



State of Utah

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

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: November 15, 2010 **Time:** 9am **Place:** East Bldg, Spruces Room

MEMBERS

Commission Members

Chair Cortlund G. Ashton, Salt Lake Cnty
Canyon W. Anderson, Davis Cnty
Co-Chair Garry M. Goodsell, Iron Cnty
Jerry M. Houghton, Tooele Cnty
Dirk Keyes

Department Staff

Perri Babalis, *AG Counsel*
Suzette Green-Wright, *MC Dir.*
Mark Kleinfeld, *ALJ*
Tammy Greening, *Examiner*
Jilene Whitby, *PIO Recorder*
Brad Tibbitts, *P&C Dir.*
Adam Martin, *Examiner*

Public

Scott Sabey
David Moore
Jeff Merrill
Jeff Wiener
Lincoln Scoffield
Al Newman
James Seaman
Larry Blake
Joseph McPhie
Ed Bowler

MINUTES

General Session: (Open to the Public)

- **Welcome and Introductions** / Cortlund Ashton, Chair
Meeting began at 9:02am. Cort congratulated Jerry on his successful bid for Tooele Recorder.
- **Executive Session** - Not needed.
- **Adopt Minutes of Previous Meetings**
Jerry made a **motion** to adopt the minutes of the previous meeting, Cort seconded it and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report**
Canyon asked for an update on ServiceLink of Utah. Tammy said they were withdrawing their license. Garry made a motion to approve the licensing report, Jerry seconded it and the vote was unanimous.
 - **Number of Cases Open & Closed**
There are about half as many cases as in 2009. Canyon noted that more cases are being closed than opened, which is commendable considering there are fewer staff members than in 2009. Suzette pointed out that the shaded areas on the report are new since last month. Suzette said the Guardian Title case is being reviewed.
 - **Enforcement Cases**
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
 - **Request for Hearing:** None
 - **Stipulation & Order:**
 - **Surety Title Agency**
 - The Stip and Order was signed by both parties October 21. The escrow officer distributed flyers indicating that a specific lender would not be charged a

document preparation fee, when in fact the agency had filed rates/charges. When brought to the attention of the agency they immediately re-distributed the flyer with the document preparation fee. A forfeiture of \$500 is recommended. It was noted that the agency had no past violations.

- Garry made the **motion** to approve the department's recommended penalty and Jerry seconded it. Commission members compared this violation and penalty with that of the Morgan Title Stip discussed last month. Morgan Title was assessed a forfeiture of \$2,500 and Surety was assessed a forfeiture of \$500. Cort wanted to know why the difference in the forfeiture amounts. Tammy explained that the two cases involved different circumstances. Surety Title's forfeiture was reduced from \$2,500 because the agency had policies and procedures in place to deter actions such as those of their Mr. Hoskins. Mr. Hoskins acted alone in his actions and was also assessed a forfeiture.
- The Commission then voted unanimously in favor of the motion.

- **Old Business**

- **Changes to Rule R592-6**

- Canyon referred to Section 6(21) that addresses unfair inducements or loans to clients. The previous rule was hard to enforce because a loan could not be provided to a client. How can it be enforced? The Commission is considering allowing loans to anyone. However in the case of closings there needs to be a distinction between loaning money and providing title work and escrow services. The prevailing concern is discerning if there is an inducement.
- Garry noted that these changes are being considered as a result of input received in last month's meeting. Cort suggested a hearing be held on the rule changes once they are made. Do we go forward? Comments were invited from attendees:
 - Scott Sabey: Asked about other changes previously proposed in the rule. Only those in Section 4 are being considered now.
 - ✓ Subsection 4(21) has errors in formatting.
 - ✓ In Subsection 4(21)(a)(i) he suggested inserting "bank" in place of person. This would prohibit banks from loaning money on investment property other than buildings they are purchasing for themselves.
 - ✓ In Subsection 4(21)(a)(ii) he asked that "affiliated" be defined.
 - ✓ The rule is still ambiguous regarding not allowing title companies to loan money to anyone buying a title policy.
 - ✓ Two ideas of what fair competition is:
 1. Providing notification to the public. Full disclosure.
 2. Being aware if the practice is in violation of RESPA.
 - ✓ Subsection 4(21) should be stricken entirely from the rule.
 - ✓ Canyon asked where the state's controlled business statute stand in relation to the public interest? Scott said it permits controlled business to exist.
 - ✓ Jerry said they had specifically left the spouse out because we cannot have that much control over the spouse.
 - ✓ Cort asked if (iv) was deleted would that fix one of the problems? Scott said it would.
 - ✓ Perri said a rule can limit what is in the code.
 - ✓ Canyon wondered about using the word "associate" in (21)(a)(ii). Scott said it was not defined in 31A.
 - ✓ Al would go along with eliminating (21) completely. What complaints has the department received? It is just another way to control competition.

- ✓ Jeff said this section deals with unfair marketing practices. Subsection (21) deals with a separate loaning business. Expanding a marketing rule will not affect the law. That has to be done in the code.
 - ✓ **Leave on agenda** for further comments.
 - ✓ Cort asked if they wanted to define "affiliate." Canyon said he did.
 - ✓ Cort asked for further input.
 - ✓ **Perri and Canyon will work on proposed changes.**
- **Bulletin Update Re: RESPA HUD-1 Compliance Agreement** / Canyon
 - Cort displayed a letter from HUD approving the compliance agreement. Industry needs to know this. Canyon said it was tantamount to being an insurer.
 - **Keep as an action item.**
 - Is the first lien letter on the web?
 - **Put Bulletin 93-2 back on the web** before the next meeting.
 - **Suzette will work on a bulletin.**
- **Legislative Title Changes Update** / Suzette

On Wednesday the Business and Labor Committee will review the department's bill which includes title changes. The bill is on the department's website. If approved Wednesday it will move more quickly through the legislative process.
- **Restrictions on Three Year Experience Requirement 31A-23a-204(1)(a)** / Cort

No language yet. **Keep on agenda.**
- **Discussion of Dual Licensing Rule, R592-5** / Cort
 - Tammy was asked how she was regulating dual licensing. She reported having two licensees who were having trouble filling out the form correctly. This has been taken care of.
 - Cort questioned on how an individual with two active licenses, one a real estate license and the other a title license would be paid. A title licensee cannot be paid unless they receive permission from the Commission as required under this rule. It does not matter if it is a separate action or deal. The use of dual licenses can be approved once every 18 months. One license has to be inactivated between uses. A person with two licenses can be paid for real estate work but cannot be paid by a title company.
 - **Cort asked Tammy to have appropriate party listed as payor.**
 - **Take off agenda**
- **Review Rule R590-99** / Suzette
 - Suzette asked if the Commission wanted to keep this rule or not and if so should it be changed to a title rule and the number changed to R592.
 - Canyon said re-conveyances were still a big problem. The rule applies to underwriters as well as agents.
 - Canyon made a **motion** to transfer it to a R592 number and **keep the topic on the agenda** to discuss further changes, Garry seconded it.
 - Al said the rule leaves room for argument over what might and might not be insurable. The rule is still needed.
 - Perri had changes to the rule that had previously been proposed. **Cort ask Suzette and Perri to make the necessary changes** for the next meeting.
 - The vote was unanimous in favor of the motion.
- **New Business**
 - **Bulletin 2010-7**

This bulletin needs to be renumbered and put out. **Comments and suggested changes need to be given to Tammy and Adam** by the end of this week.
 - **Licensing of LSI**

- What action has the department taken? Tammy said she was looking at TSI and reviewing the materials we asked them to send to the department.
- Garry said LSI is very active. He stressed the urgency of taking action. Tammy asked him for stats he said he had on them. Canyon said he had submitted copies of policies they have issued. Jerry said they were mailing everything out. Tammy will be reviewing the action she plans to take against them with the attorney general assistant.
- Tammy is reviewing the title applications prior to approval. She discovered that a recent application for a title agency was submitted showing a virtual address as the business address. This same person/entity has two other agencies (already approved) showing a virtual office as a business address. There are also licensed foreign title insurers issuing title policies direct to consumers and not through a licensed resident.
- The statute does not require that closings be done in Utah.
- David said mail-outs are being signed by notaries.
- Canyon said the AG's office needs to prosecute. These businesses are not paying premium taxes, they are issuing Fidelity Title Insurance Company policies and are using rates/premiums 50% lower. LSI needs to be at the top of the department's priority list. Other attendees agreed that this is a big issue.
- **Escrow practices** / Canyon
 - **Put on the next agenda** under New Business as: "Prepayment of Subordination and Other Fees by Title Agents."
 - Canyon reported that escrow agents are forwarding subordination fees to lenders prior to the closing. This is an unfair inducement and a trust account violation.
 - Garry suggested Canyon file a complaint with the department.
 - Canyon thought a bulletin might be in order.
 - Cort suggested making it a part of Rule R592-6. Before fines are assessed a bulletin should be sent out.
- **Other Business from Committee Members**
None
- **Adjourn: Motion** by Garry to adjourn, seconded by Jerry. 11am.
- **Next Meeting:** December 13, 2010, Spruces Room.

2010 Meetings
December 13