

AMERICAN
LAND TITLE
ASSOCIATION



TITLE INSURANCE REGULATORY SURVEY DISTRICT OF COLUMBIA

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PREPARED BY:
American Land Title Association

About ALTA

The American Land Title Association, founded in 1907, is the national trade association and voice of the abstract and title insurance industry. ALTA® members search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA® is headquartered in Washington, DC.

About the Title Insurance Regulatory Survey

The Title Insurance Regulatory Survey is the most comprehensive collection of regulatory information and practices of the title industry available. Developed by industry regulatory counsel, each state survey has been reviewed by in-state editors to ensure that the surveys reflect the proper legal and operational environment in all jurisdictions. This survey is organized into seven sections: Introduction, Title Insurers, Title Agents, Abstracters, Escrow/Closing Personnel, Market Practices, and Real Estate Practices.

Disclaimer

This Survey is designed to provide accurate and authoritative information in regard to the subject matter covered. This information reflects the regulations and statutes of the 2020 legislative session as of October 30, 2020. In preparing this Survey, the authors, including the American Land Title Association and the other named contributors, are not engaged in rendering legal, accounting, or other professional services. Thus, this Survey is not intended to substitute for advice of counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

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DISTRICT OF COLUMBIA TITLE INSURANCE REGULATORY SURVEY

PART I. INTRODUCTION

1. General Overview

On July 2, 2010, as part of the Fiscal Year 2011 Budget Support Act of 2010, the District of Columbia enacted the Title Insurance Insurer Act of 2010 and the Title Insurance Producer Act of 2010. The Acts subject title insurers and title insurance agents operating in the District of Columbia to comprehensive regulation by the D.C. Department of Insurance, Securities and Banking, effective January 1, 2011.

Title insurers and title agents are now regulated under D.C. law. To the extent that they fall within the definition of “title insurance producer” (see III(1) *infra*), abstracters and escrow and closing personnel are also subject to the provisions of the Title Insurance Producer Act.

As the terms “title insurance company” and “title insurer” can have different meanings in different circumstances, note that the use of these terms throughout this survey refers to title insurance underwriters rather than title insurance agents.

2. Explanatory Notes

In this District of Columbia Title Insurance Regulatory Survey (the “Survey”), references to the state statutes, the District of Columbia Code, are cited D.C. Code Ann. §_. References to the District’s regulations, the District of Columbia Municipal Regulations, are cited D.C. Mun. Regs. tit. ____, § ____. The Commissioner of the District of Columbia Department of Insurance, Securities and Banking is referred to as the “Commissioner”. The District of Columbia Department of Insurance, Securities and Banking is referred to as the “Department”. Forms included in this Survey should not be reproduced and used as originals without determining the acceptability of this procedure in advance with the Department.

This Survey summarizes the laws and regulations applicable to abstracters and title agents, title insurance companies (underwriters), escrow companies and settlement closers (which are likely to be title agents) in the District of Columbia.

This Survey also reviews market and real estate practices concerning the title insurance business. While this Survey reviews the applicability of title insurance laws to attorneys, no attempt has been made to review any attorney-specific requirements unrelated to the title insurance business. Moreover, this Survey is limited to the laws of the District of Columbia, and does not attempt to review any requirements that may arise under federal law.

This Survey is designed to provide currently available accurate and authoritative information in regard to the subject matter covered. In preparing this Survey, the authors, including the American Land Title Association and the other named contributors, are not engaged in rendering legal, accounting, or other professional services.

PART II. TITLE INSURERS

Prior to the enactment of the Insurer Act, domestic title insurers in the District of Columbia were regulated under banking statutes. These statutes have not been repealed. At present, there are no domestic title insurers operating in the District of Columbia. However, the Title Insurance Insurer Act and the Title Insurance Producer Act are clearly intended to be a comprehensive statutory scheme governing title insurers and title agents in the District of Columbia. This survey will address primarily the provisions of the new laws which affect all title insurers and agents doing business in the District of Columbia.

1. Doing Business Requirements

“Title insurance business” or “business of title insurance” is broadly defined as:

- (1) Issuing as an insurer, or offering to issue as an insurer, a title insurance policy;
- (2) Engaging in, or proposing to engage in, any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:
 - (a) Soliciting or negotiating the issuance of a title insurance policy;
 - (b) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting property, cooperative units, and proprietary leases, and for all liens or charges affecting the same;
 - (c) Executing title insurance policies;
 - (d) Effecting contracts of reinsurance; or
 - (e) Abstracting, searching, or examining titles;



- (3) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;
- (4) Guaranteeing or warranting the status of title as to ownership of or liens on real property or personal property by any person other than the principals to the transaction;
- (5) Doing, or holding oneself out to do business substantially equivalent to any of the activities listed above in a manner designed to evade the provisions of the Title Insurance Insurer Act of 2010; or
- (6) Matters insuring the correctness or marketability of title. D.C. Code Ann. §31-5031.01.

A license is required to transact the business of title insurance in the District of Columbia. “No person, other than a domestic, foreign, or non-U.S. title insurer organized on the stock plan and licensed under Chapter 25 of this title, shall issue a title insurance policy or otherwise transact the business of title insurance in the District. D.C. Code Ann. §31-5031.02.

With respect to a domestic title insurance company only, any 25 or more natural persons, who are citizens of the United States, may form a company for the purpose of carrying on a title insurance business, provided that the capital stock requirements set forth under Part II, § 3 are met. D.C. Code Ann. § 26-1301. Such individuals must publish their notice of intention to apply for a charter in two newspapers that are in general circulation in the District of Columbia for a minimum of four times per week for three weeks. *Id.* § 26-1306. The notice must contain the name of the proposed company that it intends to engage in the title insurance business, the names of the proposed incorporators, and the intention of the incorporators to apply for a charter on a certain day. *Id.* Proof that such notice was run must be presented before the District of Columbia’s City Council (the “Council”). *Id.*

Once the Council has approved the charter, the individuals must execute an organization certificate, which specifies:

- (1) the name of the corporation;
- (2) the purposes for which it is formed;
- (3) the term for which it is to exist, not to exceed 50 years, and that it is subject to alteration, amendment, or repeal by Congress at any time;
- (4) the number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company; and
- (5) the amount of its capital stock and its subdivision into shares.

Id. § 26-1304.

2. Monoline Statutes

The District has adopted “monoline” statute for title insurance, which prohibits title insurers from transacting any business other than title insurance business. D.C. Code Ann. §31-5031.04 A title insurer is specifically prohibited from guaranteeing payment of principal or interest on bonds and mortgages; however, a title insurer may issue closing or settlement protection to a proposed insured upon request if the title insurer issues a preliminary report, binder, or title insurance policy. The closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the Commissioner. *Id.*(See Part I §13.)

3. Minimum Capital and Surplus

Before being licensed to do an insurance business in the District, all title insurers shall establish and maintain a minimum paid-in capital of not less than \$500,000 and paid-in initial surplus of at least \$500,000, for a total minimum capital and surplus total of at least \$1 million. D.C. Code Ann. §31-5031.05.

Domestic title insurers must have minimum capital stock of at least \$1,000,000. D.C. Code Ann. § 26-1316. At least 50 percent of this amount must be paid-in in cash. *Id.* The minimum capital stock must be paid-in within one year from the organization of the corporation. *Id.*

Before a title company will be permitted to engage in any type of fiduciary duties, the company must deposit, either in cash or in bonds, mortgages, deeds of trust or other securities, an amount equal in actual value to one-fourth of the capital stock paid-in with the Commissioner. *Id.* From time to time, the Commissioner may require additional deposits from the company up to one-half the value of the paid-in capital. *Id.*

4. Risk-Based Capital Issues

The National Association of Insurance Commissioners (“NAIC”), in consultation with the insurance industry, has established separate risk-based capital models that apply to life insurers, property and casualty insurers, and health maintenance organizations. Those different formulas reflect the differences in the economic environments facing those different companies. Neither the NAIC nor the District has adopted a risk-based capital scheme applicable to the operation of a title insurance business, and, thus, title insurers in the District are not required to file a risk-based capital report.



5. Statutory Premium Reserve Issues

In determining the financial condition of a title insurer doing business in the District of Columbia, the general provisions of the acts relating to insurance which are codified in Title 31 of the D.C. Code requiring the establishment of reserves sufficient to cover all known and unknown liabilities, including allocated and unallocated loss adjustment expense, shall apply.

The statutory or unearned premium reserve required by the laws of the domiciliary state of a foreign title insurer shall also be required by the District of Columbia for the foreign title insurer. Domestic title insurers are subject to the reserve requirements set forth in DC Code §31-5031.08(a).

Additions to the statutory or unearned premium reserves after January 1, 2011, shall be, made out of total charges for title insurance policies and guarantees written, equal to the sum of the following items, as set forth in the title insurer's most recent annual statement on file with the Commissioner:

- (1) For each title insurance policy on a single risk written or assumed after January 1, 2011, \$0.36 per \$1,000 of net retained liability for policies under \$500,000 and \$0.16 per \$1,000 of net retained liability for policies of \$500,000 or greater; and
- (2) Eight percent of escrow, settlement, and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.

The aggregate of the amounts set aside in the reserve in any calendar year shall be released from the reserve and restored to net profits over a period of 20 years pursuant to the following formula:

- (1) Thirty-five percent of the aggregate sum on July 1 of the year next succeeding the year of addition;
- (2) Fifteen percent of the aggregate sum on July 1 of each of the succeeding 2 years;
- (3) Ten percent of the aggregate sum on July 1 of the next succeeding year;
- (4) Three percent of the aggregate sum on July 1 of each of the next 3 succeeding years;
- (5) Two percent of the aggregate sum on July 1 of each of the next 3 succeeding years; and
- (6) One percent of the aggregate sum on July 1 of each of the next succeeding 10 years.

A supplemental reserve shall be established consisting of any other reserves

necessary, when taken in combination with the required reserves to cover the company's liabilities with respect to all losses, claims, and loss-adjusted expenses.

D.C. Code Ann. §31-5031.08

7. Guaranty Funds & Assessment for Failed Insurer Statutes

Domestic title insurers are subject to the provisions of the Insurers Rehabilitation and Liquidation Act of 1993, DC Code §31-1301 et seq.

8. Annual Reports

Every company or association authorized to transact insurance business in the District shall file annually with the Mayor, before March 1st of each year, a financial statement for the year ending December 31st immediately preceding on forms furnished by the Mayor. The Mayor may extend the time for filing the statement by any company for reasons which the Mayor shall deem sufficient. Such a statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by 2 other principal officers. The Mayor shall annually, in the month of December, furnish to each of the companies and association section. The forms shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners (“NAIC”). The filing of these statements shall be in accordance with the NAIC Accounting Practices and Procedures Manual. The authorized to do insurance business in the District forms necessary for filing the annual financial statement required by this Mayor shall have power to make modifications and additions in the financial statement forms as the Mayor may deem necessary to ascertain the condition and affairs of the company. The Mayor may also require that at least once in the month of March in each year a summary of the annual statement by the company be published in a daily newspaper in the District. D.C. Code Ann. §31-1901.

Each domestic, foreign, and alien insurer authorized to transact insurance in the District shall annually, on or before March 1st of each year, file with the NAIC, and pay the fee established by the NAIC for filing, reviewing, or processing the information, a copy of its annual statement convention form, along with any additional filings prescribed by the Mayor for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Mayor and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the Mayor also shall be filed with the NAIC.

Foreign insurers domiciled in a state which has a law substantially similar to D.C. law shall be deemed in compliance with this section if they file their annual statements in compliance with that jurisdiction's law.

With respect to domestic title insurers, within 20 days after January 1 of each year, each title insurer must make a report to the Commissioner. D.C. Code Ann. § 26-1318. The report must contain the amount of the company's capital, the proportion of the capital that had been actually paid-in, the amount of the company's debts, and the gross earnings for the year ending December 31st of the previous year. *Id.* The president and a majority of the company's directors or trustees must sign the report and the report must be verified by an oath of the president, secretary and at least three of the company's directors or trustees. *Id.*

Each of the Company's directors or trustees will be jointly and severally liable for all of the company's debts, including those in existence and those that are contracted for before the report could be filed. *Id.* § 26-1319. In the event that the company fails to comply with the annual reporting requirement, any director can petition the secretary of the company, the Commissioner and the Recorder of Deeds of the District of Columbia in writing to comply with this requirement, thereby making that director exempt from liability for any debts. *Id.*

9. Actuarial Certification

The actuarial certification required of a title insurer shall conform to the NAIC's annual statement instructions for title insurers. D.C. Code Ann. §31-5031.08.

10. Audits

There are no audit requirements in the District of Columbia for title insurers.

11. Single Risk Limits

The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of 50% of surplus as regards policyholders, plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the Commissioner.

A single risk shall be the insured amount of any title insurance policy; provided that, if 2 or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies. A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced. D.C. Code Ann. §31-5031.06.

12. Reinsurance

There are no reinsurance requirements in the District of Columbia for title insurers.



13. Insured Closing Letters

A title insurer may issue closing or settlement protection to a proposed insured upon request if the title insurer issues a preliminary report, binder, or title insurance policy. The closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the Commissioner and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance producer:

- (1) Theft of settlement funds in connection with the closing to the extent that the theft relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land; and
- (2) Failure to comply with the written closing instructions by the proposed insured when agreed to by the title insurance producer, to the extent that they relate to the status of the title to that interest in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

The Commissioner may promulgate by rule pursuant to § 31-5031.23, or approve, a required charge for providing the coverage. The charge for issuance of a closing or settlement protection letter in a residential property transaction indemnifying a seller of an interest in real property, a refinancing borrower, or a buyer who does not purchase title insurance shall be not less than \$50.

A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

The form of closing protection letter used by a title insurer and rates shall be filed with the Commissioner as provided by § 31-5031.18(b)(3).

D.C. Code Ann. §31-5031.04.

14. Board Limitations

Domestic title companies organized in the District of Columbia are required by law to be managed by not less than 9 nor more than 30 persons. D.C. Code Ann. § 26-1324. In order to qualify to be a director, an individual must be a stockholder in the company and a citizen of the United States. *Id.* At least two-thirds of a title company's directors must reside in the District of Columbia or within 100 miles of the company's principal location. *Id.*

With the exception of the first year that the individual serves as a director, the stockholders must elect the director annually. *Id.* Elections for directors are to be held at the times and places as set forth in the company's bylaws.

15. Agent Issues

Title insurance agents are subject to the provisions of the Title Insurance Producer Act of 2010. See Part III. A title insurer shall not accept business from a title insurance producer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of responsibilities.

For each title insurance producer under contract with the insurer, the title insurer shall have on file a statement of financial condition of each title insurance producer as of the end of the previous calendar year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31st certified by the title insurance producer as being a true and accurate representation of the producer's financial condition.

The title insurer shall, at least annually, conduct an on-site review, or a review conducted electronically that would accomplish the functional equivalent of the same, of the underwriting, claims, and escrow practices of the title insurance producer which shall include a review of the producer's policy blank inventory and processing operations. If the title insurance producer does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance producer.

Within 30 days after executing or terminating a contract with a title insurance producer, the title insurer shall provide written notification of the appointment or termination and the reason for termination to the Commissioner. Notices of appointment of a title insurance producer shall be made on a form promulgated by the Commissioner. A domestic title insurer shall not appoint to its board of directors an officer, director, employee, controlling shareholder, or any title insurance agent who wrote 1% or more of the title insurer's direct premiums written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the Commissioner. This subsection shall not apply to relationships governed by the Holding Company System Act of 1993, effective October 21, 1993.

(D.C. Law 10-44; D.C. Official Code § 31-701 et seq.).

The title insurer shall maintain an inventory of all policy forms or policy numbers allocated to each title insurance producer.

The title insurer shall have on file proof that the title insurance producer is licensed in the District.

The title insurer shall establish the underwriting guidelines and, if applicable,

limitations on title claims settlement authority to be incorporated into contracts with its title. D.C. Code Ann. § 31-5031.13.

16. Policy Forms

a. Type Used

D.C. law is silent as to the form of insurance policy that must be used by an insurer. The 2006 ALTA form is the current version in general use by title insurers in the District.

Earlier ALTA forms (from 1970, 1984, 1987, and 1992) are no longer officially designated as “ALTA” forms. Some institutional lenders still require these earlier forms, and, thus they are still written if requested. The practice in the District is to designate these forms as “FORMER ALTA POLICY FORM.”

b. Approval Process

A title insurer or authorized rate service organization shall not deliver, issue for delivery, or permit any of its authorized title insurance agents to deliver in the District, any form, in connection with title insurance written, unless it has been filed with the Commissioner and approved by the Commissioner or 60 days have elapsed and it has not been disapproved as misleading or in violation of public policy.

Forms covered by this section shall include:

- (1) Title insurance policies, including standard form endorsements;
- (2) Title insurance commitments issued prior to the issuance of a title insurance policy; and
- (3) Closing protection letters.

After notice and opportunity to be heard are given to the insurer or rate service organization which submitted a form for approval, the Commissioner may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than 90 days after notice of withdrawal is given.

Any form or endorsement providing coverage for which no identifiable premium is assessed may be incorporated into every applicable title insurance policy. The insurer shall disclose any additional coverage to the insured. The provisions of this section shall not operate to eliminate any underwriting standard of conditions relating to the approved policy forms or endorsements.

Any term or condition related to an insurance coverage provided by an approved

title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, shall only be included in the policy after the term, condition, or exception has been filed with the Commissioner and approved. D.C. Code Ann. §31-5031.18.

c. License of ALTA Policy Forms

A title insurer that writes on American Land Title Association Policy Forms must be licensed to do so by the ALTA.

Membership in the ALTA includes this license.

A non-member of the ALTA must purchase a \$195 yearly license from the ALTA to write on ALTA Policy Forms.

In the alternative, non-members who, during the previous calendar year, wrote title insurance on 50 or fewer transactions may apply for an Occasional Use Waiver. Settlements that included both a loan and owner's policy would count as a single transaction for the purpose of the waiver. Applications may be found at www.alta.org/waiver.

17. Rate Regulation

A title insurer or title insurance producer may charge any rates regulated by the District of Columbia after January 1, 2011 in accordance with the premium rate schedule and manual filed by the title insurer with and approved by the Commissioner in accordance with applicable law and rules governing rate filings. The Commissioner may provide, by rule, for interim use of premium rate schedules in effect prior to January 1, 2011. D.C. Code Ann. §31-5031.17.

18. Taxes

The District does not impose taxes that are specific to title insurers. All other types of insurance companies doing business in the District are taxed on the company's gross premiums as set forth under D.C. Code Ann. § 31-205.

19. Disclosures

If a title insurance commitment includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the title insurance commitment shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the report cannot be delivered prior to or at closing, the title insurer shall document the reasons for the delay. The title insurance commitment furnished to the purchaser-mortgagor shall incorporate the following statement on the 1st page in bold type:

“Please read the exceptions and the terms shown or referred to

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herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this form is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.”

A title insurer issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the owner-occupied residential property securing the loan, if no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the Commissioner, to the purchaser-mortgagor at the time the title insurance commitment is prepared. The notice shall explain:

- (1) A lender's title insurance policy is to be issued protecting the mortgage-lender;
- (2) The policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased;
- (3) What a title policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's policy; and
- (4) The purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages or amount of insurance is not then known.

A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least 3 years after the effective date of the policy. D.C. Code Ann. §31-5031.12.

20. Escrow Accounts

See Part IV, §11-13

PART III. TITLE AGENTS

1. Title Agents Defined; Form of Business Entity Requirements

A title insurance producer is a person who is authorized to perform, on behalf of a title insurer, the following acts in conjunction with the issuance of a title insurance commitment or policy covering residential or personal property in the District of Columbia:

- (1) Determining insurability and issuing title insurance commitments or policies or both, based upon the performance or review of a search or

abstract of title; and

(2) Soliciting or negotiating title insurance business.

Id. § 31-5041.01(19A)

A person acting in the capacity of a title insurance producer must not place business with a title insurer unless there is in force a written contract between the parties, which sets forth the responsibilities of each party, and, if both parties share responsibilities for a particular function, specifies the division of the responsibilities. *Id.* § 31-5041.08

2. Licensing

On July 2, 2010, the District of Columbia enacted the Title Insurance Producer Act of 2010. *Id.* § 31-5041.01

Pursuant to the Act a person must not act in the capacity of title insurance producer and a title insurer must not contract with any person to act in the capacity of title insurance producer with respect to risks in the District unless the person is licensed as a title insurance producer in the District of Columbia. *Id.* § 31-5041.02

District of Columbia title insurance agents must obtain a license within 180 days of January 1, 2011. *Id.*

Resident producers, with the exception of title attorneys, are required to pass an examination; nonresident applicants are granted licensure through reciprocity. Producer licenses are effective for two years. They expire on the birth month for an individual licensee, or on May 31, 2011 for firms. To renew the license title insurance producers must obtain 16 hours of continuing education credits. Attorneys are required to obtain 8 hours of CE Credits prior to the expiration of the license.

The Commissioner may refuse to issue an insurance producer license; place an insurance producer on probation; suspend, revoke, or refuse to renew an insurance producer's license; levy a civil penalty ; issue subpoenas and administer oaths; or take any combination of these actions if an insurance producer or an applicant for an insurance producer license:

- (1) Provides incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violates any insurance laws or any regulation, subpoena, or order of the Commissioner or of another state's insurance commissioner;
- (3) Obtains, or attempts to obtain, a license through misrepresentation or fraud;

- (4) Improperly withholds, misappropriates, or converts any monies or properties received in the course of doing insurance business;
- (5) Intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance;
- (6) Is convicted of a felony;
- (7) Admits committing, or is found to have committed, any insurance unfair trade practice or fraud;
- (8) Uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the District or elsewhere;
- (9) Has an insurance producer license, or its equivalent, denied, suspended, or revoked in any state or territory of the United States, province of Canada, or other foreign country;
- (10) Forges another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Improperly uses notes or any other reference material to complete, or otherwise cheats on, an examination for an insurance license;
- (12) Knowingly accepts insurance business from an individual who is not licensed;
- (13) Fails to comply with an administrative or court order imposing a child support obligation;
- (14) Fails to pay District income tax or comply with any administrative or court order directing payment of District income tax;
- (15) Is found to have misrepresented satisfactory completion of, or improperly used notes or other reference material to complete, or otherwise cheats on, an examination in a prelicensure or continuing education course.

Id. § 31-1131.12(a)

In addition to the reasons set forth above, the Commissioner may place a business entity insurance producer on probation; suspend, revoke, or refuse to renew a business entity insurance producer's license; or levy a civil penalty against a business entity insurance producer if:

- (1) One or more of the partners, officers, or managers acting on behalf of the business entity knew or should have known of the occurrence of a license violation;

- (2) The violation was not reported to the Commissioner; and
- (3) Corrective action was not taken.

Id. § 31-1131.12(a-1)

3. Testing

Resident producers, with the exception of title attorneys, are required to pass an examination; nonresident applicants are granted licensure through reciprocity.

An applicant for a title insurance producer license is not required to complete a pre-licensing course of study before:

- (1) Taking the examination required by § 31-1131.05; or
- (2) Applying for an insurance producer license

Id. § 31-1131.05a

4. Continuing Education Requirements

To renew a title insurance license, title insurance producers must obtain 16 hours of continuing education credits and attorneys are required to obtain 8 hours of CE Credits prior to the expiration of their licenses.

5. Audit Requirements

The Commissioner, during normal business hours, may examine, audit, and inspect any and all books and records required and maintained by a title insurance producer; provided, that trust accounts maintained by attorneys must be subject to any privilege permitted by law producer; and properly asserted. *Id.* § 31-5041.03(a)

The Commissioner may require that this information be verified by oath of the title insurance producer or an officer, employee, or accountant of the title insurance producer. *Id.* § 31-5041.03(b).

At least annually a title insurer must conduct an on-site review, or a review conducted electronically that would accomplish the functional equivalent of the same, of the underwriting, claims, and escrow practices of the title insurance producer which must include a review of the producer's policy blank inventory and processing operations. *Id.* § 31-5031.13 (c). If the title insurance producer does not maintain separate bank or trust accounts for each title insurer it represent, the title insurer must verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance producer. *Id.*

Title insurance producers who are attorneys licensed in any state or the District of Columbia, who are not exclusively in the business of title insurance, and who issue title insurance as part of their legal representation of clients are exempt from the

requirements of having an annual audit. *Id.* § 31-5041.06(f).

If the title insurance producer is appointed by 2 or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing, settlement services, the title insurance producer must allow each title insurer reasonable access to the accounts and any or all of the supporting account information to ascertain the safety and security of the funds held by the title insurance producer. *Id.* § 31-5041.06(g).

6. Financial Statement Requirements

There are no financial statement requirements for title insurance producers.

7. Capital and Surplus Requirements

There are no capital or surplus requirements for title insurance producers.

8. Required Insurances

At the time of an application for an initial, renewal or reinstatement of a title insurance producer license, whether for a business entity or an individual, the applicant shall provide satisfactory evidence of having secured the following:

- (1) An errors and omissions policy in an amount of not less than \$500,000 per occurrence or claim;
- (2) A surety bond in an amount not less than \$200,000 and
- (3) For a business entity, fidelity coverage in an amount of not less than \$200,000 covering all employees and contractors.

Id. § 31-5041.02(c)(1)(A)-(E).

If the title insurance producer delegates the title search to a third party, such as an abstract company, the title insurance producer must exercise the appropriate diligence, in good faith, to determine that the third party is covered by or maintains the errors and omissions coverage required of title insurance producers. *Id.*

9. File Retention Requirements

A title insurance producer must maintain sufficient records of its affairs, including its escrow operations and escrow trust accounts so that the Commissioner may adequately ensure that the title insurance producer is in compliance with Title 31, Subtitle VII, Chapter 50B of the DC Code. The Commissioner may prescribe the specific record entries and documents to be kept and the length of time for which the records must be maintained, for a period not to exceed 3 years, unless otherwise required by RESPA.

Id. § 31-5041.04.

10. Required Investigations of Personal (Background, Credit, etc.)

District of Columbia law does not require title insurance producers to perform background checks of their personnel.

11. Minimum Search Requirements (Marketable Title Act, etc.)

The District of Columbia has not enacted laws setting forth minimum search requirements.

12. Title Plant Requirements

Title insurance producers are not required to have a title insurance plant.

13. Special requirements and Exemption for Attorneys

The District of Columbia attorneys are not required to pass an examination to obtain a title insurance license

14. Requirements unique to Approved Attorneys

Title attorneys are required to obtain 8 hours of continuing education prior to the expiration of their licenses.

15. Unauthorized Practice of Law Issues

The practice of law is defined under District of Columbia's Court of Appeals Rule 49 as the provision of professional legal advice or services where there is a client relationship of trust or reliance. D.C. Ct. App. Rule 49(b) (2).

Persons engaging in settlements will not be deemed to be engaging in the unauthorized practice of law by preparing legal documents in connection with real estate transactions or conveyances provided that such acts are incidental to and are practically necessary to the agent's conduct of its authorized business of effecting real estate closings in the District. See *Merrick v. American Security & Trust Co.*, 107 F.2d 271 (D.C. Cir. 1939)

16. License of ALTA Policy Forms

A title agent that writes on American Land Title Association Policy Forms must be licensed to do so by the ALTA.

Membership in the ALTA includes this license.

A non-member of the ALTA must purchase a \$195 yearly license from the ALTA to write on ALTA Policy Forms.

In the alternative, non-members who, during the previous calendar year, wrote title insurance on 50 or fewer transactions may apply for an Occasional Use Waiver. Settlements that included both a loan and owner's policy would count as a single transaction for the purpose of the waiver. Applications may be found at

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www.alta.org/waiver.

PART IV. ABSTRACTERS

Abstracting, searching or examination of title is included in the definition of “title insurance business”, and therefore abstracters are now regulated by the District of Columbia. Employees of abstracting companies are, however, specifically exempted from the definition of “title insurance producer.”

PART V. ESCROW/CLOSING PERSONNEL

1. Who Can Close/Who Actually Close

The District does not specifically regulate escrow companies. The District does not require persons engaging in settlements to be any particular type of entity, but such persons are likely to be title agents or attorneys. Notwithstanding the absence of specific regulation on this issue, the person engaging in the settlement process ultimately is responsible for conducting the settlement and disbursing the settlement proceeds. See D.C. Code Ann. § 42-2401. To the extent that a person performing settlements meets the definition of “title producer” as defined in the Title Insurance Producer Act of 2010, that person must comply with all of the provisions of the Act.

2. Form of Business Entity Requirements

There are no D. C. requirements that persons engaging in settlements be a particular type of entity. A settlement agent may be a natural person.

3. Licensing, Testing and Continuing Education Requirements

There are no D.C. licensing, testing or continuing education requirements solely applicable to individuals offering settlement services. A person offering settlement services who is a title producer must comply with the licensing, testing and continuing education requirements of the Producer Act. See Part III, §2-4.

4. Bonding and Insurance Requirements

There are no D.C. bonding or insurance requirements solely applicable to persons engaged in settlements. For persons engaged in settlements who are also title producers, see Part III, #8.

5. Capital and Surplus Requirements

There are no D.C. capital and surplus requirements for persons engaged in settlements.

6. Required Investigations of Personnel

There are no required investigations of personnel in order to effect settlements in

the District.

7. Audit Requirements

See III, §5.

8. Reporting Requirements

There are no D.C. reporting requirements for persons engaged in settlements.

9. File Retention Requirements

See III, §10. There are no D.C. file retention requirements for persons engaged in settlements.

10. Segregated account Requirements

All funds deposited with the title insurance producer or insurer in connection with an escrow, settlement, closing, or indemnity deposit shall be submitted for collection to or deposited in a fiduciary trust account in accordance with Chapter 24 of Title 42, unless otherwise agreed upon in writing, and in accordance with the following requirements:

- (1) The funds shall be the property of the person entitled to them under the provisions of the escrow, settlement, indemnity deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, indemnity deposit, or closing in the records of the title insurance producer in a manner that permits the funds to be identified on an individual basis; and
- (2) The funds shall be applied only in accordance with the terms of the individual instructions, settlement statement, or agreements under which the funds were accepted. D.C. Code Ann. §31-5031.14

11. Interest on Deposited Funds Regulations

Any interest received on funds deposited in connection with any escrow, settlement, indemnity deposit, or closing shall be paid, net of administrative costs, to the depositing party, unless the depositor's written instructions for the funds, a court order, or a governing law provides otherwise. *Id.*

12. Good Funds Requirements

Disbursements may be made out of an escrow, settlement, or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

- (1) Cash;

- (2) Wire transfers such that the funds are unconditionally received by the title insurance producer, title insurer, or depository of either;
- (3) Checks, drafts, negotiable orders of withdrawal; money orders, and any other item that has been finally paid before any disbursements; provided, that a title insurance producer may accept a check in an amount not to exceed \$3,000 that has not been finally paid before any disbursements;
- (4) A depository check, including a certified check, governed by the provisions of the Expedited Funds Availability Act, approved August 10, 1987 (101 Stat. 635; 12 U.S.C. § 4001 et seq.); or
- (5) Credit transfers through the Automated Clearing House which have been deemed available by the depository institution receiving the credit transfers and conform to the operating rules set forth by the National Automated Clearing House Association.

Id.

13. Escheat Statutes

Chapter 1 of the District's personal property provisions relates to the distribution of unclaimed property. D.C. Code Ann. §§ 41-101 et seq. These provisions cover unclaimed money, securities and other items likely to be held in escrow by title agents or underwriters. Title insurers and agents are required to review their records each year to determine whether they hold any funds, securities or other properties for the required dormancy period (presumed abandoned if unclaimed for three years) and file a report with the District's Unclaimed Property Unit.

14. Special Requirements Exemptions Applicable to Approved Attorneys Attorney Agents

Unlike other states that have "approved attorney" rate lists, there are no special requirements or exemptions applicable to approved attorneys or attorney agents. To the extent that an approved attorney meets the definition of "title producer" as defined in the Title Insurance Producer Act of 2010, the approved attorney must comply with all of the provisions of the Act.

15. Unauthorized Practice of Law

Who can practice law is defined under District of Columbia's Court of Appeals Rule 49 as the provision of professional legal advice or services where there is a client relationship of trust or reliance. D.C. Ct. App. Rule 49(b)(2).

Persons engaged in settlement will not be deemed to be engaging in the unauthorized practice of law by preparing legal documents in connection with real

estate transactions or conveyances provided that such acts are incidental to and are practically necessary to the agent's conduct of its authorized business of effecting real estate closings in the District. See *Merrick v. American Security & Trust Co.*, 107 F.2d 271 (D.C. Cir. 1939).

PART VI. MARKET PRACTICES

1. Controlled Business Issues

In addition to restrictions that may arise under the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 et seq. "RESPA"), the following provisions under D.C. law relating to controlled business arrangements.

A title insurer shall not participate in any transaction in which it knows that a title insurance producer or other person requires, directly or indirectly, or through any trustee, director, officer, agent, employee, or affiliate, as a condition precedent to selling or furnishing any other person a loan, or loan extension, credit, sale, property, contract, lease, or service, that the other person shall place a title insurance policy of any kind with the title insurer or through a particular title insurance agent.

D.C. Code Ann. §31-5031.16.

2. Kickback, Rebating and Fee Splitting Prohibitions

Aside from restrictions that may arise under RESPA, the following provisions under D.C. law relate to kickbacks, rebates or fee splitting in the context of title insurance.

A title insurer or other person shall not give or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other service provided by a title insurer. D.C. Code Ann. §31-5031.15 and Department Bulletin 12-1B-01-02/29.

In a residential property transaction, a title insurer, or any employee or representative of a title insurer, shall not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any valuable consideration or inducement, whether or not specified or provided for in the policy, except to the extent provided for in an applicable filing with the Commissioner as provided bylaw.

In a residential property transaction, an insured named in a policy, or any employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or reduction of premium, or any special favor, advantage, valuable consideration, or inducement, as specified in

subsection (a) of this section.

However, the payment of commissions or other compensation to domestic or foreign licensed title insurance producers or title insurer employees is permitted. D.C. Code Ann. §31-5041.07.

PART VII. REAL ESTATE PRACTICES

1. How Real Property is Encumbered

Real property located in the District of Columbia may be encumbered by either a mortgage or a deed of trust.

A trustee may be any natural person; there are no residency or attorney requirements in the District.

2. Security Instruments Utilized and Recordation Thereof

Both deeds of trust and mortgages may be used to encumber property in the District of Columbia. The Recorder of Deeds is required to record all such instruments regardless of whether it is a deed of trust or a mortgage. *Id.* § 42-802.

Recording with the Recorder of Deeds is necessary to make the instrument effective against third parties. All mortgages and deeds of trust to be recorded must be acknowledged before a notarial officer. *Id.* § 42-147.

Local practitioners suggest that it is advisable to use a reputable D.C. abstractor or recording service to handle recording.

Many of the current forms promulgated by or through the Office of the Recorder of Deeds may at the present time be viewed in pdf format at

<https://otr.cfo.dc.gov/service/otr-recorder-deeds>.

3. Foreclosure Procedures

a. Non-judicial foreclosures

The “Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010” was enacted by the Council of the District of Columbia on November 9, 2010, and became effective on November 17, 2010. The permanent version of this legislation became effective on March 12, 2011 as Act 18-365, the “Saving D.C. Homes from Foreclosure Amendment Act of 2010.” In response to widespread concerns regarding provisions of the Act which void foreclosure sales under certain circumstances, the Council enacted the “Saving D.C. Homes from Foreclosure Temporary Amendment Act of 2011”, D.C. Law 19-41, effective November 26, 2011. Act 20-0156, entitled the “Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013” (the “2013 Act”), was enacted on August 20, 2013, and became law on

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November 5, 2013. It incorporates previous emergency and temporary amendments in addition to including new provisions included to address stakeholder issues.

New amendments in the 2013 Act which specifically address title industry concerns include the elimination of the Final Mediation Certificate requirement for loans made to business entities, and clarification that the Act does not apply to judicial mortgage foreclosures.

- (1) The purpose of these Acts is to require a lender seeking to foreclose a residential mortgage to provide a notice of default to a residential mortgage borrower or borrowers and/or the person or persons holding title to the real property (the Borrower”), and to provide the Borrower with the right to elect to engage in mediation prior to the initiation of foreclosure by the lender. The D.C. Department of Insurance, Securities and Banking (the “Department”) serves as the Mediation Administrator.
- (2) A residential mortgage is defined as a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by four or fewer single family dwelling units. The 2013 Act strikes the previous characterization of “residential mortgage” as a mortgage encumbering owner-occupied residential property only, and further amends the definition of “residential mortgage” to exclude debts incurred, and currently obligating solely, an entity, as defined by D.C. Official Code § 29-101.02(10).
- (3) A Notice of Intention to Foreclose a Residential Mortgage (“Form FM-5”) is null and void with respect to a foreclosure of a residential mortgage unless:
 - a) A Notice of Default on Residential Mortgage (“Form FM-1”), including all attachments as set forth in proposed DCMR 27-C § 2703.3, has been mailed to each Borrower via certified first-class mail, postage prepaid, return receipt requested, and first-class mail, at his or her last known address; and
 - b) The foreclosing lender receives and records at the Office of the Recorder of Deeds a Final Mediation Certificate furnished by the Mediation Administrator, prior to or contemporaneously with the filing of Form FM-5.
 - A copy of Form FM-1, excluding attachments, and the Mediation Election Form (“Form FM-2”) must be recorded at the Office of the Recorder of Deeds within two business days of the date of mailing of Form FM-1.

- A recorded Final Mediation Certificate shall serve as conclusive evidence that the provisions of the Act and implementing regulations have been complied with, and may be relied upon by a bona fide purchaser and a bona fide purchaser's lender, their successors or assigns. Note that under the 2013 Act, an interim Mediation Certificate, subject to appeal, may be issued by the Mediation Administrator, but it does not serve as evidence of compliance with the provisions of the Act and implementing rules, and may not be recorded.
- Borrower shall have the same rights to assert claims for a defective Notice of Default on Residential Mortgage as the law provides for a defective Notice of Intention to Foreclose on a Residential Mortgage. Nothing in the Act shall be construed to limit a Borrower's right to assert a claim for fraud or monetary damages against a Borrower's lender.
- A valid foreclosure sale must be conducted in strict compliance with the Act and implementing regulations. The regulatory scheme is form-based and use of Department forms is mandatory. The forms are accessible at the Department website: <https://disb.dc.gov/>.

b. Judicial Foreclosures

Judicial foreclosures are now the most common method of residential foreclosure in the District of Columbia, most likely due to the difficulties in complying with the detailed requirements for non-judicial foreclosures, and the draconian consequences of any failure of strict compliance. Judicial foreclosures occurred very rarely prior to the enactment of the Saving D.C. Homes from Foreclosure statutes, and there is very little statutory or case law to provide guidance in reviewing titles deriving from judicial foreclosure.

D.C. Official Code § 42-816 provides that District of Columbia law recognizes a cause of action to foreclose a mortgage or deed of trust. The Superior Court has the power to hear such causes of action and to order the sale of the real property and subsequent distribution of funds.

Rogers v. Advance Bank (D.C. Ct. App. 2015) holds that judicial foreclosure actions are exempt from the mediation requirements of D.C. Code § 42-815.01, stating that “Judicial sales under § 42-816...are wholly different from non-judicial foreclosures because of the court's involvement in the process, which reduces the risk of error and predatory foreclosure practices.” However, parties to judicial foreclosure actions in the Superior Court of the District of Columbia must attend a

mandatory mediation, which usually occurs early in the foreclosure litigation.

Court Rule 308 allows the Court to determine procedures for a public sale at its discretion.

Judicial foreclosures in D.C. are scheduled on a separate calendar from other litigation matters in the Civil Division of the Superior Court.

In two judicial foreclosure cases filed in 2013, the Court allowed counsel for *amici curiae* Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly and the D. C. Office of the Attorney General to file a brief in the cases setting forth recommended procedures to be followed in hearing and disposing of cases filed in Superior Court which seek judicial foreclosure of residential mortgages or deeds of trust. These procedures addressed equitable concerns and included a recommendation for an expanded mediation process intended to promote loss mitigation and alternatives to foreclosure. The brief was well received by the Court, which now provides a notice to borrowers in residential judicial foreclosures which states in plain language that the borrower is at risk for the loss of his or her home and provides contact information for organizations which may provide assistance in exploring options for avoiding foreclosure.

In addition to these procedures, mediation occurs early in the proceedings, with a separate scheduling order for the mediation process, established at the initial scheduling conference. Housing counselors are often available at the initial scheduling conference. The Court liberally grants motions to vacate defaults in cases where a default may have been entered against a homeowner.

4. Transfer Taxes & Recordation Fees

The transfer and recordation tax on deeds that convey real property located in the District of Columbia is 1.1 percent of the total consideration for the deed. D.C. Official Code §§ 42-1103 and 47-903. Beginning October 1, 2006, except for residential properties transferred for a consideration less than \$400,000, an additional tax of .35% is imposed upon a deed. *Id.* § 42-1103 (4)(a-3). Effective October 1, 2017, the recordation tax rate payable on residential properties acquired by first-time D.C. homebuyers who qualify for the reduced rate was lowered to .725%. Lower income purchasers may also qualify for an exemption of recordation taxes where certain household income requirement limits are met. D.C. Code §47-3501, et. seq.

If there is no consideration or the consideration is considered to be nominal (typically less than 30% of the tax assessed value of the Property), the amount of tax will be determined from the fair market value of the property as determined by the Mayor. *Id.* § 42-110(a)(1)(A). For purposes of this provision, “deed” includes an instrument or writing pursuant to which title to, an interest in or a security

interest in real property is conveyed, vested, granted, bargained, sold, transferred or assigned. The term also applies to an instrument in writing by which there is a transfer of an economic interest in real property. *Id.* § 42-1102.02. Leases with a term of 30 years or more will be considered deeds. *Id.* § 42-1101(3) (A),(B).

Despite the broad definition of deed, not all deeds are subject to a recording tax. Among those deeds that are excluded are:

- (1) purchase money mortgages or purchase money deeds of trust that are recorded simultaneously with the deed conveying the real property for which the purchase money mortgage or purchase money deed of trust was obtained;
- (2) deeds between husband and wife, parent and child, grandparent and grandchild, or domestic partners without actual consideration; and
- (3) deeds of release of property which is security for a debt or other obligation.

Id. § 42-1102.

In addition, the sale or assignment of a note, mortgage, deed of trust or other instrument from one lender to another, on the secondary market, provided there are no changes in terms or conditions and the borrower has not taken action to refinance the transaction, will not be subject to a recording tax. *Id.* § 42-1102.01.

5. Homestead, Senior Citizen and Disabled Deductions

Real property owners in the District of Columbia are entitled to certain deductions in their real property taxes assessed against real property in which they reside if they meet certain requirements. All homeowners in the District of Columbia are entitled for a deduction in the assessed value of their principal residence so long as it contains fewer than five units. Senior citizens and disabled residents may qualify for deductions in their real property tax assessments if they meet certain requirements. Owners must apply to the District of Columbia to receive these benefits. Information and the forms for these programs can be found at <https://otr.cfo.dc.gov/page/homesteadsenior-citizen-deduction>.

6. Marital Property

Formerly, it was customary in the District to require that spouses join in signing deeds and deeds of trust in order to release the spouse's dower right. Effective April 27, 2001 dower rights were abolished without retroactive effect.

7.. Tenant Opportunity to Purchase Act

In 1980, the District enacted the Rental Housing Conversion and Sale Act. *Id.* §§ 42-3401.01 et seq., which includes the Tenant Opportunity to Purchase Act ("TOPA"). Before an owner of a housing accommodation may sell the

accommodation, discontinue its use, or demolish it, the owner must give the tenants an opportunity to purchase the accommodation at a price and terms that represent a bona fide offer of sale. A “sale” and the term “sell” are defined at D.C. Code §42-3404.03(b). The Act typically gives residential tenants the first opportunity to purchase a housing accommodation on terms that qualify as a bona fide offer, with certain exceptions. All notices to tenants must be sent in both English and Spanish.

a. Single-Family Accommodations

On April 10, 2018, the District of Columbia Council passed the Single-Family Home Exemption Amendment Act of 2017. Pursuant to the Act, which became effective July 3, 2018, the Rental Housing Conversion and Sale Act was revised to exclude single-family accommodations including those with an ancillary unit, single condominium units, and single cooperative units, from the requirement that a tenant be provided with an opportunity to purchase the accommodation, subject to exceptions for elderly and disabled tenants who had signed a rental agreement prior to April 1, 2018 and taken occupancy of the accommodation on or before April 15, 2018. D.C. Code §42-3404.09(c).

However, despite any exemption, notice to tenants of a sale or an intent to sell the accommodation is still required for all single-family accommodations, D.C. Code §42-3409.09(b). That notice must be provided to any tenant, regardless of whether or not they are elderly or disabled, within three (3) days of owner’s intent to sell. D.C. Code §42-3409.09(b)(1). TOPA forms for single-family accommodations can be found at <https://hcd.dc.gov/page/rental-conversion-and-sale-forms>.

Typically, a tenant has twenty (20) days from the date of delivery of the notice to deliver a response to the owner claiming elderly or disabled states. D.C. Code §42-3409.09(d)(2). If an elderly or disabled tenant elects to exercise his or her TOPA rights, the Act provides the tenant with an additional twenty-five (45) day period within which to negotiate a contract for sale. D.C. Code §42-3409.09(c)(4). The Act also provides for additional extensions of time for closing and obtaining financing that may increase the before which settlement may be required. D.C. Code §42.-3409.09(c)(5). The Act also revised and limited the ability of elderly and disabled tenants to assign their TOPA rights by, *inter alia*, limiting the type and amount of consideration available for such assignments. D.C. Code §42-3404.09(c)(6).

b. Two to Four Unit Accommodations and Those with Five or More Units

There is no exemption from the Tenant Opportunity to Purchase Act for the sale, discontinuation of use, or demolition of accommodations in two to four unit buildings and buildings of five or more units similar to that provided for single-unit

accommodations. Before an owner of such housing accommodations may sell the accommodation, discontinue its use, or demolish it, the owner must give the tenants an opportunity to purchase the accommodation at a price and terms that represent a bona fide offer of sale.

The TOPA requirements for buildings with two to four units are set forth at D.C. Code §42-3404.10. Those for buildings with five or more units are set forth at D.C. Code §42-3404.11. Additionally, for buildings with five or more units, special provisions apply before the owner may issue a notice to vacate for purposes of demolition or discontinuance of housing use, and the offer is made in the absence of an arm's-length third-party contract. D.C. Code §42-3404.02(a-1) et seq. Furthermore, TOPA rights for buildings with five or more units can only be exercised by an organized tenants' association or that associations' assignee. D.C. Code §42-3404.11(1).

c. TOPA Time Periods

All TOPA minimum time periods are construed, as a matter of law, in favor of tenants. The statutory time periods for tenant response to an Offer of Sale are measured from the date of receipt by tenants or by the D.C. Department of Housing and Community Development ("DHCD"), whichever is later.

Since Offers of Sale are sent via certified mail, it is often difficult to ascertain the date of receipt, and therefore these time periods must be calculated liberally in favor of tenants. If time periods expire on a Saturday, Sunday or legal holiday, the time periods are extended until the next business day.

Actual receipt by a seller or DHCD of a tenant letter of interest within the time periods for tenant action under TOPA is not required; it is sufficient that the tenant or tenant group send the letter of interest by hand delivery or certified mail within the specified time frame.

d. Foreclosure Sales

A foreclosure sale is not subject to TOPA and requires no Offers of Sale to tenants and no filings with DHCD. However, the sale of the accommodation to a third party by the successful bidder at the foreclosure sale is subject to TOPA rights.

Assignments of purchase or "contract" rights by the successful bidder at the foreclosure sale to a third party, prior to payment of the purchase price in full and recordation of a Trustees' Deed, may also have TOPA implications for purposes of providing TOPA coverage.



e. Notices of Transfer

In connection with the transfer of a residential rental accommodation, if a TOPA Notice of Sale and Tenant Opportunity to Purchase is not provided to tenant(s), on the grounds that a proposed transfer is not a TOPA sale, a Notice of Transfer must be provided to each tenant in the housing accommodation and to DHCD.

The following links are for the Notice of Transfer forms mandated for use by DHCD. They provide a detailed explanation of a complicated statutory scheme.

<http://dhcd.dc.gov/publication/notice-transfer-single-unit>

<http://dhcd.dc.gov/publication/notice-transfer-2-4-units>

<http://dhcd.dc.gov/publication/notice-transfer-5-or-more-units>

f. Reduced Price

If a seller contracts to sell an accommodation to a third party for a price more than 10% less than the price offered to a tenant or tenants, or for other terms which would constitute bargaining without good faith, the owner shall comply anew with TOPA requirements relating to the Offer of Sale, negotiation of a contract, time periods to secure financing, and lapse of time.

g. Bargaining in Good Faith

The owner and tenants must bargain in good faith.

An owner cannot offer to sell to a third party at a lower price of 10% or more than the price offered to the tenant(s)

An owner cannot require tenants to prove financial ability to pay, unless the owner is making a deferred purchase money loan

An owner cannot require more than a 5% earnest money deposit.

h. No Waiver

A tenant cannot waive the right to receive an Offer of Sale. and an owner cannot require a tenant to waive TOPA rights by lease provision or otherwise.

i. Assignment of TOPA Rights

Except for tenants of single-family accommodations, tenants may sell, transfer or assign their TOPA rights to any party, for any consideration acceptable to the tenant in the tenant's sole discretion, at any time in the TOPA process. D.C. Code §42-3404.6.

8. Decedent's Estates

From January 1, 1980 through the present, three different laws have been in

effect that govern probate issues in the District of Columbia. Generally, in order to insure title to real property out of a D.C. estate for a decedent whose date of death is on or after July 1, 1995, the following issues apply:

- (1) a personal representative must be appointed and if the decedent died testate, the will probated;
- (2) under normal circumstances, the personal representative does not need a court order to convey title to real property (termed an “unsupervised administration”);
- (3) if the property is being transferred to a bona fide purchaser for value in an arm’s length transaction, claims of creditors, who may file claims within six months from the first date of publication, will not attach as liens to any real property in the estate;
- (4) a deed of distribution to the heirs or devisees of the decedent may not be insured until the six month period for creditors and interested persons has run, and all claims have been satisfactorily resolved; and
- (5) federal and D.C. estate tax issues must be addressed.