



# 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:** April 11, 2011

**Time:** 9:30 AM

**Place:** East Bldg, **Copper** Room

### MEMBERS

#### Commission Members

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

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

#### Department Staff

Perri Babalis, *AG Counsel*  
Tammy Greening, *Examiner*  
Adam Martin, *Examiner*

Suzette Green-Wright, *MC Dir.*  
Jilene Whitby, *PIO Recorder*

Mark Kleinfeld, *ALJ*  
Brad Tibbitts, *P&C Dir.*

#### Public

James Seaman  
Lincoln Scoffield  
Joseph McPhee  
Randon Wilson

Jack Marinello  
Scott Sabey  
Matt Sager

David Moore  
Michael Smith  
Pete Stevens

### MINUTES

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

- **Welcome and Introductions** / Cortlund Ashton, Chair = 9:35am
- **Adopt Minutes of March Meeting**  
Jerry made a **motion** to adopt the minutes without change, Garry seconded it and the vote was unanimous.
- **Executive Session** - Not needed
- **Reports**
  - **Concur with Licensee Report**  
**Motion** by Garry to concur, seconded by Canyon, and the vote was unanimous.
  - **Concur with Complaint & Enforcement Reports**
    - Cort suggested and the Commission agree to add the LSI investigation to this report and not discuss it separately.
    - Canyon noted that 59162 was open and closed the same day. Brad will see where it went. Could have been resolved same day. Tammy said it was linked to 58852 & 59067. Deferred concurring until May meeting. Put on agenda.
  - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
  - **Pre-Hearing:** None
  - **Stipulation & Order:**
    - **Home Abstract & Title Co. Inc.**  
Agency license and appointments lapsed September 30, 2010. Agency performed eight closings while lapsed. \$1,500 Forfeiture plus 12 month Probation assessed. **Motion** by Canyon to concur, seconded by Garry, vote unanimous.
    - **Summit Escrow & Title Insurance Agency, LLC**  
Split closing performed without title policy. Assessed \$1,000 Forfeiture, 6 months Probation. Garry made **motion** to concur, seconded by Jerry. David said he reported to Sheila over a year ago that Summit's escrow sub-line of authority to the title insurance license was inactive. Still is. **Garry asked for update on their escrow license next month.**
    - **National Title Agency**  
License and appointments lapsed then reinstated three months later. While lapsed the agency

did 69 closings. Assessed \$5,000 Forfeiture, and 12 month Probation. **Motion** by canyon to concur, Garry seconded, vote was unanimous.

▪ **Tyler Cisneros**

Prepared fictitious HUD-1 to induce buyer to accept a short sale price. Commission previously rejected department's assessed penalty. During prehearing conference Cisneros agreed to revocation of his license. Garry made **motion** to concur, seconded by Canyon, vote was unanimous.

• 9:55AM closed and went to re-opened rule hearing to take comments from Glen Roberts.

• 10:16AM re-opened Commission meeting.

• **Old Business**

○ **Update on LSI / Tammy**

This is an ongoing investigation.

○ **HB333 Amendments to 31A-23a-402(8) - Changing "are" to "is."**

Perri reported that the change was grammatical only. No substantive change will result.

○ **Discuss Comments and Final Actions to R592-15 and Repeal of R592-3, R592-4**

No additional comments have been received since the hearing. **Motion** by Canyon to put changes into effect immediately, seconded by Jerry, vote was unanimous.

○ **Discuss Comments and Final Actions to R590-99 (R592-14)**

▪ Cort asked if the Commission wanted to keep the rule as it is or with the changes?

Commission discussed the issue. Canyon made the **motion** to not adopt the changes and to discuss new changes to the rule at the May meeting. Jerry suggested adopting changes. Cort's preference was to let the amendments die and discuss further improvements. Garry seconded the motion and the vote was unanimous.

▪ Canyon suggested action items: Try to incorporate statements from Peter Stevens as well as others, and request underwriters to continue to provide comments on 4B to clarify or change it rather than just deleting it. Forward comments to the Commission.

○ **Discuss Comments and Final Actions to R592-6-4.**

▪ Cort asked Perri if marriage could be interpreted as affiliate. Can a wife loan money in her own name or entity? **Perri will research it.** The definitions in a code section are the ones that relate to that section over definitions in another part of the code. Need to consider the definition of affiliate in the insurance code. **Mr. Sabey will provide Perri with the information he gave at the rule hearing today. Put this on May's agenda.**

▪ Garry asked that the Commission to review the comments and suggestions provided regarding this rule and come prepared to discuss them at the next meeting. The rule should not control what a spouse can do.

▪ Cort felt carve-outs are limited and appropriate. He did not want to address the definitions again, just "affiliates." He asked if the rule limits construction on a lot once a loan has been made and as lots are sold. Canyon thought there should be a distinction between mortgage lending and escrow. He would like to define "affiliate."

○ **Setting Search Standards / Jerry**

Jerry deferred to Jon Bartlett to review a proposed search and exam rule. He met and discussed this with people from First American. A handout of his presentation was provided. He noted that a title search license differed from a title escrow license. Title searches and exams can be done with little supervision. Must look at title and escrow differently. Rule Section R592-??-4 was discussed as follows:

▪ Subsection 1&2 are concerned with what it means to supervise an exam. How should "supervision" be defined? The rule needs to consider when an additional title worker should be hired. What should the ratio of title officers to title searches per month be?

▪ Subsection 3 says "reports" but the industry has moved to "commitments." May want to change "reports" to "commitments." Commitments should be reviewed by licensed title person.

▪ Subsection 4 - The last legislative session changed Marketable Record Title Act in SB 87. Checking to see if the bill requires a full search back to patent.

▪ Subsection 5(b) – Starters do not contain chains. This is an added burden. Canyon asked that if you don't have change but have starters, why wouldn't that continuation of warranties meet this standard. Jon thought it should be left up to the underwriter to decide.

- A member of the public asked if the enforcement date could be increased. Retooling systems could take more time than 45 days.
- A member of the public said all underwriters should be involved in this process and take full responsibility for and monitor their agents. Resources in Utah are too limited to leave this fully to the department to regulate. This issue is most critical to underwriters. Another thought it was more than an underwriter issue. Glen had specific comments that he will provide those working on the rule.
- Cort suggested the creation of a subcommittee. All decision items must come back to the Commission. Perri noted that no decisions could be made while in the sub-committee. Let everyone know about the meetings. **Motion** by Canyon that commission approve the formation of a subcommittee to discuss language and search standards for the rule and send notice to underwriters to be a part of the subcommittee and make Jerry Houghton the chair, seconded by Garry, vote was unanimous. Jerry will notify underwriters of meeting to be held in 2-3 weeks.
- **Dual Licensing Discussion - Continued** / Cort  
Perri said this issue had been discussed with the department and thought they were in agreement with the Commission. Perri suggested waiting until Suzette is in attendance to speak to the department's position.
- **Does an Agency's Surety Bond Cover a Notary?**  
Remove this from the agenda.
- **Update on Letter to Industry Re: Mobile Notary Performing Escrow Services**  
Tammy will be getting with an employee, Spencer Hadley, of the Lt. Governor's office. The word is getting out to notaries about mobile closings. He is receiving a couple of calls a week about it. Perri said the department can issue a cease and desist against a notary but that is all. The department cannot enforce the notary statute. Canyon said a letter from the department or Commission should be sent to the industry, including companies, stating that it is against the law to use notaries as escrow agents. Perri said the notary statute allows a notary's license to be revoked or suspended if they violate their code. Tammy said Spencer offered to review cases where a notary is found to be doing escrow services without an escrow license. Cort will start to get the word out to ULTA.
- **Appointment Process for Two New Members** / Brad  
So far three applicants have applied for the two Commission openings.
- **New Business**
  - **What is the Function of the Escrow that Requires the License** / Canyon  
See notary discussion above.
- **Other Business from Committee Members** - None
- **Adjourn: 11:50**
- **Next Meeting:** May 9, 2011, Copper Room

**2011 Meetings**

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