



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: November 14, 2011 **Time:** 9:00 AM **Place:** East Bldg, Copper Room

MEMBERS

(Attendees = x)

COMMISSION MEMBERS

- xChair, Dirk Keyes
xCo Chair, Cortlund G. Ashton, Salt Lake Cnty
xKirk Donald Smith, Weber Cnty
xJerry M. Houghton, Tooele Cnty
xLarry Turner Blake, Washington, Cnty

Department Staff

- xPerri Babalis, AG Counsel
xSuzette Green-Wright, MC Dir.
xJilene Whitby, PIO, Recorder
xBrett Barratt, Deputy Comm.
xBrad Tibbitts, P & C Dir.
xMark Kleinfeld, ALJ
xTammy Greening, Examiner

Public

James Seaman
Michael J. Jensen
Clayton Hansen
Matt Sager
Pete Stevens
Tyler Hawkes
Duane Phillips
David Moore
Bruce Hancey

MINUTES

General Session: (Open to the Public)

- **Welcome** / Dirk Keyes, Chair 9am
- **Adopt Minutes of Previous Meeting**
Cort suggested two changes to the minutes: p.3, second bullet, second to the last line and last word "he," should be replaced with "Mr. Hawkes;" and 3rd bullet, second line, replace "to concur" with, "for reconsideration." Cort then made a **motion** to approve the minutes with these changes, Larry seconded it and the vote was unanimous.
- **Executive Session** – (Not needed) (Closed to the Public)
- **Reports**
 - **Concur with Licensee Report** / Tammy
Jerry made a **motion** to concur, Kirk seconded it and the vote was unanimous.
 - **Concur with Complaint & Enforcement Reports** / Suzette
Cort asked if the Open Investigation I-case #60142 would be an example of a case that might be investigated cooperatively with the Division of Real Estate (DRE)? Tammy said it would be a mortgage licensee. There are only two cases where there could be overlap with DRE. DRE would only be involved if RESPA was violated. Kirk made a motion to approve, Court seconded it and the vote was unanimous.
 - **Discussion Re: Whether Commission Can Receive Information Regarding Criminal Investigation of Title Licensees** / Perri
 - Perri said the Commission could review criminal cases if they are the normal cases sent to them. Criminal cases sent to the department are forwarded on to the Fraud Division and cases given to them that do not rise to the criminal level are given to the department.
 - Cort said members of the industry often approach him about complaints they have sent to the department and ask what is being done with them. Their complaint is that they do not receive confirmation from the department when they receive their complaint and they are not notified when the case has been completed. Real Estate

Division screens cases. Is that something that could be done like this? Names can be blacked out. Perri said the Commission has been given broad authority and that the process followed now would need to be changed significantly.

- Cort asked if they have a duty to file a complaint when people call them about a possible violation? Perri said there is nothing about this in the code.
- Perri said the Commission could not investigate a case as well as a hear it. Cort said there needs to be a way to better communicate to the industry what the department is doing.

○ **Request for Attorney Exemption**

▪ **Tyler Hawkes**

- Last month there was a split vote on the exemption for Mr. Hawkes.
- Mr. Hawkes was in attendance at this meeting and gave a report of his experience. He did start as a runner in high school. The agency had a search operation. He pulled deeds, looked through abstracts, updated title prior to recording for a couple of years; worked in marketing, got his mortgage brokers license and for three years was closing deals as a mortgage licensee, reviewing HUDs, taking applications. Thought his pre law school experience was deeper than normal.
- Kirk made a **motion** to approve Hawkes' request and send to the department for reconsideration. Bruce Hancey, former co-owner and president of Founders Title Company said the information in Mr. Hawkes letter regarding his duties with Founders was somewhat enhanced relative to escrow and foreclosure experience. He was not doing escrow or trustee sales. Might have done search and limited examination for a foreclosure report. Cort seconded the motion and all but Jerry voted to approve the motion. Jerry opposed the motion.

• **Administrative Proceedings Action**

○ **Stipulation & Order: LSI Title Insurance Agency of Utah, Inc. / ALJ**

Money was not put in a federally insured account as required by R590-170-4 and 31A-32a-409, allowed non-licensee to sign on a trust account, and utilized unlicensed individuals to perform duties requiring a license. Most violations have been corrected. Recommend \$5,000 forfeiture plus \$1,000 for an unlicensed individual. Cort asked for the number of transaction made without a license. Tammy stated she did not know without reviewing her notes. Cort noted that in a similar case last year the individual was fined \$1,000 per violation. Cort made a **motion** to send it back to the department to get the number of violations, Larry seconded it and the vote was unanimous.

○ **Petition for Reconsideration by Mike Jensen / Brett (Attachment #1)**

- Brett provided Commission with copies of the 2009 Stipulation and Order and the Motion to Amend. Mr. Jensen paid \$12,500 of the total \$25,000 forfeiture. He is seeking to have the remaining amount forgiven due to financial hardship. Mr. Jensen issued 1,056 policies which were the subject of his enforcement amount.
- Mr. Jensen said his agency was in the process of moving when his renewal was mailed to the old address. He sent in the annual report a month later. Lapse was unintentional. As soon as he realized his license had lapsed he went to the state to correct the situation. He lost a lot of business as a result.
- Kirk asked if the forfeiture was related to the number of transactions. Tammy was the investigator. He could have been fined double the amount as an individual and an agency. Mr. Jensen asked why the department had not checked to see if there was a license behind the annual report he sent? Suzette said Annual Reports go to Tammy and licensing is handled by another division.
- Cort **moved** to adopt the Motion to Amend order, Kirk seconded it and the vote was unanimous. Mr. Jensen was asked to notify department of his new address.

- **Old Business**

- **Discuss Definition of Real Estate Escrow Settlements & Real Estate Closings**

- Suzette reminded the Commission that they were going to provide definitions of “real estate escrow settlement” and “real estate closing.” Brett suggested defining “delivery.” James said ULTA did not have suggested wording.
- Tammy said escrow duties needed to be outlined in the statute. She had submitted a Cease and Desist to the AG’s against a notary. It is very hard to get the evidence needed when a notary acts beyond his/her authority. One man said it seemed like a lot of work for very few violations. Dirk noted that much of the problem is a result of unlicensed insurers. It was suggested that the problem might be with the testing process that allows people into the business who don’t know what they are doing.
- Cort and Larry will try to come up with definitions. Put on next month’s agenda.

- **Proposed New Language for [31A-23a-406](#) / Perri**

- Line 2546 should not be crossed out.
- Perri said Farm Credit was moved from 2557 to 2537 to remove the \$10,000 limitation.
- Cort made a **motion** to delete lines 2537, 2538 and 2539 since they are obsolete business practices, and to undelete line 2546, the rest should remain as is; Larry seconded it and the vote was unanimous. Suzette will ask the bill’s sponsor to make these changes.

- **Discussion of Regulation of Title Insurance**

Cort announced that the president of Utah Land Title Association was present. He is setting up a meeting with Commissioner Gooch to talk about this issue December 5 along with members of the Commission. Brett said Commissioner Gooch had told the Governor his concerns about the proposal to put title insurance regulation with the Division of Real Estate. ULTA sent a letter to the Governor’s office expressing their concerns as well. Leave this on the agenda.

- [Advisory Council on Optimizing and Streamlining State Government](#)

- **New Business**

- **Department to Prepare Bulletin Regarding Intent of [31A-23a-406\(5\)\(c\)](#) / Suzette**

- Suzette asked the Commission to clarify what they wanted her to do.
- Cort said 31A-23a-406 is ambiguous. Industry needs to know the original intent of this law. If the code is followed strictly a title agency cannot accept a check over \$10,000.
- Tammy said she rarely gets complaints about dispersing funds prematurely.
- Al asked why they keep trying to pass regulations that everyone violates.
- Larry made a **motion** to drop this from the agenda and make the change legislatively, Jerry seconded it and the vote was unanimous.

- **Approval of Title Insurance Assessment / Tammy**

A copy of the assessment was given to the Commission. Tammy reported that the assessment was a little short. The total is \$79,500, \$80,000 is needed. We received \$3,800 from the General Fund. Currently there are 164 title agencies whereas last year there were 178. Fifteen insurers write business in Utah, five of these have offices in state. Insurers will make up the shortfall based on their written premium. First American writes the most title. Invoices will go out the end of this week if the Commission approves the assessment. The Recovery Assessment Bands remained the same. Bands will need to be reviewed and approved before the next fiscal year if there is a change.

Larry made a **motion** to approve, Kirk seconded it and the vote was unanimous.

- **Other Business:** None

- **Adjourned** 10:44am with motion by Cort, seconded by Larry and a unanimous vote.

- **Next Meeting:** December 12, 2011, Copper Room

2011 Meetings
Dec. 12