

R592. Insurance, Title and Escrow Commission.

92-19. Winding Down the Business of a Resident Agency Title Insurance Producer.

R592-19-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsection 31A-2-404(6).

R592-19-2. Purpose and Scope.

~~(1)~~ The purpose of this rule is to provide a process for winding down the business of a resident agency title insurance producer.

~~(2)~~ This rule applies to a resident agency title insurance producer.

R592-19-3. Definitions.

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

~~(1)~~ "Active underwriter" means an underwriter from which an agency has an appointment within the past six months before the date on which the agency provides written notice of intent to wind down to the Department.

~~(2)~~ "Agency" means a licensed resident agency title insurance producer.

~~(3)~~ "Escrow file" means a physical or electronic document relied on or generated in conducting escrow under Title 31A.

~~(4)~~ "Final audit" means the audit of an agency's trust accounts, operating accounts, escrow files, accounting records, and related title insurance records required under Section R592-19-7(1).

~~(5)~~ "Title file" means a physical or electronic document relied on or generated during the process of placing title insurance.

~~(6)~~ "Underwriter" means an insurance company that underwrites title insurance risks.

~~(7)~~ "Wind down" and "winding down" mean the process of closing a resident agency title insurance producer's business.

R592-19-4. Agency's Annual Wind Down Plan and Certification.

~~(1)(a)~~ (a) An agency shall annually prepare a written plan for winding down its business.

~~(b)~~ (b) The annual wind down plan submitted with the annual report required by Section 31A-23a-413 shall state:

~~(i)~~ (i) the physical or electronic location at which the agency's escrow and title files will be stored for a period access during the winding down process and permanently thereafter to address requests for information and documents by

consumers, lenders, and other parties to transactions together with a statement identifying the person who will access these files to address the requests;

(ii) the physical or electronic location of the escrow accounting records and how those can be accessed by the Department or an active underwriter, including log in credentials for escrow accounting software;

(iii) an agreement by the agency to provide the financial institution at least 120 days which the escrow funds are held with authorization for the Department or active underwriter to access the escrow account(s) and to make deposits, issue checks and initiate wire transfers to and from the escrow account(s);

(iv) the agency's procedures for reconciling each trust account and completing pending escrow transactions, disbursing or transferring escrow funds, and resolving outstanding escrow obligations;

(iv) the name, mailing address, email address, and telephone number of the person(s) responsible for custody of the agency's escrow files and title files after the wind down is completed;

—(v) the name, mailing address, email address, and telephone number of the title insurance licensed person(s) responsible for the completion of the wind down who will be personally liable for escrow losses and the wind down expenses if the agency does not complete its wind down obligations;

(ii) each past and current underwriter from which the agency had or has an appointment;

—(iii) that an active underwriter from whom the agency currently has an appointment is authorized to obtain the prior three years of statements for the agency's:

—(A) trust account;

—(B) operating account; and

—(C) any associated accounting and underwriting files;

—(iv) contact information for the agency; ~~and~~ and for each owner, officer, manager, or other responsible person who will assist with the wind down;

—(v) contact information for ~~an~~ each active underwriter described in Subsection ~~(1)(b)(ii)~~;

—(vi) the name, title, email address, and telephone number for each current employee, as of the date the annual report is filed; and

(vii) the name, email address, and telephone number for an agency representative who can answer wind down questions.

(c) The agency shall annually:

—(a)(i) review and update its wind down plan, as necessary; and

~~(b)(ii) provide the plan to the Department.~~

~~(2) (a) The agency shall include the wind down plan as part of, or as an underwriter from which it currently has an appointment-attachment to, the annual report required by Section 31A-23a-413. The annual report or attached plan shall contain each item described in Subsection (1)(b).~~

~~—(2)(b) The agency shall certify in the annual report required by Section 31A-23a-415 that the wind down plan has been properly reviewed, updated, and provided to each as necessary, and submitted to the Department in the manner designated by the Department.~~

~~(c) Information or documents required by this rule that are included in the current annual report or attached wind down plan may be referenced by section in a later notice or submission required under Sections R592-19-5 or R592-19-6; the agency shall provide only information that has changed, has become available after the annual report was filed, or is specific to the wind down.~~

~~(3) This section does not require an agency to provide its annual wind down plan to an underwriter.~~

R592-19-5. Notice of Intent to Wind Down.

~~— An agency shall provide written notice of intent to wind down no later than 45 days before the wind down is completed.~~

~~—(1) The notice shall be sent to:~~

~~— (a) the Department at title@utah.gov; and~~

~~(b) each active underwriter from which the agency currently has an appointment.~~

~~—(2) The notice shall include:~~

~~(a) a copy of the agency's most recent plan;~~

~~(b) the name, appointment, and termination date for each past and current underwriter from which the agency had or has an appointment;~~

~~(a) a copy of the latest annual report that includes the wind down plan submitted under Section R592-19-4, a statement of any updated information that has changed or become available after the last annual report was filed, and a certification that the information submitted with the last annual report as updated is accurate as of the date of submission of the notice sent under Subsection (1);~~

~~(e) (b) the name, title, email address, and telephone number for each current employee;~~

~~(d) (c) the name, email address, and telephone number for an agency representative that can answer questions for at least one year after the wind down is completed;~~

~~—(e)(d) a list of all pending files and all open orders in which a commitment has been prepared but not paid for as of the date of the notice;~~

~~(f)(e) the agency's written acknowledgement that a final audit of the agency's trust and operating accounts will be conducted within 60 days after the wind down is completed; and~~

~~(f) a statement of the plan for:~~

~~(i) completing pending transactions that have closed in which title insurance policies must be issued;~~

~~(ii) completing open transactions that have not been closed in which a title insurance commitment has been issued or in which funds are held in escrow;~~

~~(iii) the administration of the funds held in escrow at the time of the filing of the notice under Subsection (1), including the processes disbursements and for escheating funds remaining in the escrow account(s) after disbursement attempts have been exhausted;~~

~~(iv) providing access to pending and historic files to provide information and documents requested by consumers, lenders, and other parties to the transactions;~~

~~(v) completing the winding down of the business of the title agency, including the payment of premium and fees to the agency's active underwriters.~~

~~(g) the date on which the wind down will be completed; and~~

~~(h) any other information required by the Department to monitor the wind down.~~

~~(3) The notice to each active underwriter shall include the information described in Subsections (2)(b) through (2)(g) that relates to the active underwriter and any updates to information previously included in the annual report or attached wind down plan, but is not required to include the wind down plan described in Subsection (2)(a).~~

R592-19-6. Providing Escrow Records, Files and Trust Account Information to an Underwriter Before the Wind Down is Completed.

~~(1) (1) Before the date on which the wind down is completed, an agency shall provide to each underwriter from which the agency had or has an appointment the following records pertaining to that underwriter active underwriter for business placed through that underwriter, the information not already included in the annual report or attached wind down plan under Section R592-19-4, or identify the annual report section where it appears, including:~~

~~(a) each escrow file;~~

~~(b)(a) a list of pending escrow transactions; and~~

~~(c)(b) a list of outstanding escrow commitments;~~

~~(2)(a) For each (c) a list of files for which a title commitment has been issued, and the transaction has not closed;~~

~~(d) any updated physical or electronic location of the escrow files and title files described in Subsections (1)(a) through (1)(c); and~~

(e) any updated name, email address, and telephone number of the person responsible for custody of those files.

(2) (a) For each pending escrow transaction, outstanding escrow commitment, or open title order identified in Subsection (1)(b), an agency shall send to each interested person a written notice that states:

(i) that the ~~name of agency~~ is winding down under the ~~underwriter that has custody and control~~ supervision of the ~~person's files~~ Department; and

~~(ii)~~ (ii) the location of the person's escrow file(s) or title file(s).

(iii) the contact information for the ~~underwriter in Subsection (2)(a)(i)~~ agency representative or file custodian who can respond to requests concerning the file; and

~~(iv)~~ that no underwriter is required to accept custody or control of the person's file(s); solely because the agency is winding down.

(b) The agency shall send the written notice to each ~~underwriter~~ interested person in Subsection (2)(a)(i) no later than 30 days before the agency's final date of operation.

(c) The agency shall retain a copy of the written notice described in Subsection (2)(b) in the escrow and title insurance file of each interested person.

~~(3)(a)~~ (a) An agency ~~shall~~ remains responsible for reconciling each trust account and for disbursing, transferring, or otherwise resolving escrow funds in accordance with applicable law and written escrow instructions.

(b) An agency may not transfer funds in all undisbursed escrow and/or investment accounts funds to the appropriate an underwriter for the benefit of the persons entitled to the funds unless the underwriter has agreed in writing to accept the funds, the transfer is required by law or court order, or the transfer is otherwise authorized by the Department.

~~(b)~~ The transfer shall be completed before (4) No later than the date on which the wind down plan is completed.

~~(c)~~ The transfer shall include:

~~(i)~~ a list of the sources of transferred funds; and

~~(ii)~~ a list of pending transactions.

(4) An, an agency shall provide to the Department with any information not already included in the annual report or attached wind down plan submitted under Section R592-19-4, including:

(a) a copy of the ~~list~~ each list described in Subsections (1)(b) and (a) through (1)(c) no later than);

(b) any updates to the ~~date on which wind down is completed~~ file-location, custodian, trust-account access, or escrow-accounting information described in Section R592-19-4; and

(c) a trust-account reconciliation status report identifying any account that has not been fully reconciled or any escrow funds that remain undisbursed or unresolved.

R592-19-7. ~~PostWindDownAudit.~~ Underwriter Review; License Termination

~~— (1) An agency shall conduct a final audit of the agency's trust ~~and~~ account(s), operating accounts, escrow files, accounting records, and related title insurance records upon completion of the wind down.~~

~~(2) The final audit report shall be sent, within 60 days after the wind down is completed, to:~~

~~— (a) the Department at title@utah.gov; and~~

~~— (b) each active underwriter ~~from which.~~~~

~~(3) An agency may not surrender, cancel, terminate, or otherwise allow termination of its resident agency title insurance producer license until after the agency has ~~an~~ appointment immediately before ~~submitted~~ the date on which ~~final audit report~~ required by Subsection (2) to the Department and to each active underwriter.~~

~~(4) (a) Upon receipt of a final audit report, an active underwriter may conduct an audit of the agency's files, accounts, and records for business placed through that underwriter to determine whether there are outstanding files, unreconciled trust-account items, unpaid premiums, unresolved escrow funds, or other issues related to the wind down was completed.~~

~~— (3) ~~If an~~ (b) The agency, each owner of the agency, and each person responsible for custody of the agency's files or records shall provide reasonable access to the files, accounts, and records necessary for an audit under Subsection (4)(a).~~

~~(5) (a) Within 15 days after receiving the final audit report required by Subsection (2), an active underwriter shall notify the Department that the underwriter has received the report.~~

~~(b) If an active underwriter conducts an audit under Subsection (4), the underwriter shall notify the Department within 15 days after completing the audit whether, based on the underwriter's review, there are outstanding files, unreconciled trust-account items, unpaid premiums, unresolved escrow funds, or other issues requiring further action.~~

~~(c) If an active underwriter identifies an outstanding issue described in Subsection (5)(b), the notice to the Department shall describe the issue and any corrective action requested from the agency.~~

~~(6) If an active underwriter does not receive a final audit report within 60 days ~~of~~ after the date the ~~wind down~~ winddown is completed, the active underwriter shall ~~+~~~~

~~— (a) report the non-receipt to the Department within ten days; ~~and.~~~~

~~(b)(i)(7) (a) If an agency fails to submit the final audit report required by Subsection (2), the Department may require an active underwriter to prepare a final audit report based on records in the active underwriter's possession; and,~~

~~(ii)(b) If the Department requires a report under Subsection (7)(a), the active underwriter shall submit the report to the Department within 30 days of notifying after the Department's request, unless the Department grants an extension.~~

~~(4)(8) If the an active underwriter completes the final audit report, under Subsection (7), the expense of preparing the report may be reimbursed under Section 31A-41-203, if applicable.~~

R592-19-8. Effective Date.

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

R592-19-9. Severability.

~~If any provision of this rule, Rule R592-19, 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, escrow, insurance, wind down

Date of Enactment or Last Substantive Amendment: Authorizing, and Implemented or Interpreted Law: 31A-2-404(6); 31A-23a-413; [additional statutory authority to be added]

Proposed Statutory Changes

31A-23a-[New Section]. Resident agency title insurance producer wind down; personal liability of owners and controlling persons.

(1) As used in this section, "resident agency title insurance producer" means the same as that term is used in Section 31A-23a-413 and rules made by the commissioner concerning the winding down of a resident agency title insurance producer.

(2) An owner, officer, director, manager, member, partner, or other person who controls or is responsible for the trust accounts, escrow funds, books, records, files, or wind down activities of a resident agency title insurance producer shall ensure that the agency complies with applicable statutes and rules governing a wind down.

(3) A person described in Subsection (2) is personally liable for a loss, shortage, unreconciled trust-account item, unpaid premium, unresolved escrow fund, or other damages caused by the person's failure to:

- (a) reconcile, maintain, preserve, or account for trust-account funds or escrow funds;
- (b) maintain or preserve escrow files, title files, accounting records, or underwriting records;
- (c) conduct or submit a final audit required by statute or rule;
- (d) cooperate with the commissioner, a Department designee, a conservator, or an underwriter conducting a review authorized by statute or rule; or
- (e) otherwise properly wind down the resident agency title insurance producer.

(4) Liability under this section is in addition to, and does not limit, any civil penalty, restitution, administrative order, criminal penalty, bond claim, insurance claim, title recovery claim, or other remedy available under this title or other law.

(5) The commissioner may make rules to administer this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

31A-[New Section]. Conservatorship of a resident agency title insurance producer during wind down.

(1) The commissioner may petition a court of competent jurisdiction for appointment of a conservator for a resident agency title insurance producer if the commissioner determines that:

- (a) the agency is unable or unwilling to complete a wind down plan required by statute or rule;
- (b) trust-account funds, escrow funds, title files, escrow files, or accounting records are missing, unreconciled, at risk, or not reasonably accessible;
- (c) an owner or controlling person has failed to cooperate with the Department, a Department designee, an active underwriter, or a person responsible for custody of records; or
- (d) appointment of a conservator is necessary to protect consumers, escrow funds, title insurance policyholders, underwriters, or the public.

(2) A conservator appointed under this section may, subject to court supervision:

(a) take possession or control of books, records, files, accounts, systems, and other property necessary to complete the wind down;

(b) obtain access to trust accounts, operating accounts, escrow files, title files, accounting systems, email accounts, title-production systems, and other records or systems necessary to complete the wind down;

(c) reconcile trust accounts and escrow funds;

(d) complete, transfer, or arrange for completion of pending escrow transactions and outstanding title or escrow obligations;

(e) transfer files, funds, or records to a successor escrow holder, a court, the Department, or another person as ordered by the court or authorized by the commissioner;

(f) engage accountants, auditors, attorneys, information-technology vendors, escrow personnel, storage vendors, or other professionals necessary to administer the conservatorship; and

(g) take other action authorized by the court to protect consumers, escrow funds, title insurance policyholders, underwriters, or the public.

(3) The costs and expenses of a conservatorship may be paid from the agency's assets, assessed against responsible owners or controlling persons, or paid in another manner ordered by the court.

(4) An owner, officer, director, manager, member, partner, employee, file custodian, vendor, or other person with custody or control of records, systems, funds, or property of the agency shall cooperate with the commissioner and any conservator appointed under this section.

(5) A conservator, the commissioner, the Department, and a person acting under their direction are not liable for an act or omission taken in good faith under this section, except for gross negligence or willful misconduct.

(6) The commissioner may make rules to administer this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.