



# 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:** May 14, 2018

**Time:** 9AM

**Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

xChair, Alison McCoy (Agency, Tooele County)      xNancy 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*      xTanji Northrup, *Deputy Comm.*      xReed Stringham, *Deputy Comm.*  
Randy Overstreet, *Licensing Dir.*      xTracy Klausmeier, *P&C Dir.*      xPerri Babalis, *AG Counsel - TEC*  
xAdam Martin, *Examiner*      xTanna Shurtliff, *Examiner*      xSteve Gooch, *PIO Recorder*

#### PUBLIC

Tim Krueger      Carol Yamamoto      Tim Grubb  
Matt Sager      Blake Heiner      Adam Back  
Matt Ryden [PHONE]      Chase Phillips [PHONE]      Wade Taylor [PHONE]  
Mark Webber [PHONE]

### 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 Nancy to adopt minutes. Seconded by David. Motion passes 5-0.**
- **Reports**
  - Concur with Licensee Report / Tanna
    - For agencies, there was 1 new license and 1 reinstated license.
    - For agents, there were 13 new licenses, 8 lapsed licenses, and 3 reinstated licenses.
    - Nancy asks whether Lendmark Closing Services is a full title and escrow agency. They don't have title and escrow in their name — do they need to? Tanna will look into it and get back to the Commission.
  - Concur with Complaint & Enforcement Report / Tanna
    - 18 cases were closed in April, and several I-Cases were opened. They're not shown because most of the ones that were opened and closed are for annual reports. This year, they did mini-audits alongside the annual reports. They're not all showing, but there were well over 65 that were opened and closed.
    - **Motion by David to concur with Licensee and Complaint & Enforcement reports. Seconded by James. Motion passes 5-0.**
    - Tanna suggests condensing the reports a little bit so there aren't as many pages. For sure, they will include compliance — I-Cases, E-Cases, and stipulations & orders. She'd like to know what the TEC would like to see in the future.

- Nancy says it looks like the reports today go back to January 2017; she suggests reporting a rolling 12 months. Tanna says that's doable, but also suggests doing it monthly to shorten it. Nancy suggests doing 6 months at least to give them a picture of what's happening in the industry.
  - Randy asks what the oldest open case is. Tanna says it's from December 2017. In that type of instance, it would be rolled over every month until it became an E-Case. David asks about #69721, which says it's pending in state court but has a close date on it. Tanna notes that sometimes they have to wait on a civil case before they can take any action. Adam says it's closed.
- Request for Dual Licensee Expedited Request: None
- Request for Attorney Exemption: None
- **Administrative Proceedings Action**
  - Stipulation and Order:
    - Perri says the UID has decided it's not very beneficial to have an administrative law judge (ALJ) come read a stip & order to the TEC. The stipulation & order document will be included in the packet, and if there's an issue or questions, we can get the ALJ involved. If there's a case that has gone to trial or hearing, the ALJ will come and report on it.
    - Alison notes that the TEC's role is to concur or not concur with the penalty. Randy asks what happens if they don't concur. Perri says concerns can be raised, and if the TEC votes to not concur, it will be sent back to the UID where the Commissioner will decide whether to agree with the TEC's non-concurrence or to issue the penalty.
    - Lawyers Title Company (ENF #3986)
      - David notes that the complaint is that they conducted closings without a license. Utah has a statute that ties closings to title insurance. He says escrow isn't addressed in the findings of fact; it only talks about closings and says nothing about escrow. Adam says it was investigated and he has proof that all commitments were issued in the state of Utah by a licensed agent.
      - **Motion by David to concur. Seconded by Nancy. Motion passes 5-0.**
  - 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
    - Alison says the ULTA had one concern about the content on the title & escrow test: It's unclear if it's a HUD, settlement statement or CD. Tanna notes that the annual review is in August. Alison asks if we know which of those the test is testing on. Tanna says she's not sure. Carol Yamamoto asks why it would be testing on a HUD. Alison says her understanding is that the test is 2 years behind where the industry is.
    - The ULTA also had concerns about how quickly people are able to pass the test. In many cases, people who have never done a closing and have only worked for a month at the title company are still able to pass the test. David says there used to be a report that would show how many people took the test and how many passed the first time, but he hasn't seen one in years. He thinks it's a useful tool to see a pass-fail ratio: If 95% of people pass it, then that would mean the test is too easy. He would like to see those rates, even if it's as part of the question approval process.
    - Tanji says the UID can get the pass-fail ratios for exams. Utah averages around 65-70% on all tests. We can try to get title-specific results. The UID encourages the industry to participate in the exam reviews. She will talk to Randy O. about the TEC's concerns and getting the pass-fail rate for the June meeting.

- James agrees that the pass-fail rate is an important gauge, but he thinks the content is more important. They need to know what they need to know to do a good job. He thinks good content should be the focus versus the pass-fail rate.
    - Alison notes that the standard for the test is "minimally competent in the industry." She appreciates the UID letting the TEC know what's on the escrow test to make sure it's not outdated.
    - Alison says ULTA is also working hard on wire fraud and how to get content out to consumers.
    - ULTA's convention is in July at the Homestead.
  - Real Estate Commission report / Nancy
    - The Real Estate Division has been doing caravans to educate different areas of the state about various issues, one of which is wire and email fraud. Nancy suggests having someone from the title industry join the caravan if they do one next year. She will talk to Mark Fagergren, who is in charge of the caravans.
    - Real Estate has always used Real Estate Licensing Management System (RELMS), but someone recently started a company with the same name and is demanding that Real Estate change their name because they're getting calls all day about licensing.
    - There was a lot of discussion about new licenses and fingerprinting.
  - Alison notes that an addendum to the real estate contract is circulating by Coldwell agents that instructs clients to not take any changes to the wire instructions. She doesn't know if it's an official form that was approved, but the REC is working on it.
- **New Business**
- **Old Business**
  - Minimum E&O requirements / David
    - Last month, David raised the issue of whether to create a rule or bulletin to increase the minimums for E&O insurance. There are a wide variety of companies that provide various types of E&O. He's seen a number of policies lately that wouldn't cover much if anything. Does there need to be a minimum standard for E&O? Underwriters do a good job of reminding agents to have it, but they're not very concerned about what's in the policy.
    - Nancy says she asks to see the declarations page and any endorsements. Hopefully, the E&O companies aren't expecting the agents to not read the fine print, but that's what it sounds like from David's comments.
    - James notes that the E&O requirements are in statute, so the TEC doesn't have authority to change it. This would have to be taken up legislatively. A practical change that could be put in the legislation is to increase the coverage amount to an industry-standard \$1 million or putting a cap on the deductible. Legislating details beyond that could get difficult. He suggests having the UID consider those items for its bill in 2019.
    - Nancy notes that the industry often polices itself. She understands that lenders often require minimums. David says only about a half-dozen lenders do some type of qualification — but that's only a half-dozen out of about 50-60 lenders they work with. A lot of them just want a declaration page to make sure you have coverage. They assume it will cover what it needs to.
    - Jeff Wiener agrees with James regarding legislation. He remembers Curt Bramble running a bill that changed the E&O from \$100,000 to \$250,000. The industry was involved and included a lot of discussion. He says the outcome was that the industry needs to take charge. It's difficult to set a legislative standard for coverage.
    - Reed says the TEC has authority to make rules regarding title licensing, and this arguably would be making a requirement for licensing. He sees the point about legislation, but as he reads the statute, the only legislated requirement is the dollar amount. The TEC could make other requirements for the policy, as long as they don't change the amount requirement. He says this position is very arguable.
    - David says if the E&O is in place and has a tail, it becomes a legal battle in the case of a loss. He likes the idea of a deductible, though. On some policies, he's seen deductibles ranging from \$0 to

\$10,000. A \$10,000 deductible keeps the costs down, but it could put a small agency out of business. E&O protects the underwriter, which is the title side. The escrow side needs extra coverage.

- Alison wonders if they need to ask if the ULTA wants to tackle this. David suspects the legislature would probably stick with the \$250,000 amount. He will spend the next month looking at standard policies to see if there are any provisions that might need to be raised or required.
  - Nancy says it's been a while since she's seen a policy under \$500,000. She notes that they usually have retroactive dates. She asks if the UID collects any information about specific policies. Tanna says the amount of coverage is included on the annual report. At least 75% that are reported are \$1 million, while a minimal amount are \$250,000 or lower. If they're lower, she tells them they need to increase it.
  - **Keep this on the agenda for June.**
- **Other Business**
  - **Hot Topics**

*Executive Session* (None)

- **Adjourn** (9:36 AM)
  - **Motion by Nancy to adjourn. Seconded by James. Motion passes 5-0.**
- **Next Meeting: June 11, 2018** — Copper Room

**2018 Meeting Schedule in Copper Room**

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