



Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Title & Escrow Commission Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: July 28, 2022

Place: In Person
None

Virtual
Google Meet

Time: 10:00 AM

This special meeting was called at the request of the Insurance Commissioner under 31A-2-403(6)(c)(i)

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Kim Holbrook (<i>Insurer, Davis County</i>)	xDarla Milovich (<i>Agency, Salt Lake County</i>)
Vice Chair, Chase Phillips (<i>Agency, Weber County</i>)	xCal Robinson (<i>Agency, Iron County</i>)
xJeff Mathews (<i>Public Member, Morgan 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>	Patrick Lee, <i>Finance Dir.</i>	Adam Martin, <i>MC Examiner</i>
xShelley Coudreaut, <i>AG Counsel - UID</i>	Michael Covington, <i>CE Specialist</i>	xSteve Gooch, <i>PIO Recorder</i>

PUBLIC

Mike Koloski	Matt Holton	Frank Medina
David Moore	Spencer Stokes	Kreg Wagner
Matt Ryden	Joseph McPhie	Wade Taylor
Cort Ashton	Erik Helgeson	Bob Rice
James Seaman	Nate Sprague	Branda Hansen
Krysta Pehrson	David Buddingh	Michael Sumner

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair (10:00 AM)
- **Reading of Anchor Location Determination**
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meetings**
 - June 13
 - **Motion by Darla to adopt minutes. Seconded by Cal. Motion passes 4-0.**
 - Yea: Kim, Darla, Cal, Jeff
 - Nay: None
 - June 30
 - **Motion by Darla to adopt minutes. Seconded by Cal. Motion passes 4-0.**

- Yea: Kim, Darla, Cal, Jeff
- Nay: None
- **New Business**
 - Discuss and vote on Utah Association of Realtors' request / Reed
 - Reed says the UAR has asked the UID and TEC to participate in a working group along with the DRE and REC to discuss:
 1. Repealing the prohibition on below cost escrow services in 31A-19a-209
 2. Modifying or eliminating provisions of the administrative rule on unfair inducements and marketing practices in title insurance
 3. Transferring the regulatory authority for title insurance producers to the DRE
 - Reed says the commissioner is willing to participate in the discussions and consider these matters, and is asking for the TEC's input and hopes for their approval.
 - Kim says the TEC is always open to listen and discuss things. She asks for TEC comment and then will accept public comment. She says there could be a lot to discuss about all three items, and suggests working on them one at a time.
 - Darla agrees about taking them one at a time, and about being open to discussions. She asks for clarification about the vote: Is it voting about having the discussion, or is it voting on the items being discussed. Cal says he thinks it's voting on the discussion, not on what the UAR is proposing. Darla is open to discussions and having them one at a time.
 - Cal agrees with Darla and Kim, and will save his comments for when they meet with the group.
 - Jeff has no comment at the moment.
 - Cort Ashton would like to understand where this is coming from. He understands where item #1 is coming from, but would like context on the others. Kreg Wagner says it's due to feedback from the UAR's membership over the years. Since there's been open dialogue on this rule issue, they thought it was appropriate to raise the other items at the same time. There's a good relationship with the TEC and DRE right now, so it's a good time to try something collaborative regarding the prohibitions in marketing and competition, why those rules are in place, do they align with RESPA or go further than RESPA. The idea to place the TEC under the DRE comes from real estate agents with escrow funds and earnest money, and wondering whether it should be under the purview of the DRE. Kreg says DRE Director Johnny Stewart hasn't endorsed it at this point, but the UAR wants to have the discussion to see if it would be advantageous and protective to the public. Kreg says in past discussions, the DRE has created a task force that holds discussions with two appointed commissioners and industry experts, who then return to the REC to give a recommendation. He says that's a model the UAR would endorse and encourage to allow open dialogue with the DRE, TEC, and UAR.
 - Bob Rice says it seems to him as if the issue is not the wisdom of these 3 items or whether the commission wants to consider the 3 items, but whether the TEC wants to be involved in a working group to discuss the issues. He asks if the TEC decides not to be involved, will the working group go on without the TEC, or will the working group not exist. Kreg says they would like the TEC to participate, but would move forward on discussions with the ULTA at least. The discussions would still happen, but they would like input from the TEC. Bob says if these discussions are going to happen regardless, the TEC should absolutely have a seat at the table. Not that the issues are good or bad, but they should be involved. Cal agrees.
 - Cort says as he looks at other states, he doesn't see Real Estate regulating title insurance in other states; Financial Institutions does, but not Real Estate. He says the TEC was created to help the UID regulate title insurance and thinks there's a great working relationship with the UID. He would like the industry to be careful to see if the regulators even buy in on it. He would like to know the UID's position on the shift.
 - Reed says the UID's view is that good, responsible government requires listening to people who have ideas, and the UID will enter this with an open mind. However, Cort makes good points about how things are currently regulated. But maybe there's a better way. The commissioner is

open minded about looking at other ways that can demonstrate that the proposals make sense and are worthwhile. Most of us have questions and concerns that may be an impediment to moving things forward, but it's a good idea to talk about it.

- Joseph McPhie suggests that they start with discussing below cost escrow and proceeding from there. That one topic alone will create a lot of discussion. Kreg says the UAR isn't opposed to separating the issues. He suggests that if the group will be looking at statutory language, we should pause the rule change that would enforce that statutory language.
- **Motion by Cal to discuss UAR's request one item at a time, starting with #1. Seconded by Jeff. Motion passes 4-0.**
 - Yea: Kim, Darla, Cal, Jeff
 - Nay: None
- Reed proposes that the discussion be held within the confines of a legally constituted body that is accessible to the public and recorded. He thinks we need to take the items one at a time, starting with #1 (repealing the statute), then moving on to #2 (inducements), then on to #3 (transferring regulatory authority). He also says the DRE and REC have no legal authority over the rule and shouldn't be involved in those discussions. Those discussions should be done in an open and public TEC meeting — whether regular or specially scheduled — with the UAR presenting, and should be done within the normal structure of the TEC. It could be done in multiple meetings as necessary. As for the topic of transferring authority, that discussion does involve the DRE, REC, UID, and TEC. That should be discussed during a biannual meeting of those entities, where the UAR presents to the group. Reed's suggestion is more formal than just a working group, so they will need the UAR's buy-in on it. There may need to be some give and take, but this is what he recommends the TEC and UID advocate for.
- Kreg says it sounds like discussion with the TEC would need to happen in a public setting like a TEC meeting, but other discussions could take place that don't involve non-government entities. Reed says it would be fine for the UAR to talk to him or the commissioner, but it's important to have the public be aware of what's going on. He would feel better not having a loosely formed group. If there are recommendations, what does that mean? The group just exists, but doesn't have any legal authority to do anything. That's why it should be done within the confines of a legally constituted body. Kreg will talk about it with the CEO of the UAR and a couple members of the REC. He doesn't think there's any trepidation about a public setting, it's just can some of the legwork get done working with the ULTA before the presentation to the TEC. He would like it to be collaborative versus the UAR just dictating what will happen. Reed says he would be happy to participate in any of the discussions before the presentation. Kreg says they would welcome it, as well as participation by the AGs and industry.
- Kreg notes that it's a big change. During the rule change there was discussion about why the statute was put in place in 1999. Does it still ring true or should it be repealed? He says that's the legislature's prerogative, but any recommendation coming from both the UID and DRE would carry significant weight.
- Reed asks if there are any objections from the TEC regarding his proposed process for discussions. Kim says she thinks a public meeting with prior discussion among the associations, industry, and UID is a great plan. Darla, Jeff, and Cal all agree with Reed's proposed process.
- Joseph asks if the TEC should discuss putting the rule amendment on hold while the discussions are being held. Cal says he thinks that would be addressed at the next meeting, and Reed agrees.
- **Kim adds a discussion of whether to move forward with the rule to the next meeting.**
- Kim also notes that the UID needs to be able to move forward when they have a complaint, and to have the tools to do so. Reed agrees and says we shouldn't be sitting on our hands because of a possibility of what may happen in the future. We need to move forward with figuring out how to change the rule in light of comments received at the hearing and in the written comments. Kim says the TEC has acknowledged that they want to make changes to the existing rule due to the comments that have been received.

- Kreg asks if the existing proposed rule is changed, would that have to be approved by the TEC, then opened for public comment and a hearing if necessary. Reed and Perri say that's correct.
- **Other Business**
 - New date for August meeting / Kim
 - Kim proposes that the next TEC meeting be held on August 22. Reed notes that we'll likely be waiting to hear from the UAR on when they would like to make their presentation, so we'll wait to hear from them on a special meeting to discuss item #1, but the new date is good.
 - **Motion by Darla to reschedule August meeting to August 22. Seconded by Jeff. Motion passes 4-0.**
 - Yea: Kim, Darla, Cal, Jeff
 - Nay: None

Executive Session (None)

- **Adjourn** (10:47 AM)
 - **Motion by Darla to adjourn. Seconded by Cal. Motion passes 4-0.**
 - Yea: Kim, Darla, Jeff, Cal
 - Nay: None
- **Next Meeting: August 22, 2022** — Big Cottonwood Room, Taylorsville State Office Building

2022 Meeting Schedule

Jan 10	Feb 14	Mar 14	Apr 11	May 9	Jun 13
Jul 11 [Canceled]	Aug 22	Sept 12	Oct 17*	Nov 14	Dec 19

*Proposed TEC/REC meeting immediately following