



Insurance Department

State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

NEAL T. GOOCH

Insurance Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: November 14, 2011 **Time:** 9:00 AM

Place: East Bldg, **Copper** Room

MEMBERS

COMMISSION MEMBERS

Chair, Dirk Keyes

Jerry M. Houghton, *Tooele Cnty*

Co Chair, Cortlund G. Ashton, Salt Lake Cnty

Larry Turner Blake, *Washington, Cnty*

Kirk Donald Smith, Weber Cnty

Department Staff

Perri Babalis, *AG Counsel*

Brett Barratt, *Deputy Comm.*

Mark Kleinfeld, *ALJ*

Suzette Green-Wright, *MC Dir.*

Brad Tibbitts, *P&C Dir.*

Tammy Greening, *Examiner*

Jilene Whitby, *PIO Recorder*

AGENDA

General Session: (Open to the Public)

- **Welcome** / Dirk Keyes, Chair
- **Adopt Minutes of Previous Meeting**
- **Executive Session – (If needed)** (Closed to the Public)
- **Reports**
 - Concur with Licensee Report / Tammy
 - Concur with Complaint & Enforcement Reports / Suzette
 - Discussion Re: Whether Commission Can Receive Information Regarding Criminal Investigation of Title Licensees / Perri
 - Request for Attorney Exemption
 - Tyler Hawkes
- **Administrative Proceedings Action**
 - Stipulation & Order: LSI Title Insurance Agency of Utah, Inc. / ALJ
 - Petition for Reconsideration by Mike Jensen / Brett (Attachment #1)
- **Old Business**
 - Discuss Definition of Real Estate Escrow Settlements & Real Estate Closings
 - Proposed New Language for [31A-23a-406](#) / Perri
 - Discussion of Regulation of Title Insurance
 - [Advisory Council on Optimizing and Streamlining State Government](#)
- **New Business**
 - Department to Prepare Bulletin Regarding Intent of [31A-23a-406\(5\)\(c\)](#) / Suzette
 - Approval of Title Insurance Assessment / Tammy
- **Other Business**
- **Adjourn:**
- **Next Meeting:** December 12, 2011, Copper Room

2011 Meetings

Nov. 14 Dec. 12

Title Agency Monthly Report

For the month of October, 2011

License Renewal

Agy_ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
14832	INVESTORS TITLE INSURANCE AGENCY INC	10/5/2005	10/31/2013			TS
162042	SOUTH VALLEY TITLE INSURANCE, INC.	10/13/2009	10/31/2013			TS
162042	SOUTH VALLEY TITLE INSURANCE, INC.	10/13/2009	10/31/2013			TE
6332	RICH LAND TITLE COMPANY	5/16/2002	10/31/2013			TS
6332	RICH LAND TITLE COMPANY	5/16/2002	10/31/2013			TMR
6332	RICH LAND TITLE COMPANY	5/16/2002	10/31/2013			TE
161824	ALTA TITLE INSURANCE AGENCY LLC	10/12/2009	10/31/2013			TE
14832	INVESTORS TITLE INSURANCE AGENCY INC	10/5/2005	10/31/2013			TE
10682	CANYON RIDGE TITLE & ESCROW INSURAN	5/16/2002	10/31/2013			TS
10682	CANYON RIDGE TITLE & ESCROW INSURAN	5/16/2002	10/31/2013			TE
161824	ALTA TITLE INSURANCE AGENCY LLC	10/12/2009	10/31/2013			TS

Late License Renewal

Agy_ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
161698	CITADEL TITLE AND ESCROW LLC	9/10/2009	9/30/2013			TE
14591	SELECT TITLE INSURANCE AGENCY INC	7/14/2005	9/30/2013			TMR
161752	BIG SKY TITLE INSURANCE AGENCY, LLC	9/1/2009	9/30/2013			TS
161752	BIG SKY TITLE INSURANCE AGENCY, LLC	9/1/2009	9/30/2013			TE
14591	SELECT TITLE INSURANCE AGENCY INC	7/14/2005	9/30/2013			TE
161698	CITADEL TITLE AND ESCROW LLC	9/10/2009	9/30/2013			TS
6757	SECURITY TITLE COMPANY OF GARFIELD C	5/16/2002	9/30/2013			TE
6757	SECURITY TITLE COMPANY OF GARFIELD C	5/16/2002	9/30/2013			TS

Title Agency Monthly Report

For the month of October, 2011

Lapse Licenses

Agy_ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
12536	BARTLETT TITLE INSURANCE AGENCY INC	7/2/2003	9/30/2011	10/1/2011		TS
12536	BARTLETT TITLE INSURANCE AGENCY INC	7/2/2003	9/30/2011	10/1/2011		TE
6827	SALT LAKE TITLE & ESCROW COMPANY	5/16/2002	9/30/2011	10/1/2011		TS
6827	SALT LAKE TITLE & ESCROW COMPANY	5/16/2002	9/30/2011	10/1/2011		TE

Reinstated License

Agy_ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
14591	SELECT TITLE INSURANCE AGENCY INC	7/14/2005	9/30/2013	10/30/201	10/5/2011	TMR
161698	CITADEL TITLE AND ESCROW LLC	9/10/2009	9/30/2013	10/30/201	10/21/2011	TS
161698	CITADEL TITLE AND ESCROW LLC	9/10/2009	9/30/2013	10/30/201	10/21/2011	TE
6757	SECURITY TITLE COMPANY OF GARFIELD C	5/16/2002	9/30/2013	10/30/201	10/7/2011	TS
6757	SECURITY TITLE COMPANY OF GARFIELD C	5/16/2002	9/30/2013	10/30/201	10/7/2011	TE
14591	SELECT TITLE INSURANCE AGENCY INC	7/14/2005	9/30/2013	10/30/201	10/5/2011	TE
161752	BIG SKY TITLE INSURANCE AGENCY, LLC	9/1/2009	9/30/2013	10/30/201	10/4/2011	TS
161752	BIG SKY TITLE INSURANCE AGENCY, LLC	9/1/2009	9/30/2013	10/30/201	10/4/2011	TE

Title Individual Monthly Report

For the month of October, 2011

New License

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
1469051	MILES E LIGNELL	10-06-2011	07-31-2014			TS
1471130	LYNN MARIE LONG	10-06-2011	10-31-2013			TMR
25367	RODNEY MICHAEL PIPELLA	10-11-2011	05-31-2014			TE
1469063	BENJAMIN RUESCH	10-06-2011	05-31-2014			TE
1469063	BENJAMIN RUESCH	10-06-2011	05-31-2014			TMR
1469063	BENJAMIN RUESCH	10-06-2011	05-31-2014			TS
1469051	MILES E LIGNELL	10-06-2011	07-31-2014			TE

License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
69790	TAMARA L NORTH	05-16-2002	10-31-2013			TE
86916	AMY L ADAMS	02-20-2003	10-31-2013			TE
140833	MANSA K. ADAMS	02-23-2007	10-31-2013			TE
30924	DANIEL GREAVES ANDERSON	05-16-2002	10-31-2013			TE
30924	DANIEL GREAVES ANDERSON	05-16-2002	10-31-2013			TS
145445	TIFFANY ROSE ASHTON	05-01-2007	10-31-2013			TE
84582	CHAD E DOTY	12-03-2002	10-31-2013			TMR
88897	TYLER B AYRES	04-14-2003	10-31-2013			TS
109108	MICHAEL DAVID BENNION	01-06-2005	10-31-2013			TE

Title Individual Monthly Report

For the month of October, 2011

License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
111771	BRITNEY L BOWN	03-18-2005	10-31-2013			TE
45724	MICHAEL D BRINKERHOFF	05-16-2002	10-31-2013			TE
45724	MICHAEL D BRINKERHOFF	05-16-2002	10-31-2013			TMR
67730	KENNETH W BRUUN	05-16-2002	10-31-2013			TE
67730	KENNETH W BRUUN	05-16-2002	10-31-2013			TMR
90726	ROBYNNE C BURGESS	05-28-2003	10-31-2013			TMR
40723	MICHELE N CHRISTENSEN	05-16-2002	10-31-2013			TMR
1341050	JILL CHRISTENSEN	10-18-2007	10-31-2013			TE
45202	GREGORY CRANDALL	05-16-2002	10-31-2013			TS
84582	CHAD E DOTY	12-03-2002	10-31-2013			TE
30510	STEPHANIE L HUTCHINGS	05-16-2002	10-31-2013			TS
32576	SCOTT K HALVORSEN	05-16-2002	10-31-2013			TE
33609	TODD J FIELDING	05-16-2002	10-31-2013			TE
30763	CRAIG D NEWMAN	05-16-2002	10-31-2013			TS
32576	SCOTT K HALVORSEN	05-16-2002	10-31-2013			TS
34552	ROBERT LYNN HARRINGTON	05-16-2002	10-31-2013			TE
34552	ROBERT LYNN HARRINGTON	05-16-2002	10-31-2013			TS
87821	BRETT G HERBERT	03-17-2003	10-31-2013			TE
109941	ROBERT L HICKMAN	07-18-2005	10-31-2013			TS
140482	DENISE TAMARA HOLGREEN	01-22-2007	10-31-2013			TE

Title Individual Monthly Report

For the month of October, 2011

License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
111337	SHERRY L HOLMES	03-11-2005	10-31-2013			TMR
119884	KIMBERLY J HOLT	10-13-2005	10-31-2013			TE
119884	KIMBERLY J HOLT	10-13-2005	10-31-2013			TS
13973	DAWN MICHELLE HUGGINS	05-14-2002	10-31-2013			TE
87682	CAREY A BAIRD	03-06-2003	10-31-2013			TS
30510	STEPHANIE L HUTCHINGS	05-16-2002	10-31-2013			TE
13973	DAWN MICHELLE HUGGINS	05-14-2002	10-31-2013			TMR
37901	BRENT D KATTER	05-16-2002	10-31-2013			TS
117739	REUEL SPENCER MACDONALD	08-29-2005	10-31-2013			TE
117739	REUEL SPENCER MACDONALD	08-29-2005	10-31-2013			TS
7745	JOHN W MAX	05-16-2002	10-31-2013			TE
7745	JOHN W MAX	05-16-2002	10-31-2013			TS
35842	JON G MCKINNON	05-16-2002	10-31-2013			TE
35842	JON G MCKINNON	05-16-2002	10-31-2013			TS
144598	REBEKAH ANNE MILLER	04-24-2007	10-31-2013			TE
110271	Kimberly J. Muhlestein	03-23-2005	10-31-2013			TE
142835	CHANDLER ZACHARY MURDOCK	05-08-2007	10-31-2013			TE
142835	CHANDLER ZACHARY MURDOCK	05-08-2007	10-31-2013			TS
88897	TYLER B AYRES	04-14-2003	10-31-2013			TE
116793	WENDY S HALES	08-05-2005	10-31-2013			TE

Title Individual Monthly Report

For the month of October, 2011

License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
109365	ALICE A TAIT	01-14-2005	10-31-2013			TS
30132	THOMAS H ROBERTS	02-21-2003	10-31-2013			TE
30132	THOMAS H ROBERTS	02-21-2003	10-31-2013			TMR
69817	Sheri G Roundy	05-16-2002	10-31-2013			TS
114312	Erika Olson Rowell	05-26-2005	10-31-2013			TS
87477	JENNIFER C SHIRA	03-07-2003	10-31-2013			TE
137911	RYAN EUGENE SIMPSON	12-15-2006	10-31-2013			TE
137911	RYAN EUGENE SIMPSON	12-15-2006	10-31-2013			TS
30784	MICHAEL M SMITH	05-16-2002	10-31-2013			TE
30784	MICHAEL M SMITH	05-16-2002	10-31-2013			TS
53885	PAUL R I SUAFILO	05-16-2002	10-31-2013			TMR
140606	CHRIS WYNN SPARKS	01-24-2007	10-31-2013			TMR
32535	ALISHA J THOMAS	05-16-2002	10-31-2013			TE
43278	JAY D THOMPSON	11-22-2002	10-31-2013			TE
95254	JONATHAN TROY VEALEY	10-17-2003	10-31-2013			TS
44134	LORI VEST	05-16-2002	10-31-2013			TE
64059	MARK L VEST	05-16-2002	10-31-2013			TS
94765	CAMILLE WARBY	10-02-2003	10-31-2013			TE
44256	RUSSELL CURT WEBB	05-16-2002	10-31-2013			TE
44256	RUSSELL CURT WEBB	05-16-2002	10-31-2013			TS

Title Individual Monthly Report

For the month of October, 2011

License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
44518	NATHAN R WEBB	05-16-2002	10-31-2013			TE
32507	MICHAEL B WILLMORE	05-16-2002	10-31-2013			TS
35658	JOSLYN S WRAY	12-21-2004	10-31-2013			TE
140606	CHRIS WYNN SPARKS	01-24-2007	10-31-2013			TE
30763	CRAIG D NEWMAN	05-16-2002	10-31-2013			TE

Late License Renewal

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
36304	MARCIA T DAY	05-16-2002	10-31-2013			TS
35498	MITCHELL SCHOPPMANN	05-16-2002	10-31-2013			TS
35498	MITCHELL SCHOPPMANN	05-16-2002	10-31-2013			TE
92266	LEONARD J CARSON	07-15-2003	10-31-2013			TE
92266	LEONARD J CARSON	07-15-2003	10-31-2013			TS
1391261	BLAIN H JOHNSON	06-10-2009	10-31-2013			TE
1391261	BLAIN H JOHNSON	06-10-2009	10-31-2013			TS
42794	LOIS HARTLE	05-16-2002	10-31-2013			TE
36304	MARCIA T DAY	05-16-2002	10-31-2013			TE

Title Individual Monthly Report

For the month of October, 2011

Lapse Licenses

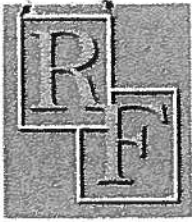
Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
50766	CONNIE S JAMES	05-16-2002	09-30-2011	10/30/2011		TE
1400924	GREGORY LEE WILLIAMS	09-02-2009	09-30-2011	10/30/2011		TMR
94137	Keeley Lynn James	09-15-2003	09-30-2011	10/30/2011		TS
1398315	JEREMY PRESTON JONSSON	08-04-2009	09-30-2011	10/30/2011		TE
1397108	TARA KAY ROPELATO	07-02-2009	09-30-2011	10/30/2011		TE
38519	DAVID GARRETT	05-16-2002	09-30-2011	10/30/2011		TE
89143	CHERYL R FISHER	04-21-2003	09-30-2011	10/30/2011		TE
45712	GLEN W ROBERTS	05-16-2002	09-30-2011	10/30/2011		TE
147734	BRITTANY BYBEE	09-10-2007	09-30-2011	10/30/2011		TMR
50766	CONNIE S JAMES	05-16-2002	09-30-2011	10/30/2011		TS
92917	CARLA HUNT	07-31-2003	09-30-2011	10/30/2011		TE
1388431	CANDICE RIGTRUP	03-09-2009	09-30-2011	10/30/2011		TMR
93732	JAMES A PAULFORD	09-02-2003	09-30-2011	10/30/2011		TS
1382099	HOLLY A NORRIS	01-20-2009	09-30-2011	10/30/2011		TMR
136979	GRACE V CARLSEN	11-20-2006	09-30-2011	10/30/2011		TE
147734	BRITTANY BYBEE	09-10-2007	09-30-2011	10/30/2011		TE
45621	PATRICK J PERRETT	05-16-2002	09-30-2011	10/30/2011		TMR

Title Individual Monthly Report

For the month of October, 2011

Reinstated License

Indv ID	Name	Issue Date	Expiration Date	Lapse Date	Reactivation Date	Qualification
93822	JEFFREY WARNER SEAMAN	08-29-2003	09-30-2013	10/30/2011	10/5/2011	TE
22935	KIMBERLY J DICKINSON	05-16-2002	06-30-2013	7/30/2011	10/24/2011	TE
146822	BERGUNDY BISCHOFF	06-08-2007	09-30-2013	10/30/2011	10/14/2011	TE
112174	SHAUNIE A KEHL	03-31-2005	06-30-2013	7/30/2011	10/20/2011	TMR
22935	KIMBERLY J DICKINSON	05-16-2002	06-30-2013	7/30/2011	10/24/2011	TS



THE RUDD FIRM P.C.

ATTORNEYS AT LAW

357 West 200 South, Ste. 200 | Salt Lake City, UT 84101
O: (801) 676-5337 | F: (801) 532-8400

ALAN D. RUDD*
MEAGAN L. RUDD**
RYAN A. RUDD
JONATHAN R. RUDD
TYLER D. HAWKES
MICHAEL D. BASSETT***

* ALSO ADMITTED IN IL
** ALSO ADMITTED IN CA
*** OF COUNSEL

September 26, 2011

Utah Insurance Department
3110 State Office Bldg.
Salt Lake City, UT 84114
Attn: Randy Overstreet

RECEIVED

OCT 03 2011

UTAH STATE
INSURANCE DEPT.

Dear Mr. Overstreet,

My name is Tyler Hawkes and I have recently received my Title and Escrow Insurance License. I am currently an attorney in good standing with the Utah State Bar, and have been integrally involved with real estate for my entire professional career. I wish to respectfully request that the Insurance Commissioner's Office grant me an exemption to open my own title agency as "an attorney with [significant] real estate experience." *UCA 31A-23-a-204*.

My first job in high school in 2001 was working at Founders Title in Layton, Utah. I first became interested in a career in real estate while working there for about a year before my LDS mission. I assisted in title abstracting, searching for liens, and reviewing legal descriptions. *UAC R592-8-3 (c)(x)*. I also helped prepare the HUD-1 settlement statements, recording documents, and assisted in trust deed foreclosures, from initial notices to trustee's sales. After I returned, I worked at Founders during the summer while attending school in much the same capacity as I had before: assisting in title searches, researching title defects, recording deeds, etc. until the fall of 2005.

Wanting to get a more broad experience, and make a bit more money, I took a job in marketing at First Horizon Home Loans in 2006, after I finished the school year. The lending manager there left to start his own company, and I followed him to Cherry Creek Mortgage later that year. I worked in helping the company make contacts with Realtors and the Spanish-speaking community and developed marketing programs that led to increased success with both of those demographics. The next year, I received my mortgage license and became a full loan officer while finishing up my bachelor's degree. *UAC R592-8-3 (c)(ii)*. I continued to originate loans as time would allow until my license expired at the end of 2010—at which time I was studying for the bar exam.

I started law school in 2007 and after my first year began work with The Rudd Firm PC in Sandy, Utah. My first experience as a clerk was assisting the firm in drafting and negotiating seven commercial leases for a client opening a string of food service businesses. Since then, I have worked as a clerk and attorney on a wide variety of real estate matters including: representing several real estate investment companies in transactions *UAC R592-8-3 (a)(i)*, commercial leasing collections for a large landlord *UAC R592-8-3 (a)(iv)(G)*, tenant defense, constructive eviction, residential lease collections, and foreclosure defense *UAC R592-8-3 (b)(i)(A)*, and an ongoing case involving attachment of a real estate lien. *UAC R592-8-3 (b)(4)(F)*. I feel that the title business is a natural growth for my practice, and an area where I can provide a valuable service and do good work for my clients. I feel my varied experience over the course of many years in real property law practice, as

well as in title, escrow, and mortgage lending qualifies me for the attorney exemption. I appreciate the Commissioner's serious consideration of this request.

Warmest Regards,

A handwritten signature in black ink, appearing to read "Tyler Hawkes", written in a cursive style.

Tyler Hawkes
Attorney at Law

M. GALE LEMMON #4363
Assistant Attorney General
MARK L. SHURTLEFF #4666
Attorney General
Attorneys for Utah Insurance Department
160 East 300 South, Fifth Floor
PO Box 140874
Salt Lake City, UT 84114
Telephone: 801-366-0375

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

LSI TITLE INSURANCE AGENCY OF
UTAH, INC.
c/o Peter Stevens
Jones, Waldo, Holbrook & McDonough
170 South Main, Suite 1500
Salt Lake City, UT 84101
License No. 105183

STIPULATION AND ORDER

Docket No.

Enf. Case No. 3015

STIPULATION

1. Respondent, LSI Title Insurance Agency of Utah, Inc. ("Agency") is an active licensed title agency in the State of Utah, holding License No. 105183.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
 - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
 - b. Respondent admits the Findings of fact and Conclusions made therefrom;

- c. Respondent stipulates to the Summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and
- d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.

3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.

4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

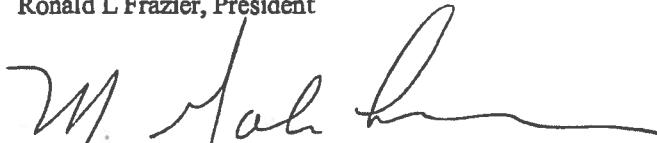
5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to its rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 27th day of October, 2011.



LSI TITLE INSURANCE AGENCY OF UTAH, INC.
Ronald L Frazier, President



UTAH INSURANCE DEPARTMENT
M. Gale Lemmon
Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Office makes the following Findings of Fact:

FINDINGS OF FACT

1. On or about January of 2011, the Department initiated an investigation of the Respondent LSI title Insurance Agency of Utah Inc. based upon a complaint received alleging unlicensed title insurance business.
2. After reviewing the annual and controlled business reports of Respondent, on February 22, 2011, the market conduct examiner sent correspondence to Respondent requesting information regarding trust accounts for the years 2008 and 2009 and an itemization of premiums paid to all insurers for the same period.
3. The investigation determined the following in regard to Respondent's trust accounts at Bank of America, National City Bank, and US Bank:
 - A. Trust account monies had not been deposited into a federally insured depository institution with an office in Utah as required by Utah Code Ann. § 31A-23a-409;
 - B. Trust accounts were not established with a Federal Employer Identification Number and in the name of the Agency licensed in Utah as required by Utah Administrative Code R590-170-4; and
 - C. Non-licensees were signatories on the licensee's trust account when the non-licensee was not an employee with specific responsibility for the trust account as required by Utah Administrative Code R590-170-4.
4. The investigation also determined that "Trustee's Sale Guarantees" and other insurance products were signed by an individual not licensed in the State of Utah and pursuant to Utah Code Ann. § 31A-23a-302 was prohibited from acting on behalf of the Agency.

5. Respondent was cooperative and diligently responded to various requests of the Department as the investigation proceeded. Most, if not all corrective action items are completed.

6. Respondent has agreed to an administrative forfeiture of \$5,000 for the trust account violations and \$1,000 for the unlicensed individual violation.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. In utilizing a trust account that was not in a federally insured depository institution with an office located in the State of Utah, Respondent violated Utah Code Ann. § 31A-32a-409.

2. In allowing persons to be signatories on a trust account that were neither licensed as title escrow agents in Utah, nor an employee with specific responsibility for the trust account, Respondent violated Utah Admin. Code Rule R590-170-4(4).

3. In utilizing trust accounts that were not established using the Federal Employer Identification Number of and in the name of the Utah licensee, Respondent violated Utah Admin. Code Rule R590-170-4.

4. In utilizing unlicensed individuals to perform duties that require a license, Respondent violated Utah Code Ann. § 31A-23a-103(c).

5. Administrative forfeitures in the amount of \$5,000 for trust account violations and \$1,000 for unlicensed individual violation, for a total of \$6,000 is appropriate.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following recommended Order:

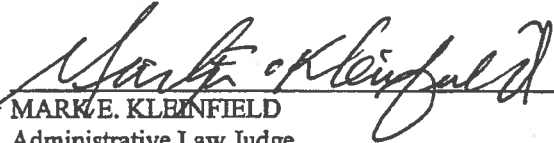
RECOMMENDED ORDER

IT IS RECOMMENDED THAT THE TITLE AND ESCROW COMMISSION IMPOSE THE FOLLOWING PENALTY:

1. Respondent LSI Title Insurance Agency of Utah, Inc. be assessed an administrative forfeiture in the total amount of \$6,000.00 to be paid within 30 days of issuance of the Commission's Order.

DATED this 27th day of October, 2011.

NEAL T. GOOCH
Insurance Commissioner



MARK E. KLEINFELD
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 538-3800

ADOPTION OF RECOMMENDED ORDER AND IMPOSITION OF PENALTY

By a vote of _____ to _____, taken in open meeting on this date, the Title and Escrow Commission hereby adopts the recommended order of the presiding officer and imposes the penalty recommended herein above.

DATED this _____ day of _____, 2011.

DIRK DONALD KEYES, Chairman
Title and Escrow Commission

NOTIFICATION

Respondents are hereby notified that failure to abide by the terms of this Order may subject you to further penalties, including additional forfeitures of up to \$5,000 per violation and the suspension or revocation of your license, and the filing of an action to enforce this Order in the District Court which may impose penalties of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

Attachment #1

July 28, 2011

RECEIVED

AUG 01 2011

UTAH STATE
INSURANCE DEPT

Commissioner Neal T. Gooch
Utah Insurance Department
State Office Building, room 3110
Salt Lake City, Utah 84114-6901

Dear Commissioner,

I am writing to ask you to please review the fine that was levied against me personally in July of 2009. Enclosed you will find a letter directed to Ms. Tammy Greening of your office dated February 2, 2009, wherein I petitioned for relief from any monetary fine based upon my 30 years of experience and good behavior in the Title Insurance Business. I know for a fact that she was upset because of the way that I self reported to the Attorney General's Office, instead of through her. I feel that the fine of \$25,000, was not only inappropriate, but was levied with prejudice. Legacy Land Title Company was a company made up of three employees. We had a Marketing Person, an Escrow Assistant/Policy Typist/ and myself. I did all of the Searches throughout the Intermountain region, and I also did all of the closings unless I was out of the office, then my licensed Escrow Assistant did the closings for me. We were on a shoestring budget, and every penny was important. I would like to think that our Company was an honest and hardworking group that was happy and kept our customers, for the most part, happy as well.

As you can imagine, the news of my license being expired came not only as a surprise, but also at a very inopportune time. Not only was it the end of the year, with Christmas coming and people in and out of town, but I had to study for four tests, (two Title and two Escrow) pass them, and be ready to close our transactions that were going to overwhelm us anyway. However, we made it and thought that we were going to be able to keep going after this major bump in the road.

When I received the ruling from Tammy Greening concerning not only a fine, but a mindnumbing fine, I was stunned. I have sat back the past 40 years and watched other companies make fortunes, by giving away microwaves, sending clients to Africa, trips to Disneyland, other companies using their Escrow Accounts as personal piggybanks, some even using Escrow Account money to buy expensive show horses for their wives. I have also seen companies use their Escrow Accounts to pay payroll. You name it and I have seen it. One of your former Market Conduct Supervisors, Lew Livingston committed a crime against me. Lew was my Father's business partner in the title company that I eventually purchased. One year when things were bad, I got behind on a payment I owed Lew (through buying out his interest). Lew under the guise of the State of Utah Insurance Department, set up an Audit of Western States Title. A short time after that, after finding out what was in our accounts, and on

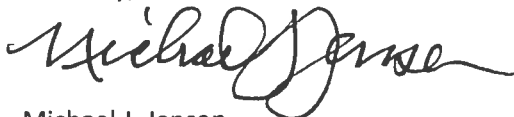
payday, Mr. Livingston went to our bank and put a hold on everyone's paycheck. We had no money to pay payroll and my Father had to take out one of his CD's to pay Lew Livingston off. Never has there been more of an unethical use of State of Utah power that there was that day. Western States Title did not owe that money to Lew, I did, but he used his power and authority through the State of Utah Insurance Department to get what he wanted personally. I think this was not only unethical, but probably unlawful. Mr. Livingston, being an Attorney should have known better.

My point in all of this, is that Ms. Greening was threatening me with millions in fines, and told me that I was lucky that I did not have to pay more in fines than I was. That \$25,000 was a deal and I should be happy with it. Well, I am not happy with it now and I was not happy with it when it was a factor in my company failing. Even though my first payment was \$12,500, it was \$12,500 that I did not have. I had to borrow it from the company, which weakened the company to the point that March of 2009 was our last month in business. I have since had to put Legacy Land Title Company into Chapter 7 Bankruptcy, and shut our doors. We lost our building, and 40 years of hard work, sweat, and tears. This because of a clerical error (see letter to Ms. Greening) that we are willing to take the blame for. This was not a blatant criminal act that we intentionally planned against the State of Utah. This was a simple mixup where any blame should have been shared between me and the State of Utah Insurance Department. I am not a criminal, far from it. You have read my history, I am not a person that breaks the law and continually taunts the State by doing criminal acts as several of my competitors do.

\$25,000 is insanely high for the offence I am charged with. While I think \$12,500 is as well, I have paid that amount to the State and would like to have it be my only payment. My Company is closed, I have been unemployed for 10 months, my house is for sale and I have no money to pay the last \$12,500 that is due August 5, 2011. I appeal to you to give me a break on this and let me get on with my life. The fact that this is how I ended my career is enough of a penalty.

I welcome a meeting with you to discuss this matter before you make a final decision. Please give me a chance to clear this matter up.

Sincerely,

A handwritten signature in black ink that reads "Michael Jensen". The signature is written in a cursive, flowing style.

Michael J. Jensen

(801)424-2337

Cell (801)560-9840

Michaeljensen37@gmail.com

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

IN RE THE MATTER OF:	:	
	:	
MICHAEL J. JENSEN	:	MOTION TO AMEND ORDER
6137 Verness Cove	:	
Salt Lake City, UT 84121	:	
Michaeljensen37@gmail.com	:	
License No. 30892	:	Docket No. 2009-806-PC
	:	(Enf. Case No. 2315)
PETITIONER	:	

This Motion to Amend Order (“Motion”) is filed pursuant to Utah Code Annotated (“UCA”) 63G-4-203 and Administrative Code Rule (“ACR”) R590-160, which is intended to be considered through an informal proceeding. This matter comes before the Utah Title and Escrow Commission based written correspondence filed August 1, 2011 (“Petition”), with the Utah Insurance Department (“Department”), by Petitioner Michael J. Jensen (“Petitioner”).

WHEREAS, Petitioner filed, *pro se*, the Petition which seeks to reduce the amount of the administrative forfeiture agreed to in the Stipulation and Order in this matter, dated July 13, 2009 (“Stipulation and Order”), from twenty five thousand dollars (\$25,000.00) to twelve thousand, five hundred dollars (\$12,500.00);

WHEREAS, Petitioner paid half of the agreed upon administrative forfeiture in the amount of twelve thousand, five hundred dollars (\$12,500.00) on July 27, 2009;

WHEREAS, Petitioner acknowledges he continued to conduct the business of title after his title agent license expired;

WHEREAS, subsequent to the execution of the Stipulation and Order, Petitioner and his business experienced a significant decline and he is, therefore, unable to pay the outstanding twelve thousand, five hundred dollar (\$12,500) administrative forfeiture; and

WHEREAS, Petitioner desires to reinstate or obtain a new license as a resident title agent, as appropriate, but is precluded from doing so based on the remaining administrative forfeiture balance due of twelve thousand, five hundred dollars (\$12,500.00).

NOW, therefore, based on the foregoing, oral testimony offered by Petitioner at the Utah Title and Escrow Commission meeting held November 14, 2011 and the Petition, the Utah Title and Escrow Commission enters the following Recommended Amended Order:

///
///

RECOMMENDED AMENDED ORDER

1. The Stipulation and Order in this matter be amended by reducing the amount of the administrative forfeiture from twenty five thousand dollars (\$25,000) to twelve thousand, five hundred dollars (\$12,500), which administrative forfeiture shall be deemed satisfied in full by Petitioner's prior payment of twelve thousand, five hundred dollars (\$12,500), except as provided in number 2 below.
2. In the event that Petitioner violates, as determined by a final order subject to any and all applicable due process procedures, the Utah Insurance Code or Rules subsequent to the date of this Amended Order, the remaining amount of the outstanding administrative forfeiture, twelve thousand, five hundred dollars (\$12,500.00) shall be immediately due and payable by Petitioner.
3. Petitioner shall be allowed to obtain a license issued pursuant to the Utah Insurance Code, subject to any and all qualification requirements applicable to any person seeking such a license.

By a vote of ___ to ___, taken in open meeting on this date, the Utah Title and Escrow Commission hereby adopts the Recommended Amended Order pursuant to the Motion for to Amend Order and take the action recommended herein above.

DATED this _____ day of _____, 2011.

Dirk Keyes, Chairman
Utah Title and Escrow Commission

NOTIFICATION

Petitioner is hereby notified that failure to abide by the terms of this Amended Order may subject you to further penalties, including but not limited to, reinstatement of the twelve thousand, five hundred outstanding portion of the initial administrative forfeiture as well as additional forfeitures of up to five thousand dollars (\$5,000.00) per violation, and the suspension or revocation of any license issued pursuant to the Utah Insurance Code and the filing of an action to enforce this Amended Order in the District Court, which may impose penalties of up to ten thousand dollars (\$10,000.00) per day for continue violation.

You are further notified that other jurisdictions in which you may be licensed may require you to report this action.

///
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///

CONSURRENCE AND ADOPTION OF RECOMMENDED ORDER

On behalf of the Commissioner of the Utah Insurance Department, I hereby concur with the Recommended Amended Order and the Utah Title and Escrow Commission, as indicated herein, in the Matter of Utah *Insurance Department v. Michael J. Jensen*, Docket Number 2009-086-PC, Enforcement Case Number 2315.

Dated this ____ day of November 2011.

NEAL T. GOOCH
Utah Insurance Commissioner

MARK E. KLEINFELD, Esq.
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on the date indicated below, I mailed by regular mail, postage prepaid, a true and correct copy of the above **AMENDED ORDER** to the following;

And delivered the same to:

Michael J. Jensen
6137 Verness Cove
Salt Lake City, UT 84121
Michaeljensen37@gmail.com

Randy Overstreet
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114

Tammy Greening
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114

DATED this ____ day of September, 2011.

Linda Hardy
Administrative Docket Clerk
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114-6901

31A-23a-406. Title insurance 2481 producer's business.

2482 (1) A title insurance producer may do escrow involving real property transactions if all

2483 of the following exist:

2484 (a) the title insurance producer is licensed with:

2485 (i) the title line of authority; and

2486 (ii) the escrow subline of authority;

2487 (b) the title insurance producer is appointed by a title insurer authorized to do business

2488 in the state;

2489 (c) the title insurance producer issues one or more of the following as part of the 2490 transaction:

2491 (i) an owner's policy of title insurance; or

2492 (ii) a lender's policy of title insurance;

2493 (d) money deposited with the title insurance producer in connection with any escrow:

2494 (i) is deposited:

2495 (A) in a federally insured financial institution; and

2496(B) in a trust account that is separate from all other trust account money that is not

2497 related to real estate transactions;

2498 (ii) is the property of the one or more persons entitled to the money under the

2499 provisions of the escrow; and

2500 (iii) is segregated escrow by escrow in the records of the title insurance producer;

2501 (e) earnings on money held in escrow may be paid out of the escrow account to any

2502 person in accordance with the conditions of the escrow;

2503 (f) the escrow does not require the title insurance producer to hold:

2504 (i) construction money; or

2505 (ii) money held for exchange under Section 1031, Internal Revenue Code; and

2506 (g) the title insurance producer shall maintain a physical office in Utah staffed by a 2507 person with an escrow subline of authority who processes the escrow.

2508 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the 2509 escrow business if:

2510 (a) the escrow involves:

2511 (i) a mobile home;

2512 (ii) a grazing right;

2513 (iii) a water right; or

2514 (iv) other personal property authorized by the commissioner; and

2515 (b) the title insurance producer complies with this section except for Subsection (1)(c).

2516 (3) Money held in escrow:

2517 (a) is not subject to any debts of the title insurance producer;

2518 (b) may only be used to fulfill the terms of the individual escrow under which the 2519 money is accepted; and

2520 (c) may not be used until the conditions of the escrow are met.

2521 (4) Assets or property other than escrow money received by a title insurance producer

2522 in accordance with an escrow shall be maintained in a manner that will:

2523 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;

2524 and

2525 (b) otherwise comply with the general duties and responsibilities of a fiduciary or 2526 bailee.

2527 (5) (a) A check from the trust account described in Subsection (1)(d) may not be 2528 drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account

2529 from which money is to be disbursed contains a sufficient credit balance consisting of collected

2530 and cleared money at the time the check is drawn, executed, or dated, or money is otherwise

2531 disbursed.

2532 (b) As used in this Subsection (5), money is considered to be "collected and cleared,"

2533 and may be disbursed as follows:

2534 (i) cash may be disbursed on the same day the cash is deposited;

2535 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;

2536 [and]

2537 (iii) a check issued by a farm credit service authorized under the Farm Credit Act of

2538 1971, 12 U.S.C. Sec. 2001 et. seq., as amended, may be disbursed on the same day the check is

2539 deposited; and

2540 [(iii)] (iv) the proceeds of one or more of the following financial instruments may be 2541 disbursed on the same day the financial instruments are deposited if received from a single

2542 party to the real estate transaction and if the aggregate of the financial instruments for the real

2543 estate transaction is less than \$10,000:

2544 (A) a cashier's check, certified check, or official check that is drawn on an existing 2545 account at a federally insured financial institution;

2546 ~~(B) a check drawn on the trust account of a principal broker or associate broker~~

2547 licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the title

2548 producer has reasonable and prudent grounds to believe sufficient money will be available

2549 from the trust account on which the check is drawn at the time of disbursement of proceeds

2550 from the title producer's escrow account;

2551 (C) a personal check not to exceed \$500 per closing; or

2552 (D) a check drawn on the escrow account of another title producer, if the title producer

2553 in the escrow transaction has reasonable and prudent grounds to believe that sufficient money

2554 will be available for withdrawal from the account upon which the check is drawn at the time of

2555 disbursement of money from the escrow account of the title producer in the escrow

2556 transaction[; or].

2557 ~~[(E) a check issued by a farm credit service authorized under the Farm Credit Act of~~

~~2558 1971, 12 U.S.C. Sec. 2001 et seq., as amended.]~~

2559 (c) ~~[Money received from a financial instrument described in Subsection (5)(b)(iii)(B)~~

2560 ~~or (C)]~~ A check or deposit not described in Subsection (5)(b) may be disbursed:

2561 (i) within the time limits provided under the Expedited Funds Availability Act, 12

2562 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

2563 (ii) upon notification from the financial institution to which the money has been

2564 deposited that final settlement has occurred on the deposited financial instrument.

Demystifying Title Insurance

A Two-Part Report on Title Insurance

by Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS



Is it any wonder people get confused and do not understand title insurance when terminology like closer, affiliated business arrangement, closing protection letter, RESPA, direct operations, good faith effort, and title plant is used? People, including regulators and insurance professionals, think title insurance includes such things as title search, abstracts, document preparation fees, curing defects fees, and several other costs. Many seem to think that title insurance is a property and casualty product, but it is not. Items related to financial statements are unique for title insurance compared to other lines of business, and the NAIC has developed annual statement reporting requirements separately for title insurance companies.

Consumers have a hard time understanding what title insurance is as they feel they do not have a choice in choosing their insurance company or their agent. Most people think that title insurance is the price they have to pay so the lender can sleep well at night. Also, the premium drives up the costs they need to shell out at closing. It's not only the premium, but many other costs related to getting a clean title that consumers feel is all wrapped up in purchasing this insurance—"what others tell me I must buy." They simply do not see the benefit.

The coverage

State definitions of title insurance are fairly lengthy. Most (but not all) states have adopted the NAIC model law version of title insurance. In its simplest form, title insurance is a contract insuring or indemnifying *someone* who has a lawful interest in real or personal property against loss or damage arising from *problems* existing on or before the effective date of the policy. We'll get into the full definition shortly.

Did you notice how this definition is different than other lines of business definitions? "*Someone*," as referred to above, is typically the owner(s) or mortgage company.

Title insurance generally comes in two flavors. The first is an owner's policy. For a newlywed couple, the owner's policy protects the two partners for any *problems* discovered regarding the title of their property after the policy effective date. It protects them for any costs associated to remedy the *problems* that were discovered in the title. The second item of importance is the protection they purchased covers them from that point forward; there is no expiration date and they do not even have to own the property any longer. A *problem* with the title or previous ownership of the land and home someone purchased might be discovered many years later and it might be the responsibility of those newlyweds to get the title corrected even if they no longer own the property. They should hold on to their policy because it protects them from the date the policy was effective.

The second form of title insurance is referred to as a lender's policy. The lender's policy protects the lender from any *problems* and associated costs to fix the *problems* up to the amount of the outstanding loan on the policy at the time of the loss. The definition above included the words "lawful interest" and that is why the lender is protected only up to the amount of the loan balance. From that short description, it sounds like a lender's policy does provide a benefit and is a good thing for lenders to purchase. The only problem is that lenders do not purchase the policy; they require the owners purchasing a property to get the policy for the lender. In some cases, it's the seller who purchases the lender's policy on behalf of the purchasers.

Many consumers do not understand insurance. They don't like it and they don't like paying for it. When someone is buying a home and s/he is securing a mortgage, s/he's told that s/he must buy a homeowners policy and title insurance with title insurance coming in two flavors: an owner's policy and a lender's policy. The insurance industry gets the unfortunate bad reputation as consumers often say "I had to buy that insurance" even though it was the

lender requiring them to do so. On top of the two policies purchased, there are all these other costs: title search, abstracts, document preparation fees, curing defects fees, and other costs they had to pay for that they think are a part of insurance. For most people, it's the house that interests them—not the insurance and other costs, which they consider to be a nuisance.

The following is the definition of title insurance policy from the NAIC Title Insurers Model Act (Model Act 628):

"Title insurance policy" or "policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

- (1) Defects in or liens or encumbrances on the insured title;
- (2) Unmarketability of the insured title;
- (3) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;
- (4) Lack of legal right of access to the land; or
- (5) Unenforceability of rights in title to the land.

The process of providing title insurance

Following is the process when a title agent or title company receives an order for title insurance. For the most part, I have copied this from the "Title Agent Statistical Data Plan Implementation Guideline" that is

continue to page 14

weaving its way through the implementation process at the NAIC. I like this guideline, as it includes the difference between title insurance and property and casualty insurance. The guideline can be found on the NAIC's website.

In the course of searching for and examining land records, title agencies fulfill their main role in the title insurance process of identifying actual and/or potential clouds or defects on the title that may lead to future losses. Agents may work to correct or eliminate the title defects that can be fixed and inform the insured of which ones cannot be cured by the agent and will be listed as exceptions in the policy. Title agents may also cure defects at the direction of the buyer, the lending institution, or the title insurer. Depending on the state, this function may be performed by an escrow agent, a title agent, or another third party.

Sometimes, an entity will spend numerous hours evaluating and eliminating risk before the premium is even paid. This is one of the fundamental differences between title insurance and casualty insurance. While technology helps to some extent, automated land records do not eliminate the cost of searching for and addressing defects in title. In most jurisdictions, automated land records are no more than automated indices and images of documents. Although these systems can reduce the time and effort necessary to search land records, the actual process is unchanged. Title insurance producers or abstractors still must search all records, find those related to a property, and manually examine each document. While some software systems collect and store information, they can be prohibitively expensive for many agencies.

The title agent often performs the functions of an underwriter, which is another difference between property and casualty insurance and the other lines of business. The following is the definition from the NAIC Title Insurers Model Act:

"Title insurance agent" or "agent" means an authorized person, other than a bona fide employee of the title insurer, who, on behalf of the title insurer, performs the following acts in conjunction with the issuance of a title insurance report or policy:

- (1) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title; and
- (2) Performs one or more of the following functions:
 - (a) Collects or disburses premiums, escrow or security deposits, or other funds;
 - (b) Handles escrows, settlements, or closings;
 - (c) Solicits or negotiates title insurance business; or
 - (d) Records closing documents.

Because the process of issuing a title policy involves underwriting to be sure the land title is clean before a policy is written, the number of resulting claims is therefore lower. Commission structures of title agents are very dissimilar to property and casualty insurance. Due to the underwriting done before a policy is issued, the acquisitions costs are higher as compared to property and casualty and, with the upfront underwriting performed, the loss ratios for title insurance are much lower as compared to property and casualty insurance.

Earlier in my simple definition of title insurance, I used the word *problems* which are covered in a policy. The NAIC definition of title insurance policy also includes some generalities regarding what is covered on a policy. Here are some specific defects found and/or fixed in a search when title insurance is purchased: the land may not have been indexed properly in the land records; missing or unknown heirs to an estate come to light after a property is sold; there could be forged deeds; there may be invalid deeds; and there may be mistakes in recording legal documents.

Title agents can provide abstracts unrelated to providing title insurance. The NAIC definition: "Abstract of title" or "abstract" means a written history, synopsis, or summary of the recorded instruments affecting the title to real property. Title agents may or may not perform closings. A closer is someone who handles the settlement or closing or escrow transactions, which involves the written documents and

money/funds in the process of transferring title. Because this is a separate function, an escrow, settlement, or closing fee will be charged, even if the title agent is involved in this function.

Many consumers do not understand insurance. They don't like it and they don't like paying for it.

Closing protection letters

At the closing, it is incumbent upon the parties that all liens are paid on the property before title is passed to the new owner. One way to ensure this occurs is the use of closing protection letters. Closing protection letters are sometimes used in the process of purchasing real property. Some advocate for their use in all property transactions; it's possible to mitigate title agent defalcations through the use of closing protection letters as the letter includes protection against the fraud or dishonesty of the agent issuing the title underwriter's policy. A closing protection letter provides an assurance that all funds will be correctly handled to clear all the encumbrances (debts owed as all lienholders will be paid what they are owed) on the property and provides an indemnification due to the issuing agent's handling of funds or documents in connection with the closing. Closing protection letters are issued to lenders and owners when required by law or to a lender or owner who requests them. Because a different function is performed and additional documents are prepared, there will more than likely be an additional charge for providing closing protection letters.

RESPA's involvement

When consumers are told by their mortgage company or their real estate broker that "I must buy" title insurance, a product they do not know or understand, what do they do next? Generally, the consumers listen to the person who told them to buy this insurance and use the title agent and/or title company referred to them. Purchasers of real property do have a choice at this

point to shop around for title insurance. However, most consumers, such as the newlyweds mentioned earlier, are focusing on buying the new home and wondering how to get everything in order and purchase new furnishings for their home. Excitement is in the air—and shopping for title insurance is not part of that excitement.

The federal Real Estate Settlement Procedures Act (RESPA) helps consumers become better shoppers for settlement services and is in place to eliminate kickbacks and referral fees. RESPA prohibits a person from giving or accepting anything of value for referrals of settlement service business related to a federally related mortgage loan. It prohibits a person from giving or accepting any part of a charge for services that are not performed. It also prohibits home sellers from requiring home buyers to purchase title insurance from a particular company. Many insurance departments, the NAIC, and other entities have been involved and will continue to be involved in providing additional information to consumers about their choices related to purchasing title insurance and the other related expenses associated with purchasing property.

When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers a Special Information Booklet, which contains consumer information regarding various real estate settlement services, and a Good Faith Estimate (GFE) of settlement costs, which lists the charges the buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the GFE and a Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. If the borrowers do not get these documents at the time of application, the lender must mail them within three business days of receiving the loan application. RESPA has other requirements for disclosures, including some that are disclosed after the settlement occurs.

The HUD-1 Settlement Statement is a standard form that clearly shows all charges

imposed on borrowers and sellers in connection with a settlement. RESPA allows the borrower to request to see the HUD-1 one day before the actual settlement. The settlement agent must then provide the borrower with a completed HUD-1 based on information known to the agent at that time. Separate HUD-1 forms may be prepared for the borrower and the seller.

Other terms

The term “title agents” includes various and different types of people and entities. Some are not agents at all as attorneys provide the functions of a title agent. Following is a listing of the different groups.

- An “affiliated title agency” is a title agency that is owned, either wholly or in part, by a title insurance company/underwriter but does not operate as an underwriter direct agency.
- An “attorney firm/title agency” is a title agency that is owned and operated by an attorney or law firm.
- An “independent title agency” is a title agency that is not part of an ownership arrangement with a real estate settlement producer or with a title insurance company/underwriter.
- A “direct operation” involves the title company also having title agents on staff as employees in procuring title insurance or a title agency that is wholly owned and operated by a title insurance company. The licensing of title agents, attorneys and the like varies by state.
- An “affiliated business arrangement” is an arrangement in which a settlement producer (such as a real estate broker, developer, mortgage loan originator, or bank, or any other individual or entity that is in a position, directly or indirectly, to refer settlement business to a title entity) also maintains a direct or beneficial ownership interest in that title entity.
- A “title plant” means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

The Title Insurance (C) Task Force of the NAIC conducted a survey of each jurisdiction’s laws and regulations regarding the collection of title agent data and other issues related to title insurance. The survey was conducted by the NAIC and began in August 2009. Respondents were the insurance department or other jurisdictional agency responsible for title agents or title insurance as appropriate in each jurisdiction. The survey was concluded and summarized in March 2010. The survey includes information by state related to such items as the different functions allowed or performed by different entities and what entities are licensed or appointed. The results are available at http://www.naic.org/documents/committees_c_title_tf_survey_state_laws.pdf.

Summary of benefits to consumers

Consumer benefits of purchasing title insurance and obtaining a closing protection letter include:

- Providing peace of mind knowing there is clear title and, if the title is not clear, there is insurance to protect the owner for any losses involved;
- Believing all payments were made to prior lienholders;
- Covering the owners for an unlimited amount of time;
- Paying for title insurance once; and
- Knowing that escrow funds were set up properly.

Regulators must be certain that the benefits are provided to consumers.

The next issue of *The Regulator* will include information related to market conduct examinations of title insurers and title insurance agents. ■

Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS, is senior regulatory services advisor with the NAIC. Before joining the NAIC in 2006, Joe spent nine years at Wolters Kluwer Financial Services and more than 20 years of his insurance career with the nation’s largest personal lines stock company. Joe currently serves as an elected board member of the Kansas City Chapter of the CPCU Society and as chair of the Regulatory and Legislative Interest Group Committee of the CPCU Society.