



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 12, 2018

Time: 9AM

Place: East Building, Copper Room

MEMBERS

COMMISSION MEMBERS

xChair, Alison McCoy (Agency, Tooele County) xNancy Frandsen (Insurer, Salt Lake County)
Vice Chair, David Moore (Agency, Salt Lake County) xJames Swan (Insurer, Salt Lake County)
xRandy Smart (Public Member, Salt Lake County)

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xBrett Barratt, *Deputy Comm.* xPerri Babalis, *AG Counsel - TEC*
xSuzette Green-Wright, *MC Dir.* xRandy Overstreet, *Licensing Dir.* xReed Stringham, *AG Counsel - UID*
xAdam Martin, *Examiner* xTanna Shurtliff, *Examiner* xLisa Watts Baskin, *ALJ*
xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto Greg Stevens Tim Krueger
Gregory Smalley Tim Grubb Jerry Houghton
Frank Medina

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / Alison McCoy, Chair (9:00 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Randy to adopt minutes. Seconded by Nancy. Motion passes 4-0.**
- **Reports**
 - Concur with Licensee Report / Suzette
 - We have nearly a clean slate. Highland title didn't show up until after the beginning of February.
 - Three individuals had lapsed licenses for short periods.
 - Concur with Complaint & Enforcement Report / Suzette
 - January had 6 new cases: 4 are audits and 2 are alleged unlicensed activity.
 - February had 5 new cases: 2 were complaints that transferred to investigations.
 - On closed cases, one went to an E-Case that was about ad violations, one had a dual real estate license and chose to give up their license. There are a few E-Cases with the AG's office.
 - **Motion by James to concur with the Licensee and Complaint & Enforcement reports. Seconded by Randy. Motion passes 4-0.**
 - Request for Dual Licensee Expedited Request: None
 - Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Lisa Watts Baskin, ALJ
 - Stipulation and Order: None
 - Order to Show Cause: None
 - Informal Adjudicative Proceeding and Order: None
 - Notice of Formal Adjudicative Proceeding: None

- **Board Duties & Responsibilities** / Perri
- **Update on 2018 Goals** / Alison
 - ULTA / Alison
 - ULTA had their convention a week and a half ago. They reported on the TEC, just like the TEC reports on them. They were complimentary of the goals that the TEC had set. They will be talking with the UID on some items they're interested in: issuing insurance with an endorsement rather than a full title policy; having less underwriters serve on the TEC; and differences between withdrawal and cancellation on state construction registry.
 - The next convention is in July at the Homestead and the one after that is in January in St. George.
 - They spent a significant amount of time talking about wire fraud. The issue is now inbound and outbound wire fraud that people need to be aware of. There isn't much coverage with E&O policies, which is discouraging.
 - Real Estate Commission / Nancy
 - Nancy introduced herself at the last Real Estate Commission meeting and told them why she was attending. She wasn't sure what their response would be, but one gentleman asked to see the TEC's agenda every month, so Steve will send it to them every month.
 - Last month's REC meeting was strictly enforcement, then they did a closed session for more enforcement discussions.
- **New Business**
 - Online filing of annual reports / Tanna
 - E-filing of annual reports is due April 30.
 - R5902-11-5 has the address of the website where things need to be uploaded.
- **Old Business**
 - Discuss amendments to R592-7 re: no more than ½ CE be from one insurer / James
 - James says the issue started with industry concern on the restriction on where CE credits can come from. The proposal would carve out title licensees from the existing restriction. The other concern is about licensees getting high-quality information. Currently, some licensees can go get CE from sources that don't relate to title, so there's a section that sets requirements for what CE topics are acceptable for title: title insurance, escrow, real estate, or ethics. There was discussion about how to accomplish the change, and ultimately it was decided that changing R592-7 was the best direction.
 - There is also an issue about provisional approval. Potentially the word "provisional" could be stricken, but that might cause statutory problems. James asks how involved the TEC should be in provisional approvals.
 - Brett says it sounds like the process is on the right track. He notes that there's a discrepancy in R592-7-6 between (1) and (2): In (1) it says credit hours may be satisfied by courses provided by one or more insurers, but (2) says they may be satisfied by courses related to title insurance, real estate, or ethics. Can a title licensee go to a real estate seminar and get CE that the UID would recognize? James says the language may add ambiguity, but the intent was to remove the restriction on licensees getting only half their credits from one or more insurers. The reality is that licensees are getting half or more from insurers. This will change it so any CE approved by the UID will work in the topics of title insurance, escrow, real estate, or ethics.
 - Alison says they would rather have agents getting all their CE come from an insurer versus getting CE from sources that are totally unrelated to title.
 - Brett suggests changing the language a little bit to make the intent clearer. The UID will work with James on it. Alison says the TEC would welcome that.
 - Nancy notes that people could get confused because R590 says one thing, while R592 says another. We don't want people reading both rules and not knowing which applies.

- James notes that the UID can track CE on Sircon now, which wasn't previously available, which is why the enforcement is an issue now. He has people asking him about where to get CE, so there's industry concern out there.
- Commissioner Kiser says the UID has discussed allowing a grace period. We don't want the industry thinking the UID is going to be out looking for violators. He would be happy to hear suggestions about what timeframe would be appropriate for people to come into compliance. James hopes agreement on the language can happen quickly, so it would just be a matter of how long the rulemaking process takes. Steve notes that rulemaking takes about 90 days.
- Brett publicly thanks James for working on the issue and writing a draft.
- **Added to the March agenda to take action on final language.**
- **Other Business**
 - Legislative Update / Commissioner Kiser
 - The UID was surprised when a second substitute was put on its bill — HB39 — in committee. HB39S02 had two amendments that were being proffered by the ULTA's government relations committee:
 - If the governor is unable to identify two title insurers willing to serve on the TEC, then one of those positions may be filled by an employee of a title agency.
 - So far, the UID has not had a problem with finding insurers who are willing to serve. Commissioner Kiser isn't sure why this change was recommended, but the UID has no concerns if it's what the industry wants. The position that's more difficult to fill is the general public member.
 - Escrow can be done if the agent or agency issues an endorsement on an owner's or lender's title policy if the transaction does not involve a transfer of ownership.
 - The UID has no issue with these changes.
 - Commissioner Kiser says the changes will likely happen unless there's concern from the industry.
 - Alison says there was discussion at the ULTA convention and there seemed to be support. She offers to take feedback to the ULTA since the UID didn't know about the changes. Commissioner Kiser says it would be good to have a heads-up about changes like this in the future so the UID is able to address them. Alison says she will pass that on during today's ULTA bill reader's meeting.
 - Jerry Houghton notes that the ULTA recently lost its legislative liaison, which was likely the problem.
- **Hot Topics**
 - Sweep accounts / Carol Yamamoto
 - Carol Yamamoto went to a Weber Davis Board of Realtors community outreach committee meeting where they discussed providing home-buying assistance for people in special circumstances. It was brought up that a lot of brokerages are getting sweep accounts and sending the interest on earnest money to UARHOF. The committee asked if it was possible for a real estate agent to use a title agency's sweep account and get the interest since not all brokerages have sweep accounts. She told them the answer is likely no, but she said she would bring it before the TEC to get an official response.
 - Alison says her concern is that it could be an unfair inducement. Carol agrees and says she's only presenting it because she told them she would.
 - Nancy notes that if real estate agents held the earnest money, they could do it.
 - Brett asks what currently happens with the interest that a title agency would potentially collect. Jerry says back in the day the interest rates were still high and there was an option to put it in a sweep account. However, as interest rates fell, the amount that was in the accounts was less than the bank fees. James says the current form of the joint closing instructions say the earnest money will be held in a non-interest-bearing account. Large commercial transactions are different, and those contracts set forth how the interest should be applied at closing.

- James notes that the parties to the transaction have to know and agree where the money should go, which would not be the case with this arrangement.
- Alison says it would not be allowed with title agency accounts, and it would be a bad idea even in a real estate agent's own trust accounts. The parties involved should decide where the money goes, not the agent holding the money.
- CE rules / Greg Smalley
 - Appreciates the discussion about CE rules and notes that a lot of people don't even know it's a problem with licensing. He thinks the amendment will be a great change and will give people one less thing to worry about.
 - Alison agrees that getting CE can be difficult if you get in a time crunch. Greg says there are a lot of online courses, but he thinks in-person learning is better than going through a computer class.
- Wire fraud / Tim Grubb
 - Tim asks if there's a way to help protect agents from wire fraud. It's a huge issue. Alison says it's terrifying that nobody checks names on accounts. Tim says maybe going back to certified checks is the answer, rather than wiring money to an account with a name mismatch. He suggests looking into a rule that would require banks to monitor wire transfers better.
 - James says one problem is that consumers don't understand that last-minute changes likely come from a fraudster. The issue is how to make consumers aware that this is happening and how to stay safe.
 - Jeff Wiener says the Department of Public Safety has a model task force that is taking wire fraud on. The latest FBI numbers say taking advantage of trust accounts is a billion-dollar industry. Jeff would be happy to reach out to them and report back on what he finds out.
 - **Alison asks Jeff to report back in March.**
 - Nancy thinks it should be on the banks. If they're having to eat some of the loss, they'll be a lot more careful.

Executive Session (None)

- **Adjourn** (9:55 AM)
 - **Motion by James to adjourn. Seconded by Nancy. Motion passes 4-0.**
- **Next Meeting: March 12, 2018** — Copper Room

2018 Meeting Schedule in Copper Room

Jan 8	Feb 12 (<i>Aspen</i>)	Mar 12	Apr 9	May 14	Jun 11
Jul 9	Aug 13	Sept 10	Oct 1	Nov 5	Dec 10