



Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Date: November 18, 2019

Time: 9AM

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Nancy Frandsen (*Insurer, Salt Lake County*) James Swan (*Insurer, Salt Lake County*)
xVice Chair, Alison McCoy (*Agency, Tooele County*) xChase Phillips (*Agency, Weber County*)
xRandy Smart (*Public Member, Salt Lake County*) xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* xTracy Klausmeier, *P&C Dir.*
xRandy Overstreet, *Licensing Dir.* xMichael Covington, *CE Specialist* Adam Martin, *MC Examiner*
xSteve Gooch, *PIO Recorder* xAnna Weidauer, *Notary*

PUBLIC

Matt Olsen Steve Strong Frank Medina
Scott Cope Blake Heiner Kim Connelly Cruz
Carol Yamamoto Jon Bartlett [PHONE] Randy Cowdin [PHONE]
Matt Ryden [PHONE]

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / Nancy Frandsen, Chair (9:02 AM)
- **Telephone Roll Call**
- **Administer Oath of Office to New Commission Member** / Anna Weidauer
 - Darla Milovich
- **Recognize James Swan for Service to the Title & Escrow Commission** / Commissioner Kiser
 - Commissioner Kiser thanks James in absentia for his service on the TEC as chair and a commission member.
 - He also takes the opportunity to thank the members of the title and escrow industry who come to meetings and get involved.
 - He notes that the Legislature asked last year for boards and commissions that could be retired. The UID reported that it didn't have any that should be retired. However, on the latest list of committees to be eliminated, the TEC was included. The UID sent a communication to the Governor's office to say it should not be eliminated, and it's functioning well. If it were to be eliminated, the industry would strongly oppose that action.
- **Adopt Minutes of Previous Meeting**
 - **Motion by Randy to adopt minutes. Seconded by Alison. Motion passes 4-0. Darla abstains.**
- **Concurrence Reports**
 - Licenses
 - Nancy notes that Clay Holbrook has been licensed for 50 years.
 - **Motion by Chase to concur. Seconded by Darla. Motion passes 5-0.**

- Penalties
 - Lendmark Closing Services of Utah LLC (Docket #2019-4177)
 - Randy notes that when things are found during an audit, the UID has been encouraging companies to fix problems. He's wondering if there shouldn't be a difference in the penalties based on the infraction. It seems like you could still have all kinds of violations versus one violation and the penalty would still be the same. Reed says the \$5,000 is a cap; if it hadn't been for the cap, these companies would be way over \$5,000. But if it's under \$5,000, that's what the amount would be. Randy asks if we've ever had any that were under \$5,000. Reed says yes. There was one that he can recall. Tracy confirms.
 - Nancy says we're not talking about the annual report — it's the escrow charges. She asks how a company could get their license without filing escrow charges. Tracy says the filing requirement isn't something that the Licensing division checks. You can't file rates without a license; you can only file after you get the license. Nancy asks if companies knew they were supposed to file them when it comes up in an audit. Tracy says it depends: One that she talked to thought they had done it, and were shocked when they found out it wasn't done. Nancy asks if it's something the UID would follow up on, like during the annual report. Tracy says that wasn't something that was previously done on the annual report, but it is now.
 - Scott Cope asks if the fine would never be more than \$5,000 even if they're a repeat offender. Like if a large company does 10,000 things and the penalty is 14 cents a transaction, there's no reason to dissuade them. Tracy says it's only when it's in an audit situation. If someone sent a complaint that the UID investigated, that's not an audit. This is purely on the audit.
 - **Motion by Randy to concur. Seconded by Darla. Motion passes 5-0.**
 - Synergy Title Insurance Agency LLC (Docket #2019-4181)
 - Nancy notes that this one had multiple issues, not just escrow filings, and it's still \$5,000. Tracy says it would have been over that, had it not been an audit.
 - **Motion by Darla to concur. Seconded by Chase. Motion passes 5-0.**
- Quarterly continuing education report
 - Nancy asks if any classes were submitted during this quarter that weren't approved. Michael says no. It was a straightforward month.
 - Nancy asks if there's anything that needs to be said about the coming quarter. Michael says no, everything will be the same.
 - **Motion by Chase to concur. Seconded by Darla. Motion passes 5-0.**
- **Board Duties & Responsibilities / Perri**
 - Perri gives the annual training on the Open and Public Meetings Act (OPMA).
 - The goal of the OPMA is for the state government to conduct its business in an open and public forum.
 - The law requires that notice of meetings be sent out at least 24 hours prior to the meeting and must contain detailed information about what will be discussed. A public body may discuss items that are not on the agenda, but cannot take action on items not on the agenda.
 - Minutes and recordings of public meetings are required and must be posted publicly within 30 days of the meeting.
 - Closed meetings can only be held to discuss a person's character, competence, or health. Meetings cannot be closed to discuss a company. The TEC would have to come out of the closed meeting to vote and take action. To go into a closed meeting, someone has to state with specificity the reason to go into a closed meeting and a 2/3 majority would have to approve it.
 - Emergency meetings are allowed, which does not require the 24 hour notice of agenda.
 - Electronic meetings are allowed, and must comply with the 24 hour notice requirement.
 - If the OPMA is violated, specifically the closed meeting portion, it's a class-B misdemeanor.
 - The meeting defines a meeting as a convening of a public body with a quorum present to discuss, receive public comment, or act upon a matter. A meeting is not a chance or social gathering.

- **Update on 2019 Goals**
 - ULTA report / Nancy
 - Nancy brought up R592-15 with the ULTA, and will discuss their reaction later in the agenda.
 - They're working on webinar CE trainings, and planning their January convention.
 - REC report / Nancy
 - Their November meeting is on Wednesday.
- **New Business**
 - 2020 goals discussion / Nancy
 - The 2019 goals are:
 1. Continue making sure testing is relevant
 2. Continue working with the Real Estate Commission
 3. Continue working with the ULTA as a liaison
 4. Increase awareness of wire fraud's effect on consumers and agencies
 - The TEC determines that these goals are all still relevant and should be continued into 2020.
 - Alison hopes that one day wire fraud will be resolved, but it's still happening. Having it on the agenda each month keeps it at the forefront of everyone's mind.
 - Discussion on "thank you" rates / Nancy
 - Nancy says Stewart Title has heard from several sources that there are some rates called "thank you" rates. She's interested in finding out what other TEC members and the UID think about them. Thank you rates are those where the amount of time spent to search and examine doesn't change, but it's a reduced rate based on other factors. An example is a military rate. She says years ago there used to be a religious rate for religious organizations. Nancy says Stewart feels like if someone wants to give a thank you rate, they have a filed minimum escrow rate they can reduce their escrow rate down to, but these would be filed rates.
 - Carol Yamamoto says another example she's seen is a senior citizens rate.
 - Tracy says because this is a filed rate, they would have to file and justify why they're giving this rate to a different class. A religious rate would be highly discriminatory and would not be allowed. Offering a military discount or senior citizen discount in traditional P&C are both allowed, but they have to be justified. The title insurer would have to prove why people in this class deserve this discount.
 - Nancy says she feels like there's a difference between title rates and P&C rates, because title is preventive. The search and examination comes before the policy is issued. She wonders what the insurer would have used to justify a rate reduction. Tracy says it would be up to the insurer to submit it to the UID. She says it's required under 19a, and they have to give expense and loss numbers to support it.
 - Chase says he's never thought of it as a thank you rate, but it makes sense. When licensees learn about it in a competitive market, what action should they take to have the UID look into it to review if it's a legitimate filed rate or if it's in violation. Tracy says rates are available on line, so licensees can look for themselves. Then they can notify the UID about it for investigation. Chase says he can think of one organization that has a lower rate for when any religious organization buys property, and he thinks it has been filed. Tracy says she'd be happy to look at it, but hopefully one of the analysts caught it. She notes that rates can't be based on a list of discriminatory items that are in statute, and religion is one of them.
 - Carol says she's not hearing these rates being presented as "military" or "senior" rates, but rather as "a good deal." She gets calls every day from people price checking and telling her that so-and-so will give them a good deal, not that they're getting a rate because of military or senior status. Nancy agrees. They hear "good deal" and ask them to check into it, and it turns out to be one of these rates. She says rates should be based on search and examine. A millennial could claim discrimination because it costs the title company the same amount to search and examine for a senior citizen, but they get a discount. Tracy says they can make the same arguments on an auto policy, but that's justifiable based on expenses and losses.

- Reed says it seems that age has an effect on auto rates, but would not affect title. Darla says the record is what it is, when the title examination is done. How long they've owned the property or how old they are would have zero bearing on the amount of risk the company is assuming.
 - Frank Medina says he ran across a transaction several months ago where they lost the order to another title company because the underwriter had a reissue bulk rate based on client volume. He said he'd never heard of that as an underwriter, but apparently they're approved in Utah. How would that be justified? Nancy says underwriters do have a bulk rate or national rate. They're not supposed to be used with brick and mortar offices. In states that have brick and mortar, those agents should not use those rates. Stewart had to tell an agent that while it's in their rate manual, they can't use it because it's for national companies. They also took it out of their rate manual because there were too many agents who would see it in their manual and would give that rate without calling on it.
- **Old Business**
 - R592-15 and submission of escrow rates / Tracy
 - Nancy brought this up with the ULTA, which was extremely hesitant to look at it because of what happened in the past with trying to change escrow rates, but there was some discussion about how the UID's workload in this area may have increased because of SB121. Tracy says it's not so much an increased workload, it's just a manual process that is a lot of work.
 - Tracy says she had also asked how often the minimum filed rate is charged, or if it's just a basement rate that isn't ever charged. She says her team gets calls from consumers about why they're not being charged the filed rate, and they refer the consumers back to the company. She notes that the rate filing process is manual, and is the only rate the UID charges a filing fee for. It's a babysitting job to make sure people file their rates, then pay the fee, then Tracy's team does their part, then Steve updates the website whenever there's a change.
 - Darla says there are many times you'd use the minimum. For instance, if a buyer is having a financial hardship in coming up with the money they need to purchase a property, a real estate agent could kick in a portion of the payment, or a title agency could revert to the minimum rate to help a buyer get into a home.
 - Chase says it's rare, and "basement rate" is a fairly good descriptor. Everyone in the room would have different scenarios or opinions about when and how they would go to the basement rate. In certain circumstances, there are times you wouldn't want to charge any rate at all. If there were no minimum rates filed, there could be people in Utah not charging any escrow fees.
 - Tracy says the purpose of this change would be to set the minimum across the board, not letting people charge no fee. It would set the minimum that nobody could go under.
 - Scott says he doesn't think anyone in the industry has a problem with it, but it becomes political. If the State wants to do it, they'll have to draw a line in the sand and just do it. The people who will be upset about it are the customers, and that becomes a nightmare. After SB121, there could be a bigger rift in the industry and builders — especially those that now own title agencies — will be vocal about it. He doesn't see how anyone would want to take it on politically.
 - Alison says the industry has already gone down this road and it didn't go well for anyone. It included everything from accusations of price fixing to threats that the minimum rates would have to be used. She doesn't have an appetite to go down that road again.
 - Blake Heiner says there's a requirement in the statute that escrow rates can't be set below the cost of doing business. He doesn't know how the UID could make that determination. Reed says they'd make it with input from the industry. That's why it was presented to the TEC. The UID checked the rates on file, and most of them are pretty close to being the same. They assumed there could be a meeting of the minds with the industry and dispense with the notion that everyone has to file their own escrow rates. Scott says the UID may get input, but they won't see anyone wanting to be the whipping boy for the industry. It'll have to be the state saying this is what we're going to do because it's best for us and the consumer. He doesn't see anyone in the industry wanting to be the target.

- Reed says he doesn't understand. Nancy says it's because the industry went through this before and it's still very clear in peoples' minds. When she took it to the ULTA and asked them if they wanted to poll their members, there were some people who immediately felt this might be an opportunity to raise it. The industry doesn't want that political battle right now, especially with what they went through earlier this year with SB121. She says Glen Roberts said to be careful because if the TEC starts something, even though everyone understands what Tracy is saying, would it be perceived by the members of the Legislature who were proponents of SB121 and those who opened title companies that they're trying to do something detrimental to the companies coming in. Nancy says we all know it won't affect them, but a lot of what we do is perception as well.
- Reed clarifies that there's no rational reason to oppose having one set minimum rate, but there will be backlash because people will get spooked and will think someone is trying to pull a fast one. Nancy says yes.
- Chase says if the state were to set the minimum rate, if the public calls the UID and asks why an agency isn't charging the rate that the UID set, what would the UID say. Tracy says they would tell them agencies don't have to charge the minimum rate; they just can't go below it. Reed also says they'd say it would prevent a race to the bottom.
- Chase says people would see it both ways: Some people would use it to raise rates, and others who would do it for free if they had the opportunity. He says the minimum rate makes a whole lot of sense, but it would have to be done like Scott suggested. If it's going to happen, the State will have to take it on and say it's what's going to happen. It's a topic that has the potential to fracture the industry again.
- Nancy notes the UID tried this a few years ago. Tracy says she wrote the rule. She thought it was a good idea to bring it up, because it's a burden and is punitive for a title agency to violate the law.
- Darla asks if there's a way to automate the filing process. Tracy says yes, but agencies would have to pay a fee to do it. It's not a hard system to use, but a title agency would only use it once or twice, and that seems unfair to the industry.
- Nancy asks if there's any other way to fix the process to make it easier. Tracy says they could take payment electronically, but it's still the same basic process. The UID has educated the industry as best it can to understand the process. If the question is whether the UID can handhold a new licensee to get it done, ultimately this process is clearly what the industry wants, so the licensee needs to do it.
- Nancy suggests that all underwriters add "Have you filed escrow charges?" to their onboarding checklists.
- **Other Business**
 - Five Year Review of R592-16 / Steve
 - Nancy says she doesn't think there's any reason to change the rule. Chase agrees.
 - **Motion by Alison to continue the rule. Seconded by Chase. Motion passes 5-0.**
- **Hot Topics**

Executive Session (None)

- **Adjourn** (9:57 AM)
- **Next Meeting: December 16, 2019** — Copper Room

2019 Meeting Schedule in Copper Room

Jan 14	Feb 11	Mar 11	Apr 15	May 28	Jun 10 — Canceled
Jul 15	Aug 12	Sept 16	Oct 21	Nov 18	Dec 16

2020 Meeting Schedule in Copper Room

Jan 13	Feb 10	Mar 9	Apr 13	May 11	Jun 8
Jul 20	Aug 17	Sept 28	Oct 19	Nov 9	Dec 14

* bold dates denote quarterly required in-person meetings