

## BUREAU OF BANKING

Department of Professional and Financial Regulation

State of Maine

March 25, 1983

### BULLETIN #30 TITLE INSURANCE

To the Chief Executive Officer Addressed:

The Bureau has received several complaints about policies or practices which restrict the selection of a title insurance company to an exclusive list provided by the financial institution. As you know, Title 9-B M.R.S.A. § 439 provides the borrower the opportunity to select his own attorney for a title search; the Code is silent regarding selection of a title insurance company. However, the Insurance Code, Title 24-A § 2168 does address the issue.

"Coercion in requiring insurance:

1. No person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property shall require, as a condition to such financing or lending, or as a condition to the renewal or extension of any such loan or to the performance of any other act in connection with such financing or lending, that the purchaser or borrower, or his successors, shall negotiate through a particular insurer or insurers, insurance agent or agents, broker or brokers, type of insurer or types of insurers, any policy of insurance or renewal thereof insuring such property.
2. This section shall not prevent the exercise by any mortgagee of his right to approve the insurer selected by the borrower on a reasonable nondiscriminatory basis related to the solvency and assessment policies of the insurer and its ability to service the policy.
3. Any person violating this section shall be punished by a fine of not more than \$100 or by imprisonment of not more than 60 days, or by both; and if he holds a license from the superintendent, he shall forfeit the same. The Superior Court, on complaint, by any person that this section is being violated, may issue an injunction against such violation and may hold in contempt and punish therefore in case of disregard of such injunction."

Title 24-A M.R.S.A. § 2169 states, in part, that "(t)here shall be no interference either directly or indirectly with such borrower's, debtor's or purchaser's free choice of an agent and of an insurer which complies with the requirements of § 2168, and the creditor or lender shall not refuse an adequate policy so tendered by the borrower, debtor or purchaser." Furthermore, any practice by a financial

institution which restricts the borrower's selection of a title insurance company may be deemed an unlawful restraint of trade. See Title 24-A M.R.S.A. § 2158, Title 10 M.R.R.A. § 1101.

Therefore, financial institutions authorized to do business in this State cannot limit the borrower's choice of a title insurer unless such action is based on the criteria set forth in Title 24-A M.R.S.A. § 2168(2).

/s/ H. Donald DeMatteis  
Superintendent