

## **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 by the Title and Escrow Commission pursuant to Subsection 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) ~~[This rule identifies.]~~ The purpose of this rule is to identify practices that constitute unfair methods of competition because the practices create unfair inducements for the placement of title insurance business.

(2) This rule applies to any person identified in Subsection 31A-23a-402(2)(a).

#### **R592-6-3. Definitions.**

~~[This rule incorporates the definitions set forth]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402~~[, and adopts the following]~~. Additional terms are defined as follows:

(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)(a) "Business activities" include sporting events, sporting activities, musical events, and art events.

(b) "Business activities" do not include awards banquets, recognition events, or similar activities sponsored by or for clients, or commercial travel.

(3)(a) "Business meals" include breakfast, brunch, lunch, dinner, cocktails, and tips.

(b) "Business meals" do not include 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 Sections 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.**

A person identified in [Subs]Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client has violated Sections 31A-23a-402 and 31A-23a-402.5 and has engaged in an unfair method of competition.

(1) 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) Paying any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect that 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 Subsection 31A-19a-209(5); or

(b) 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 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) Paying for, furnishing, or waiving all or any part of the rental or lease charge for space that is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate that 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, including conference rooms or meeting rooms, to a client or its trade association, for anything other than providing escrow or title services, or related meetings, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) 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, [-]including a 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 Section 31A-2-405 and ~~[Section]~~Rule R592-5.

(14)(a) Payment or prepayment of the following:

(i) fees or charges of a professional, including an appraiser, surveyor, engineer, or attorney, whose services are required by any party or client to structure or complete a particular transaction; or

(ii) fees or charges of a client or party to the transaction, for example, subordination, loan, or HOA payoff request fees, that are required by any party or client to structure or complete a particular transaction.

(b) Subsection (14)(a) does not prohibit pre-payment of overnight mail and delivery 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 ~~[Subs]~~Section 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]~~any kind[s], 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 ~~[Subs]~~Section 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 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 newsletter that is property specific or that highlights specific customers.

(20) Providing access to real property information that the title producer pays to produce, develop, or maintain, except:

(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, locator map, or both;
- (iii) tax and property characteristics information from the Treasurer's and Assessor's offices;

and

- (iv) covenants, conditions, and restrictions; and

(b) Providing a client access to closing software that is related to a specific transaction identified in the title commitment.

(21)(a) Providing title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by the title producer or its owners or employees.

(b) Subsection (21)(a) does not apply to transactions involving seller financing.

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

(i) paying for any advertising on behalf of a client;

(ii) advertising jointly with a client on signs for subdivision or condominium projects or 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;

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

(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;

(vi) advertising with free or paid social media services that are not open and available to the general public; or

(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 or a client's social media page.

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

(i) advertising independently that the title producer has provided title insurance for a particular subdivision or condominium project, but the title producer may not indicate that all future title insurance will be written by that title producer; or

(ii)(A) writing or posting on social media services about an event that directly involves the title producer and a client; and

(B) referencing or linking to the event on the client's social media page or the client company's social media page.

(23) Using interests in other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies to enter into any agreement, arrangement, or understanding, or to pursue any course of conduct designed to avoid the provisions of this rule.

(24) For self-promotional open houses:

(a) holding more than two self-promotional open houses per calendar year for each owned or occupied facility, including branch offices;

(b) spending more than \$15 per guest per self-promotional open house;

(c) making guest expenditures on items in the form of a gift, gift certificate, or coupon; or

(d) holding a self-promotional open house on a client's premises.

(25) Making a donation to a charitable organization created, controlled, or managed by a client.

(26) 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.

(27) 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.

(28) 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.

(29) 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) involves 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.

(30) Acknowledging a wedding, birth, or adoption of a child, or a funeral of a client or a member of the client's immediate family with flowers or gifts exceeding \$75.

#### **R592-6-5. Permitted Methods of Competition.**

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

(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.

(2) A title producer may provide clients access to water, beverages, and edible treats at the title producer's premises.

(3) A title producer may provide to a client the documents used to produce a title commitment and may provide access to them through any means.

#### **R592-6-6. Severability.**

If any provision of this rule, Rule R592-6, 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. The remainder of this rule shall be given effect without the invalid provision or application.