



State of Missouri

John Ashcroft, Governor

Department of Economic Development

Carl M. Koupal, Jr., Director

Division of Insurance  
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Lewis E. Melahn  
Director

BULLETIN 89-16

TO: All Title Insurance Companies  
FROM: Lewis E. Melahn, Director, Missouri Division of Insurance *LEM*  
RE: The Offering of deposit guarantees and the December 8, 1989  
public hearing on use of title closing protection letters  
DATE: November 1, 1989

Each title insurance company is respectfully requested to inform each and every one of its agencies and agents of the contents of the attached bulletin. It is important that all individuals in the industry are informed of the December 8, 1989 public hearing. Please verify your company's compliance with this request by signing and returning this letter to my office before December 1, 1989.

Thank you very much for your time and attention to this matter.

LEM/SJS/lar  
Attachment

_____	_____	_____
Date	Signature of Company Official	Title of Company Official and Co Name

**RESCINDED AND INOPERATIVE**



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Lewis E. Melahn  
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RULLETIN 89-16

TO: All Title Insurance Companies, Title Insurance Agencies and Title Insurance Agents

FROM: Lewis E. Melahn, Director, Missouri Division of Insurance *LEM*

RE: The Offering of deposit guarantees and the December 8, 1989 public hearing on use of title closing protection letters

DATE: November 1, 1989

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The Missouri Division of Insurance has learned that a residential homebuilder, is requesting a title insurance agency to act as a guaranty of the money deposited by prospective purchasers. A purchaser of a home to be constructed pays to the homebuilder a downpayment or construction deposit. The money is spent by the homebuilder in purchasing materials in the construction of the home. The homebuilder has asked the title insurance agency to give a guarantee to the purchaser that the money will properly be used or fully refunded. Thus, the title insurance agency risks its own assets to accommodate the homebuilder and the purchaser with their transaction in building a house.

Such agreement by the title insurance agency would cause the agency to act as a guaranty. "A transaction of guaranty is a species of contract with at least three parties: a promisor, a creditor to whom the promise is made and a debtor. The guaranty arises when the promisor makes a promise to the creditor either as to the solvency of the debtor or as to the payment of the debt." Beauchamp v. North American Savings Assn., 543 S.W.2d 535, 537 (Mo. App. 1976). A Certificate of Authority is required from the Missouri Division of Insurance for "the making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety". Section 375.786.2(2), Revised Statutes of Missouri (1986).

Before the title insurance agency may act as a guarantor of monetary deposits, it must have the appropriate certificate of authority. An insurance agency license only allows the sale of insurance on behalf of a licensed insurance company. A title insurance company only is authorized to make

contracts of title insurance. Additional authority would be needed for a title insurance company to write contracts of guaranty or suretyship.

Appropriate action will be taken by the Missouri Division of Insurance against any agency or insurance company who agrees to make contracts of guaranty without proper authority.

A related matter pertains to the use of title closing protection letters. In order to better understand the purpose of these letters, a public hearing for comments from both the title insurance industry and the lending industry is scheduled for Friday, December 8, 1989, at 10:00 a.m. in the conference room of the office of the Division of Insurance, 6th Floor, Room 630, Truman State Office Building, 301 West High Street, Jefferson City, MO. Written comments are also being accepted. Please address such comments to the Division's staff attorney, Stephen J. Stark.

LEM/SJS/lar

**RESCINDED AND INOPERATIVE**