

**State of Utah**  
**Administrative Rule Analysis**  
Revised June 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R592-17</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Title and Escrow Commission	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R592-17. Requirements for an Interest Bearing Account Used for Trust Fund Deposits
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended. The Title & Escrow Commission approved these changes in an October 18, 2021 meeting by a vote of 3-0.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards, while others are changes to make the language of the rule more clear. The Penalties section is being removed because penalties are already provided for in statute, and the Severability section is being updated to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 31A-2-404(2)		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	

<b>Issue, or version</b>	
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**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 12/15/2021

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

**10. This rule change MAY become effective on** (mm/dd/yyyy): 12/22/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	10/20/2021
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**R592. Insurance, Title and Escrow Commission.**

**R592-17. Requirements for an Interest Bearing Account[s] Used ~~[by Title Insurance Agencies]~~ for Trust Fund Deposits.**

**R592-17-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Subsection[s 31A-2-201(1) and] 31A-2-404(2) ~~[in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23a-409(2)(b)].~~

**R592-17-2. Purpose and Scope.**

~~[This rule specifies the characteristics of a]~~ (1) The purpose of this rule is to specify the type of depository account that ~~[may be used by a title insurance agency to deposit]~~ a title insurance company, an agency title insurance producer, or an individual title insurance producer shall use for depositing trust funds.

(2) This rule applies to:

(a) a title insurance company;

(b) an agency title insurance producer;

(c) or an individual title insurance producer; and

(d) an employee, representative, or any other party working for or on behalf of a title insurance company, an agency title insurance producer, or an individual title insurance producer, whether as a full-time or part-time employee or as an independent contractor.

**R592-17-3. ~~Scope.~~**

~~This rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.~~

#### **R592-17-4. Definitions.**

~~[For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23a-102 and the following]~~ Terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-23a-102. Additional terms are defined as follows:

(1) "Demand deposit account" ~~[refers to]~~ means a federally insured deposit account from which withdrawals may be made ~~[by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request]~~ at any time without advance notice.

(2) "Depositor" ~~[refers to a title insurance agency]~~ means a person that ~~[has deposited]~~ deposits, in a qualifying trust account, funds ~~[it holds]~~ held in trust in connection with a real estate transaction.

(3) "Depository institution" means a depository institution as defined in Section 7-1-103.

(4) "Money market mutual fund" means a mutual fund that:

(a) invests in highly liquid, near-term instruments;

(b) is registered under federal and state securities laws to sell its shares to the public; and

(c) maintains a par value of \$1 per share.

(5) "Repurchase agreement" ~~[is]~~ means an agreement in which a ~~[bank]~~ depository institution agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security~~;~~ or other asset~~;~~ at a later date for a specified price.

~~[(4)6]~~ "Sweep account" ~~[refers to]~~ means a demand deposit account subject to an agreement authorizing the ~~[bank]~~ depository institution to withdraw funds from the account ~~[funds exceeding]~~ that exceed a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand deposit account~~;~~ when needed, to pay checks presented for payment or other requests for withdrawal.

~~[(5)7]~~ "Trust account" means an account denominated as a trust account in which the depositor is a trustee~~;~~

~~(6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of \$1 per share].~~

#### **R592-17-54. Account Requirements.**

~~(1) [Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23a-406(1) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.~~

~~(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.~~

~~(3) Records Required. Each title insurance agency must ]A title insurance company, an agency title insurance producer, and an individual title insurance producer shall retain adequate records of [all] each deposit[s] in a trust account[; including those utilizing a sweep feature;] or a sweep account to establish individual account balances for [all] each person[s] whose funds are held in trust.~~

~~[(4)2] [Qualified Accounts.]-]Funds subject to this rule must be deposited [or held] in:~~

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account ~~[if it]~~ that meets ~~[all of]~~ the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the ~~[bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase]~~ depository institution purchases:

(A) U.S. Government securities ~~[on behalf of the depositor that are]~~ held in a segregated account~~[ in the bank]~~, subject to a repurchase agreement ~~[with the bank]~~ between the depositor and the depository institution; or

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or ~~[A]~~ agencies of the U.S. Government~~;~~; and

(iii) the ~~[bank is obligated and able to]~~ depository institution can repurchase the securities or sell or redeem the shares or interest, at any time, at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

~~[(5)3] [Obligation of Depositor for Losses.]-]A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.~~

~~[(6)4] [Authorization and Disclosure Obligation.]-]A~~[ny]~~ depositor who uses an account described in Subsection R592-17-54(4)2(b) must:~~

(a) receive written authorization from ~~[those persons on whose behalf the funds are deposited]~~ each trust beneficiary stating that the depositor may receive ~~[all]~~ any earnings ~~[which may be]~~ that are realized from the trust fund deposit; and

(b) provide full written disclosure to ~~[all persons on whose behalf the funds are deposited]~~ each trust beneficiary explaining the characteristics of a sweep account deposit as described in Subsection R592-17-54(4)2(b).

#### **R592-17-6. Penalties.**

~~Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.~~

**R592-17-7]5. Severability.**

~~[If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable]~~If any provision of this rule, Rule R592-17, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance, title**

**Date of Enactment or Last Substantive Amendment: March 16, 2016**

**Notice of Continuation: March 11, 2021**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a); 31A-2-201(1); 31A-23a-409(2)(b)**