



State of Utah
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Insurance Department

TODD E. KISER
Insurance Commissioner

BULLETIN 2015-10

TO: Individual and Agency Title Insurance Producer Licensees

FROM: Todd E. Kiser, Utah Insurance Commissioner

DATE: October 23, 2015

SUBJECT: **R592-6 Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business**

This Bulletin interprets Utah Code, Section 31A-23a-402(2), and Utah Administrative Code, Rule R592-6, specifically subsections R592-6-4(20), R592-6-5(10) and (12), some of which were recently amended. This Bulletin interprets what may be furnished or provided without charge by title insurers, individual title insurance producers or agency title insurance producers (collectively referred to as “Title Producers”). The rules referenced in this Bulletin are promulgated pursuant to Utah Code Annotated (“U.C.A.”) §31A-23a-402¹.

U.C.A. §31A-23a-402(2) prohibits Title Producers from giving or offering to give, whether directly or indirectly, as an inducement to obtaining title insurance business, any special favor or advantage not generally available to others. Consequently, Title Producers may give an item or service to a client as long as the same item or service is generally available to others and not otherwise prohibited.

One question the Department receives on a regular basis is whether Title Producers can provide lists that contain names and addresses within a designated geographic area to clients or prospective clients. These lists are sometimes referred to in the title industry as a “farm report” or “radius search.” Title Producers can provide a physical or electronic list provided the list does not contain prohibited information like “for sale by owner lists” or “rental or apartment lists” and is generally available to others. It is a prohibited inducement for Title Producers to provide such lists only to clients and prospective clients and not make them generally available to others.

R592-6 provides the limitations and restrictions related to providing real property information. R592-6-4(20) states that “[a] title producer cannot provide a client access to any real property information that the title producer pays to produce, develop, or maintain, except as otherwise permitted by R592-6-5.” Consistent with providing “farm reports” or “radius searches” as discussed above, Title Producers may provide information related to specific properties, such as a notice of default, as long as they provide that information to anyone that

¹U.C.A. §31A-23a-402(2)(a) states in relevant part that Title Producers cannot: “pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

- (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;
- (ii) any special favor or advantage not generally available to others;
- (iii) any money or other consideration, except if approved under 31A-2-405; or
- (iv) any material inducement.”

requests it and not just to clients, prospective clients or make providing the subject information contingent on title insurance referrals, quotes or placement of title insurance business.

Certain real property information is generally available on public agencies' web sites. U.C.A. §31A-23a-402(2) in conjunction with R592-6-4(20), prohibits Title Producers from producing, developing, maintaining, compiling or otherwise adding value to publicly available real property information and restricting "access" to that value added information *only* to clients or prospective clients. To be compliant with the statute and rule, any value added by producing, developing, maintaining or compiling publicly available information must be generally available. The term "access" in R592-6-4(20) is interpreted by the Department as requiring special permission. The special permission has the practical effect of giving a right to use or enter a web site, application, subscription service or database. Special permission includes use of a certain account number, login identification, password or other means that restricts the general public from being able to view or obtain the item or service.

R592-6-5(10) permits Title Producers to provide certain real property information for a specific property, generally referred to as a 'property profile.' R592-6-5(10) states "[a] title producer may provide a property profile to a client **through any means**, including copies thereof. The property profile may not include more than:

- (a) the last vesting deed of public record;
- (b) a plat map reproduction and/or locator map;
- (c) tax and property characteristics information from the Treasurer's and Assessor's offices; and
- (d) Covenants, Conditions, and Restrictions."

Any property profile provided, regardless of the method of how the property profile is given, must not contain more than the four items listed above, in R592-6-5(10).

R592-6-5(12) allows Title Producers to "provide a client the documents used to produce a title commitment. The title producer may provide access to the documents used to produce the title commitment through any means." Therefore, after Title Producers issue a title commitment on a specific property, Title Producers may make accessible or provide hard copies of the records used to produce the commitment for the specific property to that client. Title Producers may provide the specific information electronically, in hard copy, fax, through a web site or "access" through another electronic portal that may require special permission.

Title Producers are strongly cautioned that the Department will take enforcement action against persons that violate R592-6-5. The Department also recommends that Title Producers familiarize themselves with the provisions of the federal Real Estate Settlement Procedures Act ("RESPA") to ensure compliance and prevent enforcement actions by the federal Consumer Financial Protection Bureau (CFPB).

DATED this 23rd day of October, 2015.



Todd E. Kiser
Insurance Commissioner