

**TITLE INSURANCE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code to address title insurance.

**Highlighted Provisions:**

This bill:

- ▶ addresses closing or settlement protection;
- ▶ addresses the liability of title insurers and title insurance producers under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-4-117**, as enacted by Laws of Utah 2013, Chapter 319

**31A-23a-407**, as last amended by Laws of Utah 2013, Chapter 319

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

Section 1. Section **31A-4-117** is amended to read:

**31A-4-117. Closing or settlement protection.**

(1) A title insurer may issue closing or settlement protection in the form of a closing protection letter filed with the department to a person who is a party to a transaction in which a

30 title insurance policy is issued.

31 (2) Closing or settlement protection may indemnify a person who is a party to a  
32 transaction referred to in Subsection (1) against loss that the title insurer approves for the  
33 closing or settlement protection, under the terms and conditions of the closing protection letter  
34 issued by the title insurer, because of one or more of the following acts of a title insurance  
35 policy issuing individual title insurance producer or agency title insurance producer or other  
36 settlement service provider:

37 (a) theft or misappropriation of settlement funds in connection with a transaction in  
38 which one or more title insurance policies are issued by or on behalf of the title insurer issuing  
39 the closing or settlement protection, but only to the extent that the theft or misappropriation  
40 relates to the status of the title to that interest in land or to the validity, enforceability, and  
41 priority of the lien of the mortgage on that interest in land; or

42 (b) failure to comply with the written closing instructions when agreed to by the  
43 settlement agent, title agent, or employee of the title insurer, but only to the extent that the  
44 failure to follow the written closing instructions relates to the status of the title to that interest  
45 in land or the validity, enforceability, and priority of the lien of the mortgage on that interest in  
46 land.

47 (3) A title insurer may not make the fee charged by a title insurer for each party  
48 receiving closing or settlement protection coverage subject to any agreement requiring a  
49 division of fees or premiums collected on behalf of the title insurer. The fee charged for a  
50 closing or settlement coverage protection letter will be filed by the title insurer with the  
51 department 30 days before use.

52 (4) A title insurer may not provide any other protection that purports to contractually  
53 indemnify against improper acts or omissions of a person who is a party to a transaction  
54 referred to in Subsection (1) with regard to settlement or closing services.

55 (5) Subject to Section 31A-23a-407, a title insurer that is represented by an individual  
56 title insurance producer or an agency title insurance producer is liable for the acts or omissions  
57 of the individual title insurance producer or agency title insurance producer for closing or

58 settlement only to the extent of the liability undertaken in the closing protection letter  
59 according to terms and provisions in the closing protection letter issued pursuant to this  
60 section. The liability to the title insurer, if any, of the individual title insurance producer or  
61 agency title insurance producer that issues the title insurance policy for acts or omissions of the  
62 individual title insurance producer or agency title insurance producer may not be limited or  
63 modified because the title insurer has provided closing protection to one or more parties to a  
64 real property transaction, escrow, settlement, or closing.

65 Section 2. Section 31A-23a-407 is amended to read:

66 **31A-23a-407. Liability for acts of title insurance producers.**

67 [~~Any title company, represented by one or more~~]

68 (1) Subject to the other provisions in this section, a title insurer that appoints an  
69 individual title insurance [~~producers appointed by an insurer~~] producer or an agency title  
70 insurance [~~producers, is directly and primarily~~] producer is liable to [~~others dealing with the~~  
71 individual title insurance producers or agency title insurance producers] a buyer, seller,  
72 borrower, lender, or third party that deposits money with the individual title insurance producer  
73 or agency title insurance producer for the receipt and disbursement of [~~funds~~] money deposited  
74 [~~in escrows~~] with the individual title insurance [~~producers appointed by an insurer~~] producer or  
75 agency title insurance [~~producers in all those transactions where~~] producer for a transaction  
76 when a commitment [~~or binder~~] for [~~or~~] a policy [~~or contract~~] of title insurance of that title  
77 insurer [~~has been~~] is ordered, [~~or a preliminary report of the title insurer has been~~] issued, or  
78 distributed[~~. This~~] or a title insurance policy of that title insurer is issued, except that once a  
79 title insurer is named in an issued commitment only that title insurer is liable as a title insurer  
80 under this section.

81 (2) The liability of a title insurer under Subsection (1) and the liability of an individual  
82 title insurance producer or agency title insurance producer for the receipt and disbursement of  
83 money deposited with the individual title insurance producer or agency title insurance producer  
84 is limited to the amount of money received and disbursed, not to exceed the amount of  
85 proposed insurance set forth in the commitment or title insurance policy described in

86 Subsection (1) plus 10% of the amount of the proposed insurance.

87       (3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect  
88 the contractual obligations between [the] an individual title insurance [producers] producer or  
89 agency title insurance [producers] producer and the title insurer.

90       (4) The liability of a title insurer with respect to the condition of title to the real  
91 property that is the subject of a title insurance policy or a title insurance commitment for a title  
92 insurance policy is limited to the terms, conditions, and stipulations contained in the title  
93 insurance policy or title commitment.