

Effective 5/3/2023

Effective until 5/1/2024

31A-23a-406 Title insurance producer's business.

(1) As used in this section:

- (a) "Automated clearing house network" or "ACH network" means a national electronic funds transfer system regulated by the Federal Reserve and the Office of the Comptroller of the Currency.
- (b) "Depository institution" means the same as that term is defined in Section 7-1-103.
- (c) "Funds transfer system" means the same as that term is defined in Section 7-1-103.

(2) An individual title insurance producer or agency title insurance producer may do escrow involving real property transactions if all of the following exist:

- (a) the individual title insurance producer or agency title insurance producer is licensed with:
 - (i) the title line of authority; and
 - (ii) the escrow subline of authority;
- (b) the individual title insurance producer or agency title insurance producer is appointed by a title insurer authorized to do business in the state;
- (c) except as provided in Subsection (4), the individual title insurance producer or agency title insurance producer issues one or more of the following as part of the transaction:
 - (i) an owner's policy offering title insurance;
 - (ii) a lender's policy offering title insurance; or
 - (iii) if the transaction does not involve a transfer of ownership, an endorsement to an owner's or a lender's policy offering title insurance;
- (d) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow is deposited:
 - (i) in a federally insured depository institution, as defined in Section 7-1-103, that:
 - (A) has a branch in this state, if the individual title insurance producer or agency title insurance producer depositing the money is a resident licensee; and
 - (B) is authorized by the depository institution's primary regulator to engage in trust business, as defined in Section 7-5-1, in this state; and
 - (ii) in a trust account that is separate from all other trust account money that is not related to real estate transactions;
- (e) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow is the property of the one or more persons entitled to the money under the provisions of the escrow;
- (f) money deposited with the individual title insurance producer or agency title insurance producer in connection with an escrow is segregated escrow by escrow in the records of the individual title insurance producer or agency title insurance producer;
- (g) earnings on money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow;
- (h) the escrow does not require the individual title insurance producer or agency title insurance producer to hold:
 - (i) construction money; or
 - (ii) money held for exchange under Section 1031, Internal Revenue Code; and
- (i) the individual title insurance producer or agency title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow.

(3) Notwithstanding Subsection (2), an individual title insurance producer or agency title insurance producer may engage in the escrow business if:

- (a) the escrow involves:
 - (i) a mobile home;
 - (ii) a grazing right;
 - (iii) a water right; or
 - (iv) other personal property authorized by the commissioner; and
 - (b) the individual title insurance producer or agency title insurance producer complies with this section except for Subsection (2)(c).
- (4)
- (a) Subsection (2)(c) does not apply if the transaction is for the transfer of real property from the School and Institutional Trust Lands Administration.
 - (b) This subsection does not prohibit an individual title insurance producer or agency title insurance producer from issuing a policy described in Subsection (2)(c) as part of a transaction described in Subsection (4)(a).
- (5) Money held in escrow:
- (a) is not subject to any debts of the individual title insurance producer or agency title insurance producer;
 - (b) may only be used to fulfill the terms of the individual escrow under which the money is accepted; and
 - (c) may not be used until the conditions of the escrow are met.
- (6) Assets or property other than escrow money received by an individual title insurance producer or agency title insurance producer in accordance with an escrow shall be maintained in a manner that will:
- (a) reasonably preserve and protect the asset or property from loss, theft, or damages; and
 - (b) otherwise comply with the general duties and responsibilities of a fiduciary or bailee.
- (7)
- (a) A check from the trust account described in Subsection (2)(d) may not be drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account from which money is to be disbursed contains a sufficient credit balance consisting of collected and cleared money at the time the check is drawn, executed, or dated, or money is otherwise disbursed.
 - (b) As used in this Subsection (7), money is considered to be "collected and cleared," and may be disbursed as follows:
 - (i) cash may be disbursed on the same day the cash is deposited;
 - (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
 - (iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:
 - (A) a cashier's check, certified check, or official check that is drawn on an existing account at a federally insured financial institution;
 - (B) a check drawn on the trust account of a principal broker or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual title insurance producer or agency title insurance producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the individual title insurance producer or agency title insurance producer's escrow account;
 - (C) a personal check not to exceed \$500 per closing; or

- (D) a check drawn on the escrow account of another individual title insurance producer or agency title insurance producer, if the individual title insurance producer or agency title insurance producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the individual title insurance producer or agency title insurance producer in the escrow transaction;
- (iv) deposits made through the ACH network may be disbursed on the same day the deposit is made if:
 - (A) the transferred funds remain uniquely designated and traceable throughout the entire ACH network transfer process;
 - (B) except as a function of the ACH network process, the transferred funds are not subject to comingling or third party access during the transfer process;
 - (C) the transferred funds are deposited into the title insurance producer's escrow account and are available for disbursement; and
 - (D) either the ACH network payment type or the title insurance producer's systems prevent the transaction from being unilaterally canceled or reversed by the consumer once the transferred funds are deposited to the individual title insurance producer or agency title producer;
- (v) deposits may be disbursed on the same day the deposit is made if the deposit is made via:
 - (A) the Federal Reserve Bank through the Federal Reserve's funds transfer system; or
 - (B) a funds transfer system provided by an association of banks.
- (c) A check or deposit not described in Subsection (7)(b) may be disbursed:
 - (i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or
 - (ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.
- (8) An individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.
- (9) An individual title insurance producer or agency title insurance producer shall comply with:
 - (a) Section 31A-23a-409;
 - (b) Title 46, Chapter 1, Notaries Public Reform Act; and
 - (c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.
- (10) If an individual title insurance producer or agency title insurance producer conducts a search for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable search of the public records.