



State of Utah

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Insurance Department

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Insurance Commissioner

BULLETIN 2024-2

To: Utah Title Insurance Licensees
From: Jonathan T. Pike, Insurance Commissioner
Date: March 1, 2024
Subject: **Application of Title Insurance Laws to Affiliated Title Insurance Businesses**

Utah's 2019 legislature passed a law authorizing agency title insurance producers to become affiliated with non-insurance businesses. *Utah Code* § [31A-23a-1003](#). This law states that affiliated title businesses are governed by Section 8 of the Real Estate Settlement Procedures Act ("RESPA") and rules promulgated thereunder. *Id.* at § [31A-23a-1001\(8\)](#), [-1002](#), [-1003](#). The Division of Real Estate ("DRE"), not the Insurance Department, is charged with enforcing the RESPA laws. *Id.* at § [31A-23a-1002](#).

The RESPA laws that apply to affiliated title businesses prohibit a variety of conduct that could injure consumer interests. The prohibitions include:

- Giving anything of value¹ for business referrals rather than for services actually performed, *12 U.S.C. § 2607(a)*;
- Splitting charges for services not actually performed, *12 U.S.C. § 2607(b)*;
- Failing to disclose affiliated business arrangements to customers, *12 U.S.C. § 2607(c)*; and
- Requiring customers to use a particular title agency for settlement services, *id.*

According to the legislature, in deciding whether an affiliated business has violated RESPA, the DRE may consider the following:

- 1) whether the title entity:
 - is staffed with its own employees to conduct title insurance business;
 - manages its own business affairs;
 - has a physical office for business that is separate from any producer's or associate's office and pays market rent;
 - provides the essential functions of title insurance business for a fee, including incurring the risks and receiving the rewards of any comparable title entity; and
 - performs the essential functions of title insurance business itself;

¹ A thing of value includes: "monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation." *12 C.F.R. § 1024.14(d)*.

- 2) if the title entity contracts with another person to perform a portion of the title entity's title insurance business, whether the contract:
 - is with an independent third party; and
 - provides payment for the services that bears a reasonable relationship to the value of the services or goods received; and
- 3) whether the person from whom the title entity receives referrals under the affiliated business arrangement also sends title insurance business to other title entities.

Utah Code § [31A-23a-1003](#).

RESPA's provisions, and the factors provided by the legislature, sometimes overlap with regulations that apply to non-affiliated businesses. For example, much of Utah Admin. Code [R592-6-4](#) prohibits title insurance agencies from giving or receiving things of value in exchange for business referrals. This rule and its supporting statute also protect consumers from conduct that is misleading, is deceptive, or provides an unfair inducement. *Utah Code* § [31A-23a-402\(8\)\(b\)](#).

The overlap raises a question of the extent to which laws enforced by the Department should govern affiliated title businesses under the DRE's jurisdiction. The Utah Supreme Court has provided an answer to this. When "faced with two statutes that purport to cover the same subject, [courts] seek to determine the legislature's intent as to which applies. In doing this, [courts] follow the general rules of statutory construction, which provide both that 'the best evidence of legislative intent is the plain language of the statute,' and that 'a more specific statute governs instead of a more general statute.'" *Jensen v. IHC Hosps., Inc.*, 944 P.2d 327, 331 (Utah 1997).


Applying those rules here, the legislature has indicated that matters addressed by RESPA and the factors supplied by the legislature specifically apply to affiliated business. The law also plainly states that the DRE has jurisdiction of those matters. Therefore, if statutes and rules enforced by the Department address the same general matters enforced by the DRE, the Department will decline to enforce them. This approach, in addition to complying with Supreme Court precedent, avoids duplicated regulation and therefore responsibly allocates the Department's finite resources.

This Bulletin cannot identify all of the overlapping laws that the Department will leave to the DRE's enforcement. However, generally speaking, the Department will not enforce an overlapping law that concerns giving of things of value or disclosing information to consumers. On the other hand, the Department can say with certainty that affiliated businesses are still required to:

- Obtain a title insurance license from the Department, *Utah Code* § [31A-23a-204](#);
- Obtain a title insurer's appointment, *Utah Code* § [31A-23a-115\(1\)\(a\)](#);
- Annually file a report with the Department, *Utah Code* § [31A-23a-413](#) and *Utah Admin. Code* [R592-11](#);
- Maintain search and examination records for 15 years, *Utah Code* § [31A-20-110](#);
- Maintain escrow records for the current calendar year plus three years, *Utah Code* § [31A-23a-412\(5\)\(a\)](#); and
- Keep trust funds separate, *Utah Code* § [31A-23a-409\(1\)](#).

This Bulletin replaces Bulletin 2019-2. Please address questions to Reed Stringham (rmstringham@utah.gov) or Tracy Klausmeier (tklausmeier@utah.gov).

DATED this 1st day of March 2024.

A handwritten signature in blue ink that reads "Jonathan T. Pike". The signature is written in a cursive style with a large initial 'J' and 'P'.

Jonathan T. Pike
Insurance Commissioner