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BERKSHIRE HATHAWAY
HomeServices
Utah Properties

June 6, 2022

Utah Insurance Department
Title and Escrow Commission
4315 S 2700 West
Taylorsville, UT 84129

Re: Opposition to Proposed Rule R592-18

Dear Title and Escrow Commission:

I am the Chief Executive Officer and Owner of Berkshire Hathaway HomeServices Utah Properties, a full-service real estate brokerage serving the State of Utah. The brokerage, through a wholly owned subsidiary, is part of a joint venture business known as Metro Title & Escrow, LLC ("MTE"). As a provider to title and escrow services, I am writing to oppose proposed R592-18 and to suggest that the cost of doing the escrow business be determined in a more comprehensive, fact-based manner.

The purported purpose of proposed R592-18 is to establish a standard for determining compliance with Utah Code Section 31A-19a-209(3)(a)(ii), which generally provides that a title company cannot file or use any rate or other charge that would cause the entity to operate its escrow business at less than the cost of doing business. The standard that proposed R592-18 attempts to establish is the cost of doing the escrow business, which would purportedly enable the Commission to determine if a title insurer was offering escrow services at a level that was "below-cost." In other words, proposed R592-18 seeks to establish the minimum escrow fee that can be charged by title and escrow agencies.

Stated simply, proposed R592-18 does not establish a meaningful standard for determining if a title insurer is utilizing rates or charges that would cause it to operate its escrow business at a below-cost level. Determining the cost of doing the escrow business by taking a state-wide, industry average of residential escrow fees and then reducing that average by fifty percent (50%) is an arbitrary and inappropriate measure that fails to consider a variety of factors. These factors include the costs associated with doing business in different markets across the state, the relative size and capabilities of title insurers across the state, the complexity of transactions in various parts of the state and the varying property values throughout the state.

The manner of calculating the minimum escrow fee under proposed R592-18 will have disparate and negative consequences in Utah's smaller and larger counties. With regard to smaller counties in Utah, consumers will likely face increased charges

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under proposed R592-18. Escrow fees are typically less in smaller counties when compared to larger counties. This is largely the result of smaller counties having lower overall costs in terms of employees, owned/leased office space and operating costs in general. Larger counties, with higher overall costs of doing business for title and escrow companies, typically have higher escrow fees. Proposed R592-18 would create a minimum escrow fee equal to half of the average of escrow fees across the state, thereby likely increasing the charges to consumers in smaller communities as a result of the increased costs of larger communities influencing the overall minimum escrow fee. Proposed R592-18's unintended increased cost and harm to consumers in smaller communities should be avoided.

With respect to larger counties in Utah, we must note that title and escrow companies generate revenue from (1) title insurance fees and (2) escrow fees. Title insurance fees are filed with the Department of Insurance, and there is no competition among title insurers on the basis of those fees. However, there is competition among title and escrow companies in the form of lowering escrow fees. Thus, proposed R592-18 has the very real potential to create a race-to-the-bottom as companies compete on escrow fees, regardless of how much it actually costs the company to provide escrow services. If the average escrow fee in Year 1 is $400.00, the minimum escrow fee under proposed R592-18 would be as little as $200.00. Industry factors such as a cooling of the real estate market and increased competition for title and escrow business will result in continued pressure to lower escrow fees to the minimum. This will drive down the industry average escrow fee, and thus the minimum escrow fee allowable, in Year 2 and subsequent years.

Title and escrow companies are subject to fixed title insurance rates, increasing operating expenses associated with employees and office space, and increasing competition. Proposed R592-18 would have the negative effect of subjecting consumers in smaller counties to increased costs while causing providers in larger counties to reduce escrow fees below what it costs to provide the service. Proposed R592-18 should not be adopted. Instead, the Commission should audit the industry to set an evidence-based minimum escrow fee, as required by Utah Code § 31A-19a-209(3)(a)(ii).

Sincerely,

Steve Roney

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Stephen C. Roney
CEO/Owner
Berkshire Hathaway HomeServices Utah Properties