First American
Title Insurance Company

June 1, 2022

Title and Escrow Commission
Utah Insurance Department
4315 S 2700 W, Suite 2300
Taylorsville, UT 84129

Via email: sgooch@utah.gov

RE: First American Title Insurance Company's Comments
Proposed Rule R592-18
Cost of Doing the Escrow Business

First American Title Insurance Company ("First American") appreciates the opportunity to provide comments to proposed rule R592-18 - Cost of Doing the Escrow Business. This letter serves as First American's comments to the proposed rule.

First American Title recommends modifying proposed Subsection R592-18-4(1) as follows:

R592-18-4. Calculating the Cost of Doing the Escrow Business Under Section 31A-19a 209(3)(a)(ii).

(1)(a) ~~A title insurer, a~~An agency title insurance producer, or an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall file with the commissioner, to be submitted with its annual report, a ~~certified~~ statement of the average residential escrow fee charged by the filer for residential escrow transactions closed in this State for the prior calendar year.

(b) Not later than April 30 of each year, a title insurer shall file with the commissioner a statement of the average residential escrow fee charged by the title insurer for escrow transactions closed in this State for the prior calendar year.

(c) The statement filed under Subsections (1)(a) or (1)(b) shall include separate escrow fees for residential refinance and residential purchase transactions.

(~~b~~c) Submitting the ~~certified~~ statement in Subsections (1)(a) or (1)(b) satisfies the requirement of filing with the commissioner a schedule of escrow charges in Section 31A-19a-209.

A title insurer does not file the annual report as the requirement to file an annual report as contained in UAR 592-11 only applies to an agency title insurance producer and an individual title insurance producer who is not employed by a title insurer or who has not been designated to an agency title insurance producer. As such, there cannot now be a requirement for a title insurer to file an annual report where no such requirement exists. The proposed rule should also be clarified such that the Commissioner only obtains the average escrow charge for escrow transactions closed in the State of Utah. Title agents and title insurers may be licensed and have operations outside the state of Utah. The requirement to report the average residential escrow fee should not pertain to closings that occur outside the State of Utah.

The filing of a statement should be sufficient and there should not be a requirement that the statement be certified as it's not certain as to what is considered or may qualify as a certified statement. Title companies

must be honest in their filings and submissions to the commissioner but they should not be required to "certify" the average residential escrow fee.

First American recommends deleting Subsection R-592-4-2(b) and modifying Subsection R592-18-4(5) as follows:

> (2)(a) The commissioner shall establish an industry average residential escrow fee for both residential refinance transactions and residential purchase transactions by calculating the average of the residential escrow fees submitted under Subsection (1).
>
> ~~(b) The industry average residential escrow fee shall be calculated for the buyer side and the seller side of a transaction.~~
>
> (~~c~~b) The industry average residential escrow fee shall include the sum of the fees charged by a filer for conducting escrow services on any transaction involving a dwelling as defined in Section 57-21-2.
>
> (~~d~~c) The industry average residential escrow fee shall exclude any pass-through cost incurred incident to the escrow services or the issuance of the title insurance and separately charged to the consumer.
>
> (5)(a) Under Subsection 31A-19a-209(3)(a)(ii), the Title and Escrow Commission finds that the cost of doing the escrow business is 50% of the industry average residential escrow fee ~~for the buyer side and the seller side~~ as calculated under Subsection (2).
>
> (b) A title insurer, an agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer cannot charge less than 50% of the industry average that is calculated under Subsection (2) on a residential escrow transaction.

The proposed rule should be clarified so that the rule applies to all residential transactions. As currently drafted, the rule would not apply to a residential refinance transaction. This change was added to the proposed language. Additionally, the proposed language regarding the application of the rule for a buyer's or seller's side is not clear nor is it believed that that this reference is necessary. The proposed rule should clarify and directly state that title companies would not be permitted to charge less than 50% of the industry average fee. Additionally, as it is within the Title & Escrow Commission's purview to establish rules, for clarification it should be their finding that in accordance with Section 31A-19a-209(3)(a)(ii) that 50% of the industry average is the cost of doing business as opposed to having a general statement that 50% of the industry average is the cost of doing business.

Respectfully submitted,

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