

1 H.565

2 Introduced by Representative Heath of Westford

3 Referred to Committee on

4 Date:

5 Subject: Title insurance; public option; Vermont title guaranty program

6 Statement of purpose: This bill proposes to establish a public option for title
7 insurance in Vermont which shall be administered through a newly created
8 division of the Vermont housing finance agency; namely, the title guaranty
9 division.

10 An act relating to the Vermont title guaranty program

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 10 V.S.A. § 601(20) is added to read:

13 (20) "Title guaranty division" means the division of the Vermont
14 finance agency established in section 612 of this title.

15 Sec. 2. 10 V.S.A. § 612 is added to read:

16 § 612. CREATION OF THE TITLE GUARANTY DIVISION

17 (a) A title guaranty division is created within the Vermont housing finance
18 agency. The powers of the division relating to the issuance of title guaranties
19 are vested in and shall be exercised by a division board of five members
20 appointed by the governor subject to confirmation by the senate. The

1 membership of the board shall include an attorney, an abstractor, a real estate
2 broker, a representative of a mortgage lender, and a representative of the
3 housing development industry. The executive director of the agency shall
4 appoint an attorney as director of the title guaranty division, who shall serve as
5 an ex officio member of the board.

6 (b) Members of the division board shall be appointed by the governor for
7 staggered terms of six years in such a manner that no more than one term shall
8 expire annually. A person shall not serve on the division board while serving
9 on the agency board. A person appointed to fill a vacancy shall serve only for
10 the unexpired portion of the term. A member is eligible for reappointment. A
11 member of the division board may be removed from office by the governor for
12 misfeasance, malfeasance, or willful neglect of duty or for other just cause,
13 after notice and hearing, unless notice and hearing is expressly waived in
14 writing.

15 (c) Three members of the board shall constitute a quorum. An affirmative
16 vote of a majority of the appointed members is necessary for any substantive
17 action taken by the division.

18 (d) Members of the board are entitled to receive a per diem as specified in
19 32 V.S.A. § 1010 for each day spent in performance of duties as members and
20 shall be reimbursed for all actual and necessary expenses incurred in the
21 performance of duties as members.

1 (e) Members of the board and the director shall give bond as required for
2 public officers in chapter 11 of Title 3.

3 (f) Meetings of the board shall be held at the call of the chair of the board
4 or on written request of two members.

5 (g) Members shall elect a chair and vice chair annually and other officers as
6 they determine. The director shall serve as secretary to the board.

7 Sec. 3. 10 V.S.A. §§ 629 and 630 are added to read:

8 § 629. TITLE GUARANTY PROGRAM

9 (a) The agency through the title guaranty division shall initiate and operate
10 a program in which the division shall offer guaranties of real property titles in
11 this state. The terms, conditions, and form of the guaranty contract shall be in
12 a format approved by the division board. The division shall fix a charge for
13 the guaranty in an amount sufficient to permit the program to operate on a
14 self-sustaining basis, including payment of administrative costs and the
15 maintenance of an adequate reserve against claims under the title guaranty
16 program. A title guaranty fund is created as a special fund in the office of the
17 treasurer of the state as provided for in subchapter 5 of chapter 7 of Title 32.
18 Funds collected under this program shall be placed in the title guaranty fund
19 and are available to pay all claims, necessary reserves, and all administrative
20 costs of the title guaranty program. Moneys in the fund shall not revert to the
21 general fund and interest on the moneys in the fund shall be deposited in the

1 Vermont housing and conservation trust fund established in section 312 of this
2 title and shall not accrue to the general fund. If the agency board in
3 consultation with the division board determines that there are surplus funds in
4 the title guaranty fund after providing for adequate reserves and operating
5 expenses of the division, the surplus funds shall be transferred to the reserve
6 funds established pursuant to section 632 of this title and used for the purposes
7 stated therein.

8 (b) A title guaranty, closing protection letter, or gap coverage issued under
9 this program is an obligation of the division only, and claims are payable
10 solely and only out of the moneys, assets, and revenues of the title guaranty
11 fund and are not an indebtedness or liability of the state. The state is not liable
12 on any guaranty, closing protection letter, or gap coverage.

13 (c) With the approval of the agency board, the division and its board shall
14 consult with the insurance division of the department of banking, insurance,
15 securities, and health care administration in developing a guaranty contract
16 acceptable to the secondary market and developing any other feature of the
17 program with which the insurance division may have special expertise. The
18 insurance division shall establish the amount for a loss reserve fund. Except as
19 provided in this subsection, the title guaranty program is not subject to the
20 jurisdiction of or regulation by the insurance division or the deputy
21 commissioner of insurance.

1 (d) Each participating attorney and abstractor may be required to pay an
2 annual participation fee to be eligible to participate in the title guaranty
3 program. The fee, if any, shall be set by the division, subject to the approval of
4 the agency.

5 (e) The participation of abstractors and attorneys shall be in accordance
6 with rules established by the division and adopted by the agency. Each
7 participant shall at all times maintain liability coverage in amounts approved
8 by the division. Upon payment of a claim by the division, the division shall be
9 subrogated to the rights of the claimant against all persons relating to the
10 claim. Additionally, each participating abstractor is required to own or lease,
11 and maintain and use in the preparation of abstracts, an up-to-date abstract title
12 plant, including tract indices for real estate for each county in which abstracts
13 are prepared for real property titles guaranteed by the division. The tract
14 indices shall contain a reference to all instruments affecting the real estate
15 which are recorded in the office of the county recorder, and shall commence
16 not less than 40 years prior to the date the abstractor commences participation
17 in the title guaranty program. However, a participating attorney providing
18 abstract services continuously from November 12, 2010, to the date of
19 application, either personally or through persons under the attorney's
20 supervision and control is exempt from the requirements of this subsection.
21 The division may waive the requirements of this subsection pursuant to an

1 application of an attorney or abstractor which shows that the requirements
2 impose a hardship to the attorney or abstractor, and that the waiver clearly is in
3 the public interest or is absolutely necessary to ensure availability of title
4 guaranties throughout the state.

5 (f) Prior to the issuance of a title guaranty, the division shall require
6 evidence that an abstract of title to the property in question has been brought
7 up-to-date and certified by a participating abstractor in a form approved by
8 division rules and a title opinion issued by a participating attorney in the form
9 approved in the rules stating the attorney's opinion as to the title. The division
10 shall require evidence of the abstract being brought up-to-date, and the
11 abstractor shall retain evidence of the abstract as determined by the board.

12 (g) The attorney rendering a title opinion shall be authorized to issue a title
13 guaranty certificate subject to the rules of the agency.

14 (h) The agency, in consultation with the division, shall adopt rules
15 necessary for the implementation of the title guaranty program.

16 (i) The agency, in consultation with the division, may adopt rules
17 pertaining to the issuance of mortgage release certificates in real estate
18 transfers that apply only to mortgages in an original principal amount of
19 \$500,000.00 or less.

1 § 630. CLOSING PROTECTION LETTERS

2 (a) The agency through the title guaranty division may issue a closing
3 protection letter to a person whom a proposed title guaranty is to be issued,
4 upon the request of the person, if the division issues a commitment for title
5 guaranty or title guaranty certificate. The closing protection letter shall
6 conform to the terms of coverage and form of the instrument as approved by
7 the division board and may indemnify a person to whom a proposed title
8 guaranty is to be issued against loss of settlement funds due to only the
9 following acts of the division's named participating attorney or participating
10 abstractor:

11 (1) Theft of settlement funds; or

12 (2) Failure by the participating attorney or participating abstractor to
13 comply with written closing instructions of the person to whom a proposed
14 title guaranty is to be issued relating to title certificate coverage when agreed to
15 by the participating attorney or participating abstractor.

16 (b) A closing protection letter shall only be issued to a person to whom a
17 proposed title guaranty is to be issued for real property transaction in which the
18 division has committed to issue an owner of lender certificate and for which
19 the division receives a premium and other payments or fees for a title guaranty
20 certificate or other coverage.

1 (c) The division board shall establish the amount of coverage to be
2 provided and may distinguish between classes of property, including
3 residential, agricultural, or commercial, provided that the total amount of
4 coverage provided by the closing protection letter shall not exceed the amount
5 of the commitment or title guaranty to be issued. Liability under the closing
6 protection letter shall be coextensive with liability under the certificate to be
7 issued in connection with a transaction such that payments under the terms of
8 the closing protection letter shall reduce by the same amount the liability under
9 the title guaranty certificate, and payment under the title guaranty certificate
10 shall reduce the liability under the terms of the closing protection letter.

11 (d) The division may adopt a required fee for providing closing protection
12 letter coverage.

13 (e) The division shall not provide any other coverage which purports to
14 indemnify against improper acts or omissions of a person with regard to
15 escrow, settlement, or closing services.

16 (f) The agency shall adopt rules necessary to administer this section.