



Insurance Department

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Commissioner

BULLETIN 2012-1

TO: All Title Insurance Producers Licensed in Utah

FROM: Neal T. Gooch, Utah Insurance Commissioner

SUBJECT: **Closing Instructions Requiring a Title Insurance Producer to “Certify” Matters Beyond the Authority of the Title Insurance Producer**

Pursuant to information received by the Utah Insurance Department (Department), certain mortgage lenders, in their written instructions, may be requiring title insurance producers to “certify” terms and conditions, which include, but are not limited to, arm’s length transaction affidavits and closing agent certifications.

The assumption of liability beyond the authority of a title insurance producer constitutes the “business of insurance” as defined in Utah Code Annotated Section (U.C.A.) § 31A-1-301(85) and (87). A title insurance producer may issue title insurance on behalf of an insurer; however, a title insurance producer may not act as an insurer by providing an additional guaranty or assurance regarding the status or condition of title not specified in the title policy. If a title insurance producer accepts such instructions, that title insurance producer may be acting as an “unauthorized insurer,” as defined in U.C.A. § 31A-1-301(165).

The Department cautions title insurance producers to thoroughly review closing instructions, which could place them in the position of an insurer. Because a title insurance producer may not be able to provide certain assurances requested by a mortgage lender, the Department recommends the title insurance producer request amended closing instructions pursuant to Utah law. Should that option be unavailable, the Department recommends reviewing with your legal counsel use of the following language: “to the best of our knowledge,” and where appropriate add, “except where precluded by law,” if appropriate.

Please review this Bulletin with those individuals in your agency who are licensed to conduct closings and other personnel who are involved in the title and escrow business.

DATED this 15th Day of March 2012,

Neal T. Gooch
Commissioner of Insurance