

**Proposed Changes to Utah Code Sections
31A-19a-209, 31A-23a-409 and 31A-23a-415**

31A-19a-209. Special provisions for title insurance.

(1)(a)(i) The Title and Escrow Commission ~~shall~~ may adopt rules subject to Section 31A-2-404, establishing rate standards and rating methods ~~[for individual title insurance producers and agency title insurance producers].~~

(ii) The commissioner shall determine compliance with rate standards and rating methods ~~[for title insurers, individual title insurance producers, and agency title insurance producers].~~

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurers, individual title insurance producers, and agency title insurance producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the examining of public records to determine insurability of title to real redevelopment property.

~~[(2) —~~

~~(a) — A title insurer, 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:~~

~~(i) — a schedule of the escrow charges that the title insurer, individual title insurance producer, or agency title insurance producer proposes to use in this state for services performed in connection with the issuance of policies of title insurance; and~~

~~(ii) — any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).~~

~~(b) — Except for a schedule filed by a title insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.~~

~~(c) —~~

~~(i) — The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes effect on the day on which the schedule of escrow charges is filed.~~

~~(ii) — Any changes to the schedule of the escrow charges required to be filed by Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow charges except that the effective date may not be less than 30 calendar days after the day on which the change to the schedule of escrow charges is filed.]~~

~~[(3)](2)~~ A title insurer, individual title insurance producer, or agency title insurance producer may not ~~[file or]~~ use any rate or other charge relating to the business of title insurance, including rates or charges ~~[filed]~~ for escrow, that would cause the title insurance company, individual title insurance producer, or agency title insurance producer to:

(a) operate at less than the cost of doing:

(i) the insurance business; or

(ii) the escrow business; or

(b) fail to adequately underwrite a title insurance policy.

~~[(4) —~~

~~(a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed or amended at any time, subject to the limitations in this Subsection (4).~~

~~(b) Each change or amendment shall:~~

~~(i) be filed with the commissioner, subject to review by the Title and Escrow Commission; and~~

~~(ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the day on which the change or amendment is filed.~~

~~(c) Any change or amendment remains in force for a period of at least 90 calendar days from the change or amendment's effective date.~~

~~(5) While the schedule of rates and schedule of charges are effective, a copy of each shall be:~~

~~(a) retained in each of the offices of:~~

~~(i) the title insurer in this state;~~

~~(ii) the title insurer's individual title insurance producers or agency title insurance producers in this state; and~~

~~(b) upon request, furnished to the public.~~

~~(6) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurer, individual title insurance producer, or agency title insurance producer may not make or impose any premium or other charge:~~

~~(a) in connection with the issuance of a policy of title insurance; or~~

~~(b) for escrow services performed in connection with the issuance of a policy of title insurance.]~~

Reason for change: To eliminate predatory pricing, the Insurance Code now imposes a requirement that each title insurance licensee file with the Department a statement of its lowest charges for escrow services. This requirement often leads to consumer confusion because licensees rarely use their lowest charges. And because the charges are rarely used, the requirement does not help the Department monitor for predatory pricing. The proposed amendment eliminates the requirement to file the lowest charges. In place of the requirement, the Department will enact a rule that sets a floor for escrow charges that is 50% of the average charge in the industry. This standard will provide a bright line test for the Department and for industry in their efforts to prevent predatory pricing.

31A-23a-409. Trust obligation for money collected.

(2) Money required to be deposited under Subsection (1) shall be deposited:

(a) in a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:

(i) has ~~[an office]~~ a branch in this state, if the licensee depositing the money is a resident licensee;

(ii) has federal deposit insurance; and

(iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or

- (b) in some other account, that:
 - (i) the commissioner approves by rule or order; and
 - (ii) provides safety comparable to an account described in Subsection (2)(a).

Reason for change:

The amendment codifies practice. Title insurance agencies that provide escrow services hold money in trust for their clients. The law requires that the trust money be deposited in a federally-insured depository institution in Utah. This requirement assures that the money held in trust remains in Utah. However, the statute refers to an institution with “an office” in Utah, so some have contended that any type of “office” of an out-of-state institution is sufficient. This argument is contrary to the “depository institution” requirement because, under Utah law, only a “branch” of an institution may accept deposits. The amendment fixes the problem with the word “office” by replacing it with “branch”.

31A-23a-415. Assessment on agency title insurance producers or title insurers -- Account created.

(2)(d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title and Escrow Commission ~~[by rule]~~ shall, during the first quarter of each fiscal year, approve ~~[establish]~~ the amount of costs and expenses described under Subsection (3) for the prior fiscal year that will be covered by the assessment ~~[, except the costs or expenses to be covered by the assessment may not exceed the cost of one full-time equivalent position].~~ (2)(d)

Reasons for change:

1. The requirement that the Commission use the rulemaking process to establish an amount of costs and expenses is unnecessarily time consuming and costly. Allowing the Commission to approve those costs and expenses is sufficient.
2. The current statute limits the assessment amount to the equivalent of one FTE. This limitation is no longer financially feasible because the costs and expenses under Subsection (3) (“the administration, investigation, and enforcement of laws governing individual title insurance producers, agency title insurance producers, or title insurers”) include the full time work of one examiner and the part-time work of 6 other department employees. During FY22, the cost of that work exceeded the one-FTE cap by nearly \$50K. The Department’s main account has been subsidizing title insurance work.