
UTAH DEPARTMENT OF INSURANCE

UTAH DEPARTMENT OF FINANCIAL INSTITUTIONS

INTERAGENCY STATEMENT

INTEREST ON BUSINESS DEMAND DEPOSIT ACCOUNTS

May 9, 2001

During the 2001 Utah State Legislative Session, amendments were made to the Insurance Code for the State of Utah. One change now allows earnings on funds held in the escrow trust account of a title insurance agency to be paid out of the escrow account to any person in accordance with the provisions of the escrow agreement. Generally, escrow trust accounts are held in business demand deposits. This change in the Insurance Code has raised questions among both title companies and depository institutions.

S.B. 100 amended ' 31A-23-307 repealing subsection (b) which prohibited a title insurance agency from retaining interest earned in trust account deposits and added language under (2)(iii) which permits such interest to be paid to the agencies.

This language was intended to allow agencies to receive interest on trust account funds. The language was not an instruction to the financial institutions to pay interest, nor was it intended to endorse non-compliant financial arrangements. Title agencies should work closely with financial institutions to effectuate a depository relationship that is in full compliance with federal and state law.

With respect to **depository institutions**, federal regulations expressly prohibit payment of interest on business demand deposit accounts. State member banks and national banks are prohibited by Part 217 of the Federal Reserve Regulations titled; **Prohibition Against The Payment of Interest On Demand Deposits (Regulation Q)**. State non-member banks are prohibited by Part 329 of the Federal Deposit Insurance Corporation's Rules and Regulations titled; **Interest on Deposits**. The Federal Regulations that apply to banks contain the following statement:

No bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit.

Until federal law is changed, these regulations are still in effect. All depository institutions should continue to refrain from payment of interest on business demand deposit accounts. Congress is considering removing the prohibition on payment of interest on business demand deposits. The House of Representatives has recently passed H.R. 974 which allows 24 transfers

into a sweep account and will eliminate the prohibition on paying interest on business demand deposits within 2 years of enactment. The Senate has two similar bills pending. The possibility of a law ending the prohibition on payment of interest on business demand deposit accounts looks favorable in the near future.

Questions have also been raised regarding the earning of funds for independent escrow agents under the Department of Financial Institutions' jurisdiction. Pursuant to Utah Code Ann. ' 7-22-108, escrow agents must deposit escrow funds into separate federally insured depository accounts specifically denominated as trust accounts. The benefit of a trust account is that FDIC insurance coverage of \$100,000 is attached to each individual account holder the escrow agent has placed in the trust account. This arrangement multiplies the FDIC \$100,000 coverage as many times as the escrow agent has individual accounts, thus the escrow agent has a greater amount federally insured than would otherwise be the case under an individual name.

In addition, Utah Code Ann. ' 7-22-108, provides that earnings on funds held in an escrow trust account may be paid to the agent, provided the escrow contract has language that specifically grants the escrow agent those earnings. However, as mentioned above, federal law does not allow depository institutions to pay interest on business demand deposit accounts. As a result, it appears that some depository institutions have given earnings credits to escrow agents who have placed trust accounts with their institution. Depository institutions should carefully review federal law before providing earnings credits to their business customers.

Depository institutions that have further questions, should contact Jerry Jaramillo at the Department of Financial Institutions at 538-8830. Title agencies with questions should contact Pete Stevens of the Insurance Department at 538-3236.