

R592. Insurance, Title and Escrow Commission.

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R592-6-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Subsection 31A-2-404(2).

R592-6-2. Purpose and Scope.

(1) The purpose of this rule is to identify practices that constitute unfair methods of competition because the practices create unfair inducements for the placement of title insurance business.

(2) This rule applies to any person identified in Subsection 31A-23a-402(2)(a).

R592-6-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402. Additional terms are defined as follows:

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

(b) "Business activities" do not include awards banquets, recognition events, or similar activities sponsored by or for clients, or commercial travel.

(2)(a) "Business meals" include breakfast, brunch, lunch, dinner, cocktails, and tips.

(b) "Business meals" do not include awards banquets, recognition events, or similar activities sponsored by or for clients.

(3)(a) "Client" means any person who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession, or occupation of:

(i) buying or selling interests in real property; or

(ii) making loans secured by interests in real property.

(b) "Client" may include real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies, and their employees, agents, representatives, and solicitors.

(c) "Client" does not include a trade association, for the purposes of this rule.

(4) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly, or monthly publication containing information and topical material for the benefit of the members of the association.

(5) "Title insurance business" means the business of title insurance and the conducting of escrow.

(6) "Title producer" means a title insurer, agency title insurance producer, or individual title insurance producer.

(7) "Trade association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

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

A person identified in Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client has violated Section 31A-23a-402 and has engaged in an unfair method of competition.

(1) Waiving any charge, premium, or rate for insurance or services otherwise due and payable.

(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 provided.

(3) Paying for, furnishing, or waiving all or any part of the rental or lease charge for space that is occupied by a client.

(4) 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, or paying rental or lease charges based in whole or in part on the volume of business generated by the client.

(5) Furnishing any part of a title producer's facilities, including conference rooms or meeting rooms, to a client or its trade association, for anything other than providing escrow or title services, or related meetings, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(6) Sharing office space with a client when the client or title producer does not have:

(a) separate, distinct signage;

(b) separate, distinct public access; and

(c) the ability to lock and secure the title producer's office space from the client's office space.

(7) Furnishing all or any part of the time or productive effort of any employee of the title producer, including a secretary, clerk, messenger, or escrow officer, to any client when such time or productive effort is not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction.

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

(9) Paying, or offering to pay, either directly or indirectly, salary, commissions, or any other consideration to any employee who at the same time holds an active license as a real estate agent or real estate broker, or as a mortgage lender or mortgage company subject to Section 31A-2-405 and Rule R592-5.

(10)(a) Payment or prepayment of the following:

(i) fees or charges of a professional, including an appraiser, surveyor, engineer, or attorney, whose services are required by any party or client to structure or complete a particular transaction; or

(ii) fees or charges of a client or party to the transaction, for example, subordination, loan, or HOA payoff request fees, that are required by any party or client to structure or complete a particular transaction.

(b) Subsection (10)(a) does not prohibit pre-payment of overnight mail and delivery fees.

(11)(a) Except as provided in Subsection (11)(b), sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food, or otherwise providing anything of value for an activity of a client including:

(i) an open house at a home or property for sale;

(ii) a meeting;

(iii) a breakfast, luncheon, or dinner;

(iv) a convention;

(v) an installation ceremony;

(vi) a celebration;

(vii) an outing;

(viii) a cocktail party;

(ix) a hospitality room function;

(x) an open house celebration

(xi) a dance;

(xii) a sporting event of any kind, including a fishing trip, gambling trip, hunting trip or outing, or golf or ski tournament;

(xiii) an artistic performance; or

(xiv) an outing in a recreation or entertainment area.

(b) A title producer may attend an activity of a client if:

(i) there is no additional cost to the title producer, other than the title producer's own entry fee, registration fee, and meals; and

(ii) the fees in subsection (11)(b)(i) are not greater than those charged to a client or other person attending the function.

(12)(a) Providing a gift or anything of value to a client in connection with a social event, such as a birthday or job promotion.

(b) A letter or card in these instances is not a thing of value.

(13) Sponsoring a trade association event at a cost that is greater than the sponsorships offered to members of the association, affiliates, vendors, or other participants of the event.

(14) Furnishing or providing the following, even for a cost:

(a) building plans;

(b) construction critical path timelines;

(c) "For Sale by Owner" lists;

(d) surveys;

(e) appraisals;

(f) credit reports;

(g) mortgage leads for loans;

(h) rental or apartment lists; or

(i) printed labels.

(15)(a) Engaging in the following advertising activity:

(i) paying for any advertising on behalf of a client;

(ii) advertising jointly with a client;

(iii) placing an advertisement in a publication, including an internet web page and its links, that is hosted, published, produced for, or distributed by or on behalf of a client;

(iv) placing an advertisement that fails to comply with Section 31A-23a-402 and Rule R590-130;

(v) placing an advertisement that is in an official trade association publication that does not offer each title producer an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged;

(vi) advertising with free or paid social media services that are not open and available to the general public; or

(vii) paying a fee to share, like, respond to, comment on, or increase the visibility, ranking, or distribution of any social media involving a client or a client's social media page.

(b) Nothing in Subsection (15)(a) prohibits the following:

(i) advertising independently that the title producer has provided title insurance for a particular subdivision or condominium project, but the title producer may not indicate that all future title insurance will be written by that title producer; or

(ii)(A) writing or posting on social media services about an event that directly involves the title producer and a client; and

(B) referencing or linking to the event on the client's social media page or the client company's social media page.

(16) Using an interest in another business entity to avoid the provisions of Title 31A, Insurance Code, or any applicable rule.

(17) For self-promotional open houses:

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

- (b) holding a self-promotional open house at a location other than a registered office of the title producer.
- (18) Making a donation to a charitable organization controlled or managed by a client.
- (19)(a) Distributing to a client, consumer, or member of the general public a self-promotional item that:
 - (i) has a cost of more than \$25;
 - (ii) is edible;
 - (iii) does not contain a permanent marking identifying the title producer; or
 - (iv) is personalized in the donee's name.
- (b) A sticker is not considered a permanent marking under Subsection (19)(a).
- (20) Making an expenditure for a business meal or business activity on behalf of any person, whether a client or not, as a method of advertising if:
 - (a) the person representing the title producer is not present during the business meal or business activity;
 - (b) a substantial title insurance business discussion does not occur directly before, during, or after the business meal or business activity;
 - (c) the total cost of the business meal, the business activity, or both exceeds \$100 per person, per day;
 - (d) more than three individuals from an office of a client are provided a business meal or business activity in a single day by an individual title producer; or
 - (e) the entire business meal or business activity takes place on a client's premises.
- (21) Conducting education that:
 - (a) does not address title insurance, escrow, or a related subject;
 - (b) involves expenditure of more than \$20 per anticipated person including the cost of meals and refreshments;
 - (c) involves expenditure of more than \$500 for a facility and instructor; or
 - (d) is conducted at an individual, physical office location of a client more than once per calendar quarter.
- (22) 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.

R592-6-5. Severability.

If any provision of this rule, Rule R592-6, 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: title insurance

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