	1977	1978	1979								
			2,979,138	939,787	3,918,925	1,372,016	1,614,217	2,986,233	932,692	46.05	45.94
			3,398,217	943,731	4,341,948	1,774,666	1,812,403	3,587,069	754,879	52.22	49.47
			3,672,700	851,507	4,524,207	2,026,227	1,910,417	3,936,644	587,563	55.17	51.47
<u>FOREIGN COMPANIES</u>											
American Title Insurance Company Miami, Florida	1977	1978	1979								
			64	---	64	--	258	258	( 194)	-0-	-0-
			1,537	---	1,537	472	1,595	2,067	( 530)	30.71	22.84
			64,152	---	64,152	33,792	74,045	107,837	(43,685)	52.67	45.64
Berks Title Insurance Company Reading, Pa.	1977	1978	1979								
			224,182	---	224,182	143,455	30,191	173,646	50,536	63.99	82.61
			347,658	75	347,733	229,796	66,045	295,841	51,892	66.10	77.68
			424,039	---	424,039	294,585	( 27,648)	266,937	157,102	69.47	110.36
Chicago Title Insurance Company Chicago, Illinois	1977	1978	1979								
			790,513	335,518	1,126,031	142,855	930,102	1,072,957	53,074	18.07	13.31
			1,103,154	479,631	1,582,785	212,098	1,360,236	1,572,334	10,451	19.23	13.49
			1,181,188	452,287	1,613,475	176,574	1,574,656	1,751,230	(137,755)	14.95	10.08
Columbia Real Estate Title Insurance Co. Washington, D. C.	1977	1978	1979								
			352,682	66,446	419,128	153,191	247,736	400,927	18,201	43.44	38.21
			200,581	25,099	223,680	98,825	118,024	216,849	6,831	49.27	45.57
			237,892	30,987	268,879	125,994	272,460	398,454	(129,575)	52.96	31.62
Commonwealth Land Title Insurance Co. Philadelphia, Pa.	1977	1978	1979								
			1,915,568	169,711	2,085,279	1,000,397	606,651	1,607,048	478,231	52.22	62.25
			1,954,481	124,479	2,078,960	1,113,858	656,426	1,770,284	308,676	56.99	62.92
			2,226,248	116,430	2,342,678	1,247,871	470,578	1,718,449	624,229	56.05	72.62
First American Title Insurance Company Santa Ana, California	1977	1978	1979								
			202,588	---	202,588	123,860	13,842	137,702	64,886	61.14	89.95
			441,314	---	441,314	259,758	46,587	306,345	134,969	58.86	84.79
			452,051	---	452,051	274,818	51,210	326,028	126,023	60.70	87.50

MARYLAND BUSINESS ONLY

<u>FOREIGN COMPANIES</u>	<u>YEAR</u>	<u>NET TITLE PREMIUMS EARNED</u>	<u>SERVICE CHARGES</u>	<u>NET EARNED REVENUE</u>	<u>COMMISSIONS</u>	<u>OTHER OPERATING EXPENSES</u>	<u>TOTAL EXPENSES</u>	<u>NET OPERATING GAIN OR (LOSS)</u>	<u>PERCENTAGE OF COMMISSIONS TO PREMIUMS EARNED</u>	<u>PERCENTAGE OF COMMISSIONS TO TOTAL EXPENSE</u>
Industrial Valley Title Insurance Co. Philadelphia, Pa.	1977 1978 1979			NO BUSINESS IN MARYLAND NO BUSINESS IN MARYLAND NO BUSINESS IN MARYLAND						
Jefferson-Pilot Title Insurance Co. Greensboro, N. C.	1977 1978 1979	---	---	---	---	---	\$ 279 293 293	\$ (279) (293) (293)		
Lawyers Title Insurance Company Richmond, Va.	1977 1978 1979	\$1,151,001 1,190,765 1,045,119	\$206,313 191,147 124,089	\$1,357,314 1,381,912 1,169,208	\$ 466,170 473,988 430,362	\$1,147,284 946,409 1,024,942	1,613,454 1,420,397 1,455,304	(256,140) ( 38,485) (286,096)	40.50 39.81 41.18	28.91 33.37 29.57
Pioneer National Title Insurance Co. Los Angeles, Calif.	1977 1978 1979	1,188,290 1,574,024 2,090,546	22,435 14,662 17,692	1,210,725 1,588,686 2,108,238	715,947 944,326 1,283,397	472,277 749,929 629,133	1,188,224 1,694,255 1,912,530	22,501 (105,569) 195,708	60.25 59.99 61.39	60.25 55.74 67.10
Security Title and Guaranty Co. New York, N. Y.	1977 1978 1979	6,401 948 1,974	8,009 1,917 3,463	14,410 2,865 5,437	--- 2,091 3,521	1,483 1,567 2,435	1,483 3,658 5,956	12,927 ( 793) ( 519)	--- 220.57 178.37	--- 57.16 59.12
Stewart Title Guaranty Co. Houston, Texas	1977 1978 1979	96,914 204,917 245,770	--- --- ---	96,914 204,917 245,770	60,923 129,545 161,252	16,838 30,339 54,265	77,761 159,884 215,517	19,153 45,033 30,253	62.86 63.22 65.61	78.35 81.00 74.00
Title Insurance Co. of Minnesota Minneapolis, Minn.	1977 1978 1979			NO BUSINESS IN MARYLAND NO BUSINESS IN MARYLAND NO BUSINESS IN MARYLAND						
Title Insurance Corp. of Pa. Bryn Mawr, Pa.	1977 1978 1979	21,054 33,909 14,702	703 1,105 350	21,757 35,014 15,052	11,411 18,081 7,989	11,385 9,330 4,163	22,796 27,411 12,152	( 1,039) 7,603 2,900	54.20 53.32 54.34	50.06 65.96 65.74
U. S. Life Title Insurance Co. of N.Y. New York, N. Y.	1977 1978 1979	607,660 766,883 762,985	--- --- ---	607,660 766,883 762,985	356,049 472,995 477,028	198,832 317,440 268,115	554,881 790,455 745,143	52,779 ( 23,552) 17,842	58.59 61.68 62.52	64.17 59.84 64.02

COMMENTS ON ATTACHED STATISTICAL REPORT

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Another point that showed up from our study is the need for a commission breakdown by agent. From the statistics, one can only see an average commission and not get an overall view of the actual commission range.

In response to our second questionnaire the Insurance Division had only received three replies at the time of the interim report, however, all companies have responded at the time of this report.

## MARYLAND BUSINESS ONLY

FOREIGN COMPANIES	YEAR	NET TITLE PREMIUMS EARNED	SERVICE CHARGES	NET EARNED REVENUE	COMMISSIONS	OTHER OPERATING EXPENSES	TOTAL EXPENSES	NET OPERATING GAIN OR (LOSS)	PERCENTAGE OF COMMISSIONS TO PREMIUMS EARNED	PERCENTAGE OF COMMISSIONS TO TOTAL EXPENSE
First American Title Insurance Company	1977	\$ 202,588	-----	\$ 202,588	\$ 123,860	\$ 13,842	\$ 137,702	\$ 64,886	61.14	89.95
	1978	441,314	-----	441,314	259,758	46,587	306,345	134,969	58.86	84.79
Santa Ana, California	1979	452,051	-----	452,051	274,818	54,210	329,028	123,023	60.79	83.52
Jefferson-Pilot Title Insurance Company	1977	-----	-----	-----	-----	-----	279	(279)		
	1978	-----	-----	-----	-----	-----	293	(293)		
Greensboro, N.C.	1979	-----	-----	-----	-----	-----	293	(293)		
Lawyers Title Insurance Company	1977	1,151,001	\$206,313	1,357,314	466,170	\$1,147,284	1,613,454	(256,140)	40.50	28.91
	1978	1,190,765	191,147	1,381,912	473,988	946,409	1,420,397	( 38,485)	39.81	33.37
Richmond, Va.	1979	1,045,119	124,089	1,169,208	430,362	1,024,942	1,455,304	(286,096)	41.18	29.57
Pioneer National Title Insurance Company	1977	1,188,290	22,435	1,210,725	715,947	472,277	1,188,224	22,501	60.25	60.25
	1978	1,574,024	14,662	1,588,686	944,326	749,929	1,694,255	(105,569)	59.99	55.74
Los Angeles, Calif.	1979	2,090,546	17,692	2,108,238	1,283,397	629,133	1,912,530	195,708	61.39	67.10
Security Title and Guaranty Co.	1977	6,401	8,009	14,410	-----	1,483	1,483	12,927	-----	-----
	1978	948	1,917	2,865	2,091	1,567	3,658	( 793)	220.57	57.16
New York, N.Y.	1979	1,974	3,463	5,437	3,521	2,435	5,956	( 519)	178.37	59.12
Steward Title Guaranty Co.	1977	96,914	-----	96,914	60,923	16,838	77,761	19,153	62.86	78.35
	1978	204,917	-----	204,917	129,545	30,339	159,884	45,033	63.22	81.02
Houston, Texas	1979	245,770	-----	245,770	161,252	54,265	215,517	30,253	65.61	74.82
St. Paul Title Insurance Company	1977	53,262	2,993	56,255	33,248	3,167	36,415	19,840	59.10	91.30
	1978	115,453	5,362	120,815	86,054	7,092	93,146	27,669	71.23	92.39
St. Paul, Minnesota	1979	222,066	8,205	230,271	165,914	27,667	193,581	36,690	72.05	85.71
Title Insurance Corp. of Pa.	1977	21,054	703	21,757	11,411	11,385	22,796	( 1,039)	54.20	50.06
	1978	33,909	1,105	35,014	18,081	9,330	27,411	7,603	53.32	65.96
Bryn Mawr, Pa.	1979	14,702	350	15,052	7,989	4,163	12,152	2,900	54.34	65.74
U.S. Life Title Insurance Co. of N.Y.	1977	607,660	-----	607,660	356,049	198,832	554,881	52,779	58.59	64.17
	1978	766,883	-----	766,883	472,995	317,440	790,435	( 23,552)	61.68	59.84
New York, N.Y.	1979	762,985	-----	762,985	477,028	268,115	745,143	17,842	62.52	64.02

<u>DOMESTIC COMPANIES</u>	<u>YEAR</u>	<u>NET TITLE PREMIUMS EARNED</u>	<u>SERVICE CHARGES</u>	<u>NET EARNED REVENUE</u>	<u>COMMISSIONS</u>	<u>OTHER OPERATING EXPENSES</u>	<u>TOTAL EXPENSES</u>	<u>NET OPERATING GAIN OR (LOSS)</u>	<u>PERCENTAGE OF COMMISSIONS TO PERMIUMS EARNED</u>	<u>PERCENTAGE OF COMMISSIONS TO TOTAL EXPENSE</u>
District Realty	1977	\$1,688,844	\$115,392	\$1,804,236	\$ 903,534	\$ 721,360	\$1,624,894	\$179,342	53.50	55.61
Title Insurance Corp.	1978	2,009,335	124,138	2,133,473	1,088,183	1,028,480	2,116,663	16,810	54.16	51.41
Washington, D.C.	1979	2,191,346	118,134	2,309,480	1,215,728	1,096,663	2,312,391	( 2,911)	55.48	52.57
The Security Title	1977	1,191,889	655,257	1,847,146	550,270	990,538	1,540,808	306,338	46.17	35.71
Guarantee Corp. of	1978	1,262,804	574,426	1,837,230	656,042	1,006,273	1,662,315	174,915	51.95	39.47
Baltimore	1979	1,482,314	597,667	2,079,981	822,686	1,036,572	1,859,258	220,723	55.50	44.25
Baltimore, Md.										
The Title Guarantee	1977	2,979,138	939,787	3,918,925	1,372,016	1,614,217	2,986,233	932,692	46.05	45.94
Company	1978	3,398,217	943,731	4,341,948	1,774,666	1,812,403	3,587,069	754,879	52.22	49.47
Baltimore, Md.	1979	3,672,700	851,507	4,524,207	2,026,227	1,910,417	3,936,644	587,563	55.17	51.47
<u>FOREIGN COMPANIES</u>										
American Title	1977	64	-----	64	-----	258	258	( 194)	-----	-----
Insurance Company	1978	1,537	-----	1,537	472	1,595	2,067	( 530)	30.71	22.84
Miami, Florida	1979	64,152	-----	64,152	33,792	74,045	107,837	( 43,685)	52.67	45.64
Berks Title	1977	224,182	-----	224,182	143,455	30,191	173,646	50,536	63.99	82.61
Insurance Company	1978	347,658	75	347,733	229,796	66,045	295,841	51,892	66.10	77.68
Reading, Pa.	1979	424,039	-----	424,039	294,585	( 27,648)	266,937	157,102	69.47	110.36
Chelsea Title &										
Guaranty Company	1977	320,722	97,674	418,446	162,233	354,775	517,008	( 98,562)	38.77	31.38
Insurance Company	1978	387,350	110,728	498,078	200,305	379,502	579,807	( 81,729)	40.22	34.55
Atlantic City, N.J.	1979	472,451	151,351	623,802	264,362	359,440	663,768	( 39,966)	42.38	39.83
Chicago Title	1977	790,513	335,518	1,126,031	142,855	930,102	1,072,957	53,074	18.07	13.31
Insurance Company	1978	1,103,154	479,631	1,582,785	212,098	1,360,236	1,572,334	110,451	19.23	13.49
Chicago, Ill.	1979	1,181,188	432,287	1,613,475	176,574	1,574,656	1,751,230	(137,755)	14.95	10.08
Columbia Real Estate	1977	352,682	66,446	419,128	153,191	247,736	400,927	18,201	43.44	38.21
Title Insurance Co.	1978	200,581	23,099	223,680	98,825	118,024	216,849	6,831	49.27	43.57
Washington, D.C.	1979	237,892	30,987	268,879	125,994	272,460	398,454	(129,575)	52.96	31.62
Commonwealth Land Title	1977	1,915,568	169,711	2,085,279	1,000,397	606,651	1,607,048	478,231	52.22	62.25
Insurance Company	1978	1,954,481	124,479	2,078,960	1,113,858	636,426	1,770,284	308,676	56.99	62.92
Philadelphia, Pa.	1979	2,226,248	116,430	2,342,678	1,247,871	470,578	1,718,449	624,229	56.05	72.62

COMMENTS ON ATTACHED COMMISSION REPORT

If the trend of paying higher commissions continues, the financial stability of the title companies is jeopardized. The Company cannot accumulate a sufficient amount of surplus to cover potential losses to its policyholders. A reasonable commission rate must be established.

## Exhibit 2

TITLE INSURANCE STUDY  
 AGENT COMMISSIONS RANGE (Premiums in excess  
 of \$2,500)  
 FOR YEARS ENDING 1977-79

<u>Companies</u>	1977		1978		1979	
	<u>Commissions</u> <u>From</u>	<u>Range</u> <u>To</u>	<u>Commissions</u> <u>From</u>	<u>Range</u> <u>To</u>	<u>Commissions</u> <u>From</u>	<u>Range</u> <u>To</u>
1	NONE		NONE		70%	70%
2	50%	62%	50%	63%	50%	65%
3	43%	64%	48%	62%	48%	69%
4	50%	60%	50%	60%	50%	60%
5	50%	60%	50%	65%	50%	70%
6	50%	88%	57%	61%	48%	62%
7	60%	60%	57%	60%	56%	60%
8	34%	60%	50%	60%	50%	60%
9	42%	62%	49%	61%	50%	61%
10	NONE		60%	60%	60%	60%
11	55%	65%	55%	65%	55%	65%
12	50%	50%	60%	70%	60%	70%
13	52%	52%	52%	52%	53%	53%
14	40%	62%	40%	70%	42%	71%
15	36%	60%	39%	61%	32%	62%
16	40%	62%	40%	66%	43%	72%
17	32%	60%	48%	65%	49%	65%

The commission percentage depicted in the above chart are the low and high commissions that were reported to the Insurance Division by the companies. It should be noted that the companies pay commissions at various rates within the described ranges.

## INTERIM TITLE INSURANCE REPORT

### I. PREAMBLE

On January 11, 1980, Delegate Luiz Simmons introduced House Bill 586. The purpose of the Bill was to authorize the Commissioner of Insurance to review the expense portions of title insurance rates, to authorize the Commissioner to set maximum commission rates, and to require that title insurance rates be reviewed every two years. The Bill was assigned to the Economic Matters Committee. During discussions on the Bill, it appeared that there was a lack of statistical information from which any conclusions could be reached. The Bill was amended in Committee to require the Commissioner in cooperation with the Secretary of Licensing and Regulation, to obtain additional information, and based on that information recommend to the 1981 Session of the General Assembly changes in the law deemed necessary. All title insurance companies writing coverage in Maryland were directed by the Commissioner to report statistics showing earned premiums, losses, commissions, and other expenses. The statistical information was requested by way of a questionnaire, a copy of which is attached as Exhibit No. 1. The data obtained in the initial questionnaire gave rise to more specific questions which were propounded to the title companies in a second request calling for additional facts. The second questionnaire is attached as Exhibit No. 2. At the time this interim report was drafted, the Insurance Division had not received a response for all the licensed title insurers. There have been cases in which the insurers have been reluctant to answer the interrogatories and in one case a flat refusal to supply the requested information.



Title insurance does not relieve the insured of the risks inherent in the fact that the future is both unknown and unknowable. Instead it protects him from risks due to his ignorance of the past.<sup>(1)</sup>

As opposed to most other kinds of insurance, the primary purpose of title insurance is to provide security to owners and security holders who have an interest in real estate by identifying and eliminating risks and preventing losses caused by defects in titles arising out of events that occur prior to the date the title insurance policy is issued as well as offering financial indemnity against losses caused by title defects that are unknown at the time that the policy is issued. Title insurance is legally defined as:

"The liability of an insurer under a title insurance policy is for loss or damage by reason of defects in the title to the property or by reason of liens or encumbrances thereon. It has been said to be in the nature of a covenant against encumbrances. It differs, however, from a covenant of warranty and the rules applicable to such a warranty do not apply to a title insurance policy. Ordinarily, no liability arises under such a policy except for an actual loss sustained, but one already in possession claiming to be the owner when a policy of title insurance issues to him may recover thereon although he expends nothing, and hence suffers no loss in reliance on the policy, his loss occurring from a defect in the source of his title. The coverage of title insurance extends to reasonable anticipated implications of ownership which attach to the insured by reason of the record, but does not extend beyond that point."<sup>2</sup>

Between covenances of property there are many things that might occur which may affect the title to that property. Such types of occurrence are numerous, including liens of various kinds, judgments, bankruptcy, change in marital status as well as other conditions which would affect the interest purported to be conveyed. The possibilities of any of these

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<sup>1</sup> On The Theory and Practice of Rate Revision and Profit Measurement in Title Insurance, Irving H. Plitkin, 1978 pp. 26-27.

<sup>2</sup> 44 Am Jur 2nd INSURANCE § 1450

conditions having arisen are in no way related to the tenure of ownership. The title underwriter's liability covers settlement of any valid claim on the title and furthermore, it covers the cost of legal defense against any claims valid or not, and the underwriter accepts this liability whether the dispute involves matters that are on or off the record. A title policy will not only protect the insured owner for as long as he has an interest in the property, but it will also protect his heirs or devisees for as long as they hold title to the property. This protection is offered for a one time premium.

Increasing the consumer's understanding of the nature of the title insurance product is difficult. The average consumer has the need for title insurance on a limited basis, and therefore lacks the time and economic incentive to become informed in this area. These factors cause the consumer to be captive and vulnerable to excessive rates. The consumer also normally relies on the broker, a lending institution or attorneys for selecting a title policy and the interest of consumer may be diverted to one of monetary compensation for the producer of the title insurance.

### III. VARIOUS MODES OF OPERATION

Title companies have various modes of operation. The company or agent procedure is when the insurer or its agent examines the title and in some instances performs certain services relating to the closing or settlement. The approved attorney procedure is when an approved attorney certifies the title to the insurer or its agent on a preliminary report of title based upon the approved attorney's examination of title. The insurer or its agent in reliance upon such report may issue an interim binder and the approved attorney may conduct a settlement on closing based upon such report and interim binder. Subsequently, the title insurance policy

shall be issued by the insurer or its agent based upon the approved attorney's final Certificate of Authority. Various modes of operation differ throughout the State. In the metropolitan areas where the title insurance company has direct operations or maintains an office, the company itself may search and examine a title, as well as issue the insurance policy through its own staff. On the other hand, in outlining areas where the operations are more limited, the title insurance company will rely upon appointed agents to perform some or all of these functions.

IV. PREMIUM AND RATES

When the title company performs the examination itself, it uses what is called the "all inclusive rate". The all inclusive rate includes charges for examination work plus the insurance premium. On the other hand, when the transaction is conducted in conjunction with an approved attorney or licensed agent the standard \$3.50 - 2.50 per \$1,000 is charged for the insurance premium plus an additional work charge for examination work.

The difficulty in analyzing the "all inclusive rates" is that the title insurance companies perform various services other than insurance activities. This has the effect of shifting expenses between the examination and issuance of policy without any clear record upon which the regulator can monitor expenses. The filed rates of \$3.50 - \$2.50 are for title insurance only and do not include charges for searches, abstracts, or any other settlement services. The title insurers also have rates for specific kinds of transactions such as assignment of mortgages, binders, lessee policies, mortgage policies, reissue of insurance, rerating policies and rider insurance.

In the operation of a title company certain fixed costs such as plant maintenance, labor costs and the capacity to facilitate closings have no relationship to the demand for title insurance. Fixed cost do not fluctuate directly with the volume of business. As long as the company has a continuing stream of significant productivity the fixed cost of maintaining a qualified staff can be justified, but in time of economic depression, the fixed cost are burdensome.

The burden of performing all examination work by the companies would have an effect of raising the underwriting cost to the companies. In regulating the examination cost, the possibility of not having outside parties to perform the examination work would limit the services that would be required for the protection of the consumer.

A uniform reporting system must be developed in order to collect the data that is necessary to formulate premiums and rates that are not excessive and ensure to the consumers the benefit of competition in the area of title insurance.

The present system is not designed to cope with inflationary trends that have existed in the past decade. A revision is needed as stated in the report prepared by a Research Committee of the American Land Title Association:

"Timely rate review is needed by title insurers as much as by any other insurance line when inflation rises abruptly. But title insurance also needs a special kind of additional rate relief in the presence of even moderate ongoing inflation. This special form is essential if title insurers cost are not to climb endlessly upward, driving the insurance rates to a level the public cannot afford."<sup>3</sup>

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<sup>3</sup> The Title Insurance Industry. A Report from the Research Committee of the American Land Title Association 1980, P 6.

In July of 1980 several leading title insurers in the State of Maryland filed for and were granted approval of a revision in their Standard Owner's Policy Form. This policy form applies only to one to four family dwellings. The new forms are written in simplified language form, which is now optional for use in Maryland.<sup>4</sup> The form is broader in nature than the Standard Owner's Title Insurance Policy which was filed and approved by the Maryland Insurance Division in 1970. The coverage has been expanded to include mechanics' liens and, to a certain extent, surveyors' errors. There is also coverage for certain restrictions, which in the 1970 form was excepted out. Based upon the broader form of coverage and with no requests for a premium increase, these forms were approved in August, 1980 by the Maryland Insurance Division.

V. CONTROLLED BUSINESS

Apart from State regulation, the title insurance industry is also indirectly regulated by Federal laws which relate to title business. In 1974 Congress enacted the Real Estate Settlement Procedures Act (RESPA) which prohibits the payment of kickbacks and referral fees in connection with the provision of real estate settlement services.<sup>5</sup> The Federal Home Loan Bank, in their regulations<sup>6</sup>, prohibits savings and loan associations under its jurisdiction from requiring the borrower to use the services of a particular title insurance service as a condition for obtaining a mortgage loan.

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<sup>4</sup> Article 48A, §490D

<sup>5</sup> Real Estate Settlement Procedures Act of 1974 - §8

<sup>6</sup> C.F.R., §563.35(a)

In making any recommendation as to legislation, the unique aspect of controlled business as a phenomenon in the total insurance industry must be considered. As was described in a recent publication by the American Land Title Association on the controlled business problem in the title insurance industry, it was stated:

"The economics of title insurance operations, which involve high fixed costs and require a sufficient volume of business to achieve necessary economics of scale, result in title insurance service providers assigning a great deal of value to every additional transaction. Accordingly, title insurance service providers are subject to intense competitive pressures to obtain business from controllers of business."

As mentioned earlier, the Federal Government has attempted to cure the evil of controlled business by enacting RESPA. Section 8 of that law prohibits rebates. The study points out the Federal legislation has not prevented the practice of the producer of real estate business becoming affiliated or being controlled by a title company. The affiliation is accomplished by the title company establishing a connection, such as a title insurance agency, in which the real estate producer can continue to realize financial benefits without receiving direct referral fees. The study also points out:

"In recent years, entities owned by real estate brokers, mortgage lenders, attorneys or real estate developers have, with increasing frequency, become title insurance agents."

The agency receives commissions from the title insurance company which is, in turn, received by the owners of the agency by way of dividends or other forms of remuneration.

The property buyer, the one who pays the bill, rarely makes the decision which title company's policy to buy. The buyer relies upon the producer of the business whether it be

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<sup>7</sup> American Land Title Association, The Controlled Business Problem, Nov. 1979, Page 26.

<sup>8</sup> Id., American Land Title Association, Page 5.

an attorney, real estate broker, lender or other for advice in this respect. The primary reason for the lack of concern on the part of the buyer is that the cost of the total insurance is so miniscule in relation to the entire transaction that it is usually of little concern. The cost of settlement is primarily accounted for by such items as sales commission lender charges, loan discount, prepaid items, recording fees, taxes and documentary stamps.

The producer is thus able to exercise an undue amount of influence over the selection of the title insurance service provider. The phenomenon of reverse competition is not unique to the title insurance industry. Within the last few years, the Maryland Insurance Division has devoted substantial time and efforts to a similar problem which existed in the credit Life and Health insurance coverage. After litigation, a regulation was promulgated which should correct the abuses which existed due to the reverse competition phenomenon for credit insurance. In order to correct such difficulty, it is normally required that the regulator play a more active role with respect to both the rate filings as well as obtaining jurisdiction over amounts of commission paid. The reverse competition phenomenon which is found in the title insurance area is much more prominent than that in the credit Life and Health area. Because of the tendency of the controlled business to concentrate into fewer hands, the smaller independent insurance service providers are at a greater disadvantage to compete for the marginal business. The small independent companies which are saddled with their high fixed costs of the title plant and related operations are unable to obtain the business which is funneled through to larger companies. The larger companies are in a better position, because of economies of scale, to pay higher commissions both to controlled as well as independent producers.

The smaller independent companies then find themselves having to sustain their high costs without being able to compete by paying higher commissions. Consequently, the independent title insurance service providers are unable to survive on a reduced number of transactions for which they can compete. Any claim of unfair competition by the insurers must be reviewed in light of the McCarran-Ferguson Act.<sup>9</sup>

The regulator is interested in having independent business, most of which are modest in size, develop and thrive because of their ability to provide high quality efficient service within the community.

It is also believed the producers of the real estate business can provide valuable assistance and guidance to buyers and sellers in the fair selection of title insurance services without the receipt of the high commissions which are being received at this time. Whenever the producer of the real estate business has a financial stake in the entity which receives commissions, it is inevitable that there will be a tendency for the control of such business to seek higher remuneration. The Insurance Code and Federal law currently contain sections prohibiting referrals or kickbacks to non-licensed entities, but the Commissioner has no jurisdiction to prohibit such producers of real estate business from incorporating or from holding an Insurance Agent's or Broker's License .

An interpretative ruling by the Department of Housing and Urban Development on Section 8 of RESPA states:

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<sup>9</sup> 15 U.S.C., Sections 1011 - 1015

"It has concluded that the existence of "the controlled business" relationship may be a violation of Section 8 (12 U.S.C. 2607). The Department interprets this section as applying, notwithstanding (1) that the person referring the business has an ownership interest in the provider of the service, or (2) that the payment of the "fee, kickback or thing or value" is characterized as a return on capital invested."<sup>10</sup>

For the above reasons, it is recommended that consideration be granted to add or amend several provisions of the insurance laws.

#### VI. INVESTIGATIVE REPORT

At the time of the writing of the interim report, the Insurance Division had not received a respond from all of the title companies to our first and second questionnaires. All companies have responded as of the date of this report. (See attached exhibits No. 1 and No. 2)

After receiving the requested information a number of agents were selected from the information received from the title insurers. The agents selected consisted of top producers, corporate agencies and a random choice. At our investigative interviews which were conducted both at the Insurance Division and visits made to offices of the agents various questions were proposed such as:

- (1) What are your sources of business?
- (2) Do you have any affiliation with brokers or lending institutions?
- (3) Do consumers normally choose a title company of their own?
- (4) Do you perform the title examination?
- (5) What would your reaction be to a cap on commissions?

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<sup>10</sup> Federal Register, Vol 45, No 144, July 24, 1980

Agents procure their business by various means such as through association with lending institutions, attendance at real estate meetings and affiliation with brokers.

A real estate broker who forms a subsidiary corporation for real estate transaction is subject to Section 8 of RESPA and scrutinized for any form of kickback or rebate that may occur to his benefit.

Lending institutions, namely saving and loans account for the majority of mortgage financing and in many instances are in a advantageous position to funnel business to certain title agents. The person who controls the purse can pull the strings.

The majority of agents that were contacted were not associated with one broker, realtor or lending institution. They performed services for a number of different groups. Even, in the case of a controlled group the percentage of transactions that were placed through the title agency were on a 1 to 6 ratio of total transactions.

A lending institution will permit a mortgagor to make his own choice for title insurance but a service fee sometimes will be charged to the mortgagor by the lending institution for review of documents. This service fee is in addition to the charges normally made to the mortgagor by his own attorney.

The agents contacted had dealings with more than one company. Their business was placed with different title insurers. The main reason for placing business with different companies was the economics and efficiency in which the title policy could be issued. The lending institution will not complete a settlement until a title binder or policy has been issued.

Almost every agent was in agreement that the title company proposed by the broker, realtor or lending institution were normally accepted. However, with consumer education namely through RESPA the public has become more aware of settlement cost.

Title examination work in the majority of cases was not performed by title agent but was contracted out to abstractors who were on a fee paid basis. The underwriting was completed by the attorney agent. Sometimes the difficult problems were referred to the title companies for their expertise.

The abstractors would normally charge a basic fee ranging from \$75 - \$100 with add ons for different complications.

The majority of our agents interviewed were in agreement that the examination fee would be increased to make up the difference for the decrease in the commission rate. In the smaller agency operations the agents claimed that they could not take a cut in the commission rate since their profit was made in that area and not on the title examination. The title examination fee could not be raised because of competition.

#### VII. CONCLUSION

As a result of this study, the following changes or recommendations are proposed:

- (1) the Legislature granting to the Commissioner the authority to cap commissions at a certain percent.
- (2) the authority for the Commissioner to set a schedule of premiums for insurance and rates for title examinations.
- (3) requiring title insurance companies to clearly delineate all expenses between title examinations and insurance functions.

- (4) a reporting system must be developed to produce the necessary statistics in order to establish adequate premiums and rates.
- (5) amending the Title Insurance Rating Law to enable the Commissioner to periodically review title insurance rates.

PROPOSED NEW TITLE INSURANCE LAW

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that, Section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 48A - Insurance

§242A - TITLE INSURANCE RATING "

(a) Scope of Section.

[This section applies to all kinds and classes of insurance which insure or guarantee titles to real or leasehold property or any estate therein, or against loss by reason of defects, encumbrances, liens or charges on real or leasehold property, or any estate therein; or which insure or guarantee the validity, priority and status of real and leasehold property liens and estates; or which insure or guarantee the correctness and sufficiency or searches for instruments, liens, charges or other matters affecting the title to real or leasehold property or any estate therein. Any person making such guarantees or issuing such insurance shall be deemed to be engaged in the business of title insurance and is hereinafter referred to as "insurer".]

THIS SECTION APPLIES TO ALL KINDS AND CLASSES OF TITLE INSURANCE. ANY PERSON ISSUING SUCH INSURANCE SHALL BE DEEMED TO BE ENGAGED IN THE BUSINESS OF TITLE INSURANCE AND IS HEREINAFTER REFERRED TO AS AN INSURER. ANY PERSON RECEIVING TITLE INSURANCE FROM AN INSURER IS HEREINAFTER REFERRED TO AS INSURED. NO INSURER SHALL RECEIVE PREMIUM OR TITLE CHARGE INCOME OTHER THAN IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(B) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING WORDS OR PHRASES MEAN:

- (I) PREMIUM - IS THE CONSIDERATION FOR INSURANCE RECEIVED BY AN INSURER DIRECTLY OR INDIRECTLY FROM AN INSURED IN RETURN FOR A TITLE INSURANCE POLICY.
- (II) TITLE INSURANCE - ANY PROMISE WHICH INDEMNIFIES THE OWNER OF A REAL OR LEASEHOLD ESTATE IN THE EVENT CLEAR OWNERSHIP OF PROPERTY IS CHALLENGED BY THE DISCOVERY OF FAULTS IN THE TITLE.
- (III) TITLE CHARGE - ANY SUM OF MONEY PAID BY AN INSURED FOR A TITLE SEARCH, ABSTRACT, TITLE EXAMINATION REAL PROPERTY SETTLEMENT SERVICES OR ATTORNEYS' FEES.
- (IV) ALLOCATED INSURANCE EXPENSE - ANY PORTION OF PREMIUM PAID DIRECTLY AS COMPENSATION OR OTHERWISE BY AN INSURER TO ANY PERSON OTHER THAN AN EMPLOYEE OF AN INSURER PAID EXCLUSIVELY BY SALARY.
- (V) UNALLOCATED INSURED EXPENSE - ANY PORTION OF PREMIUM PAID BY AN INSURED FOR PHYSICAL OVERHEAD AND SALARIES

(VI) ~~AL~~LOCATED TITLE CHARGE EXPENSE <sup>e</sup> ANY PORTION OF TITLE CHARGE PAID DIRECTLY OR INDIRECTLY TO ANY PERSON OTHER THAN AN EMPLOYEE OF THE INSURER PAID EXCLUSIVELY BY SALARY.

(VII) UNALLOCATED TITLE CHARGE - ANY PORTION OF A TITLE CHARGE PAID BY AN INSURER FOR PHYSICAL OVERHEAD AND SALARIES OTHER THAN AS AN UNALLOCATED PREMIUM EXPENSE.

(VIII) RATES - THE METHODS AND FORMULA USED BY AN INSURER TO DETERMINE PREMIUM.

[(b)] (C)

(1) [~~Rates,~~] PREMIUMS AND TITLE CHARGES SHALL NOT BE INADEQUATE, EXCESSIVE, OR UNFAIRLY DISCRIMINATORY [shall be reasonable and adequate for the class of risks to which they apply.]

(2) [Rates,] PREMIUMS AND TITLE CHARGES shall not discriminate unfairly between risks involving essentially the same hazards and expense elements.

(3) WITH RESPECT TO PREMIUMS [D] due consideration will be given to past and perspective loss experience within and outside the state, reasonable margin for profit and contingencies, cost of participating insurance, percentaged to be allocated to reserve, operating expense and all other relevant factors fairly attributable to the business to title insurance, except as specifically prohibited herein.

(4) WITH THE APPROVAL OF THE COMMISSIONER IN EACH CASE, [Guarantees may be grouped by classification for the establishment of rates and medium premiums. A] special or unusual [guarantee] RISKS, more hazardous to the insurer [than ordinary title guarantees] AND NOT CONTEMPLATED BY OR INCLUDED IN RATES FILED AND TITLE CHARGES APPROVED BY THE COMMISSIONER because of an

alleged irregularity or difference in interpretation or application of law which might affect marketability of title, may be classified individually and separately AND AN ADDITIONAL PREMIUM CHARGED according to the circumstances peculiar to each case.

(5) EVERY FILING OR FINANCIAL REPORT MADE BY AN INSURER SHALL SEPARATE AND CLASSIFY TOTAL INCOME OTHER THAN INVESTMENT INCOME AS EITHER PREMIUM INCOME OR TITLE CHARGE INCOME. ALLOCATIONS OF INCOME SHALL BE MADE IN A MANNER CONSISTENT WITH PREMIUM AND TITLE CHARGES AS DEFINED IN THIS SECTION.

(6) EVERY FILING OR FINANCIAL REPORT MADE BY AN INSURER SHALL ATTRIBUTE AGAINST PREMIUM INCOME, ALLOCATED INSURANCE EXPENSE, UNALLOCATED INSURANCE EXPENSE AND LOSS RESERVES BUT SHALL NOT ATTRIBUTE AGAINST PREMIUM INCOME ALLOCATED OR UNALLOCATED TITLE CHARGE EXPENSE.

(7) EVERY FILING OR FINANCIAL REPORT MADE BY AN INSURER SHALL ATTRIBUTE AGAINST TITLE CHARGE INCOME ONLY ALLOCATED AND UNALLOCATED TITLE CHARGE EXPENSE.

(8) EVERY FILING OR FINANCIAL REPORT MADE BY AN INSURER SHALL ALLOCATE INVESTMENT INCOME TO PREMIUM INCOME IN THE SAME PROPORTION TO TOTAL INVESTMENT INCOME AS PREMIUM INCOME BEARS TO TOTAL INCOME: AN INSURER SHALL ALLOCATE INVESTMENT INCOME TO TITLE CHARGE INCOME IN THE SAME PROPORTION TO TOTAL INVESTMENT INCOME AS TITLE INCOME BEARS TO TOTAL INCOME.

(9) AN INSURER OR OTHER ORGANIZATION ENTITLED TO MAKE RATE FILINGS UNDER THIS SECTION SHALL MAKE SUCH FILINGS BASED ONLY ON PREMIUM INCOME, LOSS RESERVES, ALLOCATED AND UNALLOCATED INSURANCE EXPENSE, AND THAT PORTION OF INVESTMENT INCOME ALLOCATED TO PREMIUM INCOME. NO INSURER SHALL BASE ANY RATE IN WHOLE OR IN ANY PART UPON TITLE CHARGE INCOME OR ALLOCATED OR UNALLOCATED TITLE CHARGE EXPENSE.

[(c)] (D) filing or rates and policies; approved.

(1) Every insurer [must] SHALL file with the Commissioner, any manual or schedule of rates [or] AND premiums OTHER THAN THOSE FILED UNDER SUBSECTION (c)(4) which it proposes to use, together with any rules or regulations governing the setting or making of such rates or premiums, and indicate the character or extent of coverage contemplated under such rates and premiums [, except that insurers need not include rates or premiums for a special or unusual guarantee as defined in subsection (b)(4), and such rates or premiums may be classified individually and separately according to the circumstances peculiar to each case].

(2) [Every insurer must file with the Commissioner, all forms of contracts, policies or guarantees of insurance with any and all types of modifications thereof, except as to special or unusual risks, which it proposes to use.] NO INSURER SHALL ISSUE ANY POLICY OF TITLE INSURANCE OR PERMIT THE USE OF ANY WRITING IN CONNECTION WITH ANY POLICY OF TITLE INSURANCE UNTIL THE FORM OF THE POLICY AND WRITING SHALL HAVE BEEN APPROVED BY THE COMMISSIONER WHO MAY WITHDRAW APPROVAL THEREAFTER UPON GOOD CAUSE SHOWN AND AFTER AN INSURER HAS HAD AN OPPORTUNITY TO BE HEARD IN ACCORDANCE WITH §242B OF THIS ARTICLE.

(3) No change in rates or premiums or in the forms of [contracts,] policies [or guarantees of insurance] OF TITLE INSURANCE OR ANY WRITING USED IN CONNECTION WITH ANY TITLE INSURANCE POLICIES shall be permitted [to] BY any insurer[s], unless [and until a report indicating such change shall be filed and] approved by the Commissioner

(4) Any filing made pursuant to this section shall be approved OR DISAPPROVED by the Commissioner in accordance with §242(d)(7) of this Article. [, unless he finds that such filing does not meet the requirements of this subtitle or shall otherwise be contrary to law. As soon as reasonably possible after the filing has been made, the Commissioner shall, in writing, approve or disapprove the same; provided, however, that if such filing has not been disapproved by the Commissioner within fifteen days from the date of filing, or within thirty days if such period be extended in writing by the Commissioner during the first fifteen days, it shall be deemed approved, and the rates, contracts or other subject matter of such filing may be put into effect by the insurer at the expiration of such waiting period. In the event the Commissioner disapproves any filing, he shall specify in what respect he finds that such filing does not meet the requirements of this subtitle or is otherwise contrary to law.]

(5) If at any time during the approval of a filing, the Commissioner should find that the filing does not meet the requirements of this section or is otherwise contrary to law, or if anybody having an interest in such filing should make complaint in writing, setting forth specified and reasonable causes for complaint to the Commissioner, or if any insurer, upon notice of disapproval by the Commissioner of a filing pursuant to this section, should so request, the Commissioner shall hold a hearing within thirty days and shall give notice of the hearing in writing to all parties in interest. The Commissioner may confirm, modify, change or rescind any previous action, if warranted by the facts shown at the hearing.

(6) No insurer shall make or issue any contract, policy or guarantee of TITLE insurance except in accordance with filings approved as provided in this section [, except as to special or unusual risks for which no filing has been herein before provided].

(7) [Every insurer must hold to the rates or premiums as approved by the Commissioner and may not deviate therefrom nor allow to or for the account of any insured a rebate or discount on the rates or premiums payable. As compensation for procuring business, an insurer may pay or allow a commission to any licensed agent of the insurer. AN INSURER SHALL NOT CHARGE A PREMIUM OTHER THAN ACCORDING TO RATES APPROVED BY THE COMMISSIONER IN ACCORDANCE WITH THIS SECTION. AN INSURER SHALL NOT PAY ANY PERSON ANY PORTION OF THE PREMIUM EXCEPT AS HEREIN PROVIDED:

(I) NO INSURER SHALL PAY TO ANY PERSON ANY PORTION OF ANY PREMIUM UNLESS THAT PERSON IS AN AGENT LICENSED IN ACCORDANCE WITH SUBTITLE 11 OF THIS ARTICLE.

(II) NO INSURER SHALL PAY ANY PORTION OF PREMIUMS TO ANY PERSON EXCEPT IN ACCORDANCE WITH MAXIMUM RATES FOR SUCH PAYMENT ESTABLISHED BY THE COMMISSIONER TO BE FIRST ESTABLISHED ON SEPTEMBER 1, 1981 AND EVERY TWO YEARS THEREAFTER. THE COMMISSIONER IN DETERMINING SUCH RATES OF PAYMENT SHALL REVIEW THE RATES AND PREMIUM INCOME AND ANY OTHER RELEVANT FACTOR PERTINENT TO KEEPING TITLE INSURANCE RATES AND PREMIUM AS LOW AS POSSIBLE CONSISTENT WITH SOLVENCY.

(III) THE COMMISSIONER SHALL NOT ESTABLISH ANY REGULATION PERTAINING TO THE PAYMENT OF TITLE CHARGES EXCEPT THAT SUCH CHARGES SHALL BE DISCLOSED AND ACCOUNTED FOR BY THE INSURER ON AN ANNUAL BASIS ON FORMS TO BE SUPPLIED BY THE COMMISSIONER AND EXCEPT THAT NO TITLE CHARGE INCOME OR ANY PORTION THEREOF PAID TO ANY PERSON SHALL BE USED IN WHOLE OR IN ANY PART AS THE BASIS OF ANY RATE OR PREMIUM FILING.

(8) In order to further more equitable establishment in the adjustment of rates and premiums and forms of contracts, policies or guarantees of insurance, the Commissioner and every insurer may exchange information and experience data with each other, and with the insurance supervisory officials and insurers in other states and with national organizations and associations and may consult and cooperate with them in respect to rate and premium making forms of contracts, policies and guarantees of insurance

{(9) The Commissioner shall require that by September 1, 1980, all title insurance companies subject to the

provisions of this section provide on an uniform basis whatever financial data including rates, taxes, general expenses, allocated and unallocated loss adjustment expense, licenses and fees, and all other expenses relating to the procurement of business not specifically listed as commissions such as dividends, retainers, stock, office space or any other valuable consideration and any other information the Commissioner requires in the regulation of rates. This information shall be supplied on forms provided by the Commissioner. The Commissioner, in cooperation with the Secretary of Licensing and Regulation, shall conduct a study based on this information and shall recommend to the 1981 Session of the General Assembly changes in the law. if any, he deems necessary to regulate title insurance companies.]

(9) NO INSURER SHALL ISSUE ANY POLICY OF TITLE INSURANCE OR PERMIT THE USE OF ANY WRITING IN CONNECTION THEREWITH, OR USE ANY RATE FOR PREMIUM OR TITLE CHARGE AFTER MARCH 15, 1985, UNLESS THEY SHALL HAVE BEEN APPROVED BY THE COMMISSIONER. UNLESS AN INSURER SHALL HAVE RECEIVED A NEW APPROVAL AFTER JULY 1, 1981, ALL APPROVALS SHALL EXPIRE ON MARCH 15, 1985. THEREAFTER EACH INSURER SHALL FILE FOR APPROVAL OF ITS RATES AND TITLE CHARGES EVERY THREE YEARS FROM THE DATE OF ITS LAST APPROVAL. A FIVE CALENDAR YEAR EXPERIENCE PERIOD IS REQUIRED FOR ALL FILINGS MADE AFTER JULY 1, 1981.

[(d)] (E) False and misleading information.

[(e)] (F) Penalties.

Section 2. AND BE IT FURTHER ENACTED, that this act shall take effect July 1, 1981.