

TITLE INSURANCE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill amends provisions related to affiliated business in title insurance.

Highlighted Provisions:

This bill:

- ▶ removes an unused definition;
- ▶ defines "producer";
- ▶ amends a provision related to disciplinary action against a title entity or a person previously licensed as a title entity for an act the person committed while licensed;
- ▶ amends a provision related to adjudicative proceedings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-23a-1001, as enacted by Laws of Utah 2019, Chapter 475

31A-23a-1003, as enacted by Laws of Utah 2019, Chapter 475

31A-23a-1004, as enacted by Laws of Utah 2019, Chapter 475

31A-23a-1006, as enacted by Laws of Utah 2019, Chapter 475

31A-23a-1007, as enacted by Laws of Utah 2019, Chapter 475

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

31 Section 1. Section **31A-23a-1001** is amended to read:

32 **31A-23a-1001. Definitions.**

33 As used in this part:

34 (1) "Affiliated business" means the gross transaction revenue of a title entity's title
35 insurance business in the state that is the result of an affiliated business arrangement.

36 (2) "Affiliated business arrangement" means the same as that term is defined in 12
37 U.S.C. Sec. 2602, except the services that are the subject of the arrangement do not need to
38 involve a federally related mortgage loan.

39 (3) "Applicable percentage" means:

40 (a) on February 1, 2020, through January 31, 2021, 0.5%;

41 (b) on February 1, 2021, through January 31, 2022, 1%;

42 (c) on February 1, 2022, through January 31, 2023, 1.5%;

43 (d) on February 1, 2023, through January 31, 2024, 2%;

44 (e) on February 1, 2024, through January 31, 2025, 2.5%;

45 (f) on February 1, 2025, through January 31, 2026, 3%;

46 (g) on February 1, 2026, through January 31, 2027, 3.5%;

47 (h) on February 1, 2027, through January 31, 2028, 4%; and

48 (i) on February 1, 2028, through January 31, 2029, 4.5%.

49 (4) "Associate" means the same as that term is defined in 12 U.S.C. Sec. 2602.

50 (5) "Division" means the Division of Real Estate created in Section [61-2-201](#).

51 (6) "Essential function" means:

52 (a) examining and evaluating, based on relevant law and title insurance underwriting
53 principles and guidelines, title evidence to determine the insurability of a title and which items
54 to include or exclude in a title commitment or title insurance policy to be issued;

55 (b) preparing and issuing a title commitment or other document that:

56 (i) discloses the status of the title as the title is proposed to be insured;

57 (ii) identifies the conditions that must be met before a title insurance policy will be

58 issued; and

59 (iii) obligates the insurer to issue a title insurance policy if the conditions described in
60 Subsection (6)(b)(ii) are met;

61 (c) clearing underwriting objections and taking the necessary steps to satisfy any
62 conditions to the issuance of a title insurance policy;

63 (d) preparing the issuance of a title insurance policy; or

64 (e) handling the closing or settlement of a real estate transaction when:

65 (i) it is customary for a title entity to handle the closing or settlement; and

66 (ii) the title entity's compensation for handling the closing or settlement is customarily
67 part of the payment or retention from the insurer.

68 (7) "New or newly affiliated title entity" means a title entity that:

69 (a) is licensed as a title entity for the first time on or after May 14, 2019; or

70 (b) (i) is licensed as a title entity before May 14, 2019; and

71 (ii) enters into an affiliated business arrangement for the first time on or after May 14,
72 2019.

73 ~~[(8) "Ownership affiliated business arrangement" means an affiliated business
74 arrangement based on a person or a person's affiliate having a direct or beneficial ownership
75 interest of more than 1% in a title entity.]~~

76 (8) "Producer" means the same as the term "person who is in a position to refer
77 settlement service business" is defined in 12 C.F.R. Sec. 1024.15(c).

78 (9) "RESPA" means the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec.
79 2601 et seq. and any rules made thereunder.

80 (10) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules promulgated
81 thereunder.

82 (11) "Sufficient capital and net worth" means:

83 (a) for a new or newly affiliated title entity:

84 (i) \$100,000 for the first five years after becoming a new or newly affiliated title entity;

85 or

86 (ii) after the first five years after becoming a new or newly affiliated title entity, the
87 greater of:

88 (A) \$50,000; or

89 (B) on February 1 of each year, an amount equal to 5% of the title entity's average
90 annual gross revenue over the preceding two calendar years, up to \$150,000; or

91 (b) for a title entity licensed before May 14, 2019, who is not a new or newly affiliated
92 title entity:

93 (i) for the time period beginning on February 1, 2020, and ending on January 31, 2029,
94 the lesser of:

95 (A) an amount equal to the applicable percentage of the title entity's average annual
96 gross revenue over the two calendar years immediately preceding the February 1 on which the
97 applicable percentage first applies; or

98 (B) \$150,000; and

99 (ii) beginning on February 1, 2029, the greater of:

100 (A) \$50,000; or

101 (B) an amount equal to 5% of the title entity's average annual gross revenue over the
102 preceding two calendar years, up to \$150,000.

103 (12) "Title entity" means:

104 (a) a title licensee as defined in Section 31A-2-402; or

105 (b) a title insurer as defined in Section 31A-23a-415.

106 (13) (a) "Title evidence" means a written or electronic document that identifies and
107 describes or compiles the documents, records, judgments, liens, and other information from the
108 public records relevant to the history and current condition of a title to be insured.

109 (b) "Title evidence" does not include a pro forma commitment.

110 Section 2. Section 31A-23a-1003 is amended to read:

111 **31A-23a-1003. Affiliated business arrangements.**

112 (1) An affiliated business arrangement between a person and a title entity violates
113 Section 8 of RESPA for purposes of state law if:

114 (a) the title entity does not have sufficient capital and net worth in a reserve account in
115 the title entity's name; or

116 (b) more than 70% of the title entity's annual title insurance business is affiliated
117 business on or after the later of:

- 118 (i) two years after [a] the title entity begins an affiliated business arrangement; or
- 119 (ii) June 1, 2021.

120 (2) In addition to Subsection (1), the division may find that an affiliated business
121 arrangement between a person and a title entity violates Section 8 of RESPA after evaluating
122 and weighing the following factors in light of the specific facts before the division:

123 (a) whether the title entity:

124 (i) is staffed with [its] the title entity's own employees to conduct title insurance
125 business;

126 (ii) manages [its] the title entity's own business affairs;

127 (iii) has a physical office for business that is separate from any producer's or associate's
128 office and pays market rent;

129 (iv) provides the essential functions of title insurance business for a fee, including
130 incurring the risks and receiving the rewards of any comparable title entity; and

131 (v) performs the essential functions of title insurance business itself;

132 (b) if the title entity contracts with another person to perform a portion of the title
133 entity's title insurance business, whether the contract:

134 (i) is with an independent third party; and

135 (ii) provides payment for the services that bears a reasonable relationship to the value
136 of the services or goods received; and

137 (c) whether the person from whom the title entity receives referrals under the affiliated
138 business arrangement also sends title insurance business to other title entities.

139 Section 3. Section **31A-23a-1004** is amended to read:

140 **31A-23a-1004. Annual affiliated business report.**

141 Before March 1 each year, each new or newly affiliated title entity shall submit a report

142 to the division that:

143 (1) contains the following for the preceding calendar year:

144 (a) the name and address of any producer or associate that owns a financial interest in
145 the new or newly affiliated title entity;

146 (b) for each producer and associate identified under Subsection (1)(a), the percentage
147 of the new or newly affiliated title entity's affiliated business that is the result of an affiliated
148 business arrangement with the producer or associate;

149 (c) a description of any affiliated business arrangement the new or newly affiliated title
150 entity has with a person other than ~~[an]~~ a producer or associate identified under Subsection
151 (1)(a);

152 (d) the percentage of the new or newly affiliated title entity's annual title insurance
153 business that is affiliated business;

154 (e) proof of sufficient capital and net worth; and

155 (f) any other information required by the division by rule; and

156 (2) is certified by an officer of the new or newly affiliated title entity that the
157 information contained in the report is true to the best of the officer's knowledge, information,
158 and belief.

159 Section 4. Section **31A-23a-1006** is amended to read:

160 **31A-23a-1006. Disciplinary action.**

161 (1) Subject to the requirements of Section **31A-23a-1007**, the division may impose a
162 sanction described in Subsection (2) against a person if the person is:

163 (a) a title entity or a person previously licensed as a title entity for an act the person
164 committed while licensed; and

165 (b) violates a provision of this part, including Section 8 of RESPA.

166 (2) The division may, against a person described in Subsection (1):

167 (a) impose an educational requirement;

168 (b) impose a civil penalty in an amount not to exceed \$5,000 for each violation;

169 (c) do any of the following to a title entity:

- 170 (i) suspend;
- 171 (ii) revoke; or
- 172 (iii) place on probation;
- 173 (d) issue a cease and desist order; [~~and~~] or
- 174 (e) impose any combination of sanctions described in this Subsection (2).

175 (3) (a) If the presiding officer in a disciplinary action under this part issues an order
176 that orders a fine as part of a disciplinary action against a person, including a stipulation and
177 order, the presiding officer shall state in the order the deadline, that is no more than one year
178 after the day on which the presiding officer issues the order, by which the person shall comply
179 with the fine.

180 (b) If a person fails to comply with a stated deadline:

- 181 (i) the person's license is automatically suspended:
 - 182 (A) beginning the day specified in the order as the deadline for compliance; and
 - 183 (B) ending the day on which the person complies in full with the order; and
- 184 (ii) if the person fails to pay a fine required by an order, the division may begin a

185 collection process:

- 186 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,
187 Utah Administrative Rulemaking Act; and
- 188 (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

189 (4) The division may delegate to an administrative law judge the authority to conduct a
190 hearing under this part.

191 Section 5. Section **31A-23a-1007** is amended to read:

192 **31A-23a-1007. Adjudicative proceedings -- Review -- Coordination with**
193 **department.**

194 (1) (a) Before an action described in Section **31A-23a-1006** may be taken, the division
195 shall:

- 196 (i) give notice to the person against whom the action is brought; and
- 197 (ii) commence an adjudicative proceeding.

198 (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the
199 presiding officer determines that a title entity has violated a provision of this part, including
200 Section 8 of RESPA, the division may take an action described in Section 31A-23a-1006 by
201 written order.

202 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person
203 against whom action is taken under this part may seek review of the action by the executive
204 director of the Department of Commerce.

205 (3) If a person prevails in a judicial appeal and the court finds that the state action was
206 undertaken without substantial justification, the court may award reasonable litigation expenses
207 to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business
208 Equal Access to Justice Act.

209 (4) (a) An order issued under this section takes effect 30 days after the service of the
210 order unless otherwise provided in the order.

211 (b) If a person appeals an order issued under this section, the division may stay
212 enforcement of the order in accordance with Section 63G-4-405.

213 (5) (a) Except as provided in Subsection (5)(b), the division shall commence a
214 disciplinary action under this chapter no later than the earlier of the following:

- 215 (i) four years after the day on which the violation is reported to the division; or
- 216 (ii) 10 years after the day on which the violation occurred.

217 (b) The division may commence a disciplinary action under this part after the time
218 period described in Subsection (5)(a) expires if:

219 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
220 settlement; and

221 (B) the division initiates the disciplinary action no later than one year after the day on
222 which the judgment is issued or the settlement is final; or

223 (ii) the division and the person subject to a disciplinary action enter into a written
224 stipulation to extend the time period described in Subsection (5)(a).

225 (6) (a) Within two business days after the day on which a presiding officer issues an

226 order under this part that suspends or revokes a title entity's license, the division shall deliver
227 written notice to the department that states the action the presiding officer ordered against the
228 title entity's license.

229 (b) Upon receipt of the notice described in Subsection (6)(a), the department shall
230 implement the action ordered against the title entity's license.

231 [~~(7) Upon receipt of a notice described in Subsection (6), the department shall take the~~
232 ~~action described in the notice upon the title entity's license.]~~