



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: July 12, 2021

Time: 9:00 AM

Place: In Person

Taylorsville SOB
4315 S. 2700 W.
Bonneville Room
Taylorsville, UT 84129

Virtual

Google Meet

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Chase Phillips (<i>Agency, Weber County</i>)	xDarla Milovich (<i>Agency, Salt Lake County</i>)
xKim Holbrook (<i>Insurer, Davis County</i>)	xCal Robinson (<i>Agency, Iron County</i>)
xRandy Smart (<i>Public Member, Salt Lake County</i>)	xPerri Babalis, <i>AG Counsel - TEC</i>

DEPARTMENT STAFF

Jon 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>	xAdam Martin, <i>MC Examiner</i>
Michael Covington, <i>CE Specialist</i>	xSteve Gooch, <i>PIO Recorder</i>	Eddie Vasquez, <i>AG Counsel</i>

PUBLIC

Nancy Frandsen	Frank Medina	Matt Ryden
Nathan Sprague	Carol Yamamoto	Steve Strong
Bob Rice	Jeff Wiener	Blake Heiner

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome** / Chase Phillips, Chair (9:05 AM)
- **Telephone Roll Call**
- **Swear in New Commission Members**
 - Kim Holbrook sworn in by Adam Martin
 - Cal Robinson sworn in by Steve Johnson
- **Thank Nancy Frandsen & Alison McCoy for Service** / Reed
 - Reed notes that he will thank Alison later, since she's not present.
 - Reed says he appreciates Nancy's deep knowledge of the title industry, which led to better discussions and decisions. She also has a lot of graciousness and respect for others, even in situations where the industry and commission disagreed. Her attention to detail and incisive questions helped him to work harder and make sure he was prepared to present at meetings. He thanks her for her time and work on the TEC.
 - Nancy says she enjoyed her time on the TEC and had learned from its unique opportunities. She wishes the best of luck to the new members, and tells them the experience will be what they make it.
- **Adopt Minutes of Previous Meetings**
 - June 14, 2021 meeting

- **Motion by Cal to adopt minutes. Seconded by Darla. Motion passes 5-0.**
 - June 30, 2021 meeting
 - **Motion by Darla to adopt minutes. Seconded by Randy. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by Darla to concur. Seconded by Cal. Motion passes 5-0.**
- **Board Duties & Responsibilities / Perri**
- **Update on 2021 Goals**
 - ULTA report / Chase
 - The ULTA had its annual convention in Park City. He thanks Adam for providing answers to questions from the ULTA committee. They were reviewed with industry and it was very informative. A member of the UID was there who discussed regulation and how it works with affiliated businesses that are starting to operate in Utah.
 - REC report / Darla
 - 27 new complaints, 36 closed complaints, 478 pending, and 13 with the AG's office.
- **New Business**
 - Review proposed rule changes under Executive Order 2021-12 / Perri
 - R592-7: Title Insurance Continuing Education Program
 - The language in the Authority and Purpose and Scope sections are being cleaned up so they have consistent language.
 - The definitions for "commission" and title licensee" are already defined in Section 31A-2-402, so there's no need to redefine them in the rule.
 - Randy asks if there's a need to have a (1) if there's only one definition. Perri and Steve will discuss it and consult the rulemaking manual.
 - In Purpose and Scope, the rule said "continuing education course" but a rule cannot apply to a course, so it was changed to "provider".
 - The word "deemed" was changed to "considered" in R592-7-4 because the Office of Administrative Rules says "deemed" is a fiction.
 - Penalties are being removed from all rules because it's already a penalty if you violate a statute or rule, so there's no need to restate it.
 - Enforcement Date is being removed because if a rule is being amended, there's already an enforcement date.
 - **Motion by Randy to approve the rule subject to the changes in the Definitions section and the lettering in the same section. Seconded by Darla. Motion passes 5-0.**
 - R592-8: Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing
 - **Moved to August meeting**
 - R592-10: Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers
 - R592-9 and R592-10 work in conjunction with R590-102. Perri suggests holding the rules until August so she can take the extra time to make sure all three rules are consistent.
 - **Moved to August meeting**
 - R592-11: Title Insurance Producer Annual Reports
 - The changes clean up the language and remove unnecessary language. The word "Section" will need to be removed from the former Subsection (2) as part of the changes. Steve notes that the line will need to be reorganized to keep the subsections together and apart from the section.
 - A scope is added to R592-11-2.
 - Three subsections were removed from R592-11-3 because they were already spelled out in statute, and Subsection (3) was removed because the next section tells how to file.

- The enforcement date is being removed because it's an amendment, not a new rule.
 - **Motion by Randy to concur. Seconded by Darla. Motion passes 5-0.**
- **Old Business**
 - Determining compliance with Section 31A-19a-209(3) / Reed
 - Reed notes that at last meeting, it was discussed that a section would be added to the audit process to check for compliance with 31A-19a-209(3). The industry had a question about how the UID would do the check.
 - Reed says that during the audit, Adam asks what proof the agency has to show that their rates are not less than the cost of doing business. Title agencies already have the obligation to certify that's the case, so the UID is just asking for whatever proof the agency thought was sufficient to make that certification.
 - There was also a question about whether the UID would look at overall costs or cost per filing. Reed looked at the statute, which talks about "any rate or other charge", which the UID interprets as being that no rate or other charge can be less than the cost of doing business. There will be no overall review of rates at the end of the year; it will be a piecemeal basis. The intent of the statute is to make sure that other parts of the business don't support the escrow or make up for discounts that are too low in the escrow part of the business.
 - Chase says that he thought at the last meeting that the UID said they would look at year-end numbers to determine if a company is in compliance. He confirms that the new interpretation is looking at a file-by-file basis. Reed says that's correct. There were a lot of different ideas discussed last month, but after reviewing the statute, it's clear that it talks about a singular rate or singular charge. It will be up to the agency to establish how they want to show the UID that they meet the requirement. He doesn't think an agency will need to open every file — they could use a statistically representative sample — but it's up to each agency.
 - Adam notes that 406 states that each escrow will stand alone. They're segregated escrow by escrow. When he does an audit, he pulls six files and compares them against the filed rates.
 - Chase says some industry conversation happened after the last meeting, and it felt like people who talked to him were under the impression that compliance should be determined by year-end total profit. He notes that this rule has been difficult for the UID to enforce and for the industry to be compliant with, in terms of the marketplace. He expects that there will be people asking if they can't change the rule to be year-end compliance, or based on year-end profits. He says he agrees with the interpretation, but with the way the market is, it might be worth looking at updating the rule to align with modern market practices. He's nervous for the first handful of agencies audited under the new method. They will be operating how the rest of the industry is, but may find out they're not charging enough per file every single time because there are wide variations in escrow costs. He appreciates the UID clarifying its interpretation and how it intends to enforce the rule.
 - Darla agrees with the year-end report aspect because there is a certain unpredictability to escrow. Under federal guidelines, agencies have to quote a certain fee for the lender at the start of the transaction, and can't change the fee unless there is a change in circumstance. You generally don't know what will happen with a transaction until it's gone through the process. A simple \$150 closing fee may not cover a labor-intensive file, but it can't be changed because of federal guidelines. Someone at the last meeting suggested separating commercial vs. residential transactions, which is a good idea because commercial transactions are more labor intensive. Determining compliance on a file-by-file basis would be difficult to do. Changing the rule later to a year-end report that would average simple vs. complex transactions would be a good idea. Being in the business of escrow means not being able to predict anything.
 - Carol Yamamoto notes that her company implemented a time log to differentiate and explain why fees are the way they are. Every file has a time log to support what fees were charged on the closing statement. She agrees with Darla that it's hard to monitor escrow at the beginning and know what to charge for a particular file. But there's another issue where clients say that other agencies will give them a good deal.

- Reed says it sounds like having this rule isn't a good idea. If you're going to make the rule apply to the year end, it would punish people that aren't running a profitable business. He doesn't know what purpose that would serve.
- Chase says he talked with people involved in the creation of the rule, and the intent is to make sure there aren't agencies with the financial resources to close escrow for free based on the title policies they're generating. The way the industry seems to be running is that the marketplace is at odds with the rule. Every time the rule comes up in the industry, it's a hot button. There are a lot of points of view and disagreements. It comes down to whether or not they want a free market.
- Chase says he hopes the industry is listening to this meeting and paying attention. He agrees with what Reed and Adam have presented, and how the rule is written. It appears that agencies should be ensuring that on every single file they close, they should be able to cover the escrow cost of that transaction. The way the industry operates in Utah, he is fearful that there are agencies not doing that consistently on every file they close. This is an opportunity to bring the rule up for review to be compliant with current market practices, or the industry can use it to understand what it really costs to close an escrow. He says there are agencies that would provide better services and protections for the public if they were able to charge on every file the way the rule was written. He feels like the rule was written, and the industry tried to find a way to sneak by and not write it into their practices.
- Reed clarifies that what we're dealing with is a statute — not a rule — so the legislature would need to consider any changes.
- Perri says her understanding has always been that each transaction must stand on its own. An agency can't give a deal to one client, then charge another client more to justify the lesser fee for the first client. Each transaction must stand on its own.
- Reed says the law is on the books and there's justification for the UID's reading of it. It might start some conversations when the UID starts enforcing it, if the industry thinks it needs to be changed.
- Blake Heiner says he remembers when the rule was enacted. His concern at the time — and now — is that a larger title company, particularly a national title company, could come in with sufficient resources to operate the escrow as a loss-leader to get the title business. He doesn't know if anyone really expected that each individual escrow file would need to be justified. He thinks the idea is that each company, by way of its profit and loss statement, would need to demonstrate that its minimum charges cover the cost of doing the escrow business. In other words, you take all the escrow costs in the profit and loss, and divide it by the number of transactions to find the minimum escrow fee. You can always charge more if there's more work involved. Nobody should be concerned about fees for individual files lining up with the work involved in each particular transaction. The idea is that, on the whole, over a period of time, does the income from the escrow side of the business cover the cost of doing the business. It's not a matter of auditing individual files, for enforcement, it's each agency providing a profit and loss statement that demonstrates the costs of doing escrow business over the last year, and based on those costs and the number of transactions closed, here's our escrow fee. He doesn't think anyone would have a problem with that.
- Chase says the statute specifically says escrow is segregated "escrow by escrow." Reed says there's nothing in the statute that talks about a period of time. You'd think it would, if there was an idea to look at the bigger picture. Certainly the statute wouldn't refer to "rate or charge" in the singular; it would refer to charges in the plural and would talk about profit and loss in the bigger picture. That reading is not consistent with the statute.
- Blake points out that agencies have to report it as part of the annual report. Chase says the financial section was removed from the annual report a year or so ago. The UID needs another way of verifying whether an agency is in compliance or not. Because it was reported in the annual report, the industry started looking at it being an annual basis. But when you read the statute, that reading conflicts with the statute. The UID has to enforce the rule the way they need to enforce it

according to statute. Blake asks why it's not in the annual report any longer. Chase says it came through the TEC last year, and it's because the UID didn't have the resources to do it. Blake asks if the UID has the resources now to audit individual files. Reed says that's not the process; the UID will go to an agency and ask for the proof that shows their compliance. Blake asks if the UID comes to an agency and asks to see its profit and loss for the last year, and the cost of doing business, and compare that to the escrow fee, would that be problem solved? Reed says no. That doesn't comply with the statute. Chase says the problem is that the industry has gone away from the statute. He is confident saying there are agencies in Utah that are not in compliance with this rule, whether it's annual or file-by-file.

- Chase says the UID has now notified the industry that this is the new norm, so the industry needs to have a conversation about what to do, and each agency will need to determine whether or not they're in compliance. If something needs to change, the industry will need to decide whether the statute needs to change to fit industry practices, or whether the industry needs to change to fit the statute.
- Cal says the basis for the rule is unfair inducements. There are likely a lot of agencies out there with contractors or lenders that they'll give a different rate to than they give everyone else for the same amount of work. Chase says he agrees. There are several reasons this could be applicable for why the statute is healthy for the industry.
- Chase says his biggest concern as chair is that he doesn't want to see any agency be made an example of because the whole industry is out of alignment with the current statute. At the end of the day, agencies have all been providing proof of how they're compliant, and this may just be an adjustment of how the report it. For those that aren't in compliance, this is a notice that they will need to justify their rates in the future.
- Reed says it might be a good idea for Perri to look into the legislative history on the statute. It may give better insight into the intent.
- Reed understands that some agencies may be taken by surprise by this new approach, so the UID is willing to hold off for a while to give people the opportunity to take stock of how they conduct their business and make any changes they feel need to be made. Chase says that's generous of the UID and would be helpful. He expects that the UID will hear a lot of frustration because most agencies interpret the existing statute the way Blake explained it.
- Chase notes that today's discussion is about why the UID made its decision and how it intends to do what it needs to do.
- Carol says this discussion happened several years ago, and she doesn't know how you'd get the escrow people to understand the effect of not following the rule. She says it's an individual thing too. Chase says that's the greater concern of any agency owner or manager listening to the meeting. He thinks it's important that everyone understand it because everyone needs to be compliant. The problem is those agents willingly or actively out of compliance — they're the reason the rule was implemented to begin with.
- Reed notes that this issue all came about because of a request from a member of the industry saying the UID's current enforcement efforts weren't enough. This is something that industry asked for, so the UID took a hard look at it, and this is what came about.
- Bob Rice asks for the specific statutes that are being discussed. Reed says it's 31A-19a-209(3) and 31A-23a-406, which talks about keeping escrow transactions separate.
- Blake says he thinks 406 isn't applicable to rates — it's for escrow accounts — and 209(3) is about filing rates.
- Chase says it's important for people to reread the rules and statutes so the industry knows what it says. **He asks Perri to report on the history next month.**
- Chase asks, if the industry thinks the UID is incorrect, how would it challenge the approach or the determination. Reed says people are free to contact him with their analysis. He's open to what people have to say. The UID thinks it has a reasonable interpretation, but wants to get it right.

- **Other Business**

- **Hot Topics**

- Update on rate manual resubmission / Adam
 - Adam says the refiling of rates was an extensive project. All filings have been reviewed, and a roundtable meeting with the UID's actuary is happening on Thursday. In the next couple of weeks, each insurer should get either a notification of approval or a rejection. There are a few that will be rejected because their justifications were not submitted.
 - He also notes that the title assessment is being run now. Once it's done, it'll be sent to everyone around the last week of July. They will need to be paid by August 31.

Executive Session (None)

- **Adjourn** (10:45 AM)
 - **Motion by Darla to adjourn. Seconded by Randy. Motion passes 5-0.**
- **Next Meeting: August 9, 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