



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

Title & Escrow Commission Special Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: **October 28, 2021**

Place: **In Person**

Virtual

Time: **Immediately
Following TEC
Subcommittee**

Taylorsville SOB
4315 S. 2700 W.
Big Cottonwood Room
Taylorsville, UT 84129

Google Meet
meet.google.com/oqr-sqbt-tay
419-746-5663 Phone
298 331 296# Password

ATTENDEES

TITLE & ESCROW COMMISSION

Chair, Kim Holbrook (Insurer, Davis County) Darla Milovich (Agency, Salt Lake County)
Vice Chair, Chase Phillips (Agency, Weber County) Cal Robinson (Agency, Iron County)
Randy Smart (Public Member, Salt Lake County) Perri Babalis, AG Counsel - TEC

DEPARTMENT STAFF

Jon Pike, Insurance Commissioner Reed Stringham, Deputy Comm. Tracy Klausmeier, P&C Dir.
Randy Overstreet, Licensing Dir. Patrick Lee, Finance Dir. Adam Martin, MC Examiner
Michael Covington, CE Specialist Steve Gooch, PIO Recorder Eddie Vasquez, AG Counsel

AGENDA

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair
- **Telephone Roll Call**
- **Old Business**
 - Subcommittee amendments to 31A-19a-209 / Cal
 - Review proposed rule change under Executive Order 2021-12 / Perri
 - R592-14: Unfair or Deceptive Acts or Practices Affecting Title to Real Property

Executive Session (None)

- **Adjourn**
- **Next Meeting: November 8, 2021** — Bonneville Room, Taylorsville State Office Building

2021 Meeting Schedule

Jan 11	Feb 8	Mar 8	Apr 19	May 10	Jun 14
Jul 12	Aug 9	Sept 13	Oct 18	Nov 8	Dec 20

2021 Goals

1. Continue making sure testing is relevant
2. Continue working with the Real Estate Commission
3. Continue working with the ULTA as a liaison
4. Increase awareness of wire fraud's effect on consumers and agencies
5. Increase awareness of affiliated business arrangements (ABA)

31A-19a-209. Special provisions for title insurance.

(1)

(a)

(i) The Title and Escrow Commission may ~~shall~~ adopt rules subject to Section 31A-2-404, establishing rate standards and rating methods for individual title insurance producers and agency title insurance producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurers, individual title insurance producers, and agency title insurance producers.

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurers, individual title insurance producers, and agency title insurance producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the examining of public records to determine insurability of title to real redevelopment property.

(2)

(a) A title insurer, an agency title insurance producer, or an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall file with the commissioner, to be included in the annual report filed under Section 31A-23a-413, a certified statement of the average residential escrow fee charged by the filer for the prior calendar year.

(b) The commissioner shall establish an industry average escrow fee by calculating the average of the residential escrow fees submitted under Subsection (2)(a).

(3) A title insurer, an agency title insurance producer, or an individual title insurance producer shall not charge an escrow fee for its escrow services on any side of a transaction:

(a) in an amount less than 50% of the industry average escrow fee established under Subsection (2)(b); or

(b) unless there is a changed circumstance, in an amount that differs from the escrow fee originally disclosed to the consumer.

(4) A "changed circumstance" shall mean:

(a) an extraordinary event beyond the control of any interested party;

(b) an unexpected event specific to the consumer or the transaction;

(c) a material change to the information relied upon at the time of the original disclosure.

(5) "Residential escrow fee" shall be calculated as follows:

(a) per each side of a transaction (i.e., buyer-side or seller-side):

(i) the sum of the fees charged by a filer for conducting escrow services on any transaction involving a dwelling;

(ii) excluding any pass-through cost incurred incident to the escrow services or the issuance of the title insurance and separately charged to the consumer.

(6) "Dwelling" shall have the same meaning as Section 57-21-2.

R592. Insurance, Title and Escrow Commission.

R592-14. ~~[Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices]~~Unfair or Deceptive Acts or Practices Affecting Title to Real Property.

R592-14-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to [~~Section~~] Subsections 31A-2-404(2) and 31A-23a-406(8).

R592-14-2. Purpose and Scope.

(1) The purpose of this rule is to [~~prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public]~~ identify a misleading, unfair, or deceptive act or practice affecting title to real property.

(2) This rule applies to a [~~H~~] title insurance company[ers], an agency title insurance producer[s], and an individual title insurance producer[s].

R592-14-3. Definitions.

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

[~~A.~~](1) "Document" means [~~any instrument in writing]~~ a written instrument that:

(a) relates[relating] to real property described in [any-]a title insurance policy, contract, or commitment[;]; and

(b) [reasonably required for the support of the insuring provisions]is required to support an insurance provision in a policy.

[~~B.~~](2) "Record" means to cause to be delivered to the county recorder, or other appropriate public official[-as may be appropriate], [any-]a document in the possession or control of [any title insurance company or title insurance agent for which-]a title insurance company, an agency title insurance producer, and an individual title insurance producer when a request to record has been made by an insured party, a title insurance company, an agency title insurance producer, or an individual title insurance [agent]producer.

R592-14-4. ~~[Definition and Classification of Unfair or Deceptive Practices and Material Inducements]~~Prohibited Acts or Practices Affecting Title to Real Property.

[~~A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.~~

~~— B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(e)(i)(D)]A title insurance~~

company, an agency title insurance producer, and an individual title insurance producer are prohibited from engaging in the following unfair or deceptive acts or practices:

(1) knowingly failing to obtain a document for recording or knowingly failing to record a document that results in unmarketable or uninsurable title to real property; or

(2) knowingly issuing or agreeing to issue title insurance, or affirming the current marketability of title to real property when:

(a) necessary documents for title have not been recorded; and

(b) the recording does not manifest an insurable title, according to generally accepted title insurance standards.

R592-14-5. [Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-14-6. [Severability.

[If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it] If any provision of this rule, Rule R592-14, 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 law

Date of Enactment or Last Substantive Amendment: August 9, 2011

Notice of Continuation: January 9, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-404