



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: February 11, 2019

Time: 9AM

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

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

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* Tracy Klausmeier, *P&C Dir.*
xRandy Overstreet, *Licensing Dir.* Michael Covington, *CE Specialist* xSteve Gooch, *PIO Recorder*

PUBLIC

Matt Olsen Blake Heiner Matt Ryden
Frank Medina Jim Johnson

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (9:00 AM)
- **Telephone Roll Call**
 - No telephone this month
- **Adopt Minutes of Previous Meeting**
 - **Motion by Randy to adopt minutes. Seconded by Nancy. Motion passes 4-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by Nancy to concur. Seconded by David. Motion passes 4-0.**
- **Board Duties & Responsibilities** / Perri
- **Update on 2019 Goals** / James
 - ULTA report / James
 - James says the ULTA has been busy with the legislative session in full swing. The Executive Board has had multiple meetings on Capitol Hill with the UID, senators, and negotiations on SB 121.
 - The ULTA Convention in St. George took place in January. One of the keynotes was a fantastic presentation on wire fraud by Joseph McPhie. Joseph shared some good accounts of wire fraud and title insurance. It was a good, eye-opening learning experience for everyone present. There were other presentations on upcoming laws, blockchain, and one by Paul Newton on the role of title companies disclosing material information they learn during a transaction.
 - There's a board meeting today that will likely talk a lot about the legislative session.
 - REC report / Nancy
 - This month's meeting was largely the new board members getting used to the process. There was nothing pertaining to title and nothing more on the public service announcement or the caravan.
 - Nancy found out that the caravan cost \$13,000 per year.

- **New Business**
- **Old Business**
 - Legislative Update / Reed
 - The UID's bill is in the committee chair's hands. Commissioner Kiser says that means the chair likely has plans for it.
 - Reed says the meeting piece is still in it and should still be there when the substitute comes out.
 - David says the mobile notary bill has passed the House and is on its third reading in the Senate. It will take effect November 1. It will be a big implementation for everyone, but will be good for the industry. James says he doesn't see any major opposition, so it should go quickly.
- **Other Business**
- **Hot Topics**
 - SB 121: Controlled Business in Title Insurance Repeal / James
 - The first hearing was held in the Senate's Business Labor committee last Tuesday. A number of title insurance representatives spoke at the hearing to voice their opposition and concerns. The real estate brokerage group and others voiced their support, and the bill was held over for a few days. In the end, there was negotiation on Wednesday between representatives of the title and real estate industries to see if a compromise could be reached. The bill passed the committee 8-0; many senators voted conditionally, saying they would only vote for it on the floor if the discussed compromises made it into the revised bill. The compromises were:
 1. Capital requirements that would insert barriers to entry and how to make them equitable regarding size and amount of business, plus discussion about a tiered system depending on the county the company is in;
 2. Percentages of controlled business that would be permitted, the real estate brokers are pushing for no percentages and to have RESPA control the amount, but the title industry and several senators are open to the idea of some percentages because states around Utah have percentages and it would give clarity and safe harbors to RESPA;
 3. RESPA will be part of the revised bill, or at least part of it will, and the idea is to put the 10-part sham business test in the code.
 - There's still negotiation happening, so nothing is solid yet. James thanks the UID for working with the industry on the bill. He assumes that if some version of the bill passes, there may need to be a review of the rest of the Insurance Code and its marketing provisions.
 - Randy asks if the UID has a position and if some of the same principles are at work here as in other lines of insurance. Commissioner Kiser says he has concerns about the total elimination of controlled business. He told the Senate sponsor that he was supportive of having some type of threshold between 0 and 50. The UID has taken a neutral position, and is working closely with the Governor's Office as well.
 - Randy asks if the bill is passed as written, could it result in the same or similar thing happening with other lines of insurance. Commissioner Kiser says he absolutely has that concern. He is meeting with the Governor's counsel at noon to voice that concern. He's disappointed with the process in that when he was a legislator, it was never their intent to move a bill to the floor of the House without it being finished. He doesn't know what the final product will be, so it's hard to engage in conversation when it's only made up of promises. He isn't supportive of the bifurcation of the regulatory aspects of the affiliated/non-affiliated business. He could regulate very differently than the Department Real Estate (DRE) regulates, and the realtors don't want to be regulated by the UID. He notes that six years ago there was a title bill and the UID took a neutral position on it as well. The desire was to let the industry work through it themselves. He's taking the same tack with this one. Hopefully both industries can work through the differences without disjointing other things. He appreciates the industry's engagement and willingness to have thoughtful discussion with the senator. It's not what the industry wants, but he believes the legislative system is fair and consistent usually.

- Nancy says everyone was shocked because they thought there would be more discussion. She said it said there would be no fiscal impact when it was first brought up. Commissioner Kiser says there likely will be some, but we can't put in an impact without seeing the bill. The UID will submit a fiscal impact when the substitute bill comes out. It will affect both the UID and DRE.
- David says if 503 is repealed and brokers can form a title company, they'll still have to come through the UID and get an underwriter. Whether the parent company is a real estate company or mortgage company or law firm, the UID will still have major regulatory responsibilities under the new law. Commissioner Kiser says we'll have to see what the bill says. His understanding from the senator and the industry was that if there's ownership between a title company and a realtor, they will be regulated by the DRE; if it's a title agency that is just a title agency, like it is now, then the UID would regulate it. He has concerns about controlled business, and he's working with Reed and Perri to determine what's essential for the UID to have in the bill.
- Nancy thought that any company that issues insurance policies has to fall under the UID. Commissioner Kiser says he doesn't know how the bill will be crafted, but clearly they want to pull real estate out. She says she thought that RESPA would be regulated by the DRE, so will each company be regulated by two agencies? James says it's likely too early to know.
- Blake Heiner asks Commissioner Kiser if, after the UID sees the final product, the door will be open to opposition, but right now it's neutral. Commissioner Kiser says that's correct: We're neutral right now until we see and understand more.
- Blake asks what impact the capitalization requirements will have on existing companies or is it on a going-forward basis. James says it's still fluid, but all title companies would be subject to capitalization requirements, but there's a phase-in period to build up capital reserves to meet them for existing companies. Any new company formed after the passage of the bill would be subject to the capitalization requirements immediately. But that's fluid too because fairness and grandfathering provisions will surely be discussed.
- Blake asks who's negotiating on either side. James says it's a whole group from the ULTA and others came to the committee meeting, and a lot of the same people were up on the Hill talking to senators and others before the meeting. At the committee meeting, it was negotiated to have two title industry and two real estate industry reps with Sen. Hemmert. For the title industry it was Mark Webber and Frank Ivory; for the real estate industry it was Thomas Wright and Scott Markhall. At the end of the negotiation, there was an agreement on portions of RESPA being included, general agreement on capital requirements in concept, and the sides were farther apart on percentages. James notes that it's all fluid until we see a draft.
- James encourages everyone in the industry to be as active as they can and want to be. It's been good to see the involvement from the industry.
- Frank Medina says there was discussion about the DRE regulating the provisions of RESPA. Are they going to take insurance out and have the DRE regulate? James says we don't know specifics yet, but that has been discussed.
- Matt Ryden says SB 121 was a one-line bill that was passed with an agreement to work on something new. If the sides can't come to an agreement, would the one-liner go to the floor? Commissioner Kiser says yes, but Sen. Bramble promised that something new will come to the floor. Since he made that commitment, there will be something different, but it may not be something the industry likes. He'll get people to the table with Sen. Hemmert, but they feel they can get 16 votes on it. It has to go through two bodies, but there could be some gamesmanship that can be done. He doesn't like it, but it could happen.
- Commissioner Kiser notes that lobbying is sometimes a necessity, and the real estate industry often has deeper pockets than title has. Blake says he was hoping Commissioner Kiser would help with lobbying. If the UID were to take a position, that would have some sway. Commissioner Kiser says the UID generally takes a neutral position on legislation. The biggest issue is trying to figure out how to regulate after the legislature passes a bill. Until he sees the bill, he doesn't know how it will affect the UID's ability to regulate.

- Blake says it seems to him that one of the functions of the UID is to protect the consumer and the integrity of the industry. He says the supposed structure they're proposing has an impact on the integrity of the industry. Commissioner Kiser says it has an impact on title, but there could be benefits consumers could get out of the bill. But there are certainly two sides to the story. He would like to protect the industry, but that's not how it works. He hasn't tried to be an advocate for anyone; his job is to be a regulator, and he tries to reason through things to regulate the industry as best he can. If this bill were detrimental to the UID, he would talk to the Governor about it.
- Blake says we're not talking about protecting the title industry, we're talking about protecting insurance and the consumers. Commissioner Kiser says he's talked with the Governor's team and told them that there's a conflict of interest, and they've acknowledged it.
- Commissioner Kiser says there has been discussion about having consumers sign a declaration of conflict of interest. But he notes that when a realtor says where you're going to close, most consumers will just go with what they say. The brokers have had a longtime interest in title business and they've made a big step to take a chunk of it.
- Frank says notes that Commissioner Kiser objects to the controlled business part of it, but that's the whole bill. Shouldn't he have come out against it? Commissioner Kiser says he has expressed his concerns to the Governor's counsel and Sen. Hemmert. He says he's not a legislator, but he does have a voice with both of those parties and he will voice the industry's concerns to them. The problem is not knowing what's in the bill.
- Jim Johnson asks about Berkshire Hathaway doing its own closings. Would their title company have anything to do with the UID? Commissioner Kiser says he doesn't know because he hasn't seen the bill. Blake says that's their goal. Commissioner Kiser says they've asked for it, but he doesn't know how it will go. Jim says he feels like it would be better to have a title company run by Berkshire Hathaway regulated by the UID than the DRE, since insurance is involved. Commissioner Kiser says he shares Jim's concerns. He doesn't know how strong his voice will be, because the bill is being run by real estate people, so how much influence he'll have is up in the air.
- Matt Olsen asks about timelines and if there are other insurance products that are regulated by two different entities, like this bill proposes. Commissioner Kiser says no, not really. Perri says bail is similar, but not exactly. Reed says based on what we know so far, the marketing would be with the DRE, but he doesn't see anything similar. Commissioner Kiser describes the legislative process. Ultimately, they'll need to make an honest effort to make changes to move it forward.
- Reed asks if James knows about any negotiation sessions that have been set up. James says he doesn't, but he expects that the legislative council is drafting what was agreed to.

Executive Session (None)

- **Adjourn** (9:54 AM)
 - **Motion by David to adjourn. Seconded by Nancy. Motion passes 5-0.**
- **Next Meeting: March 11, 2019** — Copper Room

2019 Meeting Schedule in Copper Room*

Jan 14	Feb 11	Mar 11	Apr 15	May 13	Jun 10
Jul 8	Aug 12	Sept 9	Oct 21	Nov 18	Dec 16

* as currently scheduled; may change after Legislative Session