Dear Mr. Gooch,

I write to you about your proposed Rule R592-18 and R592-15, the minimum escrow fees that can be charged by title and escrow agencies. I have been in the title insurance business in Utah and in 40 other states and own Metro National Title, which just celebrated its 33rd year in business in Utah and employs 115 people.

Currently, escrow fees must be sufficient to cover the cost of providing the service. HB31, lines 2435-2508, changes this rule to allow agencies to charge half of the average escrow fee charged by agencies across the state. I have watched the industry change for over 50 years and if this change is enacted, it will increase escrow fees in smaller counties, force title companies into money-losing transactions, create unfair inducements, put title companies out of business, and harm the real estate industry in the state of Utah.

First, some background about the title and escrow industry. Title and escrow agencies make money from (1) title insurance fees and (2) escrow fees (sometimes called settlement fees or closing fees). Title insurers file their fees with the Department of Insurance, so title and escrow agencies must charge those fees and cannot compete. Consequently, title companies cannot compete with each other by charging lower title insurance fees. They can compete by lowering escrow fees. Over the years, I have found it incredible that we allow the escrow side of the business to lose money year after year and be subsidized by the title insurance part of the transaction. The current law on the books should prevent this, but it has not been enforced by the Title and Escrow Commission.

In fact, the Title and Escrow Commission is making things worse. Title insurance rates have not increased for many years. Just a few months ago, in the face of rising inflation, the Department of Insurance made some title insurance underwriters LOWER their rates. This makes it impossible for title and escrow agencies to increase salaries to keep up with inflation. Office space is also becoming more expensive. It is becoming harder and harder for title and escrow agencies to break even. This is a horrible time to put them in a position that they have to perform settlement services at a loss, too.

The proposed new method for calculating the minimum escrow fee will unfairly result in increased charges to consumers in Utah's small counties. This is because in smaller communities escrow charges are lower because of lower wages, office space, and costs generally. For example, the prevailing charge in Logan is $75.00 per side (buyer and seller), but in Salt Lake it is $400.00 or more per side. In fact, in the major counties, the actual cost to produce and conduct the settlement is probably over $600.00 per side. Summit county costs are even higher due to cost of employees, office space, and the size of the transactions. Under the proposed Rule, the minimum fee is 50% of the average fee across the state, which will probably result in a big increase in settlement fees in smaller communities. It is very hard for people to come up with down payments and this will add to that hardship. The better way to calculate the rates would be for there to be two different zones, smaller counties and the larger counties, this would be a more fairway to calculate the rates for large and small counties.

On the other hand, the proposed Rules will create a "race to the bottom" for escrow fees in the larger counties. Let's say the average escrow fee in Year 1 is $400.00. That means a title and escrow agency can charge as little as $200.00 for settlement services, regardless of how much it

costs to provide those services. As you know, there is a lack of inventory of homes for sale in the state. Additionally, Utah has more title and escrow agencies per capita than anywhere else in the nation (165+). As discussed above, title companies can only compete for price by lowering escrow fees. In year 2, the average fee will be $200, or slightly more. In year 3, the average fee will be $100, and so on. Title companies will have to use money from other parts of the business to cover their costs of providing settlement services. For many years, the insurance policy of Utah has been that inducements are inherently unfair and distort competition. That is what would happen in this case. Many agencies will be forced out of business, decreasing competition while simultaneously providing worse services to Utah citizens.

Fixed title insurance rates, increasing salaries and office space costs, fewer transactions, lots of title companies all make it harder for title companies pay all their bills. These Rules would result in these companies also decreasing their escrow fees below what it costs to provide them. Unfortunately, I have observed over the years that some title companies will think they can take from their Trust Account to cover their bills, believing they will pay it back as soon as the market improves. However, they do not; defalcation occurs, and the escrow money is gone. Over the years, underwriters have asked us to take over 5 agencies that have done this. In these situations, it takes many months for the underwriters to make everyone whole. The burden on the consumer is very straining and emotional. This loss of funds is absolutely devastating to a community.

I hope you will take this into consideration before you enact these Rules. I would be more than happy to discuss this matter with you at any time. I am requesting a hearing on this matter.

Respectfully
Rod

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