

Dear Utah Legislators:

The Utah Association of Title Professionals is a non-profit organization whose members consist of licensed Utah title insurance professionals. We are experts in the real estate settlement process and are committed to maintaining the highest professional standards in this industry, including the protection of the impartial role of the settlement agent, and the protection of the public consumer of real estate settlement services in Utah.

Our organization is strongly opposed to Senate Bill 121 (including the substitute/revised bill) and we encourage you to vote no to this bill. The introduction of the Affiliated Business Arrangements (AfBAs) permitted by SB 121 is a threat to consumer welfare and is unacceptable in any form or under any circumstance.

Utah's Controlled Business in Title Insurance Law (Utah's CBTI Law) is a 35-year-old consumer protection law that has been effective in preventing AfBAs from operating in Utah, very much to the benefit of the Utah consumer. Utah's CBTI Law works together with other laws to create protective separations between title insurance agencies, mortgage lenders, builders, and real estate brokerages, for the purpose of avoiding unnecessary conflicts of interest that pose very real threats to consumer welfare.

SB 121 repeals Utah's CBTI Law to allow real estate brokers and builders to own and control the title insurance agencies where they will direct (steer) their customers to close real estate transactions by exploiting and misusing their fiduciary relationships. **AfBAs are anti-competitive alliances that only work if they can successfully exercise control over consumer choice, an unethical strategy exposed by the AfBA's favorite buzzword: CAPTURE-RATE.**

In the mid-1980s Utah's legislature wisely and purposely outlawed AfBAs by enacting Utah's CBTI Law to protect against consumer abuses, **and now SB 121 will dismantle this important consumer protection law.** In other states where AfBAs are allowed, they have proven to be a threat to consumer welfare by eliminating meaningful consumer choice and driving up closing costs. The real estate brokerages and builders who profit from AfBAs do so at the expense of the consumer by getting paid what would otherwise be considered illegal kick-backs or inducements for the referral of title business. SB 121 will legalize such kick-backs, allow for monopoly in the real estate settlement process, and create strong financial incentives for real estate service providers to exploit, manipulate, and abuse their captive customers, often without the customers even realizing this is happening. A careful and critical examination of the true nature and history of AfBAs gives ample evidence that not only do they offer no benefit, they are costly and harmful to consumers of real estate settlement services.

Some of the things you are being told about Utah's CBTI Law by the bill promoters are misleading. The idea that Utah's current law is somehow 'protectionist' and 'anti-competitive' is not true and turns the 'free-market' argument on its head. Under the current law ANYONE can enter the title business in Utah. There are only limitations if a person has conflicts of interest that would prevent them from being fair to consumers. These conflicts of interest are the same ones that justify the separation of licensees in real estate. Simultaneously holding a title/escrow license and a real estate broker/agent license is not allowed, and for good reason. So, how/why does it make sense to allow for common ownership of the two businesses? Utah's CBTI Law is an effective and reasonable consumer protection law. On the other hand, the AfBAs that SB 121 will authorize are notorious for stifling competition and driving up costs to consumers. That is a fact that you cannot afford to ignore.

The title business is not like other businesses. Consumers do not typically shop for a title company. Rather, they almost always rely on their real estate broker to advise them as to what title company to choose. When AfBAs are allowed, realtors have an inherent conflict of interest and will always attempt to steer their clients to their affiliated title company. The customer will not be given a real meaningful choice in the matter. The

end-result is that title/closing fees go up and quality of service goes down. This has been proven to be the case in all states where AfBAs are allowed. For this reason, there are no consumer advocacy groups who are in favor of AfBAs. Just because AfBAs may be allowed in some other states, doesn't mean they are a good thing or that they should be reintroduced into Utah. AfBAs are a perversion in the real estate industry, and they benefit no one other than the owners of AfBAs.

We think it is critical that title agencies remain **UN-Affiliated** and the **Consumer Remain Un-Controlled** in real estate transactions in Utah – to protect consumers and to allow for free market competition. Settlement costs for consumers in Utah are currently competitive and relatively low. If a title agency raises its prices in the current market environment, it will risk losing its customers. This competition acts as an effective consumer price protection mechanism. The way things work now in Utah, Realtors have no conflict of interest concerning the choice of title company, and they will therefore advise their clients to use the title company they think provides the best service at the best price. This is as it should be.

The AfBA market environment operates differently. The stated goal of AfBAs is to CAPTURE its clients at a high rate, and because of the common ownership there is a strong financial incentive to do so. The AfBA is financially motivated to **control its customer's decision-making**, which regularly leads to **dishonest and deceptive practices**. It is typically much easier to effectively steer and capture clients if they are **ignorant, or misinformed**. The real temptation then becomes to **mislead**, or to **withhold or omit information** to which consumers are entitled. This is a clear breach and contradiction of a real estate agent's fiduciary responsibilities, but the financial incentive for such manipulation is high. With a strategy in place to control and steer its customers, the AfBA is also able to charge higher prices with little risk of losing business.

There is simply no good reason to introduce such unnecessary conflicts of interest into the Utah real estate market; not now, not ever.

If you would like to learn more about the problems with SB 121 and AfBAs, we urge you to please visit our website - www.UtahTitlePros.org or visit the Utah Consumer Advocacy Network's website at www.UCanUtah.org

We trust that once you become educated about this issue, you will do the right thing for Utah consumers and vote no to SB 121.

Sincerely

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