



**REPORT OF THE COMMISSION TO STUDY THE
TITLE INSURANCE INDUSTRY IN MARYLAND**

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Commission to Study the Title Insurance Industry in Maryland

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Consumer Member Appointed by the Governor
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Commission to Study the Title Insurance Industry in Maryland

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Executive Summary

In response to an April 2007 United States Government Accountability Office (GAO) Report to the United States House of Representatives Committee on Financial Services entitled “*Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*” and the heightened scrutiny of title insurance regulation and the title insurance industry, due in large part to a significant rise in property foreclosure rates in Maryland, the Maryland General Assembly passed and the Governor signed Senate Bill 61 and House Bill 600 (Chapters 356 and 357, Acts of 2008) creating the Commission to Study the Title Insurance Industry in Maryland (Commission).

The purpose of the Commission was to make recommendations for changes to State laws relating to the title insurance industry. In order to develop the recommendations, the Commission was required to:

- (1) review State laws relating to the title insurance industry;
- (2) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
- (3) identify title insurance industry issues that affect consumers in Maryland;
- (4) examine the rate-setting factors for title insurance premiums;
- (5) examine how rates and services in a title plant state compare to those in Maryland
- (6) identify ways to improve consumer education about the title insurance industry;
- (7) study whether mechanics’ liens on properties schedule for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
- (8) review the time limits, subsequent to closing, for the issuance or title insurance policies;
- (9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of these arrangements on title insurance premium rates; and
- (10) study any other issue with significant impact on the title insurance industry.

In addition, the Commission was required by Chapter 361, Acts of 2009, to

- (1) examine the adequacy of the blanket surety bond or letter of credit required under §10-121(e) of the Insurance Article to protect consumers who suffer a loss from the conversion or misappropriation by a title insurance producer of money received or held in escrow or trust; and
- (2) if the Commission finds that an increase in the amount of the blanket surety bond or letter of credit is warranted, determine the impact of the additional cost on title insurance producers.

The Commission held eight open meetings, including two public hearings, and solicited testimony and presentations in order to fully study each of its charges. As a result of its review and deliberations, the Commission makes the following recommendations:

1. Require the Maryland Insurance Commissioner (Commissioner) to study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer. This recommendation does not require a statutory change.

2. Provide that when a person who provides escrow, closing, or similar settlement services in any real estate settlement transaction in which a title insurance contract may be issued is a title insurance producer independent contractor (TIPIC), that person will be deemed the agent of the party that sends the person to the real estate settlement. The party that sends the person to the real estate settlement is thus the legal principal of the person and is liable for all actions, including non-intentional conduct, of the person. In this legal principal-agent relationship, the TIPIC shall be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond. In addition, require any recorded deed of trust executed in relation to a real estate transaction in which title insurance is purchased to include the name, address, and license number of the licensed title insurance producer who

conducted the real estate closing and the name, address, and license number of the licensed title insurance producer's principal, if any. This recommendation requires a statutory change.¹

3. Require the Commissioner to adopt regulations, specifying the manner in which a title insurer is to conduct the annual on-site review of each title insurance producer appointed by the title insurer. This recommendation does not require a statutory change.

4. Direct the MIA and the Department of Labor, Licensing, and Regulation (DLLR) to develop a document entitled a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The MIA and DLLR would require by regulation that the title insurance consumer's bill of rights be provided to a consumer at the same time a good faith estimate is given to a consumer. The title insurance consumer's bill of rights should be available from the websites of DLLR and the MIA. This recommendation does not require a statutory change.

5. Direct the MIA to examine the current rate review and approval process for title insurance premiums. If the MIA finds that the current rate review process requires adjustment, the MIA should adopt new processes for rate review and approval, including regulations, if warranted, to ensure that consumers are protected. In its review, the MIA should examine the rate-setting practices in Pennsylvania which utilizes an all-inclusive rate in which the premium for title insurance includes settlement costs. This recommendation does not require a statutory change.

6. With respect to affiliated business arrangements (ABAs) and the disclosure of fees related to ABAs, provide that licensees must comply with the federal law (12 USC 2607(c)(4)) and federal regulations (24 CFR 3500.15 and Appendix D) regarding this disclosure

¹ One member of the Commission did not agree with the recommendation that information regarding the TIPIC and licensed title insurance producer be included in a recorded deed of trust.

. This will allow Maryland regulators the ability to enforce the ABA disclosure requirements in nearly all residential real estate closings conducted in the State. If a licensee did not comply, action could be taken against that person's license. This recommendation requires a statutory change.

7. Direct the MIA and DLLR to share information regarding complaints involving real estate closings in order to possibly track a pattern of problem transactions and licensees. This recommendation does not require a statutory change.

The Commission recommends that, in order to better protect consumers, the changes outlined in this report should be made and encourages the General Assembly to codify those recommendations that require statutory changes.

Commission to Study the Title Insurance Industry in Maryland

Introduction

In response to an April 2007 GAO Report to the United States House of Representatives Committee on Financial Services entitled “*Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*” and the heightened scrutiny of title insurance regulation and the title insurance industry, due in large part to a significant rise in property foreclosure rates in Maryland, the 2008 Maryland General Assembly through signature of the Governor passed Senate Bill 61 and House Bill 600 (Chapters 356 and 357, Acts of 2008) establishing the Commission to Study the Title Insurance Industry in Maryland.

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- (3) identify title insurance industry issues that affect consumers in Maryland;
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- (6) identify ways to improve consumer education about the title insurance industry;
- (7) study whether mechanics’ liens on properties schedule for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
- (8) review the time limits, subsequent to closing, for the issuance or title insurance policies;
- (9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of these arrangements on title insurance premium rates; and
- (10) study any other issue with significant impact on the title insurance industry.

In addition, the Commission was required by Chapter 361, Acts of 2009, to

- (1) examine the adequacy of the blanket surety bond or letter of credit required under §10-121(e) of the Insurance Article to protect consumers who suffer a loss from the conversion or misappropriation by a title insurance producer of money received or held in escrow or trust; and
- (2) if the Commission finds that an increase in the amount of the blanket surety bond or letter of credit is warranted, determine the impact of the additional cost on title insurance producers.

The Commission held eight open meetings, including two public hearings, and solicited testimony and presentations in order to fully study each of its charges. Minutes from the open meetings and public hearings may be found in the Appendix of this report.²

At the Commission's first meeting, the Commission decided to group the Commission's charges into four different categories of study. Each of the categories would be the subject of discussion at separate Commission meetings. In addition, the Commission decided that public hearings would be held in order to solicit input from consumers, the title insurance industry, persons involved in real estate closing transactions, and any other members of the public wishing to provide information to the Commission in its work. During its work, the Commission also determined that establishing workgroups to focus on three specific areas of study would enable the Commission to more fully examine those areas of most concern to the Commission. The workgroups met to discuss issues, trends, and problems relating to: (A) Regulation of the Title Insurance Industry; (B) Consumer Protection; and (3) Affiliated Business Arrangements. Each workgroup proposed a set of recommendations to the Commission. These recommendations were the basis of the final recommendations adopted by the Commission.

² Minutes from each of the meetings of the Commission are included as appendices to this report along with copies of the handouts that were provided to the Commission members at each meeting. For the public hearings, written testimony submitted to the Commission is also included in the appendices. Written testimony of the Maryland Land Title Association submitted at the July 16, 2009 public hearing can be accessed at www.needwebaddresshere.com.

Review of Laws Relating to the Title Insurance Industry and Enforcement Mechanisms

The MIA is the State agency responsible for regulation and oversight of the insurance industry in Maryland. The MIA, headed by the Commissioner, is responsible for insuring insurer solvency, insuring compliance with all applicable insurance laws and regulations, investigating consumer complaints, reviewing insurance rates and forms, licensing producers and insurance companies, and educating consumers across the State on a multitude of insurance issues.

Title insurance is an integral aspect of most mortgage loan and refinance transactions. It is defined under Maryland law as:

“insurance of owners of property or other persons that have an interest in the property against loss by encumbrance, defective title, invalidity of title, or adverse claim to title.”³

Title insurance provides a guarantee to the owner of the parcel, and/or a lender that the property is free and clear of all liens and encumbrances except for those specifically excluded from coverage in the title policy. There are two types of title insurance policies available: (1) an owner’s policy and (2) a lender’s policy. The owner’s policy is generally purchased by the borrower/homeowner for the purpose of providing protection of the homeowner’s property interest. The lender’s policy, although typically paid for by the homeowner or the party refinancing, is purchased for the benefit of the lender providing protection of the lender’s security interest in the property. Although a premium is only paid once at the time of closing, the owner’s policy remains in effect as long as that particular homeowner owns the home; a lender’s policy remains in effect until the associated mortgage loan has been satisfied.

Title insurers are licensed and regulated by the MIA. A title insurer must obtain a certificate of authority from the Commissioner prior to issuing title insurance policies.⁴ A title

³ Ann. Code of Maryland, Insurance Article § 1-101(qq) (Michie 2003 & 2009 Supp).

insurer is also subject to the laws regarding risk-based capital requirements and surplus requirements. All insurers who issue, sell, or deliver title insurance in the State must file all policy forms with the MIA and obtain the Commissioner's approval before those forms can be utilized by the insurer. Similarly, the rates to be used by title insurers are filed with the MIA for approval prior to use.⁵ In addition to form and rate review and approval, the MIA works to protect Maryland insurance consumers through regulation and examination of the insurance companies.

Prior to the transfer of interest in real property, a title search is conducted to identify prior owners, outstanding liens, encumbrances, encroachments, rights of way, easements and the like associated with the real property. Title insurance is different from all other types of insurance coverage because it protects against events that occurred *before* the policy was purchased as long as the title defect was not discovered at the time of the title search. All other types of insurance policies, including property, casualty, life, and health insurance policies, protect against events that occur after the policy is purchased.

Each settlement in Maryland must involve a title insurance producer if title insurance may be issued in connection with the transaction.

“Title insurance producer” means a person that for compensation, solicits, procures, or negotiates title insurance contracts.

“Title insurance producer” includes a person that provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract.⁶

Before selling title insurance, a title insurance producer must obtain a license from the MIA and an appointment from the insurer for whom the producer will be selling the insurance.⁷ A title

⁴ *Id.* at § 4-101. As of November 30, 2009, there are 25 title insurers authorized to issue policies in Maryland.

⁵ *Id.* at § 11-404.

⁶ *Id.* at § 10-101(i).

insurance producer is also subject to regulation and examination by the MIA. A title insurance producer underwrites the risk, collects the title insurance policy premiums, issues the title insurance policies, conducts the settlement or closing, and holds funds in escrow for mortgage payoffs, taxes, closing costs, commissions for real estate brokerage services, and other costs related to settlement or closing.

A sole proprietor, limited liability company, partnership, or corporate applicant for a license as a title insurance producer, other than an attorney or law firm, must file with the Commissioner a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and a blanket surety bond; or a letter of credit. Unless the Commissioner approves a lesser amount, each bond or letter of credit must be for \$150,000.⁸

The prior approval of forms and rates serve as important enforcement mechanisms in protecting consumers and ensuring insurer solvency. In addition, title insurers are subject to market conduct examinations by the MIA at least once every five years, which is another important mechanism for ensuring insurer solvency. To further protect consumers, a title insurer domiciled in the State is required to participate in the Property and Casualty Insurance Guaranty Corporation to protect consumers in the event of the insurer's insolvency. Further, required annual on-site reviews by a title insurer of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer is intended to give notice to the insurer of any inconsistencies with or questionable practices of the title insurance producer.

⁷ *Id.* at § 10-103(c). As of November 30, 2009, there are over 7,000 producers licensed to sell title insurance in Maryland, including resident title insurance producer individuals, non-resident title insurance producer individuals, and resident and non-resident title insurance producer firms.

⁸ *Id.* at § 10-121.

The Commissioner's authority over title insurers and title insurance producers includes the authority to deny, suspend, revoke, and refuse to renew or reinstate an insurer's certificate of authority or a producer's license.

At the June 25 public hearing, MIA staff testified regarding the number and nature of complaints received by the Compliance and Enforcement Unit (Unit) of the MIA pertaining to title insurance. In response to the increase in complaints regarding title insurance – from 90 complaints in 2005 to 512 complaints in 2008 – the Commissioner has restructured the Unit, increasing from one to five the number of full time staff dedicated to handling these kinds of complaints. Common complaints to the MIA include: failure to pay off a prior mortgage, other lien, or encumbrance; failure to record the deed, deed of trust, mortgage, or mortgage release; failure to charge and collect the appropriate premiums; failure to issue title insurance policies and provide legal documents to the buyer; misappropriation of escrow funds; and falsification or forgery of closing documents. Investigations conducted by the Unit have resulted in revocation orders and, in cases where a title insurance policy has been issued, the MIA requiring title insurers to cover losses associated with the misappropriation of escrow funds. Misappropriation of escrow funds continues to be a common complaint received by the Unit. In 2009 alone, over a dozen complaints alleging theft or misappropriation of escrow funds have been received by the Unit.

Rate-Setting Factors for Title Insurance Premiums and a Comparison of Rates with Title Plant States

Rates for title insurance premiums are subject to prior approval by the MIA. Factors to be considered in setting rates include: past and prospective loss experience within and outside the

State; conflagration and catastrophe hazards, if any; past and prospective expenses, both countrywide and those specifically applicable to the State; underwriting profits; contingencies; investment income from unearned premium reserve and reserve for losses; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders; and all other relevant factors within and outside the State. In addition, rates may not be excessive, inadequate, or unfairly discriminatory. An excessive rate would be one that leads to unreasonably high profits over a long and sustained period of time. An inadequate rate would be one that causes an insurer to operate at a loss for an extended period of time. Inadequate rates can lead to lower reserves. Low reserves can lead to insolvency, which obviously creates the inability to honor claims. A rate is unfairly discriminatory if like customers are treated dissimilarly.

A lender’s title insurance policy is usually issued in an amount equal to the mortgage loan. An owner’s title insurance policy is issued in an amount equal to the fair market value of the property. Fair market value is generally presumed to be the contract sales price unless the insurer is furnished with an appraisal indicating a different value.

Generally speaking, the premium for an owner’s title insurance policy is calculated on the coverage amount and cost per thousand. Some insurers require a minimum policy coverage amount for an owner’s policy.⁹

Table 1. Example of Basic Premium Rates for Owner’s Policy		
Tier	Policy limit	Cost per thousand dollars of coverage
1	Up to \$250,000	\$3.89

⁹ The rate filings for two title insurers were examined and presented to the Commission at the May 28, 2009 meeting. Both insurers required a minimum policy coverage amount of \$40,000 at a fixed cost of \$155.60. The remaining premium calculation examples in this section and Tables 1 and 2 use the rate filings of the same two title insurers.

2	Over \$250,000 - \$500,000	Add \$3.31
3	Over \$500,000 - \$1,000,000	Add \$2.78
4	Over \$1,000,000 - \$5,000,000	Add \$2.21
5	Over \$5,000,000 - \$15,000,000	Add \$1.84
6	Over \$15,000,000	Add \$1.58

In calculating the basic premium for an owner's title insurance policy, there is generally a cost per thousand dollars of coverage up to certain policy limits. The cost per thousand dollars of coverage tends to decrease as the policy limit increases. See Table 1.

In order to calculate an owner's title insurance premium for a home with a contract sales price of \$657,650, first round up to the value of the next \$1,000 or 658 thousands. Since the value is greater than the first tier, only the first \$250,000 will be charged at the first tier rate, the next \$250,000 will be charged at the second tier rate, and the remaining \$158,000 will be charged at the third tier rate as follows:

- \$250 thousand x \$3.89 = \$927.50 premium
- \$250 thousand x \$3.31 = \$827.50 premium
- \$158 thousand x \$2.78 = \$439.24 premium

= \$2239.24 total basic premium.

Insurers offer various discounts to purchasers of owners' policies. Some of the discounts available include discounts for simultaneous issue, refinancing, and reissue. If the decision is made to purchase an owner's policy and a lender's policy at the same time there may be considerable savings. This is known as a "simultaneous issue" and the premium rates charged for the owner's policy will be calculated on the difference between the amount of coverage

provided to the lender (amount borrowed) and the amount of coverage provided to the owner (purchase price).

If a new owner's policy is to be issued on real property currently insured by an owner's policy issued by any title insurer licensed by the MIA, a reissue rate applies up to the face amount of the owner's policy currently in effect. If the amount of owner's title insurance then in effect is to be increased, the premium for insurance coverage for any amount in excess of the insured amount is calculated in accordance with the basic title insurance rates. See Table 2. There is no limit on the number of times the reissue rate may be applied to a particular property.

Table 2. Example of Reissue Rates for Standard Owner's Policy		
Tier	Policy limit	Cost per thousand dollars of coverage
1	Up to \$250,000	\$2.33
2	Over \$250,000 - \$500,000	Add \$1.99
3	Over \$500,000 - \$1,000,000	Add \$1.67
4	Over \$1,000,000 - \$5,000,000	Add \$1.33
5	Over \$5,000,000 - \$15,000,000	Add \$1.10
6	Over \$15,000,000	Add \$.95

In order to calculate the premium using the reissue rate for a home with a contract sales price of \$657,650 where the prior owner's policy is in the amount of \$300,000, part of the premium is calculated at reissue rates (the first \$300,000) and the balance (\$358,000) at the full basic rates.

- \$250 thousand x \$2.33 = \$582.50 premium
- \$50 thousand x \$1.99 = \$99.50 premium

- \$200 thousand x \$3.31 = \$662.00 premium

- \$158 thousand x \$2.78 = \$439.24 premium

= \$1783.24 total reissue rate premium.

When comparing the reissue rate premium of \$1783.24 with the premium on a new basic policy of \$2239.34, there is a savings of 20% when prior coverage exists.

Other charges in Maryland that are included in real estate settlements but vary from producer to producer include settlement or closing fees, abstract or title search, title examination fees, title insurance binder fees, document preparation fees, notary fees, attorney's fees, survey charges, and pest inspection fees.¹⁰ These charges are not regulated by the MIA.

Some states are "title plant" states where title insurers are required to establish and maintain a title plant covering a minimum specified period of time before a policy is written, usually 25 years. Title plants in these states consist of fully indexed records showing all instruments of record affecting lands within a jurisdiction. The title plant is used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with underwriting and issuance of title insurance policies. A title plant may include plat or map records, deeds, deeds of trust, mortgages, lis pendens, abstracts of judgment, federal tax liens, mechanic's liens, attachment liens, divorce actions wherein real property is involved, probate records, chattel mortgages, and other legal documents relating to title to real property.

Average title insurance premiums in 2008 for title insurance in several title plant states versus rates in Maryland, based on a \$200,000 loan were as follows: Alaska = \$897.84; Idaho = \$817.16; Iowa = \$543.57; Missouri = \$489.35; New Mexico = \$1,208.83; Texas = \$1,470.60;

¹⁰ As of January 1, 2010, new Housing and Urban Development regulations regarding costs associated with real estate closings require some of these charges to be included in one fee.

Maryland = \$696.10.¹¹ These rates only include the premium for title insurance and do not include other settlement charges that may or may not be included in the title insurance rate. The rates also do not take into account what may be included in the rate. Texas is an all-inclusive state where the title insurance premium includes charges other than the premium, such as the title search and examination fees, and other closing and settlement costs. Two other states that require an all-inclusive rate are California and Pennsylvania. Maryland's rate includes only the title insurance premium. No recommendations were adopted by the Commission regarding title plants.

Identification of Consumer Issues

The Commission held two public hearings, one in Annapolis on June 25 and one in Baltimore on July 16. Press releases regarding the public hearings were published by the MIA inviting members of the public to testify before the Commission on issues or concerns relating to title insurance, title agents, the manner in which real estate settlement practices are conducted, the handling of real estate escrow accounts, and any difficulties that a person may have experienced with the title insurance industry.

At the Commission's June 25 meeting, the Commission received testimony from the Community Law Center and Civil Justice, two organizations that represent and advocate on behalf of consumers. The representative from the Community Law Center believed that providing closing documents to a homebuyer at least three days prior to closing would give a consumer time to review and seek advice regarding the documents. The representative from Civil Justice briefed the Commission on the case involving the Metropolitan Money Store and the pitfalls confronting consumers when working with the Metropolitan Money Store. In order

¹¹ Source: Bankrate.com

to prevent similar cases, Civil Justice’s recommendations to the Commission for protecting consumers included stricter oversight by title insurers of their title insurance producers, stricter auditing guidelines by insurers of their title insurance producers, and the adoption of a mini Real Estate Settlement Practices Act (RESPA) establishing civil liability of persons who violate RESPA.

In addition to the testimony received from the Community Law Center and Civil Justice, the Commission received testimony from TIPICs. A TIPIC is defined under Maryland law as:

“a person that:

- (1) is licensed as a title insurance producer;
- (2) provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contract for, or on behalf of, a licensed and appointed title insurance producer; and
- (3) is not an employee of, or associated with, the licensed and appointed title insurance producer.”¹²

The Commission heard that while the TIPICs present were all licensed by the MIA, there are some notaries public who are not licensed title insurance producers but are conducting real estate closings in the State. The Commission also heard that TIPICs are sent to conduct real estate closings by licensed title insurance producers or lenders and are told not to answer questions regarding the mortgage loan that the borrower is entering into. The Commission also heard that consumers benefit from the convenience of TIPICs since a TIPIC usually works from home and can travel to the borrower’s home, place of business, or other location for the signing of the loan closing documents.

The Commission’s July public hearing included testimony from a large number of TIPICs, most of whom expressed concerns about the increased cost associated with the increase

¹² Ann. Code of Maryland, Insurance Article § 10-101(j) (Michie 2003 & 2009 Supp).

in the surety bond requirements for title insurance producers and the continued availability of such coverage in the State.¹³

Although the Commission's September 17 meeting was not scheduled to be a public hearing, the Commission accepted testimony from a consumer who was in the process of refinancing the mortgage on the consumer's home. The consumer testified that the closing was to be conducted by a notary signing agent at a FedEx Kinko's office close to the consumer's home. During the closing, the consumer had a number of questions regarding the title insurance charges that appeared on the closing documents. The notary signing agent could not answer the consumer's questions and called the title insurance producer who sent the notary signing agent to the closing to answer the consumer's questions. Since the consumer did not believe that the answers he was given were satisfactory, the consumer walked away from the closing without completing and signing the closing documents. The consumer then called the MIA to request further information regarding his rights with respect to title insurance and who may conduct the real estate closing. This testimony was the only testimony the Commission received from a consumer involved in a real estate settlement or closing.

At the Commission's October 22 meeting, the Commission was briefed on the new RESPA Rule. Under the new rule, a good faith estimate (GFE) must be provided to a consumer under certain circumstances when applying for a mortgage loan, and include estimated settlement charges and the terms of the mortgage loan being offered to the consumer. The actual charges for some settlement services included in the GFE may not exceed 10% of the estimated charges. Since some consumers may not be aware of this limit on actual charges at settlement, the duty of ensuring that the actual charges do not exceed the 10% threshold is on the person

¹³ Senate Bill 86 (Chapter 361, Acts of 2009) increased the fidelity and surety bond requirements that a title insurance producer is required to file with the Commissioner from \$100,000 to \$150,000.

conducting the settlement. Since the party sending a person to a real estate settlement is in a better position to know the requirements of the new RESPA rule and the terms of the loan than is the consumer, the Commission believes that the person conducting the real estate settlement should be more knowledgeable about settlement charges and other title insurance requirements than was the person described in the transaction with the consumer who testified before the Commission.

The Commission received extensive testimony regarding the general practice in Maryland – that TIPICs are witnessing most real estate settlements in Maryland. Even though TIPICs are licensed title insurance producers, they do not underwrite the risk, issue the title insurance policy, hold funds in escrow for mortgage payoffs, taxes, closing costs, commissions for real estate brokerage services, and other costs related to settlement or closing. These main responsibilities are usually handled by the lender or licensed title insurance producer who sent the TIPIC to the real estate settlement. TIPICs collect a fee for witnessing the signing of the closing documents and are generally prohibited by the party who sent the TIPIC to the settlement from answering questions regarding the loan terms or other settlement charges. Since the TIPIC is more like an agent of the party who sent the TIPIC to the settlement or closing, the Commission recommends that this principal-agent relationship be deemed a legal relationship in which the principal is responsible for all actions, including non-intentional conduct, of the TIPIC. The TIPIC should be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond.

Affiliated Business Arrangements

When several businesses that offer settlement services are owned or controlled by a common corporate parent those businesses are considered “affiliates.” Similarly, family members, partners, contractors, or other relationships used to refer settlement services businesses in exchange for a potential financial benefit are considered to maintain an “affiliated business arrangement” or ABA. Under federal RESPA rules, real estate brokers, lenders, title insurers, or other settlement services providers must inform consumers of an existing ABA when making a referral during the real estate settlement process. Generally, consumers are not required to use an affiliate and can shop for other service providers. If, however, a consumer chooses to use an affiliate, the only thing of value that may be paid by the affiliate to the referring party, except for services actually rendered, is a return on an ownership interest. Although it is lawful to participate in an affiliated business arrangement that is in compliance with RESPA, such joint ventures must actually be providers of settlement services.

At the Commission’s October 22 meeting, Laura Gipe, Consumer Protection Compliance Specialist with the U.S. Department of Housing and Urban Development gave a presentation to the Commission on the new RESPA Rule. Ms. Gipe provided copies of the new GFE and Settlement Statement forms that are required after January 1, 2010.

Workgroup C examined ABAs and developed a series of recommendations for consideration by the Commission. Some of the workgroup’s recommendations were included in the final recommendations of the Commission.

Recommendations of the Commission

As a result of its review and deliberations, the Commission makes the following recommendations:

1. Require the Commissioner to study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer. This recommendation does not require a statutory change.

2. Provide that when a person who provides escrow, closing, or similar settlement services in any real estate settlement transaction in which a title insurance contract may be issued is a TIPIC, that person will be deemed the agent of the party that sends the person to the real estate settlement. The party that sends the person to the real estate settlement is thus the legal principal of the person and is liable for all actions, including non-intentional conduct, of the person. In this legal principal-agent relationship, the TIPIC shall be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond. In addition, require any recorded deed of trust executed in relation to a real estate transaction in which title insurance is purchased to include the name, address, and license number of the licensed title insurance producer who conducted the real estate closing and the name, address, and license number of the licensed title insurance producer's principal, if any. This recommendation requires a statutory change.

3. Require the Commissioner to adopt regulations, specifying the manner in which a title insurer is to conduct the annual on-site review of each title insurance producer appointed by the title insurer. This recommendation does not require a statutory change.

4. Direct the MIA and DLLR to develop a document entitled a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The MIA and DLLR would require by regulation that the title insurance

consumer's bill of rights be provided to a consumer at the same time a good faith estimate is given to the consumer. The title insurance consumer's bill of rights should be available from the websites of DLLR and the MIA. This recommendation does not require a statutory change.

5. Direct the MIA to examine the current rate review and approval process for title insurance premiums. If the MIA finds that the current rate review process requires adjustment, the MIA should adopt new processes for rate review and approval, including regulations, if warranted, to ensure that consumers are protected. In its review, the MIA should examine the rate-setting practices in Pennsylvania which utilizes an all-inclusive rate in which the premium for title insurance includes settlement costs. This recommendation does not require a statutory change.

6. With respect to ABAs and the disclosure of fees related to ABAs, provide that licensees must comply with the federal law (12 USC 2607(c)(4)) and federal regulations (24 CFR 3500.15 and Appendix D) regarding this disclosure . This will allow Maryland regulators the ability to enforce the disclosure requirements in all real estate closings conducted in the State. If a licensee did not comply, action could be taken against that person's State license. This recommendation requires a statutory change.

7. Direct the MIA and DLLR to share information regarding complaints involving real estate closings in order to possibly track a pattern of problem transactions and licensees. This recommendation does not require a statutory change.

Conclusion

The Commission recommends that, in order to better protect consumers, the changes outlined above should be made and encourages the General Assembly to codify those recommendations that require statutory changes.