

R592. Insurance, Title and Escrow Commission.

R592-17. Requirements for an Interest Bearing Account[s] Used [by Title Insurance Agencies] for Trust Fund Deposits.

R592-17-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Subsection[s] 31A-2-201(1) and] 31A-2-404(2)[in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23a-409(2)(b)].

R592-17-2. Purpose and Scope.

[This rule specifies the characteristics of a](1) The purpose of this rule is to specify the type of depository account that [may be used by a title insurance agency to deposit] a title insurance company, an agency title insurance producer, or an individual title insurance producer shall use for depositing trust funds.

- (2) This rule applies to:
- (a) a title insurance company;
 - (b) an agency title insurance producer;
 - (c) or an individual title insurance producer; and
 - (d) an employee, representative, or any other party working for or on behalf of a title insurance company, an agency title insurance producer, or an individual title insurance producer, whether as a full-time or part-time employee or as an independent contractor.

R592-17-3. ~~Scope.~~

~~— This rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.~~

R592-17-4. ~~Definitions.~~

~~[For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23a-102 and the following] Terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-23a-102. Additional terms are defined as follows:~~

~~(1) "Demand deposit account" [refers to] means a federally insured deposit account from which withdrawals may be made [by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request] at any time without advance notice.~~

~~(2) "Depositor" [refers to a title insurance agency] means a person that [has deposited] deposits, in a qualifying trust account, funds [it holds] held in trust in connection with a real estate transaction.~~

~~(3) "Depository institution" means a depository institution as defined in Section 7-1-103.~~

~~(4) "Money market mutual fund" means a mutual fund that:~~

- ~~(a) invests in highly liquid, near-term instruments;~~
- ~~(b) is registered under federal and state securities laws to sell its shares to the public; and~~
- ~~(c) maintains a par value of \$1 per share.~~

~~(5) "Repurchase agreement" [is] means an agreement in which a [bank] depository institution agrees to sell to a depositor a security or other asset at a specified price with a~~

commitment to repurchase the security^[5] or other asset^[5] at a later date for a specified price.

(~~4~~6) "Sweep account" [~~refers to~~] means a demand deposit account subject to an agreement authorizing the [~~bank~~] depository institution to withdraw funds from the account [~~funds exceeding~~] that exceed a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand deposit account^[5], ~~when needed,~~ to pay checks presented for payment or other requests for withdrawal.

(~~5~~7) "Trust account" means an account denominated as a trust account in which the depositor is a trustee^[5];

~~(6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of \$1 per share.~~

R592-17-~~5~~4. Account Requirements.

(1) [~~Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23a-406(1) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.~~

~~(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.~~

~~(3) Records Required. Each title insurance agency must~~ A title insurance company, an agency title insurance producer, and an individual title insurance producer shall retain adequate records of ~~all~~ each deposit^[s] in a trust account^[5], ~~including those utilizing a sweep feature,~~ or a sweep account to establish individual account balances for ~~all~~ each person^[s] whose funds are held in trust.

(~~4~~2) [~~Qualified Accounts.~~] Funds subject to this rule must be deposited [~~or held~~] in:

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account [~~if it~~] that meets [~~all of~~] the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the [~~bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase~~] depository institution purchases:

(A) U.S. Government securities [~~on behalf of the depositor that are~~] held in a segregated account^[5] ~~in the bank~~, subject to a repurchase agreement [~~with the bank.~~] between the depositor and the depository institution; or

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or [~~A~~] agencies of the U.S. Government^[5]; and

(iii) the [~~bank is obligated and able to~~] depository institution can repurchase the securities or sell or redeem the shares or interest², at any time², at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(~~5~~3) [~~Obligation of Depositor for Losses.~~] A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(~~6~~4) [~~Authorization and Disclosure Obligation.~~] A [~~ny~~] depositor who uses an account described in Subsection R592-17-~~5~~4(~~4~~2)(b) must:

(a) receive written authorization from [~~those persons on whose behalf the funds are~~

~~deposited]each trust beneficiary stating that the depositor may receive [all]any earnings [which may be]that are realized from the trust fund deposit; and~~

(b) provide full written disclosure to ~~[all persons on whose behalf the funds are deposited,~~]each trust beneficiary explaining the characteristics of a sweep account deposit as described in Subsection R592-17-~~[5]4~~(~~[4]2~~)(b).

R592-17-~~[6]~~ Penalties.

~~Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.~~

R592-17-~~7]5~~. Severability.

~~[If any provision or clause of this rule or its application to any person or situation is held invalid, such 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]~~If any provision of this rule, Rule R592-17, 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.

KEY: insurance, title

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Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a); 31A-2-201(1); 31A-23a-409(2)(b)