



Insurance Department

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Apptd. Insurance Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: May 10, 2010

Time: 9am

Place: East Bldg, Spruces Room

ATTENDEES

(abs= absent)

Commission Members

Chair, Jerry M. Houghton, Tooele Cnty

Canyon W. Anderson, Davis Cnty

Cortlund G. Ashton, Salt Lake Cnty

Garry M. Goodsell, Iron Cnty

(abs) Dirk Keyes

Department Staff

Perri Babalis

Suzette Green-Wright

(abs) Mark Kleinfield

AG Legal Counsel

Mc Director Dir.

Admin. Law Judge

Tammy Greening

Sheila Curtis

Jilene Whitby

(abs) Brad Tibbitts

Mc Examiner

Mc Examiner

PIO/Recorder

Life, P&C

Public

David Moore

Doretta Smith

Jack Marinello

James Seaman

TeJay Rasband

MINUTES

General Session: (Open to the Public)

- **Welcome and Introductions** / Jerry Houghton, Chair
Garry made a **motion** to move to Executive Session, Canyon seconded it and vote was unanimous.

Executive Session (Closed to the Public)

General Session

- **Adopt Minutes of Previous Meeting**
Canyon made a **motion** to approve minutes, Garry seconded it and vote was unanimous.
- **Reports**
 - **Concur with Licensee Report**
Canyon made a **motion** to concur with report, Garry seconded it and vote was unanimous.
 - **Number of Cases Open & Closed**
Canyon made a **motion** to concur with report, Garry seconded it and vote was unanimous.
 - **Enforcement Cases**
Canyon made a **motion** to concur with report, Garry seconded it and the vote was unanimous.
 - **Request for Attorney Exemption: None**
- **Administrative Proceedings Action**
 - Emergency Suspension: None
 - Request for Hearing: None
 - Stipulation and Orders: None
 - Order to Show Cause: None
- **Old Business**

- **Good Funds Revised Wording / Canyon & Suzette**
- **R592-6(4)(21) Proposed Wording Changes / Canyon**
 - As is, this rule is difficult for the department to enforce.
 - Jerry provided Commission members with proposed wording changes.
 - Jack asked the definition of a lender? If there are more than X number of loans or X amount of money then you are a lender. Lenders don't lend their own money. Here we are talking about people loaning their own money. The concern is in loaning money as an inducement.
 - Send Jerry additional changes. Loans do not always involve an unfair inducement. An unfair inducement occurs when a loan is made that requires a person to do business with a title agency.
 - Sheila also noted that there are other sections of the rule that may need to be updated / changed. She will try to put a list together and asked if the Commission would also look closer at the rule.
 - Canyon made a motion to open Rule R592-6 to discuss (4)(21) and other changes. Cort seconded it and the vote was unanimous.
- **Breach of Fiduciary Duty - Real Estate Division Wording / Suzette**
David Moore said that the word "fiduciary" in the Code only comes up once in regard to title and then it does not deal with trust funds. It was noted that money held in escrow results in fiduciary responsibility.
- **Auditing of Financial Statements - Rule R592-11**
Canyon suggested that the rule include a reference to 31A-23a-415.
- **Definition of a "Transaction" / Suzette**
 - The Commission reviewed Black's Law definition of "Transaction." Garry provided Indiana's real estate definition. Is there a broader term than "sale." Can it be broadened to more than a purchase? Real Estate refers to transaction as any escrow transaction between two parties. Drop (b) from the Indiana definition.
 - Coordinate with the Real Estate Division.
 - Suzette will give the final language to Legislative Research. The language needs to be broad enough to cover the buyer and seller. Base language on Indiana's definition. Language should not allow cash splits.
 - Drop the word "certified" in the case of Good Funds. This will protect consumers against cash transactions that are unprotected. Could a closing protection letter be used as an option?
 - Canyon made a **motion** to **recommend to the department that they define "transaction" broadly, and within the definition, or elsewhere, prohibit cash transactions.** Garry seconded it and the vote was unanimous.
 - Cort made a **motion** to **include the \$500 carve out, plus cashier checks.** Garry seconded it and the vote was unanimous.
- **New Business**
 - **Can Title Agencies participate in Trade Show put on by Clients? / Jerry & Sheila**
 - A handout was provided.
 - A trade show put on by the Association of Realtors was only allowing five title agencies in. In this situation they are considered a client.
 - Can you participate in a trade association trade show? It is a form of advertising. Participants cannot be limited. If it was first come first served or a drawing that included all who wanted to participate then it would be okay.
 - Advertising cannot be redistributed through a goody bag but it can be handed out by the title person.
 - Sheila said that a recorders workshop would not be considered a client.

- The five who have already signed up will have to be told they can't do it. There is enough time for the association to change how this is done. All members ought to be given fair opportunity to participate. It was noted that the code disallowed any limitation. It must be open to all.
- **Review of Utah Code Section 31A-23a-415 by Utah Legislature's Business & Labor Interim Committee / Jerry]**
 - Jerry will represent the Commission and comment on the sunset provision and assessment. Glenn Roberts will represent ULTA.
 - Commission members suggested Jerry report that the Title Commission was effective.
 - Tammy will review the recovery fund assessment to determine if last year's money was used, what the general expenses are, and if additional expenses need to be considered.
 - Perri said the assessment rule should be reviewed annually. That time is coming up. **This should be put on the agenda.**
 - The legislative committee should be asked if they are comfortable with the Commission reviewing the department's budget and the assessment.
 - What was the intent of the Recovery Act - Chapter 41 of the Code? Moneys in the fund in excess of \$250,000 may be used by the Commission to: investigate violations; conduct education; and examine a title insurance licensee's trust account, exam procedures, and rules. The last use is the definition of a financial audit. Is there enough money to hire someone to do financial audits? Sheila said the code requires exams when fraud is the issue.
 - Report on both the annual assessment and the Recovery Fund. How can the use of this money be improved?
 - Delay amending R592-11 until these reports are reviewed. **Tammy will find out what the balance is in the latter fund.**
- **Short Sell Negotiation / Dual License / Jerry**
See below.
- **Dual Licensee Expedited Request / Jerry**
 - The Commission received an Expedited Request from Doretta Smith regarding five transactions.
 - An agent can have two licenses but can't use them at the same time unless they apply to handle one transaction during an 18 month period. See 31A-2-405 and Rule R592-5.
 - Doretta Smith said her intent was not to continue with an active real estate license. She misunderstood the law. She did not activate these transactions as a marketing representative. She will not receive commission from Inwest for them. They will be closed with Inwest. She will receive compensation from Prudential upon their closing. Jerry noted that she had the option to not be employed by Inwest until after transactions are done. After that she will no longer be a realtor. James did not think the rule dealt with this issue.
 - Jack said there was confusion in the industry regarding this law. Cort explained the history of the law that was put into effect about two years ago.
 - Doretta will select the transaction she wants to expedite.
 - Perri noted that changes would need to be made to the law first and then the rule.
- **Short Sale Bulletin / Tammy**
 - Tammy explained the focus of the bulletin.
 - In paragraph 2 it is up to the short sale agent to collect items listed. Lists vary from agency to agency. David said agents do other things than just those listed. It was suggested that:

- ✓ the paragraph be eliminated;
 - ✓ list services that cannot be done; or
 - ✓ include wording with the list that, “this includes but is not limited to.”
 - Paragraph 3 should reference the rule and statute. The bulletin is a reminder and has no force of law. An example of a negotiation that cannot be done would be helpful to include.
- **Other Business from Committee Members** - None
 - **Adjourn:** At noon Cort made a **motion** to adjourn and Canyon seconded it.
 - **Next Meeting:** June 14

2010 Meetings

Spruces Room, East Building

May 10
September 13

June 14
October 11

July 12
November 8

August 9
December 13