

**REAL ESTATE RELATED TRANSACTIONS
AND REGULATION**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Title and Escrow Commission Act and related provisions.

Highlighted Provisions:

This bill:

- requires disclosure of business interests by members of the Title and Escrow

Commission;

- requires the concurrence of the Real Estate Commission with rules made by the

Title and Escrow Commission;

- addresses when certain rulemaking is prohibited or required;

- addresses interest on accounts; and

- makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-2-402, as enacted by Chapter 185, Laws of Utah 2005

31A-2-403, as enacted by Chapter 185, Laws of Utah 2005



31A-2-404, as enacted by Chapter 185, Laws of Utah 2005

31A-19a-209, as last amended by Chapter 185, Laws of Utah 2005

31A-23a-106, as last amended by Chapters 185 and 219, Laws of Utah 2005

31A-23a-204, as last amended by Chapter 312, Laws of Utah 2006

31A-23a-402, as last amended by Chapters 123 and 185, Laws of Utah 2005

31A-23a-406, as last amended by Chapters 124 and 185, Laws of Utah 2005

31A-23a-409, as last amended by Chapter 2, Laws of Utah 2004

31A-23a-415, as last amended by Chapter 185, Laws of Utah 2005

31A-26-204, as last amended by Chapter 185, Laws of Utah 2005

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 31A-2-402 is amended to read:

31A-2-402. Definitions.

As used in this part:

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

(2) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(3) "Real Estate Commission" means the Real Estate Commission created in Section 61-2-5.5.

~~[(3)]~~ (4) "Title licensee" means a person licensed under this title as:

(a) an agency with a title insurance line of authority;

(b) a producer with:

(i) a general title insurance line of authority; or

(ii) a specific category of authority for title insurance; or

(c) a title insurance adjuster.

Section 2. Section 31A-2-403 is amended to read:

31A-2-403. Title and Escrow Commission created.

(1) (a) There is created within the department the Title and Escrow Commission that is comprised of five members appointed by the governor with the consent of the Senate as follows:

(i) four members shall:

(A) be or have been licensed under the title insurance line of authority; and

(B) as of the day on which the member is appointed, be or have been licensed with the search or escrow subline of authority for at least five years; and

(ii) one member shall be a member of the general public.

(b) No more than one commission member may be appointed from:

(i) any ~~given~~ county in the state; or

(ii) any single company.

(2) (a) Each member of the commission shall file with the department a disclosure of any position of employment or ownership interest that the member of the commission has with respect to any person that is subject to the jurisdiction of the department.

(b) The disclosure statement required by this Subsection (2) shall be:

(i) filed by no later than the day on which the person begins that person's appointment; and

(ii) amended when a significant change occurs in any matter required to be disclosed under this Subsection (2).

~~[(2)]~~ (3) (a) Except as required by Subsection ~~[(2)]~~ (3)(b), as terms of current commission members expire, the governor shall appoint each new member to a four-year term ending on June 30.

(b) Notwithstanding the requirements of Subsection ~~[(2)]~~ (3)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of the commission members are staggered so that approximately half of the commission is appointed every two years.

(c) A commission member may not serve more than one consecutive term.

(d) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.

~~[(3)]~~ (4) (a) A member of the commission ~~[shall receive no]~~ may not receive compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

90 ~~[(4)]~~ (5) Members of the commission shall annually select one member to serve as
91 chair.

92 ~~[(5)]~~ (6) (a) The commission shall meet at least monthly.

93 (b) The commissioner may call additional meetings:

94 (i) at the commissioner's discretion;

95 (ii) upon the request of the chair of the commission; or

96 (iii) upon the written request of three or more commission members.

97 (c) (i) Three members of the commission constitute a quorum for the transaction of
98 business.

99 (ii) The action of a majority of the members when a quorum is present is the action of
100 the commission.

101 ~~[(6)]~~ (7) The department shall staff the commission.

102 Section 3. Section **31A-2-404** is amended to read:

103 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

104 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
105 part, the commissioner shall administer and enforce the provisions in this title related to:

106 (a) title insurance; and

107 (b) escrow conducted by a title licensee or title insurer.

108 (2) The commission shall:

109 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
110 and subject to Subsection (3), make rules for the administration of the provisions in this title
111 related to title insurance including rules related to:

112 (i) rating standards and rating methods for title agencies and producers as provided in
113 Section 31A-19a-209;

114 (ii) the licensing for a title licensee including the licensing requirements of Sections
115 31A-23a-203 and 31A-23a-204;

116 (iii) continuing education requirements of Section 31A-23a-202;

117 (iv) examination procedures, after consultation with the department and the
118 department's test administrator when required by Section 31A-23a-204; and

119 (v) standards of conduct for a title licensee;

120 (b) concur in the issuance and renewal of licenses in accordance with Section

31A-23a-105 or 31A-26-203;

(c) in accordance with Section 31A-3-103, establish, with the concurrence of the department, all fees imposed by this title on a title licensee;

(d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

(e) conduct all administrative hearings not delegated by [it] the commission to an administrative law judge related to the:

(i) licensing of any applicant;

(ii) conduct of any title licensee; or

(iii) approval of continuing education programs required by Section 31A-23a-202;

(f) with the concurrence of the commissioner, approve assets that can be included in a reserve fund required by Section 31A-23a-204;

(g) with the concurrence of the commissioner, approve continuing education programs required by Section 31A-23a-202;

(h) with the concurrence of the commissioner, impose penalties:

(i) under this title related to:

(A) title insurance; or

(B) escrow conducted by a title licensee;

(ii) after investigation by the department in accordance with Part 3, Procedures and Enforcement; and

(iii) that are enforced by the commissioner;

(i) advise the commissioner on the administration and enforcement of any matters affecting the title insurance industry;

(j) advise the commissioner on matters affecting the department's budget related to title insurance; and

(k) perform other duties as provided in this title.

(3) The commission may make a rule under this title only with the concurrence of the Real Estate Commission.

(4) (a) The following may not make a rule described in Subsection (4)(b):

(i) the department;

(ii) the commission; or

(iii) the Real Estate Commission.

(b) The following rules are prohibited by this Subsection (4), a rule:

(i) concerning the marketing and advertising of title insurance products or services; or

(ii) prohibiting licensure or certification in more than one business, profession, or occupation involved in real estate transactions, unless the rule applies only to engaging in the same real estate transaction in two or more capacities that require licensure or certification.

(5) By no later than October 1, 2007, the commission shall make a rule, with the concurrence of the Real Estate Commission, that permits that monies held by a title licensee in an escrow or similar account in accordance with this title may earn interest:

(a) only under conditions similar to those imposed by rule by the Real Estate Commission on real estate related trust accounts; and

(b) subject to conditions that minimize any incentive for a title licensee to delay a closing to increase interest earned on the escrow or similar account.

Section 4. Section **31A-19a-209** is amended to read:

31A-19a-209. Special provisions for title insurance.

(1) (a) (i) The Title and Escrow Commission shall adopt rules [~~in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~] subject to the requirements and limitations of Section 31A-2-404, establishing rate standards and rating methods for title agencies and producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurance insurers, agencies, and producers.

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurance insurers, agencies, and producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the searching and examining of public records to determine insurability of title to real redevelopment property.

(2) (a) Every title insurance insurer, agency, and title insurance producer shall file with the commissioner:

(i) a schedule of the escrow charges that the title insurance insurer, agency, or title insurance producer proposes to use in this state for services performed in connection with the issuance of policies of title insurance; and

(ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

(b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.

(c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes effect on the day on which the schedule of escrow charges is filed.

(ii) Any changes to the schedule of the escrow charges required to be filed by Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow charges except that the effective date may not be less than 30 calendar days after the day on which the change to the schedule of escrow charges is filed.

(3) A title insurance insurer, agency, or producer may not file or use any rate or other charge relating to the business of title insurance, including rates or charges filed for escrow that would cause the title insurance company, agency, or producer to:

(a) operate at less than the cost of doing:

(i) the insurance business; or

(ii) the escrow business; or

(b) fail to adequately underwrite a title insurance policy.

(4) (a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed or amended at any time, subject to the limitations in this Subsection (4).

(b) Each change or amendment shall:

(i) be filed with the commissioner, subject to review by the Title and Escrow Commission; and

(ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the day on which the change or amendment is filed.

(c) Any change or amendment remains in force for a period of at least 90 calendar days from the change or amendment's effective date.

(5) While the schedule of rates and schedule of charges are effective, a copy of each

shall be:

(a) retained in each of the offices of:

(i) the title insurance insurer in this state;

(ii) the title insurance insurer's producers in this state; and

(b) upon request, furnished to the public.

(6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurance insurer, agency, or producer may not make or impose any premium or other charge:

(a) in connection with the issuance of a policy of title insurance; or

(b) for escrow services performed in connection with the issuance of a policy of title insurance.

Section 5. Section **31A-23a-106** is amended to read:

31A-23a-106. License types.

(1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).

(b) License types and lines of authority pertaining to each license type describe the type of licensee and the lines of business that licensee may sell, solicit, or negotiate. License types are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.

(2) (a) A producer license type includes the following lines of authority:

(i) life insurance, including nonvariable contracts;

(ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;

(iii) accident and health insurance, including contracts issued to policyholders under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) property insurance;

(v) casualty insurance, including surety and other bonds;

(vi) title insurance under one or more of the following categories:

(A) search, including authority to act as a title marketing representative;

245 (B) escrow, including authority to act as a title marketing representative;
246 (C) search and escrow, including authority to act as a title marketing representative;
247 and
248 (D) title marketing representative only;
249 (vii) workers' compensation insurance;
250 (viii) personal lines insurance; and
251 (ix) surplus lines, if the producer has the property or casualty or both lines of authority.
252 (b) A limited line producer license type includes the following limited lines of
253 authority:
254 (i) limited line credit insurance;
255 (ii) travel insurance;
256 (iii) motor club insurance;
257 (iv) car rental related insurance;
258 (v) legal expense insurance; and
259 (vi) bail bond producer.
260 (c) A customer service representative license type includes the following lines of
261 authority, if held by the customer service representative's employer producer:
262 (i) life insurance, including nonvariable contracts;
263 (ii) accident and health insurance, including contracts issued to policyholders under
264 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
265 Organizations and Limited Health Plans;
266 (iii) property insurance;
267 (iv) casualty insurance, including surety and other bonds;
268 (v) workers' compensation insurance;
269 (vi) personal lines insurance; and
270 (vii) surplus lines, if the employer producer has the property or casualty or both lines of
271 authority.
272 (d) A consultant license type includes the following lines of authority:
273 (i) life insurance, including nonvariable contracts;
274 (ii) variable contracts, including variable life and annuity, if the consultant has the life
275 insurance line of authority;

276 (iii) accident and health insurance, including contracts issued to policyholders under
277 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
278 Organizations and Limited Health Plans;

279 (iv) property insurance;

280 (v) casualty insurance, including surety and other bonds;

281 (vi) workers' compensation insurance; and

282 (vii) personal lines insurance.

283 (e) A managing general agent license type includes the following lines of authority:

284 (i) life insurance, including nonvariable contracts;

285 (ii) variable contracts, including variable life and annuity, if the managing general
286 agent has the life insurance line of authority;

287 (iii) accident and health insurance, including contracts issued to policyholders under
288 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
289 Organizations and Limited Health Plans;

290 (iv) property insurance;

291 (v) casualty insurance, including surety and other bonds;

292 (vi) workers' compensation insurance; and

293 (vii) personal lines insurance.

294 (f) A reinsurance intermediary license type includes the following lines of authority:

295 (i) life insurance, including nonvariable contracts;

296 (ii) variable contracts, including variable life and annuity, if the reinsurance
297 intermediary has the life insurance line of authority;

298 (iii) accident and health insurance, including contracts issued to policyholders under
299 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
300 Organizations and Limited Health Plans;

301 (iv) property insurance;

302 (v) casualty insurance, including surety and other bonds;

303 (vi) workers' compensation insurance; and

304 (vii) personal lines insurance.

305 (g) A holder of licenses under Subsections (2)(a), (d), (e), and (f) has all qualifications
306 necessary to act as a holder of a license under Subsections (2)(b) and (c).

(3) (a) The commissioner may by rule recognize other producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner and subject to the requirements and limitations of Section 31A-2-404, recognize other categories for a title insurance producer line of authority not listed under Subsection (2)(a)(vi).

(4) The variable contracts, including variable life and annuity line of authority requires:

(a) licensure as a registered agent or broker by the National Association of Securities Dealers; and

(b) current registration with a securities broker/dealer.

(5) A surplus lines producer is a producer who has a surplus lines line of authority. Section 6. Section **31A-23a-204** is amended to read:

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

Title insurance producers shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

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

(i) both a:

(A) search line of authority; and

(B) escrow line of authority; or

(ii) a search and escrow line of authority.

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

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

(ii) one or more natural persons who are licensed with the escrow line of authority for

the time period provided in Subsection (1)(a).

(c) The Title and Escrow Commission may by rule [~~made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~], subject to the requirements and limitations of Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a).

(2) (a) Every title insurance agency or producer appointed by an insurer shall maintain:

(i) a fidelity bond;

(ii) a professional liability insurance policy; or

(iii) a financial protection:

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

(B) that the commissioner considers adequate.

(b) The bond or insurance required by this Subsection (2):

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

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

(c) The Title and Escrow Commission may by rule [~~made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~], subject to the requirements and limitations of Section 31A-2-404, exempt title insurance producers from the requirements of this Subsection (2) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(3) (a) (i) Every title insurance agency or producer appointed by an insurer shall maintain a reserve fund.

(ii) The reserve fund required by this Subsection (3) shall be:

(A) (I) composed of assets approved by the commissioner and the Title and Escrow Commission;

(II) maintained as a separate trust account; and

(III) charged as a reserve liability of the title insurance producer in determining the producer's financial condition; and

(B) accumulated by segregating 1% of all gross income received from the title insurance business.

- 369 (iii) The reserve fund shall contain the accumulated assets for the immediately
370 preceding ten years as defined in Subsection (3)(a)(ii).
- 371 (iv) That portion of the assets held in the reserve fund over ten years may be:
372 (A) withdrawn from the reserve fund; and
373 (B) restored to the income of the title insurance producer.
- 374 (v) The title insurance producer may withdraw interest from the reserve fund related to
375 the principal amount as it accrues.
- 376 (b) (i) A disbursement may not be made from the reserve fund except as provided in
377 Subsection (3)(a) unless the title insurance producer ceases doing business as a result of:
378 (A) sale of assets;
379 (B) merger of the producer with another producer;
380 (C) termination of the producer's license;
381 (D) insolvency; or
382 (E) any cessation of business by the producer.
- 383 (ii) Any disbursements from the reserve fund may be made only to settle claims arising
384 from the improper performance of the title insurance producer in providing services defined in
385 Section 31A-23a-406.
- 386 (iii) The commissioner shall be notified ten days before any disbursements from the
387 reserve fund.
- 388 (iv) The notice required by this Subsection (3)(b) shall contain:
389 (A) the amount of claim;
390 (B) the nature of the claim; and
391 (C) the name of the payee.
- 392 (c) (i) The reserve fund shall be maintained by the title insurance producer or the title
393 insurance producer's representative for a period of two years after the title insurance producer
394 ceases doing business.
- 395 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
396 Subsection (3)(c)(i) may be withdrawn and restored to the former title insurance producer.
- 397 (4) Any examination for licensure shall include questions regarding the search and
398 examination of title to real property.
- 399 (5) A title insurance producer may not perform the functions of escrow unless the title

insurance producer has been examined on the fiduciary duties and procedures involved in those functions.

(6) The Title and Escrow Commission shall adopt rules, ~~[in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to the requirements and limitations of Section 31A-2-404, after consulting with the department and the department's test administrator, establishing an examination for a license that will satisfy this section.

(7) A license may be issued to a title insurance producer who has qualified:

(a) to perform only searches and examinations of title as specified in Subsection (4);

(b) to handle only escrow arrangements as specified in Subsection (5); or

(c) to act as a title marketing representative.

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

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

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

Section 7. Section **31A-23a-402** is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Inducement -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that

insurer.

(2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be issued or continued, including premium or commission rebates.

(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.

(iii) This Subsection (2)(a) does not preclude:

(A) insurers from reducing premiums because of expense savings;

(B) the usual kinds of social courtesies not related to particular transactions; or

(C) an insurer from receiving premiums under an installment payment plan.

(b) A licensee under this title may not absorb the tax under Section 31A-3-301.

(c) (i) A title insurer or producer or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

(A) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

(B) any special favor or advantage not generally available to others; or

(C) any money or other consideration or material inducement.

(ii) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to the requirements and limitations of Section 31A-2-404.

(iii) An insured or any other person connected, directly or indirectly, with the transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(c)(i).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons

insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

(i) a person who is or should be licensed under this title;

(ii) an employee of that licensee or person who should be licensed;

(iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that they:

- (i) are misleading;
- (ii) are deceptive;
- (iii) are unfairly discriminatory;
- (iv) provide an unfair inducement; or
- (v) unreasonably restrain competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, ~~[in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to the requirements and limitations of Section 31A-2-404, that define any other unfair method of competition or any other unfair or deceptive act or practice after a finding that they:

- (i) are misleading;
- (ii) are deceptive;
- (iii) are unfairly discriminatory;
- (iv) provide an unfair inducement; or
- (v) unreasonably restrain competition.

Section 8. Section **31A-23a-406** is amended to read:

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

(1) A title insurance producer may do escrow involving real property transactions if all of the following exist:

- (a) the title insurance producer is licensed with:
 - (i) the title line of authority; and
 - (ii) the escrow subline of authority;
- (b) the title insurance producer is appointed by a title insurer authorized to do business in the state;
- (c) one or more of the following is to be issued as part of the transaction:

555 (i) an owner's policy of title insurance; or
556 (ii) a lender's policy of title insurance;
557 (d) (i) all funds deposited with the title insurance producer in connection with any
558 escrow:
559 (A) are deposited:
560 (I) in a federally insured financial institution; and
561 (II) in a trust account that is separate from all other trust account funds that are not
562 related to real estate transactions; and
563 (B) are the property of the persons entitled to them under the provisions of the escrow;
564 and
565 (ii) are segregated escrow by escrow in the records of the title insurance producer;
566 (e) earnings on funds held in escrow may be paid out of the escrow account to ~~[any]~~ a
567 person in accordance with the conditions of the escrow only to the extent permitted by rules
568 made by the Title and Escrow Commission in accordance with Subsection 31A-2-404(5); and
569 (f) the escrow does not require the title insurance producer to hold:
570 (i) construction funds; or
571 (ii) funds held for exchange under Section 1031, Internal Revenue Code.
572 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the
573 escrow business if:
574 (a) the escrow involves:
575 (i) a mobile home;
576 (ii) a grazing right;
577 (iii) a water right; or
578 (iv) other personal property authorized by the commissioner; and
579 (b) the title insurance producer complies with all the requirements of this section
580 except for the requirement of Subsection (1)(c).
581 (3) Funds held in escrow:
582 (a) are not subject to any debts of the title insurance producer;
583 (b) may only be used to fulfill the terms of the individual escrow under which the funds
584 were accepted; and
585 (c) may not be used until all conditions of the escrow have been met.

(4) Assets or property other than escrow funds received by a 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 all general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account from which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise disbursed.

(b) As used in this Subsection (5), funds are considered to be "collected or 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 following may be disbursed on the day following the date of deposit:

(A) a cashier's check;

(B) a certified check;

(C) a teller's check;

(D) a U.S. Postal Service money order; and

(E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and

(iv) any other check or deposit may be disbursed:

(A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(B) upon written notification from the financial institution to which the funds have been deposited, that final settlement has occurred on the deposited item.

(c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.

(6) The title insurance producer shall maintain records of all receipts and disbursements of escrow funds.

(7) The 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 [~~in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~], subject to the requirements and limitations of Section 31A-2-404, that govern escrows.

Section 9. Section **31A-23a-409** is amended to read:

31A-23a-409. Trust obligation for funds collected.

(1) (a) Every licensee is a trustee for all funds received or collected for forwarding to insurers or to insureds.

(b) Except for amounts necessary to pay bank charges, and except for funds paid by insureds and belonging in part to the licensee as fees or commissions, a licensee may not commingle trust funds with:

(i) the licensee's own funds; or

(ii) funds held in any other capacity.

(c) Except as provided under Subsection (4), every licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.

(d) (i) Unless the funds are sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

(ii) Funds deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Funds required to be deposited under Subsection (1) shall be deposited:

(a) in a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:

(i) has an office in this state;

(ii) has federal deposit insurance; and

(iii) is authorized by its primary regulator to engage in the trust business, as defined by

Section 7-5-1, in this state; or

(b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) (a) Subject to Subsection (4)(b):

~~[(4)-A]~~ (i) a trust account into which funds are deposited may be interest bearing[- The]; and

(ii) interest accrued on the trust account may be paid to the licensee, [so long as] if:

(A) the licensee otherwise complies with this section; and

(B) with the contract with the insurer.

(b) Notwithstanding Subsection (4)(a), a title licensee, as defined in Section 31A-2-402, may deposit funds into an interest bearing trust account:

(i) subject to the other provisions of this title; and

(ii) only to the extent permitted by rules made by the Title and Escrow Commission in accordance with Subsection 31A-2-404(5).

(5) A financial institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the licensee.

(6) Any licensee who, not being lawfully entitled ~~[thereto]~~ to do so, diverts or appropriates any portion of the funds held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

Section 10. Section **31A-23a-415** is amended to read:

31A-23a-415. Assessment on title insurance agencies or title insurers.

(1) For purposes of this section:

(a) "Premium" is as defined in Subsection 59-9-101(3).

(b) "Title insurer" means a person:

(i) making any contract or policy of title insurance as:

(A) insurer;

(B) guarantor; or

- 679 (C) surety;
- 680 (ii) proposing to make any contract or policy of title insurance as:
- 681 (A) insurer;
- 682 (B) guarantor; or
- 683 (C) surety; or
- 684 (iii) transacting or proposing to transact any phase of title insurance, including:
- 685 (A) soliciting;
- 686 (B) negotiating preliminary to execution;
- 687 (C) executing of a contract of title insurance;
- 688 (D) insuring; and
- 689 (E) transacting matters subsequent to the execution of the contract and arising out of
- 690 the contract.
- 691 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
- 692 personal property located in Utah, an owner of real or personal property, the holders of liens or
- 693 encumbrances on that property, or others interested in the property against loss or damage
- 694 suffered by reason of:
- 695 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 696 property; or
- 697 (ii) invalidity or unenforceability of any liens or encumbrances on the property.
- 698 (2) (a) Beginning on July 1, 1998, the commissioner may assess each title insurer and
- 699 each title insurance agency an annual assessment:
- 700 (i) determined by the Title and Escrow Commission:
- 701 (A) after consultation with the commissioner; and
- 702 (B) in accordance with this Subsection (2); and
- 703 (ii) to be used for the purposes described in Subsection (3).
- 704 (b) A title insurance agency shall be assessed up to:
- 705 (i) \$200 for the first office in each county in which the title insurance agency maintains
- 706 an office; and
- 707 (ii) \$100 for each additional office the title insurance agency maintains in the county
- 708 described in Subsection (2)(b)(i).
- 709 (c) A title insurer shall be assessed up to:

(i) \$200 for the first office in each county in which the title insurer maintains an office;
(ii) \$100 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:
(A) aggregating the assessments imposed on:
(I) title insurance agencies under Subsection (2)(b); and
(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);
(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and
(C) multiplying:
(I) the amount calculated under Subsection (2)(c)(iii)(B); and
(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and ~~[in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to the requirements and limitations of Section 31A-2-404, the Title and Escrow Commission by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed \$75,000 annually.

(3) All money received by the state under this section:
(a) shall be deposited in the General Fund as a dedicated credit of the department; and
(b) may be expended by the department only to pay for any cost or expense incurred by the department in the administration, investigation, and enforcement of ~~[Chapter 23a, Parts 4]~~ this part and Part 5, Compensation of Producers and Consultants, related to:

(i) the marketing of title insurance; and
(ii) audits of agencies.
(4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Section 11. Section **31A-26-204** is amended to read:

31A-26-204. License classifications.

A resident or nonresident license issued under this chapter shall be issued under the classifications described under Subsections (1), (2), and (3). These classifications are intended

to describe the matters to be considered under any prerequisite education and examination required of license applicants under Sections 31A-26-206 and 31A-26-207.

(1) Independent adjuster license classifications include:

(a) accident and health insurance, including related service insurance under Chapter 7, Nonprofit Health Service Insurance Corporation, or 8, Health Maintenance Organizations and Limited Health Plans;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

(iv) policies containing combinations or variations of these coverages;

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

(f) workers' compensation insurance.

(2) Public adjuster license classifications include:

(a) accident and health insurance, including related service insurance under Chapter 7 or 8;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

(iv) policies containing combinations or variations of these coverages;

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

(f) workers' compensation insurance.

(3) (a) The commissioner may by rule:

(i) recognize other independent adjuster or public adjuster license classifications as to other kinds of insurance not listed under Subsection (1); and

(ii) create license classifications that grant only part of the authority arising under

772 another license class.

773 (b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and
774 Escrow Commission may make the rules provided for in Subsection (3)(a), subject to the
775 requirements and limitations of Section 31A-2-404.

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