



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Aptd. Insurance Commissioner

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: April 12, 2010

Time: 9am

Place: East Bldg, Spruces Room

MEMBERS

(Attendees = x)

COMMISSION MEMBERS

xChair, Jerry M. Houghton, Tooele Cnty

xCortlund G. Ashton, Salt Lake Cnty

Dirk Keyes

xCanyon W. Anderson, Davis Cnty

xGarry M. Goodsell, Iron Cnty

Department Staff

xPerri Babalis
AG Legal Counsel

xSuzette Green-Wright
Mc Director Dir.

xMark Kleinfield
Admin. Law Judge

xTammy Greening
Mc Examiner

xSheila Curtis
Mc Examiner

xJilene Whitby
PIO/Recorder

xBrad Tibbitts
Life, P&C

MINUTES

General Session: (Open to the Public)

- **Welcome and Introductions** / Jerry Houghton, Chair
Jerry began the meeting at 9:05am.
- **Executive Session** - If needed (*Closed to the Public*)
It was determined that an executive meeting was not needed.
- **Adopt Minutes of Previous Meeting**
Cort moved to approve the minutes, Canyon seconded it and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report**
It was noted that the smaller the license number the older it is. Garry made a motion to approve the report, Cort seconded it and the vote was unanimous.
 - **Number of Cases Open & Closed**
Consumer complaints that are open and closed the same day are usually not valid. A valid consumer complaint could evolve to an I-case.
 - **Enforcement Cases**
 - There is now enough information to write complaint on 2174.
 - Canyon made a motion to concur with the report, Cort seconded it and the vote was unanimous.
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
 - **Guardian Title Dismissal**
 - A hearing was held January 12, 2010. Department alleged that respondent in handling buyer's side of a sale in a cash "split" closing, did not issue a title policy as part of the transaction, thus violating 31A-23a-406(1)(c).
 - Mark Kleinfield, administrative law judge, determined that since it was real estate they only needed one policy and therefore were not in violation of the law.

- Perri reminded attendees and the Commission that bulletins, such as Bulletin 2007-1, Prohibited Escrow Settlement Closing Transactions, do not have force of law. The law could be changed to make this illegal. Bulletins are written by the department, and in this case Representative Curt Web said the Commission approved the use of a bulletin rather than changing the law and going through the rulemaking process.
 - Perri noted that the department could appeal the decision.
 - Mr. Kleinfield said the issue for him was the plain reading of the law and legislative history, of which there was none. The law just referred to "escrow" and not "Escrow transaction." A rule would be helpful but preponderance would still be on the plain language of the law. He thought the law needed changing to create the result the Commission wanted. If appealed this decision would go to the Commissioner and then the Court of Appeals. It will be up to the department to repeal the rule.
 - Representative Web suggested they comply with the code as now interpreted or have Legislative Research change the code. Perri suggested they define "Transaction."
 - Canyon wanted to work on a rule. Jerry wanted more carve-outs to the law.
 - Canyon asked Jeff how all parties in a transaction could be protected and covered in the case of a mistake or negligent act. Jeff said that a CPL could be issued to the consumer. A carve-out would need to be created. David said that the statute would need to be changed if a policy is substituted for a CPL. A CPL would give added coverage.
 - Jerry asked that this topic remain on the agenda.
 - Cort made a **motion** to recommend to the department that in order to protect consumers they appeal the decision. Garry seconded the motion. Canyon said he would vote "No" because he thought the decision was right. Garry said the decision should be reviewed for the sake of the industry. Jeff said that regardless of what is decided escrow cash closing will not be allowed. The vote was unanimous. The Commission discussed carve-outs to be added to the law like short sells, HELOCs, etc. Perri suggested including a stay as a part of the appeal. The stay would consider if the decision was enforceable. Cort **amended** his motion to include a stay, Garry seconded it and the vote was unanimous.
- **Emergency Suspension: Kevin L Di Stenfano**
Respondent used \$11,000 to be held in trust for his own benefit. The department issued an emergency suspension March 31, 2010 to avoid respondent working with another agency.
 - **Request for Hearing:**
Mark Kleinfield noted that the following two cases had been put on the agenda prematurely before complaints had been filed.
 - Empire Land Title
 - Jerry D. Christensen
- **Stipulation and Orders:**
 - Utah Commercial Title Insurance Agency & Teryl S. Hammer
Ecase 2538 & 2540: Respondent charged rates for an owner's policy and closing fee below the rates filed with the department. Respondent was assessed \$1,000 forfeiture. Canyon wondered if the department could provide the Commission with a short statement of fact regarding the audit, if an audit is done, if there were charges outside of the filed rates, was there a pattern or not? Garry made a **motion** to approve the stip, Cort seconded it and the vote was unanimous.

- **Order to Show Cause:** None
- **Old Business**
 - Good Funds Revised Wording / Suzette
 - Handout provided of Real Estate Division's Rule R162-2 that allows cash deposits. Sometimes it takes three days to complete a transfer. We need to decide what period of time is needed to complete a transfer and at the same time avoid conflicting with the Real Estate Division's requirements. They require contract closing within four calendar days.
 - The Commission discussed the problem of withdrawing duplicate wire transfers and who fixes the problem? The bank must have the approval of the person the money is sent to before the bank can correct it. A cashier's check can be cancelled or replaced. Cort said ACH transfers can be withdrawn. He was not so worried about same day wires.
 - Can ACH credits be withdrawn or disputed? Yes, within 90 days.
 - Talked about official checks being added to carve-out.
 - The Commission discussed making wires transfers the standard with some flexibility for other situations.
 - Canyon and Suzette will draft suggested changes to 31A-23a-406. Representative Web recommended that when approved the change should be put in the department's omnibus bill.
 - Jeff suggested adding a carve-out for governmental entities.
 - R592-6(4)(21) Proposed Wording Changes / Canyon
Pending
 - Breach of Fiduciary Duty - Real Estate Division Wording / Suzette
The department has not received the Real Estate Division's wording yet. She had found a couple of ideas from the web. This is on short sale issues.
 - Auditing of Financial Statements - Rule R592-11
 - Suzette said the NAIC is thinking about putting the title industry under the same scrutiny as other insurers. They would have risk based capital (RBC) assigned to them. The NAIC sent a questionnaire to states asking what information they collect regarding title. Changes may be made within the next two years.
 - Jerry noted that the fraud case in southern Utah would not have been found through a financial audit. We need to focus on trust accounts and define how title premiums are paid, i.e.; via a separate check, out of the operating account, etc.
 - Canyon said that Rule R592-11 contains reasonable disclosure to the department.
 - It was suggested that audited financial statement be signed by a CPA. It was also suggested that companies be required to send the department a copy of their business tax return. If looking at gross losses and profits there is no problem but if looking at depreciation how do you interpret it? Cort did not think additional requirements should be put on the industry if the department was not trending or looking for patterns in the annual statements now. Jeff noted several valid reasons a balance sheet could show a low or negative balance. Canyon said that if there was disclosure the balance sheet could be reviewed to see why the agency does not have enough money to meet expenses.
 - Suzette suggested changing 31A-23a-409 to give the department more guidance. Canyon thought they needed enough regulation to determine if an agency is in trouble. Tammy said she looks at annual statements for the assessment but there are not enough people to do more. For an agency to show a loss now is expected.

- Representative Web asked what the yard stick would be. What are the parameters and penalties? How do we tell if an agency is solvent? What happens if they lose money one year? Do we kick them out?
 - Representative Web asked what the department does with the annual report they receive. Suzette said that if an agency is having financial problems the department would probably ask to see their financials more often.
 - Jeff said that a surety sends out same auditor to various states to do the same sort of audit on everyone.
 - Al said small agencies will fight this. He then asked how many customer losses have there been. Customer losses have been very few. He stated that the Commission and Department did not regulate title insurance, just escrow. He suggested separating escrow from title. Nine out of ten claims come from title agencies and not consumers. The bulk of losses are escrow related. Rarely does anyone go out of business because of escrow claim and definitely not title.
 - Cort asked this be put on the next agenda to see what they could do to help the department with this process.
 - Jerry said he is often asked how to fill-out the annual report form? The report refers to the code that describes how to fill it out. Canyon said a tax return would provide a more accurate disclosure.
 - Canyon proposed a **motion** to amend Rule R592-11-4 to require a tax return. Cort said only if the department will do something with it. Suzette said that if they saw a trend they might want to watch that company closer. Scott said companies are cancelling agents. The problem is that licenses are too easily obtained. Companies will filter out unstable agencies. The state needs to make it harder to get a license. It is not up to the state to decide who is good or not. Underwriters can do that. Cort **seconded** Canyon's motion. He expressed concern that the legislature might make their own correction to the law making things harder. All but Jerry **approved** the motion.
- **New Business**
 - Utah Housing (UH) Instructions / Sheila
Canyon made the **motion** to approve opening up a separate settlement statement for Utah Housing that piggybacks a simultaneous transaction that does not require a second escrow. Garry seconded it and the vote was unanimous.
 - Definition of a "Transaction" / Suzette
Suzette received one definition. She invited attendees to send her their definitions. Canyon had Wikipedia's definition. Is a bank loan considered a transaction? There can be multiple transactions within a real estate transaction. Canyon emphasized that they wanted an insurable transaction definition allowing a person to be a fiduciary. An uninsurable transaction could fall within the definition as well. The definition will determine if CPLs will be included or not.
 - Canyon said that a settlement is the completion of the transaction. Jack asked if there was a difference in escrow vs settlements. Are we talking about escrow services or settlement services? Canyon said a REPC defines the difference between escrow and settlement services.
 - The Commission needs to correlate their definition with the Real Estate Commission. Representative Web suggested presenting this change to the legislature early so it can be a part of a committee bill. To be in the department's bill the change will need to be submitted to the department in June. Suzette will send the Commission a copy of her letter to Trish Owen of Legislative Research requesting that she prepare these changes.

- **Other Business from Committee Members**

None

- **Adjourn:**

Cort made a **motion** to adjourn and Garry seconded it at 11:50am.

- **Next Meeting:** May 10

2010 Meetings

Spruces Room, East Building

May 10
September 13

June 14
October 11

July 12
November 8

August 9
December 13