

Insurance Laws that Continue to Govern the New Affiliated Title Insurance Agencies

SB 121 removed a barrier that prohibited title insurance agencies from affiliating with persons who refer title insurance business. As those agencies and persons begin operations under new affiliations, they should be aware of pre-SB 121 insurance laws that continue to govern their business activities. Those laws include:

1. Utah Code § 31A-23a-402(2)(a) : A title insurance agency may not give consideration to obtain title insurance business.

“A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

- (i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;
- (ii) any special favor or advantage not generally available to others;
- (iii) any money or other consideration, except if approved under Section 31A-2-405; or
- (iv) material inducement.

2. Utah Code § 31A-23a-402(2)(c): A person connected with a title insurance transaction, including a mortgage lender, realtor or builder, may not receive consideration from the transaction.

An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:

- (i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
- (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- (iii) a builder;
- (iv) an attorney; or
- (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

3. Utah Code § 31A-23a-504(4)(b): A title insurance agency may not share its commissions with persons who didn't contribute to the issuance of the policy.
"A person may share compensation for the issuance of a title insurance policy only to the extent that the person contributed to the examination of the title or other services connected with the title insurance policy." Utah Code § 31A-23a-504(4)(b).

4. Utah Admin. Code R592-6-4(7), (8) and (9) and R592-6-3(4)(b): A title insurance agency may not charge or pay more or less than fair market value for offices or facilities provided to or by entities that refer title business.

"[Each of the following] is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which 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 any client.

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

"'Client' includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies and the employees, agents, representatives, solicitors and groups or associations of any of the foregoing."

5. Utah Admin. Code R592-6-4(10): A title insurance agency may not share office space with entities that refer business to the agency.

"[It] is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition [to share] . . . office space with a client of a title producer."

6. Utah Admin. Code R 592-6-4(22), -4(23), and -4(24)): A title insurance agency may not jointly advertise with an entity that refers title business.

“[Each of the following] is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.”