

## Utah Insurance Department Comments on Proposed Amendments to R592-6

The TEC has proposed to amend the rule on prohibited inducements (R592-6) and has submitted its work for the commissioner's concurrence. These are the Department's comments on the TEC's proposed amendments.

### **Comment 1: The regulation of shared office space is unnecessary.**

The TEC proposes that the Department continue regulating shared office space. Under R592-6-4(6), if a title producer shares offices with a client (e.g. realtor, lender, builder), the licensee and the client must have:

- separate, distinct signage;
- separate, distinct public access; and
- the ability to lock and secure the title producer's office space from the client's office space.

This rule purports to allow shared office space if certain requirements are met. However, if the title producer and client must have separate signage, separate access and locking common doors, the rule in reality seems to prohibit rather than permit office sharing.

It's worth observing that sharing space is not, by itself, an unfair inducement. It is neutral. In essence, the rule prohibits an activity that is common and acceptable in any other field of business. The rule, it seems, is really intended to prevent bad actors from having the opportunity to offer or demand unfair inducements under an office sharing arrangement.

The Department questions whether this purpose justifies the prohibition. Business-friendly regulation should not bar otherwise harmless activity simply because a bad actor could decide to violate the law while engaging in that activity. This is particularly true with office sharing because other prohibitions in R592-6 will prohibit a bad actor from unfairly inducing business referrals in that environment. The prohibited acts include:

- Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction without receiving fair market payment for the services provided;
- Paying for, furnishing, or waiving all or any part of the rental or lease charge for space that is occupied by a client;
- Renting or leasing space from a client at a rate that is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area;
- Paying rental or lease charges based in whole or in part on the volume of business generated by the client;

- Furnishing all or any part of the time or productive effort of any employee of the title producer when such time or productive effort is not reasonably related to a title insurance, escrow, settlement, or closing transaction.

See R592-6-4(2)-(5), (7). With those prohibitions in place, there is no need to require separate signs, separate entrances and locking common doors when licensees and clients share space. For this reason, we think that the entire provision on shared office space (R592-6-4(6)) should be eliminated.

**Comment 2: The prohibition on compensating a dual licensee is not legally authorized.**

The proposed rule prohibits a title licensee from paying consideration to an employee who is a "dual licensee" – an individual who holds a title insurance license and a real estate license or mortgage lender license. R592-6-4(9). This rule is out of sync with the Insurance Code. The Code permits a dual licensee to provide a title insurance product in a real estate transaction if the commissioner approves. Utah Code Section 31A-2-405(2). However, nothing in the Code says that the dual licensee cannot be compensated for providing the product. Id. If anything, the commissioner's approval suggests that the dual licensee may be compensated. For this reason, the Department believes that the rule exceeds the scope of the Code on dual licensees and should be eliminated.

**Comment 3: Suggested wordsmithing.**

**R592-6-3. Definitions.**

(1)(a) "Business activities" include sporting events, sporting activities, musical events, ~~and~~ art events, and similar activities.

(b) "Business activities" do not include:

(i) awards banquets, recognition events, or similar activities that are sponsored by or for clients~~;~~; or

(ii) commercial travel.

**R592-6-4. Prohibited Unfair Methods of Competition.**

(2) Furnishing services not ~~reasonably~~ related to a bona fide title insurance, escrow, settlement, or closing transaction without receiving fair market payment for the services.

(8) Paying ~~for all or any part of the income of~~ a client or an employee of a client for a referral

(17)~~[For self-promotional open houses:]~~

(a) ~~[H]~~ Holding more than two self-promotional open houses per calendar year for each owned or occupied facility, including branch offices; or

(b) ~~[H]~~ Holding a self-promotional open house at a location other than a registered office of the title producer of business.

(22) (a) Acknowledging a wedding, a birth or adoption of a child, or a funeral of a client or a member of the client's immediate family with flowers or gifts exceeding \$150[-]; or

(b) Acknowledging any other life event of a client or a member of the client's immediate family with flowers or gifts.