

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: S3/12/15

# A Bill

SENATE BILL 172

5 By: Senators J. Hutchinson, S. Flowers, D. Johnson  
6 By: Representatives Wright, Bennett  
7

## For An Act To Be Entitled

8  
9 *AN ACT TO ELIMINATE DUPLICATIVE LICENSING*  
10 *REQUIREMENTS OF ATTORNEYS WHO ENGAGE IN THE BUSINESS*  
11 *OF TITLE INSURANCE; TO REGULATE TITLE INSURANCE,*  
12 *TITLE INSURANCE AGENCIES AND AGENTS, AND ABSTRACTERS;*  
13 *TO CREATE THE ARKANSAS LAND TITLE COMMISSION TO*  
14 *REGULATE THE BUSINESS OF TITLE INSURANCE AND THE*  
15 *BUSINESS OF ABSTRACTING; TO ABOLISH THE ARKANSAS*  
16 *ABSTRACTERS' BOARD AND TRANSFER ITS DUTIES AND FUND*  
17 *BALANCE TO THE ARKANSAS LAND TITLE COMMISSION; TO*  
18 *DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

## Subtitle

19  
20  
21  
22 *TO ELIMINATE DUPLICATIVE ATTORNEY TITLE*  
23 *INSURANCE LICENSING REQUIREMENTS; TO*  
24 *TRANSFER REGULATION OF TITLE INSURANCE,*  
25 *TITLE INSURANCE AGENCIES, TITLE INSURANCE*  
26 *AGENTS, AND ABSTRACTERS; AND TO DECLARE*  
27 *AN EMERGENCY.*

28  
29  
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31  
32 *SECTION 1. DO NOT CODIFY. Arkansas Abstracters' Board abolished –*  
33 *Type 3 transfer to Arkansas Land Title Commission.*

34 *(a) The Arkansas Abstracters' Board created by Arkansas Code § 17-11-*  
35 *401 et seq. is abolished, and its powers and duties are transferred by a type*  
36 *3 transfer, as defined under Arkansas Code § 25-2-106, to the Arkansas Land*



1 Title Commission established under this act.

2 (b) For purposes of this act, the Arkansas Land Title Commission shall  
3 be considered a principal department established by Acts 1971, No. 38.

4  
5 SECTION 2. DO NOT CODIFY. Transfer of certain funds from State  
6 Insurance Department to Arkansas Land Title Commission.

7 (a) On July 1, 2015, all assets, unexpended balances, appropriations,  
8 allocations, and other funds held by the State insurance Department or the  
9 State Insurance Department Trust Fund that are derived from the Arkansas  
10 Title Insurance Act, § 23-103-401 et seq., as determined by the Chief Fiscal  
11 Officer of the State shall be transferred on the books of the Chief Fiscal  
12 Officer of the State, the Treasurer of State, and Auditor of State to the  
13 Arkansas Land Title Commission and the Arkansas Land Title Commission Fund.

14 (b) The fund balances transferred under this section shall be used by  
15 the Arkansas Land Title Commission for the purposes for which the fund  
16 balances were collected.

17  
18 SECTION 3. DO NOT CODIFY. Transition of licenses, certificates of  
19 registration, and certificates of authority.

20 The licenses, certificates of registration, or certificate of authority  
21 of an individual granted a title insurance agent license or a certificate of  
22 registration or certificate of authority from the Arkansas Abstracters' Board  
23 to engage in the business of abstracting before the effective date of this  
24 act shall continue in full force and effect subject to the provisions of this  
25 act, including without limitation applicable residency requirements, but  
26 without the necessity to requalify for the license, certificate of  
27 registration, or certificate of authority.

28  
29 SECTION 4. DO NOT CODIFY. Transition of duties and responsibilities  
30 from State Insurance Department.

31 On the effective date of this act, the Arkansas Land Title Commission  
32 shall have the powers and perform the duties previously exercised by the  
33 Insurance Commissioner under the Arkansas Title Insurance Act, § 23-103-401  
34 et seq., except that the commissioner's regulation of and rules concerning  
35 the licensing and regulation of title insurance agents shall be administered  
36 and enforced by the commission until superseded by statute or by rule of the

1 commission.

2  
3 SECTION 5. Arkansas Code Title 17, Chapter 11, repealed.

4 ~~Subchapter 1—General Provisions~~

5 ~~17-11-101.—Title.~~

6 ~~This chapter shall be known and may be cited as the “Abstracters’~~  
7 ~~Licensing Law of 1969”.~~

8  
9 ~~17-11-102.—Definitions.~~

10 ~~As used in this chapter, unless the context otherwise requires:~~

11 ~~(1) “Abstract of title” means a compilation in orderly~~  
12 ~~arrangement of the materials and facts of record affecting the title to a~~  
13 ~~specific piece of land, issued under a certificate certifying to the matters~~  
14 ~~therein contained;~~

15 ~~(2)(A) “Abstract plant” means a set of records in which an entry~~  
16 ~~has been made of all documents or matters which under the law impart~~  
17 ~~constructive notice of matters affecting title to all real property or any~~  
18 ~~interest therein or encumbrances thereon, which have been filed or recorded~~  
19 ~~in the county or district thereof for which a title plant is maintained from~~  
20 ~~earliest records available in the county or district thereof and continually~~  
21 ~~thereafter.~~

22 ~~(B) Such records shall consist of an index or indices in~~  
23 ~~which notations of or references to any documents that describe the property~~  
24 ~~affected thereby are posted, entered, or otherwise included, according to the~~  
25 ~~property described therein or copies or briefs of all documents that describe~~  
26 ~~the property affected thereby which are sorted and filed according to the~~  
27 ~~property described therein;~~

28 ~~(3) “Business of abstracting” means the making, compiling, or~~  
29 ~~selling of abstracts of title or title evidence purporting to be based upon~~  
30 ~~information from an abstract plant;~~

31 ~~(4) “Certificate of authority” means the authorization to engage~~  
32 ~~in the business of abstracting in a county or district thereof in the State~~  
33 ~~of Arkansas granted to a person, firm, or private corporation in possession~~  
34 ~~of an abstract plant; and~~

35 ~~(5) “Registered abstracter” means an individual registered under~~  
36 ~~this act and holding an operative certificate of registration to prepare~~

1 ~~abstracts of title to real property in any county in this state or any person~~  
2 ~~holding a license to practice law within the State of Arkansas.~~

3  
4 ~~17-11-103. — Penalties.~~

5 ~~(a) Any person, firm, partnership, association, or corporation~~  
6 ~~violating any of the provisions of this chapter shall be guilty of a~~  
7 ~~misdemeanor and upon conviction shall be punished by a fine of not less than~~  
8 ~~twenty five dollars (\$25.00) nor more than one hundred dollars (\$100) for~~  
9 ~~each offense. Each succeeding day on which the provisions of this chapter are~~  
10 ~~violated shall be a separate offense.~~

11 ~~(b) If any licensed abstracter shall willfully falsify any public~~  
12 ~~record or information contained therein, he or she shall be guilty of a~~  
13 ~~felony and punished accordingly in addition to his or her civil liability.~~

14  
15 ~~Subchapter 3 — Certification~~

16 ~~17-11-301. — Certificate of registration required.~~

17 ~~(a)(1) Every person, firm, or private corporation engaged in the~~  
18 ~~business of abstracting in one (1) county only, shall be or have in its~~  
19 ~~employ a registered abstracter.~~

20 ~~(2) Every person, firm, or private corporation engaged in the~~  
21 ~~business of abstracting in more than one (1) county in this state shall have~~  
22 ~~at least one (1) registered abstracter for each county in which it maintains~~  
23 ~~an abstract office.~~

24 ~~(b) No person shall execute an abstract certificate or otherwise attest~~  
25 ~~to the accuracy of abstracts unless the person is a registered abstracter as~~  
26 ~~defined in this chapter.~~

27 ~~(c)(1) Each person engaged in the business of abstracting who is a~~  
28 ~~registered abstracter may fulfill the requirements of subsection (a) of this~~  
29 ~~section in one (1) county only.~~

30 ~~(2) No registered abstracter may fulfill the requirements of~~  
31 ~~subsection (a) of this section for more than one (1) county or more than one~~  
32 ~~(1) company at any one (1) time.~~

33  
34 ~~17-11-302. — Certificate of registration — Application.~~

35 ~~(a) Any person desiring to become a registered abstracter under this~~  
36 ~~chapter shall make application to the Arkansas Abstracters' Board for~~

1 ~~registration.~~

2 ~~(b) The application shall be in a form prepared by the board and shall~~  
3 ~~contain such information as may be necessary to assist the board in~~  
4 ~~registration and to determine if the applicant is of good moral character.~~

5 ~~(c) Except as provided in subsection (c) of this section, each~~  
6 ~~application shall be accompanied by an examination fee in the sum of twenty-~~  
7 ~~five dollars (\$25.00).~~

8 ~~(d) Thereupon the board shall notify the applicant of the time and~~  
9 ~~place of the next scheduled examination, and notice of the examination shall~~  
10 ~~be given to the applicant by mail.~~

11 ~~(e) Any person authorized to practice law in this state shall be issued~~  
12 ~~a certificate of registration upon application, without examination and~~  
13 ~~payment of fee.~~

14  
15 ~~17-11-303. Certificate of registration — Examination.~~

16 ~~The examination required under this chapter shall be in the form of~~  
17 ~~written interrogatories as may be prescribed by the Arkansas Abstracters'~~  
18 ~~Board to determine the proficiency of the applicant.~~

19  
20 ~~17-11-304. Certificate of registration — Issuance or reapplication.~~

21 ~~(a) If the applicant satisfactorily passes the examinations and is of~~  
22 ~~good moral character, the applicant shall be certified as a registered~~  
23 ~~abstracter, and the certificate provided for shall be issued to him or her.~~  
24 ~~The privileges granted by the certificate shall continue unless revoked, as~~  
25 ~~provided in this chapter, or unless the certificate is otherwise surrendered~~  
26 ~~to the Arkansas Abstracters' Board.~~

27 ~~(b) The certificate shall be in a form prescribed by the board and~~  
28 ~~shall attest that the person possesses the knowledge, skill, ability, and~~  
29 ~~understanding of abstracting and is designated a registered abstracter. The~~  
30 ~~certificate shall be prominently displayed in the abstract office wherein the~~  
31 ~~person is employed.~~

32 ~~(c) An applicant failing to satisfy the board that he or she possesses~~  
33 ~~the qualifications or proficiency to become a registered abstracter may~~  
34 ~~reapply for registration if the application is accompanied by the examination~~  
35 ~~fee provided for in § 17-11-302(c), but no application shall be submitted~~  
36 ~~sooner than six (6) months following the date on which the last previous~~

1 ~~examination was administered to the applicant.~~

2 ~~(d) Each holder of a certificate shall pay an annual fee to be set by~~  
3 ~~the board.~~

4  
5 ~~17-11-305. Certificate of registration—Temporary.~~

6 ~~(a) The Arkansas Abstracters' Board upon application to it by any~~  
7 ~~person succeeding to the ownership of any abstract plant or business by any~~  
8 ~~means other than by purchase, or any person who by reason of the incapacity~~  
9 ~~of any registered abstractor owner of any abstract plant or business is~~  
10 ~~required to assume the operation of the abstract plant or business, may grant~~  
11 ~~to the person without examination a temporary certificate of registration.~~

12 ~~(b) The fee for a temporary certificate of registration shall be~~  
13 ~~fifteen dollars (\$15.00).~~

14 ~~(c) This certificate shall expire six (6) months after its date or upon~~  
15 ~~the expiration of sixty (60) days after the next regularly scheduled~~  
16 ~~examinations which could be taken by the applicant under the rules and~~  
17 ~~regulations of the board, whichever period is longer.~~

18 ~~(d) The board shall notify the applicant by mail of the time and place~~  
19 ~~of the examination.~~

20  
21 ~~17-11-306. Unregistered assistants.~~

22 ~~Nothing in this chapter shall be construed as prohibiting any person,~~  
23 ~~firm, or corporation holding a valid and subsisting certificate of authority~~  
24 ~~from employing such clerical and stenographic assistants as may be necessary~~  
25 ~~in the conduct of its business who are not registered under this chapter.~~

26  
27 ~~17-11-307—17-11-319. [Reserved.]~~

28  
29 ~~17-11-320. Certificate of authority required.~~

30 ~~No person, firm, or corporation shall engage in the business of~~  
31 ~~abstracting in this state until a certificate of authority has been issued to~~  
32 ~~the person, firm, or corporation by the Arkansas Abstracters' Board.~~

33  
34 ~~17-11-321. Certificate of authority—Application—Issuance.~~

35 ~~(a) Any person, firm, or corporation desiring to engage in the business~~  
36 ~~of abstracting in this state shall make application to the Arkansas~~

1 ~~Abstracters' Board for a certificate of authority.~~

2 ~~(b) The application shall:~~

3 ~~(1) Be in a form prepared by the board;~~

4 ~~(2) Contain such information as may be necessary to assist the~~  
5 ~~board in determining whether the applicant has complied with the provisions~~  
6 ~~of this chapter; and~~

7 ~~(3) Be accompanied by an application fee in the sum of twenty-~~  
8 ~~five dollars (\$25.00).~~

9 ~~(c) The applicant shall furnish proof that:~~

10 ~~(1) The applicant has available an abstract plant for each county~~  
11 ~~for which abstracts will be prepared, which abstract plant shall be made~~  
12 ~~available for examination by the board;~~

13 ~~(2) The applicant is or has employed a registered abstracter; and~~

14 ~~(3) The bond requirements provided for in § 17-11-324 have been~~  
15 ~~complied with.~~

16 ~~(d)(1) When the foregoing things have been done or conditions exist and~~  
17 ~~approved by the board, the board shall issue a certificate of authority in~~  
18 ~~such form as it may prescribe, attesting to the same and indicating the~~  
19 ~~county of this state wherein the applicant may operate.~~

20 ~~(2) The certificate shall be prominently displayed in the office~~  
21 ~~of the applicant.~~

22  
23 ~~17-11-322. Certificate of authority — Expiration — Renewal.~~

24 ~~(a)(1) All certificates of authority issued pursuant to the provisions~~  
25 ~~of this chapter shall expire on the same date, irrespective of when issued.~~

26 ~~(2) Expiration dates of the certificates, either renewal or~~  
27 ~~original, shall be the July 1 following the year from the preceding~~  
28 ~~expiration date.~~

29 ~~(b) Current and subsisting certificates of authority shall be renewed~~  
30 ~~as provided for in this section for a one-year period upon payment of a~~  
31 ~~renewal fee in the sum to be set by the Arkansas Abstracters' Board.~~

32 ~~(c)(1)(A) No more than sixty (60) days nor less than thirty (30) days~~  
33 ~~prior to the expiration date of the certificate issued, the board shall cause~~  
34 ~~a notice of expiration and application for renewal to be mailed to each of~~  
35 ~~the holders of the certificates.~~

36 ~~(B) The notice and application shall be in a form prepared~~

1 ~~by the board.~~

2 ~~(2) Upon determination by the board of the applicant's compliance~~  
3 ~~with this chapter, a renewal certificate of authority shall be issued to the~~  
4 ~~applicant.~~

5 ~~(d)(1)(A) If a holder of a certificate of authority fails to apply for~~  
6 ~~renewal of his or her authority and to pay the fee provided therefor, the~~  
7 ~~board shall cause to be mailed to the holder a notice that his or her~~  
8 ~~certificate has expired and is no longer valid authority for the person to~~  
9 ~~engage in the business of abstracting.~~

10 ~~(B) The notice shall be mailed not more than thirty (30)~~  
11 ~~days following the certificate expiration date.~~

12 ~~(C) The holder shall be granted an additional period of~~  
13 ~~sixty (60) days from the date of mailing the notice within which to file his~~  
14 ~~or her application for renewal.~~

15 ~~(2)(A) The name of any holder failing to renew his or her~~  
16 ~~authority pursuant to the terms of this section shall be stricken from the~~  
17 ~~records of the board.~~

18 ~~(B) Such a person, firm, or corporation shall no longer~~  
19 ~~engage in the business of abstracting in this state until so authorized by~~  
20 ~~the board.~~

21  
22 ~~17-11-323. Access to public records.~~

23 ~~(a)(1) Holders of certificates of authority and their employees in the~~  
24 ~~conduct of the business of abstracting shall have access to the public~~  
25 ~~records in any office of any city or county or of the state.~~

26 ~~(2) They shall be permitted to make memoranda or notations~~  
27 ~~therefrom or copies thereof and to occupy reasonable space with equipment for~~  
28 ~~that purpose, subject to the reasonable regulation of the custodian of the~~  
29 ~~public records and during the business hours of the office, in order to~~  
30 ~~enable certificate holders to make and prepare abstracts and to compile,~~  
31 ~~post, copy, and maintain their books, records, and indices.~~

32 ~~(b) No persons other than the custodian of the records shall remove~~  
33 ~~real estate records from the recorder's office.~~

34  
35 ~~17-11-324. Bond, insurance, or personal surety.~~

36 ~~(a)(1)(A) Before the certificate of authority is issued, the applicant~~



~~shall file with the Arkansas Abstracters' Board a bond approved by the board conditioned upon the payment by the applicant of any and all damages that may be sustained by or may accrue to any person, firm, or corporation for whom the applicant may compile, make, or furnish abstracts of title by reason of or on account of any error, deficiency, or mistake in any abstract or certificate, or any continuation, made or issued by the abstracter over its authorized signature and seal.~~

~~(B) The bond shall be written by a corporate surety or other company issuing such bonds licensed and authorized to do business in this state.~~

~~(2)(A) The bond shall remain in full force and effect for a period of one (1) year and may be renewed annually by a continuation certificate.~~

~~(B) However, no continuation certificate shall operate to increase the penal sum of the bond beyond the limits established in this section.~~

~~(3)(A) The penal sum of the bond shall be dependent upon the aggregate population, according to the latest federal census, of all counties in which the applicant proposes to conduct the business of abstracting, as follows:~~

<del>-If the population is:-</del>	<del>The penalty of the bond shall be:</del>
<del>Less than 25,000 .....</del>	<del>\$ 5,000</del>
<del>More than 25,000 but less than 50,000 .....</del>	<del>10,000</del>
<del>50,000 but less than 100,000 .....</del>	<del>15,000</del>
<del>100,000 but less than 200,000 .....</del>	<del>20,000</del>
<del>Over 200,000 .....</del>	<del>25,000</del>

~~(B) No person, firm, or corporation shall be required at any time to have in force and effect and filed with the board valid bonds in excess of the penal sum of twenty five thousand dollars (\$25,000).~~

~~(b)(1) In lieu of the bond or bonds provided for in subsection (a) of this section, the applicant may file proof with the board that he or she carries abstracters' liability insurance in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section.~~

1 ~~(2) The proof shall be the filing of the actual policy or a~~  
2 ~~certificate showing the issuance thereof by the insurance company.~~

3 ~~(c)(1) In lieu of bond or bonds or liability insurance provided for in~~  
4 ~~subsections (a) and (b) of this section, the applicant shall have the right~~  
5 ~~to file with the board a personal surety bond in such a sum as would be~~  
6 ~~required using the population scale in subdivision (a)(3)(A) of this section,~~  
7 ~~made in favor of any person or client that may suffer a loss for which he or~~  
8 ~~she is liable, which shall be accepted in lieu of the insurance policy.~~

9 ~~(2) The personal bond shall have the signatures of at least three~~  
10 ~~(3) other persons thereon whose total net worth shall be at least three (3)~~  
11 ~~times the total amount of the personal bond.~~

12 ~~(3) The applicant shall pay for the actual cost of the credit~~  
13 ~~reports on the bondsmen.~~

14  
15 ~~17-11-325 — 17-11-339. [Reserved.]~~

16  
17 ~~17-11-340. — Revocation of certificates — Grounds.~~

18 ~~(a) The Arkansas Abstracters' Board is authorized, after a hearing as~~  
19 ~~provided in § 17-11-341, to cancel and revoke any certificate of registration~~  
20 ~~issued to any person under the provisions of this chapter:~~

21 ~~(1) For a violation of any of the provisions of this chapter;~~

22 ~~(2) Upon a conviction of the holder of such a certificate of a~~  
23 ~~crime involving moral turpitude; or~~

24 ~~(3) If the board finds the holder to be guilty of habitual~~  
25 ~~carelessness or of fraudulent practices in the conduct of the business of~~  
26 ~~abstracting.~~

27 ~~(b) The board is authorized, after a hearing as provided in § 17-11-~~  
28 ~~341, to cancel and revoke any certificate of authority issued to any person,~~  
29 ~~firm, or corporation under the provisions of this chapter for:~~

30 ~~(1) Failure to furnish the bond or bonds, or other securities,~~  
31 ~~required by § 17-11-324;~~

32 ~~(2) Failure to properly maintain an abstract plant;~~

33 ~~(3) Failure to have employed a registered abstracter as provided~~  
34 ~~in § 17-11-301; or~~

35 ~~(4) Otherwise violating any of the provisions of this chapter.~~

36

~~17-11-341. Revocation of certificates — Procedure — Appeal.~~

~~(a)(1) Upon a verified complaint being filed with the Arkansas Abstracters' Board or upon the board's own motion filing a complaint charging the holder of a certificate of registration with a violation of any of the provisions of this chapter, or conviction of a crime involving moral turpitude, or with habitual carelessness or fraudulent practices in the conduct of the business of abstracting, or charging the holder of a certificate of authority with failure to furnish the bond or bonds, or other securities, required by § 17-11-324, or with failing to have employed a registered abstracter as provided in § 17-11-301, or with a violation of any of the provisions of this chapter, the board shall immediately notify in writing by registered mail, with return receipt, the holder of the certificate of the filing of the complaint and furnish the holder with a copy of the complaint.~~

~~(2) The board shall at the same time require the holder of the certificate to appear before it on a day fixed by the board, not less than twenty (20) days nor more than forty (40) days from the date of the service of the complaint on the holder of the certificate, and to show cause why the certificate should not be cancelled and revoked.~~

~~(3) Under the hand of its president and the seal of the board, the board may subpoena witnesses and compel their attendance and may require the production of books, papers, and other documents.~~

~~(4) The president or the secretary may administer oaths or affirmations to witnesses appearing before the board.~~

~~(5)(A) If any person refuses to obey any subpoena so issued or refuses to testify or to produce any books, papers, or other documents, the board may present its petition to any court of record, setting forth the facts.~~

~~(B) Thereupon the court shall, in a proper case, issue its subpoena to the person requiring his or her attendance before the court and there to testify or produce such books, papers, and documents as may be deemed necessary and pertinent.~~

~~(6) The holder of the certificate shall be entitled to counsel at any hearing before the board or any other hearing involving revocation of his or her certificate.~~

~~(7) The board shall cause a transcript of any testimony taken to~~

1 ~~be made by a reporter or stenographer.~~

2 ~~(b)(1)(A) Either the respondent or the complainant may appeal from the~~  
3 ~~decision of the board to the circuit court in the county in which the~~  
4 ~~respondent has his or her or its place of business.~~

5 ~~(B) The appeal shall be taken within thirty (30) days after~~  
6 ~~the decision of the board by causing a written notice of appeal to be served~~  
7 ~~on the secretary of the board and executing a bond to the State of Arkansas,~~  
8 ~~with surety to be approved by the secretary of the board, conditioned to pay~~  
9 ~~all costs that may be adjudged against the appellant.~~

10 ~~(2) Upon an appeal's being taken, the secretary of the board~~  
11 ~~shall immediately make out a return of the proceedings in the matter before~~  
12 ~~the board with its decision thereon and file them together with the bond and~~  
13 ~~all the papers pertaining thereto in his or her possession, including a~~  
14 ~~certified record of testimony taken at the hearing, with the clerk of the~~  
15 ~~court to which the appeal is taken.~~

16 ~~(3) The court shall hear the appeal as a trial de novo, and the~~  
17 ~~costs of the appeal, including the furnishing of the testimony, shall be~~  
18 ~~taxed as the court may direct.~~

19 ~~(4) An appeal shall stay the cancellation of any certificate of~~  
20 ~~registration or certificate of authority until the final decision is had on~~  
21 ~~appeal.~~

22  
23 ~~17-11-342. — Seal.~~

24 ~~Any licensee under this chapter shall provide a seal, which shall have~~  
25 ~~stamped on the license the name of the licensee, and shall deposit with the~~  
26 ~~Arkansas Abstracters' Board an impression of the seal and the names of all~~  
27 ~~persons authorized to sign certificates to abstracts on behalf of the~~  
28 ~~licensee.~~

29  
30 ~~17-11-343. — Abstract as evidence.~~

31 ~~An abstract or photostat or verbatim copy of any public record, where~~  
32 ~~certified by and impressed with the official seal of any licensed abstracter,~~  
33 ~~shall be admissible in evidence, if otherwise admissible, on behalf of any~~  
34 ~~party litigant in any court in the State of Arkansas and shall be prima facie~~  
35 ~~evidence of the facts recited therein.~~

36

1 ~~Subchapter 4—Arkansas Abstractors' Board~~

2 ~~17-11-401.—Creation—Members.~~

3 ~~(a) The Arkansas Abstractors' Board is created.~~

4 ~~(b)(1) The board shall consist of five (5) members appointed by the~~  
5 ~~Governor, subject to confirmation by the Senate, for a term of six (6) years.~~

6 ~~(2) Two (2) members shall:~~

7 ~~(A) Be actively involved in the making of abstracts of real~~  
8 ~~estate titles in this state for a period of at least five (5) years before~~  
9 ~~appointment; and~~

10 ~~(B) Serve an initial term of six (6) years;~~

11 ~~(3) Two (2) members shall:~~

12 ~~(A) Be citizens of this state; and~~

13 ~~(B) Serve an initial term of four (4) years; and~~

14 ~~(4) One (1) member shall:~~

15 ~~(A) Be knowledgeable of the abstract business; and~~

16 ~~(B) Serve an initial term of two (2) years.~~

17 ~~(c) A vacancy on the board caused by death, resignation, or otherwise~~  
18 ~~shall be filled by appointment of the Governor, subject to confirmation by~~  
19 ~~the Senate.~~

20 ~~(d)(1) A member may be appointed to successive terms.~~

21 ~~(2) No two (2) members shall be appointed from the same county.~~

22 ~~(e)(1) Each member shall serve without compensation.~~

23 ~~(2) However, a member may be entitled to receive travel and~~  
24 ~~expense reimbursement in accordance with § 25-16-901 et seq.~~

25  
26 ~~17-11-402.—Organization and proceedings.~~

27 ~~(a) The Arkansas Abstractors' Board shall elect a chair and a~~  
28 ~~secretary-treasurer.~~

29 ~~(b) The chair and secretary-treasurer of the board shall have the power~~  
30 ~~to administer oaths.~~

31 ~~(c) The board shall have a seal and shall have the power to compel the~~  
32 ~~attendance of witnesses.~~

33  
34 ~~17-11-403.—Duties and powers.~~

35 ~~(a)(1) The Arkansas Abstractors' Board shall keep a register and shall~~  
36 ~~record the following information in the register:~~

1 ~~(A) The name and the place of business of each applicant~~  
2 ~~for registration and certification;~~

3 ~~(B) A notation of the action taken by the board on each~~  
4 ~~application for registration and each application for certification;~~

5 ~~(C) The date upon which each certificate of registration~~  
6 ~~and each certificate of authority are issued; and~~

7 ~~(D) Such other information as the board deems appropriate.~~

8 ~~(2) The board shall maintain such other records, registers, and~~  
9 ~~files as may be necessary for the proper administration of its duties under~~  
10 ~~this subchapter.~~

11 ~~(b) The board may adopt rules for the proper administration of its~~  
12 ~~powers and duties and the carrying out of the purposes of this subchapter.~~

13  
14 SECTION 6. Arkansas Code Title 19, Chapter 5, Subchapter 12, is  
15 amended to add an additional section to read as follows:

16 19-5-1255. Arkansas Land Title Commission Fund.

17 (a) There is created on the books of the Treasurer of State, the  
18 Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous  
19 fund to be known as the "Arkansas Land Title Commission Fund".

20 (b) The fund shall consist of:

21 (1) All unexpended balances, appropriations, allocations, and  
22 other funds transferred to the fund under this act from the Arkansas  
23 Abstracter's Board, the State Insurance Department, and the State Insurance  
24 Department Trust Fund;

25 (2) Licensing and registration fees, fines, penalties, and any  
26 other moneys collected by the Arkansas Land Title Commission under the  
27 Arkansas Land Title Act, § 23-103-101 et seq.;

28 (3) Grants, contributions, or other transfers made by a person,  
29 organization, or federal or state government entity or official; and

30 (4) Any other funds provided by law.

31 (c) The fund shall be used by the commission to administer the  
32 Arkansas Land Title Act, § 23-103-101 et seq.

33  
34 SECTION 7. Arkansas Code § 23-64-101 is amended to read as follows:  
35 23-64-101. Scope of provisions.

36 This chapter shall apply with respect to any insurer, as to all

1 *insurances other than wet marine, ~~and~~ foreign trade insurance, and title*  
2 *insurance.*

3  
4 *SECTION 8. Arkansas Code § 23-64-301(b), concerning continuing*  
5 *education requirements for an individual who holds a title insurance license,*  
6 *is repealed.*

7 ~~*(b) An individual who holds a title insurance license shall complete*~~  
8 ~~*the minimum number of hours of continuing education courses established by*~~  
9 ~~*rule of the commissioner.*~~

10  
11 *SECTION 9. Arkansas Code § 23-79-102(4), concerning insurance policy*  
12 *provisions that do not apply to title insurance policies, is amended to read*  
13 *as follows:*

14 *(4) Title insurance, except that the following apply to this*  
15 *line:*

16 *(A) Section 23-79-101(1), §§ 23-79-109 – 23-79-111, 23-79-*  
17 *113, 23-79-116, 23-79-118, 23-79-119, and 23-79-202 – 23-79-205; and*

18 *(B) Section 23-79-121, except that the insurer may*  
19 *authorize or require its title agents to provide the policy to the insured*  
20 *and retain a copy of the policy on the insurer's behalf.*

21  
22 *SECTION 10. The introductory language of Arkansas Code § 23-79-138(a),*  
23 *concerning information to accompany insurance policies, is amended to read as*  
24 *follows:*

25 *(a) The following information shall accompany every policy of life*  
26 *insurance, accident and health insurance, property insurance, or casualty*  
27 *insurance, ~~or title insurance~~ issued and covering risks located, resident, or*  
28 *to be performed in the State of Arkansas:*

29  
30 *SECTION 11. Arkansas Code Title 23, Chapter 103, is amended to read as*  
31 *follows:*

32 *Chapter 103*

33 *Title Insurance Arkansas Land Title Act*

34  
35 *Subchapter 1 – General Provisions*

1 23-103-101. Title.

2 This chapter shall be known and may be cited as the "Arkansas Land  
3 Title Act".

4  
5 23-103-102. Legislative findings and intent.

6 (a) The General Assembly finds that it is necessary to regulate the  
7 business of title insurance and the business of abstracting in order to  
8 protect the public health, safety, and welfare.

9 (b) It is the intent of the General Assembly by this chapter to ensure  
10 that only persons that meet and maintain minimum standards of competence and  
11 conduct and comply with this chapter may perform the business of title  
12 insurance and the business of abstracting in this state.

13  
14 23-103-103. Definitions.

15 As used in this chapter:

16 (1)(A) "Abstract of title" means a written, chronological  
17 compilation of all of the materials and facts of record affecting the title  
18 to a specifically described interest in real property that is certified as  
19 accurate by a registered abstracter.

20 (B) "Abstract of title" includes a continuation of the  
21 initial certification of the compilation;

22 (2)(A) "Abstract plant" means a set of records:

23 (i) In which an entry has been made of all documents  
24 or matters that under the law impart constructive notice of matters affecting  
25 the title to any interest in real property that has been filed or recorded in  
26 the county or district for which the abstract plant is maintained; and

27 (ii) That have been continuously maintained from the  
28 time of the earliest records available in the county or district.

29 (B) The records shall consist of an index or indices in  
30 which:

31 (i) Notations of or references to any documents that  
32 describe the real property affected are posted, entered, or otherwise  
33 included according to the real property described; or

34 (ii) Copies or briefs of all documents that describe  
35 the real property affected are sorted and filed according to the real  
36 property described;



1           (3) "Business of abstracting" means the making, compiling, or  
2 selling of abstracts of title or title evidence based upon or purporting to  
3 be based upon information from an abstract plant;

4           (4)(A) "Business of title insurance" means:

5                   (i) Issuing or offering to issue as an insurer or on  
6 behalf of a title insurer, a title insurance policy or closing protection  
7 letter;

8                   (ii) Transacting or proposing to transact any of the  
9 following activities when conducted or performed in contemplation of or in  
10 conjunction with the issuance of a title insurance commitment or title  
11 insurance policy:

12                           (a) Guaranteeing, warranting, or otherwise  
13 insuring the status of title, liens, encumbrances, or other matters of  
14 record;

15                           (b) Executing title insurance commitments or  
16 policies;

17                           (c) Effecting contracts of reinsurance;

18                           (d) Underwriting titles; or

19                           (e) Collecting, disbursing, or receiving title  
20 insurance premiums, unless incidental to serving as a closing agent; or

21                           (iii) Doing or proposing to do the substantial  
22 equivalent of a matter described in this subdivision (4) in a manner designed  
23 to evade this chapter.

24           (B) "Business of title insurance" does not include:

25                           (i) A closing or escrow transaction; or

26                           (ii) The activities of a closing agent or other  
27 party performing a closing or escrow transaction;

28           (5) "Certificate of abstracting authority" means the  
29 authorization granted by the Arkansas Land Title Commission to a person,  
30 firm, or private corporation in possession of an abstract plant to engage in  
31 the business of abstracting in a county or district in this state;

32           (6) "Certificate of registration" means the authorization  
33 granted by the commission under this chapter to compile and certify abstracts  
34 of title in this state;

35           (7) "Closing" means the collection and disbursement of  
36 documents, funds, and title insurance premiums out of escrow in connection

1 with a transaction involving either personal or real property, including the  
2 transfer of title or creation of a lien intended to encumber the title;

3 (8) "Closing agent" means a person that facilitates a closing;

4 (9) "Escrow" means:

5 (A) A deposit of documents or funds, or both, that is held  
6 in trust by a closing agent to facilitate a closing; and

7 (B) The act or process of receiving funds or documents in  
8 trust:

9 (i) For disbursement to facilitate a closing; or

10 (ii) Under an escrow agreement;

11 (10) "Person" means an individual or any partnership,  
12 association, cooperative, corporation, firm, trust, limited liability  
13 company, or other legal entity;

14 (11) "Registered abstracter" means a resident of this state who  
15 has received a certificate of registration under this chapter to prepare  
16 abstracts of title to real property in any county or district in this state;

17 (12) "Risks" means the danger or hazards of a loss or damage by  
18 encumbrance, a defective or invalid title, or adverse claim to title covered  
19 under a title insurance policy;

20 (13) "Title insurance agency" means a person that has an agency  
21 contract under § 23-103-404 with a title insurer and is licensed under § 23-  
22 103-301 et seq;

23 (14)(A) "Title insurance agent" means an individual affiliated  
24 with a title insurance agency who is authorized on behalf of a title insurer  
25 to issue a title insurance commitment or title insurance policy and is:

26 (i) A resident of this state licensed under § 23-  
27 103-301 et seq.; or

28 (ii) A nonresident individual licensed under § 23-  
29 103-301 et seq. who is employed by a title insurance agency.

30 (B) "Title insurance agent" does not include:

31 (i) An individual employed by a title insurance  
32 agency that does not sell or negotiate title insurance but who performs  
33 marketing duties under the supervision of a title insurance agent;

34 (ii) An individual employed by a title insurance  
35 agency that is a closing agent and does not solicit, sell, or negotiate title  
36 insurance; or

1 (iii) A closing agent that provides closing services  
2 but does not otherwise engage in the business of title insurance in this  
3 state;

4 (15) "Title insurance commitment" means a document or binder  
5 issued before a title insurance policy is issued that contains the  
6 requirements, terms, conditions, exceptions, exclusions, and any other  
7 matters incorporated by reference under which a title insurer is willing to  
8 issue a title insurance policy;

9 (16) "Title insurance policy" means a contract, including any  
10 coverage, enhancements to coverage, or endorsements, that insures or  
11 indemnifies an owner or another person with a lawful interest in personal  
12 property or real property against loss or damage arising from risks that  
13 existed on, before, or after the policy date and that are not specifically  
14 excepted or excluded from coverage, including without limitation:

15 (A) Defects, liens, or encumbrances;

16 (B) Unmarketability of the insured title;

17 (C) Invalidity or unenforceability of liens or  
18 encumbrances;

19 (D) Title being vested other than as stated in the policy;

20 (E) Lack of a legal right of access to the land that is  
21 part of the insured title in a policy relating to real property;

22 (F) Lack of priority of the lien of any insured mortgage  
23 over any statutory lien for services, labor, or materials as specifically  
24 described in the policy;

25 (G) Invalidity or unenforceability of any assignment of an  
26 insured mortgage subject to certain conditions; or

27 (H) The priority of any lien or encumbrance over the lien  
28 of an insured mortgage;

29 (17)(A) "Title insurance premium" means the funds paid to a  
30 title insurer and its appointed title insurance agency as consideration for  
31 the risks assumed by the title insurer under a title insurance policy,  
32 including all amounts retained by the title insurance agency under the title  
33 insurance agency's contract with the title insurer.

34 (B) For purposes of calculating premium tax under § 26-57-  
35 603, "title insurance premium" means the gross premium upon which the amount  
36 retained by the title insurance agency and title insurer is based as

1 specified by the title insurance agency contract required by § 23-103-404.

2 (C) "Title insurance premium" does not include charges for  
3 the performance of services related or incidental to title insurance or  
4 closings that are disclosed to the person charged, including without  
5 limitation:

6 (i) Title search, abstracting, or title examination  
7 fees;

8 (ii) Title opinion fees;

9 (iii) Document preparation fees;

10 (iv) Escrow or closing fees;

11 (v) Notary fees;

12 (vi) Attorney's fees;

13 (vii) Fees incurred to cure defects in title;

14 (viii) Tax report or tax certification fees;

15 (ix) Title commitment or binder fees;

16 (x) Title services fees;

17 (xi) Processing fees;

18 (xii) Courier fees; and

19 (xiii) Fees incident to the issuance of a title  
20 insurance commitment or policy; and

21 (18) "Title insurer" means a company authorized under the laws  
22 of this state to transact the business of title insurance as an insurer.

23  
24 23-103-104. Violations.

25 It is unlawful for a person to:

26 (1) Engage in the business of title insurance unless the person  
27 is a title insurance agent, title insurance agency, or title insurer;

28 (2) Engage in the business of abstracting unless the person is:

29 (A) A registered abstracter;

30 (B) The holder of a certificate of abstracting authority;

31 or

32 (C) A clerical or stenographic assistant permitted to work  
33 in the business of abstracting under § 23-103-510; or

34 (3) Violate this chapter:

35 (A) Individually; or

36 (B) As an officer, agent, or member of a business entity

1 by participating in or being an accessory to a violation of this chapter by  
2 the business entity.

3  
4 23-103-105. Penalties.

5 In addition to any other penalty or sanction provided by another law of  
6 this state, a violation of a statute or rule enforceable by the Arkansas Land  
7 Title Commission or the Executive Director of the Arkansas Land Title  
8 Commission is punishable by one (1) or more of the following:

9 (1) The refusal, suspension, revocation, or nonrenewal of a  
10 license, certificate of registration, or certificate of abstracting  
11 authority;

12 (2) A fine no greater than one thousand dollars (\$1,000) per  
13 violation, not to exceed fifty thousand dollars (\$50,000) in any six-month  
14 period;

15 (3) A temporary or permanent injunction; and

16 (4) The sanctions provided in § 23-103-208.

17  
18 23-103-106. Confidential records.

19 (a) Except as provided in subsection (c) of this section, the  
20 following records of the Arkansas Land Title Commission and the Executive  
21 Director of the Arkansas Land Title Commission shall be privileged and  
22 confidential, are exempt from the Freedom of Information Act of 1967, § 25-  
23 19-101 et seq., and shall not be exhibited or revealed to the public except  
24 as stated in this section or in accordance with the commission's rules:

25 (1) Audit or investigative reports filed with the commission or  
26 the executive director;

27 (2) Records disclosing information obtained from audits or  
28 investigations;

29 (3) Investigations and reports revealing facts concerning a  
30 title insurance agent or title insurance agency or the customers of a title  
31 insurance agent or title insurance agency;

32 (4) Financial statements submitted to the commission for any  
33 purpose; and

34 (5) Work papers submitted to the commission as evidence of the  
35 requirements for licensure under this chapter.

36 (b) The executive director shall be the custodian of the commission's

1 records and shall not disclose a record of the commission to:

2 (1) Persons other than commission members except as provided by  
3 this section; or

4 (2) A member of the commission if disclosure would give the  
5 member a competitive advantage or disclose a trade secret of a title insurer,  
6 title insurance agency, or holder of a certificate of abstracting authority  
7 unless and only to the extent required for the commission to:

8 (A) Take appropriate action under § 23-103-108; or

9 (B) Determine the commission's response to a request for  
10 production of documents or a subpoena, writ, or other court process.

11 (c) Confidential records under subsection (a) of this section may be  
12 disclosed by the executive director:

13 (1)(A) Under a validly issued subpoena and in the interest of  
14 justice.

15 (B) The executive director may waive the privilege created  
16 by this section and produce audit and investigation reports and other related  
17 documents under the provisions of a protective order entered by a court or  
18 administrative tribunal of competent jurisdiction when the order is designed  
19 to protect the confidential nature of the information disclosed from public  
20 dissemination;

21 (2) If the confidential records contain official actions of the  
22 commission or the executive director, and the executive director determines  
23 that the disclosure would not give advantage to a competitor or adversely  
24 affect the safety and soundness of a title insurance agency; or

25 (3) To state and federal regulatory agencies with jurisdiction  
26 over insurance companies or financial institutions or entities engaged in  
27 financial activities.

28  
29 23-103-107. No civil liability – Exceptions.

30 (a) Unless a person acted fraudulently or in bad faith, a civil action  
31 shall not be filed against the person for supplying any information:

32 (1) Relating to suspected fraudulent insurance acts furnished to  
33 or received from law enforcement officials or their agents and employees;

34 (2) Relating to suspected fraudulent insurance acts furnished to  
35 or received from other persons subject to the provisions of this chapter; or

36 (3) Furnished in reports to the Arkansas Land Title Commission,

1 the Executive Director of the Arkansas Land Title Commission, or an  
2 organization established to detect and prevent fraudulent insurance acts or  
3 the agents, employees, or designees of the organization.

4 (b) In the absence of fraud or bad faith, the commission and its  
5 employees are not subject to liability or suit for publishing a report or  
6 bulletin related to the official activities of the commission.

7 (c) This section does not abrogate or modify a common law or statutory  
8 privilege or immunity available to a person.

9  
10 23-103-108. Rules.

11 The Arkansas Land Title Commission may promulgate rules to implement  
12 this chapter.

13  
14 Subchapter 2 – Arkansas Land Title Commission

15  
16 23-103-201. Creation – Members.

17 (a)(1) The Arkansas Land Title Commission is created, to be composed  
18 of the Insurance Commissioner or his or her designee and six (6) commission  
19 members appointed by the Governor, subject to confirmation by the Senate.

20 (2)(A)(i)(a)(1) Four (4) commission members shall be title  
21 insurance agents who have been practicing for at least five (5) years before  
22 their appointment who are chosen, except as provided in subdivision  
23 (a)(2))(i)(b) of this section, from a list of the names of five (5) members  
24 of the Arkansas Land Title Association who qualify to serve on the  
25 commission.

26 (2) After the initial appointments are  
27 confirmed, the list shall be submitted to the Governor at least annually by  
28 the association on or before January 15.

29 (b) One (1) practicing title insurance agent  
30 may be appointed by the Governor from the state at large.

31 (ii) The failure to actively practice as a title  
32 insurance agent for more than sixty (60) days shall result in automatic  
33 disqualification from the commission.

34 (B)(i) Except for the Governor's one (1) at-large  
35 appointment, a vacancy among the practicing title insurance agents shall be  
36 filled from the list submitted by the association.

1 (ii) If necessary to fill a vacancy on the  
2 commission, the Governor may request the association to submit additional  
3 names of members of the association who are eligible to serve on the  
4 commission.

5 (iii) A practicing title insurance agent shall not  
6 be denied the opportunity to submit his or her name for consideration to fill  
7 the one (1) at-large appointment to the commission based solely upon  
8 membership or lack of membership in the association.

9 (C) The four (4) commission members who are practicing  
10 title insurance agents:

11 (i) Shall not include more than two (2) residents of  
12 the same congressional district;

13 (ii) Shall be representative of the various title  
14 insurance agencies located in this state, including without limitation  
15 geographic location, ownership structure, total number of employees, and size  
16 of market served; and

17 (iii) Shall include:

18 (a) An attorney licensed in Arkansas whose  
19 principal place of business is located in a county that is not ranked among  
20 the ten (10) most populous counties in the state according to the most recent  
21 federal decennial census, unless an attorney who meets these requirements and  
22 is willing to serve cannot be found;

23 (b) A registered abstractor; and

24 (c) An individual who represents a title  
25 insurance agency in an affiliated business arrangement as defined in 12  
26 U.S.C. § 2602(7), as it existed on March 1, 2015.

27 (3) One (1) commission member shall be a representative of the  
28 financial services industry who is familiar with the business of title  
29 insurance.

30 (4) One (1) commission member shall be an attorney licensed and  
31 residing in Arkansas who:

32 (A) Actively practices in the field of real estate law and  
33 is familiar with the business of title insurance;

34 (B) Does not and whose firm does not have an affiliation  
35 with or financial interest in a title insurance agency; and

36 (C) Is appointed by the Governor from a list of two (2)



1 nominees submitted by the Arkansas Bar Association.

2 (5) No more than one (1) position on the commission shall be  
3 held by the same person or representatives of the same entity, affiliate, or  
4 holding company.

5 (6) All commission members shall be full voting members.

6 (b) The Governor may remove a commission member for cause.

7 (c) A commission member other than the Insurance Commissioner or his  
8 or her designee shall be a resident of the State of Arkansas who is at least  
9 thirty (30) years of age.

10 (d)(1)(A) Initial terms for the commission members who are practicing  
11 title insurance agents shall be determined by lot as follows:

12 (i) One (1) title insurance agent shall serve two  
13 (2) years;

14 (ii) One (1) title insurance agent shall serve three  
15 (3) years;

16 (iii) One (1) title insurance agent shall serve four  
17 (4) years; and

18 (iv) One (1) title insurance agent shall serve five  
19 (5) years.

20 (B) The commission member who represents attorneys shall  
21 serve an initial term of two (2) years.

22 (C) The commission member who represents the financial  
23 services industry shall serve an initial term of three (3) years.

24 (2) The succeeding term of a commission member other than the  
25 Insurance Commissioner or his or her designee shall be five (5) years.

26 (e) Upon expiration of their terms, commission members shall continue  
27 to hold office until the appointment and qualification of their successors.

28 (f) A person shall not serve as a commission member for more than  
29 three (3) consecutive terms.

30 (h) A commission member other than the Insurance Commissioner or his  
31 or her designee may receive expense reimbursement and stipends in accordance  
32 with § 25-16-901 et seq.

33  
34 23-103-202. Meetings – Commission action.

35 (a) Annually upon the qualification of each newly appointed member of  
36 the Arkansas Land Title Commission, the commission shall meet and organize by

1 selecting from its members a chair and vice chair.

2 (b) A simple majority of commission members shall constitute a quorum  
3 to hold commission meetings.

4 (c) The commission shall meet as often as necessary or desirable in  
5 order to conduct its business.

6 (d)(1) Except as provided by subdivision (d)(2) of this section, the  
7 vote of four (4) commission members at a commission meeting is required for  
8 commission action.

9 (2) The imposition of sanctions under this chapter shall require  
10 the affirmative vote of the Insurance Commissioner and at least four (4)  
11 other commission members at a commission meeting.

12  
13 23-103-203. Executive Director – Employees.

14 (a) The Arkansas Land Title Commission shall employ an individual as  
15 the Executive Director of the Arkansas Land Title Commission and may employ  
16 additional staff to implement and administer this chapter.

17 (b) The executive director shall:

18 (1) Be a resident of this state;

19 (2) Have the duties, authority, and responsibilities:

20 (A) Designated by the commission;

21 (B) Specified in § 23-103-205; and

22 (C) Necessary to carry out a duty designated by the  
23 commission or specified in § 23-103-205;

24 (3) Have not less than five (5) years' experience in the  
25 business of title insurance, unless the commission is unable to find a  
26 qualified candidate with five years' experience; and

27 (4) Not be employed by or have a financial interest in:

28 (i) A company subject to licensure under § 23-103-  
29 301 et seq. that is actively engaged in the business of title insurance; or

30 (ii) A title insurer operating in this state under a  
31 certificate of authority issued under § 23-63-201.

32 (c) The executive director serves at the pleasure of the commission.

33 (d) The commission shall fix the salaries of the executive director  
34 and commission employees.

35  
36 23-103-204. Commission powers and duties – Records.

1 (a) The Arkansas Land Title Commission:

2 (1) Is charged with the general supervision of persons licensed,  
3 registered, or certified under this chapter, the execution of the laws  
4 relating to the business of title insurance and the business of abstracting,  
5 the implementation and administration of this chapter, and any other duties  
6 prescribed by law; and

7 (2) May institute suits or other legal proceedings to enforce  
8 this chapter and do all things necessary or convenient to implement and  
9 administer this chapter.

10 (b) The commission shall maintain written or electronic records  
11 containing:

12 (1) A list of the names and addresses of all active and inactive  
13 persons that have received a license, certificate of registration, or  
14 certificate of abstracting authority under this chapter;

15 (2) A register of each applicant for a license, certificate of  
16 registration, or certificate of abstracting authority that includes:

17 (A) The name and place of business of the applicant;

18 (B) The action taken by the commission on each  
19 application; and

20 (C) If the application is granted, the date that the  
21 license, certificate of registration, or certificate of abstracting authority  
22 is issued.

23 (c) The commission may:

24 (1) Administer oaths and subpoena witnesses and documents  
25 through the Executive Director of the Arkansas Land Title Commission:

26 (A) In cases of administrative adjudication under the  
27 Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

28 (B) For a hearing to determine whether a cease and desist  
29 order should be issued under this chapter; or

30 (C) As provided by this chapter;

31 (2) Adopt a seal;

32 (3) Publish in writing or in electronic format the names of all  
33 persons who have been sanctioned by the commission and information relative  
34 to the enforcement of this chapter of interest to the public;

35 (4)(A) Conduct or assist in conducting educational seminars that  
36 are open to all holders of a license, certificate of registration, or

1 certificate of abstracting authority under this chapter.

2 (B) The commission may incur and pay the reasonable and  
3 necessary expenses of the educational seminars;

4 (5) Impose reasonable charges for providing materials and  
5 performing related services;

6 (6) Contract and pay for services to administer this chapter,  
7 including without limitation investigation, examination, actuarial,  
8 technical, and other professional services; and

9 (7) Require consent to and conduct criminal background checks on  
10 all applicants, licensees, registered abstracters, and holders of  
11 certificates of abstracting authority.

12 (d) A copy of a record or paper of the commission that is certified  
13 and authenticated by the commission shall be treated as an original and  
14 received in evidence in all courts.

15  
16 23-103-205. Powers and duties of executive director.

17 (a) In addition to any other powers or duties conferred by this  
18 chapter, the Executive Director of the Arkansas Land Title Commission may:

19 (1) Cooperate with the State Insurance Department, including  
20 without limitation sharing records and information consistent with the  
21 purposes of this chapter; and

22 (2)(A) Obtain a state criminal background check and a national  
23 fingerprint-based criminal background check performed by the Federal Bureau  
24 of Investigation in compliance with federal law and regulations for all  
25 applicants:

26 (i) Selected for employment as an examiner or  
27 otherwise for the Arkansas Land Title Commission or the executive director;  
28 or

29 (ii) For a license, certificate of registration, or  
30 certificate of abstracting authority.

31 (B) The application shall include the applicant's consent  
32 to a state criminal background check and a national fingerprint-based  
33 criminal background check performed by the Federal Bureau of Investigation in  
34 compliance with federal law and regulations.

35 (C) The commission and executive director shall treat  
36 information obtained from a criminal background check under this section as

1 confidential and shall disclose the information only to the applicant.

2 (b) This section does not modify the confidentiality provisions of §  
3 23-103-106.

4  
5 23-103-206. Disposition of funds.

6 Except as otherwise provided in this chapter, all fees, charges, fines,  
7 and penalties collected by the Arkansas Land Title Commission shall be  
8 deposited into the Arkansas Land Title Commission Fund and used by the  
9 commission for the requirements, purposes, and expenses of the commission  
10 under this chapter.

11  
12 23-103-207. Fees.

13 (a) The Arkansas Land Title Commission shall establish administrative  
14 procedures for setting, charging, and collecting reasonable fees for the  
15 operation of the commission.

16 (b) The commission may direct applicants to pay the actual cost of an  
17 examination fee directly to a testing service engaged by the commission to  
18 administer an examination.

19 (c) Fees for a state or federal criminal background check shall not  
20 exceed the cost to the commission of the state or federal criminal background  
21 check.

22  
23 23-103-208. Investigation of complaint – Sanctions – Penalties.

24 (a)(1) The Arkansas Land Title Commission, upon receipt of a verified,  
25 written complaint that a violation of this chapter has occurred or upon its  
26 own motion, shall cause the Executive Director of the Arkansas Land Title  
27 Commission to investigate an alleged violation of this chapter.

28 (2) The executive director may hire an independent investigator  
29 to conduct all or part of the investigation and report his or her findings to  
30 the executive director.

31 (b) If the executive director determines that a prima facie case of a  
32 violation of this chapter exists, the executive director shall initiate the  
33 procedures for an administrative adjudication under the Arkansas  
34 Administrative Procedure Act, § 25-15-201 et seq.

35 (c) If the commission determines that:

36 (1)(A) Insufficient proof of a violation of this chapter exists,

1 the commission shall dismiss the complaint.

2 (B) The person that filed the complaint may appeal the  
3 decision under the Arkansas Administrative Procedure Act, § 25-15-201 et  
4 seq.; or

5 (2) Sufficient proof of a violation of this chapter exists, the  
6 commission shall determine an appropriate sanction, if any, including without  
7 limitation, one (1) or more of the following sanctions or requirements:

8 (A) A reprimand or censure;

9 (B) A suspension, revocation, denial, or refusal to renew  
10 a license, certificate of registration, or certificate of abstracting  
11 authority;

12 (C) A penalty not to exceed one thousand dollars (\$1,000)  
13 for each violation;

14 (D) Completion of appropriate educational programs or  
15 courses;

16 (E) Successful completion of an appropriate licensing  
17 examination;

18 (F) Conditions or restrictions upon the person's license,  
19 certificate of registration, or certificate of abstracting authority; and

20 (G) Payment of restitution, damages, or other penalties  
21 appropriate to the circumstances of the case that would:

22 (i) Achieve the desired disciplinary purpose;

23 (ii) Compensate or reimburse an injured party or the  
24 commission; or

25 (iii) Promote the regulation of the business of  
26 abstracting or business of title insurance.

27 (d) The commission may:

28 (1) Suspend the imposition of a sanction imposed upon  
29 appropriate terms and conditions; and

30 (2) File suit in Pulaski County Circuit Court or the circuit  
31 court of the county where a sanctioned holder of a license, certificate of  
32 registration, or certificate of abstracting authority resides or does  
33 business to collect a penalty assessed under this chapter if the penalty is  
34 not paid as ordered by the commission.

35  
36 23-103-209. Alternate sanction procedure – Citations.

1 (a) In lieu of the procedure contained in § 23-103-208, the Executive  
2 Director of the Arkansas Land Title Commission may issue a citation imposing:

3 (1) A penalty of not more than one hundred dollars (\$100) to a  
4 title insurance agent or registered abstractor who:

5 (A) Fails to complete annual education requirements; or

6 (B) Fails to complete post-licensure education  
7 requirements by the established deadline; or

8 (2) A penalty of not more than two hundred fifty dollars (\$250)  
9 to a title insurance agent or registered abstractor if the title insurance  
10 agent or registered abstractor performs activities that require an active  
11 license or certificate of registration while his or her license is expired.

12 (b) The citation under this section shall include:

13 (1) The name, title, mailing address on file with the Arkansas  
14 Land Title Commission, and license number or number of the certificate of  
15 registration of the licensee or registrant;

16 (2) The specific violation and related statute, regulation, or  
17 rule;

18 (3) The time and date the citation is issued;

19 (4) The amount of the penalty;

20 (5) The deadline of thirty (30) days from issuance of the  
21 citation and procedure to either:

22 (A) Pay the citation without further penalty; or

23 (B) Dispute the citation;

24 (6) A statement that the amount of the penalty and the findings  
25 of the executive director as to the facts are considered accurate,  
26 conclusive, finally adjudicated, and nonappealable if a verified written  
27 complaint contesting the citation is not filed with the commission within  
28 thirty (30) days of the citation's issuance; and

29 (7) A signature line for the licensee or registrant to accept  
30 the penalty without filing a written dispute.

31 (c) A licensee who is issued a citation under this section shall  
32 within thirty (30) days of the issuance of the citation:

33 (1) Accept the conditions of the citation by signing and  
34 returning the citation to the commission accompanied by the penalty payment;  
35 or

36 (2) File a verified written complaint under § 23-103-208

1 contesting the citation.

2 (d) The commission may treat the failure to respond within thirty (30)  
3 days of the issuance of the citation under this section as a violation of  
4 this chapter punishable by the penalties provided in § 23-103-208.

5 (e)(1) If a licensee or registrant does not dispute the citation under  
6 this section by filing a verified complaint under § 23-103-208, the findings  
7 contained in the citation are deemed accurate, conclusive, finally  
8 adjudicated, and nonappealable.

9 (2) If a licensee or registrant disputes the citation by timely  
10 filing a verified written complaint with the commission, the licensee or  
11 registrant shall be provided a hearing before the commission under § 23-103-  
12 208.

13 (f) The commission may modify or vacate a citation issued under this  
14 section with or without a hearing.

15  
16 23-103-210. Cease and desist orders.

17 (a) The Arkansas Land Title Commission may after at least ten (10)  
18 days' notice and a hearing issue a cease and desist order against a title  
19 insurance agent, a registered abstractor, the holder of a certificate of  
20 abstracting authority, or an owner, officer, director, or employee of a title  
21 insurance agency to restrain:

22 (1) A violation of this chapter;

23 (2) A criminal or fraudulent act;

24 (3) A violation of state or federal law;

25 (4) An incompetent, reckless, or dishonest act; or

26 (5) An act that jeopardizes the safety or soundness of a title  
27 insurance agency, title insurer, or abstract plant.

28 (b)(1) The cease and desist order issued under this section may be  
29 appealed to the Circuit Court of Pulaski County or the circuit court of the  
30 county in which a person subject to the cease and desist order resides within  
31 thirty (30) days of the order by posting a bond determined by the court to be  
32 sufficient to pay all damages which may accrue based upon the facts and  
33 circumstances that prompted the issuance of the cease and desist order.

34 (2) Except as provided in subdivision (b)(1) of this section,  
35 the appeal shall be governed by § 25-15-212.

36 (c) The commission may assess a fine not to exceed one thousand



1 dollars (\$1,000) per day payable to the commission for each day a person  
2 refuses or fails to comply with the terms of a cease and desist order issued  
3 under this section.

4 (d) If an appeal of the cease and desist order is not timely filed,  
5 the order may not be appealed and is binding upon each person subject to the  
6 order until the order is terminated by the commission.

7  
8 23-103-211. Injunctions.

9 With the approval of the Arkansas Land Title Commission ,the Executive  
10 Director of the Arkansas Land Title Commission may seek a temporary or  
11 permanent injunction in Pulaski County Circuit Court or the circuit court of  
12 the county in which one (1) or more defendants reside against a title  
13 insurance agent, a registered abstracter, the holder of a certificate of  
14 abstracting authority, or an owner, officer, director, or employee of a title  
15 insurance agency to restrain:

16 (1) A violation of this chapter;

17 (2) A criminal or fraudulent act;

18 (3) An act that jeopardizes the safety or soundness of a title  
19 insurance agency, title insurer, or abstract plant; or

20 (4) A cease and desist order issued under § 23-103-210.

21  
22 23-103-212. Subpoenas and subpoenas duces tecum.

23 (a) The Arkansas Land Title Commission through the Executive Director  
24 of the Arkansas Land Title Commission may issue subpoenas and subpoenas duces  
25 tecum in connection with both its investigations and hearings.

26 (b) A subpoena duces tecum issued under this section may require the  
27 production of any book, writing, document, or other paper or electronic  
28 record or other evidence that is germane to an investigation or hearing  
29 conducted by the commission.

30 (c)(1) Service of a subpoena issued under this section and the fees  
31 and mileage of officers serving the subpoena and of witnesses appearing in  
32 answer to the subpoena shall be as provided by law for proceedings in civil  
33 cases in the circuit courts of this state.

34 (2)(A) The executive director shall issue a subpoena or subpoena  
35 duces tecum upon the request of any party to a hearing before the commission.

36 (B) The fees and mileage of officers serving the subpoena

1 and of witness shall be paid by the party requesting the subpoena.

2 (d)(1) If a person fails to comply with a subpoena or subpoena duces  
3 tecum served under this section, the executive director may apply to the  
4 circuit court of the county in which the commission is conducting its  
5 investigation or hearing for an order to compel the production of the  
6 person's testimony, records, or other evidence.

7 (2) The failure to comply with the subpoena or subpoena duces  
8 tecum served under this section is punishable as contempt of court.

9  
10 Subchapter 3 – Licensing of Title Insurance Agencies and Title Insurance  
11 Agents

12  
13 23-103-301. License required – Authorization for temporary license.

14 (a) Unless licensed under this chapter, a person shall not issue a  
15 title insurance policy, issue a title insurance commitment, transact the  
16 business of title insurance, or otherwise act as a title insurance agency or  
17 title insurance agent.

18 (b)(1) A licensee or applicant for licensure under this subchapter  
19 shall notify the Arkansas Land Title Commission in writing within thirty (30)  
20 days of the filing of a criminal charge, a conviction or plea of guilty or  
21 nolo contendere to a crime, or the filing of a bankruptcy proceeding by or  
22 against the licensee or applicant.

23 (2) The failure to so notify the commission under subdivision  
24 (b)(1) of this section may result in the immediate suspension, revocation, or  
25 denial of a license under this subchapter.

26 (c) To provide for the continuing temporary operation of a title  
27 insurance agency upon the closing of the title insurance agency or if a title  
28 insurance agency does not have a licensed title insurance agent due to the  
29 death, resignation, termination, or incapacity of its title insurance agents,  
30 the commission may issue a temporary license to a title insurance agency  
31 under the direction of a person approved by the commission upon the time  
32 limitations and other conditions the commission deems appropriate.

33 (d) If the commission issues a license under this subchapter by  
34 mistake or through inadvertence, the commission may:

35 (1) Revoke the license with or without a hearing; and

36 (2) Permit the licensee to reapply for a license upon terms the

1 commission deems appropriate.

2  
3 23-103-302. Issuance or denial of license.

4 (a) The Arkansas Land Title Commission shall issue a title insurance  
5 agency license to an applicant that:

6 (1) Is authorized to do business in this state;

7 (2) Designates a title insurance agent responsible for the title  
8 insurance agency's compliance with this chapter; and

9 (3) Pays the application fees prescribed by the commission.

10 (b) The commission shall issue a title insurance agent license to an  
11 applicant who:

12 (1) Is at least eighteen (18) years of age;

13 (2) Satisfies the education and experience requirements  
14 prescribed by the commission;

15 (3) Successfully completes the examination administered or  
16 approved by the commission;

17 (4) Demonstrates no record of unprofessional conduct;

18 (5)(A) Is a resident of this state or of a city or town through  
19 which passes the boundary of this state, and has been a resident for not less  
20 than the thirty (30) days immediately prior to the date of application for  
21 the title insurance agent license.

22 (B) However, upon written request by the applicant, the  
23 commission may waive the thirty-day residency requirement as to any applicant  
24 for a title insurance agent license who is a bona fide resident of this state  
25 and who furnishes proof satisfactory to the commission that he or she is and  
26 intends to be a permanent resident of the state;

27 (6) Is deemed by the commission to be competent, trustworthy,  
28 financially responsible, and of good personal and business reputation;

29 (7) Consents to and completes a criminal history background  
30 check through the Department of Arkansas State Police under § 23-103-311 that  
31 is satisfactory to the commission; and

32 (8) Pays the application and examination fees prescribed by the  
33 commission.

34 (c) The commission shall deny a license to any applicant that does not  
35 meet the requirements of this section.

36

1 23-103-303. Education and experience requirements.

2 (a) The Arkansas Land Title Commission shall promulgate rules  
3 containing the examination, education, experience, and continuing education  
4 requirements, including the standards and procedures for approval of  
5 education programs, for persons licensed or to be licensed under this  
6 subchapter.

7 (b) An attorney licensed and in good standing with the Supreme Court  
8 to practice law who resides in this state and who submits an affidavit on a  
9 form specified by the commission attesting to at least one (1) year of  
10 experience in the regular practice of real estate law is exempt from the  
11 experience and examination requirements of this subchapter.

12 (c) Only courses, schools, seminars, and other educational programs  
13 approved by the commission satisfy the licensing standards and continuing  
14 education requirements of this subchapter.

15 (d) The continuing education requirements of this subchapter do not  
16 apply to:

17 (1) A licensee over sixty-five (65) years of age; or

18 (2) An attorney licensed and in good standing with the Supreme  
19 Court to practice law who resides in this state.

20  
21 23-103-304. Application procedure – Licensing examination required.

22 (a)(1) Applications for licensure under this subchapter shall be  
23 submitted on forms prescribed by the Arkansas Land Title Commission.

24 (2) The commission may require any information and documentation  
25 needed to determine if the applicant meets the criteria for licensure.

26 (3) Each applicant shall pay the application fee and examination  
27 fee prescribed by the commission.

28 (4) All application materials and records submitted to the  
29 commission shall be retained by the commission.

30 (5) Upon notice from the commission that an applicant has  
31 provided all required information and documentation to the commission and the  
32 process for obtaining a criminal background check has been initiated, the  
33 applicant may sit for the examination.

34 (b)(1) An applicant who successfully completes the examination shall  
35 pay within ninety (90) days from the date of the examination the license fee  
36 prescribed by the commission.

1           (2) The applicant's failure to pay the license fee within ninety  
2 (90) days from the date of the examination shall:

3           (A) Invalidate the examination and criminal background  
4 check results; and

5           (B) Require the applicant to reapply as an original  
6 applicant for licensure.

7  
8           23-103-305. License expiration and renewal.

9           (a) Each license issued under this subchapter shall expire on a date  
10 established by the Arkansas Land Title Commission.

11           (b)(1) A licensee under this subchapter shall complete annually the  
12 number of classroom hours of continuing education prescribed by the  
13 commission.

14           (2) If a licensee files for renewal of a license but fails to  
15 provide proof of continuing education, the licensee's license is inactive  
16 until proof is provided to the commission.

17           (c)(1) To renew or reactivate a license issued under this subchapter,  
18 a licensee shall complete the number of classroom hours of continuing  
19 education prescribed by the commission.

20           (2) The commission may waive all or part of the requirements of  
21 subdivision (c)(1) of this section if a licensee is unable to complete the  
22 continuing education due to extenuating circumstances.

23           (d)(1) For each active licensee under this subchapter, the commission  
24 shall issue a new license for each ensuing renewal period in the absence of a  
25 reason or condition that may warrant the refusal of a license, upon receipt  
26 of the:

27           (A) Written request for license renewal before the  
28 expiration of the license upon forms provided by the commission; and

29           (B) Renewal fee prescribed by the commission.

30           (2)(A) A licensee who does not wish to engage in the business of  
31 title insurance may renew a license on inactive status in the absence of a  
32 reason or condition that may warrant the refusal of a license upon receipt of  
33 the:

34           (i) Written request of the applicant before the  
35 expiration of the license upon forms provided by the commission; and

36           (ii) Renewal fee prescribed by the commission.

1 (B) The commission may limit the number of renewal periods  
2 in which a license may be renewed on inactive status.

3 (3) An application for renewal filed after the date established  
4 by the commission to renew a license is treated as an application to renew an  
5 expired license.

6 (e) A licensee under this subchapter that permits a license to expire  
7 within a grace period established by the commission may renew the license  
8 without taking an examination if the licensee:

9 (1) Provides the information required by the commission under  
10 this subchapter, including proof of completion of appropriate continuing  
11 education requirements; and

12 (2) Pays the fee required by the commission.

13  
14 23-103-306. Criminal background check.

15 (a)(1) The Arkansas Land Title Commission shall require each original  
16 applicant, and any renewal applicant for a license issued by the commission  
17 to apply to the Identification Bureau of the Department of Arkansas State  
18 Police for a criminal background check to be conducted by the Identification  
19 Bureau of the Department of Arkansas State Police.

20 (2)(A) An applicant may sit for the examination required by this  
21 subchapter while awaiting the results of the criminal background check.

22 (B) A license shall not be issued to an applicant until  
23 the commission receives and approves the criminal background check.

24 (b) The applicant under this subchapter shall sign a release of  
25 information to the commission and shall be responsible for the payment of any  
26 fee associated with the criminal background check.

27 (c) Upon completion of the criminal background check, the  
28 Identification Bureau of the Department of Arkansas State Police shall  
29 forward to the commission all releasable information obtained concerning the  
30 applicant under this subchapter.

31 (d) Except as provided in subsection (e) of this section, a person  
32 shall not receive or hold a license issued by the commission under this  
33 subchapter if the person has been convicted of or pleaded guilty or nolo  
34 contendere to a felony or a crime involving moral turpitude, fraud,  
35 dishonesty, untruthfulness, or untrustworthiness.

36 (e)(1) The provisions of subsection (d) of this section may be waived

1 by the commission upon the request of:

2 (A) An affected applicant for licensure under this  
3 subchapter; or

4 (B) The person holding a license issued under this  
5 subchapter subject to sanctions.

6 (2) Circumstances for which a waiver may be granted include  
7 without limitation, the following:

8 (A) The age at which the crime was committed;

9 (B) The circumstances surrounding the crime;

10 (C) The length of time since the crime;

11 (D) Subsequent work history;

12 (E) Employment references;

13 (F) Character references; and

14 (G) Other evidence demonstrating that the applicant does  
15 not pose a threat to the public.

16 (f)(1) Any information received by the commission from the  
17 Identification Bureau of the Department of Arkansas State Police pursuant to  
18 this section shall not be available for examination except by the commission,  
19 the affected applicant for licensure or the applicant's authorized  
20 representative, or by the person whose license is subject to sanctions or the  
21 person's authorized representative.

22 (2) A record, file, or document shall not be removed from the  
23 custody of the Department of Arkansas State Police except as provided to the  
24 commission, applicant, or applicant's authorized representative.

25 (g) Any information made available to the affected applicant for  
26 licensure under this subchapter or the person whose license is subject to  
27 sanctions shall be information pertaining to that person only.

28 (h) Rights of privilege and confidentiality established in this  
29 section shall not extend to any document created for purposes other than the  
30 background check under this section.

31 (i) The commission may adopt rules and regulations to fully implement  
32 this section.

33  
34 Subchapter 4 – ~~Arkansas Title Insurance Act~~ Regulation of the  
35 business of title insurance – Requirements – Prohibited conduct.

36

1           23-103-401. ~~Title~~ Authorized activities of title insurers.

2           ~~This subchapter shall be known and may be cited as the "Arkansas Title~~  
3 ~~Insurance Act".~~

4           (a) Subject to the exceptions and restrictions contained in this  
5 subchapter, a title insurer may:

6                     (1) Transact only the business of title insurance;

7                     (2) Reinsure title insurance policies; and

8                     (3) Unless prohibited by the Arkansas Land Title Commission or  
9 the Insurance Commissioner, perform or cause to be performed ancillary  
10 activities whether or not in contemplation of or in conjunction with the  
11 issuance of a title insurance commitment or title insurance policy, including  
12 without limitation:

13                             (A) Underwriting title to and furnishing related  
14 information about personal property or real property; and

15                             (B) Procuring and furnishing information about relevant  
16 personal property.

17           (b) A title insurer may issue as an insurer:

18                     (1) Closing protection; or

19                     (2) A title insurance policy, if issued on behalf of the title  
20 insurer by a person licensed under § 23-103-301 et seq.

21  
22           23-103-402. ~~Definitions~~ Title insurers – Limitation of authority –  
23 Powers.

24           ~~As used in this subchapter:~~

25                     ~~(1) "Closing" means the collection and disbursement of funds and~~  
26 ~~title insurance premiums out of escrow in connection with a transaction~~  
27 ~~involving either personal or real property, including the transfer of title~~  
28 ~~or creation of a lien on the title;~~

29                     ~~(2) "Closing agent" means a person that facilitates a closing;~~

30                     ~~(3) "Depositor" means the person providing funds or documents for~~  
31 ~~delivery to a depository in connection with a transaction involving real~~  
32 ~~property;~~

33                     ~~(4) "Depository" means a title insurer, title insurance agency,~~  
34 ~~closing agent, or qualified financial institution receiving a deposit of~~  
35 ~~funds or documents;~~

36                     ~~(5) "Escrow" means the act or process of providing closing~~



1 ~~services or services pursuant to an escrow agreement;~~

2 ~~(6) "Escrow account" means the demand deposit account maintained~~  
3 ~~by a title insurer or title insurance agency at a qualified financial~~  
4 ~~institution into which the title insurer or title insurance agency deposits~~  
5 ~~and disburses funds collected from any person that is or will be a party to a~~  
6 ~~transaction involving real property;~~

7 ~~(7) "Person" means an individual or any partnership, association,~~  
8 ~~cooperative, corporation, firm, trust, limited liability company, or other~~  
9 ~~legal entity;~~

10 ~~(8) "Qualified financial institution" means a bank, credit union,~~  
11 ~~or savings and loan association regulated, supervised, or examined by federal~~  
12 ~~or state authorities having regulatory authority over banks and trust~~  
13 ~~companies;~~

14 ~~(9) "Risks" means the danger or hazards of a loss by encumbrance,~~  
15 ~~a defective or invalid title, or adverse claim to title covered under a title~~  
16 ~~insurance policy;~~

17 ~~(10) "Title insurance agency" means a person that has an agency~~  
18 ~~contract under § 23-103-407 with a title insurer;~~

19 ~~(11)(A) "Title insurance agent" means an individual affiliated~~  
20 ~~with a title insurance agency who is authorized on behalf of a title insurer~~  
21 ~~to issue a title insurance report or title insurance policy and is:~~

22 ~~(i) A resident of the State of Arkansas licensed~~  
23 ~~under § 23-64-101 et seq.; or~~

24 ~~(ii) A nonresident individual licensed under § 23-64-~~  
25 ~~101 et seq. and employed by a resident licensee.~~

26 ~~(B) "Title insurance agent" does not include:~~

27 ~~(i) An individual employed by a title insurance~~  
28 ~~agency that does not sell or negotiate title insurance but who performs~~  
29 ~~marketing duties under the supervision of a title insurance agent;~~

30 ~~(ii) An individual employed by a title insurance~~  
31 ~~agency that is a closing agent and does not solicit, sell, or negotiate title~~  
32 ~~insurance; or~~

33 ~~(iii) A closing agent that provides closing services~~  
34 ~~but does not otherwise engage in title insurance business in the State of~~  
35 ~~Arkansas;~~

36 ~~(12)(A) "Title insurance business" means:~~

1 ~~(i) Issuing or offering to issue as an insurer a~~  
2 ~~title insurance policy or closing protection letter;~~

3 ~~(ii) Transacting or proposing to transact any of the~~  
4 ~~following activities when conducted or performed in contemplation of or in~~  
5 ~~conjunction with the issuance of a title insurance report or policy;~~

6 ~~(a) Guaranteeing, warranting, or otherwise~~  
7 ~~insuring the status of title, liens, encumbrances, or other matters of~~  
8 ~~record;~~

9 ~~(b) Executing title insurance policies;~~

10 ~~(c) Effecting contracts of reinsurance;~~

11 ~~(d) Underwriting titles; or~~

12 ~~(e) Collecting, disbursing, or receiving title~~  
13 ~~insurance premiums, unless incidental to serving as a closing agent; or~~

14 ~~(iii) Doing or proposing to do any business~~  
15 ~~substantially equivalent to the matters described in this subdivision (12) in~~  
16 ~~a manner designed to evade this subchapter.~~

17 ~~(B) "Title insurance business" does not include:~~

18 ~~(i) A closing or escrow; or~~

19 ~~(ii) The activities of a closing agent or other party~~  
20 ~~performing a closing or escrow;~~

21 ~~(13) "Title insurance policy" means a contract, including any~~  
22 ~~coverage, enhancements to coverage, or endorsements, insuring or indemnifying~~  
23 ~~owners of or other persons lawfully interested in personal or real property~~  
24 ~~against loss or damage arising from any of the following conditions existing~~  
25 ~~on, before, or subsequent to the policy date and not specifically excepted or~~  
26 ~~excluded:~~

27 ~~(A) Defects in or liens or encumbrances on the insured~~  
28 ~~title;~~

29 ~~(B) Unmarketability of the insured title;~~

30 ~~(C) Invalidity or unenforceability of liens or encumbrances~~  
31 ~~on the insured title of the personal or real property;~~

32 ~~(D) Title being vested other than as stated in the policy;~~

33 ~~(E) Lack of a legal right of access to the land that is~~  
34 ~~part of the insured title in a policy relating to real property;~~

35 ~~(F) Lack of priority of the lien of any insured mortgage~~  
36 ~~over any statutory lien for services, labor, or materials as specifically~~

1 ~~described in the policy;~~

2 ~~(G) Invalidity or unenforceability of any assignment of an~~  
3 ~~insured mortgage subject to certain conditions; or~~

4 ~~(H) The priority of any lien or encumbrance over the lien~~  
5 ~~of an insured mortgage;~~

6 ~~(14)(A) "Title insurance premium" means the funds paid to the~~  
7 ~~title insurer and to an appointed title insurance agency as consideration for~~  
8 ~~the amount of liability assumed by a title insurer under a title insurance~~  
9 ~~policy, including all amounts retained by the title insurance agency pursuant~~  
10 ~~to the title insurance agency's contract with the title insurer.~~

11 ~~(B) "Title insurance premium" does not include charges for~~  
12 ~~the performance of services related or incidental to title insurance or~~  
13 ~~closings that are disclosed to the person charged, including without~~  
14 ~~limitation:~~

15 ~~(i) Title search, abstracting, or title examination~~  
16 ~~fees;~~

17 ~~(ii) Title opinion fees;~~

18 ~~(iii) Document preparation fees;~~

19 ~~(iv) Escrow or closing fees;~~

20 ~~(v) Notary fees;~~

21 ~~(vi) Attorney's fees;~~

22 ~~(vii) Fees incurred to cure defects in title;~~

23 ~~(viii) Tax report or tax certification fees;~~

24 ~~(ix) Title report fees;~~

25 ~~(x) Processing fees;~~

26 ~~(xi) Courier fees; and~~

27 ~~(xii) Fees incident to the issuance of a title~~  
28 ~~insurance report or policy;~~

29 ~~(15) "Title insurance report" means a preliminary report,~~  
30 ~~commitment, or binder issued before the issuance of a title insurance policy~~  
31 ~~containing the requirements, terms, conditions, exceptions, and any other~~  
32 ~~matters incorporated by reference under which a title insurer is willing to~~  
33 ~~issue a title insurance policy;~~

34 ~~(16) "Title insurer" means a company authorized under the laws of~~  
35 ~~this state to transact title insurance business; and~~

36 ~~(17) "Underwrite" means the acceptance or rejection of risk on~~

1 ~~behalf of the title insurer.~~

2 (a)(1) An insurer that transacts any class, type, or kind of insurance  
3 other than title insurance is not eligible for the issuance or renewal of a  
4 license to transact the business of title insurance in this state.

5 (2) Title insurance shall not be transacted, underwritten, or  
6 issued by any insurer transacting or licensed to transact any other class,  
7 type, or kind of business.

8 (b) A title insurer shall not engage in the business of guaranteeing  
9 payment of the principal or the interest on bonds or mortgages.

10 (c) Notwithstanding subsection (a) of this section:

11 (1) If the closing services are provided in Arkansas, the  
12 closing agent shall give notice of availability of closing protection to all  
13 parties to a transaction in which it is contemplated that title insurance may  
14 be issued;

15 (2) Upon written request by a party to a closing with a licensed  
16 title insurance agency with which the title insurer has an agency contract or  
17 closing agent with which the title insurer is in privity of contract, the  
18 title agent shall issue a closing protection letter to the requesting party  
19 on behalf of the title insurer;

20 (3)(A) Except as provided in subdivision (c)(3)(C) of this  
21 section, upon written request by a party to a closing conducted by a person  
22 that is not a licensed title insurance agency, a title insurer at its  
23 discretion may issue closing protection to the requesting party if the title  
24 insurer and the closing agent are in privity of contract.

25 (B) The contract shall:

26 (i) Affirmatively state that the title insurer will  
27 indemnify third parties for the actions of the closing agent to the extent  
28 provided in the closing protection letter; and

29 (ii) Require the closing agent to make its books and  
30 records available to the title insurer for each transaction in which a  
31 closing protection letter is issued by the title insurer on behalf of the  
32 closing agent except to the extent the books and records are privileged under  
33 the attorney-client privilege or otherwise.

34 (C) The contract requirements contained in subdivisions  
35 (c)(3)(A) and (B) of this section do not apply if the closing is conducted  
36 outside the State of Arkansas and the closing agent is licensed or otherwise

1 authorized to conduct a closing in the state where the closing is conducted;

2 (4) The closing protection letter shall conform to the terms of  
 3 coverage and form of instrument as may be filed with the State Insurance  
 4 Department and shall indemnify a person solely against loss of closing funds  
 5 because of the following acts of a closing agent, title insurer's named  
 6 employee, or title insurance agency:

7 (A) Theft or misappropriation of closing funds; or

8 (B) Failure to comply with written instructions from the  
 9 proposed insured when agreed to by the closing agent, title insurer's named  
 10 employee, or title insurance agency as it relates to the status of the title  
 11 to the interest in land or to the validity, enforceability, and priority of  
 12 the lien of a mortgage or deed of trust on the interest in land;

13 (5) The form and amount charged by a title insurer for closing  
 14 protection coverage shall be filed with the department at least twenty (20)  
 15 days before the first use of closing protection coverage in the market;

16 (6) Except as provided in this section, a title insurer shall  
 17 not provide any other coverage that purports to indemnify against improper  
 18 acts or omissions of a person with regard to escrow or closing services;

19 (7) A title insurance agent or title insurance agency shall not  
 20 issue a closing protection letter on behalf of a title insurer unless the  
 21 title insurance agent or title insurance agency contemplates issuing a title  
 22 insurance policy to a party to the transaction; and

23 (8) Issuing closing protection is not a violation of § 23-103-  
 24 401.

25  
 26 23-103-403. Requirement for license Title insurance agents -  
 27 Examination of records.

28 ~~(a)(1) Except as provided in subdivision (a)(2) of this section and §~~  
 29 ~~23-103-404, only an appointed title insurance agency licensed under § 23-64-~~  
 30 ~~101 et seq. shall issue title insurance policies, reports, or otherwise~~  
 31 ~~transact title insurance business.~~

32 ~~(2) An appointed title insurance agency licensed under § 23-64-~~  
 33 ~~101 et seq. shall not issue closing protection or issue as an insurer a title~~  
 34 ~~insurance policy.~~

35 ~~(b) All title insurance policies and reports covering an insurable~~  
 36 ~~interest in title to real property located in this state shall be signed by a~~

1 ~~title insurance agent:~~

2 ~~(1) Properly appointed by a title insurer;~~

3 ~~(2) Affiliated with a title insurance agency; and~~

4 ~~(3) Licensed in this state under this subchapter.~~

5 During normal business hours, the Arkansas Land Title Commission or  
6 title insurer may examine, audit, and inspect all books, records, files, and  
7 escrow and operating accounts related to title insurance commitments and  
8 title insurance policies maintained by a title insurance agency, or the title  
9 insurance agency's successor in interest, transferee, or receiver under this  
10 chapter.

11  
12 23-103-404. ~~Authorized activities of title insurers~~ Title insurance  
13 agency contracts.

14 ~~(a) Subject to the exceptions and restrictions contained in this~~  
15 ~~subchapter, a title insurer may:~~

16 ~~(1) Transact only title insurance business;~~

17 ~~(2) Reinsure title insurance policies; and~~

18 ~~(3) Unless prohibited by the Insurance Commissioner, perform or~~  
19 ~~cause to be performed ancillary activities whether or not in contemplation of~~  
20 ~~or in conjunction with the issuance of a title insurance report or title~~  
21 ~~insurance policy including:~~

22 ~~(A) Underwriting title to and furnishing related~~  
23 ~~information about personal property or real property; and~~

24 ~~(B) Procuring and furnishing information about relevant~~  
25 ~~personal property.~~

26 ~~(b) Only a title insurer may issue closing protection or issue as an~~  
27 ~~insurer a title insurance policy.~~

28 (a)(1) A person acting in the capacity of a title insurance agency  
29 shall not place business with a title insurer, and a title insurer shall not  
30 accept business from a title insurance agency, unless a written contract  
31 exists between the title insurer and title insurance agency.

32 (2) The written contract shall establish the responsibilities of  
33 the title insurer and title insurance agency and specify the division of the  
34 responsibilities if both share responsibility for a particular function.

35 (3) The written contract shall also contain:

36 (A) The types of risks that may be undertaken;

1 (B) The maximum authority or limits of liability;

2 (C) The territorial limitations;

3 (D) All terms of compensation for the title insurance  
4 agency;

5 (E) Requirements for title insurance policy issuance and  
6 funds remittance;

7 (F) Termination provisions;

8 (G)(i) The date by which all funds and title insurance  
9 policies due under the contract shall be accounted for to the title insurer.

10 (ii) The date shall be no later than sixty (60) days  
11 after:

12 (a) Issuance of the title insurance policy;

13 (b) The satisfaction of all requirements and  
14 conditions of any commitment; or

15 (c) The time specified in the contract if less  
16 than sixty (60) days; and

17 (H) The time in which the title insurance agency has to  
18 report and forward to the title insurer all claims filed in writing with the  
19 title insurance agency by title insurance policyholders or other claimants.

20 (b) The contract under subsection (a) of this section shall not be  
21 assigned in whole or in part by the title insurance agency unless as part of  
22 a sale of a title insurance agency or its assets and approved in writing by  
23 the title insurer.

24 (c)(1) The title insurer may terminate the contract under subsection  
25 (a) of this section upon written notice to the title insurance agency under  
26 any of the following circumstances:

27 (A) Fraud, insolvency, appointment of a receiver or  
28 conservator, bankruptcy, cancellation of the title insurance agency's license  
29 or permit to do business, or the commencement of legal proceedings by the  
30 state of the domicile of the title insurance agency, which if successful  
31 would lead to the cancellation of the title insurance agency's permit or  
32 license to do business;

33 (B) Material breach of any provision of the contract  
34 between the title insurer and the title insurance agency; or

35 (C) In accordance with any other termination provision of  
36 the contract between the title insurer and the title insurance agency.

1           (2) Unless otherwise agreed in writing by the title insurer,  
2 upon the effective date of the title insurer's notice of termination, the  
3 title insurance agency shall immediately discontinue conducting the business  
4 of title insurance on behalf of the title insurer.

5           (3) This subsection does not relieve the title insurance agency  
6 or the title insurer of any other contractual obligation.

7  
8           23-103-405. ~~Title Insurers—Limitation of authority—Powers~~ Minimum  
9 search requirements.

10           ~~(a)(1) An insurer that transacts any class, type, or kind of insurance~~  
11 ~~other than title insurance is not eligible for the issuance or renewal of a~~  
12 ~~license to transact title insurance business in this state.~~

13           ~~(2) Title insurance shall not be transacted, underwritten, or~~  
14 ~~issued by any insurer transacting or licensed to transact any other class,~~  
15 ~~type, or kind of business.~~

16           ~~(b) A title insurer shall not engage in the business of guaranteeing~~  
17 ~~payment of the principal or the interest on bonds or mortgages.~~

18           ~~(c) Notwithstanding subsection (a) of this section:~~

19           ~~(1) If the closing services are provided in Arkansas, the closing~~  
20 ~~agent shall give notice of availability of closing protection to all parties~~  
21 ~~to a transaction in which it is contemplated that title insurance may be~~  
22 ~~issued;~~

23           ~~(2) Upon written request by a party to a closing with a licensed~~  
24 ~~title insurance agency with which the title insurer has an agency contract or~~  
25 ~~closing agent with which the title insurer is in privity of contract, the~~  
26 ~~title insurer shall issue a closing protection letter to the requesting~~  
27 ~~party;~~

28           ~~(3)(A) Except as provided in subdivision (c)(3)(G) of this~~  
29 ~~section, upon written request by a party to a closing conducted by a person~~  
30 ~~that is not a licensed title insurance agency, the title insurer at its~~  
31 ~~discretion may issue closing protection to the requesting party if the title~~  
32 ~~insurer and the closing agent are in privity of contract.~~

33           ~~(B) The contract shall:~~

34           ~~(i) Affirmatively state that the title insurer will~~  
35 ~~indemnify third parties for the actions of the closing agent to the extent~~  
36 ~~provided in the closing protection letter; and~~



1 ~~(ii) Require the closing agent to make its books and~~  
2 ~~records available to the title insurer for each transaction in which a~~  
3 ~~closing protection letter is issued by the title insurer on behalf of the~~  
4 ~~closing agent except to the extent the books and records are privileged under~~  
5 ~~the attorney-client privilege or otherwise.~~

6 ~~(C) The contract requirements contained in subdivisions~~  
7 ~~(e)(3)(A) and (B) of this section do not apply if the closing is conducted~~  
8 ~~outside the State of Arkansas and the closing agent is licensed or otherwise~~  
9 ~~authorized to conduct a closing in the state where the closing is conducted;~~

10 ~~(4) The closing protection shall conform to the terms of coverage~~  
11 ~~and form of instrument as may be filed with the Insurance Commissioner and~~  
12 ~~shall indemnify a person solely against loss of closing funds because of the~~  
13 ~~following acts of a closing agent, title insurer's named employee, or title~~  
14 ~~insurance agency:~~

15 ~~(A) Theft or misappropriation of closing funds; or~~

16 ~~(B) Failure to comply with written instructions from the~~  
17 ~~proposed insured when agreed to by the closing agent, employee, or title~~  
18 ~~insurance agency as it relates to the status of the title to the interest in~~  
19 ~~land or to the validity, enforceability, and priority of the lien of a~~  
20 ~~mortgage or deed of trust on the interest in land;~~

21 ~~(5) The form and amount charged by a title insurer for closing~~  
22 ~~protection coverage shall be filed with the commissioner at least twenty (20)~~  
23 ~~days before the first use of closing protection coverage in the market;~~

24 ~~(6) Except as provided in this section, a title insurer shall not~~  
25 ~~provide any other coverage that purports to indemnify against improper acts~~  
26 ~~or omissions of a person with regard to escrow or closing services;~~

27 ~~(7) A title insurer shall not issue a closing protection letter~~  
28 ~~unless the title insurer contemplates issuing a title insurance policy to a~~  
29 ~~party to the transaction; and~~

30 ~~(8) Issuing closing protection is not a violation of § 23-103-~~  
31 ~~404.~~

32 (a) A title insurance commitment or title insurance policy shall not  
33 be issued unless the title insurance agency or title insurance agent has  
34 caused to be made a search of the title from the evidence prepared from a  
35 title plant or files of the county where the property is located or from the  
36 records of the clerk or the ex officio recorder of land records of the county

1 that maintains records relating to real estate and any interest in the  
2 county.

3 (b) The search under subsection (a) of this section shall include a  
4 review of all matters affecting the title to the property or interest to be  
5 insured for a continuous period of not less than the immediately preceding  
6 thirty (30) years.

7 (c) A title insurance policy shall not be issued until the title  
8 insurer or title insurance agent has caused to be made a determination of  
9 insurability of title in accordance with the title insurer's underwriting  
10 practices.

11  
12 ~~23-103-406. Title insurance agents — Examination of records Title~~  
13 ~~insurance agent — Restrictions.~~  
14 ~~The Insurance Commissioner or title insurer during normal business hours may~~  
15 ~~examine, audit, and inspect any and all books, records, files, and escrow and~~  
16 ~~operating accounts related to title insurance reports and policies maintained~~  
17 ~~by a title insurance agency, its successor in interest, transferee, or~~  
18 ~~receiver under this subchapter.~~

19 A title insurance agent shall not:

20 (1) Bind reinsurance on behalf of the title insurer;

21 (2) Permit any of its directors, officers, controlling  
22 shareholders, or employees to serve on the title insurer's board of directors  
23 if the title insurance agent wrote five percent (5%) or more of the direct  
24 title insurance premiums of the title insurer written in the previous  
25 calendar year as shown on the title insurer's most recent annual statement  
26 filed with the State Insurance Department, unless the title insurer and the  
27 title insurance agent are under common control or ownership;

28 (3) Jointly employ an individual who is employed with the title  
29 insurer unless the title insurer and the title insurance agent are under  
30 common control or ownership; or

31 (4) Issue a title insurance commitment or title insurance policy  
32 insuring the interest of an insured in real property in this state unless the  
33 title insurance agent is licensed under this chapter and the title insurance  
34 commitment or title insurance policy is signed by a title insurance agent  
35 licensed under this chapter.

36

1           23-103-407. ~~Agency contracts Title insurance inventory maintenance.~~

2           ~~(a)(1) A person acting in the capacity of a title insurance agency~~  
3 ~~shall not place business with a title insurer, and a title insurer shall not~~  
4 ~~accept business from a title insurance agency unless a written contract~~  
5 ~~exists between the title insurer and title insurance agency.~~

6           ~~(2) The written contract shall establish the responsibilities of~~  
7 ~~the title insurer and title insurance agency and specify the division of the~~  
8 ~~responsibilities if both share responsibility for a particular function.~~

9           ~~(3) The written contract shall also contain:~~

10                   ~~(A) The types of risks that may be undertaken;~~

11                   ~~(B) The maximum authority or limits of liability;~~

12                   ~~(C) The territorial limitations;~~

13                   ~~(D) All terms of compensation for the title insurance~~  
14 ~~agency;~~

15                   ~~(E) Policies and funds remittance;~~

16                   ~~(F) Termination provisions;~~

17                   ~~(G)(i) The date by which all funds and policies due under~~  
18 ~~the contract shall be accounted for to the title insurer.~~

19                           ~~(ii) The date shall be no later than sixty (60) days~~  
20 ~~after;~~

21                                   ~~(a) Issuance of the policy;~~

22                                   ~~(b) The satisfaction of all requirements and~~  
23 ~~conditions of any report; or~~

24                                   ~~(c) The time specified in the contract if less~~  
25 ~~than sixty (60) days; and~~

26                                   ~~(H) The time in which the title insurance agency has to~~  
27 ~~report and forward to the title insurer all claims filed in writing with the~~  
28 ~~title insurance agency by policyholders or other claimants.~~

29           ~~(b) The contract shall not be assigned in whole or in part by the title~~  
30 ~~insurance agency unless as part of a sale of a title insurance agency or its~~  
31 ~~assets and approved in writing by the title insurer.~~

32           ~~(c)(1) The title insurer may terminate the contract upon written notice~~  
33 ~~to the title insurance agency under any of the following circumstances:~~

34                           ~~(A) Fraud, insolvency, appointment of a receiver or~~  
35 ~~conservator, bankruptcy, cancellation of the title insurance agency's license~~  
36 ~~or permit to do business, or the commencement of legal proceedings by the~~

1 ~~state of the domicile of the title insurance agency, which if successful~~  
2 ~~would lead to the cancellation of the title insurance agency's permit or~~  
3 ~~license to do business;~~

4 ~~(B) Material breach of any provision of the contract~~  
5 ~~between the title insurer and the title insurance agency; or~~

6 ~~(C) In accordance with any other termination provision of~~  
7 ~~the contract.~~

8 ~~(2) Upon the effective date as set forth in the notice of~~  
9 ~~termination from a title insurer unless otherwise agreed to in writing by the~~  
10 ~~title insurer, the title insurance agency shall immediately discontinue all~~  
11 ~~title insurance business on behalf of that title insurer.~~

12 ~~(3) This subsection does not relieve the title insurance agency~~  
13 ~~or the title insurer of any other contractual obligation.~~

14 (a) A title insurer and a title insurance agency shall each maintain  
15 an inventory of all numbered policy forms or policy numbers assigned to the  
16 title insurance agency by the title insurer.

17 (b) If title insurance policies are generated electronically by the  
18 title insurer, the title insurer shall maintain the inventory of policy  
19 numbers assigned to the title insurance agency.

20  
21 23-103-408. Minimum search requirements Title insurer - Audit.

22 ~~(a) A title insurance report or title insurance policy shall not be~~  
23 ~~issued unless the title insurance agency or title insurance agent has caused~~  
24 ~~to be made a search of the title from the evidence prepared from a title~~  
25 ~~plant or files of the county where the property is located or from the~~  
26 ~~records of the clerk or the ex officio recorder of land records of the county~~  
27 ~~that maintains records relating to real estate and any interest in the~~  
28 ~~county.~~

29 ~~(b) The search shall include a review of all matters affecting the~~  
30 ~~title to the property or interest to be insured for a continuous period of~~  
31 ~~not less than the immediately preceding thirty (30) years.~~

32 ~~(c) A title insurance policy shall not be issued until the title~~  
33 ~~insurer or title insurance agent has caused to be made a determination of~~  
34 ~~insurability of title in accordance with the title insurer's underwriting~~  
35 ~~practices.~~

36 (a)(1) At least one (1) time each year, a title insurer shall conduct

1 an on-site audit of the escrow and closing practices related to the issuance  
2 of title insurance policies, escrow accounts, security arrangements, files,  
3 underwriting and claims practices, and policy inventory of the title  
4 insurance agencies that the title insurer has authorized to issue title  
5 insurance commitments or title insurance policies on its behalf.

6 (2) If the title insurance agency fails to maintain separate  
7 escrow or trust accounts for each title insurer it represents, the title  
8 insurer shall verify that the funds related to closings in which the title  
9 insurer's policies are issued are reasonably ascertainable from the books of  
10 account and records of the title insurance agency.

11 (b)(1) The Arkansas Land Title Commission may promulgate rules setting  
12 forth the standards of audit and the form of audit required under this  
13 section.

14 (2) The commission may also require the title insurer to provide  
15 a copy of its audit reports to the commission.

16 (3) This second does not modify the prohibitions upon the  
17 disclosure of confidential information contained in § 23-103-106.

18  
19 23-103-409. Title ~~insurance agent~~ insurer - Restrictions.

20 ~~A title insurance agent shall not:~~

21 ~~(1) Bind reinsurance on behalf of the title insurer;~~

22 ~~(2) Permit any of its directors, officers, controlling~~  
23 ~~shareholders, or employees to serve on the title insurer's board of directors~~  
24 ~~if the title insurance agent wrote five percent (5%) or more of the direct~~  
25 ~~premiums of the title insurer written in the previous calendar year as shown~~  
26 ~~on the title insurer's most recent annual statement filed with the Insurance~~  
27 ~~Commissioner, unless the title insurer and the title insurance agent are~~  
28 ~~under common control or ownership;~~

29 ~~(3) Jointly employ an individual who is employed with the title~~  
30 ~~insurer unless the title insurer and the title insurance agent are under~~  
31 ~~common control or ownership; or~~

32 ~~(4) Issue a title insurance report or title insurance policy~~  
33 ~~insuring the interest of an insured in real property in this state unless the~~  
34 ~~title insurance agent is licensed under this subchapter and the title~~  
35 ~~insurance report or title insurance policy is signed by a title insurance~~  
36 ~~agent licensed under this subchapter.~~

1 A title insurer shall not:

2 (1) Appoint any director, officer, controlling shareholder, or  
3 employee of a title insurance agency to serve on the title insurer's board of  
4 directors if the title insurance agency wrote five percent (5%) or more of  
5 the direct title insurance premiums of the title insurer written during the  
6 previous calendar year as shown on the title insurer's most recent annual  
7 statement on file with the State Insurance Department, unless the title  
8 insurer and the title insurance agency are under common control or ownership;

9 (2) Jointly employ an individual who is employed with the title  
10 insurance agency unless the title insurer and the title insurance agency are  
11 under common control or ownership; or

12 (3) Permit a person not properly licensed under this chapter to  
13 sell, negotiate, or engage in the business of title insurance on behalf of  
14 the title insurer or a title insurance agent or title insurance agency.

15  
16 23-103-410. Title insurance inventory maintenance Policyholder  
17 rights and disclosure.

18 ~~(a) The title insurer and the title insurance agency shall each~~  
19 ~~maintain an inventory of all numbered policy forms or policy numbers assigned~~  
20 ~~to the title insurance agency by the title insurer.~~

21 ~~(b) If title insurance policies are generated electronically by the~~  
22 ~~title insurer, the title insurer shall maintain the inventory of policy~~  
23 ~~numbers assigned to the title insurance agency.~~

24 (a)(1) When a title insurance commitment includes an offer to issue an  
25 owner's title insurance policy covering the resale of owner-occupied  
26 residential property, the title insurance commitment shall be furnished to  
27 the purchaser or mortgagor or to the representative of the purchaser-  
28 mortgagor as soon as reasonably possible before closing.

29 (2) The title insurance commitment furnished to the purchaser-  
30 mortgagor shall incorporate the following statement on the first page in bold  
31 type:

32  
33 "Please read the exceptions and the terms shown or referred to herein  
34 carefully. The exceptions are meant to provide you with notice of matters  
35 that are not covered under the terms of the title insurance policy and should  
36 be carefully considered.

1  
2 This title insurance commitment is a written representation as to the  
3 condition of title for purposes of providing title insurance and lists all  
4 liens, defects, and encumbrances filed of record within the last thirty (30)  
5 years that have not been released of record or that are not statutorily  
6 expired.

7  
8 No title insurance agent or any other person other than a licensed Arkansas  
9 attorney may provide legal advice concerning the status of title to the  
10 property described in this title commitment."

11  
12 (b)(1) When an owner's title insurance policy has not been requested,  
13 a title insurer or a title insurance agency issuing a title insurance policy  
14 to a lender in conjunction with a mortgage loan involving real property made  
15 simultaneously with the purchase of all or part of the real property securing  
16 the loan shall give written notice on a form prescribed or approved by the  
17 Arkansas Land Title Commission to the purchaser-mortgagor at the closing.

18 (2) The notice required by subdivision (b)(1) of this section  
19 shall explain:

20 (A) That a title insurance policy for the lender involving  
21 real property is issued for the protection of the mortgage lender and that  
22 the policy does not provide title insurance protection to the purchaser-  
23 mortgagor as the owner of the real property being purchased;

24 (B) The coverage that a title insurance policy relating to  
25 real property insures and that risks exist for the purchaser-mortgagor of  
26 real property that could be insured through the purchase of an owner's title  
27 insurance policy involving real property; and

28 (C) That the purchaser-mortgagor may obtain an owner's  
29 title insurance policy at a specified title insurance premium.

30 (3) A copy of the notice signed by the purchaser-mortgagor shall  
31 be retained by the title insurance agency for at least five (5) years after  
32 the effective date of the lender's title insurance policy.

33 (c) The following information shall accompany every title insurance  
34 policy issued and covering risks located, resident, or to be performed in  
35 this state:

36 (1) The name, address, and telephone number of the title

1 insurance agency issuing the title insurance policy; and

2 (2) The address and telephone number, including a toll-free  
3 number if available, of the Arkansas Land Title Commission.

4  
5 23-103-411. ~~Title insurer—~~Audit Record retention requirements.

6 ~~(a)(1) At least one (1) time each year, a title insurer shall conduct~~  
7 ~~an on-site audit of the escrow and closing practices related to the issuance~~  
8 ~~of title insurance policies, escrow accounts, security arrangements, files,~~  
9 ~~underwriting and claims practices, and policy inventory of the title~~  
10 ~~insurance agencies that the title insurer has authorized to issue title~~  
11 ~~insurance reports or title insurance policies on its behalf.~~

12 ~~(2) If the title insurance agency fails to maintain separate~~  
13 ~~escrow or trust accounts for each title insurer it represents, the title~~  
14 ~~insurer shall verify that the funds related to closings in which the title~~  
15 ~~insurer's policies are issued are reasonably ascertainable from the books of~~  
16 ~~account and records of the title insurance agency.~~

17 ~~(b)(1) The Insurance Commissioner may promulgate rules setting forth~~  
18 ~~the standards of audit and the form of audit required.~~

19 ~~(2) The commissioner may also require the title insurer to~~  
20 ~~provide a copy of its audit reports to the commissioner.~~

21 ~~(3) Any audits shall remain confidential unless introduced as~~  
22 ~~evidence at a hearing or court proceeding involving the title insurance~~  
23 ~~agency or agent.~~

24 (a) The title insurer and the title insurance agency shall maintain  
25 sufficient records of their affairs, including evidence of underwriting  
26 title, determination of insurability, and records of their escrow operations  
27 and escrow accounts.

28 (b) The Arkansas Land Title Commission may prescribe the specific  
29 records and documents to be kept and the length of time for which the records  
30 shall be maintained.

31  
32 23-103-412. ~~Title insurer—~~Restrictions Access to public records.  
33 ~~A title insurer shall not:~~

34 ~~(1) Appoint any director, officer, controlling shareholder, or~~  
35 ~~employee of a title insurance agency to serve on the title insurer's board of~~  
36 ~~directors if the title insurance agency wrote five percent (5%) or more of~~



~~1 the direct premiums of the title insurer written during the previous calendar  
2 year as shown on the title insurer's most recent annual statement on file  
3 with the Insurance Commissioner, unless the title insurer and the title  
4 insurance agency are under common control or ownership; or~~

~~5 (2) Jointly employ an individual who is employed with the title  
6 insurance agency unless the title insurer and the title insurance agency are  
7 under common control or ownership.~~

8 (a) A person licensed under § 23-103-301 et seq., and a person  
9 affiliated with a title insurance agency shall:

10 (1) Have free access to the instruments of record affecting real  
11 property filed in any city, county, or state office; and

12 (2) Be permitted to:

13 (A) Occupy reasonable space, use equipment, and make  
14 memoranda, notations, and copies of instruments of record during the business  
15 hours of the city, county, or state office; and

16 (B) Compile, post, copy, and maintain books, records, and  
17 indices.

18 (b)(1) A person licensed under § 23-103-301 et seq., and a person  
19 affiliated with a title insurance agency have the right of access to any  
20 instrument filed of record in a city, county, or state office no later than  
21 the close of business of the first business day following the day the  
22 instrument was filed.

23 (2) A fee shall not be charged for providing access to the  
24 instrument.

25 (c) As used in this section, "access" means possession of an  
26 instrument sufficient to mechanically reproduce the instrument in the office  
27 where the instrument is filed.

28 (d)(1) A person entitled to access under this section that is denied  
29 access may petition immediately to a circuit court of competent jurisdiction.

30 (2) Upon written complaint of a person or an interested party  
31 denied a right provided by this section, the circuit court having  
32 jurisdiction shall hear the complaint within seven (7) business days of the  
33 date the complaint is filed.

34 (3)(A) In an action or appeal of an action to enforce the rights  
35 granted by this section, the court shall assess against a losing party  
36 reasonable attorney's fees and other litigation expenses reasonably incurred

1 by a party that has substantially prevailed unless the court finds that the  
2 position of the losing party was substantially justified or that other  
3 circumstances make an award of attorney's fees and other litigation expenses  
4 unjust.

5 (B) Expenses shall not be assessed against the State of  
6 Arkansas or any of its agencies or departments.

7 (C) If at trial a defendant has substantially prevailed in  
8 the action, the court may assess attorney's fees and litigation expenses  
9 against a plaintiff only upon a finding that the action was initiated  
10 primarily for frivolous or dilatory purposes.

11  
12 23-103-413. ~~Policyholder rights and disclosure~~ Fiduciary duties of  
13 licensees.

14 ~~(a)(1) When a title insurance report includes an offer to issue an~~  
15 ~~owner's title insurance policy covering the resale of owner-occupied~~  
16 ~~residential property, the title insurance report shall be furnished to the~~  
17 ~~purchaser or mortgagor or to the representative of the purchaser-mortgagor as~~  
18 ~~soon as reasonably possible before closing.~~

19 ~~(2) The title insurance report furnished to the purchaser-~~  
20 ~~mortgagor shall incorporate the following statement on the first page in bold~~  
21 ~~type:~~

22 ~~"Please read the exceptions and the terms shown or referred to herein~~  
23 ~~carefully. The exceptions are meant to provide you with notice of matters~~  
24 ~~that are not covered under the terms of the title insurance policy and should~~  
25 ~~be carefully considered.~~

26 ~~This report is a written representation as to the condition of title for~~  
27 ~~purposes of providing title insurance and lists all liens, defects, and~~  
28 ~~encumbrances filed of record within the last thirty (30) years that have not~~  
29 ~~been released of record or that are not statutorily expired.~~

30 ~~No title insurance agent or any other person other than a licensed Arkansas~~  
31 ~~attorney may provide legal advice concerning the status of title to the~~  
32 ~~property described in the title commitment."~~

33 ~~(b)(1) When an owner's title insurance policy has not been requested, a~~  
34 ~~title insurer or a title insurance agency issuing a title insurance policy to~~  
35 ~~a lender in conjunction with a mortgage loan involving real property made~~  
36 ~~simultaneously with the purchase of all or part of the real property securing~~

~~1 the loan shall give written notice on a form prescribed or approved by the  
2 Insurance Commissioner to the purchaser-mortgagor at the closing.~~

~~3 (2) The notice required by subdivision (b)(1) of this section  
4 shall explain:~~

~~5 (A) That a title insurance policy for the lender involving  
6 real property is issued for the protection of the mortgage lender and that  
7 the policy does not provide title insurance protection to the purchaser-  
8 mortgagor as the owner of the real property being purchased;~~

~~9 (B) The coverage that a title insurance policy relating to  
10 real property insures and that risks exist for the purchaser-mortgagor of  
11 real property that could be insured through the purchase of an owner's title  
12 policy involving real property; and~~

~~13 (C) That the purchaser-mortgagor may obtain an owner's  
14 title insurance policy at a specified premium.~~

~~15 (3) A copy of the notice signed by the purchaser-mortgagor shall  
16 be retained in the closing file for at least five (5) years after the  
17 effective date of the lender's title insurance policy.~~

~~18 (a) All funds, fees, moneys, premiums, and return premiums received by  
19 a person licensed under this chapter in the person's official capacity shall  
20 be held in trust by the licensee and paid when required to the insured,  
21 insurer, licensee, or any other person entitled to the funds, fees, moneys,  
22 premiums, or return premiums.~~

~~23 (b) A licensee who diverts or misappropriates any part of funds, fees,  
24 moneys, premiums, or return premiums held in trust under subsection (a) of  
25 this section to the licensee's own use shall, upon conviction, be guilty of  
26 theft of property and shall be punished as provided by law.~~

~~27  
28 23-103-414. Record retention requirements Place of business -  
29 Maintenance of records.~~

~~30 (a) The title insurer and the title insurance agency shall maintain  
31 sufficient records of their affairs, including evidence of underwriting  
32 title, determination of insurability, and records of their escrow operations  
33 and escrow accounts.~~

~~34 (b) The Insurance Commissioner may prescribe the specific records and  
35 documents to be kept and the length of time for which the records shall be  
36 maintained.~~

1 (a)(1) A title insurance agency shall have and maintain in this state  
2 a place of business accessible to the public where it principally conducts  
3 its transactions as a title insurance agency.

4 (2) The address of the place of business shall appear on the  
5 licensee's license, and the licensee shall notify the Arkansas Land Title  
6 Commission in writing of a change of address within thirty (30) days of the  
7 change of address.

8 (b) The licensee's license shall be conspicuously displayed in the  
9 place of business in a place customarily open to the public.

10 (c)(1) A licensee shall keep at the licensee's place of business the  
11 usual and customary records pertaining to transactions performed under the  
12 license.

13 (2) As used in this subsection, "usual and customary records"  
14 includes any documents or information identified by rule under § 23-103-411.

15  
16 ~~23-103-415. Rules promulgated by Insurance Commissioner Appointment of~~  
17 ~~title insurance agent or title insurance agency.~~

18 ~~The Insurance Commissioner shall issue rules in accordance with the~~  
19 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement this~~  
20 ~~subchapter.~~

21 (a) As used in this section, "appointment" means the notification  
22 filed with the Arkansas Land Title Commission that a title insurer has:

23 (1) Established a contractual title insurance agency  
24 relationship with a licensed title insurance agency; or

25 (2) Approved a licensed title insurance agent that is employed  
26 by a title insurance agency with which the insurer has a contractual  
27 relationship.

28 (b)(1)(A) A title insurer that appoints a title insurance agent or  
29 title insurance agency in this state shall file with the commission the  
30 initial appointment and pay an appointment fee prescribed by the commission.

31 (2) The appointing title insurer's appointment of a title  
32 insurance agent or title insurance agency shall be an indication to the  
33 commission that the insurer has reviewed the background and fitness of the  
34 principals of the title insurance agent or title insurance agency to be a  
35 title insurance agent.

36 (b) Each appointment shall remain in effect until the title insurance

1 agent's or title insurance agency's license is revoked or otherwise  
2 terminated unless written notice of earlier termination of the appointment is  
3 filed with the commission by the title insurer or title insurance agency.  
4

5 23-103-416. ~~Penalties—Liabilities~~ Change of name or address.

6 ~~(a) If the Insurance Commissioner determines that a title insurer,~~  
7 ~~title insurance agency, title insurance agent, or any other person has~~  
8 ~~violated this subchapter or any rule or order promulgated under this~~  
9 ~~subchapter, the commissioner may order:~~

10 ~~(1)(A) Payment of a monetary penalty not to exceed one thousand~~  
11 ~~dollars (\$1,000) for each act or violation and not to exceed an aggregate~~  
12 ~~penalty of ten thousand dollars (\$10,000) unless the title insurer, title~~  
13 ~~insurance agency, title insurance agent, or other person knew or reasonably~~  
14 ~~should have known that the title insurer, title insurance agency, title~~  
15 ~~insurance agent, or other person was in violation of this subchapter.~~

16 ~~(B) If the title insurer, title insurance agency, title~~  
17 ~~insurance agent, or other person knew or reasonably should have known that~~  
18 ~~the title insurer, title insurance agency, title insurance agent, or other~~  
19 ~~person was in violation of this subchapter, the penalty shall not exceed five~~  
20 ~~thousand dollars (\$5,000) for each act or violation and not exceed an~~  
21 ~~aggregate penalty of fifty thousand dollars (\$50,000) in any six-month~~  
22 ~~period; or~~

23 ~~(2) Suspension or revocation of the title insurer's, title~~  
24 ~~insurance agency's, title insurance agent's, or other person's license if the~~  
25 ~~title insurer, title insurance agency, title insurance agent, or other person~~  
26 ~~knew or reasonably should have known that the title insurer, title insurance~~  
27 ~~agency, title insurance agent, or other person was in violation of this~~  
28 ~~subchapter.~~

29 ~~(b) If an order of rehabilitation or liquidation of the title insurer~~  
30 ~~or of conservation of assets of the title insurer has been entered and the~~  
31 ~~receiver appointed under the order determines that the title insurance agency~~  
32 ~~or title insurance agent or any other person has not complied with this~~  
33 ~~subchapter or any rule or order promulgated under this subchapter and the~~  
34 ~~title insurer suffered any resulting loss or damage, the receiver may~~  
35 ~~maintain a civil action for recovery of damages or other appropriate~~  
36 ~~sanctions for the benefit of the title insurer and its policyholders and~~

1 ~~creditors.~~

2 ~~(e) This section does not affect the right of the commissioner to~~  
3 ~~impose any other penalties provided under § 23-64-101 et seq.~~

4 (a)(1) If a licensee under this subchapter changes the licensee's  
5 name, place of business, or address shown on the licensee's license or loses  
6 the license, the licensee shall notify the Arkansas Land Title Commission  
7 within thirty (30) days of the change or loss.

8 (2) Upon receipt of the notice and payment of the applicable  
9 fee, the commission shall reissue the license that was changed or lost.

10 (b) It is the responsibility of each licensee to keep the commission  
11 notified of any changes in email address and home and business mailing  
12 addresses at all times.

13 (c) Upon the termination of an appointed or affiliated licensee's  
14 employment by or affiliation with a licensed title insurance agency, the  
15 title insurance agency shall promptly notify the commission of the  
16 termination.

17  
18 ~~23-103-417. Access to public records Mandatory reporting of fraudulent~~  
19 ~~acts.~~

20 ~~(a) A title insurance agent, a title insurance agency, and a person~~  
21 ~~affiliated with a title insurance agency shall:~~

22 ~~(1) Have free access to the instruments of record affecting real~~  
23 ~~property filed in any city, county, or state office; and~~

24 ~~(2) Be permitted to:~~

25 ~~(A) Occupy reasonable space, use equipment, and make~~  
26 ~~memoranda, notations, and copies of instruments of record during the business~~  
27 ~~hours of the city, county, or state office; and~~

28 ~~(B) Compile, post, copy, and maintain books, records, and~~  
29 ~~indices.~~

30 ~~(b)(1) A title insurance agent, a title insurance agency, and a person~~  
31 ~~affiliated with a title insurance agency has the right of access to any~~  
32 ~~instrument filed of record in a city, county, or state office no later than~~  
33 ~~the close of business of the first business day following the day the~~  
34 ~~instrument was filed.~~

35 ~~(2) A fee shall not be charged for providing access to the~~  
36 ~~instrument.~~

1 ~~(c) As used in this section, "access" means possession of an instrument~~  
2 ~~sufficient to mechanically reproduce the instrument in the office where the~~  
3 ~~instrument is filed.~~

4 ~~(d)(1) A person entitled to access under this section that is denied~~  
5 ~~access may petition immediately to a circuit court of competent jurisdiction.~~

6 ~~(2) Upon written complaint of a person or an interested party~~  
7 ~~denied a right provided by this section, the circuit court having~~  
8 ~~jurisdiction shall hear the complaint within seven (7) days of the date the~~  
9 ~~complaint is filed.~~

10 ~~(3)(A) In an action or appeal of an action to enforce the rights~~  
11 ~~granted by this section, the court shall assess against a losing party~~  
12 ~~reasonable attorney's fees and other litigation expenses reasonably incurred~~  
13 ~~by a party that has substantially prevailed unless the court finds that the~~  
14 ~~position of the losing party was substantially justified or that other~~  
15 ~~circumstances make an award of attorney's fees and other litigation expenses~~  
16 ~~unjust.~~

17 ~~(B) Expenses shall not be assessed against the State of~~  
18 ~~Arkansas or any of its agencies or departments.~~

19 ~~(C) If at trial a defendant has substantially prevailed in~~  
20 ~~the action, the court may assess attorney's fees and litigation expenses~~  
21 ~~against a plaintiff only upon a finding that the action was initiated~~  
22 ~~primarily for frivolous or dilatory purposes.~~

23 Section 23-66-501 et seq. concerning fraudulent insurance act  
24 prevention applies to a title insurance agency and a title insurance agent.

25  
26 23-103-418. Title insurance agencies – Prohibited conduct.

27 (a) An appointed title insurance agency licensed under this chapter  
28 shall not issue as an insurer:

29 (1) Closing protection; or

30 (2) A title insurance policy.

31 (b) A title insurance agency shall not permit a person not properly  
32 licensed under this chapter to sell, negotiate, or engage in the business of  
33 title insurance on behalf of a title insurer, title insurance agent, or title  
34 insurance agency.

35  
36 23-103-419. Title insurance agents – Requirements – Prohibited

1 conduct.

2 (a) A title insurance policy and title insurance commitment covering  
3 an insurable interest in title to real property located in this state shall  
4 be signed by a title insurance agent who is:

5 (1) Properly appointed by a title insurer;

6 (2) Affiliated with a title insurance agency licensed under this  
7 subchapter; and

8 (3) Licensed under this chapter.

9 (b)(1) A title insurance agent shall be competent, trustworthy,  
10 financially responsible, and of good personal and business reputation.

11 (2) The Arkansas Land Title Commission may require documentation  
12 to verify an individual's qualifications for licensure under this subchapter.

13 (c) The following acts, conduct, or practices are prohibited and may  
14 result in disciplinary action by the commission under this chapter:

15 (1) Obtaining a license by means of fraud, misrepresentation, or  
16 concealment;

17 (2) Violating this chapter or a rule or order adopted under this  
18 chapter;

19 (3) Being convicted of or pleading guilty or nolo contendere to  
20 a felony or crime involving moral turpitude, fraud, dishonesty,

21 untruthfulness, or untrustworthiness whether or not the imposition of  
22 sentence has been deferred or suspended;

23 (4) Making a substantial misrepresentation;

24 (5) Failing within a reasonable time to account for or to remit  
25 moneys in the licensee's possession that belong to others;

26 (6) Being convicted of any act involving moral turpitude, fraud,  
27 dishonesty, untruthfulness, or untrustworthiness;

28 (7) Acting as a title insurance agent while not affiliated with  
29 a licensed title insurance agency;

30 (8) Advertising in a false, misleading, or deceptive manner;

31 (9) Being unworthy or incompetent to act as a title insurance  
32 agent or on behalf of a title insurance agency in such a manner as to  
33 safeguard the interests of the public and the land title industry in this  
34 state; or

35 (10) Any other conduct, whether of the same or a different  
36 character from that specified in this section, which constitutes improper,



1 fraudulent, or dishonest dealing.

2 (d) A title insurance agent shall not:

3 (1) Permit a person not properly licensed under this chapter to  
4 sell, negotiate, or engage in the business of title insurance on behalf of a  
5 title insurer, title insurance agent or title insurance agency; or

6 (2) Issue as an insurer:

7 (A) Closing protection; or

8 (B) A title insurance policy.

9  
10 Subchapter 5. Abstracters

11  
12 23-103-501. Penalties.

13 If a licensed abstracter knowingly falsifies a public record or  
14 information contained therein, the licensed abstracter shall be guilty of a  
15 felony and punished accordingly in addition to the licensed abstracter's  
16 civil liability.

17  
18 23-103-502. Certificate of registration required.

19 (a)(1) A person, firm, or private corporation engaged in the business  
20 of abstracting in only one (1) county in this state, shall be or have in its  
21 employ a registered abstracter.

22 (2) A person, firm, or private corporation engaged in the  
23 business of abstracting in more than one (1) county in this state shall have  
24 at least one (1) registered abstracter for each county in which it maintains  
25 an abstracting office.

26 (b) A person shall not execute an abstract certificate or otherwise  
27 attest to the accuracy of an abstract of title unless the person is a  
28 registered abstracter.

29 (c)(1) Each person engaged in the business of abstracting who is a  
30 registered abstracter may fulfill the requirements of subsection (a) of this  
31 section in one (1) county only.

32 (2) A registered abstracter shall not fulfill the requirements  
33 of subsection (a) of this section for more than one (1) county or more than  
34 one (1) company at any one (1) time.

35  
36 23-103-503. Certificate of registration – Application.

1 (a) A person desiring to become a registered abstracter shall make  
2 application to the Arkansas Land Title Commission for a certificate of  
3 registration.

4 (b) The application required under this section shall be in a form  
5 prepared by the commission and shall contain such information as may be  
6 necessary to assist the commission in registration and to determine if the  
7 applicant is of good moral character.

8 (c) Except as provided in subsection (e) of this section, each  
9 application required under this section shall be accompanied by an  
10 examination fee established by the commission.

11 (d) Upon receipt of a properly completed application and the fee  
12 required under this section, the commission shall notify the applicant of the  
13 time and place of the next scheduled examination, and notice of the  
14 examination shall be given to the applicant by mail.

15 (e) A person authorized to practice law in this state shall be issued  
16 a certificate of registration upon application without examination or payment  
17 of an examination fee.

18  
19 23-103-504. Certificate of registration – Examination.

20 The examination required under this subchapter shall be in the form of  
21 written interrogatories prescribed by the Arkansas Land Title Commission to  
22 determine the proficiency of the applicant.

23  
24 23-103-505. Certificate of registration – Issuance or reapplication.

25 (a)(1) If an applicant for a certificate of registration  
26 satisfactorily passes the examinations required for obtaining a certificate  
27 of registration and is of good moral character, the applicant shall be  
28 certified as a registered abstracter, and the certificate of registration  
29 shall be issued to him or her.

30 (2) The privileges granted by the certificate of registration  
31 shall continue unless revoked under this chapter or unless the certificate of  
32 registration is otherwise surrendered to the Arkansas Land Title Commission.

33 (b)(1) The certificate of registration shall be in a form prescribed  
34 by the commission and shall attest that the holder of the certificate of  
35 registration possesses the knowledge, skill, ability, and understanding of  
36 abstracting and is designated a registered abstracter.

1           (2) The certificate shall be prominently displayed in the  
2 abstracting office where the holder of the certificate of registration is  
3 employed.

4           (c) An applicant who fails to satisfy the commission that he or she  
5 possesses the qualifications or proficiency to become a registered abstracter  
6 may reapply for a certificate of registration if the application is  
7 accompanied by the examination fee provided by § 23-103-503, but an  
8 application shall not be submitted sooner than thirty (30) days following the  
9 date on which the last previous examination was administered to the  
10 applicant.

11           (d) Each holder of a certificate of registration shall pay an annual  
12 fee established by the commission.

13  
14           23-103-506. Temporary certificate of registration.

15           (a) Upon the application of a person that succeeds to the ownership of  
16 an abstract plant by any means other than by purchase or a person who by  
17 reason of the incapacity of a registered abstracter who holds a certificate  
18 of abstracting authority is required to assume the operation of an abstract  
19 plant, the Arkansas Land Title Commission may grant the person without  
20 examination a temporary certificate of registration.

21           (b) The fee for a temporary certificate of registration shall be set  
22 by the commission.

23           (c) The temporary certificate of registration shall expire on the  
24 later of:

25           (1) Six (6) months after the temporary certificate of  
26 registration is issued; or

27           (2) The expiration of sixty (60) days after the next examination  
28 for a certificate of registration could have been taken by the applicant  
29 under the rules of the commission.

30           (d) The commission shall notify the applicant by mail of the time and  
31 place of the examination required under this section.

32  
33           23-103-507. Unregistered assistants.

34           This subchapter does not prohibit a person, firm, or corporation that  
35 holds a valid and subsisting certificate of authority from employing clerical  
36 and stenographic assistants who are not registered under this subchapter that

1 are deemed necessary to conduct the business of abstracting.

2  
3 23-103-508. Certificate of abstracting authority required.

4 A person, firm, or corporation shall not own or operate an abstract  
5 plant for engaging in the business of abstracting in this state until a  
6 certificate of abstracting authority has been issued to the person, firm, or  
7 corporation by the Arkansas Land Title Commission.

8  
9 23-103-509. Certificate of abstracting authority – Application –  
10 Issuance.

11 (a) A person, firm, or corporation desiring to own or operate an  
12 abstract plant for engaging in the business of abstracting in this state  
13 shall make application to the Arkansas Land Title Commission for a  
14 certificate of abstracting authority.

15 (b) The application shall:

16 (1) Be in a form prepared by the commission;

17 (2) Contain such information as may be necessary to assist the  
18 commission in determining whether the applicant has complied with this  
19 chapter; and

20 (3) Be accompanied by an application fee established by the  
21 commission.

22 (c) The applicant for a certificate of abstracting authority shall  
23 furnish proof that:

24 (1) The applicant has available an abstract plant for each  
25 county for which abstracts will be prepared that is available for examination  
26 by the commission;

27 (2) The applicant is or has employed a registered abstracter;  
28 and

29 (3) The bond requirements provided by § 23-103-512 have been  
30 met.

31 (d)(1) If the commission determines the requirements of subsections  
32 (a)-(c) of this section have been satisfied, the commission shall issue a  
33 certificate of abstracting authority to the applicant that indicates each  
34 county of this state in which the applicant may operate.

35 (2) The certificate of abstracting authority shall be prominently  
36 displayed in each office the applicant uses to conduct business under the

1 certificate of abstracting authority.

2  
3 23-103-510. Certificate of abstracting authority – Expiration –  
4 Renewal.

5 (a) A certificates of abstracting authority issued under this  
6 subchapter shall expire on July 1 of the following year.

7 (b) A certificate of abstracting authority may be renewed under this  
8 section for one (1) year upon payment of the renewal fee established by the  
9 Arkansas Land Title Commission.

10 (c)(1)(A) No more than sixty (60) days nor less than thirty (30) days  
11 before the expiration date of the a certificate of abstracting authority the  
12 commission shall cause a notice of expiration and application for renewal to  
13 be mailed to each holder of a certificate of abstracting authority.

14 (B) The notice and application shall be in a form prepared  
15 by the commission.

16 (2) Upon determination by the commission of the applicant's  
17 compliance with this chapter, a renewal certificate of abstracting authority  
18 shall be issued to the applicant.

19 (d)(1)(A) If a holder of a certificate of abstracting authority fails  
20 to apply for renewal of his or her certificate of abstracting authority and  
21 pay the renewal fee, the commission shall mail a notice to the holder of a  
22 certificate of abstracting authority that his or her certificate of  
23 abstracting authority has expired and is no longer authority to engage in the  
24 business of abstracting.

25 (B) The notice shall be mailed not more than thirty (30)  
26 days following the expiration date of the certificate of abstracting  
27 authority.

28 (C) The holder of a certificate of abstracting authority  
29 shall be granted an additional period of sixty (60) days from the date of  
30 mailing the notice within which to file the application for renewal.

31 (2) If a holder of a certificate of abstracting authority fails  
32 to renew his or her certificate of abstracting authority under this section;

33 (A) The name of the holder of a certificate of abstracting  
34 authority shall be stricken from the records of the commission; and

35 (B) The holder of a certificate of abstracting authority  
36 shall no longer engage in the business of abstracting in this state until

1 authorized by the commission.

2  
3 23-103-511. Access to public records.

4 (a) A holder of a certificate of abstracting authority and the  
5 holder's employees engaged in the business of abstracting shall:

6 (1) Have access to the public records in any office of any city  
7 or county or of the state; and

8 (2) Be permitted to make memoranda, notations, and copies from  
9 the records and to occupy reasonable space including space for equipment in  
10 the county recorder's office, subject to reasonable regulation by the county  
11 recorder and during the business hours of the office, in order to enable the  
12 holder of a certificate of abstracting authority to make and prepare  
13 abstracts and to compile, post, copy, and maintain their books, records, and  
14 indices.

15 (b) Only the county recorder shall remove real estate records from the  
16 county recorder's office.

17  
18 23-103-512. Bond, insurance, or personal surety.

19 (a)(1)(A) Before the certificate of abstracting authority is issued,  
20 the applicant shall file with the Arkansas Land Title Commission a bond  
21 approved by the commission conditioned upon the payment by the applicant of  
22 all damages that may be sustained by or may accrue to any person, firm, or  
23 corporation for whom the applicant may compile, make, or furnish abstracts of  
24 title by reason of or on account of any error, deficiency, or mistake in an  
25 abstract of title.

26 (B) The bond shall be written by a corporate surety or  
27 other company licensed and authorized to do business in this state.

28 (2)(A) The bond shall remain in full force and effect for a  
29 period of one (1) year and may be renewed annually by a continuation  
30 certificate.

31 (B) The continuation certificate authorized under  
32 subdivisions (a)(2) of the section shall not operate to increase the penal  
33 sum of the bond beyond the limits established in this section.

34 (3)(A) The penal sum of the bond shall be dependent upon  
35 aggregate population, according to the latest federal decennial census, of  
36 all counties in which the applicant proposes to conduct the business of

1 abstracting, as follows:

2

3 If the population is:                      The penalty of the bond shall be:

4 Less than 25,000    \$ 5,000

5 More than 25,000 but less than 50,000    10,000

6 50,000 but less than 100,000    15,000

7 100,000 but less than 200,000    20,000

8 Over 200,000    25,000

9

10                      (B) A person, firm, or corporation shall be required at  
11 any time to have in force and effect and filed with the commission valid  
12 bonds in excess of the penal sum of twenty-five thousand dollars (\$ 25,000).

13                      (b)(1) In lieu of the bond or bonds provided for in subsection (a) of  
14 this section, the applicant may file proof with the commission that he or she  
15 carries abstracters' liability insurance in such a sum as would be required  
16 using the population scale in subdivision (a)(3)(A) of this section.

17                      (2) The proof shall be the filing of the actual policy or a  
18 certificate showing the issuance thereof by the insurance company.

19                      (c)(1) In lieu of bond or bonds or liability insurance provided for in  
20 subsections (a) and (b) of this section, the applicant shall have the right  
21 to file with the commission a personal surety bond in such a sum as would be  
22 required using the population scale in subdivision (a)(3)(A) of this section,  
23 made in favor of any person or client that may suffer a loss for which he or  
24 she is liable, which shall be accepted in lieu of the insurance policy.

25                      (2) The personal bond shall have the signatures of at least  
26 three (3) other persons thereon whose total net worth shall be at least three  
27 (3) times the total amount of the personal bond.

28                      (3) The applicant shall pay for the actual cost of the credit  
29 reports on the bondsmen.

30

31                      23-103-513. Revocation of certificates of registration and  
32 certificates of abstracting authority – Grounds.

33                      (a) The Arkansas Land Title Commission is authorized, after a hearing  
34 as provided in § 23-103-514, to revoke a certificate of registration issued  
35 to any person under this chapter:

36                      (1) For a violation of this chapter;

1 (2) Upon conviction of the person of a crime involving moral  
2 turpitude; or

3 (3) If the commission finds the person to be guilty of habitual  
4 carelessness or of fraudulent practices in conducting the business of  
5 abstracting.

6 (b) The commission is authorized after a hearing as provided in § 23-  
7 103-514, to revoke a certificate of abstracting authority issued to any  
8 person, firm, or corporation under this subchapter for:

9 (1) Failure to furnish the bond or bonds, or other securities,  
10 required by § 23-103-512;

11 (2) Failure to properly maintain an abstract plant;

12 (3) Failure to have employed a registered abstracter as provided  
13 in § 23-103-502; or

14 (4) Otherwise violating this chapter.

15  
16 23-103-514. Sanctions – Procedure – Appeal.

17 (a)(1) The Arkansas Land Title Commission shall cause the Executive  
18 Director of the Arkansas Land Title Commission to investigate an alleged  
19 violation of this chapter upon receipt of a verified, written complaint or  
20 upon the its own motion if it has reason to believe any of the following has  
21 occurred:

22 (A) That the holder of a certificate of registration:

23 (i) Violated a provision of this subchapter  
24 applicable to a registered abstracter;

25 (ii) Was convicted of a crime involving moral  
26 turpitude; or

27 (iii) Was habitually careless or engaged in  
28 fraudulent practices in the business of abstracting; or

29 (B) That the holder of a certificate of abstracting  
30 authority:

31 (i) Failed to furnish the a bond or other securities  
32 required by § 23-103-512;

33 (ii) Failed to have employed a registered  
34 abstracter; or

35 (iii) Violated of any other provision of this  
36 subchapter applicable to the holder of a certificate of abstracting



1 authority.

2 (2) The executive director may hire an independent investigator  
3 to conduct all or part of the investigation and report his or her findings to  
4 the executive director.

5 (b) If the executive director determines that a prima facie case of a  
6 violation of this chapter exists, the executive director shall initiate the  
7 procedures for an administrative adjudication under the Arkansas  
8 Administrative Procedure Act, § 25-15-210 et seq.

9 (c) If the commission determines that:

10 (1)(A) Insufficient proof of the alleged violation exists, the  
11 commission shall dismiss the complaint.

12 (B) The person that filed the complaint may appeal the  
13 decision under the Arkansas Administrative Procedure Act, § 25-15-210 et  
14 seq.; or

15 (2) Sufficient proof of the alleged violation exists, the  
16 commission may impose an appropriate sanction, if any, including without  
17 limitation, one (1) or more of the following sanctions or requirements:

18 (A) A reprimand or censure;

19 (B) A suspension, revocation, denial, or refusal to renew  
20 a certificate of registration or certificate of abstracting authority;

21 (C) A penalty not to exceed one thousand dollars (\$1,000)  
22 for each violation;

23 (D) Completion of appropriate educational programs or  
24 courses;

25 (E) Successful completion of an appropriate examination;

26 (F) Conditions or restrictions upon the person's  
27 certificate of registration or certificate of abstracting authority; and

28 (G) Payment of restitution, damages, or other penalties  
29 appropriate to the circumstances of the case that would:

30 (i) Achieve the desired disciplinary purpose;

31 (ii) Compensate or reimburse an injured party or the  
32 commission; or

33 (iii) Promote the regulation of the business of  
34 abstracting.

35 (d) The commission may:

36 (1) Suspend the imposition of a sanction imposed upon

1 appropriate terms and conditions; and

2 (2) File suit in Pulaski County Circuit Court or the circuit  
3 court of the county where a sanctioned holder of a certificate of  
4 registration or certificate of abstracting authority resides or does business  
5 to collect a penalty assessed under this chapter if the penalty is not paid  
6 as ordered by the commission.

7 (e) An appeal shall stay the cancellation of a certificate of  
8 registration or certificate of authority until the final decision on appeal.

9  
10 23-103-515. Seal.

11 The holder of a certificate of abstracting authority under this  
12 subchapter shall:

13 (1) Provide a seal containing the name of the holder of the  
14 certificate of abstracting authority; and

15 (2) Deposit with the Arkansas Land Title Commission an  
16 impression of the seal and the names of all registered abstracters authorized  
17 to certify an abstract on behalf of the holder of the certificate of  
18 abstracting authority.

19  
20 23-103-516. Abstract as evidence.

21 An abstract or photocopy or verbatim copy of a public record certified  
22 and impressed with the official seal of a holder of a certificate of  
23 abstracting authority shall be admissible in evidence, if otherwise  
24 admissible, on behalf of any party litigant in any court in the State of  
25 Arkansas and shall be prima facie evidence of the facts recited therein.

26  
27 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the  
28 General Assembly of the State of Arkansas that the continued, uninterrupted  
29 regulation of the title insurance industry and abstracters is essential to  
30 the well-being of the state; that the transition of funds, resources, and  
31 responsibilities required by this act should coincide with the state's fiscal  
32 year; and that to provide for the efficient operation and regulation of the  
33 title insurance industry and abstracters it is necessary for this act to  
34 become effective on July 1, 2015. Therefore, an emergency is declared to  
35 exist, and this act being necessary for the preservation of the public peace,  
36 health, and safety shall become effective on July 1, 2015.

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*/s/J. Hutchinson*