

PROJECT HISTORY - 2003

TITLE INSURANCE AGENT MODEL ACT (#230)

1. What issues was the project intended to address?

On Feb. 1, 2001, the Kansas Insurance Department issued an opinion letter related to a request from a financial holding company asking whether certain provision of Kansas law were preempted by the Gramm-Leach-Bliley Act (GLBA). The opinion advised that certain portions of a Kansas law related to its controlled business provisions were preempted. A controlled business statute is one that limits the amount of business an agent can receive from a single source. It essentially means that any portion of a title insurance agent's business written that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title insurance agent. A similar matter was referred by the Tennessee Department of Commerce and Insurance to the Tennessee Attorney General. In a similar fashion, the Tennessee Attorney General issued an opinion that certain Tennessee controlled business provisions were preempted. Since both of these state laws were based on the NAIC Title Insurance Agents Model Act, the Kansas Insurance Department and the Tennessee Department of Commerce and Insurance brought the matter to the attention of the NAIC through its then Functional Regulation (G) Working Group. The subgroup was appointed and asked to look at the title agent model and the Title Insurer Model Act for compliance with the GLBA.

Subsequently, the charge to the subgroup was expanded to look at any necessary update to the title agent act and the title act. Interested parties were invited to tender suggestions for changes to either of the models.

2. What states participated in drafting the model?

The following states are currently members of the subgroup: Tennessee (chair), Arkansas, California, Illinois, Kansas, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Utah, and Washington.

3. What general procedure was followed in drafting the model? What efforts were made to assure that all interested parties were provided an opportunity to comment during the drafting process?

The efforts of the subgroup were closely coordinated with all interested parties. In addition to open sessions at the quarterly meetings of the NAIC, five conference calls were held since Dec. 2002 to discuss the various submissions and drafts of the models. Notice of those conference calls was posted on the NAIC's home page on the Internet and e-mailed to everyone that expressed an interest in the project. Written comments were received from the Office of the Comptroller of the Currency, the McIntyre Law Firm on behalf of the American Bankers Insurance Association, the State of Utah and the American Land Title Association. Representatives of each organization along with several other interested parties participated in the meetings and conference calls. All meetings and conference calls were open to all participants.

4. What significant issues were raised during the drafting process, and how were those issues resolved?

Given the complexity of this topic and the myriad of discussions and opinions, it is impossible to put together a brief description that captures all of the issues raised and all of the detail underlying those issues. The reader is referred to the minutes of the subgroup for these details. This summary provides a broad overview and might omit various particulars of the project. However, the items below represent the major points of discussion:

- A. Section 4 of the title agent act addresses the examination authority of the commissioner related to title insurance agents. It was amended to limit the commissioner's access to non-insurance books and records held by a depository institution. The model directs the commissioner to the information sharing agreements that have been entered into by most states and the OCC or other functional regulator when the title insurance agent is also a depository institution. These changes are similar to changes made last year to the NAIC's Unfair Trade Practices Act by the Functional Regulation Working Group.
- B. Section 5A of the title agent act was amended to assure compliance with GLBA, regulations issued by federal banking regulators and Section 8 of the Real Estate Settlement Procedures Act (RESPA). It now allows payment of referral fees with express limitations provided in laws and regulations mentioned in the previous sentence. Similar modifications were made to the NAIC's Unfair Trade Practices Act last year.
- C. The second optional Subsection D to Section 6 was amended so that it does not apply to depository institutions. This was the change that was required by the original charge regarding controlled business provisions. The subgroup

believed that it was preferable to keep controlled business provisions for entities other than depository institutions because they are intended to be an essential element of solvency protection for title insurers.

- D. Section 8E of the title agent act addresses the business records requirements for title insurance agents. It was amended to limit the commissioner's access to non-insurance books and records held by a depository institution that is also a title insurance agent. The model directs the commissioner to the information sharing agreements that have been entered into by most states and the OCC or other functional regulator when the title insurance agent is also a depository institution.
- E. A drafting note was added to Section 11 of the title agent act to suggest that states take steps to ensure that their record-keeping requirements for the title insurance agency operations of depository institutions do not place the depository institutions in a position where they cannot comply with both the state requirements and the record-keeping requirements of the institution's primary functional regulator.
- F. Section 12 of the title agent act was amended to refer to other state and federal laws that may apply.

5. What are the implications of this project for accreditation and codification?

Since this project does not principally deal with solvency monitoring, there is no impact for accreditation and codification. However, there was concern expressed by subgroup members that modification of the controlled business provision could restrict the states' ability to monitor the solvency of title insurers. The subgroup observed that concentration of risk was a significant element in many past title insurer failures. The drafters believe that, at least for depository institutions that also operate as title insurance agents, particular attention should be paid to such title insurance agents in relationship to their risk concentration.