

September 10, 2009

Mr. Dennis Gartner  
Assistant Deputy Minister  
Financial Sector, Regulation and Policy &  
Superintendent of Financial Institutions  
Room 409, Terrace Building, 95915-107 Street  
Edmonton, AB T5K 2C3

Dear Mr. Gartner:

Thank you for the opportunity to comment on the proposed regulations to the *Insurance Amendment Act, 2008*. I am responding on behalf of the Title Insurance Industry Association of Canada. Our comments are provided on a number of sections of the consultation as outlined below.

Prior to providing our comments on the specific recommendations, it is useful to set out the key differences between title insurance and other forms of property and casualty (P&C) insurance. Title insurance is not like other forms of property and casualty insurance and as such does not easily lend itself to the same regulatory regime as other forms of P&C insurance. Specifically, title insurance is distinct from traditional P&C insurance as follows:

- No annual premium - a one time cost
- No deductible
- No negotiation - premium based on purchase price of property
- Separate policies for owners and policies for lenders
- Owners policies for both residential and commercial transactions
- Primarily distributed by lawyers/notaries to the public and included in the legal fees and disbursements on a home purchase.
- Can be purchased directly by lenders to protect their interests on title in a purchase mortgage or refinance transaction
- A no-fault claims process

**Section 1: "Disclosure of Limitation Periods"**

As noted above, title insurers provide their clients with a no fault, no deductible claims process, which is distinct from other forms of P&C insurance. With respect to the claims process there are other characteristics of the title insurance claims process that are distinct from traditional property and casualty insurance claims, as follows:

1. Homeowners normally purchase their policies directly through lawyers and as such many claims are submitted through counsel.

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2. The bulk of insured claimants are lenders who are also well represented and submit their claims through counsel, either internal or external.
3. The risks related to title insurance are not as complicated as those for traditional P&C. There is no burden of proof on the claimant to verify the incident. As such, the liability at the outset is on the insurer, the claimant is only required to notify the title insurer.
4. Title insurance does not lend itself to limitation periods. A risk for which coverage is provided can take place at any time prior to the purchase of the policy by the insured. As such the specific date at which the claimable action occurred is not readily available. As such the proposed regime would add unnecessary complication to the title insurance claims process for the insured as well as the insurer.

While we appreciate that the purpose of this regulation is to protect the insured we are concerned that it may complicate the title insurance claim process. Our primary position is that title insurance should be exempt from this notification provision. If it is felt necessary to apply a regulation to notify a claimant of their rights, then we would suggest that a consumer be informed of their prospective avenues of recourse when a claim is denied. In keeping with the spirit of the proposed regulation to ensure consumers are informed of their rights, we would recommend that when a claim is denied that the title insurer notify the claimant of their statutory rights under *the Limitations Act*.

In terms of phasing in this regulation, we would recommend that the regulation only affect new claims denied after the date of implementation.

#### **Section 4: “Facilitation of Electronic Transmissions”**

We are supportive of initiatives that offer consumers choice in the distribution of their policies.

#### **Section 5: “Classes of Insurance”**

As an organization representing federally-regulated title insurance companies whose members operate in many provinces, we are very supportive of the initiative to harmonize insurance classes across the country.

#### **Section 11: “Innocent Co-insured”**

In principle we are supportive of the concept however, until we see the wording of the regulation and assess its impact on our unique insurance coverage, we cannot provide our unconditional support. As such we would kindly request that a copy of the proposed wording be distributed for consultation with affected stakeholders prior to adoption.

**Section 12: "Requirements of the Innocent Co-insured"**

Section 12 identifies an important issue, the conditions on an innocent co-insured is going to be able to make a claim on a portion of a loss caused by a co-owner. It is our recommendation that the innocent co-insured must also participate in the prosecution in order for the insurer to have a successful court action against the loss caused by the co-owner. As such we strongly advise that the regulation should require the innocent co-owner to "co-operate with the insurer in the investigation and the prosecution of the loss."

**Section 14 "Disclosure of Dispute Resolution Process"**

Based on our interpretation of the other amendments and the exclusion for title insurers in Section 540, it is our understanding that this section does not apply to us.

**Section 15 "Exclusion from the Application of Statutory Conditions"**

We are supportive of the exemption for title insurers. As set out above title insurance is unique and distinct form other forms of P&C insurance, and as such an exemption is fully warranted.

Thank you for the opportunity to provide our comments on the proposed regulations. We look forward to seeing them in final draft.

Should you have any comments or questions please do not hesitate to contact Wendy Rinella, VP Public Affairs at [info@TIIAC-ACCAT.com](mailto:info@TIIAC-ACCAT.com)

Thank you,

Sincerely,

Don Bergeron, BA, LLB, AMP  
President