R592. Insurance, Title and Escrow Commission.

R592-19. 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 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 Subsection 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 process" and "winding down process" mean the process of closing an agency’s business.

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

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

(2) The plan shall state:

(a) the physical or electronic location at which the agency's escrow and title files will be securely stored for access:

(i) during the wind down process; and

(ii) for a period of 4 years after the wind down process ends;

(b) the name and contact information for the person:
(i) with access the escrow and title files; and
(ii) responsible to respond to questions about information in the files;
(c) the physical or electronic location of the escrow accounting records;
(d) the process that the Department or an active underwriter must follow to obtain access to those records;
(e) the agency's procedures for:
(i) reconciling each trust account;
(ii) completing pending escrow transactions;
(iii) disbursing or transferring escrow funds; and
(iv) resolving outstanding escrow obligations;
(f) the name and contact information for the title insurance licensed person responsible for the completion of the wind down process; and
(g) each past and current underwriter from which the agency had or has an appointment.
(3) The agency shall annually:
(a) review and update the plan, as necessary;
(b) provide the plan with the report required by Section 31A-23a-413; and
(c) certify in the report that the wind down plan has been reviewed and updated as necessary.
(4) This section does not require an agency to provide the plan to an underwriter.

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

(1) An agency shall provide written notice of intent to wind down no later than 45 days before the wind down is completed.
(2) The notice shall be sent to:
(a) the Department at title@utah.gov; and
(b) each active underwriter.
(3) The notice shall include:
(a) a copy of the agency's most recent plan;
(b) a statement of information relevant to the plan that has changed or become available since the last plan was filed;
(c) a certification that the information identified in Subsection (3)(b) is accurate;
(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;

(e) a written acknowledgement that the agency will perform a final audit of the agency's trust and operating accounts within 60 days after the wind down is completed;
(f) a statement of a 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 for:
(A) disbursements; and
(B) escheating funds remaining in the escrow accounts after disbursement attempts have been exhausted;
(iv) completing the winding down of the business of the title agency, including the payment of premium and fees to the agency’s active underwriters; and
(g) a statement that the agency will be subject to the Department’s jurisdiction, regardless of whether its license has been surrendered, cancelled, or terminated, until outstanding issues described in R592-19-7(4) have been resolved.
(4) The notice to each active underwriter shall include only information described in Subsections (3)(b) through (3)(g) that relates to the active underwriter.

R592-19-6. Records, Files and Trust Account Information Before the Wind Down is Completed.

(1) An agency shall send each party a written notice that states:
(a) that the agency is winding down;
(b) the location of the person’s escrow files or title files;
(c) the contact information for the agency representative or file custodian who can respond to requests concerning the file; and
(d) that no underwriter is required to accept custody or control of the person's files solely because the agency is winding down.
(2) The agency shall send the written notice to each interested person in Subsection (1) no later than 60 days before the agency's final date of operation.
(3) The agency shall retain a copy of the written notice described in Subsection (1) in the escrow and title insurance file of each interested person.

(4)(a) An agency 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 undisbursed escrow or investment accounts funds to an underwriter unless:
(i) the underwriter has agreed in writing to accept the funds;
(ii) the transfer is required by law or court order; or
(iii) the transfer is otherwise authorized by the Department.
(5) No later than the date on which the wind down is completed, an agency shall provide the Department with any information not already included in the wind down plan submitted under Section R592-19-4, including:
(a) a listing of each party notified as described in Subsections (1), (2) or (3);
(b) any updates to the 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. Underwriter Review; License Termination.
(1) An agency shall conduct a final audit of the agency's trust accounts, operating accounts, escrow files, accounting records, and related title insurance records upon completion of the wind down.
(2) Within 60 days after the wind down is completed, the final audit report shall be sent to:
(a) the Department at title@utah.gov; and
(b) each active underwriter.
(3)(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.
(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 (3)(a).
(4)(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 (3), the underwriter shall notify the Department within 15 days after completing the audit if, based on the

underwriter's review, there are outstanding files, unreconciled trust-account items, unpaid premiums, unresolved escrow funds, or any other issue requiring further action.
(c) If an active underwriter identifies an outstanding issue described in Subsection (4)(b), the notice to the Department shall describe the issue and any corrective action requested from the agency.
(5) If an active underwriter does not receive a final audit report within 60 days after the date the wind down is completed, the active underwriter shall report the non-receipt to the Department within ten days.
(6)(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 report based on records in the active underwriter's possession.
(b) If the Department requires a report under Subsection (6)(a), the active underwriter shall submit the report to the Department within 30 days after the Department's request, unless the Department grants an extension.
(7) If an active underwriter completes a final audit report under Subsection (6), the expense of preparing the report may be reimbursed under Section 31A-41-203, if applicable.
(8)(a) A resident agency title insurance producer license may not be canceled, terminated, or accepted for surrender unless the Department has received:
(i) the final audit report required by Subsection (2); and
(ii) confirmation from each active underwriter that it received the final audit report.
(b) If outstanding issues described in Subsection (4) are identified, the Department may:
(ii) elect not to cancel, terminate, or accept for surrender a resident agency title insurance producer license;
(ii) take enforcement action against the agency.
(c) Until a resident agency title insurance producer license is canceled, terminated, or accepted for surrender, the holder of the license shall comply with all applicable legal requirements.

R592-19-8. Record Storage Post Wind Down.
Records required to be stored under this rule shall be securely stored in a physical or electronic location.

R592-19-9. Effective Date.
The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-19-10. 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.

KEY: title, escrow, insurance, wind down