



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

NEAL T. GOOCH
Apptd. Insurance Commissioner

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: July 12, 2010

Time: 9am

Place: East Bldg, **Spruce** Room

MEMBERS

(Attendees = x)

Commission Members

xChair, Jerry M. Houghton, Tooele Cnty

xCanyon W. Anderson, Davis Cnty

xCortlund G. Ashton, Salt Lake Cnty

xGarry M. Goodsell, Iron Cnty

Dirk Keyes

Department Staff

xPerri Babalis
AG Legal Counsel

xSuzette Green-Wright
Mc Director Dir.

xMark Kleinfield
Admin. Law Judge

xTammy Greening
Mc Examiner

xJilene Whitby
PIO/Recorder

xBrad Tibbitts
Life, P&C

AGENDA

General Session: (Open to the Public)

- **Welcome and Introductions** / Jerry Houghton, Chair **9:05am**
At 9:05am Jerry welcomed everyone to the meeting. The agenda was re-arranged to accommodate Canyon who left at 10am.
- **Executive Session** - Not needed (*Closed to the Public*)
- **Adopt Minutes of Previous Meeting**
Garry **moved** to accept the minutes, Cort seconded it and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report**
 - The report was not included in the packet for attendees. It should have been. It will be included in the attachments to the minutes on the web.
 - Garry made a **motion** to approve the report, Cort seconded it and the vote was unanimous.
 - Some of the business reports are late because people forgot they were due. A fourth filed as hard copies and were told to send in electronic copies.
 - **Number of Cases Open & Closed**
The spike in open cases is because annual report are late.
 - **Enforcement Cases**
 - Perri noted that 20659 was shown as a complaint but not as a Stip and Order. Suzette will correct it.
 - Suzette said 2331 was still ongoing.
 - The department is appealing the decision made by Mark Kleinfield Regarding Guardian Title. Many assume the cash closing bulletin is void. This is not true. **Bulletin 2007-5, Prohibited Split Escrow, is still valid** and on the department's website <http://www.insurance.utah.gov/legalresources/bulletins.html>.
 - Jack said the confusion was due to poor communication on the part of the department. It was noted that the department had sent a letter to companies, associations, and title agencies to encourage them to sign-up for **Twitter and RSS**

Feed or to check the department's rule webpage for updates. The department would no longer send mailings to licensees about proposed rule changes. They have since added an additional electronic notification process to the rules, bulletin and news webpages. It is called **Monitor This Page**. The department does not have the capability, time or personnel to manage and update an email list of 90,000 agents and companies. It is up to the industry to sign-up for one of these new electronic monitoring options.

- Perri did not know if Gale had issued an Order of Stay. She said the Stay would only affect Guardian Title. It is based solely on the facts of that case. Perri encouraged those who know of parties violating Bulletin 2007-5 to file a complaint with the department.
- Garry noted that it was time to make the bulletin a rule or change the law.
- **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
 - **Emergency Suspension:** None
 - **Request for Hearing / Mark**

Mark asked the Commission if they wanted to hear the following cases. Respondents had not requested they hear it. They are all set for pre-hearings. Canyon **suggested** Mark hear the cases, Garry seconded it and all agreed.

 - Wasatch Land & Title Agency, Inc.
Prehearing is set for August 3. They failed to file their annual business report for 2008 and 2009. He is proposing a forfeiture and probation.
 - The Title Insurance Agency, Inc.
The prehearing is set for August 3.
 - Michael T. Moss
Mr. Moss is the president or director of Title Insurance Agency. He performed closings on an expired license. Mark proposed both the agency and individual licenses be revoked.
 - **Formal Actions Initiated by AG - Pre-Hearing:**

Both are being heard August 10. Both failed to file their 2008 and 2009 business reports. Both are still in business.

 - Priority Title Insurance Agency, Inc.
 - Mt. Olympus Title Insurance Agency, Inc.
 - **Stipulation and Orders:**
 - Kevin DiStefano
He allegedly diverted \$11,000 to personal use. Mark is recommending his license be revoked. Garry **moved** to accept the recommendation, Canyon seconded it and the vote was unanimous.
 - Capitol Title Insurance Agency
Irregularities were found in a June 2006 HUD settlement. Mark recommended a forfeiture of \$2,500 and 12 month probation.
 - Canyon could not find the agency on the department's data base.
 - Commission members expressed concern that the department had not taken action against Mr. Wolf who had signed the HUD agreements as an executive officer and had been involved in misrepresentation.
 - Garry asked if the \$2,500 penalty was in the Matrix. He was told it was. It is a single incident charge and not part of a range.
 - Mark said action taken against Capitol Title was separate from action taken against individuals in the company. The Commission has the choice to approve or disapprove the recommendation. Perri said they could also impose

- Garry moved to disapprove the stipulation and put it on hold until the department investigated and took action against Mr. Wolf. After further discussion Garry withdrew his first motion for a motion to approve the Stip and Order against Capitol Title and request that the department open an investigation against Mr. Wolf. Information gathered regarding real estate licensees would be shared with the Real Estate Division. Canyon seconded the motion and the vote was unanimous.
- Canyon left the meeting at 10:05am to attend a funeral.
- Jack reported that he had attended a Real Estate Division meeting last month. At the meeting it was announced that one of their rules had been revised to allow real estate licensees to not attend settlement closing when they have legal representation present. Jack was concerned that this would reduce communication between parties involved.
- **Order to Show Cause:** None
- **Old Business**
 - **Good Funds Revised Wording** / Canyon & Suzette
 - Section 31A-23a-406 needs to be finalized and given to the Business and Labor Legislative Committee for their review at their August interim meeting.
 - Canyon proposed new wording stating that state and federal checks may be dispersed on the same day the check is deposited. The wording came from Indiana good funds law. Canyon thought it would be treated by the bank the same as a wire. Perri said each bank would have its own policy regarding those checks.
 - Perri wondered if the words “Financial institutions?” needed to be added.
 - Don’t need to add line about government checks. Change lead in to say “next business day following the deposit.” Perri said outline numbering needed to be corrected on the next page.
 - Garry **moved** to recommend that the department prepare and amend the wording to 31A-23a-406 as discussed and file it with the Business and Labor Legislative Committee, Cort seconded it and the vote was unanimous.
 - **Title Insurance Bill** / Suzette

The legislature asked that the Title Assessment be tied to a consumer price index (CPI). Bryant Howe of Legislative Research said they have a boiler plate to draft the language needed for this. They would need to know if the Commission wanted a set or flexible cap and what day and month of the year to set it. The Commission wanted a flexible cap that could grow. The formula would use last year's assessment amount plus this year's CPI. Bryant said the Commission just needed to give them the date it should be adjusted. Cort **moved** to recommend the formula be added to the bill showing last year's amount plus next year's CPI, Garry seconded it and the vote was unanimous.
 - **Rule R592-6 Review Proposed Changes**
 - Garry thought this rule should not be changed. David said secondary lenders want basic information and it is in the property profile. Title agencies have been providing this information to lenders, which is a bad practice.
 - Subsection 4 (24) was suggested by Sheila and deals with advertisements. Subsection 4(21) was suggested by Canyon and deals with loans. The wording deals with who can issue a loan, and allows siblings and children as long as they are not the closer or employee.
 - Jack referred to new NMLS rule requiring a person to be licensed to do loans. **Jack will find the federal citation.**

- Cort said co-advertizing is only referred to where it is disallowed on billboards.
 - "Publication" needs to be defined.
 - Subsection 5(3) refers to "open houses." This term may need to be defined and specify where they can be held
 - Tammy will talk to Sheila about wording and background for these changes.
 - Put on next month's agenda.
 - **Rule R592-11 Review Proposed Changes**
This rule should be filed by July 18th. Cort will let Jilene know if a hearing should be included. Notify the Real Estate Commission.
 - **Review R592-10 Regarding Title Assessment / Suzette**
Assessments should be reviewed and approved by the Commission.
- **New Business**
 - **Short Sale Bulletin Update / Tammy**
Jilene was asked to make sure links to bulletins and rules are working on the Title page.
 - **Short Searches and Signature Services / Jerry**
 - Unlicensed individuals are taking search information and issuing junior policies. They put packages together and then send them to be signed outside of Utah. Some are being sent to lenders.
 - Dave said the notary website says that if an individual is only doing closings they do not need to be licensed. If a notary is getting everything signed are they not acting as closing agent? When does the notary step over the line to being a closing agent? Anytime the notary has papers signed that do not require them as a witness, that notary is crossing the line. How do we track these people?
 - Garry said that if no insurance product is being issued then we can't do anything.
 - If an escrow agent does a closing then insurance must be issued. Suzette suggested that the definition of an escrow agent specify that if a notary does the work of an escrow they must have an escrow license.
 - There is no protection to the consumer if the closing is done by someone without a license or E&O. Suzette can tighten the definition in the code.
 - The letter on the notary website needs to say that any document signing witnessed by a notary must include that notary's signature.
 - The matter of limiting the number of agencies an individual can have was discussed. This change would have to be done legislatively.
 - Keep on agenda.
 - David will be meeting with national people and see what their experience is.
 - **E&O Insurance Questions / Jerry**
Do escrow agents need to have E&O? Section 31A-23a-406 isn't clear? How can consumers be protected if their escrow agents do not have E&O? CPL only helps in certain situations. Is there a trend towards the use of fidelity bonds or E&O? Dave suggested providing information about E&O coverage in a cover letter. What are surrounding states doing? Leave on agenda. Where is the national association going on this? Dave will research this.
- **Other Business from Committee Members**
- **Adjourned:** 12:10pm.
- **Next Meeting:** August 9, 2010, Spruces Room

2010 Meetings

September 13

October 11

November 8

August 9
December 13