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BULLETIN NO. 2011-04

TO: All Alabama-licensed title insurers

FROM : Jim L. Ridling
Commissioner of Insurance 

DATE: September 20, 2011

EFFECTIVE: September 20, 2011

RE: Ala. Act No. 2011-556 – closing or settlement protection

All title insurers should make certain any closing or settlement protection provided complies with Ala. Code § 27-3-6.1 (2011), added by Ala. Act No. 2011-556, effective June 9, 2011. This Bulletin addresses some aspects of this new law.

1. Section 27-3-6.1(b) requires the form of closing or settlement protection to be submitted to and approved by this office. All title insurance forms, including closing or settlement protection, should be filed through SERFFSM.

2. The fee to be charged by the title insurer for closing or settlement protection must be submitted to and approved by this office. No justification shall be required if the filing is for the minimum fees set forth in § 27-3-6.1(d). Any title insurer submitting a fee in excess of the statutory minimum must include sufficient actuarial support to justify the amount.

3. Section 27-3-6.1 contains a superficial ambiguity by interchanging “parties” and “purchaser” in Subsections (e) and (f). Because the affirmative obligation of notice found in the first sentence of Subsection (e) extends to the “parties,” the ambiguity is reconciled by requiring that the “written statement” or “notice” be furnished to each party to the transaction, that is, the seller(s), purchasers(s), and lenders(s); that each party express a desire in the statement or notice to buy or decline closing or settlement protection; and that the statement or notice be signed by each party.

4. If the statement or notice is not timely provided to a party, the omission can be cured as to that party by sending the statement or notice to the party at the party’s last known address by certified mail as provided in § 27-3-6.1(f).

5. The statement or notice referred to in § 27-3-6.1(e) is only required in the case of the transfer of an ownership or possessory interest and not in the case of a refinanced mortgage or other transaction limited to just an owner and a lender.

6. The statement or notice is only required in transactions in which title insurance is being provided. It is not required in a closing handled by an attorney when no title insurance is being provided, even if the attorney also happens to be a title insurance agent.

7. The statement or notice is only required when the lender has not requested closing protection prior to the closing, and thus is always required in transactions not involving a lender.

JLR/JFM/bc