

R592. Insurance, Title and Escrow Commission.

R592-17. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.

R592-17-1. Authority.

This rule is promulgated pursuant to Subsections 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.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.

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:

(1) "Demand deposit account" refers to 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.

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

(3) "Repurchase agreement" is an agreement in which a bank 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) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding 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 account, when needed, to pay checks presented for payment or other request for withdrawal.

(5) "Trust account" means an account denominated as a trust account in which the depositor is 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.

R592-17-5. 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 retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) 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 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:

(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.

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or Agencies of the U.S. Government, and

(iii) the bank is obligated and able to 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) 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) Authorization and Disclosure Obligation. Any depositor who uses an account described in Subsection R592-17-5(4)(b) must:

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

(b) provide full written disclosure to all persons on whose behalf the funds are deposited, explaining the characteristics of a sweep account deposit as described in Subsection R592-17-5(4)(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. 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.

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