



Insurance Department

TANJI J. NORTHRUP
Interim Insurance Commissioner

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Title & Escrow Commission Meeting

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

Date: November 9, 2020

Time: 9AM

**Place: TELECONFERENCE ONLY
by telephone: **1-877-820-7831**
passcode: **827555#****

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Chase Phillips (<i>Agency, Weber County</i>)	Darla Milovich (<i>Agency, Salt Lake County</i>)
xVice Chair, Nancy Frandsen (<i>Insurer, Salt Lake County</i>)	xAlison McCoy (<i>Agency, Tooele County</i>)
xRandy Smart (<i>Public Member, Salt Lake County</i>)	xPerri Babalis, <i>AG Counsel - TEC</i>

DEPARTMENT STAFF

xTanji Northrup, <i>Interim Commissioner</i>	xReed Stringham, <i>Deputy Comm.</i>	xTracy Klausmeier, <i>P&C Dir.</i>
xRandy Overstreet, <i>Licensing Dir.</i>	xDanny Schoenfeld, <i>Finance Dir.</i>	xAdam Martin, <i>MC Examiner</i>
xMichael Covington, <i>CE Specialist</i>	xSteve Gooch, <i>PIO Recorder</i>	xEddie Vasquez, <i>AG Counsel</i>

PUBLIC

Carol Yamamoto	Frank Medina	Nathan Sprague
Joseph McPhie	Bob Rice	

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome / Chase Phillips, Chair (9:01 AM)**
- **Reading of Anchor Location Determination**
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Alison to adopt minutes. Seconded by Nancy. Motion passes 4-0.**
- **Concurrence Reports**
 - Licenses
 - The UID included reports for August, September, and October because there was a problem with the reports last month.
 - Alison notes that Dwayne Phillips and Paul Newton have more than 40 years in the industry. She says she likes to acknowledge people who have stayed in the industry for that long. Nancy agrees and says they are two good men who retired in the last year.
 - **Motion by Nancy to concur. Seconded by Randy. Motion passes 4-0.**
 - Continuing education
 - Michael says courses are continuing despite COVID-19. Webinars are taking off like crazy and it's good to see all the courses coming through.
 - Chase says he's excited to see how many webinars are created, especially the number about fraud. He's appreciative of the industry being proactive in educating the public. He appreciates the ALTA's efforts in educating the industry too.
 - **Motion by Alison to concur. Seconded by Nancy. Motion passes 4-0.**

- **Board Duties & Responsibilities** / Perri
- **Update on 2020 Goals**
 - ULTA report / Nancy
 - Nancy didn't attend the last ULTA meeting, but she did provide them a short synopsis of the last TEC meeting. She also passed along the names of the 4 ABA companies that she'd received from Director Johnny Stewart, and notice of Commissioner Kiser's retirement.
 - Chase asks if the names of the ABA companies can be presented in the public packet. Steve will add it to the packet. Chase thinks it's important for ABAs to be known to the public. Nancy sends her statement to the ULTA for Steve to add to the packet.
 1. *Note: Nancy's statement did not include the names of the ABAs. However, the names are included in the September 28, 2020 meeting minutes in the Update on 2020 Goals.*
 - REC report / Darla
 - No report.
- **New Business**
 - Gathering and publishing ABA information / Reed
 - Reed says the UID has received a lot of requests to identify ABAs ever since ABAs were put into place. The UID has looked at the law and has decided that it won't be collecting the info because the UID doesn't have the legal authority to do it. The ABA statutes make it clear that they are enforced by the DRE. The legislature kept the UID completely out of it. The situation is that the UID has no legal authority to gather info about ABAs, no regulatory reason to collect it because the UID doesn't regulate ABAs, and it would be contrary to legislative intent for the UID to step into that arena. He understands that it's important for the industry to have the information, but the UID doesn't have the authority to get it. It's the Division of Real Estate.
 - Chase says he appreciates the UID reviewing its authority and trying to help resolve the issue. He knows it was a hot-button issue when the laws changed, and perhaps it will need to be the ULTA lobbying the DRE to bring that public information open and transparent. Reed agrees.
 - Nancy says she remembers someone suggesting legislative changes at the last meeting, but she agrees that it would need to be the ULTA or a lobbyist putting forward a tweak to say who is gathering information and disseminating it. She'll bring it up with the ULTA at the next meeting.
 - Chase asks if it would take a legislative change to give the authority to collect and maintain ABA information for the public. Would a legislative change need to be narrow regarding reporting, or would the UID need to take over the entire authority of reporting? Reed says he doesn't know if it would be wise policy to have two agencies regulating a specific part of the industry, but it would be a fairly narrow fix. It could just be a line that says the UID has authority to identify ABAs and publish a list.
 - Nancy notes there have been issues with ABAs that are under the umbrella of another title company and have been sharing space with their parent company. The UID has investigated and told them they can't share space with a parent title company. She says in those instances, the UID is getting involved with the ABAs; what areas are the UID getting involved in and which ones are they not? Reed says, off the cuff, ABAs wear two hats: first as a title licensee, and second as an ABA. To the extent they're functioning as a title licensee, they're subject to title rules. But the operations that involve ABA functions, those are subject to the DRE. There are two sets of regulations that govern an ABA: there's all the title stuff that applies to all title licensees, and the ABA-specific functions that are regulated by the DRE. Nancy says she knows that the UID will let ABAs know not to share space with a parent title company. Reed says that's correct, because that rule applies to every title agency.
 - **Chase removes this item from future agendas.**
 - Differences in deposit requirements / Reed

- 1. The first issue deals with what needs to be deposited: under 406 it's any money in connection with escrow, but under 409 it's any money the licensee gets to forward to an insurer or an insured.
 - 2. The second issue deals with where the money is deposited: under 406 it's a financial institution, but under 409 it's a depository institution that has an office in Utah. The UID has taken the position that if a title licensee is depositing money in a federal institution, that institution must have an office in the state.
 - 3. The third issue deals with account type: 406 and 409 say it must be federally insured and a trust account.
 - 4. The fourth issue deals with alternatives: under 406 there are no alternatives, but under 409 the commissioner can approve an account that provides safety comparable to a federally insured trust account, but there's no office requirement. In theory, if someone wanted to comply with 409 and not deposit with an institution with an office in the state, they would just need to ask the commissioner to approve depositing in a federally insured trust account. It's a giant loophole to get around the office requirement.
- Reed says the UID is looking to make the two statutes consistent, so it wants to add an office requirement in the title licensee statute (406). Perri thinks it would be better to change the term to "a depository institution" because a "financial institution" could be anything regulated by the Department of Financial Institutions, like a title lender or a money transmitter. A depository institution is closer to the intent of the statute.
- Reed thinks it would also be wise to eliminate the alternative under 409 to get rid of the loophole.
- Alison asks if the most important reason for the change is to make sure licensees have a bank account in Utah. Reed says yes, that's the bottom line.
- Nancy asks if the UID knows when the "some other account approved by the commissioner" part was added to the statute, or if it's always been there. Reed says he doesn't know, but to his knowledge the UID has never used it before. Nancy says she doesn't see any reason to not remove it, and it's always good to get rid of loopholes.
- Chase says it's hard to know about past intent, but changing the rules would bring them in line with the current intent to keep the money in Utah and clear-cut under Utah laws and rules. He doesn't have any concerns other than knowing if there's a specific reason the current language reads as it does. He appreciates Reed looking for loopholes.
- Randy O. says he doesn't know when it was put in place, but he knows it was at least 15 years ago.
- Randy S. notes that 409 applies to any licensee, not just title agents. Is it possible that because it involves other licensees, there was a reason for the loophole to be put in for licensees with other types of insurance. Reed says that's possible, and to ease concerns, maybe instead of eliminating the loophole we could require a depository institution with an office in the state, or to provide safety equivalent to a federally insured trust account and it has to be an account with an institution that has an office in the state. Then the requirement for the office in the state is in the exception, because it's not there right now. Chase says that would bring in the same wording to create uniformity between both sections. Reed says that's correct, and it would apply in all cases.
- Chase says his current understanding is that the only nonresident licenses that are issued are for title examiners. Are there any nonresident agency licenses or escrow licenses that have been issued? Randy O. says there aren't many, but occasionally there are nonresident agent licenses. Even if there aren't any at the moment, there could be in the future.
- Carol Yamamoto says she had a closing the other day and the title company was in Utah but the money went out of the state – is that OK as long as it's a federal banking institution. Reed

says no, unless the institution has an office in Utah. Carol says they do, but when the money was wired to them, it went outside Utah. Chase says there are some banks that have centralized funding offices, but use a Utah bank or branch funded with the assistance of a home office. He asks if the wiring instructions listed a Utah bank, or was the address in the same state she was sending the money to. Carol recalls it being the latter.

- Chase says Reed makes a great point that there are deposits that absolutely should stay and others that should go, and this makes it clear. This should close the loophole.
 - Randy S. says his only concern is that 409 involves all licensees, not just a specific group. He doesn't know enough about the other licensees to know if they would need at times to get approval from the commissioner to have another type of federally insured account. Reed says the direction the UID will go is to keep that exception in place, but simply say the exception must involve an office in Utah.
- **Old Business**
 - **Other Business**
 - **Hot Topics**

Executive Session (None)

- **Adjourn** (9:53 AM)
 - **Motion by Randy to adjourn. Seconded by Alison. Motion passes 4-0.**
- **Next Meeting: December 14, 2020** — UID Alta 3110E

2020 Meeting Schedule in Copper Room

Jan 13 Canceled	Feb 10	Mar 9 Canceled	Apr 13 Canceled	May 11	Jun 8 Canceled
Jul 20	Aug 17	Sept 28	Oct 19 Canceled	Nov 9	Dec 14 <i>(UID Alta 3110E)</i>

* bold dates denote quarterly required in-person meetings

2021 Meeting Schedule in Copper Room

Jan 11 <i>(UID Alta 3110E)</i>	Feb 8 <i>(Beehive Room)</i>	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