

AMENDED IN SENATE MAY 15, 1997

AMENDED IN SENATE MAY 1, 1997

**SENATE BILL**

**No. 319**

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**Introduced by Senators Burton, Calderon, Kopp, Leslie,  
and Rosenthal**

(Coauthors: Assembly Members Figueroa, *Hertzberg*,  
Perata, Shelley, and Torlakson)

February 11, 1997

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An act to amend Section ~~12342~~ of 1057.6 of, and to add Sections 1057.61 and 1057.62 to, the Civil Code, and to add Section 12340.12 to, the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 319, as amended, Burton. Title insurance.

Under existing law, title insurance is defined as insuring, guaranteeing, or indemnifying an owner of real or personal property or the holder of liens or encumbrances or other interests against loss due to liens, encumbrances, or defects in the title to the insured property, defects in liens or encumbrances, or defects in title searches.

This bill would ~~permit an owner refinancing an existing loan, a successor in interest to an owner, lienholder, or bona fide encumbrancer~~ require a title insurer that has issued a policy of title insurance on real property, at the request of the owner who refinances an existing loan, or a purchaser or successor in interest, to issue a title insurance policy covering the period of time from the last title search by that insurer to

*the present time. It would authorize the owner to maintain, or purchaser or successor in interest to succeed to a previously issued title insurance policy, subject to specified limitations.*

~~Existing law defines holders of liens or encumbrances to include certain institutional 3rd parties.~~

~~This bill would provide that the business of title insurance does not include the representations and warranties made in connection with the sale of a loan to an institutional 3rd party. The bill would also make related changes with respect to escrow transactions, as specified.~~

The bill would also make legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. In enacting this act, the Legislature finds  
2 and declares:

3 Homebuyers face an unreasonable burden under  
4 current law because lenders require title insurance that  
5 must be purchased each time a property is sold or  
6 refinanced, even if the sale or refinancing occurs shortly  
7 after the title was last searched and a title insurance policy  
8 purchased.

9 The state closely regulates the title insurance industry  
10 to ensure safety and soundness of the industry and to  
11 ensure that the industry conducts itself in a manner  
12 consistent with consumers' best interests in the products  
13 and services it sells. Title insurance requires unusual  
14 regulation as, unlike other forms of insurance, it insures  
15 a risk over which the title insurer exercises exclusive  
16 control, namely defects in a chain of title as searched by  
17 the title insurer.

18 Allowing assumable title insurance policies is a  
19 reasonable solution to the economic problem  
20 homebuyers face when buying and owners face when  
21 refinancing. Front end or transaction costs often prevent  
22 buyers at the margin from being able to purchase a house,  
23 and prevent owners from refinancing.



1 An assumption of the seller's title insurance policy by  
2 the buyer does not disrupt the reasonable expectations of  
3 those involved in the transaction. Title insurance is issued  
4 with the title insurer's full knowledge and expectation  
5 that the title insurance policy may remain in force for the  
6 lifetime of the purchaser and even the lifetimes of the  
7 purchasers' heirs.

8 Assumption does not change the title insurer's risk  
9 under the policy because no acts after issuance of a title  
10 insurance policy can impact the record title prior to the  
11 time the policy was issued. Therefore, the title insurer's  
12 risk will not be expanded by any act occurring after the  
13 title insurance policy is issued, regardless of whether  
14 there is a subsequent transfer by sale, inheritance, or  
15 refinancing. It would be inappropriate to allow the title  
16 insurer to escape its obligation simply because the  
17 property is transferred or refinanced.

18 The state has a legitimate interest and serves an  
19 important public purpose by regulating title products  
20 available to consumers and encouraging the creation of  
21 new and economically competitive products to facilitate  
22 the purchase and financing of real estate.

23 SEC. 2. *Section 1057.6 of the Civil Code is amended*  
24 *to read:*

25 1057.6. In an escrow transaction for the purchase,  
26 *refinance* or simultaneous exchange of real property,  
27 where a *new* policy of title insurance will not be issued to  
28 the *owner who is refinancing, to the* buyer, or to the  
29 parties to the exchange, the following notice shall be  
30 provided in a separate document to ~~the~~ *that* owner,  
31 buyer, or parties exchanging real property, which shall be  
32 signed and acknowledged by them:

33 ~~“IMPORTANT~~ “WARNING: IN A PURCHASE,  
34 *REFINANCE*, OR EXCHANGE OF REAL PROPERTY,  
35 IT ~~MAY—BE~~ *IS* ADVISABLE TO OBTAIN TITLE  
36 INSURANCE IN CONNECTION WITH THE CLOSE  
37 OF ESCROW ~~SINCE~~ *BECAUSE* THERE MAY BE  
38 PRIOR RECORDED LIENS AND ENCUMBRANCES  
39 ~~WHICH THAT~~ AFFECT YOUR INTEREST IN THE  
40 PROPERTY ~~BEING—ACQUIRED~~. A NEW POLICY OF



1 TITLE INSURANCE SHOULD BE OBTAINED IN  
2 ORDER TO ENSURE YOUR INTEREST IN THE  
3 PROPERTY ~~THAT YOU ARE ACQUIRING.~~”

4 SEC. 3. Section 1057.61 is added to the Civil Code, to  
5 read:

6 1057.61. In an escrow transaction for the purchase,  
7 refinance, or simultaneous exchange of real property, the  
8 owner refinancing a loan or the purchaser or successor in  
9 interest shall be informed at the earliest practicable time  
10 after the escrow is opened that a variety of title insurance  
11 products may be available from competing title insurers,  
12 including, but not limited to, title insurance policies with  
13 refinance discounts, policies with short-term discounts if  
14 the property had recently been sold before the pending  
15 purchase, and “gap” policies that insure title from the last  
16 title search on the property and that are available from  
17 the insurer that issued the last policy on the property,  
18 which policy may be maintained by the owner or  
19 assumed by the purchaser or successor in interest.

20 SEC. 4. Section 1057.62 is added to the Civil Code, to  
21 read:

22 1057.62. (a) In an escrow transaction for the  
23 purchase, refinance, or simultaneous exchange of real  
24 property, a copy of any policy of title insurance succeeded  
25 to pursuant to Section 12340.12 of the Insurance Code,  
26 and any new policy of title insurance issued, shall be  
27 provided to the owner refinancing an existing loan, the  
28 purchaser or successor in interest, lienholder, or bona fide  
29 encumbrancer of the real property within a reasonable  
30 period of time after the close of escrow.

31 (b) In an escrow transaction for the purchase,  
32 refinance, or simultaneous exchange of real property,  
33 which involves a policy of title insurance succeeded to  
34 pursuant to Section 12340.12 of the Insurance Code, the  
35 following notice shall be provided in bold type and sent  
36 in a separate document to the owner who refinances, or  
37 to the purchaser or successor in interest, or parties  
38 exchanging real property:

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“TITLE INSURANCE NOTICE

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ALL POLICIES OF TITLE INSURANCE, ALONG WITH RELATED INFORMATION ON CLAIM PROCEDURES, SHOULD BE KEPT IN A SAFE PLACE SO IF A CLAIM SHOULD ARISE UNDER ONE OR MORE OF THE POLICIES, THE APPROPRIATE TITLE INSURER MAY BE NOTIFIED.”

10 SEC. 5. Section 12340.12 is added to the Insurance  
11 Code, to read:

12 ~~12340.12. (a) An owner refinancing an existing loan,~~  
13 ~~the successor in interest to an owner, lienholder, or bona~~  
14 ~~fade encumbrancer of real property may succeed to~~  
15 ~~previously issued title insurance. The period of the title~~  
16 ~~insurance policy to which the successor can succeed is~~  
17 ~~limited by the dates covered by that policy or those~~  
18 ~~policies.~~

19 12340.12. (a) A title insurer that has issued a policy of  
20 title insurance on real property shall, at the request of the  
21 owner who refinances an existing loan, or a purchaser or  
22 successor in interest, issue a title insurance policy  
23 covering the period of time from the last title search by  
24 that insurer to the present time, and allow the owner to  
25 maintain, or purchaser or successor in interest to succeed  
26 to, the title insurance policy previously issued by the title  
27 insurer. The period of the title insurance policy to which  
28 the owner or successor may succeed is limited by the  
29 dates covered by that policy or those policies.

30 (b) This section does not prevent a title insurer that is  
31 not subject to subdivision (a) from allowing an owner of  
32 or purchaser or successor in interest to real property, or  
33 a lender, to succeed to a title insurance policy, or from  
34 issuing a title insurance policy covering only the period  
35 of time from the last title search of a property to the  
36 present time.

37 ~~(b)~~

38 (c) This section does not create any new coverage or  
39 obligation to indemnify in excess of the period or  
40 exclusions of the previous title policy.



1     ~~(e)~~  
 2     (d) Nothing in this section limits any lender’s ability to  
 3 require any form of title insurance as a condition of  
 4 lending.

5     ~~SEC. 3. Section 12342 of the Insurance Code is~~  
 6 ~~amended to read:~~

7     ~~12342. (a) For purposes of this chapter, “holders of~~  
 8 ~~liens or encumbrances” includes, but is not limited to, the~~  
 9 ~~institutional third parties described in Sections 1452 and~~  
 10 ~~1717 of Title 12 of the United States Code.~~

11     ~~(b) For purposes of this chapter, “business of title~~  
 12 ~~insurance” does not include the representations and~~  
 13 ~~warranties made in connection with the sale of a loan to~~  
 14 ~~an institutional third party described in subdivision (a).~~

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