

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**Bulletin 2006-08-INS**

**In the matter of**

**Mortgage Impairment Coverage  
and Title Insurance**

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**Issued and entered  
this 2nd day of August 2006  
By Linda A. Watters  
Commissioner**

OFIS has become aware that insurers without authorization to write title insurance in Michigan may be selling mortgage impairment products that contain, at least in part, the substantive equivalent of title insurance as defined under Michigan law.

In Michigan, only certain companies may sell title insurance products. Title insurance is regulated pursuant to Chapter 73 of the Insurance Code of 1956, 218 PA 1956. The statute, MCL 500.7303 states in relevant part:

“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...authorizing the transaction of the business.”

Under the statute MCL 500.7301(a), title insurance is defined as:

“the insuring, guaranteeing, or indemnifying of designated owners of real estate or any interest in real estate against loss or damage that may result because the title is vested in a manner otherwise than as stated in the title insurance policy, because the title is unmarketable, or because the title is subject to liens, encumbrances, or other matters adversely affecting the rights of use, enjoyment, or disposition of the real estate, and not excepted in the policy, all in accordance with the terms of a title insurance policy approved as to substance and form, or doing anything equivalent in substance to any of the foregoing in a manner designed to evade the provisions of this chapter.”

Title insurance serves as protection for the borrower and lender against loss or damages resulting from defects in marketable title to a particular parcel of real property. If a lien, encumbrance, or other cloud on marketability of title appears as a

result of a matter not disclosed or excepted in a title insurance policy, the title insurer is obligated to indemnify the insured against losses sustained when the lien position of the insured, as listed on the policy, has been thwarted. A title insurance policy means:

“any policy or contract insuring, guaranteeing, or indemnifying against loss or damage suffered by owners of real estate or by other persons interested in the real estate by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to the real estate, or other matters affecting the title to real estate or the right to the use and enjoyment of the real estate, and insuring, guaranteeing, or indemnifying the condition of the title to real estate or the status of any lien on the real estate” (MCL 500.73016)

Chapter 73 of the Michigan Insurance Code, MCL 500.7300, et. seq, requires that coverage for losses sustained due to liens or possible liens on real property be provided only by insurers authorized to write title insurance. The risk covered and authority required by Chapter 73 apply to any risk of loss from undisclosed liens or defects in marketability of title to real property, without regard to the form of the transaction: first mortgage, second mortgage, refinancing, or home equity loan.

Mortgage impairment insurance provides a hybrid of both mortgage guaranty coverage and “undisclosed lien loss” coverage. In the event of default by the mortgagor, the mortgage impairment insurance purports to provide mortgage guarantee insurance in the form of an insurer agreeing to pay the mortgage lender for any loss resulting from property foreclosure up to a specific amount, as well as losses sustained due to undisclosed liens.

The Michigan Insurance Code grants no authority to combine title risks with non-title risks in a single, hybrid policy. The separate chapter on and specific code definition for title insurance clearly establish the specific authority to underwrite title risks, separate from any authority to underwrite other, non-title risks.

This bulletin is intended to inform the insurance industry that any insurance policy or product purporting to offer coverage related to possible liens against or defects in real estate title or purporting to cover any other risk identified in the MCL 500.7301(a) definition of title insurance is classified as title insurance, regardless of the name under which the policy or product is marketed to consumers. As such, any company offering such a product must have a certificate of authority from the commissioner specifically authorizing it to transact any business of title insurance in this state, as set forth in Chapter 73.

The Commissioner may initiate action against any insurer found to be offering coverage related to possible liens against or defects in real estate title or for any other risk identified in MCL 500.73019(a), unless the insurer holds a certificate of authority specifically authorizing it to transact any business of title insurance in this state.

Any questions regarding this bulletin should be directed to:

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