

1 S.F. No. 278, as introduced - 87th Legislative Session (2011-2012) Posted on Feb 08,  
2 2011

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A bill for an act

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6 relating to commerce; imposing requirements on title insurers and title insurance agents;  
7 increasing regulatory requirements for real estate Issuing Agents; amending Minnesota  
8 Statutes 2010, section 82.641, subdivisions 1, 2, 3, by adding a subdivision; proposing  
9 coding for new law in Minnesota Statutes, chapter 68A; repealing Minnesota Statutes  
10 2010, section 82.641, subdivisions 6.

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

13

14 Section 1. [68A.05] TITLE INSURANCE AGENTS.

15 Subdivision 1. Contract required.

16 (a) A title insurer shall not accept business from a title insurance agent unless there is in

17 force a written contract between the parties that sets forth the responsibilities of each

18 party and, where both parties share responsibility for a particular function, specifies the

19 division of responsibilities.

20 (b) Nothing in Sections \_\_\_ to \_\_\_ shall be construed as prohibiting the division of

21 premiums and charges between or among a title insurer and its title insurance agent, two

22 or more title insurers, one or more title insurers and one or more title insurance agents,

23 provided such division of premiums and charges does not constitute a violation of the

24 Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, et seq., as amended.

25 Subd. 2. Statement of financial condition of agent. For each title insurance agent under

26 contract with the title insurer, the title insurer shall have on file a statement of financial

27 condition of each title insurance agent as of the end of the previous calendar year, setting

28 forth an income statement of business done during the preceding year and a balance sheet

29 showing the condition of its affairs as of the prior December 31, certified by the title

1 insurance agent as being a true and accurate representation of the title insurance agent's  
2 financial condition.

3 Subd. 3. Annual review. The title insurer shall, at least annually, conduct a review of the  
4 underwriting, claims, and escrow practices of the title insurance agent that includes a  
5 review of the title insurance agent's policy blank inventory and processing operations. If  
6 the title insurance agent does not maintain separate bank or trust accounts for each title  
7 insurer it represents, the title insurer shall verify that the funds held on its behalf are  
8 reasonably ascertainable from the books of the account and records of the title insurance  
9 agent.

10 Subd. 4. Record retention. A title insurance agent shall maintain sufficient records of its  
11 affairs for a minimum of five years, including its escrow operations and escrow trust  
12 accounts, so that the commissioner of commerce may adequately ensure that the title  
13 insurance agent is in compliance with all provisions of this chapter.

14 Subd. 5. Definition. For purposes of this section, title insurance agent includes:  
15 an authorized partnership, limited liability partnership, association, limited liability  
16 company, corporation, or other form of business organization which, on behalf of the title  
17 insurer, performs the following acts, in conjunction with the issuance of a title insurance  
18 commitment or policy

19 (1) determines insurability and issues title insurance commitments or policies, or both;  
20 and

21 (2) performs one or more of the following functions:

22 (i) collects or disburses premiums, escrow, or security deposits or other funds;

23 (iii) solicits or negotiates title insurance business; or

1 (iv) submits documents for recording.

2 Subd. 6 LICENSING REQUIREMENTS.

3 Subdivision 1. Generally. A business entity shall not act in the capacity of a title  
4 insurance agent and a title insurer may not contract with a business entity to act in the  
5 capacity of a title insurance agent with respect to risks located in this state unless the  
6 business entity is a licensed title insurance agent in this state or possesses a license  
7 acceptable to the commissioner and issued by this state pursuant to Chapter 60K.

**Comment [A1]:** Actually it says in 60K.37sub3 that it is a producer license – 60A defines agent as one that has a producer license

8 Subd. 2. Required coverages. The title insurance agent shall maintain an errors and  
9 omissions policy which includes coverage for not less than \$500,000.

10 Subd. 3. Title Insurance Agent net worth requirement. (a) In addition to the requirement  
11 of section 68B.06, subdivision 2, the title insurance agent must have and maintain at all  
12 times one of the following:

13 1) a minimum net worth, net of intangibles, of at least \$250,000; or

14 a bond or irrevocable letter of credit in the amount of \$50,000, issued by an insurance  
15 company authorized to do so in this state. The bond must cover all persons who are owners,  
16 officers or employees of the applicant. The bond must be available for the recovery of expenses,  
17 fines, and fees levied by the commissioner under this chapter and for losses incurred by persons  
18 as a result of a licensee's noncompliance with the requirements of this chapter. Net worth, net of intangibles, must  
19 be calculated in accordance with generally accepted accounting principles.

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21 Sec. 2 [68A.06] Authorized Activities.

22 Subd. 1 Subject to the exceptions and restrictions contained in this Act, a title insurer  
23 may:

24 (1)do only title insurance business;

1 (2)reinsure title insurance policies; and  
2 (3) perform ancillary activities, unless prohibited by the commissioner, including,  
3 without limitation, examining titles to real property and any interest in real property and  
4 procuring and furnishing related information and information about relevant personal  
5 property, when not in contemplation of, or in conjunction with, the issuance of a title  
6 insurance policy.

7 Subd. 2 Closing Protection. (a) Subject to the provisions of this Section, a title  
8 insurer for a residential real property transaction, shall issue a closing protection letter  
9 protecting the buyer's or borrower's, the lender's and the seller's interests in conjunction  
10 with the issuance of a title insurance policy.

11 (b) Closing protection letters under this Section shall indemnify the parties in a real  
12 property transaction against actual loss, not to exceed the amount of the settlement funds  
13 required to close and deposited with the Issuing Agent, when such loss arises out of:

14 1. Failure of the Issuing Agent to comply with written closing instructions to the extent  
15 that they relate to (a) the status of the title to an interest in land or the validity,  
16 enforceability, and priority of the lien of a mortgage on an interest in land, including the  
17 obtaining of documents and the disbursement of funds necessary to establish the status of  
18 title or lien; or (b) the obtaining of any other document, specifically required by a party to  
19 the real property transaction, but only to the extent the failure to obtain such other  
20 document affects the status of the title to an interest in land or the validity, enforceability,  
21 and priority of the lien of a mortgage on an interest in land, and not to the extent that the  
22 written closing instructions require a determination of the validity, enforceability or the  
23 effectiveness of the other document, or

1 2.Fraud, dishonesty, or negligence of the Issuing Agent in handling funds or documents  
2 in connection with closings to the extent such fraud, dishonesty, or negligence relates to  
3 the status of the title to said interest in land or to the validity, enforceability, and priority  
4 of the lien of a mortgage on an interest in land or, in the case of a seller, to the extent that  
5 such fraud, dishonesty, or negligence relates to funds paid to or on behalf of, or which  
6 should have been paid to or on behalf of, the seller.

7 The indemnification under a closing protection letter may include limitations on the  
8 liability of the title insurer for any or all of the following:

9 A. Failure of the Issuing Agent to comply with closing instructions that require title  
10 insurance protection inconsistent with that set forth in the title insurance commitment.

11 Instructions that require the removal of specific exceptions to title or compliance with the  
12 requirements contained in the title insurance commitment shall not be deemed to be  
13 inconsistent.

14 B. Loss or impairment of funds in the course of collection or while on deposit with a  
15 bank due to bank failure, insolvency, or suspension, except such as shall result from  
16 failure of the Issuing Agent to comply with written closing instructions to deposit the  
17 funds in a bank that is designated by name by the indemnified party to the real property  
18 transaction.

19 C. Mechanics' and materialmen's liens in connection with sale or purchase or lease or  
20 construction loan transactions, except to the extent that protection against such liens is  
21 afforded by a title insurance commitment or policy.

22 D. Defects, liens, encumbrances or other matters in connection with a party's purchase,  
23 lease or loan transactions except to the extent that protection against those defects, liens,

1 encumbrances or other matters is afforded by a policy of title insurance not inconsistent  
2 with the closing instructions.

3 E. Fraud, dishonesty, or negligence of an employee, agent, attorney, or broker, who is  
4 not also the Issuing Agent, of the indemnified party to the real property transaction.

5 F. The settlement or release of any claim by the indemnified party to the real property  
6 transaction without the written consent of the title insurer.

7 G. Any matters created, suffered, assumed, or agreed to by, or known to, the indemnified  
8 party to the real property transaction without the written consent of the title insurer.

9 H. When the title insurer shall have reimbursed the indemnified party to the real property  
10 transaction pursuant to the closing protection letter, it shall be subrogated to all rights and  
11 remedies which the party would have had against any person or property had that party  
12 not been so reimbursed. Liability of the title insurer for reimbursement shall be reduced  
13 to the extent that the indemnified party to the real property transaction knowingly and  
14 voluntarily impairs the value of this right of subrogation.

15 I. The Issuing Agent is the title insurer's agent only for the limited purpose of issuing title  
16 insurance policies. The Issuing Agent is not the title insurer's agent for the purpose of  
17 providing other closing or settlement services. The title insurer's liability for losses  
18 arising from those other closing or settlement services is strictly limited to the protection  
19 expressly provided in the closing protection letter. Any liability of the title insurer for  
20 loss does not include liability for loss resulting from the negligence, fraud or bad faith of  
21 any party to a real estate transaction other than an Issuing Agent, the lack of  
22 creditworthiness of any borrower connected with a real estate transaction, or the failure of  
23 any collateral to adequately secure a loan connected with a real estate transaction.

1 However, this letter does not affect the title insurer's liability with respect to its title  
2 insurance binders, commitments or policies.

3 J. Either the title insurer or an indemnified party to the real property transaction may  
4 demand that any claim arising under the closing protection letter be submitted to  
5 arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title  
6 Association, unless an indemnified party to the real property transaction has a policy of  
7 title insurance for the applicable transaction with an amount of insurance greater than  
8 \$2,000,000. If an indemnified party to the real property transaction has a policy of title  
9 insurance for the applicable transaction with an amount of insurance greater than  
10 \$2,000,000, a claim arising under this letter may be submitted to arbitration only when  
11 agreed to by both the title insurer and that party.

12 K. An indemnified party to the real property transaction must promptly send written  
13 notice of a claim under the closing protection letter to the title insurer. The title insurer  
14 shall not be liable for a loss if the written notice of a matter that the party believes is  
15 compensable under the closing protection letter is not received within one year from the  
16 date of closing.

17 L. The protection herein offered extends only to real property transactions in Minnesota.  
18 The closing protection letter may also include reasonable, additional provisions  
19 concerning arbitration, subrogation, claim notices and other conditions and limitations  
20 which do not materially impair the coverages required by this Section.

21 (c) A title insurer is expressly authorized to collect a charge, which shall not be  
22 considered insurance premium, for the issuance of closing protection letters.

1           1. The charge for issuance of a closing protection letter in a residential real property  
2 transaction indemnifying a buyer of an interest in real property, or a refinancing borrower  
3 and/or a lender secured by a mortgage of an interest in real property who purchase title  
4 insurance shall be not less than \$25.00

5           2. The charge for issuance of a closing protection letter in a residential real property  
6 transaction indemnifying a seller of an interest in real property shall be not less than  
7 \$50.00.

8           3. The entire charge for the closing protection letter shall be remitted by the title  
9 insurance agent to the title insurer. Title insurance agents shall not charge the parties any  
10 additional amount for closing protection letters issued under this section.

11           4. The charge for issuance of closing protection letters shall be shown as a  
12 separate line item on the settlement statement.

13           (d) Except as provided under this section, a title insurer shall not provide any other  
14 coverage which purports to indemnify against improper acts or omissions of a person  
15 with regard to escrow, settlement, or closing services.

16           Subd. 3 Definition. For the purposes of this section, "Issuing Agent" means any title  
17 insurer and title insurance agent which accepts funds and/or documents for the buyer,  
18 seller or lender for the purpose of closing a sale of any interest in real estate located  
19 within the State of Minnesota.

20           Sec. 3. Minnesota Statutes 2010, section 82.641, subdivision 1, is amended to read:

21           Subdivision 1. Generally. (a) No person shall act as a closing agent in this state unless the  
22 person is licensed under this section.

1 (b) The commissioner shall issue a license as a closing agent to a person who qualifies for  
2 the license under the terms of this chapter.

3 Sec. 4. Minnesota Statutes 2010, Section 82.55, Subd. 4 is hereby amended to read:

4 Subd. 4. Closing Agent. "Closing Agent" means any person who for another and with or  
5 without commission, fee or other valuable consideration or with or without the intention  
6 or expectation of receiving a commission, fee or other valuable consideration, directly or  
7 indirectly provides closing services incident to the sale, trade, lease or loan of residential  
8 real estate, including drawing or assisting in drawing papers incident to the sale, trade,  
9 lease or loan or advertises or claims to be engaged in these activities.

**Comment [A2]:** Closing services is not defined in the statute

10 Sec. 5 Minnesota Statutes 2010, section 82.641, subdivision 2, is amended to read:

11 Subd. 2.

12 Qualification of applicants. An applicant for a closing agent license must be at least 18  
13 years of age at the time of making application for the license

14 Sec. 6. Minnesota Statutes 2010, section 82.641, subdivision 3, is amended to read:

15 Subd. 3. Application for license; contents. (a) An applicant for a closing agent license  
16 shall make an application in the format prescribed by the commissioner. The application  
17 must be accompanied by the license fee required by this chapter.

18 (b) An application for a closing agent license must contain the information required by  
19 the commissioner consistent with this chapter.

20 (c) An application for a closing agent license shall give the applicant's legal name, age,  
21 residence address, and the name and place of business of the closing agent.

22 Sec. 7 Minnesota Statutes 2010, section 82.641, subdivision 6, is amended to read:

23 The following persons are exempt from the requirements of this section:

1 (1) A direct employee of a title insurer or title insurance agent authorized to do business  
2 in this state;

3 (2) A licensed attorney or a direct employee of a licensed attorney;

4 (3) A licensed real estate broker or salesperson;

5 (4) A direct employee of a licensed real estate broker if the broker maintains all funds  
6 received in connection with the closing services in the broker's trust account;

7 (5) A bank, trust company, savings association, credit union, industrial loan and thrift  
8 company, regulated lender under Chapter 56, public utility, or land mortgage or farm loan  
9 association organized under the laws of this state or the United States, when engaged in  
10 the transaction of businesses within the scope of its corporate powers as provided by law;

11 (6) A title insurer authorized to do business in this state;

12 (7) A title insurance agent authorized to do business in this state; and

13 (8) An issuing agent under Section 2 of this act.

14 Sec. 8. REPEALER.

15 Minnesota Statutes 2010, section 82.641, subdivision 4, are repealed.

16 Sec. 9. EFFECTIVE DATE.

17 Sections 1 to 9 are effective January 1, 2012.

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**Comment [A3]:** NOTE: The way it is currently written insurer is liable for agent and employees under 82

1 OBSERVATIONS AND ADDITIONAL CONCERNS:

2 Discuss and negotiate language regarding phase in of bonding and/or net-worth  
3 requirements

- 4 1. Time in business
- 5 2. Population of service area
- 6 3. Premium generated annual/average

7 Bonding Requirement:

- 8 1. Are there hearings or other regulatory requirements needed to determine the  
9 type and conditions of bonds.
- 10 2. Bonding companies input required for what is available and how these can be  
11 written.

12 Discuss consolidation of governing laws for title insurance (Ch 82, Ch 60K; 60A, 507.45;  
13 ?)

14 Escrow trust account; good funds, licensing,

15 Escrow Accounts regulation

16 Nebraska Statute 44-19.116

17 Minn. Stat Section 82.65

18 Do we need a notice regarding no coverage if no policy and no CPL coverage.

19 Notice regarding closing risk

20 Notice of availability of owner's title insurance

21 1031 escrow regulation / notices –

22 Nebraska Statute 44-19.116(1)(f)

23 BONDING issues:

1 1 Do we need approved form for bonding?  
2 a. We need to know that bonds as proposed as required  
3 b. We need to make not cost-prohibitive  
4 2 Is Fidelity coverage sufficient in lieu of the Surety bond  
5 a. Owner coverage  
6 3 Who must be beneficiary on bond  
7 4 Duplication if insurers are also requiring bondingBonds must not be  
8 accumulative  
9 5 Definition issues in the proposed bill and amended bill: Closing services,  
10 title insurer  
11 6 Issue with determining if a title insurer is required to follow CPLs.  
12 7 The change to closing agent would eliminate the need for a title insurance  
13 agent (and an insurer if operating in the state as an issuing agent) to  
14 require closing licenses and title producer licenses for all employees. If  
15 DOC has an issue with funding – increase the fee on title producer license  
16 and require the education there – there really are no closing agents any  
17 longer as contemplated by the current statute  
18 Definitions Required: Title Insurer, Title Insurance Agent, Issuing Agent  
19 – where should they be included?  
20  
21 Closing Agent Definition does not address protection in Cindy Strand  
22 circumstance. We feel it should be addressed but are not certain how to  
23 do so in the bill as address.