

## Bulletin 2007 – 5

To: All Title Insurers, Title Agencies, and Title Producers  
From: D. Kent Michie, Utah Insurance Commissioner  
Date: June 14, 2007  
Subject: **Prohibited Split Escrows**

The purpose of this bulletin is to clarify for all persons conducting a split escrow those split escrows that are prohibited. This bulletin supersedes all prior communications to the title industry reference a split escrow.

Utah Code Annotated (U.C.A.) Subsection 31A-23a-406 (1) states as follows:

- (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:
    - (i) an owner's policy of title insurance; or
    - (ii) a lender's policy of title insurance;
  - (d) (i) all funds deposited with the title insurance producer in connection with any escrow:
    - (A) are deposited:
      - (I) in a federally insured financial institution; and
      - (II) in a trust account that is separate from all other trust account funds that are not related to real estate transactions; and
    - (B) are the property of the persons entitled to them under the provisions of the escrow;
  - and
    - (ii) are segregated escrow by escrow in the records of the title insurance producer;
  - (e) earnings on funds held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow; and
  - (f) the escrow does not require the title insurance producer to hold:
    - (i) construction funds; or
    - (ii) funds held for exchange under Section 1031, Internal Revenue Code.

In order to conduct an escrow, a title producer must be properly licensed, be appointed by an authorized title insurer, and issue one or more title insurance policies.

A split escrow occurs when two of the parties to a real property transaction conduct their portion of the escrow using two separate title producers. The use of two separate title

producers creates two separate transactions and each separate transaction must comply with all of the requirements to conduct an escrow.

A split escrow consists of two separate transactions with each transaction being done by a properly licensed title producer appointed by an authorized title insurer that issues either an owner's or a lender's title insurance policy.

A prohibited split escrow occurs if either of the two separate transactions does not comply with all three of the requirements to conduct an escrow.

A cash only split escrow is prohibited because one of the separate transactions does not include the issuance of a title policy.

**DATED this 14<sup>th</sup> day of June, 2007**

D. Kent Michie  
Commissioner