



# Insurance Department

State of Utah

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

## State of Utah Title & Escrow Commission Meeting Meeting Information

**Date:** April 9, 2018

**Time:** 9AM

**Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

xChair, Alison McCoy (Agency, Tooele County) Nancy Frandsen (Insurer, Salt Lake County)  
xVice 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* Tanji Northrup, *Deputy Comm.* xReed Stringham, *Deputy Comm.*  
xSuzette Green-Wright, *MC Dir.* xRandy Overstreet, *Licensing Dir.* Tracy Klausmeier, *P&C Dir.*  
xAdam Martin, *Examiner* xTanna Shurtliff, *Examiner* xPerri Babalis, *AG Counsel - TEC*  
xSteve Gooch, *PIO Recorder*

#### PUBLIC

Timothy Grubb Carol Yamamoto Blake Heiner  
Jeff Wiener Kimberly Mosby Frank Medina  
Adam Back Wes Jensen Bob Rice  
Matt Ryden

### MINUTES — *Approved*

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

- **Welcome** / Alison McCoy, Chair (9:01 AM)
  - Nancy is excused.
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
  - **Motion by David to adopt minutes. Seconded by James. Motion passes 4-0.**
- **Reports**
  - Concur with Licensee Report / Suzette
    - One agency was lapsed for a month.
    - There were a few lapsed individuals. The ones that are of concern are the individuals who lapsed but were never reinstated. It's a pretty clean report this time.
    - Commissioner Kiser asks David, as an agency operator, if there are things the UID can send to agents to help them remember to renew. How do we tighten this up so we don't have so many people failing to renew. David says most people know when their license expires because of the CE requirement. A lot of these people may be retiring. He thinks the UID does a good job and doesn't need to do anything more.
    - Commissioner Kiser asks if agencies have a staff member who takes care of license renewals and whatnot for agents. David says yes, most companies he's aware of track CE and have someone in the agency who takes care of licensing. Alison says as Sircon gets better, her agency gets better at keeping track.
    - Suzette says the monthly report has helped a lot over the last 10 years, and that Randy Overstreet has been helping get things done with Sircon.

- **Motion by David to concur. Seconded by Randy. Motion passes 4-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - There were 5 actions for unlicensed activity (1 of which also had a cosponsoring issue). There were 3 clean audits completed, and 3 alleged unlicensed activity.
    - **Motion by David to concur. Seconded by James. Motion passes 4-0.**
  - Request for Dual Licensee Expedited Request: None
  - Request for Attorney Exemption: None
- **Administrative Proceedings Action**
  - 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 report / Alison
    - They wanted to make sure that title is taking its job seriously regarding making sure fines and penalties are being well-considered. They were concerned about the Gateway Title matter, which will be discussed later.
    - They discussed the ALTA as a resource for wire fraud materials. Alison relayed conversation from the last TEC meeting to suggest having the ULTA put out materials about wire fraud.
- **New Business**
  - Gateway Title investigation re: controlled business / Alison
    - The Gateway Title case was concurred with back in March. David asked whether it was looked at for controlled business. After reviewing the evidence, the UID will not pursue a controlled business claim.
    - The facts are that Gateway needed startup money. The owner had a couple of real estate friends agree to give money to Gateway, and in exchange Gateway would pay back the money. The question is whether Gateway also accepted business referrals from these realtors, and whether that would constitute controlled business.
    - Reed looked at the particular agreements with the realtors: Kessler and Koch.
    - The Gateway-Kessler transaction was pretty clearly a loan. Gateway was required to pay the money back within a certain period of time. According to statute, for controlled business the realtor would need financial interest in the title business. "Financial interest" is defined as "entitled to more than 1% of the net profits or the worth of the licensee's business." Looking at the facts, Kessler just gave a loan and did not constitute a financial interest.
    - The Koch transaction was less clear. The contract said he was making an investment in the business, but it also said Gateway would make regular payments back. There was significant ambiguity in the contract, which would require the parties to testify.
    - In this case, Gateway's owner always said it was a loan, not an investment. The settlement papers talk about Gateway repaying the realtors.
    - The UID could not meet its burden to prove controlled business in this case. Hence, the UID will not pursue a controlled business determination.
    - Randy asks if the loans were repaid. Reed says yes.
    - Commissioner Kiser notes that Reed is the new deputy commissioner, replacing Brett Barratt. Tanji Northrup will become a deputy commissioner as well. Tanji will oversee the TEC every month, but Reed will assist as well. The Commissioner suspects that the AG's office will have a replacement too, since Perri represents the TEC and Reed represented the UID.
  - Minimum E&O requirements / David
    - David asks if anyone has any concerns regarding minimum E&O requirements. In statute, the minimum is \$250,000. Over the years, there have been a lot of different exclusions and conditions

added. He had a situation where an E&O policy had no retroactive date, which basically made it insurance for only the current year. That doesn't work for the title industry. The event has to occur as a claim, so if you have no retroactive date, the E&O policy is worthless for protection.

- Would it be appropriate to form a subcommittee to come up with more than a minimum standard that is more than just monetary? Would it be legislative or by rule?
  - Alison asks what David proposes. David says one thing he saw in a policy at renewal was that it excluded real estate transactions. We need to be careful about a retroactive date, how many years back it goes, etc. He notes that his company's E&O goes back to when the company was organized. Do we come up with ideas as an industry or do we let the underwriters decide?
  - Alison suggests that James and Nancy think about it from the underwriter perspective, and Alison will bring it up to the ULTA.
  - Commissioner Kiser says there are external forces and internal needs. Title companies need to think about their clients' exposures. Some representatives ran a bill a few years ago that required agents have \$1 million E&O coverage.
  - Randy O. says 31A-23a-203.5 states that the E&O needs to be either under an individual or agency license that covers the individuals, or through an insurer that covers all its agents. It didn't specify amounts and it was left to be done by rule. The general licensing rule requires a minimum of \$250,000 or \$500,000 aggregate. Suzette notes that 31A-23a-204 requires \$250,000 for title.
  - Reed says David's question is really what type of E&O coverage is necessary, not the amount.
  - Blake Heiner says the same discussion happened a few years back. He thinks the decision was made that underwriters would be left to govern and regulate it along with the marketplace. Many lenders require E&O and they'll require far more than \$250,000, but won't look at what it covers.
  - **David requests that this be added to the May agenda.**
- **Old Business**
  - **Other Business**
    - Controlled business reports / Tanna
      - Tanna reminds everyone that annual and controlled business reports are due by April 30. She has received less than ¼ of them so far.
    - Suzette retirement / Commissioner Kiser
      - Commissioner Kiser notes that Suzette is retiring April 27 after 23 years with the state. He expresses his appreciation for her work during that time.
      - Alison says she's been a household name in the industry for a long time. She thanks Suzette for her work and says she's done a great job and will be missed.
  - **Hot Topics**

*Executive Session* (None)

- **Adjourn** (9:36 AM)
  - **Motion by James to adjourn. Seconded by David. Motion passes 4-0.**
- **Next Meeting: May 11**, 2018 — Copper Room

**2018 Meeting Schedule in Copper Room**

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