

MLTA Study Guide

Preparing for the State Exam: TITLE INSURANCE LICENSE



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Section I

Title Insurance Terms and Concepts

Section I - Title Insurance Terms and Concepts

A. Rights and Interests

Title is the evidence of a person's right or extent of a person's interest in real estate. It is the means by which ownership is asserted and the right to possession, use and enjoyment of land is maintained. The right to possess, use and enjoy land can be affected by **covenants, conditions or restrictions**.



1. Covenants

A **covenant** is an agreement or promise between two parties. An example of such a covenant would be a covenant of warranty contained in a deed. The grantor in a warranty deed assures the grantee named in the deed that the grantor holds the interest being conveyed and has the right to convey such interests to the grantee. If a party "breaks this promise" or assurance, they may be subject to a legal action by the other party for such breach of covenant.





2. Conditions

A **condition** is a provision contained in a deed or other instrument which may affect a person's right to use, possess or enjoy land. It makes a particular right in real estate contingent upon the occurrence of a future event. A condition usually appears with a provision which will divest or take away a person's right or interest upon the occurrence of a certain event.

Restriction



A **restriction** is a provision contained in a deed or other instrument which prohibits or limits certain uses, occupation or improvements of land. Restrictions may be either in the form of a covenant or a condition.

Restrictions may be either private or public restrictions. Public restrictions are imposed by governmental entities and are often in the form of zoning ordinances. Private restrictions are created by owners of land and are enforceable by those parties imposing the restrictions.

Private restrictions affecting title to land are often referred to as "covenants running with the land". Once created, a restriction will affect the right to use or possess land until terminated by all those parties who have a right to enforce the restriction.

B. Exception



Exceptions are those matters which are "excepted" from coverage provided under the insuring provisions contained in a title insurance policy. Interests or encumbrances which affect the title or estate being insured are shown on Schedule B of a policy. Exceptions can be in the form of liens, restrictions, easements or other interests which affect a person's title to property.

Policies of title insurance contain a schedule of exceptions which will be discussed later in this outline.

C. Requirements



A requirement is a provision contained in a title insurance commitment which imposes an obligation to perform some act before a policy will be issued to an insured party.

Requirements may include the recording of instruments evidencing the creation or termination of rights or interest in land. Examples of requirements may include the recording of a deed or mortgage, the recording of a discharge of lien or the payment of real estate taxes.

D. Endorsement



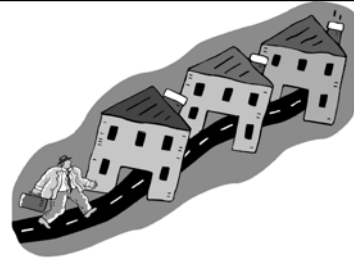
An **endorsement** is an addendum or amendment which changes terms or coverage contained in a title insurance commitment or policy. An endorsement is often used to add coverage which would otherwise be excluded from coverage contained in the title insurance policy. The endorsement becomes part of the title insurance policy and is subject to the provisions, conditions and stipulations of the title insurance policy.

Endorsements and premium charges for endorsements must be filed and approved by the Michigan Insurance Bureau and may not be issued unless the endorsement language and premium charge has been approved. Once approved by the Insurance Bureau, the endorsement form may not be changed or altered. Premium charges for endorsements are determined by the rates filed with the Insurance Bureau by title insurance companies.

E. Insurer/Underwriter



An **insurer** or underwriter is a title **insurance company**. A title insurance company provides the insurance coverage afforded by a policy and is responsible for the payment of any claim which may be made under a policy. Title insurance companies are regulated by the Michigan Insurance Bureau and must provide financial information, rate and form filings and other information regarding the conduct of its business activities.



F. Chain of Title

A **chain of title** is a term which describes the series of transactions affecting title to a particular parcel of land. An abstract is a written history or summary of the recorded documents which evidence the series of transactions or chain of title.

G. Transfer Tax and Recording



Written instruments which evidence the conveyance or transfer of an interest in land are subject to the payment of a transfer tax . The payment of a transfer tax is a prerequisite to the recording of such instruments. The statutory requirements for the payment of a transfer tax are set forth in MCL 207.501-.512 and MCL 207.526-.537.

Certain instruments are exempt from the payment of these transfer taxes. These exemptions are set forth in MCL 207.505 and MCL 207.526.

The transfer tax imposed by MCL 207.501 is at a rate of \$.55 per \$500.00 or fraction thereof of the total value of the real estate being sold or conveyed. (Instruments for a conveyance of land in Wayne County are subject to a tax at the rate of \$.75 per \$500.00.) The transfer tax imposed under MCL 207.501 is often referred to as the **county transfer tax**.

G. Transfer Tax and Recording Continued

As of January 1, 1995, in addition to the tax imposed under MCL 207.501 there is a transfer tax imposed under MCL 207.526. This tax is often referred to as the **state transfer tax** and is at a rate of \$3.75 per \$500.00 or fraction thereof of the total value of the real estate being sold or conveyed. The exemptions from payment of the state transfer tax are set forth in MCL 207.526.

If an exemption from payment of either the county transfer tax or the state transfer tax is being claimed, the exemption must be referenced on the face of the instrument.



Recording Requirements



The amount of consideration for a transfer of an interest in real estate must be stated on the face of the instrument evidencing such transfer or a transfer valuation affidavit must be filed when the instrument is presented to the register of deeds for recording.

A tax certificate from the county treasurer which shows that there are no delinquent real estate taxes is also required before certain instruments may be recorded. (See MCL 211.135)

There are a number of other requirements which must be met before an instrument which conveys or transfers an interest in real estate may be recorded. These requirements are set forth in MCLA 565.201, MCL 565.221, MCL 565.48. The recording of instruments is the responsibility of the register of deeds for the county in which the real estate is located.



Constructive Notice

The **recording of an instrument** conveying an interest in land **provides constructive notice** of such interest being conveyed or transferred. Constructive notice establishes a person's rights in and to real estate and may defeat another's claim of interest to that same real estate. It is notice which is implied or imputed to another whether or not that person has actual notice of a person's claim or interest in land.



Search and Examination



A **search and examination** of the recorded instruments which constitute a chain of title will determine the ownership of title to real estate and identify those other interests or encumbrances which affect such title.

The search will identify those documents which constitute the chain of title. The search is akin to abstracting or listing the instruments which transfer or convey an interest in land or encumber title to real estate.

The examination is a careful review of each individual instrument to determine the validity of an instrument and the nature of the interest being transferred or conveyed, identify any lien or encumbrance on title and identify those parties with any interest or encumbrance on title.



H. Search and Examination Continued

Title insurance commitments or policies should not be issued until a reasonable search and examination of the chain of title has been conducted by a title insurance company or agent for a title insurance company. A determination of marketability and insurability in accordance with sound underwriting practices should be made before a title insurance commitment or policy is written.

Underwriting is the process of analyzing any risk or question regarding the title search and examination or the nature of the transaction creating an interest which is to be insured.

I. Encumbrance and Encroachment



An **encumbrance** is a right or interest in land which decreases the value of the land, but does not hinder the ability to sell or transfer the land. Examples of encumbrances would include mortgages, easements or restrictions. Although a burden on title, an encumbrance does not necessarily render title unmarketable.

An **encroachment** is an improvement which extends onto or is located on the land of another. Encroachments also include improvements which are located over easements which affect title to land.



J. Deeds

A **deed** is a written instrument by **which the ownership of land is transferred from one party to another**. Deeds should include the names of the parties, statement of conveyance, consideration and any. exceptions, restrictions or conditions affecting the title being conveyed.

There are **three kinds of deeds commonly used** to convey title to property in Michigan: quitclaim deeds, warranty deeds and a covenant deed.

1. Quitclaim Deed

A **quitclaim deed** conveys all right, title and interest that a grantor has in real estate. This form of deed contains no assurances, however, that the grantor has any interest to convey.

2. Warranty Deed

A **warranty deed** conveys all right, title and interest that a grantor has in real estate. Unlike a quitclaim deed, it also contains a covenant that the grantor has the interest being conveyed and will defend such interest against any other party.

3. Covenant Deed

A **covenant deed** conveys all right, title and interest the grantor has in the land being conveyed. This form of deed contains a covenant that the grantor has not done anything which would affect the interest being conveyed. Unlike the warranty deed, the warranties contained in the covenant deed are limited to the acts of the grantor and not any predecessor in title.

K. Foreclosures/Forfeiture

Foreclosure is the process by which a party enforces a lien or security interest in land. The foreclosure process includes a sale of the land to satisfy the debt or obligation for which the lien or security interest was given.

In Michigan, lenders are entitled to enforce their security interest through a **foreclosure by judicial action**. In such a proceeding, the lender files an action in circuit court and seeks a judgment declaring a default and a sale of the property to satisfy the debt.

A lender who holds a mortgage on property may also proceed to **foreclose by advertisement** which is a procedure without court supervision. A foreclosure by advertisement may be conducted only if the mortgage contains a power of sale in the mortgage. The power of sale provision in a mortgage is a remedy given to the lender in the event there is a default under the mortgage.



Both a foreclosure by advertisement and a foreclosure by judicial action are governed by statute. Most foreclosures are by advertisement. It is a quicker procedure which generally takes six (6) weeks from commencement of the foreclosure to a sale of the property. A judicial foreclosure may take six (6) months or more before a sale may take place.

A lender must choose which remedy or foreclosure process it wishes to pursue. A judicial foreclosure may be necessary in the event there are priority issues to resolve between other parties and the foreclosing lender. Once a foreclosure sale has taken place, a deed is delivered to the purchaser at the sale by the person conducting the sale, generally the Sheriff or Deputy Sheriff.

After a foreclosure sale has taken place, there is a period of time, determined by statute, that the property may be redeemed. During this period, the property may be redeemed by paying the redemption price. The redemption price is the amount bid at the sale plus interest from the time of the sale.



Forfeiture



Forfeiture can be defined as the loss of any right, title or interest in land as a consequence of a default under an obligation. A default itself does not forfeit such right, title and interest. A declaration is made by the party with the right to enforce an obligation that an interest has been forfeited.

Forfeiture is most often used by a vendor under a land contract who seeks to terminate the interest of a vendee. Once a land contract vendee's interest has been forfeited, the legal and equitable title vest with the vendor.

The procedure for forfeiture of a land contract is governed by Michigan Statute MCL 600.5701, et seq. and Michigan Court Rules.



L. Liens

A **lien is** an encumbrance or claim of another obtained for the purpose of securing the payment of a debt or the performance of an obligation. Liens are generally evidenced by a written instrument which sets forth the amount or extent of the lien. Liens may be either voluntary or involuntary.

1. Voluntary Lien

A voluntary lien is a lien which is granted by one party to another. An example of a voluntary lien would be a mortgage granted to secure a loan for the purchase of a home.

2. Involuntary Lien

An involuntary lien is a lien which has not been granted by a person holding an interest in land, but rather is obtained through judicial or statutorily prescribed proceedings. An example of an involuntary lien would be a mechanics lien or levy after a judgment.

M. Mortgagor/Mortgagee



A **mortgagor** is the party who is granting a security interest in land. A mortgagor may include the owner of property, a vendee under a land contract or a lessee under a lease.

A **mortgagee** is the party who is being granted a security interest in property. A mortgagee would also include any party who receives an **assignment** of a mortgage. An assignment is a transfer or conveyance of an interest in real estate.

After a mortgagor has repaid the debt or performed the obligation secured by the mortgage, the mortgagee will execute a discharge or release of the mortgage. The discharge or release evidences the fulfillment of the obligation by the mortgagor and terminates the security interest in property. A discharge of mortgage must properly identify the mortgage being discharged.

If a mortgage or other security interest has been assigned, the discharge or release must be executed by the **assignee** who is the party now holding the security interest.

N. Probate

Probate is a term which is used to describe proceedings prescribed under the Michigan Revised Probate Code (MCL 700.1, et seq.) and administered through the Probate Court. A decedent's interest in land is the most common reason for applying the Probate Code to real estate. There are, however, other applications of the Probate Code to real estate interests held by certain protected parties such as minors or persons unable to handle their own affairs.



Under the Michigan Revised Probate Code, the administration of a decedent's estate can be through Independent or Supervised proceedings. In independent probate, the estate of a decedent is administered by an independent personal representative who operates without court supervision. Title to real estate held by a decedent's estate is conveyed by a deed given by the independent personal representative. Under supervised proceedings, title is conveyed by either a deed from the personal representative or is vested in the heirs of a decedent by an order from the probate court entered at the conclusion of the estate. This order is called an Order Assigning Residue.

The authority of a personal representative to act on behalf of an estate is evidenced by letters of authority.



O. Simultaneous Issue

Simultaneous Issue is a term used to describe the issuance of an owner's and loan policy of title insurance with identical effective dates. Because the search and examination of title necessary to issue both policies is the same, title insurance underwriters provide a substantial reduction in the premium charge for the issuance of the loan policy.

P. Title Defect

A defect in title is any right held by another to claim property or make demand upon an owner of property. Title defects may be discovered in a search of the records which constitute the chain of title. Common examples of title defects would include a missing conveyance or discharge of mortgage.

Title defects may be distinguished from encumbrances. Generally, a title defect would render title to land unmarketable, whereas an encumbrance such as a utility easement would not have the same effect.

Marketable title can be defined as title that is free from such defects or encumbrances and is of such condition that a reasonably prudent person would accept the title being conveyed. It is title in such condition as to assure a purchaser the quiet and peaceable enjoyment of the property.



Real Property

Real Property is property which is of a fixed, permanent and unmovable nature. It includes improvements erected on the surface and everything beneath the surface of the land. Real property encompasses land, rights and improvements pertaining to land. However, not all improvements located on land constitute real estate. Certain property or improvements may not constitute real estate if they can be easily severed or removed from the land and were never intended to be permanent improvements.

R. Easement or Right of Way



An **easement** is a right of another to use land or a portion of land for a particular purpose. Examples of easements include: an easement for ingress and egress to another parcel of land, an easement for a public utility such as a telephone line or electric line.

There are two basic types of easements: an easement appurtenant and an easement in gross.

An **easement appurtenant** is an easement which benefits one parcel of land and burdens another. The parcel which is benefited by the easement is referred to as the dominant parcel. The parcel which is burdened by the easement is referred to as the servient parcel.

An **easement in gross** is an easement which benefits a particular person or entity. It is personal in nature rather than connected with the use or enjoyment of another parcel of land.

Easements may be created by a grant or reservation in a deed or other conveyance. An easement may also be created by operation of law such as an implied easement, an easement by necessity or a prescriptive easement.

Easements appurtenant pass with a conveyance of title to the dominant estate.

Right of Way



A **right of way** is a right to cross over a parcel of land. A right of way may be either public or private. The creation of a public right of way is largely determined by statute.

General Insurance Concepts



Title Insurance is a form of insurance that differs from other forms of insurance. Most forms of insurance assume risks which arise out of future events such as an accident or damage from a hurricane. Title insurance is designed to eliminate risk and prevent loss due to defects in title which arose in the past.

A title insurance policy is a contract of indemnity against loss or damage arising out of defects in or liens on the interest insured under the policy. A title policy indemnifies the insured from existing, although unknown, risks that may cause a claim or a loss in the future.

Like other forms of insurance, every policy of title insurance contains a duty to defend. The duty to defend is a broader duty than the duty to indemnify. The obligation of an insurer under a duty to defend may actually result in payments by an insurer which exceed the face amount of a title insurance policy.

Legal Descriptions



The system used to parcel out or divide the vast areas of land in the United States and provide a method for identifying and describing real estate is known as the **rectangular survey system**.



T. Section, Township, Range

The rectangular system consists of townships which are **six miles square**.

Each township is divided into **36 sections**. Each township is referenced or located in relation to a North-South line called the **Michigan Meridian** (the Michigan Meridian **runs roughly through the center of the lower Peninsula**) and an East-West **base line** (the base line **runs across the state about 35 minutes South of Grand Rapids.**)

A **range** is used to identify the location of a township in relation to the Michigan Meridian. A reference in a legal description of Town 6 North, **Range** 12 West means that property is located in the sixth township North of the Base line and in the twelfth township West of the Michigan Meridian.

A **Section** is (theoretically since there is no perfect section) one mile square or 5,280 feet along each side of the section. A section consists of 640 acres.



U. Metes and Bounds

Metes and Bounds is a manner of describing property by using courses and distances which begin at a certain designated point and follow the perimeter of the property being described back to the point of beginning.

A **course** is the direction which is determined by its relation to a true North-South line. For example: a person who is going to follow a course of "South 65 degrees East" would face due South and turn 65 degrees to their left (Easterly).

A **distance** is the length one would travel along a particular course. The rectangular survey system used measurement units known as rods, links and chains. A **rod** is 16.5 feet, a link is .66 feet and a **chain** is 66 feet.

A Metes and bounds descriptions will start at a known point which is indicated by a marker. This marker is also referred to as a monument. A **monument** is a physical object on the ground which establishes the starting point of a line. A monument may be a natural object such as a tree or river. Most monuments today are artificial monuments consisting of an iron or concrete stake placed in the ground.

There is an entire body of law relating to title to property abutting an inland lake or river. Owners of such property are referred to as **riparian or littoral** owners. Generally, an owner of property which abuts an inland lake (littoral) or river (riparian) will also take title to a portion of the lakebed or riverbed to the center of the lake or river. Because the exact dimensions of such lakebed or riverbed is difficult to determine and are subject to rights and interests of the other riparian or littoral owners, **title insurance underwriters rarely insure title to submerged land.**

V. Lot and Block

Property may be described by reference to a plat. A plat is a parcel of land which has been divided up into smaller parcels called lots. The platting of land is governed by the Michigan Subdivision Control Act of 1967 (MCLA 560.101, et seq.). This Act is also commonly referred to as the Plat Act.

Prior to enactment of the Subdivision Control Act, plats often included sections of a plat referred to as blocks. Each block was numbered and a certain lot would be described by referring to a lot and the block within which the lot is located.

Once property has been platted, the legal description of property changes from a metes and bounds description to a lot as identified on a plat.

Section II

Title Insurance Policies

Section II. Title Insurance Policies



Title insurance policies provide protection to a party owning an interest in real estate **against loss or damage arising out of defects in or claims against the interest as insured** under a policy.

Title insurance policies are unlike other forms of insurance policies and are generally "transactional" in nature. A title insurance policy is typically issued to a party who has just been given or conveyed an interest in land.

Title policies are a form of "risk elimination" insurance rather than risk assumption and are issued after a search and examination of the public records has been conducted. The search and examination will determine the present owner of property and identify any liens, encumbrances or other interests which affect the land and interest being insured.

A. Types of Policies

1. Owners

An **owner's policy** of title insurance is designed to protect the owner of title to land against any claim or attack on the title as insured. The policy will be issued in the amount that the insured has paid to acquire his interest.

The owner's policy will have an **effective date** which is typically the day after the insured's **interest in land is recorded in the public records**. The policy insures the named insured that, as of the effective date of the policy, title to the estate insured is vested in the insured and that the insured's interest is subject only to those matters shown on Schedule B of the policy.

The **coverage and protection afforded by an owner's policy will continue as long as the insured has an interest in the property or has liability under covenants of warranty given to a purchaser from the insured.**

b. Owner Policy Forms

The **forms of owner's policies** of title insurance are policy forms which **have been drafted by the America Land Title Association and are identified as ALTA Owner's Policy**. There have been several revisions or modifications to this policy form. Most underwriters have currently filed the 2006 Owners Policy form. The date of each policy form will be indicated on the policy jacket. For example the 2006 owner's policy form will be identified as: ALTA Owner's Policy (06-17-06).

2. Loan Policy

The **loan policy** of title insurance is **also a form promulgated by the American Land Title Association** and like the commercial owner's policy has undergone some revisions in recent years.

The loan policy is **designed to protect lenders who are acquiring a security interest in land which is evidenced by a mortgage** granted by an owner to the insured lender.

Because the **nature of a lender's security interest in land differs from that of an owner**, the loan policy form is **designed to provide coverages unique to the concerns of a lender/mortgagee and the risks associated with a security interest in land**.

There are also policy forms or endorsements designed to insure **leasehold** interests, mortgages granted on leaseholds and interests acquired by the United States.

B. Commitment and Policy Provisions

A title insurance commitment is an agreement to issue a policy and **reflects the state of title to land as of a specific date**. This state of title will be determined by the search of the public records and an examination of conveyances or other instruments affecting the interest in land to be insured.

The commitment sets forth the specific terms and conditions of the agreement to issue a policy. The commitment will also include Schedule A, Schedule B - Requirements, Schedule B - Exceptions and a list of standard or general exceptions.

Schedule A sets forth the name of the proposed insured, amount of insurance to be issued, current owner, the legal description of the land and the effective date of the commitment.

Schedule B - Requirements sets forth the requirements which must be met before a policy will be issued. These requirements will include, among others, a requirement to record the instrument creating the interest to be insured.

Schedule B - Exceptions sets forth the specific encumbrances, interests or other matters which affect the title of the land to be insured.

The **standard or general exceptions** are matters which may affect title to the land but cannot be ascertained from a search and examination of the public records. These include: rights of parties in possession, matters which would be disclosed by a survey of the property, unrecorded mechanics liens. The standard exceptions vary slightly among title insurance companies.

Policy Provisions

Once the requirements for issuance of a policy has been satisfied, a policy will be issued to an insured owner or lender. The policy is a contract which **contains both uniform and non-uniform provisions**.

The **uniform provisions are contained in the policy jacket** or cover and include the insuring provisions, exclusions and conditions and stipulations.

The **non-uniform provisions** are contained in the Schedules A and B which are part of the policy.

1. Insuring Provisions

A policy of title insurance contains **provisions on the face page of the policy which describe the scope of coverage being given** to the insured. These are known as the **insuring provisions**.

The insuring provisions in an owner's policy provide coverage against loss sustained by reason of:

1. Title to the estate or interest described in Schedule A being other than as stated therein.
2. Any defect in or lien or encumbrance on the title.
3. Unmarketability of the title.
4. Lack of a right of access to and from the land.

A loan policy contains the same insuring provisions as an owner's policy, but also contains the following additional insuring provisions:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title.
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:

- a. Arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or

- b. Arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The insuring provisions are subject to the exclusions, exceptions and the conditions and stipulations set forth in the rest of the title insurance policy.

2. Conditions and Stipulations

The **conditions and stipulations** of a title policy contain what is often referred to as "insurance boilerplate". It is important, however, to understand the meaning of certain terms used in the policy, the rights of the insured and insurer and the manner in which claims will be handled and resolved.

The conditions and stipulations define the terms used in the policy and explain the mechanics of claim resolution. The rights and obligations of the insurer in resolving a claim as well as the rights and duties of an insured are set forth in the conditions and stipulations portion of a policy.

3. Exceptions and Exclusions Exceptions

Exceptions are those matters which are "excepted" from coverage provided under the insuring provisions contained in a title insurance policy. Interests or encumbrances which affect the title or estate being insured are shown on Schedule B of a policy. The *exceptions are unique to the property being insured*. An example of an exception would be a mortgage given by the titleholder for the land being insured.

Exclusions

Exclusions are matters which are expressly "excluded" or removed from the scope of coverage provided within the policy. **Excluded matters include those which are beyond the control of an insurer.**

Examples of excluded matters would be zoning ordinances or governmental police power regulation.

In addition to zoning and police power regulations, *each policy of title insurance excludes matters which result from action or agreement by the insured.*

The exclusions appear in each policy after the insuring provisions and before the conditions and stipulations.

Standard or general exceptions may also appear in a policy of title insurance. The standard exceptions are interests, encumbrances or other matters which may affect the title to property but the existence of which may not necessarily be detected by a search of the public records. The standard exceptions include rights of parties in possession such as tenants under unrecorded leases, unrecorded mechanics liens that may relate back to a date prior to the effective date of the policy and matters which may be disclosed by an accurate survey, such as an encroachment of a fence or a driveway.

The standard exceptions are often removed from a loan or owner's policy based upon information received by the title insurer. This information is often in the form of an affidavit from an owner which identifies parties with a right to possess or states whether a work of improvement has been recently made which would create a mechanics lien. Surveys are also provided to an insurer in order to delete the standard exception for survey matters.

NOTE: Different underwriters may have different requirements and different criteria for removing standard exceptions. Make sure you check with the underwriter whose "paper" you are using to insure the transaction on if you have any questions regarding their underwriting requirements!



4. Premium Payments

The amount of premium for a title policy is determined in accordance with rate filings which are submitted by a title insurance company and approved by the Michigan Insurance Bureau. **Premium payments must be in strict accordance with the approved rate filings of a title insurance company.** The premium payment for any endorsement which is being issued must also be made in accordance with approved rate filings.

Because title policies are issued on a transactional basis, there is a one time premium payment for a policy of title insurance.



5. Loss payments

Loss payments are determined in accordance with the conditions and stipulations of a title insurance policy. Any payment of loss to an insured must be by a title insurance company.

The conditions and stipulations of a policy set forth the manner in which loss will be determined in the event of a claim under a policy. Loss payments will be made by an insurer only after sufficient evidence or proof of loss has been submitted to the title insurance company.

6. Subrogation



Subrogation is a term which describes the right of an insurer to substitute or "step into the shoes" of an insured in order to enforce any rights which an insured may have against a third party. The concept of subrogation is common to all types of insurance - including title insurance.

Under the subrogation provision contained in the conditions and stipulations of the title insurance policy, an insurer may pursue recovery of its loss against a party who is obligated to the insured. For example: If A warrants title to B and it is later discovered that A signed a mortgage which was misposted by the Register of Deeds and did not appear on B's title policy, the title insurance company would pay the mortgage and seek recovery from A since A is obligated to B under the warranties contained in A's deed to B.

There are other provisions contained in a policy of title insurance which address the extent of liability of the insurer and rights of the insurer and the insured in resolving any claim under the policy. One such provision provides for **arbitration** to resolve any dispute between an insurer and an insured. When the amount of insurance is **\$2,000,000.00 or less, either the insured or the insurance company may demand arbitration**. When the amount of insurance exceeds **\$2,000,000.00 both the insured and the insurer must agree to arbitration**.

Section III

Real Estate Ownership

Section III Real Estate Ownership



There are **two major categories of estates or interests** in land: **freehold** and **nonfreehold estates**.

A **freehold estate** is a direct ownership of land or a possessory interest in land.

A **nonfreehold estate** is not a direct ownership of land, but rather the ownership of a right to use or to occupy land.

Within these two categories of estates in land, there are many different forms or types of ownership. The following types of ownership are those commonly encountered in Michigan.



A. Fee Simple

Fee simple is a term which describes absolute ownership in land. Fee simple is the highest form of ownership in land and is also commonly referred to as "fee simple absolute" or "fee". This form of ownership or title to property is freely transferable and inheritable. The owner of this estate can use, convey, or devise his interest in property.



B. Life Estate

A **life estate** is similar to a fee estate except that the term of this estate is limited to the life of a living person. A life estate is an estate of possession, but not of inheritance. An owner of this type of interest may possess and enjoy the real estate during his life or the life of a third person. Upon the death of the holder of a life estate, the interest in land will pass to another party, typically referred to as a remainderman.



C. Concurrent Estates

A fee simple estate may be held by more than one person at a time. Each owner will have an equal right to possess the land. The *commonly encountered forms of joint ownership* are tenancy in common, joint tenancy and tenancy by entireties.

D. Tenancy in Common

A tenancy in common is a form of ownership where **each tenant in common has the same right to possess the property**. Each tenant in common also **has the full right to transfer, will, mortgage or take any other action regarding his interest**.

A conveyance to two or more persons (other than trustees, personal representatives, mortgagees or husband and wife) is presumed to create a tenancy in common unless the instrument expressly declares a contrary intent.

This form of tenancy has **no survivorship feature**. *When one tenant in common dies, his interest passes to his heirs or devisees through his estate.* (See Michigan Land Title Standard 6.1 for a discussion of this form of ownership.)

E. Joint Tenancy

A joint tenancy is a form of ownership where **each joint tenant has an equal right to possession** and each joint tenant also has **the right to the entire estate if he survives all of the other joint tenants**.

In order to create a joint tenancy, there must be four "unities" present: **unity of time, unity of title, unity of interest and unity of possession**. Without all four of these unities, a joint tenancy cannot exist.

The **unity of time is established** by a conveyance to all joint tenants at the same time. The **unity of title requires** that the same grantor convey by the same deed title to the joint tenants. The **unity of interest requires** that each joint tenant have an undivided interest in the whole estate. No joint tenant can have a greater interest than any other joint tenant. The **unity of possession requires** that each joint tenant has an equal right of possession with the other joint tenants.

If a joint tenant conveys his interest, then there is a severance of the joint tenancy and a termination of the joint relationship as to that interest. The unities of time, title and interest have been broken. When such a conveyance or severance is made, the grantee or transferee holds his interest as a **tenant in common**. If there were only two joint tenants, a severance will terminate that joint relationship. *If there were more than two joint tenants, the original joint tenants who did not convey their interest will continue to hold their interests as joint tenants with each other.* The grantee of the joint tenant who conveyed his interest becomes a tenant in common with the remaining joint tenants. (See Michigan Land Title Standard 6.2 and 6.3 for a discussion of this form of ownership.)

F. Tenancy by Entireties

A **tenancy by entireties** is a form of concurrent ownership held by a **husband and wife**. A tenancy by the entireties is created when there is a conveyance to a man and woman who are husband and wife. This form of tenancy is similar to a joint tenancy since it contains a survivorship feature. A surviving spouse takes title to the entire fee title.

The distinction between a joint tenancy and tenancy by the entireties is that a tenancy by the entireties cannot be severed by a conveyance by only one spouse. A tenancy by the entireties can only be severed by a conveyance from both spouses, the death of one spouse or a divorce. (See Michigan Land Title Standard 6.5 for a discussion of this type of ownership.)

Joint Life Estate with Remainder to Survivor

There is another form of concurrent ownership which is unique to Michigan. A joint life estate with remainder to **survivor** is often confused with joint tenancy.

A joint life estate with remainder to survivor is created by a conveyance to two or more persons "as joint tenants with full rights of survivorship" or "joint tenants and to the survivor" or "to the survivor" or some variant thereof. When two or more persons hold title in this manner, a conveyance to a third party will not create a tenancy in common. One person holding such an estate cannot deed to a third party and thereby defeat the right of the surviving joint life estate holder to acquire the entire fee estate. (See Michigan Land Title Standard 6.4 for a discussion of this form of ownership).

H. Nonfreehold Interests

A **leasehold** is a form of **nonfreehold** estate. The owner of a leasehold interest does not own a fee interest in property, but rather a right of possession which has been purchased from the fee title holder. **Examples** of nonfreehold interests include **easements, periodic tenancies and tenancies at will.**

Section IV

Marketing Practices

Section IV. Marketing Practices

A. Unfair/Prohibited Practices

1. False Advertising 500.2007,.2057

§ 24.12007. Untrue, deceptive or pleading advertising.

Sec. 2007. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance; Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(MCL § 500.2007)

§ 24.12.057. False representations as to insurer's identity; penalty; certain advertising not limited.

Sec. 2057. (1) No insurer or department or general agency of an insurer, doing business in this state, or its officers or agents, shall issue any false or misleading advertisement through newspapers or other periodicals, or any false or misleading representations by signs, cards, letterheads, or other stationery, tending to conceal or misrepresent the true identity of the issuer or insurer which is carrying the liability under any policy issued in this state. Nor shall any insurer or department or general agency of an insurer, doing business in this state, issue any advertisement or representation of any character, giving the appearance of a separate or independent insuring organization on the part of any department or general agency, and the type or lettering used in any advertisement or representation shall set forth the name of the company or organization assuming the risk more conspicuously than that of any department or general agency.

2. Nothing herein contained shall be construed as limiting the right of any representative of a fire insurance company to advertise his own individual business.

3. Any violation of this section shall be punished by a fine not exceeding \$500.00, as a misdemeanor.

(MCL § 500.2057.)

§ 24.12005. Unfair methods of competition and unfair practices; misrepresentations.

Sec. 2005. An unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact does any of the following:

- a. Misrepresents the terms, benefits, advantages, or conditions of an insurance policy.
- b. Misrepresents the dividends or share of the surplus to be received on an insurance policy.
- c. Makes a false or misleading statement as to the dividends or share of surplus previously paid on an insurance policy.
- d. Makes a misleading statement or misrepresentation as to the financial condition of a person engaged in the business of insurance, or as to the legal reserve system upon which a life insurer operates.

e. Uses a name or title of an insurance policy or class of insurance policies misrepresenting the true nature of that insurance policy or class of insurance policies. A policy approved by the commissioner shall be conclusively presumed not to misrepresent the true nature of that policy.

f. Makes a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy.

g. Makes a misrepresentation for the purpose of effecting a pledge or assignment of or a loan against an insurance policy.

h. Misrepresents an insurance policy as being a security. This subdivision shall not apply to an insurance policy which must be registered as a security pursuant to the law of this state or of the United States.

i. Misrepresents the nature or extent of coverage afforded an insurance policy or annuity contract by the Michigan life and health insurance guaranty association or the property and casualty guaranty association.

(MCL § 500.2005.)

§ 24.12064. Misrepresenting terms of policy or benefits; misrepresentation or incomplete comparison of policies for certain purposes; revocation of license; penalties.

Sec. 2064. (1) No insurer, or any officer, director, agent or solicitor thereof shall issue, circulate or use or cause or permit to be issued, circulated or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by such insurer, or misrepresenting the benefits or privileges promised under any such policy, or estimating the future dividends payable under any such policy.

No insurer, officer, director, agent or solicitor, or any person, firm, association or corporation, shall make any misrepresentation or incomplete comparison of policies, oral, written or otherwise, to any person insured in any insurer for the purpose of inducing or tending to induce such person to take out a policy of insurance or for the purpose of inducing or tending to induce a policyholder in any insurer to lapse, forfeit or surrender his insurance therein, and to take out a policy of insurance in another like insurer.

Upon satisfactory evidence of any violation of the provisions of this section by any insurer, its officers, solicitors or agents, or any insurance broker, the commissioner shall forthwith revoke the certificate of authority or license of such insurer, its officers, solicitors or agents, after following the procedures provided for in section 2068 and no certificate of authority or license shall be issued to such insurer, officers, agents or solicitors, within 1 year from the date of such revocation.

Violations of this section shall also be subject to the penalties provided for in section 2069.

(MCL § 500.2064.)

§ 24.1221.8. Disability insurance; false statements in application; effect of material misrepresentation.

Sec. 2218. The falsity of any statement in the application for any disability insurance policy covered by chapter 34 of this code may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

1. No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless the misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make the contract.

2. A representation is a statement as to past or present fact, made to the insurer by or by the authority of the applicant for insurance or the prospective insured, at or before the making of the insurance contract as an inducement to the making thereof. A misrepresentation is a false representation, and the facts misrepresented are those facts which make the representation false.

3. In determining the question of materiality, evidence of the practice of the insurer which made the contract with respect to the acceptance or rejection of similar risks shall be admissible.

4. A misrepresentation that an applicant for life, accident or health insurance has not had previous medical treatment, consultation or observation, or has not had previous treatment or care in a hospital or other like institution, shall be deemed, for the purpose of determining its materiality, a misrepresentation that the applicant has not had the disease, ailment or other medical impairment for which such treatment or care was given or which was discovered by any licensed medical practitioner as a result of such consultation or observation. If in any action to rescind any contract or to recover thereon, any misrepresentation is proved by the insurer, and the insured or any other person having or claiming a right under the contract, shall prevent full disclosure and proof of the nature of the medical impairment, the misrepresentation shall be presumed to have been material.

MCL, § 500.2218.)

Defamation 500.2009

§ 24.12009. Unfair methods of competition and unfair practices; false or maliciously critical statement as to financial condition of insurer.

Sec. 2009. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include the making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false, or maliciously critical of, or derogatory to the financial condition of a person engaged in the business of insurance, and which is calculated to injure a person engaged in the business of insurance.

(MCI, § 500.2009.)

4. Controlled Business 500.12.08

§ 24.11208. Insurance of property, life or other risk of agent or associates; limitations.

Sec. 1208. An agent, during any 12-month period, may not effect insurance upon his own property, life or other risk and the property, life or other risk of his employees, employer or business associates, in excess of 15% of the total premium which he effected during that period.

(MCL § 500.1208.)

§ 24.12017. Unfair methods of competition and unfair practices; financial inducement.

Sec. 2017. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance: Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(MCL § 500.2017.)

§ 24.12424. Agreement, rebate or other inducements not specified in contract of life or accident and health insurance. Sec. 2024. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance: Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(MCL § 500.2.024.)

§ 24.12066. Rebates, etc., prohibited; revocation of license; penalties..

Sec. 2066. (1) No insurer, by itself or any other party, and no insurance agent or solicitor, personally or by any other party, transacting any kind of insurance business **shall offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy or on any policy, or agent's commission thereon, or earnings, profit, dividends or other benefit. founded, arising, accruing or to accrue thereon, or therefrom, or any other valuable consideration or inducement to** or for insurance, on any risk in this state now or hereafter to be written, which is not specified in the contract of insurance; nor shall any such insurer, agent or solicitor, personally or otherwise, offer, promise, give, sell, or purchase any stocks, bonds, securities or any dividend or profits accruing or to accrue thereon, **or other thing of value whatsoever as inducement** to insurance or in connection therewith which is not specified in the policy contract.

2. Upon satisfactory evidence of the violation of this section by any insurer, its officers, solicitors or agents, or any insurance broker, the commissioner shall revoke the license or certificate of authority of such offending insurer, its officers, solicitors or agents, after following the procedures provided for in section 2068; and **no license** or certificate of authority shall be issued to such insurer, officers, agents, solicitors or brokers, **within 1 year from the date of such revocation.**

3. Violations of this section **shall also be subject to the penalties provided for in section 2069.**

(MCL § 500.2066.)

§ 24.11207. Fiduciary responsibility of agent; failure to turn over money, evidence of violation; accounting methods; records; examination by commissioner; reward or remuneration for procuring business; inability to provide coverage; obtaining through another source; advice to buyer; prohibited acts, responsibility for payment of losses.

(3) Except as provided in section 1212 and subsection (4), **an agent shall not reward or remunerate any person for procuring or inducing business in this state, furnishing leads or prospects,** or acting in any other manner as an agent.

(MCL § 500.1207.) (3)

Discrimination

§ 24.12019. Unfair discrimination, life insurance.

Sec. 2019. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(MCL § 500.2019.)

§ 24.12020. Unfair discrimination, accident or health insurance.

Sec. 2020. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, membership, or policy fees, or rates charged for any policy or contract of accident or health insurance applicable to individual or family expense coverage or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(MCL § 500.2020.)

§ 29.1202.7. Additional acts or practices constituting unfair methods of competition or unfair practices.

Sec. 2027. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include:

(a) Refusing to insure, or refusing to continue to insure, or limiting the amount of coverage available to an individual or **risk** because of any of the following:

Race, color, creed, marital status, sex, or national origin, except that marital status may be used to classify individuals **or risks** for the purpose of insuring family units.

The residence, age, handicap, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, handicap, or lawful occupation of the individual or the location of the risk and the extent of the risk or the coverage issued or to be issued, but subject to subparagraph (iii). This section shall not prohibit an insurer from specializing in or limiting its transactions of insurance to certain occupational groups, types, or risks as approved by the commissioner of insurance. The commissioner shall approve the specialization for an insurer licensed to do business in this state and whose articles of incorporation contained a provision on July 1, 1976, requiring that specialization.

(iii) For property insurance, the location of the risk, unless there is a statistically significant relationship between the location of the risk and a risk of loss due to fire within the area in which the insured property is located. As used in this subparagraph, "area" means a single zip code number under the zoning improvement plan of the United States postal service.

(b) Refusing to insure or refusing to continue to insure an individual or risk solely because the insured or applicant was previously denied insurance coverage by an insurer.

(c) Charging a different rate for the same coverage based on sex, marital status, age, residence, location of risk, handicap, or lawful occupation of the risk unless the rate differential is based on sound actuarial principles, a reasonable classification system, and is related to the actual and credible loss statistics or reasonably anticipated experience in the case of new coverages. This subdivision shall not apply if the rate has previously been approved by the commissioner.

(MCL § 500.2027)

§ 24.12082. Race discrimination; forfeiture, penalty.

Sec. 2082. (1) No life insurer doing business in this state shall make any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; nor shall any such insurer demand or require a greater premium from such colored **persons** than is at that time required by such insurer from white persons of the same age, sex, general condition of health and prospect of longevity; nor make or require any rebate, diminution or discount upon the amount to be paid on such policy in case of death of such colored person insured; nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself or his heirs, executors, administrators and assigns to accept any sum less than the full amount or value of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed on white persons in similar cases; and any such stipulations or conditions so made or inserted shall be void.

(2) Any insurer which violates any of the provisions of this section shall forfeit to the state the sum of \$500.00 for each violation, to be recovered by the attorney general by appropriate action in any court of competent jurisdiction, and any judgment therefor may be collected in the same manner as is herein provided for collecting judgments rendered in favor of policyholders. And any officer or agent who violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding 1 year, or by a fine of not less than \$50.00, and not exceeding \$500.00, or by both such fine and imprisonment, in the discretion of the court.

(MCL § 500.2082.)

Other Unfair/Prohibited Practices 500.2014, -.2018**24.12014. False statement of financial condition; false entry or omission of true entry.**

Sec. 2014. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include:

Filing with a supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to a person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, or delivered to a person, or placed before the public, a false material statement of financial condition of a person engaged in the business of insurance.

Making a false entry of a material fact in a book, report, or statement of a person engaged in the business of insurance or omitting to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

(MCL § 500.2014.)

§ 24.12018. False statement relative to application for insurance.

Sec. 2018. An unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.

(MCI, § 500.2018.)

Penalties**500.1244, .2038(1a,b,c), .2069****§ 24.11244. Violation; procedure; civil penalties; injunction.**

Sec. 1244. (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, *the* commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a). Payment of a civil fine of not more than \$300.00 for each violation . However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$1,500.00 for each violation. However, an order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$10,000.00. A fine collected under this subdivision shall be turned over. to the state treasurer and credited to the general fund of the state.

(b). A refund of any overcharges.

(c). That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person which are found to be in violation of this chapter.

(d). The suspension or revocation of the person's license.

(2). The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3). If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. However, an order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4). The commissioner may apply to the circuit court of Ingham County for an order of the court enjoining a violation of this chapter.

(MCL § 500.1244.)

§ 24.12036. Determination that act has been violated, cease and desist order, other sanctions; effect of petition for review; modification or setting aside; change of order by commissioner.

Sec. 2038. (1) If, after opportunity for a hearing held pursuant to Act No. 306 of the Public Acts of 1969, as amended, the commissioner determines that the person complained of has engaged in methods of competition or unfair or deceptive acts or practices prohibited by sections 2001 to 2050, the commissioner shall reduce his findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in that method of competition, act, or practice and the commissioner may order any of the following:

- (a). Payment of a monetary penalty of not more than \$500.00 for each violation but not to exceed an aggregate penalty of \$5,000.00, unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall not be more than \$2,500.00 for each violation and shall not exceed an aggregate penalty of \$25,000.00 for all violations committed in a 6-month period.
- (b). Suspension or revocation of the person's license or certificate of authority if the person knowingly and persistently violated a provision of this chapter.
- (c). Refund of any overcharges.

§ 24.12069. Violation of certain sections by insurer or agent a misdemeanor; penalty.

Sec. 2069. Any insurer, agent, solicitor, or any person, firm, association, or corporation, violating any of the provisions of sections 2064 and 2066 shall be guilty of a misdemeanor. Upon conviction of violating section 2066 the offender shall be sentenced to pay a fine of not more than \$100.00 for each violation, or in the discretion of the court, to imprisonment in the county jail of the county in which the offense is committed. Upon conviction of violating section 2064 the offender shall be sentenced to pay a fine of not more than \$1,000.00 for each violation, or in the discretion of the court, to imprisonment in the county jail of the county in which the offense is committed.

(MCL § 500.2069.)

Section V

Michigan Laws Applicable to Title Insurance

Section V. Michigan Laws Applicable to Title Insurance

A. File Rates 500.7312

§ 24.17312. Rate filings.

Sec. 7312. The rates of every title insurer shall be filed pursuant to the applicable provisions of chapter 24. (MCL § 500.7312.)

Requirements for Transacting

Title Insurance

500.7302,.7303,.7304

§ 24.17302. Transaction. of business.

Sec. 7302. Only a domestic, foreign or alien corporation organized on the stock plan and authorized by the commissioner pursuant to section 7303 shall transact or attempt to transact a title insurance business in this state or issue title insurance with respect to real estate located in this state.

(MCL § 500.7302.)

§ 24.17303. Certificate of authority; conditions precedent to issuance.

Sec. 7303. No corporation shall issue title insurance policies, contracts or commitments with respect to real estate located in this state or otherwise transact any business of title insurance in this state unless it holds a certificate of authority from the commissioner, pursuant to section 402, authorizing the transaction of the business, which certificate shall not be issued until the title insurer has complied with the following conditions:

(a) The insurer shall comply with the deposit requirements of section 411.

(b) A domestic, foreign or alien title insurer shall have completed its rate filing pursuant to section 7312.

(c) A domestic, foreign or alien title insurer shall have filed its forms of policies pursuant to section 7313.

(MCL § 500.7303.)

§ 24.17304. Powers of insurer; prohibited practices; unlawful acts.

Sec. 7304. Every title insurer authorized to do business pursuant to this code may issue title insurance; make, execute and perfect such contracts, agreements, policies and other instruments as may be required therefor; examine titles to real estate in connection with any transaction in which a policy of title insurance or commitment therefor is being issued and report thereon; issue commitments for title insurance policies specifying the requirements for the issuance of such policies; act as escrow agent in any action involving the issuance of a title insurance policy.

Nothing contained in this chapter shall be construed to authorize any title insurer, or any officer, director, employee, trustee, agent solicitor thereof, to engage in any act or practice prohibited by Act No. 354 of the Public Acts of 1917, being section 450.681 of the Compiled Laws of 1948, under a claim that the act or practice is incidental to the conduct of a business authorized by this chapter, whether or not a separate charge is made therefor. It shall be unlawful for any title insurer, or any such person, to suggest to any party to a transaction involving the examination, insuring and conveyancing of titles to real estate that the party does not need to retain for the transaction the professional services of an independent attorney duly licensed to practice law in this state.

(MCL § 500.7304)

C. Maintenance of Records

D. File Forms 500.2236

§ 24.12236. Basic policy forms; approval by commissioner; rating organization membership; readability scoring for forms, nonapproval for failure to obtain; changes or additions subject to approval; disapproval, withdrawal of approval; prohibition of issuance, advertising or delivery; hearing; penalties; inapplicability of section.

Sec. 2236.

(1) A basic insurance policy form or annuity contract form shall not be issued or delivered to any person in this state, and an insurance or annuity application form if a written application is required and is to be made a part of the policy or contract, a printed rider or indorsement form or form of renewal certificate, and a group certificate in connection with the policy or contract, shall not be issued or delivered to a person in this state, until a copy of the form is filed with the insurance bureau and approved by the commissioner as conforming with the requirements of this act and not inconsistent with the law. Failure of the commissioner to act within 30 days after submittal shall constitute approval. All such forms, except policies of disability insurance as defined in section 3400, shall be plainly printed with type size not less than 8-point unless the commissioner determines that portions of such a form printed with type less than 8-point is not deceptive or misleading.

(2) An insurer may satisfy its obligations to make form filings by becoming a member of, or a subscriber to, a rating organization, licensed under section 2436 or 2630, which makes such filings and by filing with the commissioner a copy of its authorization of the rating organization to make the filings on its behalf. Every member of or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization except that an insurer may file with the commissioner a substitute form, and thereafter if a subsequent form filing by the rating organization affects the use of the substitute form, the insurer shall review its use and notify the commissioner to withdraw its substitute form.

(3) Beginning January 1, 1992, the commissioner shall not approve a form filed pursuant to this section providing for or relating to an insurance policy or an annuity contract for personal, family, or household purposes if the form fails to obtain the readability score or meet the other requirements of this subsection, as applicable:

(a) The readability score for a form for which approval is

§ 24.12236 Continued...

required by this section shall not be less than 45, as determined by the method provided in subdivisions (b) and (c).

(b) The readability score for a form shall be determined as follows:

For a form containing not more than 10,000 words, the entire form shall be analyzed. For a form containing more than 10,000 words, not less than two 200-word samples per page shall be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

Count the number of words and sentences in the form or samples and divide the total number of words by the total number of sentences. Multiply this quotient by a factor of 1.015.

Count the total number of syllables in the form or samples and divide the total number of syllables by the total number of words. Multiply this quotient by a factor of 84.6. As used in this subparagraph, "syllable" means a unit of spoken language consisting of 1 or more letters of a word as indicated by an accepted dictionary. If the dictionary shows 2 or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

Add the figures obtained in subparagraphs (ii) and (iii) and subtract this sum from 206.835. The figure obtained equals the readability score for the form.

(c) For the purposes of subdivision (b) (ii) and (iii), the following procedures shall be used:

A contraction, hyphenated word, or numbers and letters when separated by spaces shall be counted as 1 word.

A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as 1 sentence.

(d) In determining the readability score, the method provided in subdivisions (b) and (c):

(i) Shall be applied to an insurance policy form or an annuity contract, together with a rider or endorsement form usually associated with such an insurance policy form or annuity contract.

(ii) Shall not be applied to words or phrases that are defined in an insurance policy form, an annuity contract, or riders, endorsements, or group certificates pursuant to an insurance policy form or annuity contract.

(iii) Shall not be applied to language specifically agreed upon through collective bargaining or required by a collective bargaining agreement.

(iv) Shall not be applied to language that is prescribed by state or federal statute or by rules or regulations promulgated pursuant to a state or federal statute.

§ 24.12236 Continued...

(e) Each form for which approval is required by this section shall contain both of the following:

(i) Topical captions.

(ii) An identification of exclusions.

(f) Each insurance policy and annuity contract that has more than 3,000 words printed on not more than 3 pages of text or that has more than 3 pages of text regardless of the number of words shall contain a table of contents. This subdivision does not apply to endorsements.

(g) Each rider or endorsement form that changes coverage shall do all of the following:

(i) Contain a properly descriptive title.

(ii) Reproduce either the entire paragraph or the provision as changed.

(iii) Be accompanied by an explanation of the change..

(h) If a computer system approved by the commissioner calculates the readability score of a form as being in compliance with this subsection, the form is considered in compliance with the readability score requirements of this subsection.

After January 1, 1992, any change or addition to a policy or annuity contract form for personal, family, or household purposes, whether by endorsement, rider, or otherwise, or a change or addition to a rider or endorsement form to such policy or annuity contract form, which policy or annuity contract form has not been previously approved under subsection (3), shall be submitted for approval pursuant to subsection (3).

(5) Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising or delivery of any form to any person in this state if it violates any provisions of this act, or contains inconsistent, ambiguous or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. The notice shall specify the objectionable provisions or conditions and state the reasons for the commissioner's decision. If the form is legally in use by the insurer in this state, the notice shall give the effective date of the commissioner's disapproval. which shall not be less than 30 days subsequent to the mailing or delivery of the notice to the insurer. If the form is not legally in use, then disapproval shall be effective immediately.

(6) If a form is disapproved or approval is withdrawn under the provisions of this act, the insurer shall be entitled upon demand to a hearing before the commissioner or a deputy commissioner within 30 days after the notice of disapproval or of withdrawal of approval; and after the hearing, the commissioner shall make findings of fact and law, and either affirm, modify or withdraw his or her original order or decision.

(7) Any issuance, use or delivery by an insurer of any form

§ 24.12236 Continued...

without the prior approval of the commissioner as required by subsection (1) or after withdrawal of approval as provided by subsection (5) constitutes a separate violation for which the commissioner may order the imposition of a civil penalty of \$25.00 for each offense, but not to exceed the maximum penalty of \$500.00 for any 1 series of offenses relating to any 1 basic policy form, which penalty may be recovered by the attorney general as provided in section 230.

- (8) The filing requirements of this section shall not apply to:
- (a) Insurance against loss of or damage to:
 - (i) Imports, exports, or domestic shipments.
 - (ii) Bridges, tunnels, or other instrumentalities of transportation and communication.
 - (iii) Aircraft and attached equipment.
 - (iv) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.
 - (b) Insurance against loss resulting from liability, other than worker's compensation or employers' liability arising out of the ownership, maintenance, or use of
 - (i) Imports, exports, or domestic shipments.
 - (ii) Aircraft and attached equipment.
 - (iii) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.
 - (c) Surety bonds other than fidelity bonds.

(d) Policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder or certificate holder. Beginning September 1, 1968, the commissioner by order may exempt from the filing requirements of this section and sections 2242, 3606, and 4430 for so long as he or she considers proper any insurance document or form, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, as specified in the order to which this section practicably may not be applied, or the filing and approval of which are considered unnecessary for the protection of the public. Insurance documents or forms providing medical payments or income replacement, benefits, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, exempt by order of the commissioner from the filing requirements of this section and sections 2242 and 3606 are considered approved by the commissioner for purposes of section 3430.

(9) Every order made by the commissioner under the provisions of this section shall be subject to court review as provided in section 244.

(MCL § 500.236.)

§ 24.11242. Refusal to grant license; grounds; notice, contents; hearing; suspension or revocation for failure to maintain standards; coercion, indirect rebating or other prohibited practices; summary suspension of license; effective date; continuation of suspension; subpoena power of commissioner; enforcement.

Sec. 1242. (1) The commissioner shall refuse to grant a license to act as an agent, a solicitor, an insurance counselor or an adjuster to an applicant who fails to meet the requirements of this chapter. Notice of the refusal shall be in writing and shall set forth the basis for the refusal. If the applicant submits a written request within 30 days after mailing of the notice of refusal, the commissioner shall promptly conduct a hearing in which the applicant shall be given an opportunity to show compliance with the requirements of this chapter.

(2) The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of an agent, solicitor, insurance counselor or adjuster who fails to maintain the standards required for initial licensing or who violates any provision of this act.

(3) After notice and opportunity for a hearing, the commissioner may refuse to grant or renew a license to act as an agent, solicitor, adjuster or insurance counselor if he determines by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions or other practices in the sale of insurance which are prohibited by law.

(4) Without prior hearing, the commissioner may order summary suspension of a license if he finds that protection of the public requires emergency action and incorporates this finding in his order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later. If requested, the commissioner shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose license is suspended requests a later date. At the hearing, the commissioner shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the license should be revoked. The commissioner shall announce his decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

(5) The commissioner, or his designated deputy, may issue subpoenas with the approval of a circuit court judge of the Circuit Court of Ingham County to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing and may designate an employee of the insurance bureau to make service thereof. The subpoenas issued by the commissioner, or his designated deputy, may be enforced upon application by them to the circuit court of Ingham county by proceedings in contempt thereof, as provided by law.
(MCL § 500.1242.)

§ 24.1222 Continued...

the same kind of business and of its assets, books, accounts, and general condition. Every foreign or alien insurer and its agents and officers are subject to the same obligations and are subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic insurers doing the same kind of business, or any of the agents or officers thereof, are or may be liable to under the laws of this state or the regulations of the insurance bureau of the department of commerce. The commissioner may, whenever he or she considers it expedient to do so, either in person or by a proper person appointed by him or her, repair to the general office or other offices of the foreign or alien insurer, wherever the same may be, and make an investigation and examination of its affairs and condition.

(3) Upon such an examination the commissioner, his or her deputy or any examiner authorized by him or her, may examine in person, by writing, and if appropriate, under oath the officers or agents of the insurer or all persons considered to have material information regarding the insurer's property or business. The commissioner may compel the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, and files relating to the insurer's business or affairs, and may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence for this purpose. The insurer and its officers and agents shall produce its books and all papers in its or their possession relating to its business or affairs, and any other person may be required to produce any books or papers considered relevant to the examination for the inspection of the commissioner, or his or her deputy or examiners, whenever require. The insurer's officers or agents shall facilitate the examination and aid in making the same so far as it is in their power to do so. If the commissioner's order or subpoena is not folio-wed, the commissioner may request the. Ingham county circuit court to issue an order requiring compliance with the commissioner's order or subpoena.

(4) The deputy or examiners shall make a full and true report, and furnish the insurer a copy of the examination report that shall comprise only facts appearing on the insurer's books, records, or documents or ascertained from examination of its officers or agents or other persons concerning its affairs and the conclusions and recommendations as may be reasonably warranted from the facts disclosed. An insurer examined, upon its request, shall be granted a hearing before the commissioner or his or her designee before the report is filed. Upon request of the insurer, the hearing shall be closed to the public. A hearing under this subsection is not subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Each examination report shall be withheld from public inspection until the report is final and filed with the commissioner. In addition, the commissioner may withhold any examination report from public inspection for such

§ 24.1222 Continued...

time as he or she may consider proper. In any event, all information and testimony furnished to the insurance bureau and the insurance bureau's work papers, correspondence, memoranda, reports, records, and other written or oral information related to an examination report or an investigation shall be withheld from public inspection, shall be confidential, shall not be subject to subpoena, and shall not be divulged to any person, except as provided in this section. If assurances are provided that the information will be kept confidential, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:

- (a) To the governor or the attorney general.
 - (b) To any relevant regulatory agency, including regulatory agencies of other states or the federal government.
 - (c) In connection with an enforcement action brought pursuant to this or another applicable act.
 - (d) To law enforcement officials.
 - (e) To persons authorized by the Ingham county circuit court to receive the information.
 - (f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act.
- (5) Notwithstanding the other provisions of this section, the commissioner is not required to finalize and file an examination report for an insurer for a year in which an examination report was not finalized and filed, if the insurer is currently undergoing an examination subsequent to the year for which an examination report was not finalized and filed.
- (6) The examination of an alien insurer shall be limited to its United States business, except as otherwise required by the commissioner.
MCL § 500.222.)

Section VI

Commissioners of Insurance

Section VI. Commissioners of Insurance

A. Broad Powers and Duties 500.2007.202,.210,.1242

§24.1200. Insurance department; establishment.

Sec. 200. There is hereby established a separate and distinct state department which shall be especially charged with the execution of the laws in relation to insurance and surety business and to perform such other duties as may be required by law: Provided, however, That the said department so established shall be deemed and considered as in continuation of and the successor to the insurance bureau established by Act. No. 108 of the Session Laws of 1871, and other acts amending and supplementing the same, and as in continuation of and the successor to the state department established by Act No. 256 of the Public. Acts of 1917 and other acts: amending or supplementing the same.

(MCL § 500.200.)

§ 24.1202. Commissioner; appointment, qualifications, term, vacancy.

Sec. 202. (1) The chief officer of the department shall be known as the. commissioner of insurance. He shall be a citizen of this state, shall have his office at the seat of government, shall personally superintend the duties of his office, and shall not be a stockholder or directly or indirectly connected with the management of affairs of any insurer. He shall be appointed by the governor for a term of 4 years by and with the consent of the senate.

(2) Whenever a vacancy occurs in the office of commissioner by reason of death, removal, or otherwise, the governor shall fill such vacancy by appointment, by and with the advice and consent of the senate, if in session.

(MCL § 500.202.)

§ 24.1210. Rules and regulations.

Sec. 210. The commissioner shall promulgate rules and regulations in addition to those now specifically provided for by statute as he may deem necessary to effectuate the purposes and to execute and enforce the provisions of the insurance laws of this state in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

(MCI § 500.210.)

B. Examination of Records 500.222,.249

§ 24.1222. Examination of insurer, *officer*, agent, or person having pertinent information, by commissioner or representatives; foreign and alien insurers; attendance of witnesses; production of documents; requiring compliance with order or subpoena; report, copy for insurer; hearing; disclosure of information; finalization of report; filing.

Sec. 222. (1) The commissioner in person or by any of his or her authorized deputies or examiners may examine any or all of the books, records, documents, and papers of any insurer at any time after its articles of incorporation have been executed and filed, or after it has been authorized to do business in this state. The commissioner at his or her discretion shall examine into the affairs of any domestic insurer, and whenever he or she considers it expedient so to do, to examine into the affairs of any foreign or alien insurer doing business in this state. The commissioner in person or by any of his or her authorized deputies or examiners shall once every 5 years examine the books, records, documents, and papers of each domestic insurer. The commissioner may examine an insurer more frequently and upon its request shall examine a domestic insurer that has not been examined for the 3 years immediately preceding the request. This section does not authorize the examination of books, records, documents, or papers if those items involve matters that are a subject of a currently pending administrative or judicial proceeding, unless the commissioner or judge specifically finds on the record of the proceeding that the examination is reasonably necessary to protect the interests of policyholders, creditors, or the public or to make a determination of whether an insurer is safe, reliable, and entitled to public confidence.

(2) The business affairs, assets, and contingent liabilities of insurers shall be subject to examination by the commissioner at any time. The commissioner may supervise and make the same examination of the business and affairs of every foreign or alien insurer doing business in this state as of domestic insurers doing

§ 24.1249. Examination of accounts and records.

Sec. 249. For the purposes of ascertaining compliance with the provisions of the insurance laws of the state or of ascertaining the commissioner, as often as he deems advisable, may initiate proceedings to examine the accounts, records, documents and transactions pertaining to:

- (a) Any insurance agent, surplus line agent, general agent, adjuster, public adjuster or counselor.
- (b) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.
- (c) Any person holding the shares of voting stock or policyholder proxies of an insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise.
- (d) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of an insurer or insurance holding corporation, or corporation to finance an insurer or the production of its business.
- (e) A person or organization owning stock representing 10% or more of the voting shares of an insurer.
- (f) Any officer or director of an insurer.

(MCL § 500.249.)

C. Notice of Hearing 500.2028-.2034,.2032-.2034,
.2038-.2040.,.2058

§ 24.12028. Investigation to determine whether person is engaged in unfair competition or unfair or deceptive act or practice.

Sec. 2028. Upon probable cause, the commissioner shall have power to examine and investigate into the affairs of a person engaged in the business of insurance in this state to determine whether the person has been or is engaged in any unfair method of competition *or in any unfair or deceptive act or practice prohibited by sections 2001 to 2050.*

(MCL § 500.2028.)

§ 24.12029. Investigation; hearing by commissioner; notice; opportunity for settlement before hearing.

Sec. 2029. When the commissioner has probable cause to believe that a person engaged in the business of insurance has been engaged or is engaging in this state in an unfair method of competition, or an unfair or deceptive act or practice in the conduct of his business, as prohibited by sections 2001 to 2050, and that a hearing by the commissioner in respect thereto would be in the interest of the public, he shall first give notice in writing, pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to the person involved, setting forth the general nature of the complaint against him and the proceedings contemplated pursuant to sections 2001 and 2050. Before the issuance of a notice of hearing, the staff of the bureau of insurance responsible for the matters which would be at issue in the hearing shall give the person an opportunity to confer and discuss the possible complaint and proceedings in person with the commissioner or his representative and the matter may be disposed of summarily upon agreement of the parties.

(MCL § 500.2029.)

§ 24.12030. Unfair methods of competition and unfair practices; hearing, procedure, intervention; burden of proof; presiding officer; independent hearing officer, qualifications.

Sec. 2030. (1) At the time and place fixed for the hearing referred to in section 2029, the person shall have an opportunity to be heard, to be represented by counsel and to show cause why an order should not be made by the commissioner requiring the person to cease and desist from the acts, methods, or practices complained of. Upon showing by any person that he has an interest likely to be affected adversely, the commissioner shall permit that person to intervene, appear and be heard at the hearing by counsel or in person.

The burden of proof at the hearing shall be upon the agency or upon an intervenor who intervened in opposition to the person who is the subject of the proceeding.

The commissioner or his designate shall preside over the hearing, except that an independent hearing officer shall be designated by the commissioner if requested by the person who is the subject of the proceedings. The independent hearing officer shall be selected by the commissioner from a list of individuals submitted by the American Arbitration Association qualified to conduct hearings on behalf of the commissioner. A list of the individuals shall be maintained by the commissioner and shall be compiled pursuant to rules promulgated by the commissioner. The rules shall set forth the qualifications, criteria, and procedures to be utilized in the compilation of the list of independent hearing officers. The person subject to the proceedings may exercise 1 peremptory dismissal of the hearing officer selected, if exercised within 20 days after notification.

(MCL § 500.2030.)

§ 24.12.038. Determination that act has been violated, cease and desist order; other sanctions; effect of petition for review; modification or netting aside; change of order by commissioner.

Sec. 2038. (1) If, after opportunity for a hearing held pursuant to Act No. 306 of the Public Acts of 1969, as amended, the commissioner determines that the person complained of has engaged in methods of competition or unfair or deceptive acts or practices prohibited by sections 2001 to 2050, the commissioner shall reduce his findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in that method of competition, act, or practice and the commissioner may order any of the following:

(a) Payment of a monetary penalty of not more than \$500.00 for each violation but not to exceed an aggregate penalty of \$5,000.00, unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall not be more than \$2,500.00 for each violation and shall not exceed an aggregate penalty of \$25,000.00 for all violations committed in a 6-month period.

(b) Suspension or revocation of the person's license or certificate of authority if the person knowingly and persistently violated a provision of this chapter.

(c) Refund of any overcharges.

(2) The filing of a petition for review does not stay enforcement of action pursuant to this section, but the commissioner may grant, or the appropriate court may order, a stay upon appropriate terms.

(3) Until the expiration of the time allowed under section 244 for filing a petition for review if a petition has not been duly filed within that time or, if a petition for review has been filed within that time, then until the transcript of the record in the proceeding has been filed in the circuit court, as hereinafter provided, the commissioner, upon notice and in a manner as he shall deem proper, may modify or set aside in whole or in part an order issued by him under this section.

(4) After the expiration of the time allowed for filing a petition for review, if a petition has not been duly filed within that time, the commissioner may at any time, by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in *whole or in part*, an order issued by him under this section, when in his opinion conditions of fact or of law have so changed as to require that action or if the public interest shall so require. (MCL § 500.2038.)

§ 24.12039. Order of commissioner, finality.

Sec. 2039. An order issued by the commissioner pursuant to this chapter shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review if a petition has not been duly filed within that time, except that the commissioner may thereafter modify or set aside his order to the extent provided in section 2038(2) .

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(MCL § 500.2039.)

§ 24.12040. Violation of cease and desist order, penalty; stay of enforcement; restricted applicability of cease and desist order.

Sec. 2040. (1) A person who violates a cease and desist order of the commissioner under this chapter while the order is in effect, after notice and an opportunity for a hearing and upon order of the commissioner, may be subject to any of the following:

(a) A monetary penalty of not more than \$10,000.00 for each violation.

(b) Suspension or revocation of the person's license or certificate of authority.

(2) The filing of a petition for review does not stay enforcement pursuant to this section, but the commissioner may grant, or the appropriate court may order, a stay upon appropriate terms.

(3) A cease and desist order issued by the commissioner pursuant to section 2043 shall not contain fines or other penalties applicable to acts or omissions occurring prior to the date of the cease and desist order.

(MCL, § 500.2040.)

§ 24.12068. Procedure to revoke license;. notice, hearing, review.

Sec. 2068. (1) Before any such license or certificate is revoked, as provided. in sections 2064 and 2066 hereof, the commissioner shall notify the holder thereof in writing of the complaint against him, and require such person on a date named, not less than 15 days after service of said notice, to appear for a hearing before him at the insurance department, and such certificate shall not be revoked until after a full hearing or an opportunity therefor has been granted as herein provided; and no such revocation shall take effect until 10 days after such order has been made by the commissioner and the holder thereof notified in writing of such action.

(2) Any such order may be reviewed by the supreme court if the appeal for such review is taken within the 10 days immediately following the giving of the notice of the making of said order, and pending such appeal for review, such license or certificate of authority shall *be* deemed to be in full force and effect and until the final determination of such appeal, but in case the order of revocation by the commissioner is sustained the period of such revocation shall date from the time such appeal is determined.

(MCL § 500.2068.)

24.11244. Violation; procedure; civil penalties; injunction.

Sec. 1244. (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$300.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$1,500.00 for each violation. However, an order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$10,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person which are found to be in violation of this chapter.

(d) The suspension or revocation of the person's license.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. However, an order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4) The commissioner may apply to the Circuit Court of Ingham County for an order of the court enjoining a violation of this chapter.

(MCL, § 500.1244.)

§ 24.12038. Determination that act has been violated, cease and desist order, other sanctions; effect of petition for review; modification or setting aside; change of order by commissioner.

Sec. 2038. (1) If, after opportunity for a hearing held pursuant to Act No. 306 of the Public Acts of 1969, as amended, the commissioner determines that the person complained of has engaged in methods of competition or unfair or deceptive acts or practices prohibited by sections 2001 to 2050, the commissioner shall reduce his findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in that method of competition, act, or practice and the commissioner may order any of the following:

(a) Payment of a monetary penalty of not more than \$500.00 for each violation but not to exceed an aggregate penalty of \$5,000.00, unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall not be more than \$2,500.00 for each violation and shall not exceed an aggregate penalty of \$25,000.00 for all violations committed in a 6-month period.

b) Suspension or revocation of the person's license or certificate of authority if the person knowingly and persistently violated a provision of this chapter.

(c) Refund of any overcharges.

§ 24.12.069. Violation of certain sections by insurer or agent a misdemeanor; penalty.

Sec. 2069. Any insurer, agent, solicitor, or any person, firm, association, or corporation, violating any of the provisions of *sections* 2064 and 2066 shall be guilty of a misdemeanor. Upon conviction of violating section 2066 the offender shall be sentenced to pay a fine of not more than \$100.00 for each violation, or in the discretion of the court, to imprisonment in the county jail of the county in which the offense is committed. Upon conviction of violating section 2064 the offender shall be sentenced to pay a fine of not more than \$1,000.00 for each violation, or in the discretion of the court, to imprisonment *in the* county jail of the county in which the offense is committed.

(MCL § 500.2069.)

Section VII

Licensing Requirements and Limitations

Section VII. Licensing Requirements and Limitations

A.Types of Licenses

1.Resident Agent 500 1201,.1204,.1206

2.4.11201. Persons acting as agents; written authorization; licensure; apparent authority; representation of insurers.

Sec. 1201. (1) Except as provided in sections 1202 and 1203 and the surplus lines insurance act, a person shall not solicit insurance, bind coverage, or in any other manner act as an insurance agent unless the person meets all of the following requirements:

(a) Is authorized in writing by an insurer authorized to transact insurance in this state, which authorization specifies the extent of the person's authority to act for the insurer.

(b) The person is licensed to act as an insurance agent in accordance with this chapter.

(2) Subsection (1) shall not affect the apparent authority of an agent.

(3) Except as provided in section 1202, an insurer may not appoint, employ, or in any manner receive the benefit of business done or services rendered in this state by a person acting as an agent unless that person is employed by, or is authorized to act in writing by, the insurer and the person is licensed as an agent in accordance with this chapter.

(4) A person who is licensed as an agent may represent, within the lines of insurance permitted by the license, any insurer authorized to transact insurance in this state if the insurer has properly notified the commissioner of the appointment or employment of that person as its agent.

(MCL § 500.1201.)

§ 24.11204. Agent's license; requirements; application; investigation and testing of applicant; notice of appointment; written examination; prerequisites for examination; waiver of prerequisites; re-examination; time for decision on applications; nonresident licensing; restrictions on license.

Sec. 1204. (1) An application for a license to act as an agent shall be made to the commissioner and be accompanied by a notice of appointment from the sponsoring insurer. The application and the notice of appointment shall be on forms prescribed by the commissioner.

(2) Within a reasonable time after receipt of a properly completed application and notice of appointment forms, the commissioner shall subject the applicant to a written examination. Beginning July 1, 1987, an applicant shall not be given an examination unless the applicant has completed an insurance agent program of study registered with the commissioner pursuant to section 1204a. A certificate of completion of the registered program of study shall be filed with the commissioner on a form prescribed by the commissioner and shall indicate that the course of study was completed by the applicant not more than 6 months before the application is received by the commissioner. The commissioner may waive the applicable examination or program of study requirements of this section for a person who applies for a limited license as designated by the commissioner; for a person who has been a licensed agent or solicitor within the preceding 24 months; for a person who has obtained the chartered property and casualty underwriter designation, the chartered life underwriter designation, certified insurance counselor designation, accredited advisor in insurance designation, or the chartered financial consultant designation or for a person who has an associate's, bachelor's, or master's degree with a concentration in insurance from an institution approved by the commissioner. An applicant who fails to pass an examination may take subsequent examinations pursuant to rules promulgated by the commissioner.

(3) The commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations which are relevant to the applicant's qualifications as an agent, and any other matter which the commissioner considers necessary or advisable to determine compliance with this chapter, or for protection of the public.

(4) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant is an employee of, or is authorized in writing to represent, an insurer which is authorized to transact insurance in this state, and the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance the applicant will be licensed to solicit, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an agent, is honest and trustworthy, possesses a good business reputation, and possesses good moral character to act as an agent. The commissioner shall make a decision on an application within 60 days after the applicant passes the examination or, if the examination has been waived, within 60 days after receipt of a properly completed application and notice of appointment forms.

(5) A license to act as an agent in this state in compliance with the laws of this state shall be issued to an insurance agent who is not a resident of this state. The license may be issued subject to any additional restrictions under which a resident of this state would be licensed in the jurisdiction in which the applicant resides. (MCL § 500.1204.)

§ 24.112.06. License, contents, display, duration; agent for legal expense insurance; surrender; reexamination notice; temporary license; temporary license for collection of premiums on industrial insurance contracts.

Sec. 1206. (1) A license document issued by the commissioner shall set forth the name of the agent and the lines of insurance permitted by the license. A person who is licensed to act as an agent for life or disability insurance or for casualty insurance is permitted to act as an agent for legal expense insurance without obtaining additional authorization or licensure from the commissioner. The agent shall display the license document in his or her principal place of business.

(2) The license shall continue in effect unless suspended or **revoked** by the commissioner, is voluntarily surrendered by the licensee, or terminates because of lack of authority or appointment to act as an agent in this state from an admitted insurer. If the commissioner's records indicate that an agent has no valid or active appointment from an admitted insurer, the commissioner shall notify the agent that the agent has no valid or active appointment. The agent shall have 60 days from the date notice is sent by the commissioner to secure a valid appointment and have notice of the appointment filed with the commissioner. If notice of appointment is not received by the commissioner within the 60 day period, the agent's licensing authority shall be considered terminated for failure to comply with the licensing requirements of this act.

(3) The commissioner may reexamine a licensed agent at any time upon written notice with stated reasons.

(4) The commissioner, without examination, may issue a temporary license to a natural person who demonstrates to the satisfaction of the commissioner that the death or physical or mental incapacity of an agent makes the action reasonably necessary to assure continued operation of the agent's business. The temporary license shall be effective for 90 days, and may be extended for additional periods of 90 days in the discretion of the commissioner.

(5) The commissioner may issue a temporary license permitting collection of premiums on industrial insurance contracts to an applicant for a license to act as an insurance agent whom he or she determines to be honest and trustworthy. The temporary license shall be effective for 90 days, renewable for 1 additional period of 90 days, or until disposition of the application to act as an insurance agent, whichever occurs first. If the commissioner does not notify the applicant of action on the request for a temporary license within 15 days after mailing of the application, the request for a temporary license shall be considered granted. For purposes of this subsection, an "industrial insurance contract means a contract for which premiums are payable at monthly or more frequent intervals directly to a representative of the insurer by the person insured or by a person representing the person insured. (MCL § 500.1206.)

Nonresident Agent

§ 24.112.04. **Agent's license; requirements; application; investigation and testing of applicant; notice of appointment; written examination; prerequisites for examination; waiver of prerequisites; re-examination; time for decision on applications; nonresident licensing; restrictions on license.**

Sec. 1204.

(5) A license to act as an agent in this state in compliance with the laws of this state shall be issued to an insurance agent who is not a resident of this state. The license may be issued subject to any additional restrictions under which a resident of this state would be licensed in the jurisdiction in which the applicant resides. (MCL § 500.1204.)

Solicitor

§ 24.11202. Solicitation of applications and collection of premiums; clerical or administrative employees; officers and managers.

Sec. 1202. (1) A natural person resident in this state may solicit applications for insurance and collect premiums on behalf of a licensed agent resident in this state if he is so authorized to act by a written contract with the agent, and the contract specifies the extent of his authority to act, he is licensed to act as a solicitor in accordance with this chapter and the agent has notified the commissioner of the contract.

§ 24.11214. Solicitors license; prerequisites, contents, duration; application; notice of appointment; written examination; subsequent examination upon failure; waiver; investigation of qualifications; disclosure requirements; refusal to issue or continue license, grounds; action on behalf of sponsoring agent; legal expense insurance solicitor; surrender, reexamination.

Sec. 1214. (1) An application for a license to act as a solicitor shall be made to the commissioner and shall be accompanied by a notice of appointment from the sponsoring licensed agent. The application and the notice of appointment shall be on forms prescribed by the commissioner.

(2) Within a reasonable time after receipt of a properly completed application and notice of appointment forms, the commissioner shall subject the applicant to a written examination. Beginning July 1, 1987, the examination shall be given only after the applicant has completed a program of study registered with the commissioner as provided in section 1204a. A certificate of completion of the registered program of study shall be filed with the commissioner on a form prescribed by the commissioner and shall indicate that the course of study was completed by the applicant not more than 6 months before the application is received by the commissioner. An applicant who has failed to pass the examination may take subsequent examinations as determined by rules promulgated by the commissioner. The commissioner may waive the examination or program of study requirements of this section for a person who applies for a limited lines license as designated by the commissioner or for a person who has been licensed as an agent or solicitor within the preceding 24 months. The commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations which are relevant to the applicant's qualifications as a solicitor, and any other matter which the commissioner considers necessary or advisable to determine compliance with this chapter, or for protection of the public. The commissioner shall make a decision on the application within 60 days after the applicant passes the examination or within 60 days after receipt of a properly completed application and notice of appointment forms.

(3) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant meets all of the following:

- (a) Is authorized by written contract to act on behalf of a licensed agent.
- (b) Possesses reasonable understanding of the provisions, terms, and conditions of the insurance the applicant will be licensed to solicit.
- (c) Possesses reasonable understanding of the insurance laws of this state.
- (d) Intends in good faith to act as a solicitor.
- (e) Is honest and trustworthy.
- (f) Possesses a good business reputation.
- (g) Possesses good moral character to act as a solicitor.

(4) The commissioner may require an applicant or a licensed solicitor to disclose fully the identity of his or her employers, partners, and employees, may propound reasonable interrogatories, and may refuse to issue or to continue a license if the commissioner is satisfied that any employer, partner, or employee who can materially influence the applicant or the solicitor is not a fit and proper person under the standards of this chapter and that the action reasonably is necessary to protect the public.

(5) An applicant may act on behalf of the applicant's sponsoring agent after receipt of a license from the commissioner.

(6) The license shall set forth the name of the solicitor and the lines of insurance permitted by the license. A person who is licensed to act as a solicitor for casualty insurance is permitted to act as a solicitor for legal expense insurance without obtaining additional authorization or licensure from the commissioner.

(7) The license shall continue in effect until suspended or revoked by the commissioner or voluntarily surrendered by the licensee. The commissioner shall demand that the licensee surrender the license when the commissioner's records indicate that the licensee is without authority from any agent to act as a solicitor.

(8) The commissioner may reexamine a licensed solicitor at any time upon written notice with stated reasons.

(MCL, § 500.1214.

§ 24.11216. Fiduciary responsibility of solicitor; failure to turn over moneys, evidence of violation; accounting methods; records; examination by commissioner; reward or remuneration for procuring business prohibited.

Sec. 1216. (1) A solicitor shall be a fiduciary for all moneys received or held by him in his capacity as a solicitor. Failure by a solicitor in a timely manner to turn over the moneys which he holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the solicitor's fiduciary responsibility.

(2) A solicitor shall use reasonable accounting methods to record funds received in his fiduciary capacity. The records required by this section shall be open to examination by the commissioner.

(3) A solicitor shall not reward or remunerate a person for procuring or inducing business in this state, furnishing leads or prospects or acting in any other manner as an agent or solicitor.

(MCL § 500.1216.)

Temporary 500.1206(4)(5)

§ 24.11206. License, contents, display, duration; agent for legal expense insurance; surrender; reexamination; notice; temporary license; temporary license for collection of premiums on industrial insurance contracts.

Sec. 1206.

(4) The commissioner, without examination, may issue a temporary license to a natural person who demonstrates to the satisfaction of the commissioner that the death or physical or mental incapacity of an agent makes the action reasonably necessary to assure continued operation of the agent's business. The temporary license: shall be effective for 90 days, and may be extended for additional periods of 90 days in the discretion of the commissioner.

(5) The commissioner may issue a temporary license permitting collection of premiums on industrial insurance contracts to an applicant for a license to act as an insurance agent whom he or she determines to be honest and trustworthy. The temporary license shall be effective for 90 days, renewable for 1 additional period of 90 days, or until disposition of the application to act as an insurance agent, whichever occurs first. If the commissioner does not notify the applicant of action on the request for a temporary license within 15 days after mailing of the application, the request for a temporary license shall be considered granted. For purposes of this subsection, an "industrial insurance contract" means a contract for which premiums are payable at monthly or more frequent intervals directly to a representative of the insurer by the person insured or by a person representing the person insured.
(MCL § 500.1206.)

5. Limited License R501.15

WRITTEN EXAMINATION
FOR HEALTH AND ACCIDENT AGENTS

Rule

501151 Rescinded.
501.152 Examinations; location; frequency.
501.153 to 501156 Rescinded.
501.157 Limited licenses.
501.158 Rescinded.

R 501.151 Rescinded

R 501.152 Examinations; location; frequency

Rule 2. Examinations shall be given at Lansing, Michigan, not less frequently than monthly. Candidates shall be advised of the date and hour of such examinations. At the option of the commissioner of insurance, examinations may be given at other locations, as the commissioner may designate, for the greater convenience of applicants.

History.—Filed 12-1-83, eff. 12-15-83.

R 501.153 to R 501.156 Rescinded

R. 501.157 Limited licenses

Rule 7. (l) The commissioner of insurance may issue a limited license to an agent who will be limiting his or her business to certain specified lines of insurance.

An agent may receive a limited license upon qualifying to write the lines of insurance desired under procedures established by the commissioner of insurance.

The insurer's request for licensing and the application of the prospective agent shall conspicuously indicate that the request is for a limited license. An explanation of the reasons for the limitation shall accompany the documents.

An agent issued a limited license shall not submit, and an insurer shall not accept from that agent, any business written for lines of insurance not specifically authorized under the agent's license.

History.—Filed 12-1-83, eff. 12-15-83.

R: 501.158 Rescinded

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Good Moral Character

§ 24.11200. Definition. Good moral character.

Sec. 1200. As used in this chapter, "good moral character" means good moral character as defined and determined under Act No. 381 of the Public Acts of 1974, as amended, being sections 338.41 to 338.47 of the Michigan. Compiled Laws.

(MCL § 500.1200.)

§ 24.11204. Agent's license; requirements; application; investigation and testing of applicant; notice of appointment; written examination; prerequisites for examination; waiver of prerequisites; re-examination; time for decision on applications; nonresident licensing; restrictions on license.

Sec. 1204.

After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant is an employee of, or is authorized in writing to represent, an insurer which is authorized to transact insurance in this state, and the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance the applicant will be licensed to solicit, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an agent, is honest and trustworthy, possesses a good business reputation, and possesses good moral character to act as an agent. The commissioner shall make a decision on an application within 60 days after the applicant passes the examination or, if the examination has been waived., within 60 days after receipt of a properly completed application and notice of appointment forms.

A license to act as an agent in this state in compliance with the laws of this state shall be issued to an insurance agent who is not a resident of this state. The license may be issued subject to any additional restrictions under which a resident of this state would be licensers in the jurisdiction in which the applicant resides. (MCL § 500.1204.)

Exceptions/Exemptions 500.1203, 1202(2,3,4), 1205(3)

§ 24.11203. Newspaper subscriber limited accident policies; fraternal benefit society; attorney-in-fact for reciprocal or inter-insurance exchange.

Sec. 1203. (1) A newsboy or a manager of a newspaper distribution office may take applications for newspaper subscriber limited personal accident insurance policies and may collect premiums for the policies if these activities are incidental to his duties as a newsboy or manager.

(2) A person may act as an agent only for a fraternal benefit society authorized to transact insurance in this state without being licensed as an insurance agent if he devotes less than 50% of his time to the solicitation and procurement of insurance contracts for the society. A person who in the preceding calendar year solicits or procures life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000.00, or, in case of any other kind of insurance which the society might write, on the persons of more than 25 individuals and who has received a commission or other compensation therefor is conclusively presumed to be devoting 50% of his time to the solicitation or procurement of insurance contracts for the society.

(3) An attorney-in-fact of a reciprocal or of an inter-insurance exchange may act as an agent for the reciprocal or exchange.

(MCL § 500.1203.)

§ 24.11202. Solicitation of applications and collection of premiums; clerical or administrative employees; officers and managers.

Sec. 1202.

(2) A clerical or administrative employee of an insurance agent may take insurance applications or receive premiums in the office of his employer if the activities are incidental to clerical or administrative duties and the employee's compensation does not vary with the volume of the applications or premiums.

(3) A clerical or administrative employee of an insurance agent may bind coverage only within the confines of the agent's main office.

A regular salaried officer of an insurer or a manager of an insurer may act as an agent without being licensed as an agent in the transaction of insurance for his insurer if his compensation does not vary with the amount of insurance transacted.

(MCL § 500.1202.)

(a) Is authorized in writing by an insurer authorized to transact insurance in this state, which authorization specifies the extent of the person's authority to act for the insurer.

(3) Except as provided in section 1202, an insurer may not appoint, employ, or in any manner receive the benefit of business done or services rendered in this state by a person acting as an agent unless that person is employed by, or is authorized to act in writing by, the insurer and the person is licensed as an agent in accordance with this chapter.

(4) A person who is licensed as an agent may represent, within the lines of insurance permitted by the license, any insurer authorized to transact insurance in this state if the insurer has properly notified the commissioner of the appointment or employment of that person as its agent.

(MCL § 500.1201.)

§ 24.11205. Disclosure requirements: refusal to issue or continue license, grounds; representation of sponsoring insurer additional insurer; written examination not required of certain applicants; investigation; interrogatories; fraternal benefit society agents: licensure without written examination.

Sec. 1205. (1) The commissioner may require an applicant or a licensed agent to disclose fully the identity of its stockholders, officers, partners and employees; may propound reasonable interrogatories; and may refuse to issue or to continue a license if he is satisfied that any stockholder, officer, partner or employee who can materially influence the applicant or the agent is not a fit and proper person under the standards of this chapter and that such action reasonably is necessary to protect the public.

(2) An applicant may represent his sponsoring insurer after receipt of the license from the commissioner. A licensed agent who is otherwise qualified may represent an additional insurer after mailing of a notice of appointment from that insurer.

(3) A written examination need not be required of an applicant for a license to write only limited personal accident insurance policies or baggage insurance policies, whose employment is for a purpose other than the sale of such policies, and who does not receive any commission or other compensation directly dependent on the amount of insurance written. However, the commissioner may make any investigation or propound any interrogatories which he deems necessary or advisable to determine the qualifications of the applicant and for protection of the public.

(4) An agent for a fraternal benefit society authorized to transact insurance in this state on the effective date of this act, upon application to the commissioner, may be licensed as an insurance agent to represent that fraternal benefit society without written examination.

(MCL § 500.1205.)

§ 24.11209. Termination of agent's authority; grounds; notice; non-liability of insurer and commissioner; continuation of responsibility; authority of agent after notice; inapplicability of provisions to certain agents; meaning of "automobile insurance" and "home insurance".

Sec. 1209. (1) An insurer shall give to the commissioner and the agent immediate written notice of the termination of an agent's authority to represent the insurer. The notice shall include the full disclosure, with supporting evidence, of acts or omissions by the agent which reasonably may be construed to be a violation of this act, or of any other statute, and acts or omissions which may reflect on the agent's qualifications as an agent or which may adversely affect the public interest. There shall not be liability on the part of, and a cause of action of any nature shall not arise against, the commissioner, an insurer, or an authorized representative of either for any statement made or evidence provided pursuant to this section.

(2) When an agent's authority to represent an insurer is terminated, the responsibility of an agent having property rights in the renewal shall continue until the existing policies of insurance are canceled, replaced, or have expired. The agent's authority during the period following notice of termination shall be governed by the written agreement between the agent and the insurer. An insurer shall not cancel or refuse to renew the policy of an insured because of the termination of an agent's contract. If the written agreement does not cover the agent's authority during this period, the agent may continue to represent the insurer in servicing existing policies, but the agent shall not bind a new risk, renew a policy, nor increase the obligation of the insurer under the policy without the approval of the insurer. This subsection shall not apply to a life insurer, an agent of a life insurer, an agent who is an employee of an insurer, or to an agent who by contractual agreement represents only 1 insurer or group of affiliated insurers. If the property rights in the renewal are owned by the insurer or group of affiliated insurers and the alteration of the agent's contract does not result in the cancellation or nonrenewal of any insurance policy.

(3) As a condition of maintaining its authority to transact insurance in this state, an insurer transacting automobile insurance or home insurance in this state shall not cancel an agent's contract or otherwise terminate an agent's authority to represent the insurer with respect to automobile insurance or home insurance, except for 1 or more of the following reasons:

- (a) Malfeasance.
- (b) Breach of fiduciary duty or trust.
- (c) A violation of this act.
- (d) Failure to perform as provided by the contract between the parties.
- (e) Submission of less than 25 applications for home insurance and automobile insurance within the immediately preceding 12month period.

(4) Subsection (3) shall not be construed as permitting a termination of an agent's authority based primarily upon any of the following:

(a) The geographic location of the agent's home insurance or automobile insurance business.

(b) The actual or expected loss experience of the agent's automobile or home insurance business related in whole or in part to the geographical location of that business.

(c) The performance of the agent's obligations under chapter 21.

(5) Subsection (3) and the written notice requirement prescribed in subsection (1) shall not apply with respect to an agent who is an employee of an insurer or to an agent who by contractual agreement represents only 1 insurer or group of affiliated insurers, if the property rights in the renewal are owned by the insurer or group of affiliated insurers and the cancellation or termination of the agent's contract does not result in the cancellation or nonrenewal of any home or automobile insurance policy.

(6) As used in this section, "automobile insurance" and "home insurance" mean those terms as defined in chapter 21.

(MCL § 500.1209)

Solicitor 500.1212,.1218

§ 24.11212. Solicitors; necessity for license; notice of appointment.

Sec. 1212. (1) An agent may not appoint, employ or in any manner receive the benefit of business done or services rendered in this state by a person acting as a solicitor unless that person is so authorized to act by a written contract with the agent, he is licensed as a solicitor in accordance with this chapter, and the agent has notified the commissioner in writing of the appointment.

(2) A person who is licensed as a solicitor, within the lines of insurance permitted by the license, may act on behalf of a licensed agent if the agent has properly notified the commissioner of the appointment of that person as his solicitor.

MCL § 500.1212.)

§ 2.4.112.18. Termination of solicitor's authority; notice; contents; non-liability of agent.

Sec. 1218. An agent shall immediately notify the commissioner of the termination of a solicitor's authority to represent the agent. The notice shall include full disclosure, with supporting evidence, of acts or omissions by the solicitor which reasonably may be construed to be a violation of this act or of any other statute and any act or omissions that may reflect on his qualification as a solicitor or which adversely affect the public interest. There shall not be any liability on the part of, and a cause of action of any nature shall not arise against, an agent for any statements or evidence provided in compliance with this section.

(MCL § 500.1218.)

License Maintenance

§ 24.11238. Agent, solicitor, counselor, adjuster; license application; mailing address; notice of change; fee; general fund; violation; notice of hearing or service of process.

Sec. 1238. (1) When applying for a license to act as an agent, solicitor, counselor, or adjuster. each applicant shall report his or her mailing address to the commissioner. An agent, solicitor, counselor, or adjuster shall notify the commissioner of any change in his or her mailing address within 30 days of such change. A fee of \$3.00 shall accompany each change of address to cover costs of recording such change. A fee collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state. The commissioner shall maintain the mailing address of each agent, solicitor, counselor, or adjuster on file.

(2) A notice of hearing or service of process may be served upon an agent, solicitor, counselor, or adjuster in any action or proceeding for a violation of this act by mailing such notice or process by first class mail to the agent's, solicitor's, counselor's, or adjuster's mailing address which has been reported to the commissioner pursuant to subsection (1).

(MCL § 500.1238.)

Termination, Revocation & Suspension

500.1205,.1206(2),.1242

§ 24.11205. Disclosure requirements; refusal to issue or continue license, grounds; representation of sponsoring insurer, additional insurer, written examination not required of certain applicants; investigation; interrogatories; fraternal benefit society agents; licensure without written examination.

Sec. 1205. .(1) The commissioner may require an applicant or a licensed agent to disclose fully the identity of its stockholders, officers, partners and employees; may propound reasonable interrogatories: and may refuse to issue or to continue a license if he is satisfied that any stockholder, officer, partner or employee who can materially influence the applicant or the agent is not a fit and proper person under the standards of this chapter and that such action reasonably is necessary to protect the public.

(2) An applicant may represent his sponsoring insurer after receipt of the license from the commissioner. A licensed agent who is otherwise qualified may represent an additional insurer after mailing of a notice of appointment from that insurer.

(3) A written examination need not be required of an applicant for a license to write only limited personal accident insurance policies or baggage insurance policies, whose employment is for a purpose other than the sale of such policies, and who does not receive any commission or other compensation directly dependent on the amount of insurance written. However, the commissioner may make any investigation or propound any interrogatories which he deems necessary or advisable to determine the qualifications of the applicant and for protection of the public.

(4) An agent for a fraternal benefit society authorized to transact insurance in this state on the effective date of this act, upon application to the commissioner, may be licensed as an insurance agent to represent that fraternal benefit society without written examination
(MCL § 500.1205.)

§ 24.11206. License, contents, display, duration; agent for legal expense insurance, surrender; reexamination; notice; temporary license; temporary license for collection of premiums on industrial insurance contracts.

Sec. 1206.

(2) The license shall continue in effect unless suspended or revoked by the commissioner, is voluntarily surrendered by the licensee, or terminates because of lack of authority or appointment. to act as an agent in this state from an admitted insurer. If the commissioner's records indicate that an agent has no valid or active appointment from an admitted insurer, the commissioner shall notify the agent that the agent has no valid or active appointment. The agent shall have 60 days from the date notice is sent by the commissioner to secure a valid appointment and have notice of the appointment filed with the commissioner. If notice of appointment is not received by the commissioner within the 60day period, the agent's licensing authority shall be considered terminated for failure to comply with the licensing requirements of this act.

(MCL § 500.1206)

§ 24.11242. Refusal to grant license; grounds; notice; contents hearing; suspension or revocation for failure to maintain standards; coercion, indirect rebating or other prohibited practices; summary suspension of license; effective date; continuation of suspension; subpoena power of commissioner; enforcement.

Sec. 1242. (1) The commissioner shall refuse to grant a license to act as an agent, a solicitor, an insurance counselor or an adjuster to an applicant who fails to meet the requirements of this chapter. Notice of the refusal shall be in writing and shall set forth the basis for the refusal. If the applicant submits a written request within 30 days after mailing of the notice of refusal, the commissioner shall promptly conduct a hearing in which the applicant shall be given an opportunity to show compliance with the requirements of this chapter.

(2) The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of an agent, solicitor, insurance counselor or adjuster who fails to maintain the standards required for initial licensing or who violates any provision of this act.

(3) After notice and opportunity for a hearing, the commissioner may refuse to grant or renew a license to act as an agent, solicitor, adjuster or insurance counselor if he determines by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions or other practices in the sale of insurance. which are prohibited by law.

(4) Without prior hearing, the commissioner may order summary suspension of a license if he finds that protection of the public requires emergency action and incorporates this finding in his order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later. If requested, the commissioner shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose license is suspended requests a later date. At the hearing, the commissioner shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the license should be revoked. The commissioner shall announce his decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

(5) The commissioner, or his designated deputy, may issue subpoenas with the approval of a circuit court judge of the Circuit Court of Ingham County to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing and may designate an employee of the insurance bureau to make service thereof. The subpoenas issued by the commissioner, or his designated deputy, may be enforced upon application by them to the circuit court of Ingham county by proceedings in contempt thereof, as provided by law.
(MCL § 500.1242.)

Brokerage Business

§ 24.112.01. Persons acting as agents; written authorization; licensure; apparent authority; representation of insurers.

Sec. 1201

(3) Except as provided in section 1202, an insurer may not appoint, employ, or in any manner receive the benefit of business done or services rendered in this state by a person acting as an agent unless that person is employed by, or is authorized to act in writing by, the insurer and the person is licensed as an agent in accordance with this chapter.

(MCL § 500.12.01.)

§ 24.11207. Fiduciary responsibility of agent; failure to turn over money, evidence of violation; accounting methods; records; examination by commissioner, reward or remuneration for procuring business; inability to provide coverage; obtaining through another source; advice to buyer; prohibited acts; responsibility for payment of losses.

Sec. 1207.

(4) If an agent is unable to immediately provide, through his or her insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, the agent may obtain the part of the coverage refused by his or her insurers through another licensed agent or through a risk sharing plan permitted by state law. An agent who attempts to place the refused part of the coverage through another licensed agent shall advise the buyer in writing that the refused part of the coverage is not in effect until the buyer receives written evidence of insurance.

(MCL § 500.1207.)

Fiduciary Responsibility

§ 24.11207. Fiduciary responsibility of agent; failure to turn over money, evidence of violation; accounting methods; records; examination by commissioner; reward or remuneration for procuring business: inability to provide coverage; obtaining through another source; advice to buyer; prohibited acts; responsibility for payment of losses.

Sec. 1207. [Until such time as the state administrative board certifies, by December 31, 1994, that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes below), this section provides as follows:]

(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her which are due an insured on policies reduced or canceled or which are due a prospective purchaser of insurance as a result of a rejected or declined application. Records required by this section shall be open to examination by the commissioner.

(3) Except as provided in section 1212 and subsection (4), an agent shall not reward or remunerate any person for procuring or inducing business in this state, furnishing leads or prospects, or acting in any other manner as an agent.

(4) If an agent is unable to immediately provide, through his or her insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, the agent may obtain the part of the coverage refused by his or her insurers through another licensed agent, through the state accident fund, or through a risk sharing plan permitted by state law. An agent who attempts to place the refused part of the coverage through another licensed agent shall advise the buyer in writing that the refused part of the coverage is not in effect until the buyer receives written evidence of insurance.

Section VIII

Property & Casualty Guaranty Association

Section VIII. Property & Casualty Guaranty Association
500.7911,.7921

24.11207

(5) A person may not sell or attempt to sell insurance by means of intimidation or threats, whether express or implied. Except as provided in section 2077(4) a person may not induce the purchase of insurance through a particular agent or from a particular insurer by means of a promise to sell goods, to lend money, to provide services, or by a threat to refuse to sell goods, to refuse to lend money, or to refuse to provide services.

(6) After January 1, 1973, an insurer or an agent may not be a party to a contract under which the agent assumes any responsibility or obligation for payment, from his or her commission or any allocation of premium to him or her by the insurer, of any losses on insurance policies sold by the agent unless the claim adjusting is done by insurance company adjusters or licensed independent adjusters.

[From and after such time as the state administrative board certifies, by December 31, 1994, that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes below), this section shall provide as follows:]

An agent shall be a fiduciary for all money' received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her which are due an insured on policies reduced or a result of a rejected or declined application. Records required by this section shall be open to examination by the commissioner.

(3) Except as provided in section 1212 and subsection (4), an agent shall not reward or remunerate any person for procuring or inducing business in this state, furnishing leads or prospects, or acting in any other manner as an agent.

§ 24.11207

(4) If an agent is unable to immediately provide, through his or her insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, the agent may obtain the part of the coverage refused by his or her insurers through another licensed agent or through a risk sharing plan permitted by state law. An agent who attempts to place the refused part of the coverage through another licensed agent shall advise the buyer in writing that the refused part of the coverage is not in effect until the buyer receives written evidence of insurance.

(5) A person may not sell or attempt to sell insurance by means of intimidation or threats, whether express or implied. Except as provided in section 2077(4) a person may not induce the purchase of insurance through a particular agent or from a particular insurer by means of a promise to sell goods, to lend money, to provide services, or by a threat to refuse to sell goods, to refuse to lend money, or to refuse to provide services.

(s) After January 1, 1973, an insurer or an agent may not be a party to a contract under which the agent assumes any responsibility or obligation for payment, from his or her commission or any allocation of premium to him or her by the insurer, of any losses on insurance policies sold by the agent unless the claim adjusting is done by insurance company adjusters or licensed independent adjusters.

(MCL § 500.1207.)

24.17911. Property and casualty guaranty association; membership; exclusions; governing laws.

Sec. 7911. **(Unless and until Pub Acts 1993, No. 143 is approved in a referendum to be held in November, 1994, (see Editor's notes below) and until such time as the state administrative board certifies, by December 31, 1994, that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes), this section reads as follows:]**

(1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920, the Brown-McNeely insurance fund created in section 2502(1), and on and after the effective date of this 1990 amendatory act, the accident fund created in the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association". Each insurer shall be a member of the association, as a condition of its authority to continue to transact insurance in this state.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of sections 1901 to 1955 shall not be considered to be an insurer authorized to transact insurance in this state, for the purposes of this chapter.

(3) The association shall be subject to the requirements of this chapter and of chapter 78, but shall not be subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

[From and after such time as Pub Acts 1993, No. 143 is **approved by referendum to be held in November, 1994, (see Editor's notes) this section shall read as follows:**] (1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920 and on and after June 29, 1990, the accident fund created in the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association". Each insurer shall be a member of the association as a condition of its authority to continue to transact insurance in this State.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of sections 1901 to 1955 shall not be considered to be an insurer authorized to transact insurance in this state for the purposes of this chapter.

(3) The association shall be subject to the requirements of this

§ 24.17911 Continued...

chapter, chapter 78, and section 3172a, but shall not be subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

[From and after such time as the state administrative board certifies, by December 31, 1994, that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes), this section shall provide as follows:] (1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920 , an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association" Each insurer shall be a member of the association as a condition of its authority to continue to transact insurance in this state.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of sections 1901 to 1955 shall not be considered to be an insurer authorized to transact insurance in this state for the purposes of this chapter.

(3) The association shall be subject to the requirements of this chapter, chapter 81, and section 3172a, but shall not be subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

(MCL § 500.7911.)

§ 24.17921. Definitions.

Sec. 7921. [Until the state administrative board certifies by December 31, 1994 that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes below) this section provides as follows:] As used in this chapter:

(a) "Insolvent insurer" means an insurer for which a domiciliary receiver has been appointed by a final order in this state or in a reciprocal state, as defined in section 8103 for the liquidation of the insurer and which has been a member insurer. The date on which the order becomes final shall be the date on which the receiver is appointed for purposes of this chapter. On and after the effective date of this 1990 amendatory act, the state accident fund created in the worker's disability compensation act of 1969, Act. No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws shall not be considered an insolvent insurer.

(b) "Member insurer" means an insurer required to be a member of the association pursuant to section 7911.

[From and after such time as the state administrative board certifies, by December 31, 1994, that an agreement has been consummated to transfer and assume the assets and liabilities of the state accident fund with a permitted transferee pursuant to section 701a of the worker's disability act of 1969 (see Editor's notes), this section shall provide as follows:] As used in this chapter:

(a) "Insolvent insurer" means an insurer for which a domiciliary receiver has been appointed by a final order in this state or in a reciprocal state, as defined in section 8103 for the liquidation of the insurer and which has been a member insurer. The date on which the order becomes final shall be the date on which the receiver is appointed for purposes of this chapter.

(b) "Member insurer means an insurer required to be a member of the association pursuant to section 7911.

(MCI § 500.7921)

Section IX

RESPA

The Real Estate Settlement Procedures Act

- Real Estate Settlement & Procedures Act

WHAT IS RESPA?

RESPA is short for the federal Real State Settlement Procedures Act of 1974. RESPA generally requires disclosures to borrowers and prohibits certain settlement practices. The Department of Housing and Urban Development (HUD) enforces RESPA.

SECTION 8 OF RESPA PROHIBITS KICKBACKS, UNEARNED FEES, AND FEE-SPLITTING

In enacting RESPA, Congress intended to outlaw certain kickbacks or referral fees that tend to increase unnecessarily the cost of real estate settlement services. Section 8 of RESPA broadly prohibits any person from giving or receiving any fee, kickback, or thing of value under an agreement to refer settlement service business to any person.

RSPA

Section 8(a) “anti-kickback” provision

5 Elements of a Section 8(a) violation:

It is illegal to ***give*** or ***accept***:

1. any thing of value pursuant to
2. an agreement or understanding to
3. refer
4. a settlement service, in connection with
- t. a federally related mortgage loan

RSPA

Thing of Value = Broadly defined to be virtually anything one receives in consideration for making a referral

- | | |
|--------------------|--------------------|
| ➤ \$ | ➤ Fax Machines |
| ➤ Computer | ➤ Commissions |
| ➤ Ipods | ➤ Property |
| ➤ Free Advertising | ➤ Trips |
| ➤ Viagra | ➤ Football Tickets |

RSPA

Agreement or Understanding = Need not be in writing or even articulated or verbalized – may include a practice or course of Action where the receipt of a **THING OF VALUE is understood**

❖ Wink, wink

RSPA

Referral = Any conduct intended to influence the selection of a particular settlement service provider

RSPA

Settlement Services = Anything done by
Title Agents; Attorneys; Real Estate Agents;
Mortgage Brokers; Banks

- Title searches
- Credit reports / appraisals
- Origination of loans
- Title insurance, etc.

RSPA

Federally Related Mortgage Loan = Any loan
secured by a first or subsequent lien on a
1 – 4 family residential property

Includes

Refinances
Purchase money mortgages
Second liens
ARMs
Reverse mortgages
Interest only mortgages

Excludes

Commercial loans
Construction loans
Temporary financing
Property over 25 acres
Business purpose loans

RSPA

Exceptions - Section 8(c)

Congress recognized certain exceptions where paying a referral fee is ok

- To an Attorney for services actually performed
- By a Title Company to its duly appointed Title Agent for services performed in issuance of a title policy
- By a Lender to its duly appointed Agent
- Cooperative Agreements between listing and selling agents

RSPA

Exceptions - Section 8(c)

Congress recognized certain exceptions where paying a referral fee is ok (cont'd)

- Payments by Employer to Employee
- Secondary Market Transactions
- Affiliated Business Arrangements
- Section 8(c)(2) payments for services rendered or goods/facilities actually provided

RSPA

Exceptions - Section 8(c)

Congress recognized certain exceptions where
paying a referral fee is ok (cont'd)

Section 8(c)(2) payments for services rendered or
goods/facilities actually provided

2 Part Test

- Good/Services must be actual, necessary and distinct
- Payment must be commensurate with the value of goods/services

RSPA

Violation / Penalties of Section 8's anti-kickback

RSPA

Violations of Section 8's anti-kickback

Referral fees and unearned fees provisions of RESPA
are subject to

Criminal and Civil penalties

RSPA

Violations of Section 8's anti-kickback

In a criminal case a person who violates Section 8

Fined up to \$10,000 each violation
Imprisoned up to 1 year each violation
Court orders "Stopping" a company's business activities
Refund fees unfairly charged to customers.
Return all illegally gained profits

RSPA

Violations of Section 8's anti-kickback

Civil Actions – Consumers', either individually or through class action suite

May be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service

Court cost and reasonable attorney's fee