Memorandum

To: Title and Escrow Commission
Fr: Reed Stringham, Deputy Commissioner
Re: Insurance Code cap on costs covered by the annual title assessment
Dt: September 27, 2019

At its last meeting, the Title and Escrow Commission discussed the Department's proposal to raise the Insurance Code's cap on costs covered by the annual title assessment. The Commission deferred its response to allow the Department to provide additional information about how assessment funds are used.

In this memorandum, the Department will follow-up on the Commission's request for more information about assessment funds. And because the Department now proposes to repeal rather than raise the cap, this memorandum will explain why that is the appropriate course of action.

<u>The assessment pays for two regulatory programs.</u> Collections from the title industry annual assessment are used in two regulatory programs, the Title Licensee Enforcement Restricted Account ("Enforcement Program") and the Title Insurance Recovery, Education, and Research Fund ("Recovery Program"). *Utah Code §§ 31A-23a-415 and 31A-41-201.* The Enforcement Program pays for "expense[s] incurred by the department in the administration, investigation, and enforcement of laws governing" title licensees. *31A-23a-415(3)(d).* The Recovery Program provides compensation to victims of fraud committed by title insurance licensees. *31A-41-203(1).* It also pays for investigations of fraud by a title licensee, for education and research, and for examinations of title licensees. *31A-41-203(2).*

<u>Unspent monies remain in Enforcement and Recovery Programs.</u> Because the law limits the purposes for which assessment monies can be spent, amounts left in the Enforcement Program and the Recovery Program at the end of a fiscal year cannot be transferred elsewhere. *Utah Code §§ 31A-23a-415 and 31A-41-201.* They remain for use in a following year.

<u>The Enforcement Program did not pay for all eligible expenses in recent years.</u> The chart below provides an accounting for the Enforcement Program in FY15-19. The amounts in the "Spent" column represent the annual compensation paid to one market conduct examiner plus peripheral costs (i.e. IT, copy expenses). Those amounts vary from year-to-year due to position vacancies and salary differences. The amounts do not include compensation paid to the examiner's supervisor, the deputy commissioner, the commissioner and other Department employees who performed work eligible to be paid from the Enforcement Program. Instead, the Department's main administration account paid for that work. As a result, for FY15-FY19, the Department's main administration account subsidized work that should have been paid for by the Enforcement Program.

Fiscal Year	Appropriation	Collected	Spent	Year End Balance
2015	$94,100	$83,850	$87,416	($3,566)
2016	$123,600	$108,083	$80,741	$27,342
2017	$132,400	$101,169	$70,264	$30,905
2018	$127,300	$100,550	$70,863	$29,687
2019	$129,900	$100,550	$100,000	$550

The Recovery Program was not tapped to pay for title insurance investigations. The chart below provides an accounting for the Recovery Program for FY15-19. The amounts in the "Spent" column represent costs related to per diem and mileage reimbursement for Title Commission members, expenses for Title Commission meetings and other related training costs. No Recovery Program money was used for title insurance investigations.

Fiscal Year	Appropriation	Collected	Spent	Year End Balance
2015	$50,000	$33,504	$6,079	$27,425
2016	$50,000	$32,836	$2,432	$30,404
2017	$50,000	$31,680	$1,406	$30,274
2018	$50,000	$33,648	$2,181	$31,467
2019	$50,000	$36,909	$6,063	$30,846

The Enforcement and Recovery Programs now pay for all eligible expenses. Department employees now bill the Enforcement Program and the Recovery Program for eligible work. This includes work by the market conduct examiner assigned to title insurance, that examiner's supervisor, the deputy commissioner, the commissioner, and rate analysts and examiners who have been cross-trained to handle title complaints and investigations. As a result, the FY20 costs that the Programs pay for will be higher than the costs for FY19. The Department expects to be able to cover those costs because the total balance in the Enforcement Program is $118,638 (July 1, 2019) and the total balance in the Recovery Program is $590,120 (July 1, 2019).

Higher Department costs warrant a repeal of the cap. The Insurance Code now imposes a $100,000 cap on expenditures for work covered by the Enforcement Program. *Utah Code § 31A-23a-415(3)(d).* However, Utah's budget statute authorizes the Department to spend up to $131,200 for that work. (General Session 2019, House Bill 4, Item 88.) Because the budget statute is updated annually and reflects the legislature's current intent on spending limits, it is unnecessary to maintain a statutory cap in the Insurance Code. The Department will therefore seek a repeal of the cap.

Title licensees will not be assessed for the Recovery Program next year. As stated previously, the Recovery Program's balance as of July 1, 2019 was $590,120. Because past assessments for that Program have exceeded anticipated expenses for victim compensation, education and investigation, the Department will not impose an assessment for the Program next year. Beyond then, the Department will determine year-to-year whether to impose assessments.