



Greg Schwab

## *Bill Analysis*

*Legislative Service Commission*

### **H.B. 244**

126th General Assembly  
(As Introduced)

**Reps. Schneider, Seitz, Brinkman, Setzer**

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#### **BILL SUMMARY**

- Requires a title insurance agent to notify mortgagors of the availability of, and protection offered by, owner's title insurance when the agent issues lender's title insurance in conjunction with a residential mortgage loan.
- Requires title insurance agents to maintain errors and omissions insurance.
- Requires a title insurance company to issue closing or settlement protection to lenders, borrowers, and sellers of real property, and to applicants for title insurance, if the title insurance company issues a preliminary report, binder, or title insurance policy.

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#### **CONTENT AND OPERATION**

##### **Duties of title insurance agents**

(secs. 1349.24 and 3953.23)

The Title Insurance Law, Chapter 3953. of the Revised Code, defines a "title insurance agent" as a person, partnership, or corporation authorized in writing by a title insurance company to solicit insurance, collect premiums, and to issue or countersign policies on the company's behalf. Title insurance is insurance insuring, guaranteeing, or indemnifying persons with interest in real property, such as banks and other mortgage lenders, against loss or damage suffered by reason of a lien or encumbrance upon, defect in, or the unmarketability of, a title to real property, which failing was not discovered during a search of the title to the property.

The bill requires a title insurance agent issuing a title insurance policy to a lender, in conjunction with a residential mortgage loan made simultaneously with the purchase of all or part of the real property securing the loan, to give written notice to the mortgagor, when no owner's title insurance policy has been requested, that explains that the lender's title insurance policy does not provide title insurance protection to the mortgagor. The notice must be given to the mortgagor, according to the bill, on a form prescribed or approved by the Superintendent of Insurance at the time that the mortgagor's loan commitment is prepared. The notice must explain that a lender's title insurance policy protects only the residential mortgage lender, must inform a mortgagor of title-related exposures that the mortgagor is exposed to, and must state which exposures an owner's title insurance policy could insure against. The bill requires the notice to state that the mortgagor may obtain an owner's title insurance policy that protects the mortgagor as the owner of the property, either at a specified cost or at an approximate cost if the proposed coverage or amount of insurance is not then known. Title insurance agents must maintain a copy of this notice, signed by the mortgagor, in the relevant underwriting file for at least five years after the effective date of the lender's title insurance policy.

The bill also requires every title insurance agent and subcontractor that performs title searches, directly or indirectly, to maintain an errors and omissions policy for the benefit of the title insurance company.<sup>1</sup> The amount of the policy must exceed the minimum limits established by the Superintendent of Insurance and the policy must include coverage for an agent's delegation of any agent function.

The bill defines a "residential mortgage loan" as an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located in Ohio that contains two or fewer residential units, or on which two or fewer residential units are to be built, and includes an obligation of this type on a residential condominium or cooperative unit. A "residential mortgage lender" is defined as any person, including, but not limited to, banks, savings and loan associations, and savings banks, that lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt.

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<sup>1</sup> According to Black's Law Dictionary, an errors and omissions policy is an agreement to indemnify for loss sustained because of a mistake or oversight by the insured--though not for loss due to the insured's intentional wrongdoing (e.g., inadvertent mistakes such as missing a deadline).

**Closing or settlement protection for lenders, borrowers, and sellers of real property**

(sec. 3953.32)

The bill requires a title insurance company to issue closing or settlement protection to the lender, borrower, and seller of real property, and to any applicant for title insurance, if the title insurance company issues a preliminary report, binder, or title insurance policy. A title insurance company is not required to issue closing or settlement protection, however, to any lender, borrower, seller, or applicant that signs a written document in which the lender, borrower, seller, or applicant declines closing or settlement protection. This closing or settlement protection must indemnify any lender, borrower, seller, or applicant that has not declined the protection, both individually and collectively, against the loss of settlement funds resulting from specified acts of the title insurance company's named title insurance agent or anyone acting on the agent's behalf. The acts specified are theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds, and any failure to comply with any applicable written closing instructions that the title insurance agent agreed to. The bill prohibits a title insurance company from issuing coverage indemnifying insureds against such improper acts and omissions, in connection with escrow, settlement, and closing services, except as provided above.

The bill defines the issuance of closing or settlement protection as part of the business of title insurance for purposes of the Title Insurance Law. The Superintendent of Insurance, under the bill, may adopt rules in accordance with the Administrative Procedure Act as the Superintendent considers necessary to carry out this section, including, but not limited to, rules that detail the specific language that must be included in the written document that lenders, borrowers, sellers, and applicants must sign to decline closing or settlement protection.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	05-05-05	pp. 757-758

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