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BULLETIN

TO: All Property and Casualty Insurers Doing Business in Tennessee

FR: Paula A. Flowers, Commissioner Paula A. Flowers
Department of Commerce and Insurance

RE: Mortgage Impairment Products Determined To Be Title Insurance

DT: April 8, 2004

This Department has been made aware that certain insurers and other entities have been selling mortgage impairment products in this State. In reviewing some products purporting to protect against mortgage impairment, it is the opinion of this Department that such products constitute title insurance. This Bulletin is intended to inform the industry that all mortgage impairment products must comply with the Title Insurance Law, Tenn. Code Ann. §§ 56-35-101, *et seq.*

Tenn. Code Ann. § 56-35-103(a)(11) defines the term "title insurance business" as "the insuring or guaranteeing of titles to real property, *or interests therein*, or the validity, accuracy or sufficiency of liens or encumbrances thereon; ..." (Emphasis added.)

As understood by the Department, mortgage impairment protection products, whether or not they use the term "insurance" or "warranty" in their name, purport to insure the validity or the priority of a mortgage in that it protects the insured, often a lender, against undisclosed liens, which may impair the priority of the insured mortgage. Be advised that the fact that a mortgage impairment product only covers second or third mortgage lenders does not change the Department's position that such products are title insurance. Any product that, in essence, insures against loss by reason of defective title or incorrect title searches is title insurance, regardless of the name under which it is marketed to consumers.

It is the conclusion, therefore, of this Department that mortgage impairment products, of the type described above, are contracts of title insurance, and must comply with all applicable title insurance laws. Should you have any questions concerning the applicability of this Bulletin to a certain product, please contact the Insurance Division @ 615-741-2199.

cc: Kevin Lavender, Commissioner
Tennessee Department of Financial Institutions