



## 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:** February 8, 2021

**Time:** 9AM

**Place:** TELECONFERENCE ONLY

### ATTENDEES

#### TITLE & ESCROW COMMISSION

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

#### DEPARTMENT STAFF

xJon Pike, <i>Insurance Commissioner</i>	xReed Stringham, <i>Deputy Comm.</i>	xTracy Klausmeier, <i>P&amp;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	Blake Heiner	Randy Cowden
Bob Rice	Joseph McPhie	Matt Ryden

### MINUTES — Approved

#### General Session: (Open to the Public)

- **Welcome** / Chase Phillips, Chair (9:03 AM)
- **Telephone Roll Call**
  - Randy Smart is excused.
  - Adam Martin arrived late, but was present.
- **Reading of Anchor Location Determination**
- **Introduction** / Commissioner Jon Pike
  - Commissioner Pike started as acting commissioner on January 5 and was fully confirmed by the Senate last week.
  - He lives in St. George and has for the past 25 years. Governor Cox wants him to stay in St. George because he wants diversity in his cabinet, including geographic diversity.
  - He was born, raised, and educated in Salt Lake City. He has a bachelor degree in business from the University of Utah and a masters from Westminster College. He worked for IHC and SelectHealth for 25 years, most recently as regional operations director. He has been an elected official for the last 13 years: as a city councilor for 6 years and as mayor for 7 years.
  - Commissioner Pike hopes he can bring direct experience with mixing government and insurance to help the industry and the public.
  - Chase hopes to continue the tradition of the UID working with the TEC on sensitive issues to help the title industry benefit the public. It's an important industry and he hopes to help Commissioner Pike see that as well. He notes that many TEC meetings are routine, but occasionally there are dustups in the industry. Hopefully most of that is behind us and we can keep moving forward.

- Commissioner Pike says he has respect for the TEC and former Commissioner Kiser, and he doesn't foresee big changes. If there are any, it will be because the Governor, Legislature, or TEC directs it. He intends to carry on with the good things that have been happening.
- **Adopt Minutes of Previous Meeting**
  - **Motion by Alison to adopt minutes. Seconded by Nancy. Motion passes 4-0.**
- **Concurrence Reports**
  - Licenses
    - November's report was previously approved in December, but Randy O. has included it again as part of the full quarter.
    - Wendy Harris has been licensed since 1976, Jax Pettey has been licensed since 1978, and Edward Bowler has been licensed since 1975.
    - **Motion by Nancy to concur. Seconded by Darla. Motion passes 4-0.**
  - Attorney exemptions
    - Tom Cook, Esq.
      - Randy O. says Tom Cook submitted an application that was heard at the September meeting. He had the required experience but his application was preliminarily disapproved and concurred with because he did not have the required licenses. He has since gotten his producer license with title escrow and title examination lines of authority. Along with his legal real estate expertise, the UID now preliminarily approves him for the attorney exemption.
      - Chase remembers stating that if he got his license, the TEC would approve him for the exemption. He notes that Cook has been licensed with the bar since 1995 and now has his title license.
      - **Motion by Alison to approve. Seconded by Darla. Motion passes 4-0.**
  - Continuing education
    - Michael brings attention to the January 26 "Utah Economic Forecast" class. She says the outline was vague and didn't detail how it applied to title or real estate. She asked the instructor to expand the outline, which they did, and then Michael approved it.
    - Chase says he's never questioned a class based on the title, but wonders how the "Lessons Learned from the COVID-19 Pandemic" worked. He appreciates Michael giving the background and justification for why that was allowed. Michael says the pandemic one discussed a lot of security issues since everyone is working from home.
    - Chase says he's happy to see so many new courses in January. That's helpful for the industry and he can't remember how long it's been since he's seen that many done in a single month.
    - **Motion by Alison to concur. Seconded by Nancy. Motion passes 4-0.**
- **Board Duties & Responsibilities / Perri**
- **Update on 2020 Goals**
  - ULTA report / Nancy
    - The ULTA executive committee meets after the TEC meeting every month. She didn't attend the January 11 meeting, but got their minutes. They were planning on a February convention in Las Vegas, but it has since been canceled. The midwinter convention is virtual and will be every day this week at noon.
    - Cort Ashton, who is the head of the ULTA's legislative committee, spoke before the legislative session started and said they were focusing on the mechanic's lien bill and HB 54, which is the UID's bill. They were focusing on language they wanted to change.
    - Chase thanks Nancy for her efforts in keeping the ULTA and TEC informed, and says it's important for the title industry to stay up to speed with industry trends and changes. He appreciates the way the ULTA finds a way to continue hosting their convention virtually and expects a lot of positive information will be presented.
  - REC report / Darla

- November: 1 new complaint, 8 cases closed, 453 pending, 13 at the AG's office.
  - December: 5 new complaints, 20 cases closed, 458 pending, 9 at the AG's office.
  - Nancy asked if the REC talked about the rule change they're doing for ABAs. Darla says they didn't; they focused on rule changes to broker responsibilities and how they're going to police the number of locations a broker can preside over. They haven't approached the subject of the new rule proposal yet, but she's told that it should be coming up.
- Discuss goals for 2021
  - Chase asks if there are any other goals that should be added this year, other than staying in concert with the ULTA and REC.
  - Commissioner Pike asks if there's anything the UID would suggest to the group. Reed has nothing additional, and thinks the goals continue to be relevant. Tracy and Randy O. agree.
  - Chase likes that it's turned into having routine reports on what other bodies are doing in the industry, and thinks that's important.
  - The public attendees have no suggestions.
  - **The 2020 Goals will stand for 2021.**
- **New Business**
  - Five-year reviews of R592-15 and R592-17 / Steve
    - Steve says that the UID is required to review each rule every 5 years to make sure they're still relevant and not creating a burden to the industry. Changes cannot be made, but can be discussed. Today is just a determination of whether the rules need to be continued.
    - At issue are R592-15, Submission of a Schedule of Minimum Charges for Escrow Services, and R592-17, Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.
    - Chase thinks they're both very applicable and recommends continuing.
    - Alison agrees and says they're still relevant and necessary.
    - Chase notes that opening a rule can have unintended consequences, but can understand the industry or public thinking changes could be made. He asks if anyone on the call would like a discussion of either rule added to a future agenda. There is no response.
    - Joseph McPhie thinks they're both very applicable and needed. He can't imagine doing away with either of them right now.
    - **Motion by Alison to continue R592-15 and R592-17. Seconded by Darla. Motion passes 4-0.**
  - Fixing the confusion between R592-6-4 and R592-6-5 / Reed
    - This is an issue that has concerned Reed for a long time. R592-6-4 has a list of prohibitions that agents CAN'T do, while R592-6-5 has a list of things people CAN do. The problem is that 6-4 says the things in 6-5 are exceptions to 6-4, while 6-5 says the things in 6-4 are exceptions to 6-5. It's confusing because you don't know which subsection is ultimately controlling.
    - The thing that's come up a few times is that 6-5 says there are certain things that can be done if you do it a certain way. But the way the rule is phrased, it doesn't say there's a violation if someone doesn't do something the way the rule says. Reed gave an example in the memo in the attachments.
    - Reed thinks it would be a good idea to take out the interplay between the rules and have a clear statement of prohibitions and a clear statement of inclusions. He would like to make a draft and present it to the TEC for discussion and approval.
    - Nancy asks if there have been issues with Adam having to working through violations and or complaints? Secondly, if the rule is opened, does that mean other parts of R592 are open for changes. Reed says yes, there have been problems in the past. Adam has found people not complying with 6-5, but it's not really a prohibition -- it's an exception to the prohibition. The fact that you don't comply means you get the exception and haven't really violated anything. Reed had a similar issue come up when he was in the AG's office. It doesn't come up often, but it has come up a few times. As far as opening the rule, Reed says he doesn't think it's a risk. The TEC has the authority to decide what the rule will be. People can ask the TEC to do certain things, but the

TEC can decide what to do. If they only want to clear up certain things, they can do that and nobody can force them otherwise.

- Alison thinks these two sections are the single biggest, most contentious parts of title company rule in the industry. If the rule is opened, it will open a can of worms. If the TEC chooses to do it, it won't just be opening it for a few little things; it will be some real philosophical discussions about where the industry stands. Using Reed's example about food and beverage in the memo, that's a real philosophical discussion that has been going on since the 1990s. The TEC will have to decide if that's where they want to go and if they're ready to take it on. They'll have to take some real input about what will be permitted and what will be prohibited. These two sections represent something that everyone can live with, and that's why they haven't been touched for so long. If it's opened, it will be a process, not something that happens in a month or two.
  - Reed sees where Alison is coming from, but what he's suggesting won't change the substance of any of the prohibitions or permissions. It would just change the fact that the permissions aren't exceptions, but they stand separately as permissions. It wouldn't be opening the rule to change the substance, it would be organizing them better so people can see what they are and that they stand independent from each other.
  - Chase agrees with Alison and says the process makes him hesitant. He doesn't want to become the referee to the industry in changing the rule. He asks if Reed's draft will correct the language -- which Chase agrees with -- and then will submit the draft to the TEC for approval, but that doesn't open the rule to other changes. The TEC will be voting on Reed's correction, not the rest. Reed says that's correct. The TEC has rulemaking authority and they can decide they won't entertain other changes. Chase confirms that the TEC can deny other changes they don't think should be implemented at this time. Reed says yes. Perri says that if enough people ask for a hearing, there would be a hearing and other changes could be suggested. Chase asks if it would be in the TEC's authority to decide that they aren't ready to make larger changes if that happened. Perri says two things have to be kept in mind: 1) every rule has to go to the REC and 2) if certain changes weren't adopted, it could potentially have to go before the Legislative Rulemaking Committee. Reed says if something happened, couldn't the TEC just withdraw the rule? Perri says yes, and to keep in mind that it's not as black-and-white as the TEC having the final say, because of the hearing process and the rulemaking committee.
  - Alison notes that going forward with changing the rule opens the title industry to scrutiny from other industries. As an example, when trying to set minimum rates several years ago, the rulemaking process was co-opted by the Realtors.
  - Perri notes that in the past, the Legislative Rulemaking Committee got involved and took the TEC and UID to the woodshed over it. She's not suggesting the rule not be changed, she's just reminding everyone of what may happen.
  - Chase says the correction being proposed makes sense, and if that's the only change to be made, there's no reason to oppose it. The question is if the TEC submits the rule, is there any other group that can change it when the TEC submits it. Can the REC or the Rules Committee change the substance of the rule if the TEC submits it? Reed's understanding is that the REC just gets notice of the rule, they have no authority.
  - Chase thinks if the TEC asks the UID to bring a draft as long as this is all that's being changed, that's OK. If someone brings other changes, the TEC will discuss it if they make sense, but the TEC will have the authority to say whether it goes further. He thinks this change makes sense and ought to be fixed. Reed suggests having Reed draft the changes for review at least. Then if the TEC is uncomfortable with it, they can decide not to go forward. But let's get something in front of the TEC to see what will be done and see if that gives some comfort.
  - Reed says if the TEC is going to dip its toe in the water of rulemaking again, this is a good one to start with because the changes aren't controversial. Chase would like to see a draft of the potential changes. Darla agrees. Nancy agrees. Alison agrees.
- Re-file title insurance rates / Reed

- Reed says Adam has been reviewing rate filings and has found some that say rates are "negotiable" and others say there are discounts for certain classes, but there's no supporting info for why those discounts are allowed under law. There have been enough that this may be a bigger problem than just a couple of insurers. He says the UID could investigate and issue penalties, but the UID doesn't want to do that. Instead, the UID wants to do a reset to have everyone restart in compliance.
- The UID will issue a bulletin that says title insurers will need to refile their rates, supplementary rate information, and supporting information by April 1. When that information is submitted, the UID will review it to make sure there are no negotiable rates and that discounts are properly supported, and everything will be reset so everyone is in compliance moving forward.
- Chase asks if the TEC needs to get involved to help ensure the elimination of improper fees. He remembers that this came up several months ago with centralized rates, church rates, and negotiable rates. Those don't work with the unfair inducements rules – the whole idea is an equal playing field, and he feels like that should carry through. It seems like that's the intent of many of the rules that regulate the industry. He wonders if a bulletin will make insurers fall in line, or if they can argue a justification for them. Is the UID looking to draw a line to say centralized and negotiable rates aren't allowed in Utah, or are they OK with justification and the UID will accept them with any acceptable reason? Are some justifications good and others aren't?
- Tracy says that with rate regulation, insurers are required to justify their rates based on losses and expenses. If someone can send in a centralized rate, she doesn't think there's anything in the code to say that's not compliant, but they would have to justify it based on losses and expenses. The problem for title insurers is that they underwrite everything up front, so justifying rates is difficult. Doing the reset will allow them to send in justifications based on losses and expenses as required in Chapter 19a. Asking for a rate reset is not an uncommon request from an insurance department to industry. The UID has done it before with other industries. This shouldn't be out of the ordinary or an extraordinary request.
- Chase says his perspective could be skewed because he's an agent, but he thinks this may end up giving unfair advantages to larger agencies that can take advantage of those different rates. Negotiated rates are advantageous if you can secure a contract with the underwriters that use that language. It's not necessarily due to size. He sees some issues with adjustments or discounts, and they all seem to be related in that one agency can use it as an advantage over another. He wonders if these are also part of unfair inducements, but he knows that's not how the UID is viewing it. Will there be any future need for the TEC to help add teeth to the rule?
- Alison works for a small title company in a small market, and they hear about people getting discount rates at other companies, but there are only so many allowable reasons in the rate manual. As far as unfair inducement, she thinks it absolutely is because they're misrepresenting the rate.
- Tracy says it's not an unfair inducement if they're using a rate they haven't filed with the UID, but it is a rating violation under Chapter 19a. The UID is trying to get its arms around what the rates are and what's the justification. Rates for a title insurer may not be excessive, inadequate, or unfairly discriminatory, and they cannot be less than the cost of doing business. Discounts need to be based on actual risk, losses, and expenses. A rate reset will get everyone on the same page.
- Reed asks if negotiable rates are allowed. Tracy says no.
- Nancy, as an insurer, remembers the UID doing a rate reset in the 1980s or early 1990s. Insurers were asked to remove certain rates, but thinks it wasn't losses and expenses – it was more if the search is the same, there shouldn't be discounts for certain segments of the consumer market and not others. She thinks losses and expenses doesn't fit with the title industry; it should be the time and effort that goes into a title search.
- Bob Rice says the rates that are being used have all been filed and approved by the UID. How is the analysis going to be different this go around versus the last one? Is it just revisiting to see if it was done correctly? Tracy says Utah is a file and use state – there's no approval necessary. The

Insurer's burden is to file the rates, then the UID has 30 days to review them or not, and not every filing is reviewed. The UID has gotten some education on how to review the rates, and they want to apply it during the restart.

- Nancy says she remembers an underwriter having to put language in to justify any deviation on a rate. As she reviews rate filings, she's not seeing the justification language that they used to have. Is that something the UID will be looking for? Tracy says yes. The code was recodified in the early 1990s, and language about basing rates on search may have been there at that time, but it's not there now. The justification for rate filings in Chapter 19a is now specific on expenses and losses, but the UID would appreciate the explanation regarding search in a filing. Adam will now be reviewing the rates.
  - Reed says the code requires the filing of rates, supplementary rate information, and supporting information. Those terms are defined in the code. It should be an easy lift for people who are in compliance because they can just resubmit what they've already done, but the UID suspects there may be several that aren't in compliance, which is why the UID is doing the reset.
  - Bob asks what "in compliance" means. Reed says you can't have something that says "negotiable rates" or discount rates without supporting information about the discounts. The definitions are in 31A-19a-102.
  - Matt Ryden asks if the refiling is going to call for reporting information, actuarial data, and cost data for rates that haven't been in violation of Chapter 19a to this point. Reed says it sounds like he's asking if those with non-violating rates will have to refile, and says the UID needs to take some ownership of this too. The UID suspects the problem goes beyond negotiable rates and discounts. Those that have filed rates with proper justification will have no problem. But the rates need to be supported by the items in statute. Rather than doing a review of everyone's rates and seeking a penalty from offenders, it will be easier to do a reset and get everyone flying straight.
  - Matt says essentially that means they will need to refile justifications for all base rates and deviations from them. He says his company has been through it in other states and it's a major effort. It's extremely expensive, but they understand and want to be in compliance. He doesn't know exactly what is needed, but it's a major effort.
  - Chase asks if that's the intent of the UID, to review the justification for the base rates. Reed says yes.
  - Joseph McPhie asks if the UID would consider setting a rate and applying for variances by the underwriters. In other words, allowing title insurance to be a specific rate based on a person or company, and that rate isn't tied to the risks associated with the property or clearing of title, they become discriminatory. When you're a small agent and have a single underwriter, it limits your ability to chase the rate or shop for a rate. Sometimes that's discriminatory because some underwriters own multiple title companies and insurers. A standard rate with a variance or deviance requirement could require those underwriters to justify why they have one rate under one brand name and another rate under a different brand name. His company has several underwriters and it's been difficult to calculate the differences between them. He requests that the UID consider setting a rate or using a rating commission, then asking for specific instances when the rate isn't applied.
  - Chase says that's an interesting comment and could be a heavily debated concept. He says Utah is a state where any restrictive rule isn't loved, and he could see it being quite contentious. Reed says he can take it under consideration, but he doesn't think the UID has the legal authority to do it. A rate commission would need to be a statutory change. Tracy agrees and says currently the UID doesn't have the authority to set the rates. Companies set them and then tell the UID what they are. Reed says it would be a radical departure. Chase thinks the need to look at that solution might come if there are still major concerns after the rate reset.
  - Chase offers to make this topic a Hot Topic item if the UID or anyone in the industry feels it's necessary in the future.
- **Old Business**

- **Other Business**

- Legislative update / Reed

- A couple of months ago there was discussion about making a change to 31A-23a-406 to make it more similar to 31A-23a-409 regarding the deposits of money with a title company. Reed says he didn't use good language, and Cort Ashton of the ULTA sent him corrected language. Reed used the word "person" but it should have referred specifically to "individual title insurance producer" and "agency title insurance producer". It has been resubmitted and should be coming out in the substitute HB 54.

- **Hot Topics**

*Executive Session* (None)

- **Adjourn** (10:54 AM)

- **Motion by Nancy to adjourn. Seconded by Alison. Motion passes 4-0.**

- **Next Meeting: March 8, 2021** — Copper Room

**2021 Meeting Schedule in Copper Room**

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

\* bold dates denote quarterly required in-person meetings