

TITLE INSURANCE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

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 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

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



28 protection letter filed with the department to a person who is a party to a transaction in which a
29 title insurance policy is issued.

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

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

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

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

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

54 (5) Subject to Section 31A-23a-407, a title insurer that is represented by an individual
55 title insurance producer or an agency title insurance producer is liable for the acts or omissions
56 of the title insurance producer for closing or settlement only to the extent of the liability
57 undertaken in the closing protection letter according to terms and provisions in the closing
58 protection letter issued pursuant to this section. The liability to the title insurer, if any, of the

59 title insurance producer that issues the title insurance policy for acts or omissions of the title
 60 insurance producer may not be limited or modified because the title insurer has provided
 61 closing protection to one or more parties to a real property transaction, escrow, settlement, or
 62 closing.

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

64 **31A-23a-407. Liability of title insurers for acts of title insurance producers.**

65 [Any title company,] (1) Subject to the other provisions in this section, a title insurer
 66 that is represented by [one or more] an individual title insurance [producers appointed by an
 67 insurer] producer or an agency title insurance [producers, is directly and primarily] producer is
 68 liable to [others dealing with the individual title insurance producers or agency title insurance
 69 producers] a buyer, seller, borrower, lender, or third party that deposits money with the title
 70 insurance producer for the receipt and disbursement of [funds] money deposited [in escrows]
 71 with the [individual] title insurance [producers appointed by an insurer or agency title
 72 insurance producers in all those transactions where] producer:

73 (a) for a transaction when a commitment [or binder] for [or] a policy [or contract] of
 74 title insurance of that title insurer [has been] is ordered, [or a preliminary report of the title
 75 insurer has been] issued, or distributed[- This] or a title insurance policy of that title insurer is
 76 issued; and

77 (b) only if:

78 (i) the title insurance producer no longer exists; or

79 (ii) the person, after obtaining a money judgment against the title insurance producer,
 80 cannot collect money from:

81 (A) the title insurance producer; and

82 (B) when uncollectible from the title insurance producer, the Title Insurance Recovery,
 83 Education, and Research Fund in accordance with Chapter 41, Title Insurance Recovery,
 84 Education, and Research Fund Act.

85 (2) The liability of a title insurer under Subsection (1) is limited to the amount of
 86 money received and disbursed, not to exceed the amount of proposed insurance set forth in the
 87 commitment or title insurance policy described in Subsection (1)(a) plus 10% of the amount of
 88 the proposed insurance.

89 (3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect

90 the contractual obligations between [~~the~~] an individual title insurance [producers] producer or
91 agency title insurance [~~producers~~] producer and the title insurer.

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

96 (5) A person may not commence an action against a title insurer under this section
97 unless the person has exhausted the remedies described in Subsection (1)(b).

Legislative Review Note
Office of Legislative Research and General Counsel