

R592. Insurance, Title and Escrow Commission.

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R592-6-1. Authority.

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission ("the Commission") to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer or individual title insurance producer.

R592-6-2. Purpose and Scope.

(1) ~~[The purpose of this]~~ This rule ~~[is to identify]~~ identifies ~~[certain]~~ practices ~~[, which]~~ that ~~[the Commission finds]~~ constitute ~~[creates]~~ unfair ~~[inducements for the placement of title insurance business and as such constitute unfair]~~ methods of competition because the practices create unfair inducements for the placement of title insurance business. ~~[These practices include the payment of expenses that are considered normal, customary, reasonable and recurring in the operation of a client of a title producer.]~~

(2) This rule applies to all title producers and their full-time and part-time ~~[all]~~ employees, independent contractors, representatives and any other persons ~~[party]~~ working for or on their behalf ~~[of said entities whether as a full time or part time employee or as an independent contractor].~~

R592-6-3. Definitions.

~~[For the purpose of this]~~ This rule ~~[the Commission]~~ incorporates the definitions ~~[as]~~ set forth in Sections 31A-1-301 and 31A-2-402 and adopts the following:

(1) Bona fide real estate transaction" means:

(a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or

(b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2) "Business Activities" shall include sporting events, sporting activities, musical and art events. In no case shall such business activities rise to the level of ceremonies, for example, award banquets, recognition events or similar activities sponsored by or for clients, or include travel by air, or other commercial transportation.

(3) "Business meals" shall include breakfast, brunch, lunch, dinner, cocktails and tips. In no case shall such business meals raise to the level of ceremonies, for example, awards banquets, recognition events or similar activities sponsored by or for clients.

(4) (a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession or occupation of:

(i) buying or selling interests in real property; and

(ii) making loans secured by interests in real property.

(b) "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) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Title producer" means a title insurer, agency title insurance producer, or individual title insurance producer.

(9) "Trade Association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Prohibited Unfair Methods of Competition~~[, Acts and Practices].~~

~~[In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that] A party [providing or offering to provide any of the following benefits by parties] identified in Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client[, either directly or indirectly, except as allowed in Section R592-6-5 below,] has violated the is a] material and unfair inducements law [to obtaining title insurance business] and has engaged in [constitutes] an unfair method of competition. [A party identified in Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client has violated the prohibition against material and unfair inducements and has engaged in an unfair method of competition.]~~

(1) ~~[The furnishing of]~~ Furnishing a title insurance commitment when the title producer is aware that no policy is intended to be issued without one of the following:

(a) sufficient evidence in the file of the title producer that a bona fide real estate transaction or listing agreement exists; or

(b) a request from a proposed insured to issue a title insurance commitment together with a payment of a minimum cancellation fee of \$200.

(2) ~~[The paying of]~~ Paying any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) ~~[the furnishing of escrow services]~~ for a charge less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services that ~~[, which]~~ are not the subject of rates or escrow charges filed with the commissioner.

- (5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.
- (6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.
- (7) ~~[The paying]~~ 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 related 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.
- (10) ~~[The co-habitation of sharing]~~ Co-habiting or sharing office space with a client of a title producer.
- (11) Furnishing all or any part of the time or productive effort of any employee of the title producer, for example, secretary, clerk, messenger or escrow officer, to any client.
- (12) Paying for all or any part of the salary of a client or an employee of any client.
- (13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.
- (14) (a) Payment or prepayment of the following:
- (i) [ing for the] fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any party or client to structure or complete a particular transaction; or

(ii) [~~for the pre-payment of~~] fees ~~or~~[and] charges of a client or party to a transaction, for example subordination, loan or HOA payoff request fees, [~~whose services~~] that are required by any party or client to structure or complete a particular transaction.

(b) [~~This subsection~~] Subsection (a) does not prohibit [~~include the~~] pre-payment of overnight delivery/mail fees that will be recovered through closing a transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under [~~Subsection~~] R592-6-5. Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5, or otherwise providing things of value for promotional activities of a client. Title producers may attend activities of a client if there is no additional cost to the title producer, other than their own entry fees, registration fees, and meals[~~;~~]; the fees may not be greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as [~~providing~~] a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

- (a) building plans;
- (b) construction critical path timelines; (c) "For Sale by Owner" lists;
- (d) surveys;
- (e) appraisals;
- (f) credit reports;
- (g) mortgage leads for loans;
- (h) rental or apartment lists; or

(i) printed labels.

(19) Issuing a [Newsletters] newsletter that is [cannot be] property specific or [cannot] highlights specific customers.

(20) Providing [A title producer cannot provide a client] access to [any] real property information that the title producer pays to produce, develop, or maintain, except: [as otherwise permitted by R592-6-5.]

(a) Providing to a client, through any means including copies, a property profile that includes only the following:

(i) the last vesting deed of public record;

(ii) a plat map reproduction and/or locator map;

(iii) tax and property characteristics information from the Treasurer's and Assessor's offices; and

(iv) Covenants, Conditions and Restrictions; [Note: See original 6-5(10)] and

(b) Providing a client access to closing software that is related to a specific transaction identified in the title commitment. [Note: See original 6-5(13)]

(21) (a) ~~[A title producer cannot provide]~~ Providing title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by ~~[said]~~ the title producer or, including its owners or employees.

(b) Subsection (21) (a) does not apply to ~~[such]~~ transactions involving seller financing.

(22) (a) Engaging in the following advertising activity:

(i) Paying for any advertising on behalf of a client; [-]

(ii) ~~[23]~~ Advertising jointly with a client on signs for subdivision or condominium projects ~~[signs,]~~ or ~~[signs]~~ for the sale of a lot or lots in a subdivision or units in a condominium project;

(iii) Placing an advertisement in a publication, including an internet web page and its links, that is hosted, published, produced for, or distributed by or on behalf of a client; [Note: See original 6-4(24)]

(iv) Placing an advertisement that fails to comply with Section 31A-23a-402 and R590-130;

[Note: See original 6-5(1)]

(v) Placing an advertisement that:

(A) is not purely self-promotional; or

(B) is in an official trade association publication that does not offer any title producer an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged. [Note: See original 6-54(1) (a) and (b)]

(vi) Advertising with free or paid social media services that are not open and available to the general public; [Note: See original 6-5(2)]

(vii) Paying a fee to share, like, respond to, comment on, or increase the visibility, ranking, or distribution of any social media involving a client a client's social media page. [Note: See original 6-5(2) (b)]

(b) Nothing in Subsection 22(a) prohibits the following:

(i) 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; [Note: See original 6-4(23)]

(ii) A title producer may write or post on social media services about an event that directly involves the title producer and a client, and it may reference or link to the client's social media page or the client company's social media page. [Note: See original 6-5(2) (a)]

~~(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.~~

~~(25) A donation may not be made to a charitable organization created, controlled or managed by a client. [Note: See new Subsection (32) below]~~

~~(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8). [Note: See new R592-6-4.1 below. I recommend that the Commission consider deleting this provision because it adds nothing. The department and the Commission already have this authority.]~~

(27) Using interests in [~~Title producers who have ownership in, or control of,~~] other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, [~~may not use those other business entities~~] to enter into any agreement, arrangement, or understanding, or to pursue any course of conduct, designed to avoid the provisions of this rule.

(28) Holding more than two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. [~~Note: See original 6-5(4)~~]

(29) Spending more than \$15 per guest per self-promotional open house. [Note: See original 6-5(4)]

(30) Making guest expenditures on items in the form of a gift, gift certificate, or coupon. [Note: See original 6-5(4)]

(31) Holding a self-promotional open house on a client's premises. [Note: See original 6-5(4)]

(32) Making a donation to a charitable organization created, controlled or managed by a client. [Note: See original 6-4(25)]

(33) Making a charitable donation that:

(a) is paid in cash;

(b) is paid by negotiable instrument to a payee other than the charitable organization;

(c) is distributed to anyone other than the charitable organization; or

(d) provides a benefit to a client. [Note: See original 6-5(5)]

(34) Distributing outside the regular course of business to clients, consumers and members of the general public, self-promotional items that:

(a) have a value of more than \$10, including taxes, setup fees and shipping;

(b) are edible;

(c) are personalized in the donee's name; or

(d) are given to clients or trade associations for redistribution. [Note: See original 6-5(6)]

(35) Making expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if:

(a) the person representing the title producer is not present during the business meal or business activity;

(b) a substantial title insurance business discussion does not occur directly before, during or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both exceeds \$50 per person, per day;

(d) more than three individuals from an office of a client are provided a business meal or business activity in a single day; or

(e) the entire business meal or business activity takes place on a client's premises.

[Note: See original 6-5(7)]

(36) Conducting a continuing education program that:

(a) is not approved by the appropriate regulatory agency;

(b) addresses matters other than title insurance, escrow or related subjects;

(c) is less than one hour in duration;

(d) involve expenditure of more than \$15 per person including the cost of meals and refreshments; or

(e) is conducted at more than one individual, physical office location of a client per calendar quarter. [Note: See original 6-5(8)]

(37) Acknowledging a wedding, birth or adoption of a child, or funeral of a client or a member of the client's immediate family with flowers or gifts exceeding \$75. [Note: See original 6-5(9) This provision doesn't square with Subsection (17) above]

R592-6-4.1. Department may identify other unfair inducements.

A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

R592-6-5. Permitted ~~[Advertising, Business Entertainment, and]~~ Methods of Competition.

The following are permitted methods of competition. In the event of a conflict between R592-6-4 and R592-6-5, R592-6-5 is controlling.

~~[Except as specifically prohibited in Section R592-6-4 above, the following are permitted:~~

~~(1) In addition to complying with the provisions of 31A-23a-402 and R590-130, Rules Governing Advertisements of Insurance, advertisement by title producers must comply with the following:~~

~~(a) the advertisement must be purely self-promotional; and~~

~~(b) advertisement in official trade association publications are permissible as long as any title producer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.~~

~~(2) A title producer may use free or paid social media services to promote its own business as long as such social media services are open and available to the general public. Additionally, the following shall be permitted and are not in violation of R592-6-4(22) and (24):~~

~~(a) a title producer may write or post on social media services about an event that directly involves the title producer and a client, and it may reference or link to the client's social media page or the client company's social media page; and~~

~~(b) a title producer may share, like, respond to, or comment on a client's social media page, post, or event as long as such action is free of charge. Paying a fee to share, like, respond, or comment on any social media service that involves a client or to increase visibility, ranking, or distribution of any social media involving a client is not an allowed exception to R592-6-4(22) and (24).]~~

([3]1) A title producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

~~[(4) A title producer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, including branch offices. The title producer may not expend more than \$15 per guest per open house. The expenditures per guest may not be in the form of a gift, gift certificate, or coupons. The open house may take~~

~~place on or off the title producer's premises but may not take place on a client's premises.~~

~~(5) A donation to a charitable organization must: (a) not be paid in cash; (b) if paid by a negotiable instrument, be made payable only to the charitable organization; (c) be distributed directly to the charitable organization; and (d) not provide any benefit to a client.~~

~~(6) A title producer may distribute self-promotional item having a value of \$10 or less, including taxes, setup fees, shipping, and the like, to clients, consumers and members of the general public. These self-promotional items shall be novelty items which are non-edible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to clients or trade associations for redistribution by these entities.~~

~~(7) A title producer may make expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising, if the expenditure meets all the following criteria:~~

~~(a) the person representing the title producer must be present during the business meal or business activity;~~

~~(b) there is a substantial title insurance business discussion directly before, during or after the business meal or business activity;~~

~~(c) the total cost of the business meal, the business activity, or both is not more than \$50 per person, per day;~~

~~(d) no more than three individuals from an office of a client may be provided a business meal or business activity by a title producer in a single day; and~~

~~(e) the entire business meal or business activity may take place on or off the title producer's premises, but may not take place on a client's premises.~~

~~(8) A title producer may conduct continuing education programs that are approved by the appropriate regulatory agency, under the following conditions:~~

~~(a) the continuing education program shall address only title insurance, escrow or other topics related thereto;~~

~~(b) the continuing education program must be of at least one hour in duration;~~
~~(c) for each hour of continuing education, \$15 or less per person may be expended, including the cost of meals and refreshments; and~~
~~(d) no more than one such continuing education program may be conducted at each individual, physical office location of a client per calendar quarter.~~
~~(9) A title producer may acknowledge a wedding, birth or adoption of a child, or funeral of a client or members of the client's immediate family with flowers or gifts not to exceed \$75. (10) A title producer may provide a property profile to a client through any means, including copies thereof. The property profile may include not more than the following: (a) the last vesting deed of public record;~~
~~(b) a plat map reproduction and/or locator map;~~
~~(c) tax and property characteristics information from the Treasurer's and Assessor's offices; and~~
~~(d) Covenants, Conditions and Restrictions.]~~
[[11]2) A title producer may provide clients access to water, beverages, and edible treats at the title producer's premises.
[[12]3) A title producer may provide to a client the documents used to produce a title commitment and may provide access to them [The title producer may provide access to the documents used to produce the title commitment] through any means.
[-(13) A title producer may provide a client access to closing software as long as the access is related to a specific transaction identified in the title commitment.

~~[R592-6-6. Enforcement Date.~~

~~The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.]~~

R592-6-6[7]. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may 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.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: August 11, 2015

Notice of Continuation: June 10, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-404