

31A-23a-503 Controlled business in title insurance.

- (1) As used in this section:
 - (a) "Associate" means any:
 - (i) business organized for profit in which a person who refers title business is a director, officer, partner, or employee;
 - (ii) spouse or relative within the second degree by blood or marriage of a person who refers title business, who is a natural person;
 - (iii) employee of a person who refers title business; or
 - (iv) person with whom a person who refers title business or any associate of that title insurer, individual title insurance producer, or agency title insurance producer has any agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid the provisions of this chapter.
 - (b) "Controlled business" means that portion of the title insurance business of a title insurer, individual title insurance producer, or agency title insurance producer in this state that is referred to it by all those producers of title business who have a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer and by all associates of those producers. Business is referred if there is influence over the selection of the person with whom the business is placed.
 - (c) "A person who refers title business" includes any person engaged in this state in a business of:
 - (i) buying or selling interests in real property;
 - (ii) making loans secured by interests in real property; or
 - (iii) acting as a representative or employee of a person who buys or sells any interest in real property or who lends or borrows money with interest as security, other than acting as a licensed title insurer, individual title insurance producer, or agency title insurance producer doing the business of title insurance.
 - (d) "Financial interest" means any legal or beneficial interest that together with other interests entitles the holder to more than 1% of the net profits or net worth of the business in which the interest is held.
- (2) A title insurer, individual title insurance producer, or agency title insurance producer or person having a financial interest in a title insurer, individual title insurance producer, or agency title insurance producer may not knowingly be a party to or knowingly permit to continue in any arrangement in which the title insurer, individual title insurance producer, or agency title insurance producer, or person knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the expected realization of financial profit or gain derived in whole or in part from controlled business.
- (3) A title insurer may not appoint or knowingly continue its authorization of any individual title insurance producer or agency title insurance producer in which the company knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the person's expected realization of financial profit or gain derived in whole or part from controlled business.
- (4)
 - (a) If for any calendar quarter, the gross operating revenues of a title insurer, individual title insurance producer, or agency title insurance producer derived from all sources of controlled

business in this state amount to more than 1/3 of its gross operating revenues from all other sources of its business of title insurance in this state, it is presumed that the expected realization of financial profit or gain derived in whole or in part from controlled business was a substantial factor in the ownership of financial interest in the title insurer, individual title insurance producer, or agency title insurance producer.

- (b) The title insurer, individual title insurance producer, or agency title insurance producer has the burden of overcoming the presumption described in Subsection (4)(a).
- (c) This Subsection (4) does not authorize any controlled business if a violation of the standards set forth in Subsection (2) or (3) exists.
- (5) A title insurer, individual title insurance producer, or agency title insurance producer may not accept any order for the business of title insurance that it knows or has reason to believe constitutes controlled business, unless it records and maintains in its permanent records on forms prescribed by the commissioner the facts relating to the transactions.
- (6) An applicant for qualification as a title insurer, individual title insurance producer, or agency title insurance producer may not be granted a license if it reasonably appears that the expected realization of financial profit or gain to be derived in whole or in part from controlled business is or will be a substantial factor in the applicant's plan of operation or in the ownership or acquisition of financial interests in the applicant by any person who refers title business.
- (7) Each title insurer, individual title insurance producer, and agency title insurance producer shall maintain permanent records relating to its controlled business on forms prescribed by the commissioner.
- (8)
 - (a) Each title insurer and agency title insurance producer shall file annually with the commissioner, on forms prescribed by the commissioner, reports setting forth:
 - (i) the names and addresses of any persons owning a financial interest in the title insurer or agency title insurance producer as of the last day of the calendar year, who are known or reasonably believed by the title insurer or agency title insurance producer to be a person who refers title business; and
 - (ii) a summary compiled from the title insurer's or agency title insurance producer's records of the controlled business, sufficient to inform the commissioner and the Title and Escrow Commission as to the proportion of the title insurer's or agency title insurance producer's gross operating revenues attributable to controlled business during the preceding calendar year.
 - (b) The reports shall be filed with the reports required under Section 31A-23a-413 and shall contain the certification of an officer of the title insurer or agency title insurance producer that the information contained in them is true to the best of the officer's knowledge, information, and belief. Upon filing, the reports are public records.
 - (c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and Escrow Commission.
- (9) An attorney who is also a licensed individual title insurance producer and who issues as producer a policy of title insurance to a client on behalf of whom the attorney is also acting as an attorney and who, in so doing, acts consistently with the applicable ethical standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt of a commission on a policy of title insurance is not, without more, considered to be engaged in controlled business.

Amended by Chapter 319, 2013 General Session