

INTERPRETIVE LETTER 97-03 (MARCH 24, 1997)

Acting as agent for sale of title insurance is permitted for Illinois state chartered trust company; title insurance agent is not engaged in the "insurance business;" therefore, trust company is not prohibited from acting as title insurance agent by Sec. 499.1 of the Illinois Insurance Code

We are writing in response to your letter asking the Commissioner of Banks and Trust Companies (now the Office of Banks and Real Estate, hereinafter referred to as the Commissioner's Office) whether an Illinois state-chartered trust company may act as agent in the sale of title insurance and whether the prohibitions in Section 499.1 of the Illinois Insurance Code, 215 ILCS 5/499.1 (1994), against trust companies, state banks and national banks in towns larger than 5,000 would apply. In your letter, you stated that Magna Group, Inc. (the "Company"), a bank holding company, is considering forming a separate trust company for the purpose of acting as agent for the sale of title insurance. Sales would initially be focused on current customers of the Company's affiliate bank, however, you expect that sales efforts could be expanded in the future to the general public. The Company is currently only interested in acting as title insurance agent, not in acting as a title insurance company that would underwriting title insurance. The Commissioner's Office concludes that an Illinois state-chartered trust company is permitted to act as agent for the sale of title insurance.

An agent for the sale of title insurance is regulated in Illinois by the Title Insurance Act, 215 ILCS 155/1 et seq. (1994) ("Act"). Section 16 of this Act, requires that a "person, firm, partnership, association, corporation or other legal entity " seeking to be a title insurance agent must register with the Director of the Department of Financial Institutions ("DFI") on forms specified by DFI. None of the provisions of the Act prohibit a state-chartered trust company from registering or acting as a title insurance agent. Section 3 of the Act, defines a title insurance agent as:

' 3. A person, firm, partnership, association, corporation or other legal entity registered by a title insurance company and authorized by such company to determine insurability of title in accordance with generally acceptable underwriting rules and standards in reliance on either the public records or a search package prepared from a title plant, or both, and authorized in addition to do any of the following: act as an escrow agent, solicit title insurance, collect premiums, issue title reports, binders or commitments to insure and policies in its behalf, provided, however, the term "title insurance agent" shall not include officers and salaried employees of any title insurance company.

Historically in Illinois, companies have been permitted to engage in both title insurance and the trust business. While title insurance companies now tend to be separate from trust companies, there remain a number of similar functions exercised by both trust companies and title insurance companies, such as acting as transfer agent, and escrow agent, and the functions described in Section 3 of the Act are examples of such activities . An Illinois state-chartered trust company derives its powers from the Corporate Fiduciary Act, 205 ILCS 620/1-1 et seq. (1994). Section 1-6 of this Act, states that the Commissioner's Office may specify powers of corporate fiduciaries generally or of a particular corporate fiduciary. In addition, trust companies shall have those powers granted in Sections 4.01 through 4.24 of the Trusts and Trustees Act, 760 ILCS 5/4.01-

4.24 (1994). Pursuant to the authority granted to the Commissioner by Section 1-6 of the Corporate Fiduciary Act, we are of the opinion and find that acting as agent for the sale of title insurance is an activity in which an Illinois state-chartered trust company may engage.

The Illinois Insurance Code ("Code"), 215 ILCS 5 (1994), prohibits an Illinois state-chartered trust company from becoming a registered firm for the purpose of transacting business as an insurance agency, 215 ILCS 5/499.1 (1994). Section 4 of the Code, defines the various classes of insurance covered within the Code, but title insurance is not included in any of the classes of insurance defined in Section 4 of the Code. The Title Insurance Act is administered by the Department of Financial Institutions in Illinois, while the Insurance Code is administered by the Illinois Department of Insurance. Therefore, State-chartered trust companies are not precluded from becoming title insurance agents pursuant to the Title Insurance Act, a separate and distinct Act and type of insurance from that generally regulated under the Illinois Insurance Code and such activity would not violate Section 499.1 of the Code. We also contacted DFI, and the representatives of DFI stated that they are not aware of any provision of the Act or rules that would prohibit a trust company acting as a title insurance agent.

In conclusion, title insurance is a unique form of insurance, it is significantly unlike life, property and casualty insurance to justify treating it differently from those forms of insurance for regulatory purposes. In Illinois, there are separate statutory provisions governing title insurance and the other forms listed above. The Commissioner's Office hereby finds, pursuant to Section 1-6 of the Corporate Fiduciary Act, 205 ILCS 620/1-6 (1994), that an Illinois state-chartered trust company may act as agent for the sale of title insurance. Please contact us with any questions.