



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

Title & Escrow Commission Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: **October 28, 2021**

Place: **In Person**

Virtual

Taylorsville SOB

Google Meet

4315 S. 2700 W.

Bonneville Room

Taylorsville, UT 84129

Time: **Immediately
Following TEC
Subcommittee**

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Kim Holbrook (*Insurer, Davis County*)

xDarla Milovich (*Agency, Salt Lake County*)

xVice Chair, Chase Phillips (*Agency, Weber County*)

xCal Robinson (*Agency, Iron County*)

xRandy Smart (*Public Member, Salt Lake County*)

xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

Jon Pike, *Insurance Commissioner*

xReed Stringham, *Deputy Comm.*

Tracy Klausmeier, *P&C Dir.*

Randy Overstreet, *Licensing Dir.*

Patrick Lee, *Finance Dir.*

Adam Martin, *MC Examiner*

Michael Covington, *CE Specialist*

xSteve Gooch, *PIO Recorder*

Eddie Vasquez, *AG Counsel*

PUBLIC

Blake Heiner

Jonathan Ivins

Celesta Stephenson

Richard Thurston

Matt Ryden

Matt Sager

Joseph McPhie

Cort Ashton

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair (10:54 AM)
- **Telephone Roll Call**
- **Old Business**
 - Subcommittee amendments to 31A-19a-209 / Cal
 - Chase notes that there's an extra word — "redevelopment" — in Subsection (1)(b)(ii) that needs to be removed.
 - Matt Sager thanks Reed Stringham and the UID on behalf of the subcommittee for the work and insight provided during the subcommittee meetings. Kim appreciates that the UID asked for the industry's input and allowed them to help with the process.
 - Kim notes that in the last TEC meeting, it was suggested that Subsect (3)(b) be stricken. Cort Ashton describes the ULTA's intent in that section and says that "by a title insurer, agency title insurance producer, or individual title insurance producer" could be added after "changed circumstance to clarify it. Reed says Justin Sutherland had suggested striking Subsections (3)(b) and (4) so there would be no exception for changed circumstances. Cort says the ULTA is good with that.
 - Randy notes that striking Subsection (3)(b) requires that (a) be combined into (3).

- Chase asks who is being referred to in Subsection (2)(a). Matt says it was needed because some individual licensees, like attorneys or employees of a title insurer, aren't designated to a title agency. This language clarifies that they don't need to file anything, while a licensee who is individually licensed and operating as an agency would need to.
- Joseph asks if it's intentional that the direct operations of an underwriter don't need to file a schedule of escrow fees in Subsection (1)(a)(i). Kim says she doesn't think that was the intent. Joseph says he wants his underwriter to be on a level playing field with him. Matt says (1) is focused on rates, which is the insurer, while (2) is focused on escrow. No agency is filing title rates.
- Matt suggests amending (1)(a)(i) to strike everything after "rating methods", and to do the same thing in (1)(a)(ii).
- Joseph McPhie notes that there's a gap created from when the law is enacted in May and the first filing of the average charge with the annual report the next April. That gap could enable a free for all where antitrust communications could happen in the industry and could allow for price fixing. Rachael suggests that the first report could be due quickly, like by July 1, then all subsequent reports are due with the annual report. Joseph notes that a similar thing happened in the 1980s in Arizona. He says a possible solution is removing Subsection (3)(a)(ii) now, which would relieve pressure from the industry and UID, then the remaining proposal could kick in later, or through rules. That would make the minimum change for the omnibus bill, and leave the rest up to the industry. Rachael says if some of the market knows the second step is coming, price fixing could still occur.
- Kim asks who would be responsible for making and submitting the actual changes. Rachael says the ULTA legislative committee has the working docs and can make the changes.
- Randy asks why the TEC couldn't pass a rule in March and have it take effect after the statute is enacted. Reed says assuming the TEC agrees with this, people could start price fixing right now. Chase says that's correct, because agencies file a minimum schedule. Reed says he's not concerned about it because of that. Joseph asks if the minimum schedule would go away. Consensus is yes, because they would conflict with the statute.
- Reed suggests having the initial filing would be due July 1, so the average would be in effect that date. Matt notes that this won't be a surprise for companies, so they should be able to get an annual average to file by July 1. Cal clarifies that this would be calendar year. The answer is yes, the report would be July 1 for calendar year 2021.
- Rachael notes that the ULTA asked their membership about the effort involved in generating the average, and it sounds like it will be pretty easy.
- Chase clarifies that the first filing would be due July 1, 2022 for calendar year 2021. Then the filing would be due with the annual report in April for the prior calendar year.
- Chase asks if there would be a report form the UID makes or would it be a line on the annual report? Reed will think about it.
- The changes will be:
 - (1)(a)(i): change "shall" to "may", and strike everything after "rating methods".
 - (1)(a)(ii): strike everything after "rating methods".
 - (1)(b)(ii): strike "redevelopment".
 - (3)(b): strike entirely.
 - (4): strike entirely.
 - Add language about first filing July 1, 2022, and with the annual report thereafter.
- **Motion by Randy to approve the language in principle, with final approval upon review at the next TEC meeting. Seconded by Chase. Motion passes 5-0.**
- Review proposed rule change under Executive Order 2021-12 / Perri
 - R592-14: Unfair or Deceptive Acts or Practices Affecting Title to Real Property

- Perri says the main change is putting the language in Subsection (4) in the proper formatting. The new language has the same meaning as the old language. She worked with Cort Ashton of the ULTA and the UID, and everyone is in agreement.
- Matt has concerns that "unfair and deceptive act" needs to be clear. Although "knowingly" is addressed, there are certain things that happen on a daily basis that may result in violations every day. He's not even sure the rule is necessary. The rule was intended to say that title companies can't not record a document intentionally so nobody else could ever insure the property again. That's not how he reads the new proposal. The new proposal could give litigants ammunition against title companies. He says he's not aware of any title companies doing this, and if the rule is stricken, the UID could still go after anyone doing this as a deceptive act.
- Chase says he thinks this came from a time when title companies had their own title plants. But with online abstracts and recording, title plants have kind of died.
- Matt says he's worried about the simplified language.
- Rachael says she agrees that if something isn't recorded, it's a claim. The issue is if the student has an issue to file a claim on their policy or be told by the company that did the act, "just come to me and we'll insure it," that's what would happen. No consumer wants to file a claim. They don't care who issues the next policy. She agrees with Matt's concern that it's a little outdated, but there needs to be some ability to control the market or title by intentionally not filing.
- Matt says he's good with changing the format, but he suggests keeping the terms as they are.
- Cort describes the changes and notes that he worked with Perri to respect rulemaking's preference and also keep as much as they could. Matt thinks the additions in Subsection (2)(b) work for just the record, but a title company would be in violation if there were documents that were not of record. The additions in (2)(b) define a record according to generally accepted insurance standards, not the process.
- Blake Heiner says this has happened, and if it doesn't anymore it's because of the rule. He believes the rule is necessary, and the changes Perri made do track with the existing rule and do not create any more liability or exposure than was there before. If we want to make changes to clarify the rule, that's great, but for the purposes of what Perri was trying to do, this isn't significantly different from what was already there.
- Joseph says there are problems. Since title insurance is an indemnity and not an abstract of title, it's looking for litigation to determine if you have an uninsurable or unmarketable title before you get to use the rule. Matt agrees. This would allow someone with a claim to also bring a claim that this was an unfair or deceptive act.
- Blake wants to know how Perri's language is materially different from the language that is there now. Matt doesn't disagree, but without the rule, the UID still has the ability to investigate whether a company is intentionally failing to record documents to continue to insure a particular piece of property. This rule doesn't provide necessary guidance to the UID, but it does give fodder to someone trying to determine whether there's extra liability beyond the policy. He says keep the language as close as possible to the old language, or repeal it. Blake says the language doesn't change anything material.
- Matt suggests that (2) becomes "knowingly issuing or agreeing to issue title insurance, or affirming the current marketability of title to real property contrary to generally accepted title insurance standards, when". That would allow a title insurer to insure based on underwriting standards because title isn't always clear. The way the rule is currently written, that would be a violation.
- Reed suggests eliminating "knowingly" in (2) and adding the "contrary to generally accepted title insurance standards" in its place.

- Perri will work on the rule again and will bring it back to the Nov. 8 meeting. Matt will be involved in the process.
- **Motion by Chase to have Perri make more adjustments to the rule and bring it back November 8. Seconded by Kim. Motion passes 5-0.**

Executive Session (None)

- **Adjourn** (12:09 AM)
 - **Motion by Chase to adjourn. Seconded by Cal. Motion passes 5-0.**
- **Next Meeting: November 8, 2021** — Bonneville Room, Taylorsville State Office Building

2021 Meeting Schedule

Jan 11	Feb 8	Mar 8	Apr 19	May 10	Jun 14
Jul 12	Aug 9	Sept 13	Oct 18	Nov 8	Dec 20

* bold dates denote quarterly required in-person meetings