



# Insurance Department

## State of Utah

GARY R. HERBERT

*Governor*

GREG BELL

*Lieutenant Governor*

NEAL T. GOOCH

*Aptd. Insurance Commissioner*

## State of Utah Title and Escrow Commission Meeting Meeting Information

**Date:** March 8, 2010

**Time:** 9am

**Place:** East Bldg, Spruce Room

*(Attendees=x)*

### MEMBERS

#### *Commission Members*

xChair, Jerry M. Houghton, Tooele Cnty	xCanyon W. Anderson, Davis Cnty
xCortlund G. Ashton, Salt Lake Cnty	xGarry M. Goodsell, Iron Cnty
xDirk Keyes	

#### *Department Staff*

xPerri Babalis <i>AG Legal Counsel</i>	xSuzette Green-Wright <i>Mc Director Dir.</i>	xMark Kleinfield <i>Admin. Law Judge</i>
xTammy Greening <i>Mc Examiner</i>	xSheila Curtis <i>Mc Examiner</i>	xJilene Whitby <i>Pio/Recorder</i>
		xBrad Tibbitts <i>Life, P&amp;C</i>
	<b>Public</b>	
Clayton Hansen Jeff Weiner	Jack Marinello	Pete Stevens Lincoln Schofield

## MINUTES

### *General Session: (Open to the Public)*

- **Welcome and Introductions** by Jerry Houghton at 9:04am.
- **Executive Session** -Was not needed.
- **Adopt Minutes of Previous Meeting**
  - Canyon requested changes to the wording in the 8th bullet under the "R592-6" Subheading of Old Business. It begins with; "Garry said...." The second to the last sentences should read:
 

It states that if an insurer or producer receives more than a third of their businesses revenues from controlled business it is presumed that they are in violation of the code. ~~[and their]~~ Any referred business with anyone with a financial interest is in violation of controlled business [revenue needs to be reduced].
  - Cort **moved** to approve the minutes as amended, Dirk seconded it and the vote was unanimous.
- **Reports**
  - **Concur with Licensee Report**  
Canyon made a **motion** to concur with the report, Garry seconded it and the vote was unanimous. Canyon reported that an underwriter someone told him that Mike Jensen of Legacy Title would be closing his business.
  - **Number of Cases Open & Closed**  
Mark said that e-cases will often go to an informal order, then after negotiation, it may move to a stipulation.
  - **Enforcement Cases**

- **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
  - **Request for Hearing:** None
  - **Stipulation and Orders:**
    - **Heritage Title Insurance Agency, Inc.**  
Respondent purchased advertisement in the Real Estate Book, which is in violation of Rule R592-6-2(24) . The recommended forfeiture is \$1,500 with \$500 stayed based on outcome, and six months probation. Jerry said that the date in #3 should be changed. Mark agreed. The Commission discussed the length of the probation. Mark said that in the case of differences in the Order and the Findings of Fact, the Order will override the Findings of Fact. It was noted that the Real Estate Book was published by a client and not an association. Canyon made **motion** to approve the Order, Cort seconded it and the vote was unanimous.
    - **MaryAnn Blake**  
Mary Ann is co-owner and manager of Meridian Title. She admitted to diverting funds in excess of \$400,000 from the trust account. As a result she was unable to pay off mortgages and liens in connection with escrows she closed. The recommendation is that her license be revoked. Cort made a **motion** to approve the recommended action, Dirk seconded it and the vote was unanimous.
  - **Order to Show Cause: Mason Title**  
Mark reported that originally an informal action was taken against NETCO Title Insurance Agency because they did not file their annual business report. They did not resolve this issue and were assessed a forfeiture of \$1,000 and required to file their report. Mason Title still did not respond so the department has started and Order to Show Cause. Mark asked if the Commission wanted to hear the case or wanted him to do it. Jerry asked how the department will know if the owners of this business apply for another license? Sheila said they look at the federal EIN number. Also, the application for a new license has questions regarding prior violations or actions against the applicant. Canyon made a **motion** to have Mark hear the case, Cort seconded it and the vote was unanimous.
- **Old Business**
  - **Good Funds Wording / Canyon & Cort**
    - A copy of proposed new wording was provided to the Commission and attendees.
    - Canyon reviewed the draft of changes to 31A-23a-406(5).
    - Suzette said the department would **need the final draft of these changes by June 1** so Mark could review it and put it in our 2011 legislation.
    - Garry suggested finding a definition of "Certified Check" and including "official checks." It was also suggested that "government checks" be included. The last paragraph is confusing. What is the purpose of including "expedited funds?"
    - Canyon explained that if the amount is over \$10,000, it must be collected and cleared and can't be used until the bank confirms the money has been cleared. This would encourage wired funds. This still allows us to collect paper. Garry wondered why anyone would take on any exposure.
    - Jack read the FDIC and Wikipedia definitions of "Certified Check." Perri did not think banks used certified checks much, if at all.
    - **Suzette will bring the revised version next month.**
  - **R592-6(4)(21) Proposed Wording Changes / Canyon**  
Postpone until next month.

- **Breach of Fiduciary Duty - Short-Sale Transactions** / Suzette
  - Tammy reported that the Real Estate Commission is working on the issue of when the title agent should be involved in a short sale. They want title agencies to be aware of privacy laws.
  - Tammy says she gets a call about this weekly.
  - Jack said that title licensees encourage business by coordinating business without paying referral fees or paying for short sales.
  - Jeff met with Financial Institutions in Idaho. In Idaho as long as an escrow officer is acting as a funnel of information they are within the law. He receives a lot of calls from people asking about the definition of "negotiations."
  - The Real Estate Division will give us their wording regarding this matter.
  - Keep this on the agenda.
  - Cort clarified that if an escrow agent acts in more than a processing capacity they are doing so illegally. As long as there are no unfair inducements and they are charging a fee, it is okay. If they act as an agent by negotiating, they are violating the law.
  - Suzette said that before the department can issue a letter, bulletin or rule to clarify this matter we need to see the Real Estate Division's wording.
- **Auditing of Financial Statements** / Cort
  - Cort suggested the department consider some type of audit certification that would require someone other than the owner to review the audit.
  - The code requires nothing more than an owner prepared audit.
  - Suzette will look for language in the code that requires stricter regulation.
  - It was suggested that changes in the law be done by degrees.
  - Suzette will look at the possibility of amending Rule R592-11 to strengthen the audit requirements and make sure the code gives authority to do so.
  - Jeff said he would like to see guidelines and standardizations for the report.
  - Canyon made a motion to put "Rule R592-11" on next month's agenda, Cort seconded it and the vote was unanimous.
- **Completion of Commission Member Disclosure** / Cort & Dirk  
Disclosures were completed and given to Jilene.  
**All handed in.**
- **New Business**
  - None
- **Other Business from Committee Members**
  - Sheila asked that "Utah Housing Instructions" be added to next month's agenda" and that everyone bring wording they are getting from them.
  - The question is, "What is a Transaction." Suzette asked that the definitions be sent to her prior to the next meeting.
- **Adjourn:** Canyon made a motion to adjourn and Garry seconded it at 10:46am.
- **Next Meeting:** April 12, 2010

**2010 Meetings  
Spruces Room, East Building**

May 10	June 14	July 12	April 12
September 13	October 11	November 8	August 9
			December 13