

Utah Insurance Department Memorandum

To: Members of the Title and Escrow Commission (TEC)

Fr: Utah Insurance Department

Re: TEC request for concurrence in proposed amendments to Utah Admin. Code R592-6

Dt: March 6, 2024

With one exception, the Insurance Commissioner concurs in the TEC's proposed amendments to Utah Admin. Code R592-6. Concurrence is not given for proposed R592-6-4(6) which regulates office sharing between title insurance agencies and their clients. For the reasons set forth below, this activity need not be regulated.

Reasons for not concurring in proposal to regulate office sharing

The Commissioner decided not to concur in R592-6-4(6) for three reasons:

- The proposal will be difficult to comply with and enforce.
- The proposal will be minimally effective in preventing consumer confusion.
- The Department's resources are better spent on financial protections than on monitoring office sharing.

1. The proposal is difficult to comply with and enforce

The TEC proposes three restrictions on office sharing:

- office signs for the title insurance agency and the client must be separate and distinct;
- public entrances to their offices must be separate and distinct; and
- if the offices are adjacent, any interior door between them must be kept locked.

The restrictions for signs and entrances are too subjective to be useful. Reasonable people will differ on whether a sign or an entrance is separate and distinct, particularly given the many ways in which commercial offices can be configured. The February 21, 2024 TEC meeting on office sharing proves this point; the industry could not agree on any standard for regulating signs and entrances.

Because the proposal gives no objective guidance, it will be difficult to comply with and enforce. Honest, well-intentioned producers won't be able to determine whether the signs or office spaces they have invested in are compliant. And with this lack of clarity, experience tells us that the Department will spend its time repeatedly fielding complaints and questions about separate and distinct signs and entrances.

Subjectivity is not the only problem with this proposal. Unless a trespasser takes a photograph of an interior common door, it will be nearly impossible to prove that the door was

actually locked, unlocked but closed, or open at any given time. As a result, the Department's investigations will become "he-said-she-said" contests that are rarely definitively resolved.

2. The proposal will be minimally effective in preventing consumer confusion

The TEC is concerned that office sharing may mislead consumers. According to the TEC, when realtors or lenders share space with a title insurance agency, consumers may incorrectly assume that the two are part of the same business organization. And based on this mistaken belief, consumers may then conclude that they must do business with the agency. Because consumers are free to hire the agency of their choice, the TEC hopes to prevent this misunderstanding by requiring that agencies have separate and distinct office signs and entrances and that common interior doors be locked.

Regardless of this proposal's effect, however, it would be better to simply tell consumers outright that they have a right to hire their own title insurance agency. A direct, black-and-white disclosure will have more impact than any sort of indirect influence that restrictions on signs, entrances and internal doors may generate.

The TEC could consider a rule that requires a title insurance agency, before starting work, to inform the consumer in writing that the consumer may freely choose an agency. This requirement could draw on the form of notice used by affiliated title insurance agencies under federal law (Regulation X, Appendix D):

You are NOT required to use [name of title insurance agency] for title insurance and escrow services as a condition of using [name of client] for the services that it provides. THERE ARE OTHER TITLE INSURANCE AND ESCROW PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

I/we acknowledge reading and understanding this disclosure form.

Consumer

3. Regulatory resources should be spent on financial protection

The Department recognizes that consumer confusion about hiring a title insurance agency is not an insignificant concern. However, the Department's regulatory resources are better spent on financially protecting those consumers than on enforcing restrictions for signs, entrances and interior doors. This is particularly true when consumer confusion can be easily eliminated with minimal effort -- a written disclosure. The legislature's emphasis this past session on financial protection (HB399, SB31 and SB151 (original version)) serves to confirm that the Department's focus is appropriate.