



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: June 14, 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>)	Perri Babalis, <i>AG Counsel - TEC</i>

DEPARTMENT STAFF

xJon Pike, <i>Insurance Commissioner</i>	xReed Stringham, <i>Deputy Comm.</i>	xTracy Klausmeier, <i>P&C Dir.</i>
xRandy Overstreet, <i>Licensing Dir.</i>	xDanny Schoenfeld, <i>Finance Dir.</i>	Adam Martin, <i>MC Examiner</i>
Michael Covington, <i>CE Specialist</i>	xSteve Gooch, <i>PIO Recorder</i>	xEddie Vasquez, <i>AG Counsel</i>

PUBLIC

Paul Halliday Jr.	Matt Ryden	Wade Taylor
Blake Heiner	Rod Newman	Russ Nance
Joseph McPhie	Nathan Sprague	5 Anonymous Callers

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome** / Nancy Frandsen, Chair (9:00 AM)
- **Reading of Anchor Location Determination**
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Darla to adopt minutes. Seconded by Alison. Motion passes 4-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by Alison to concur. Seconded by Darla. Motion passes 4-0.**
 - Attorney exemptions
 - Paul Halliday Jr.
 - Randy notes that Mr. Halliday is seeking the exemption just for the title exam portion and will have another person with adequate experience managing the escrow portion, similar to other recent exemptions.
 - **Motion by Darla to concur. Seconded by Chase. Motion passes 4-0.**
- **Board Duties & Responsibilities** / Perri
- **Update on 2021 Goals**
 - ULTA report / Nancy
 - The ULTA will be meeting in person for its summer convention in Deer Valley. People can also attend the convention virtually.

- With Nancy's upcoming exit from the TEC, Chase will begin attending ULTA meetings.
 - REC report / Darla
 - The REC is reviewing rules to see if they need to be changed or eliminated according to an executive order from the Governor.
 - 29 new complaints, 6 closed complaints, 487 pending, 13 at the AGs office.
 - Nancy asks if there has been any discussion about how they've updated their website for ABA companies. Darla says there hasn't been any yet.
- **New Business**
 - Determining compliance with Section 31A-19a-209(3) / Reed
 - Reed says the law requires that escrow charges can't be less than the cost of doing business. The law requires that each agency file its minimum escrow charges with the UID and the agency must certify that its charges comply with the legal requirements. A few months ago, an agency asked the UID what it's doing to ensure that people are complying with the statute. Reed told them that the UID requires the certification and does investigations if there are complaints. The agency thought the UID should be doing more, so Reed, Tracy and Adam discussed having agencies demonstrate during an audit that the escrow charges are not below the cost of the services.
 - Alison asks what justification the UID would be looking for. Reed says anything reasonable — if a company thought that payroll records demonstrate it, that's fine; if they have something else they'd prefer to use, that's fine too. There are a lot of different ways to conduct business and the UID wants to keep it flexible. Agencies would have had to determine the rates initially, and that method would likely be fine now.
 - Alison notes that the UID took the financial requirement out of the annual report because it didn't have the time and expertise to review them. Are we going to end up in the same position with this? Reed says this would only be done during an audit, and Adam doesn't audit everyone every year. Adam says it won't be a problem to add it to the audit process that he's already doing.
 - Nancy clarifies that this is just going to be part of the audit, and isn't something the whole industry will have to do and then turn in. Reed says that's correct.
 - Nancy says it seems like it would be a good idea for this to be part of the audits and asks if the audits are random. Reed says yes. If companies wanted, the UID could make some guidelines that companies would have to meet as proof, but he would prefer giving companies flexibility.
 - Alison asks what the fine or punishment is if a company doesn't meet the regulations. Reed says he thinks it would be just a single violation. Tracy says it would look at how many files were charged at less than the cost of doing business, and the forfeiture would be based on the number of files that were charged at less than the cost of doing business. It would likely be a random sample, not every file. Chase says, based on discussions with past UID members, if a violation is found during an audit, the fine is \$5,000, but it's different for an investigation. He thinks it's a great idea. Asking for reasonable proof will likely be sufficient, and doing it during an audit would make it manageable for the UID. The rule is clear, and in the industry and Utah in general, companies are often suspicious of each other. If the rule needs to be updated in the future, this could spur discussion. He says he's all for the UID's plan.
 - Nancy asks if this has been a rule for quite a while and if people haven't been complying, what is the UID going to do to notify the industry. Reed says the UID doesn't know whether people are complying with the statute or not. It's been assumed that people are being honest. The plan is to send out a bulletin saying that this will be included in future audits.
 - Chase thinks this is a good idea, and as long as the law is on the books, having a practical approach to enforcing it seems like the better way to proceed. Doing it during an audit really reduces the liability and risk on an agency if they're out of compliance. It's a good step to compliance and is a healthy way to approach it.
 - Nancy asks how many random audits are done every year. Tracy says Adam is currently doing 3 audits a month, and is hoping to increase it to 4 over the next few months.

- [46:40] Nancy asks if it's true that it's escrow as a whole — not each escrow — is what needs to support the cost of doing business. So will looking at escrow file by file give an accurate picture? How does the UID determine the cost of doing business if they're just pulling random files. Tracy says that's a fine question and she doesn't have an answer. Reed says the UID could look at every file, but doesn't know that would serve the interests of the UID or the agency. He thinks it should be possible to get random samples that would be representative of the business and can be used to extrapolate.
- Chase says the concern is that there are some times in any business where you're at a loss for doing business. There may be individual files where an agency is at a loss for doing business for whatever reason. Some agencies may be found in violation on a per file basis, but escrow as a whole may carry itself. Can you really legislate that a business is not allowed to take a loss under certain situations? He notes that some agencies are small enough that their accounting doesn't show the income specific to each escrow file, but would for the whole population. He likes the idea because it could spur some necessary conversation about it. His interpretation is that it's escrow operations as a whole, but knows that in the past his company was investigated on a single file due to a complaint, and they had to show profit on that single file. The big concern is that taking random samples may hit one of those examples where there's a loss, and what happens from there? Market conduct examiners were reasonable, and most agencies will be able to show that they make money overall. He doesn't think it will result in anyone getting a fine that they don't deserve.
- Alison thinks part of the individual file basis has to do with fleshing out the unfair inducement aspect of things. If someone is giving a reduced rate to a contractor, a random sample might pick that up. But it may need to be looking at a client sampling vs. a random sampling to see if someone is unfairly inducing a client.
- Tracy says it's a statutory requirement that a title business not operate at less than the cost of doing business in 31A-19a-209(3). What's being discussed is a filing issue that was brought to the UID by industry. The UID is trying to be reactive to someone bringing a concern. In the past, the UID had agencies certify on the filing of their escrow rates and title rates. They're learning now that some of those certifications may not be correct, so they're trying to figure out how to get a better view rather than looking at every filing or doing a refile. It's not looking at unfair inducements, it's just looking to make sure people aren't operating at less than the cost of doing business.
- Nancy asks if the escrow profit/loss and title profit/loss could be put back into the annual report. Since the annual report is quite small now, it might be better to do that rather than something random. Tracy says they thought the audit process would be less of a lift for the industry and would be less burdensome, but they could require every agency to file it every year. Chase says he thought it was taken out of the report because the UID didn't have the ability to review all those reports every year to verify them. He says the industry says that as long as they're making money at the end of the year rather than a per-file basis, that shouldn't matter. The concern is whether it's a per-file basis they have to be concerned with, or is it escrow operations as a whole. Will the person conducting those audits recommend a fine if they find one random file among the others that is out of compliance? Or can they rely on being able to show that they were profitable at the end of the year? Alison says that's her concern as well. Anyone can make escrow profitable throughout the year, but an agency could have one client they choose not to make money on due to volume.
- Reed says the statute talks about operating at less than the cost of doing the escrow business. Operating is not looking at one file or a group of files — the issue is operating at less than the cost of providing the services at the end of the year. Someone may want to show all their files at the end of the year, while others may show accounting records that show they made more money than the cost of the services. The UID won't ask for all the files; it will ask what they did to make

sure their certification is accurate. If the UID finds something egregious, that may be an inducement problem, but it won't be the main investigation.

- **Nancy would like this added to the next meeting's agenda under Old Business.**
- Rod Newman remembers when this rule came about, and discussions were held on how to make compliance reasonable and not too laborious. It boils down to the profit and loss statement — take the total costs of your escrow operations minus title fees and divide that by the number of transactions in a year, and you should be able to come up with a reasonable number for the charge of an escrow. You can even take the commercial deals out of the equation because they're charged differently. That gives a fairly accurate number for what it costs to do an escrow. He says that with rising employee costs, there is no way people are covering their escrow costs. Chase says that's why this is a good thing: It will spur conversations and change within the industry that is necessary.
- Title R592 rule review project / Reed
 - The Governor has asked every state agency to review its rules and update them to make the form consistent, determine whether rules can be eliminated, and see whether some rules can have their regulations pared back. The AG's office will help with a lot of it, and Perri will be reviewing the rules in R592. She's been with the TEC since it's inception and knows a lot about its history and business. The plan is for her to do a form review primarily, unless there's something glaring. Perri's changes will be submitted to the UID, with the understanding that the TEC has rulemaking authority with the UID's concurrence. The rule updates will be presented to the TEC for its approval. The hope is that a lot of the rules will be compliant and won't need to be presented. All rules need to be done by the end of the year, which means the UID needs to have them submitted by November 1.
- Five year review of R592-11 / Steve
 - Steve says state statute requires all agencies to review each rule every five years to make sure they're still relevant, necessary, and not onerous. Changes cannot be made during a five year review, but they can be discussed. All that is necessary today is determining whether or not the rule should be kept.
 - Nancy asks if we had any problems with eliminating the controlled business part of the report. Reed and Tracy say there have been no problems.
 - **Motion by Alison to maintain the rule. Seconded by Darla. Motion passes 4-0.**
- Prometric exam review / Chase
 - Chase received an email from Prometric acknowledging that he would be the TEC member attending. The review is scheduled for July 28.
 - Randy O. says the invitations went out to people who have participated in prior years, as well as other interested parties. Participants come from UID personnel and the industry, and the meeting will be virtual due to COVID-19. The statute requires that one member of the TEC attend, and an invite went to Chase, Nancy, and Alison. At least one of them needs to participate. Invitations went out to 9 people in the title industry altogether. Chase said he'll be going, and Alison says she'd be happy to attend as well.
 - Randy O. says title portion of the meeting is on July 28 from 1-5pm.
- **Old Business**
- **Other Business**
 - Alison asks about an update on replacements for members whose terms are ending June 30. Steve says the Governor has submitted names to the senate, who meet in June. If reviews aren't done then, it's unclear when confirmations will happen because the Senate takes a break in July and August. Commissioner Pike says interims happen Wednesday; otherwise, they aren't meeting again until September.
- **Hot Topics**

Executive Session (None)

- **Adjourn** (10:13 AM)
 - **Motion by Alison to adjourn. Seconded by Chase. Motion passes 4-0.**
- **Next Meeting: July 12, 2021** — Bonneville Room, Taylorsville State Office Building

2021 Meeting Schedule

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

* bold dates denote quarterly required in-person meetings