



Insurance Department

State of Utah

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor
NEAL T. GOOCH
Insurance Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: January 10, 2011 **Time:** 9am **Place:** East Bldg, Spruces Room

MEMBERS

(Attendees = x)

Commission Members

xChair Cortlund G. Ashton, Salt Lake Cnty
Co-Chair Garry M. Goodsell, Iron Cnty
xDirk Keyes

xCanyon W. Anderson, Davis Cnty
Jerry M. Houghton, Tooele Cnty

Department Staff

xPerri Babalis, AG Counsel
Tammy Greening, Examiner
Adam Martin, Examiner

Suzette Green-Wright, MC Dir.
xJilene Whitby, PIO Recorder
xSandra Halladay

xMark Kleinfeld, ALJ
xBrad Tibbitts, P&C Dir.

Public

David Moore

Clayton Hansen

Larry Tejay Rasband

MINUTES

General Session: (Open to the Public)

- **Welcome and Introductions** / Cortlund Ashton, Chair
Garry and Jerry were excused.
- **Executive Session** - Not needed
- **Adopt Minutes of Previous Meetings**
Canyon asked that the motion associated with Utah Standard Title Insurance Agency stip be amended from "unanimous" to "two for and one opposed." Canyon then made a motion to approve the minutes with this change, Dirk seconded it and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report**
 - Cort asked if the department checked to see if new agency business addresses were valid. Brad will find out.
 - A member of the public noted that two of the three new agencies did not appear to be in compliance with the three years of experience requirement. Brad will verify this.
 - Suggested the department track this. It was suggested that agencies need to be educated to reinstate agency designation when license reinstated. Brad will talk with Producer Licensing Division about this.
 - Jilene was asked to send the licensee report to the Commission prior to the meeting.
 - Motion by Dirk to concur with all but new licensee report while the department checks on what they can do to notify reinstated agencies of need to reinstate designations, seconded by Canyon and the vote was unanimous.
 - **Number of Cases Open & Closed**
 - **Investigation Process** / Tammy
Pending until next meeting.
 - **Enforcement Cases**
 - 58119 on Open and Closed Consumer Complaints: "Justified" mean the complaint can result in an ongoing investigation, as per Brad. Brad will check to see the status of this complaint and if it went to an investigation. Brad said investigations can be for possible violations of the code or rules.
 - Ecase 2174 is scheduled for a hearing that Mark will handle.
 - Ecase 2703 – Mailing notice returned with no forwarding address. As a result Sandra said it would go to a complaint.
 - Canyon commended the department for having more closed investigations than opened.

- **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
 - **Request for Hearing:** None
 - **Stipulation & Order:**
 - **Guardian Title Ins. Agency of Southern Utah / Mark Kleinfield**
 - ✓ The Order is the result of violation of 31A-23a-406(1)(c) relating to the purchase of title insurance in an escrow transaction. Due to a similar case, the Cooper case decided in the Court of Appeals that received a higher penalty than this one did originally, Mr. Kleinfield recommended a forfeiture of \$1,000, probation of 60 days, and a penalty of twice their profit (that is the amount charged minus the expenses, as per 31A-2-308(1)). Mark will change the March 2010 dates on pages 3 and 4 to January 10, 2010.
 - ✓ Canyon made a **motion** to accept the recommendation, Dirk seconded it and the vote was unanimous.
- **Old Business**
 - **Justification of Rates / Tracy**
 - Generally, in order to show rates are excessive the department would have to show there is no competition in the marketplace. There is no indication that this is the case. The department will not change how they review rates until the NAIC spearheads a change.
 - Canyon referred to 31A-19a-201(3) and said that when an underwriter uses rates reduced by 30% either other rates are too high or the lower rates are less than adequate. Tracy said the rates have been justified. Nothing different is being done here than what happens in the auto and home owner insurance marketplace. WFG has justified their rates. The state of domicile audits their companies regularly. Proving they are a monopoly is not easy.
 - Canyon noted that title insurance was different as per 31A-20-110 that justifies up front premium and a reasonable search. We have reason to believe that the rates that are being used are because a reasonable search is not being made. Tracy said Chapter 20 was not part of the rate filing law.
 - Cort said they were discriminatory in that a person only has access to these rates by going to the company that uses them. Tracy said most consumers go where their mortgage lender takes them. This is no different than any other line of insurance where you shop from agent to agent for the lowest rates. Agents do not sell for every company.
 - **Update on LSI / Suzette**
 - **Justification of National Title Rates / Suzette**
Put on next month's agenda.
 - **Discuss Proposed Rule, "Submission of a Schedule of Minimum Charges for Escrow Services" (Combination of R592-3 & 4) / Tracy**
 - Rules R592-3 & 4 describes how escrow rates are to be filed with the department. The rules are currently outdated. A couple of years ago the Commission thought about combining them but then decided to have a minimum charge. When that was not done these rules needed to be updated. The new rule brings filing into line with filing rules for other lines of insurance. Changes to the rule include: certification language; filings rejected if the fee is not received within 7 days of the filing; provides an electronic filing process; etc.
 - Cort asked if there were any changes to filing forms and fees. Tracy said no. He suggested they look at the rule and forms together to be sure no further changes are needed. **Put on next month's agenda. Tracy will see if forms need to be incorporated into the rule or not.**
 - **Review Working Draft of Rule R592-6-4, Including Prepayment of Subordination & Other Fees by Title Agents / Perri & Canyon**
 - Commission already agreed to the changes to Subsection (9).
 - The Commission needs to approve the changes. It was thought that "purchase money" in (21)(b) was really referring to "seller financing." Combine (b)(i) and (ii) then change numbering.
 - Canyon agreed with Tammy that the Prepayment of Subordination Agreement or Any Other Fees should be added to (14). Changes are concerned with out of pocket money that may not be recoverable. Add the word "loan." Commission agreed with the proposed wording changes. Canyon made a **motion** that **Perri and Jilene include changes in a working draft,** Dirk seconded it and the vote was unanimous.

- **Answers to Questions on Three Year Experience Requirement 31A-23a-204(1)(a)** / Brad
 - Brad thought the intent of this law was to have an experienced owner or manager at each location. This however is not specified in the code. Perri agreed that it could be clarified in a rule. One person asked how an individual could supervise multiple locations. Essentially locations are being run without supervision. Another suggested the rule needed to specify the number of agencies supervised by an experienced person. An agency may have been in compliance when they were licensed but have evolved into multiple locations and are out of compliance now. Qualifications need to be reviewed at renewal.
 - The department has legislation regarding this in HB19, line 2422, paragraph (c) states that the agency must be owned or managed by a person at all times who has three years licensed experience. Cort made a motion to move forward with a rule requiring new agencies be required to have one qualified person per entity. Brad suggested Commission members provide Suzette and him with possible unintended drawback to this. They will then prepare a rule. One member of the public thought a 1 to 1 restriction was too severe. Canyon agreed. Cort suggested putting this on back burner and see what Legislature does.
- **Review notary authority & 2 letters issued about notaries by department** / Brad
 - Issue started around 2005. A company came into the state with mobile notaries. The concern was that they might try to answer questions about the documents. Around November ??? the department provided a letter to the effect that a notary could sign but not explain documents.
 - Canyon asked who would enforce this? Since notaries are issued through the Lt. Governor's office it would probably be someone there. They have an AG representative. Perri said a bulletin could be sent to title agencies. Cort suggested a copy of the letter be distributed again. The letter should list the four things a notary is limited to.
 - Brad will check with the Lt. Governor to see who is in charge of notaries.
 - The notice should be put on the department's website.
 - Brad will bring a bulletin to the next meeting.
 - Put on the next agenda.
- **Confusion with Dates on Initial, Inactive, Activated Licenses on Website** / Tammy
Put on next agenda
- **Update on Proposed Changes to Rule R590-99 (R592-14)** / Suzette
Cort said this went out to industry and only one comment came back. Motion by Canyon that we move forward to R592-14 for comment seconded by Dirk.
- **Prepayment of Subordination & Other Fees by Title Agents** / Canyon
Discussed above. Take off agenda.
- **New Business**
 - **Notary Rate Justification and Authority**
Take off agenda
 - **What is an Adequate Search?** / Jerry
Put on next month's agenda.
 - **Definition of Escrow** / Canyon
Put on next month's agenda.
- **Other Business from Committee Members**
- **Adjourn:** At 11:30am Dirk moved to adjourn until Valentines' Day, Canyon seconded. Sugar cookies would be in order.
- **Next Meeting:** February 14, 2011, Copper Room

2011 Meetings

Jan. 10	Feb. 14	Mar. 14	Apr. 11	May 9	Jun. 13
Jul. 11	Aug. 8	Sep. 12	Oct. 11	Nov. 14	Dec. 12