

1                                   **TITLE INSURANCE RECOVERY,**  
2                                   **EDUCATION, AND RESEARCH FUND ACT**

3                                   2008 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Michael T. Morley**

6                                   Senate Sponsor: Dan R. Eastman

---

---

8 **LONG TITLE**

9 **General Description:**

10           This bill modifies the Insurance Code to create the Title Insurance Recovery, Education,  
11 and Research Fund and make related amendments.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ modifies requirements for title insurance producer reserve accounts;
- 15           ▶ enacts the Title Insurance Recovery, Education, and Research Fund Act, including:
- 16               • defining terms;
- 17               • addressing disciplinary actions;
- 18               • creating the fund;
- 19               • providing for assessments;
- 20               • providing for how the fund may be used;
- 21               • providing procedures for making claims against the fund; and
- 22               • creating subrogation rights; and
- 23           ▶ makes technical and conforming amendments.

24 **Monies Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           This bill takes effect on July 1, 2008.

28 **Utah Code Sections Affected:**

29 AMENDS:

30           **31A-23a-204**, as last amended by Laws of Utah 2007, Chapters 307 and 325

31 ENACTS:

32           **31A-40-101**, Utah Code Annotated 1953

33           **31A-40-102**, Utah Code Annotated 1953

34           **31A-40-103**, Utah Code Annotated 1953

35           **31A-40-201**, Utah Code Annotated 1953

36           **31A-40-202**, Utah Code Annotated 1953

37           **31A-40-203**, Utah Code Annotated 1953

38           **31A-40-301**, Utah Code Annotated 1953

39           **31A-40-302**, Utah Code Annotated 1953

40           **31A-40-303**, Utah Code Annotated 1953

41           **31A-40-304**, Utah Code Annotated 1953

42           **31A-40-305**, Utah Code Annotated 1953

43           **31A-40-306**, Utah Code Annotated 1953



44  
45 *Be it enacted by the Legislature of the state of Utah:*

46           Section 1. Section **31A-23a-204** is amended to read:

47           **31A-23a-204. Special requirements for title insurance producers and agencies.**

48           [Title] A title insurance [producers] producer, including [agencies] an agency, shall be  
49 licensed in accordance with this chapter, with the additional requirements listed in this section.

50           (1) (a) A person that receives a new license under this title on or after July 1, 2007 as a  
51 title insurance agency, shall at the time of licensure be owned or managed by one or more  
52 natural persons who are licensed with the following lines of authority for at least three of the  
53 five years immediately proceeding the date on which the title insurance agency applies for a  
54 license:

55           (i) both a:

56           (A) search line of authority; and

57           (B) escrow line of authority; or

58 (ii) a search and escrow line of authority.

59 (b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection  
60 (1)(a) by having the title insurance agency owned or managed by:

61 (i) one or more natural persons who are licensed with the search line of authority for the  
62 time period provided in Subsection (1)(a); and

63 (ii) one or more natural persons who are licensed with the escrow line of authority for  
64 the time period provided in Subsection (1)(a).

65 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,  
66 exempt an attorney with real estate experience from the experience requirements in Subsection  
67 (1)(a).

68 (2) (a) [~~Every~~] A title insurance agency or producer appointed by an insurer shall  
69 maintain:

70 (i) a fidelity bond;

71 (ii) a professional liability insurance policy; or

72 (iii) a financial protection:

73 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

74 (B) that the commissioner considers adequate.

75 (b) The bond, insurance, or financial protection required by this Subsection (2):

76 (i) shall be supplied under a contract approved by the commissioner to provide  
77 protection against the improper performance of any service in conjunction with the issuance of a  
78 contract or policy of title insurance; and

79 (ii) be in a face amount no less than \$50,000.

80 (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404,  
81 exempt title insurance producers from the requirements of this Subsection (2) upon a finding  
82 that, and only so long as, the required policy or bond is generally unavailable at reasonable  
83 rates.

84 (3) (a) [~~(i) Every~~] A title insurance agency or producer appointed by an insurer shall  
85 maintain a reserve fund to the extent required by this Subsection (3).

86 ~~[(ii) The reserve fund required by this Subsection (3) shall be:]~~

87 ~~[(A) (I) composed of assets approved by the commissioner and the Title and Escrow~~  
88 ~~Commission;]~~

89 ~~[(H) maintained as a separate trust account; and]~~

90 ~~[(HII) charged as a reserve liability of the title insurance producer in determining the~~  
91 ~~producer's financial condition; and]~~

92 ~~[(B) accumulated by segregating 1% of all gross income on premiums received from the~~  
93 ~~title insurance business.]~~

94 ~~[(iii) The reserve fund shall contain the accumulated assets for the immediately~~  
95 ~~preceding ten years as defined in Subsection (3)(a)(ii).]~~

96 ~~[(iv) That] (b) On or after July 1, 2008, a title insurance agency or producer may not~~  
97 ~~deposit monies to a reserve fund required by this Subsection (3).~~

98 (c) On or after July 1, 2008, a title insurance agency or producer for the portion of the  
99 assets held in the reserve fund over the preceding ten years may ~~[be]:~~

100 ~~[(A) withdrawn] (i) withdraw from the reserve fund~~[-; and] in accordance with a time~~~~  
101 ~~schedule adopted by the title insurance agency or producer that allows:~~

102 (A) all the monies to be withdrawn in one year; or

103 (B) the monies to be withdrawn in equal partial withdrawals of principal over a time  
104 period of two years, three years, four years, five years, or ten years; and

105 ~~[(B) restored] (ii) restore the amounts withdrawn to the income of the title insurance~~  
106 ~~producer.~~

107 ~~[(v)] (d) The title insurance producer may withdraw interest from the reserve fund~~  
108 ~~related to the principal amount as it accrues.~~

109 ~~[(b)] (e) (i) A disbursement may not be made from the reserve fund except as provided~~  
110 ~~in Subsection (3)~~[(a)]~~(c) unless the title insurance producer ceases doing business as a result of:~~

111 (A) a sale of assets;

112 (B) a merger of the producer with another producer;

113 (C) a termination of the producer's license;

- 114 (D) an insolvency; or
- 115 (E) any cessation of business by the producer.
- 116 (ii) [~~Any disbursements~~] A disbursement from the reserve fund may be made only to
- 117 settle [~~claims~~] a claim arising from the improper performance of the title insurance producer in
- 118 providing services defined in Section 31A-23a-406.
- 119 (iii) The commissioner shall be notified ten days before any [~~disbursements~~]
- 120 disbursement from the reserve fund.
- 121 (iv) The notice required by this Subsection (3)[~~(b)~~](e) shall contain:
- 122 (A) the amount of claim;
- 123 (B) the nature of the claim; and
- 124 (C) the name of the payee.
- 125 [~~(e)~~] (f) (i) [~~The~~] Except as provided in Subsection (3)(c), the reserve fund shall be
- 126 maintained by the title insurance producer or the title insurance producer's representative for a
- 127 period of two years after the day on which the title insurance producer ceases doing business.
- 128 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
- 129 Subsection (3)(c)(i) may be withdrawn and restored to the former title insurance producer.
- 130 (4) Any examination for licensure shall include questions regarding the search and
- 131 examination of title to real property.
- 132 (5) A title insurance producer may not perform the functions of escrow unless the title
- 133 insurance producer has been examined on the fiduciary duties and procedures involved in those
- 134 functions.
- 135 (6) The Title and Escrow Commission shall adopt rules, subject to Section 31A-2-404,
- 136 after consulting with the department and the department's test administrator, establishing an
- 137 examination for a license that will satisfy this section.
- 138 (7) A license may be issued to a title insurance producer who has qualified:
- 139 (a) to perform only searches and examinations of title as specified in Subsection (4);
- 140 (b) to handle only escrow arrangements as specified in Subsection (5); or
- 141 (c) to act as a title marketing representative.

142 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of  
143 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

144 (b) In determining the number of policies issued by a person licensed to practice law in  
145 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a  
146 policy to more than one party to the same closing, the person is considered to have issued only  
147 one policy.

148 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or  
149 not, shall maintain a trust account separate from a law firm trust account for all title and real  
150 estate escrow transactions.

151 Section 2. Section **31A-40-101** is enacted to read:

152 **CHAPTER 40. TITLE INSURANCE RECOVERY,**  
153 **EDUCATION, AND RESEARCH FUND ACT**

154 **Part 1. General Provisions**

155 **31A-40-101. Title.**

156 This chapter is known as the "Title Insurance Recovery, Education, and Research Fund  
157 Act."

158 Section 3. Section **31A-40-102** is enacted to read:

159 **31A-40-102. Definitions.**

160 As used in this chapter:

161 (1) "Commission" means the Title and Escrow Commission created in Section  
162 31A-2-403.

163 (2) "Fund" means the Title Insurance Recovery, Education, and Research Fund created  
164 in Section 31A-40-201.

165 (3) "Title insurance licensee" means:

166 (a) a title insurance agency; or

167 (b) a title insurance producer.

168 Section 4. Section **31A-40-103** is enacted to read:

169 **31A-40-103. Authority to take disciplinary action not limited.**

170 (1) This chapter does not limit the authority of the commissioner or the commission to  
171 take disciplinary action against a title insurance licensee for a violation of this title or rules made  
172 by the department or commission under this title.

173 (2) The repayment in full of obligations to the fund by a title insurance licensee does not  
174 nullify or modify the effect of another disciplinary proceeding brought pursuant to this title or  
175 rules and regulations made by the department or commission under this title.

176 Section 5. Section **31A-40-201** is enacted to read:

177 **Part 2. Creation of Fund**

178 **31A-40-201. Creation of Title Insurance Recovery, Education, and Research**  
179 **Fund.**

180 (1) There is created a restricted special revenue fund to be known as the "Title  
181 Insurance Recovery, Education, and Research Fund."

182 (2) The fund shall consist of:

183 (a) assessments on title insurance producers made under this chapter;

184 (b) amounts collected under Section 31A-40-305; and

185 (c) interest earned on the fund.

186 (3) Interest on fund monies shall be deposited into the fund.

187 (4) The department shall administer the fund.

188 Section 6. Section **31A-40-202** is enacted to read:

189 **31A-40-202. Assessments.**

190 (1) Beginning January 1, 2009, a title insurance agency licensed under this title shall pay  
191 an annual assessment determined by the commission by rule made in accordance with Title 63,  
192 Chapter 46a, Utah Administrative Rulemaking Act, except that the annual assessment:

193 (a) may not exceed \$1,000; and

194 (b) shall be determined on the basis of title insurance premium volume.

195 (2) Beginning January 1, 2009, an individual who applies for a license or renewal of a  
196 license as a title insurance producer, shall pay in addition to any other fee required by this title,  
197 an assessment not to exceed \$20, as determined by the commission by rule made in accordance

198 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that if the individual  
199 holds more than one license, the total of all assessments under this Subsection (2) may not  
200 exceed \$20 in a fiscal year.

201 (3) (a) To be licensed as a title insurance agency on or after July 1, 2008, a person shall  
202 pay to the department an assessment of \$1,000 before the day on which the person is licensed as  
203 a title insurance agency.

204 (b) (i) By no later than July 15, 2008, the department shall assess on a title insurance  
205 agency licensed as of June 30, 2008, an amount equal to the greater of:

206 (A) \$1,000; or

207 (B) subject to Subsection (3)(b)(ii), 2% of the balance as of December 31, 2007, in the  
208 title insurance agency's reserve account required under Subsection 31A-23a-204(3).

209 (ii) The department may assess on a title insurance agency an amount less than 2% of  
210 the balance described in Subsection (3)(b)(i)(B) if:

211 (A) before issuing the assessments under this Subsection (3)(b) the department  
212 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

213 (B) the amount assessed on the title insurance agency is not less than \$1,000; and

214 (C) the department reduces the assessment in a proportionate amount for title insurance  
215 agencies assessed on the basis of the 2% of the balance described in Subsection (3)(b)(i)(B).

216 (iii) A title insurance agency assessed under this Subsection (3)(b) shall pay the  
217 assessment by no later than August 1, 2008.

218 (4) The department may not assess a title insurance licensee an assessment for purposes  
219 of the fund if that assessment is not expressly provided for in this section.

220 Section 7. Section **31A-40-203** is enacted to read:

221 **31A-40-203. Use of monies.**

222 (1) Monies in the fund may be used to pay claims made under Part 3, Claims on Fund.

223 (2) (a) Except as limited by Subsection (2)(b), monies in the fund in excess of \$250,000  
224 may be used by the commissioner, with the consent of the commission, to:

225 (i) investigate violations of this chapter related to fraud by a title insurance licensee;



226 (ii) conduct education and research in the field of title insurance; or  
227 (iii) examine a title insurance licensee's;  
228 (A) escrow and trust account;  
229 (B) search and examine procedures; or  
230 (C) compliance with applicable statutes and rules.  
231 (b) The commissioner may not use more than 75% of monies collected under this  
232 chapter in a fiscal year from assessments and interest for the purposes outlined in this  
233 Subsection (2).

234 (3) The disclosure of an examination conducted under this section is governed by  
235 Section 31A-2-204.

236 Section 8. Section **31A-40-301** is enacted to read:

237 **Part 3. Claims on Fund**

238 **31A-40-301. Procedure for making a claim against the fund.**

239 (1) (a) To bring a claim against the fund a person shall notify the department within 30  
240 business days of the day on which the person files an action against a title insurance licensee  
241 alleging the following related to a title insurance transaction:

- 242 (i) fraud;
- 243 (ii) misrepresentation; or
- 244 (iii) deceit.

245 (b) The notification required by Subsection (1)(a) shall be:

- 246 (i) in writing; and
- 247 (ii) signed by the person who provides the notice.

248 (c) Within 30 days of the day on which the department receives a notice under  
249 Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).

250 (2) (a) Subject to the other provisions in this section, a person who provides the notice  
251 required under Subsection (1) may maintain a claim against the fund if:

- 252 (i) in an action described in Subsection (1), the person obtains a final judgment in a  
253 court of competent jurisdiction in this state against a title insurance licensee;

254 (ii) all proceedings including appeals related to the final judgment described in  
255 Subsection (2)(a)(i) are at an end; and  
256 (iii) the person files a verified petition in the court where the judgment is entered for an  
257 order directing payment from the fund for the uncollected actual damages included in the  
258 judgment and unpaid.  
259 (b) A court may not direct the payment from the fund of:  
260 (i) punitive damages;  
261 (ii) attorney fees;  
262 (iii) interest; or  
263 (iv) court costs.  
264 (c) Regardless of the number of claimants or parcels of real estate involved in a single  
265 real estate transaction, the liability of the fund may not exceed:  
266 (i) \$15,000 for a single real estate transaction; or  
267 (ii) \$50,000 for all transactions of a title insurance license.  
268 (d) A person shall:  
269 (i) serve the verified petition required by Subsection (2)(a) on the department; and  
270 (ii) file an affidavit of service with the court.  
271 (3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days  
272 after the day on which the department is served.  
273 (b) The person who files the petition may recover from the fund only if the person  
274 shows all of the following:  
275 (i) the person is not a spouse of the judgment debtor or the personal representative of  
276 the spouse;  
277 (ii) the person complied with this chapter;  
278 (iii) the person has obtained a final judgment in accordance with this section indicating  
279 the amount of the judgment awarded;  
280 (iv) the amount still owing on the judgment at the date of the petition;  
281 (v) (A) the person has had a writ of execution issued under the judgment, and the

282 officer executing the writ has returned showing that no property subject to execution in  
283 satisfaction of the judgment could be found; or

284 (B) that the amount realized upon the execution levied against the property of the  
285 judgment debtor is insufficient to satisfy the judgement;

286 (vi) the person has made reasonable searches and inquiries to ascertain whether the  
287 judgment debtor has any interest in property, real or personal, that may satisfy the judgment;  
288 and

289 (vii) the person has exercised reasonable diligence to secure payment of the judgment  
290 from the assets of the judgment debtor.

291 (4) If the person described in Subsection (3) satisfies the court that it is not practicable  
292 for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through  
293 (vii), the court may waive those requirements.

294 (5) (a) A judgment that is the basis for a claim against the fund may not have been  
295 discharged in bankruptcy.

296 (b) If a bankruptcy proceeding is still open or is commenced during the pendency of the  
297 claim, the person bringing a claim against the fund shall obtain an order from the bankruptcy  
298 court declaring the judgement and debt to be nondischargeable.

299 Section 9. Section **31A-40-302** is enacted to read:

300 **31A-40-302. Department's authority to act upon receipt of petition.**

301 (1) Upon receipt of a petition required by Section 31A-40-301, the department may  
302 answer, initiate review proceedings of its own, or appear in any proceeding:

303 (a) in the name of the defendant to the action; or

304 (b) on behalf of the fund.

305 (2) Subject to court approval, the department may compromise a claim on the basis of  
306 an application of the person who files the petition.

307 Section 10. Section **31A-40-303** is enacted to read:

308 **31A-40-303. Court determination and order.**

309 Subject to the requirements of this part, if the court determines that a claim should be

310 levied against the fund, the court shall enter an order directing the department to pay from the  
311 fund that portion of the petitioner's judgment that is payable from the fund.

312 Section 11. Section **31A-40-304** is enacted to read:

313 **31A-40-304. Insufficient funds to satisfy judgment.**

314 If the monies in the fund are insufficient to satisfy a claim ordered to be paid under  
315 Section 31A-40-303, when sufficient money is in the fund, the department shall pay a person  
316 with an unpaid claim:

317 (1) in the order that petitions related to unpaid claims are originally served on the  
318 department; and

319 (2) an amount equal to the sum of:

320 (a) the unpaid claim; and

321 (b) interest on the unpaid claim at a rate of 5% per annum from the date the court  
322 orders payment from the fund until the day on which the claim is paid.

323 Section 12. Section **31A-40-305** is enacted to read:

324 **31A-40-305. Department subrogated -- Authority to revoke license.**

325 (1) (a) If the department makes payment from the fund, the department is subrogated to  
326 all the rights of the person who received monies from the fund for the amounts paid out of the  
327 fund.

328 (b) Any amounts recovered by the department under the subrogated rights shall be  
329 deposited in the fund.

330 (2) (a) The license of a title insurance licensee for whom payment from the fund is made  
331 under this chapter is automatically revoked.

332 (b) Before a title insurance licensee whose license is revoked under this section may  
333 apply for a new license under this title, the title insurance licensee shall pay to the department  
334 for deposit in the fund:

335 (i) the amounts paid by the fund because of an action brought against the title insurance  
336 licensee; and

337 (ii) interest at a rate determined by the commissioner with the concurrence of the

338 commission.

339 Section 13. Section **31A-40-306** is enacted to read:

340 **31A-40-306. Failure to comply constitutes a waiver.**

341 The failure of a person to comply with this chapter constitutes a waiver of any right  
342 provided under this chapter.

343 Section 14. **Effective date.**

344 This bill takes effect on July 1, 2008.