

Memorandum

To: The Utah Title and Escrow Commission
Fr: Reed Stringham, Deputy Insurance Commissioner
Re: Proposed amendment of Utah Admin. Code R592-11
Dt: September 11, 2019

At the Commission's last meeting the Department proposed to amend the rule that requires an annual report from title insurance producers. Utah Admin. Code R592-11. The amendments were intended to:

- (1) remove requirements for a no-longer-needed controlled business report;
- (2) remove requirements that duplicated or were not supported by statute;
- (3) reduce regulatory burden for the industry.

The Commission asked the Department to explain the reasons for removing certain requirements. The explanations are highlighted in yellow and are set forth below.

Rule R592-11. Title Insurance Producer Annual ~~and Controlled Business~~ Reports.

R592-11-1. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission ~~(Commission)~~ to make rules related to title insurance;

(2) Section 31A-23a-413, which requires certain title insurance producers to file the annual filing of an annual report containing a verified statement of the financial condition, transactions, and affairs by an agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer;

~~(3) Subsection 31A-23a-503(8), which requires the annual filing of a controlled business report; and~~

(4) Subsection 31A-23a-406(1)(g), which requires the maintenance of a physical address in Utah.

Subsection 31A-23a-406(1)(g) requires that a title agency maintain a physical address in Utah. But it does not require that the agency provide proof of that to the Department in an annual written report. Subsection 31A-23a-415(1) already requires a title agency to give notice of its physical location. The Department believes that compliance with this requirement can be more efficiently determined by a Department audit than by an annual written report.

R592-11-2. Purpose and Scope.

~~(1) The purpose of t~~This rule is to establish~~es the form requirements of and filing deadline for the Title Insurance Producer Annual Report and Controlled Business Report required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).~~

~~(2) This rule applies to an agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.~~

R592-11-3. Title Insurance Producer Annual Report.

(1) The following shall file a Title Insurance Producer Annual Report not later than April 30 of each year ~~if they have conducted title insurance business in the State of Utah within the time period described in R592-11-3(4):~~

(a) an agency title insurance producer; and

(b) an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.

(2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;

The Department doesn't have the resources required to evaluate a balance sheet and an income and expense statement. It is more efficient to require an affirmation that the reported title insurance premium is accurate and is based on appropriate business reports.

(i) title premium, including endorsement income and expenses, shall be reported separately from the escrow income and expenses;

The department believes that title insurance agencies are able to determine total title insurance premium accurately and that an additional report of endorsement and escrow income and expenses is not needed.

(b) the name and address of each financial institution where a title or escrow trust account is maintained;

Better to say, "The number and location of each title or escrow trust account."

(c) proof of financial protection that complies with Subsection 31A-23a-204(2) shall consist of one or more of the following:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection approved by the commissioner;

The law requires that a title agency maintain financial protection. But it does not require that the agency provide written proof of that protection with a written report. The Department believes that compliance with this requirement can be more efficiently determined by a Department audit than by an annual written report.

(d) the name of the individual title insurance producer designated as the "qualifying licensee," as provided in 31A-23a-204; and

(e) the physical address in Utah maintained by the agency title insurance producer or individual title insurance producer, pursuant to 31A-23a-406(1)(g).

The law requires that a title agency maintain a physical address in Utah. But it does not require that the agency provide proof of that to the Department in a written report. The Department believes that compliance with this requirement can be more efficiently determined by a Department audit than by an annual written report.

~~(3) A title insurance producer may comply with Subsection R592-11-3-(2)(c) does not apply to an attorney exempted under 31A-23a-204(8) by completing and submitting a report in.~~

~~(4) The the Title Insurance Producer Annual Report Form that is available on the department's website period shall be the preceding calendar year.~~

~~(5) A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63C-2-305 and 63C-2-309.~~

~~R592-11-4. Controlled Business Report.~~

~~(1) The following that conduct title insurance business in the State during the time period described in R592-11-4(2)(a) shall file an annual Controlled Business Report not later than April 30 of each year:~~

~~(a) an agency title insurance producer; and~~

~~(b) an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.~~

~~(2)(a) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a); and~~

~~(b) contain the name, address, and percentage of ownership of each owner.~~

~~(3) A Controlled Business Report is a public record upon filing.~~

~~R592-11-5. Electronic Filing of Title Insurance Producer Annual Report and Controlled Business Report.~~

~~(1) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted together electronically using the Department of Insurance's secure file upload site located at <https://forms.uid.utah.gov/insurance/fileUploads/>.~~

~~(a) Registration may be required.~~

~~(2) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted not later than~~

~~April 30 of each year as an attachments to the Title Insurance Agency Producer Annual Reports Transmittal Form.~~

~~(3) The following report forms, which are is available on the department's website, shall be used to submit the Title Insurance Producer Annual Report and the Controlled Business Report:~~

~~(a) Title Insurance Producer Annual and Controlled Business Reports Transmittal form; and~~

~~(b) Controlled Business Report form.~~

~~(4) Actual copies of the forms may be used or may be adapted to a particular word processing system, however, if adapted, (a) the content, size, and font shall be similar; and shall be:~~

~~(a) the form is converted to one portable document format or PDF prior to submission; and~~

~~(cb) the form is submitted in the order listed on the Annual Report Checklist located at <http://insurance.utah.gov/agent/title/agency-reports-information.php>.~~

~~R592-11-6. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R592-11-57. Enforcement Date.~~

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

~~R592-11-68. Severability.~~

~~If any provision of this rule or its application to any persons or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby. If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

Title Insurance Producer Annual Report Form

Date:

Title Insurance Producer ("Producer"):

Address and Telephone:

Total Annual Title Insurance Premium:

Trust Account Location and Number:

Verification

Under criminal penalty of the state of Utah, I declare the following:

(1) I hold the position of _____ with the Producer and am authorized to make this Title Insurance Producer Annual Report on its behalf.

(2) The information set forth in this Title Insurance Producer Annual Report is correct based on my personal knowledge or based on my reasonable belief after diligent inquiry.

(3) The Producer earned the above Total Annual Title Insurance Premium during the prior calendar year.

(4) The above Total Annual Title Insurance Premium was derived from an income and expense statement prepared in conformity with generally accepted accounting principles.

(5) The Producer does/does not request that the above Total Annual Title Insurance Premium and Trust Account Location and Number be kept confidential pursuant to Utah Code §§ 63G-2-305 and 63G-2-309. For the following reasons, this information qualifies as a trade secret described in § 63G-2-305(1) and/or as commercial or nonindividual financial information described in § 63G-2-305(2):

Name: