{deleted text} shows text that was in SB0151 but was deleted in SB0151S01.

inserted text shows text that was not in SB0151 but was inserted into SB0151S01.

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TITLE CONSPINATOR DISCLESSIFICATION OF THE CONSPINATOR SUBstitute bill:

### FRAUDULENT DEED AMENDMENTS

2024 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Kera Birkeland

#### **LONG TITLE**

#### **Committee Note:**

The Administrative Rules Review and General Oversight Committee recommended this bill.

Legislative Vote: 7 voting for 0 voting against 3 absent

### **General Description:**

This bill {addresses requirements for the net worth of agency insurance producers} modifies provisions related to real property.

### **Highlighted Provisions:**

#### This bill:

- {establishes minimum net worth requirements for agency insurance
   producers.}creates civil liability for an individual who records a fraudulent deed;
- establishes a process by which an individual may nullify a fraudulent deed;

- directs how a court should treat a petition to nullify a fraudulent deed;
- <u>limits a court's review of a fraudulent deed to determining whether the deed is a</u> fraudulent deed;
- mandates court-ordered consequences for recording a fraudulent deed;
- <u>prohibits a court from expediting any proceeding related to damages resulting from a fraudulent deed; and</u>
- <u>defines terms.</u>

### Money Appropriated in this Bill:

None

### **Other Special Clauses:**

None

#### **Utah Code Sections Affected:**

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<del>{AMENDS}</del><u>ENACTS</u>:
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<del>{31A-23a-204, as last amended by Laws of Utah 2015, Chapter 330}</del> <u>57-31-101,</u>

Utah Code Annotated 1953

57-31-201, Utah Code Annotated 1953

57-31-202, Utah Code Annotated 1953

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

Section 1. Section {31A-23a-204 is amended to read:

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

An individual title insurance producer or agency title insurance producer 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 as an agency title insurance producer shall at the time of licensure be owned or managed by at least one individual who is licensed for at least three of the five years immediately preceding the date on which the agency title insurance producer applies for a license with both:

- (i) a title examination line of authority; and
- (ii) an escrow line of authority.
- (b) An agency title insurance producer subject to Subsection (1)(a) may comply

with Subsection (1)(a) by having the agency title insurance producer owned or managed by: (i) one or more individuals who are licensed with the title examination line of authority for the time period provided in Subsection (1)(a); and (ii) one or more individuals who are licensed with the escrow line of authority for the time period provided in Subsection (1)(a). (c) A person licensed as an agency title insurance producer shall at all times during the term of licensure be owned or managed by at least one individual who is licensed for at least three years within the preceding five-year period with both: (i) a title examination line of authority; and (ii) an escrow line of authority. (d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a). (e) An individual who satisfies the requirements of this Subsection (1) is known as a "qualifying licensee." At any given time, an individual may be a qualifying licensee for not more than two agency title insurance producers. (2) (a) An individual title insurance producer or agency title insurance 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 57-31-101 is enacted to read: **CHAPTER 31. FRAUDULENT DEEDS ACT** Part 1. Definitions **57-31-101. Definitions.** As used in this chapter:

- (1) "Deed" means an instrument in writing, including any conveyance that affects, purports to affect, describes, or otherwise concerns any right, title, or interest in real property.
- (2) "Fraudulent deed" means a deed that is not executed or authorized to be executed by the record interest holder.

- (3) "Interest holder" means a person who holds or possesses a present, lawful property interest in real property.
- (4) "Purported grantee" means a person who is identified as the grantee on a fraudulent deed.
- (5) "Purported grantor" means a person who executes or causes to be executed a fraudulent deed.
  - (6) "Record interest holder" means a person:
  - (a) who holds or possesses a present, lawful property interest in real property; and
- (b) whose name and interest in the real property appears in the county recorder's records for the county in which the property is located.

Section 2. Section **57-31-201** is enacted to read:

### Part 2. Remedies

## 57-31-201. Civil liability for recording a fraudulent deed -- Damages.

- (1) A purported grantor who records a fraudulent deed or causes a fraudulent deed to be recorded in the office of a county recorder is liable to a record interest holder as described in Subsection (2) {(a)(i) or (ii); and
  - (B) that the commissioner considers adequate.
  - (b) The bond, insurance, or financial protection 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 \$250,000.
- (c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt individual title insurance producer or agency 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) An individual title insurance producer or agency title insurance producer appointed by an insurer may maintain a reserve fund to the extent money was deposited before July 1, 2008, and not withdrawn to the income of the individual title insurance producer or agency title insurance producer.
  - (4) An examination for licensure shall include questions regarding the examination of

### title to real property.

- (5) An individual title insurance producer may not perform the functions of escrow unless the individual title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.
- (6) The Title and Escrow Commission may adopt rules, establishing an examination for a license that will satisfy this section, subject to Section 31A-2-404, and after consulting with the commissioner's test administrator.
- (7) A license may be issued to an individual title insurance producer or agency title insurance producer who has qualified:
  - (a) to perform only examinations of title as specified}.
- (2) If a court determines that a deed is a fraudulent deed under Section 57-31-202, the purported grantor is liable to the record interest holder for:
  - (a) the greater of:
  - (i) \$10,000; or
  - (ii) treble actual damages; and
  - (b) reasonable attorney fees and costs.

Section 3. Section **57-31-202** is enacted to read:

- <u>57-31-202. Petition to nullify fraudulent deed -- Notice to purported grantor and purported grantee -- Summary relief.</u>
- (1) A record interest holder may petition a court to nullify a fraudulent deed and record a lis pendens on a property affected by the fraudulent deed.
  - (2) A petition described in Subsection (<del>{4});</del>
  - (b) to handle only escrow arrangements as specified 1) shall:
    - (a) state with specificity that the deed is a fraudulent deed; and
    - (b) be supported by a sworn affidavit of the record interest holder.
    - (3) (a) A court considering a petition described in Subsection (<del>{5}); or</del>
- (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. (10) An agency title insurance producer that is not part of an affiliated business arrangement, as defined in Section 31A-23a-1001, shall comply with the following net worth requirements: (a) an agency title insurance producer licensed on or after May 14, 2019, shall maintain a net worth of at least: (i) \$100,000 for the first five years after becoming licensed; and (ii) after the first five years after becoming licensed, the greater of: (A) a yearly average net worth of \$50,000; or (B) based on a determination made on February 1 of each year, an amount equal to 5% of the agency title insurance producer's average annual gross revenue over the preceding two calendar years, up to \$150,000; or (b) an agency title insurance producer licensed before May 14, 2019, shall: (i) beginning on February 1, 2025, and ending on January 31, 2029, maintain a net worth of at least the lesser of: (A) a yearly average net worth of \$150,000; or (B) based on a determination made on February 1 of each year, an amount equal to 5% of the agency title insurance producer's average annual gross revenue over the preceding two calendar years, up to \$150,000; and (ii) beginning on February 1, 2029, maintain a net worth of at least the greater of: (A) a yearly average net worth of \$50,000; or (B) based on a determination made on February 1 of each year, an amount equal to 5% of the title entity's average annual gross revenue over the preceding two calendar years, up to <del>\$150,000.</del> Section 2\1) may dismiss the petition without a hearing, if the court finds the petition insufficient.

(b) If the court finds the petition sufficient, the court shall schedule a hearing within 10

- days after the day on which the petition is filed for the purpose of determining whether the deed is a fraudulent deed.
- (c) The record interest holder shall serve a copy of the petition and a copy of the notice of the hearing on the purported grantor and purported grantee.
- (d) The purported grantor and purported grantee may attend the hearing described in Subsection (3)(b) to contest the petition.
  - (4) A proceeding under this section:
  - (a) may only determine whether a document is a fraudulent deed; and
- (b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.
- (5) (a) If, after the hearing described in Subsection (3), a court determines that a deed is a fraudulent deed:
  - (i) the court shall:
  - (A) issue an order declaring the fraudulent deed void ab initio;
  - (B) direct the county recorder to remove the deed from county records; and
  - (C) award costs and reasonable attorney fees to the petitioner;
- (ii) the record interest holder may submit a certified copy of the order, containing a legal description of the real property, to the county recorder for recording; and
- (iii) the fraudulent deed is void ab initio and the fraudulent deed provides no conveyance of any interest in real property.
- (b) If, after the hearing described in Subsection (3), a court determines that the deed is not a fraudulent deed:
  - (i) the court:
  - (A) shall dismiss the petition;
- (B) may award costs and reasonable attorney fees to the purported grantor and purported grantee; and
  - (C) shall include in the dismissal order a legal description of the property; and
- (ii) the purported grantor or purported grantee may record a certified copy of the dismissal order.
- (6) If a petition under this section contains a claim for damages, a court may not expedite the proceedings related to the claim for damages.

Section 4. Effective date.

This bill takes effect on May 1, 2024.