



**State of New Jersey**  
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**BULLETIN NO. 05-05**

**TO: ALL PROPERTY AND CASUALTY INSURANCE  
COMPANIES LICENSED OR AUTHORIZED TO DO  
BUSINESS IN NEW JERSEY**

**FROM: DONALD BRYAN, ACTING COMMISSIONER**

**RE: NON-TITLE MORTGAGE PRODUCTS DETERMINED  
TO BE TITLE INSURANCE**

The New Jersey Department of Banking and Insurance has become aware that non- title insurers in other states are selling products that appear to be the substantive equivalent of title insurance as defined in New Jersey Law. The purpose of the Bulletin is to remind insurers of the State's monoline title insurance requirement as set forth N.J.S.A. 17:46B-1 et. seq. Specifically, N.J.S.A. 17:46B-5 provides that only a title insurance company shall underwrite or issue a policy of title insurance. N.J.S.A. 17:46B-12 provides that a title insurance company shall not transact, underwrite or issue any kind of insurance other than title insurance; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance.

N.J.S.A. 17:46B-1(a) defines "title insurance" as, "insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title to said property, guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this act."

N.J.S.A. 17:46B-1(b) defines the “business of title insurance” as, “(1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of the title insurance, including abstracting, examination of title, solicitation, negotiation preliminary to execution of a contract of title insurance, and execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this act.”

Although certain of the “non-title” mortgage products sold in other states may be limited to covering only second or third mortgage lenders, the Department reminds title insurers and producers that N.J.S.A. 17:46B-1 et. seq. applies to the insuring of any lender of a loan secured by an interest in real property from loss, regardless of the priority of the lien. Moreover, the fact that an insurance product is labeled as a “warranty” does not prevent it from being considered title insurance if it meets the statutory definition as set forth above.

If you have questions regarding this bulletin or a particular title product please contact the Department.

Questions may be submitted by mail:

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3/9/05

Date

/s/ Donald Bryan

Donald Bryan  
Acting Commissioner