

# STATE OF NEW YORK

8574

2021-2022 Regular Sessions

## IN ASSEMBLY

December 13, 2021

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law and the state finance law, in relation to establishing the New York title guaranty program; to establish the New York title guaranty commission; and to repeal certain provisions of the insurance law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature finds and declares  
2 that a state title guaranty program promotes land title stability and a  
3 low-cost mechanism to provide for guaranties of real property titles in  
4 New York state. The title guaranty corporation established by this act  
5 will facilitate developers', homebuyers', and mortgage lenders' partic-  
6 ipation and add to the integrity of the land-title transfer system in  
7 the state.

8 § 2. Article 10-D of the public authorities law is amended by adding a  
9 new title 4 to read as follows:

### TITLE 4

#### NEW YORK TITLE GUARANTY PROGRAM

12 Section 3974. New York title guaranty program.

13 3975. New York title guaranty corporation.

14 § 3974. New York title guaranty program. (a) There is hereby created  
15 the New York title guaranty program to initiate and operate a program  
16 which shall offer guaranties of real property titles in this state. The  
17 program shall be authorized and administered by a new state corporation  
18 entitled the New York title guaranty corporation. The corporation shall  
19 determine the terms, conditions, and form of the guaranty contract. The  
20 corporation shall fix a charge for the guaranty in an amount sufficient  
21 to permit the program to operate on a self-sustaining basis, including  
22 payment of administrative costs and the maintenance of an adequate  
23 reserve against claims under the New York title guaranty program.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) A title guaranty or gap coverage issued under this program is an  
2 obligation of the corporation only and claims are payable solely and  
3 only out of the moneys, assets, and revenues of the title guaranty fund  
4 established and held by the corporation and are not an indebtedness or  
5 liability of the state. The state shall not be liable on any guaranty or  
6 gap coverage.

7 (c) The corporation shall consult with the department of financial  
8 services in developing a guaranty contract and developing any other  
9 feature of the program with which the department of financial services  
10 may have special expertise.

11 (d) Each participating attorney and abstractor may be required to pay  
12 an annual participation fee to be eligible to participate in the New  
13 York title guaranty program. The fee, if any, shall be set by the corpo-  
14 ration.

15 (e) The participation of abstractors and attorneys shall be in accord-  
16 ance with rules established by the corporation and adopted by the  
17 program pursuant to the state administrative procedure act, including  
18 rules for the payment of reasonable fees and costs of necessary  
19 services.

20 (1) (A) Each participant shall at all times maintain liability cover-  
21 age in amounts approved by the corporation. Upon payment of a claim by  
22 the corporation, the corporation shall be subrogated to the rights of  
23 the claimant against all persons relating to the claim.

24 (B) Additionally, the state, through the corporation, shall establish  
25 and maintain a statewide electronic database of real property throughout  
26 the state. All instruments affecting real property in the state which  
27 have heretofore been recorded in the office of a county clerk or other  
28 municipal office shall be recorded in the statewide electronic database  
29 of real property. The corporation may undertake additional methods to  
30 obtain real property title information for purposes of creating and  
31 maintaining a comprehensive statewide electronic database of real prop-  
32 erty. The statewide electronic database of real property shall be  
33 accessible to participating abstractors and attorneys under terms deter-  
34 mined by the corporation, and the corporation may provide access to all  
35 or portions of the database to the public.

36 (2) The corporation may waive the requirements of this subdivision  
37 pursuant to an application of an attorney or abstractor which shows that  
38 the requirements impose a hardship to the attorney or abstractor and  
39 that the waiver clearly is in the public interest or is absolutely  
40 necessary to ensure availability of title guaranties throughout the  
41 state.

42 (f) Prior to the issuance of a title guaranty, the corporation shall  
43 require evidence that an abstract of title to the real property in ques-  
44 tion has been brought up-to-date and certified by a participating  
45 abstractor in a form approved by the corporation and a title opinion  
46 issued by a participating attorney in the form approved by the corpo-  
47 ration stating the attorney's opinion as to the title. The corporation  
48 shall require evidence of the abstract being brought up-to-date and the  
49 abstractor shall retain evidence of the abstract as determined by the  
50 corporation. The information obtained may be included in the statewide  
51 electronic database.

52 (g) The attorney rendering a title opinion shall be authorized to  
53 issue a title guaranty certificate subject to the rules of the corpo-  
54 ration.

1 (h) The corporation shall adopt rules and regulations necessary for  
2 the implementation of the New York title guaranty program as established  
3 by this article.

4 § 3975. New York title guaranty corporation. 1. There is hereby  
5 established the New York title guaranty corporation for the implementa-  
6 tion of the New York title guaranty program. The corporation shall be a  
7 body corporate and politic constituting a public benefit corporation.  
8 The president of the corporation shall be nominated by the governor and  
9 confirmed by the senate. The board of directors shall consist of twelve  
10 members as follows: the president of the corporation, or his or her  
11 designee, who shall serve as the chairperson of the board; three members  
12 appointed by the governor; three members appointed by the temporary  
13 president of the senate; three members appointed by the speaker of the  
14 assembly; one member appointed by the minority leader of the senate; and  
15 one member appointed by the minority leader of the assembly. One of the  
16 governor's appointees shall serve an initial term of two years; one of  
17 the governor's appointees shall serve an initial term of three years;  
18 and one of the governor's appointees shall serve an initial term of four  
19 years. One of the appointees of the temporary president of the senate  
20 and one of the appointees of the speaker of the assembly shall serve  
21 initial terms of two years; and two appointees of the temporary presi-  
22 dent of the senate and two appointees of the speaker of the assembly  
23 shall serve initial terms of four years. The appointees of the minority  
24 leader of the senate and the minority leader of the assembly shall serve  
25 initial terms of two years. Thereafter, all terms shall be for a period  
26 of four years. In the event of a vacancy occurring in the office of  
27 trustee by death, resignation or otherwise, the respective appointing  
28 officer shall appoint a successor who shall hold office for the unex-  
29 pired portion of the term.

30 2. On or before October first, two thousand twenty-two, the New York  
31 title guaranty board shall provide the governor and the legislature a  
32 plan for the implementation of the New York title guaranty program.

33 3. To the maximum extent feasible, the state department of taxation  
34 and finance, the department of financial services, the department of  
35 housing and community renewal, and the department of finance of the city  
36 of New York shall provide the board with such facilities, assistance and  
37 data as will enable the board to carry out the powers and duties of the  
38 corporation. Additionally, to the maximum extent feasible, all other  
39 agencies of the state or subdivisions thereof shall, at the request of  
40 the chairperson provide the board with such facilities, assistance, and  
41 data as will enable the board to carry out the powers and duties of the  
42 corporation.

43 4. The president shall have the authority to appoint such officers and  
44 employees as it may require for the performance of the duties of the  
45 corporation and to fix and determine their qualifications, duties, and  
46 compensation, and to retain or employ counsel, auditors and private  
47 financial consultants and other services on a contract basis or other-  
48 wise for rendering professional, business or technical services and  
49 advice.

50 § 3. The state finance law is amended by adding a new section 92-j to  
51 read as follows:

52 § 92-j. Title guaranty fund. 1. There is hereby established in the  
53 joint custody of the New York title guaranty corporation and the state  
54 comptroller a special fund to be known as the "title guaranty fund".

55 2. The title guaranty fund shall consist of all moneys collected from  
56 the New York title guaranty program collected pursuant to title four of

1 article ten-D of the public authorities law, and all other moneys cred-  
2 ited or transferred thereto from any other fund or source pursuant to  
3 law.

4 3. The moneys in such fund shall be available for payment of any and  
5 all costs and expenditures incurred in performing any of the work  
6 required in administering the New York title guaranty program pursuant  
7 to title four of article ten-D of the public authorities law, including  
8 claims, necessary reserves, staffing, administrative costs and expenses  
9 incidental and appurtenant thereto; provided, however, that ten percent  
10 of the moneys in such fund shall be used to fund the homeowner  
11 protection program established by the office of the attorney general for  
12 the purposes of foreclosure defense and homeowner education; and  
13 provided, further, that twenty-five percent of the moneys in such fund  
14 shall be directed to the New York state division of homes and community  
15 renewal to fund such division's consolidated plan submitted to the  
16 United States department of housing and urban development pursuant to 24  
17 CFR Part 91.

18 4. Moneys in the title guaranty fund shall be kept separately from and  
19 shall not be commingled with any other moneys in the joint or sole  
20 custody of the New York title guaranty corporation and the state comp-  
21 troller.

22 § 4. Article 64 of the insurance law is REPEALED.

23 § 5. Any title policy which was issued prior to the effective date of  
24 this act pursuant to article 64 of the insurance law shall continue to  
25 be governed by such article solely for the purposes of administering,  
26 reserving for and paying claims on such pre-existing policies, under the  
27 oversight and enforcement of the department of financial services.

28 § 6. This act shall take effect January 1, 2023. Effective immediate-  
29 ly, the addition, amendment and/or repeal of any rule or regulation  
30 necessary for the implementation of this act on its effective date are  
31 authorized to be made and completed on or before such effective date.