



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: August 9, 2021

Place: In Person

Virtual

Time: 9:00 AM

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

Google Meet

ATTENDEES

TITLE & ESCROW COMMISSION

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

DEPARTMENT STAFF

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

PUBLIC

Frank Ivory	Justin Sutherland	Steve Strong
Blake Heiner	Charles Pearlman	Matt Ryden
Wade Taylor	Joseph McPhie	Wes Jensen
Jon Bartlett	Matt Olson	

MINUTES — Approved

General Session: (Open to the Public)

- **Welcome** / Chase Phillips, Chair (9:02 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Randy to adopt minutes. Seconded by Cal. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - Chase notes there are a lot of people this month who are over the 40-year mark, several over the 30-year mark, and many who are over 20 years. He notes that Andy Day was licensed in 1962, which is great.
 - **Motion by Darla to concur. Seconded by Randy. Motion passes 5-0.**
 - Continuing education
 - Michael approved 3 classes in May, 11 in June, and 5 in July. No classes needed to be rejected.
 - **Motion by Darla to concur. Seconded by Cal. Motion passes 5-0.**
- **Board Duties & Responsibilities** / Perri
 - Annual board member training

- The Open and Public Meetings Act (OPMA) is found in Title 52, Chapter 4. The goal of OPMA is to make sure the public body deliberates and takes action openly and transparently.
- Public notice must be provided 24 hours ahead of the meeting. The UID takes care of notice by posting the agenda including date, time, and topics to be discussed on the Public Notice Website. House Bill 27 changed the site's name to the Open Data Portal. Notice must also be sent to a newspaper and posted on the door of the UID.
- Meetings must be recorded and minutes must be taken and posted online. Draft minutes must be made available within 30 days of the meeting, and final minutes must be posted.
- OPMA allows closed meetings only for certain reasons that are enumerated in Section 52-4-205. The likeliest to apply to the TEC are discussing a person's competence and physical or mental health, discussing impending litigation, and investigating alleged criminal conduct. To enter a closed session, the TEC must state the statutory authority to enter the closed session and take a roll-call vote of each member. Once in closed session, there may be discussion, but the only vote that can take place is a vote to end the closed session and resume the open session.
- OPMA allows emergency meetings and anticipates 24 hours notice to the public, but it is not required. The TEC must try to reach each member to see if they can attend.
- Electronic meetings are allowed with certain provisions. The biggest issue is whether there needs to be an anchor location. SB 125 requires an anchor location unless there is a threat to the safety or health of attendees, or if the anchor location site is damaged or unsafe.
- OPMA includes penalties for noncompliance. Not complying with closed meeting requirements is a class-B misdemeanor. Taking action in a closed meeting could void the action taken.
- Chase says that in his experience, most of the situations Perri described don't happen. The TEC has done some emergency meetings, however. He says ultimately a lot of the specifics are what Steve and Perri do. They make sure the TEC is in compliance. If the TEC wants to call a meeting, they should go to Steve or Perri. Perri says that is correct.
- **Update on 2021 Goals**
 - ULTA report / Chase
 - Chase was unable to attend the last ULTA meeting. The ULTA had its convention in Deer Valley and there was a lot of good industry information. Adam Martin with the UID presented a lot of good info. The Department of Real Estate discussed how they will enforce affiliated business arrangements in the state, and reviewed the rules that are in place.
 - The ULTA meets today, and they are interested in the discussions about 31A-19a-209(3).
 - REC report / Darla
 - 27 new complaints, 44 cases closed, 461 pending, 12 with the AG's office.
 - Chase says knowing that the DRE will be enforcing on affiliate business, he'd be interested to know if anything is mentioned. Darla says she will certainly let the TEC know if anything comes up.
- **New Business**
 - Review proposed rule changes under Executive Order 2021-12 / Perri
 - R592-8: Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing
 - The amendments are just cleanup changes.
 - Extra language is removed from the Authority section to comply with the rulewriting manual.
 - The Purpose and Scope and Definitions sections are being standardized to have consistent language.
 - The rulewriting manual doesn't allow "and/or" constructions, so that has been fixed in a few places.
 - Many of the changes are being done to use consistent terms and language.
 - The Penalties section is removed because penalties are set in the statute, so there's no need to repeat it in rule.

- The Enforcement Date is removed because it's already in force.
- The Severability section is being updated to use the department's current language.
- Randy O. notes that R592-8-2 removes the words "a request for" an attorney exemption, but R592-8-4 does not. Does "a request for" need to be removed from R592-8-4 as well? Perri says yes, it can be removed.
- **Motion by Darla to approve. Seconded by Randy. Motion passes 5-0.**
- R592-9: Title Insurance Recovery, Education, and Research Fund Assessment Rule
 - More detail is given regarding the fees in R590-102, and what's in R590-102 is largely restated in R592-9, but R590-102 has more detail.
 - Perri's suggestion is that we enact this version of the rule that refers to R590-102, where the fees and detail are.
 - Randy asks what is the purpose of this rule if the assessment is stated in R590-102. Perri says the statute requires the TEC to enact a rule regarding fees.
 - Reed thinks it's OK to have the language say "establish." The statute requires that the TEC do what R590-102 is already doing. He thinks the rule can be approved as currently worded, because the TEC and the UID both have authority and both have to make the rule. Perri asks if the TEC reviews the fees in R590-102. Reed says it never has. Perri suggests that they should, and Reed agrees. If the fees change, the TEC will be made aware of it.
 - Other changes are done to fit with the rulemaking manual and to add a Definitions section.
 - R592-9-4 is updated to say that the TEC adopts the title assessment amount in R590-102.
 - R592-9-5 is updated to say that the TEC adopts the individual producer assessment in R590-102.
 - R592-9-6 is updated to say that the TEC adopts the agency producer assessment in R590-102.
 - The title fees are in R590-102-22.
 - Randy notes that the original language says that the commission "will by motion adopt" the fees. He thinks that needs to be kept in or the TEC needs to adopt the assessment in a meeting. Reed says the UID will present it at the next meeting for adoption. Perri says she took the language out because the statute anticipates that it will occur. Randy agrees, but says there needs to be a formal action to approve it.
 - Perri says the review of the fees in R590-102 are not on the agenda, they can't be voted on today. But Reed says the changes to R592-9 can be voted on because they are on the agenda.
 - The Penalties, Enforcement Date, and Severability are being changed as discussed in R592-8.
 - **Motion by Darla to approve. Seconded by Cal. Motion passes 5-0.**
- R592-10: Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers
 - The Authority section is cleaned up, and certain citations were removed because they didn't have rulemaking authority.
 - The Purpose and Scope is updated to clean up the language, and the same with Definitions.
 - R592-10-4 and R592-10-5 were cleaned up to remove some excess language.
 - R592-10-6 was changed to remove the title bring up the provisions into R592-10-5. There is no method in the rule to calculate the number of offices, so it works better to be combined into the Office Report section.
 - Randy asks if the number of offices is underreported, is that automatically a penalty? Perri says the statute already contemplates that, so it wasn't necessary to restate it.
 - The new R592-10-6 was combined into one sentence because it seemed to be one thought.
 - The Penalties, Enforcement Date, and Severability are being changed as discussed in R592-8.
 - **Motion by Randy to approve. Seconded by Darla. Motion passes 5-0.**
- **Old Business**
 - Discussion of Section 31A-19a-209(3), including report on legislative history / Reed & Perri

- Perri says the AG's law clerk, Charles Pearlman, did a thorough search of the archives and wasn't able to find a lot of legislative history on this provision.
- Charles says the only intent shown was the prevent anticompetitive pricing. There's one letter discussing the original provision in terms of legislative history. Perri notes that Charles traveled the state to find any history on the statute.
- Chase reads a letter that Commissioner Pike sent to the TEC on August 5. The letter notes that the UID and the title industry disagree about the prohibition on below-cost escrow charges, and requests that the TEC advise the UID on below-cost escrow services in order to update the rule and draft a legislative update. Chase thinks this is a wise approach and appreciates that the UID is taking the industry's concerns seriously. He appreciates the opportunity to bring practice and statute into alignment.
- Reed suggests that the TEC appoint a subcommittee to start discussions. Chase agrees and proposes that it draft the language and bring it back to the TEC for approval.
- Randy recommends that Perri or Reed be on the subcommittee, plus 1-2 people from the TEC. Chase thinks there should be a couple of members from the industry or ULTA as well.
- Steve Strong (Cottonwood Title) is in the industry and is happy to participate. He says 31A-23a-406 doesn't relate to permitted charges and fees in an escrow — it's just managing files. It doesn't speak to 209 about what the rate or charge can be, or whether it's over a period of time or file by file. Chase asks for all comments like this to be heard at the subcommittee, not today's meeting. Reed says we're past those types of points, and the issue now is how to deal with the situation. He notes that the UID isn't going to take one hardline position over another — it's about finding a solution that works for everyone.
- Frank Ivory (Cottonwood Title) thinks there are a lot of people on the call who wanted to be heard. He'd like to hear some comments from people before the committee is formed. Chase says he doesn't want to exclude anyone, but he suspects comments will have been prepared to argue one side or the other. Everyone has already been convinced that it needs to change, so they're unnecessary.
- Darla asks if the public will be allowed to participate in the subcommittee. Reed says yes.
- Darla suggests that the subcommittee include 3-5 people from the industry and an underwriter. Chase doesn't think underwriters are necessary on the subcommittee, but they will be there to give their opinions.
- Perri suggests that Chase form the subcommittee, then the subcommittee can take it from there. Steve can notify the public should they wish to participate.
- Frank Ivory thinks having Adam on the subcommittee is a great idea. He also suggests that Justin Sutherland of the ULTA participate as well. He notes that truly segregating costs between title and escrow will mean creating separate title and escrow companies, like they have in California. It's a great idea to solve the problem now. It may prevent some things with potential legislation and can help the industry.
- Joseph McPhie suggests having someone associated with the DRE on the subcommittee. He says there is a provision in statute that the DRE be notified of changes to rates. Perri says the provision requires the DRE be notified of rule changes, not statute changes.
- Chase appoints a 7-member subcommittee:
 - Cal Robinson (chair) — TEC
 - Chase Phillips — TEC
 - Darla Milovich — TEC
 - Blake Heiner — industry
 - Justin Sutherland — industry
 - Matt Sager — underwriter
 - Adam Martin — UID

- Chase says that the purpose of the subcommittee is to complete the request in the UID's letter to the TEC and bring language for 31A-19a-209 that can be changed in statute. **Motion by Cal. Seconded by Darla. Motion passes 4-0.**
- **Other Business**
 - Elect chair & vice chair
 - **Darla nominates Kim as chair. Seconded by Cal. Motion passes 4-0.**
 - **Darla nominates Chase as vice chair. Seconded by Kim. Motion passes 4-0.**

Executive Session (None)

- **Adjourn** (10:54 AM)
 - **Motion by Darla to adjourn. Seconded by Cal. Motion passes 4-0.**
- **Next Meeting: September 13, 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