

R5902. Insurance, ~~[Administration]~~ Title and Escrow Commission.

R590-99. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.

~~[R590-99]~~ R592-14-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to ~~[the general authority vested in the commissioner by Section 31A-2-404(2).201(2)(3) to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Utah Insurance Code, and pursuant to the specific authority of Section 31A-23a-402 allowing the commissioner to prescribe a classification of material inducements constituting unlawful trade practices, and to define unfair or deceptive acts or practices prohibited in the business of insurance.]~~

~~[R590-99]~~ R592-14-2. Purpose and Scope.

~~[Title insurance is designed to provide indemnification against loss, including a loss resulting from a determination of unmarketability of the insured's interest in real property. The burden of proving any loss, together with the measure of damages, is the obligation of the insured. Normally, a claim of unmarketability of title or a claim involving a "defect, lien or encumbrance" not excluded from coverage will arise in connection with a proposed sale or loan requiring a review of the insured property as to current marketability. The insured owner, as a potential seller or borrower, may then be placed in the position of being forced or coerced into dealing only with his prior insurer or agent purely as the result of time constraints in meeting the requirements of his transaction, and as the only practical alternative to processing his claim and proving his damage as an insured under his existing coverage. The commissioner is advised and is aware that, in some instances, this circumstance has resulted from the]~~ (1) The purpose of this rule is to prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

(2) This rule applies to all title insurers and producers.

~~[R590-99]~~ R592-14-3. Definitions.

For the purpose of this rule, the ~~[commissioner]~~ Commission adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party.

~~[R590-99]~~R592-14-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i) (D).

R592-14-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

~~[R590-99-5]~~R592-14-6. Severability.

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

KEY: insurance law

Date of Enactment or Last Substantive Amendment: ~~[1994]~~ 2011

Notice of Continuation: January 27, 2007

**Authorizing, and Implemented or Interpreted Law: 31A-2-~~[201]~~ 404;
~~[31A-23-302]~~**