1. DRAFT A PROPOSED AMENDMENT TO SECTION 31A-19A-209(3)(A)(II) THAT REFLECTS THIS APPROACH.

1.1. Proposed ***Utah Code Ann. § 31A-19a-209***

(3) A title insurer, individual title insurance producer, or agency title insurance producer may not file or use any rate or other charge relating to the business of title insurance, including ~~rates or~~ charges filed for escrow that would cause the title insurance company, individual title insurance producer, or agency title insurance producer to~~: (a)~~ operate at less than the cost of doing business inclusive of any business reasonably incidental to the business of insurance.

~~*(i) the insurance business; or*~~

~~*(ii) the escrow business; or*~~

2. DRAFT A PROPOSED AMENDMENT TO RULES THAT REFLECTS THIS APPROACH:

2.1. Require a new Schedule of Escrow Charges be filed:

2.1.1. The Schedule of Escrow Charges must be strictly adhered to with no deviation. **Utah Code Ann. Section 31A-23-19(6)** does not allow for a "minimum schedule of escrow charges."

2.1.2. *The Schedule of Escrow Charges should be based on* [i]*"…classifications related to the nature and the degree of risk covered or the expenses involved:"* ie.:

2.1.2.1.1. The "nature of" the transaction; and

2.1.2.1.2. The "risks involved;" and/or

2.1.2.1.3. The "expenses involved."

2.1.3. A sample Schedule of Escrow Charges:

2.1.3.1. Residential and Commercial

2.1.3.1.1. Owners Side

2.1.3.1.1.1. Unimproved Property Sale

2.1.3.1.1.2. New Development Sale

2.1.3.1.1.3. Cash Sale

2.1.3.1.1.4. Amount or High Liability

2.1.3.1.2. Borrower's Side

2.1.3.1.2.1. Construction Loan

2.1.3.1.2.2. Loan Purchase

2.1.3.1.2.3. Refinance Second Trust Deed Loan

2.1.3.1.2.4. Amount of Transaction or High Liability

2.1.4. *The* [ii]*Commission* [iii]*shall review the* [iv]*proposed schedule of escrow* [v]*charges filed with the Commissioner and make rules that define charges which are* misleading, deceptive, unfairly discriminatory,[vi]a material or unfair inducement; or which unreasonably restrain competition or provide any benefit to a producer of title insurance in violation of [vii]Utah Code Ann. § 31A-23a-402(2)(c), Utah Code Ann. § 31A-23a-402(8)(b) or [viii]Section 8 of RESPA[ix].

2.2. Remove the Word "Minimum" from the following Rules: Utah Admin. Code r. R592-15-4; Utah Admin. Code r. R592-15-6; Utah Admin. Code r. R592-15-7.

[i] Utah Code Ann. § 31A-23a-402 (3)(a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved. (b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies. (4)(a) This Subsection (4) applies to: (i) a person who is or should be licensed under this title; (ii) an employee of that licensee or person who should be licensed; (iii) a person whose primary interest is as a competitor of a person licensed under this title; and (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

[ii] **Utah Code Ann. § 31A-19a-209 (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: (i) a schedule of the escrow charges that the title insurer, individual title insurance producer, or agency title insurance producer proposes to use in this state for services performed in connection with the issuance of policies of title insurance; and(ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i). **(b)** Except for a schedule filed by a title insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.

[iii] Utah Code Ann. § 31A-23a-402 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice: (i) is misleading; (ii) is deceptive; (iii) is unfairly discriminatory; (iv) provides an unfair inducement; or (v) unreasonably restrains competition.

[iv] Utah Code Ann. § 31A-19a-209(6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurer, individual title insurance producer, or agency title insurance producer may not make or impose any premium or other charge:(a) in connection with the issuance of a policy of title insurance; or (b) for escrow services performed in connection with the issuance of a policy of title insurance.

[v] Utah Code Ann. § 31A-23a-402 (b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

[vi] Utah Code Ann. § 31A-23a-402 (2)(a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not 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 Section 31A-2-405; or (iv) material inducement.

[vii] Utah Code Ann. § 31A-23a-402(2)(c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including: (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act; (iii) a builder; (iv) an attorney; or (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

[viii] **Utah Code Ann. § 31A-23a-1006 (1)** Subject to the requirements of Section 31A-23a-1007, the division may impose a sanction described in Subsection (2) against a person if the person is: (a) a title entity or a person previously licensed as a title entity for an act the person committed while licensed; and (b) violates a provision of this part, including Section 8 of RESPA (**Utah Code Ann. § 31A-23a-1001(9)** "RESPA" means the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder. (10) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules promulgated thereunder).

[ix] **12 U.S.C.A. § 2607** (a) Business referrals No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person….(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010. (5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees. (6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.