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SENATE BILL 376

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO TITLE INSURANCE; PROVIDING UNDERWRITING STANDARDS  
FOR TITLE INSURERS; PROVIDING PROCEDURES FOR ENFORCING  
REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-30-11 NMSA 1978 (being Laws 1985,  
Chapter 28, Section 11, as amended) is amended to read:

"59A-30-11. UNDERWRITING STANDARDS AND RECORD  
RETENTION. --

~~[A. No title insurance policy may be written unless  
the title insurer or its title insurance agent has caused to be  
conducted a reasonable search and examination of the title  
using an abstract plant meeting the requirements of Section  
59A-12-13 NMSA 1978 and has caused to be made a determination  
of insurability of title in accordance with sound underwriting~~

underscored material = new  
[bracketed material] = delete

1 ~~practices. The duty to search and examine imposed by this~~  
2 ~~section is solely for the purpose of enhancing the financial~~  
3 ~~stability of title insurers for the benefit of insureds under~~  
4 ~~title insurance policies. The New Mexico Title Insurance Law~~  
5 ~~is not intended and should not be construed to create any duty~~  
6 ~~to search and examine that runs to the benefit of, or to create~~  
7 ~~any right or cause of action in favor of, any person other than~~  
8 ~~a title insurer.]~~

9           A. A title insurance policy may be issued only  
10 after the title has been searched using an abstract plant  
11 meeting the requirements of Section 59A-12-13 NMSA 1978 and  
12 after the title has been examined in accordance with sound  
13 underwriting practices. The search and examination required by  
14 this section are not intended to create duties owed to any  
15 person, other than the title insurer. The title insurer shall  
16 be liable under the policy for errors and mistakes made by the  
17 title insurance agent or an employee of the title insurer in  
18 the search and examination required by this section for claims  
19 covered by the policy.

20           B. Evidence of the examination of title and  
21 determination of insurability shall be preserved and retained  
22 in the files of the title insurer or its title insurance agent  
23 for a period of not less than fifteen years after the title  
24 insurance policy has been issued. Instead of retaining the  
25 original evidence, the title insurer or title insurance agent

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[bracketed material] = delete

1 may in the regular course of business establish a system  
2 whereby all or part of the evidence is recorded, copied or  
3 reproduced by any process that accurately and legibly  
4 reproduces or forms a durable medium for reproducing the  
5 contents of the original. This subsection shall not apply to:

6 (1) a title insurer assuming liability through  
7 a contract of reinsurance; or

8 (2) a title insurer acting as coinsurer if one  
9 of the other coinsuring title insurers has complied with this  
10 section. "

11 Section 2. A new section of the New Mexico Title  
12 Insurance Law is enacted to read:

13 "[NEW MATERIAL] PROCEDURE FOR ENFORCING REMEDIES. -- A  
14 person insured under a title insurance policy shall present any  
15 claim to the title insurer in accordance with the provisions of  
16 the title insurance policy form issued pursuant to the New  
17 Mexico Title Insurance Law and the rules promulgated by the  
18 superintendent. "