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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Jim Haney
Member, House of Representatives
Post Office Box 16122
Huntsville, AL 35802

Insurance - Title - Real Estate -
Loans - Madison County

Mortgage Impairment Insurance and similar products should be sold by title insurers. Title insurance in Alabama may not be issued by an insurer or other entity not licensed as a title insurer, and rates must be approved by the Department of Insurance.

Dear Representative Haney:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is Mortgage Impairment Insurance a legal way to insure title for real estate loans in Alabama?

FACTS AND ANALYSIS

Title insurance is defined by the Alabama Legislature as follows:

"Title insurance" is insurance of owners of property, or others having an interest therein or liens or encumbrances thereon against loss by

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encumbrance, or defective titles, or invalidity or adverse claim to title.

ALA. CODE § 27-5-10 (1998).

A title insurance policy is defined by the Alabama Legislature as follows:

(8) TITLE INSURANCE POLICY or POLICY. A contract insuring or indemnifying against loss or damage arising from any or all of the following existing on or before the date of the policy:

- a. Defects in or liens or encumbrances on the insured title.
- b. Unmarketability of the insured title.
- c. Invalidity or unenforceability of liens or encumbrances on the property described in the policy.
- d. Lack of priority of liens or encumbrances.

ALA. CODE § 27-25-3(8) (Supp. 2001).

Based on the information contained in your correspondence, "mortgage impairment insurance" purports to insure the validity or the priority of a mortgage in that it protects the insured against undisclosed liens, which may impair the priority of the insured mortgage. Hence, the so-called "Mortgage Impairment Insurance," as defined in your correspondence, is actually title insurance and is thus subject to the requirements applicable thereto as set forth in chapter 25 of title 27 of the Code of Alabama.

CONCLUSION

Mortgage Impairment Insurance and similar products should be sold by title insurers. Title insurance in Alabama may not be issued by an insurer or other entity not licensed as a title insurer, and rates must be approved by the Department of Insurance.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:



CAROL JEAN SMITH
Chief, Opinion Division

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