



# 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:** August 8, 2011

**Time:** 9:00 AM

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

### MEMBERS

(Attendees)

#### Commission Members

xChair, Dirk Keyes

Jerry M. Houghton, *Tooele Cnty*

xCo Chair, Cortlund G. Ashton, *Salt Lake Cnty*

xLarry Turner Blake, *Washington, Cnty*

xKirk Donald Smith, *Weber Cnty*

#### Department Staff

xPerri Babalis, *AG Counsel*

xSuzette Green-Wright, *MC Dir.*

xMark Kleinfield, *ALJ*

xTammy Greening, *Examiner*

xJilene Whitby, *PIO Recorder*

xBrad Tibbitts, *P&C Dir.*

Adam Martin, *Examiner*

#### Public

David Moore

Peter Stevens

Al Newman

James Seaman

Ruf Pace

Spencer Hadley

Lincoln Scaffield

Matt Saeger

Jeff Wiener

Glen Roberts

Clayton Hansen

## MINUTES

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

- **Welcome** / Dirk Keyes, Chair  
Dirk started the meeting at 9:05 am and welcomed all in attendance.
- **Adopt Minutes of Previous Meeting**  
Minutes were approved unanimously. No changes were made.
- **Executive Session** – Not needed.
- **Reports**
  - **Concur with Licensee Report**  
Commission concurred with report.
  - **Concur with Complaint & Enforcement Reports**  
Commission concurred unanimously with reports. Missing column on I-case report regarding reason for the investigation that Suzette will make sure is included in future reports.
  - **Request for Attorney Exemption: Reef Pace**  
The Commission reviewed Mr. Pace's exemption letter and asked him numerous questions about his background, experience and education. Cort made a **motion** to decline his request due to limited title experience, Blake seconded it and the vote was unanimous.
- **Administrative Proceedings Action**
  - **Pre-Hearing: None**
  - **Default and Default Order:**
    - **Michael T. Moss**  
Department held a Finding of Fact and Conclusions of Law hearing July 26, 2011 regarding enforcement case 2582 in which the respondent failed to appear. Department recommended Mr. Moss's license be revoked immediately. Larry made

a **motion** to accept the recommendation, Cort seconded it and the vote was unanimous.

○ **Stipulation & Order:**

▪ **Scott L. Powell**

Mr. Powell performed 34 closings with a lapsed license between 9-1-10 and 12-2-10. Respondent admits to having violated the law and agrees with the penalty, which is \$2,500. Cort made a **motion** to accept the recommendation, Larry seconded it and the vote was unanimous.

▪ **Patriot Title Ins. Agency, LLC**

Patriot was found in violation of using an unlicensed individual, Jacob Sorensen, to make 20 closings. The respondent admitted to the findings of fact and agreed with the penalty of \$2,500. They have verified that all their producers are now properly licensed. Larry made a **motion** to concur with the recommendation, Cort seconded it and the vote was unanimous.

● **Old Business**

○ **Comment Period Ended 8-1-11 for R590-99 (R592-14). Put into effect or amend?**

Having received no comments Cort made the **motion** to put the rule changes into effect, Larry seconded it and the vote was unanimous.

○ **Comment Period Ended 8-1-11 for R592-6-4. Put into effect or amend?**

Having received no comments Cort made the **motion** to put the rule changes into effect, Kirk seconded it and the vote was unanimous.

○ **Search Standard Rule - Formation of Subcommittee** / Jerry

Jerry was not in attendance due to illness. This topic is to be left on the agenda.

○ **Discussion of Rule Regarding Definition of Escrow & Mobile Notaries** / Perri

There is no case law to decide standard in Utah. Section 31A-1-301 defines escrow. The term "Escrow" is used throughout the code and should not be given a narrow definition relating only to title in this section. The cleanest way to change it would be through legislation. AG's research has found that the issue of what encompasses the act of doing escrow differs throughout the country. They researched seven different states and found seven different definitions. The Commission can create their own definition using this information as perhaps a basis. Perhaps the best place to define it is in 31A-23a-406.

▪ Cort suggested writing a rule explaining what an opening and closings are and when a license is required. Perri said that to give it teeth the code will also need to be changed. Larry noted that the reason they are doing this is to make sure notaries know where their bounds are and when they are stepping over the line into escrow.

▪ How do we get the word out to the notaries. Tammy suggesting taking enforcement action. She is ready to do a Cease and Desist now regarding this issue. Unlicensed activity is the real problem. Out of state companies hire mobile notaries to do their work for them. Cort asked department to re-send the 2006 letter to Lt. Governor's office that was signed by Darrel Powell. Larry recommended updating the letter and asking Commissioner to send it out. All agreed. Take off agenda.

○ **Status of Salt Lake Title's Orderly Withdrawal** / Jerry

Can the department make an underwriter take the files of an agency going out of business? The code specifies the requirements. The past owner of Salt Lake Title recently sent an email to Title Commission members encouraging them to clarify the law. The code requires files to be kept 15 years. This is very expensive if they are hard copies and is a real issue now with the economy.

● **Split Closing Instructions** / Cort

What happens when money is transferred from one company to another and the latter goes out of business? Glen Roberts provided a copy of split closing instruction that was discussed and voted on several years ago. It did not pass. Will this fix the problem of

transferring funds between title company A & B, or is more needed? Jeff thought it would help. It was suggested that the term “Sub Escrow” be used instead of split closings. Another person said that in a sub-escrow both parties are performing title insurance but only one issues insurance and both parties should always sign. Glen said there were two reasons the instructions did not pass: 1) Determining if this applies to a commercial closing or not; and 2) the issue of whether a regulatory body ought to be imposing itself into a commercial transaction and requiring parties to enter into a contract. Jeff suggested approaching the ULTA to use this as a standard application for certain transactions.

- **New Business**

- **Letter regarding intent of new law / Cort**

- Handouts provided. What was the intent of changing the “good funds” wording in the code via the department’s bill this year. Some of the intent was lost in drafting. The changes were to clarify that:
  - A cashier’s check was to limit risk to \$10,000. Any amount greater than this should be transferred electronically.
  - A \$500 or less check could be in the form of a personal check.
- Final wording in the statute is confusing, particularly in 31A-23a-406(5)(b), which was to describe what is collected and cleared. Farm credit should not be limited to \$10,000 and should be considered good funds.
- Cort did not feel “collected and cleared funds” had been defined and needs to be clarified. Cort will give proposed code changes to the department by August 15.
- Cort made a **motion** to amend 31A-23a-406(5) as follows:
  - (c) any other check or credit may be disbursed:
  - Subsection (5)(b)(iii)(E) to be renumbered as (5)(b)(iii); and
  - Subsection (5)(b)(iii) to be renumbered as (iv).

Kirk seconded it and the vote was unanimous. Perri will review it to be sure there are no negative side effects and Suzette will send to Commission members and James who will send it to ULTA to review.

- James said ULTA would issue a letter on this matter to help explain it to agents.

- **Foreclosure Reports, Letter Reports, CPL's and other Quasi-Insurance Products / Cort**

Is a Foreclosure Report, Letter Reports and CPL considered insurance or the business of insurance? It was noted that the CPL was insurance but not the others. Reports are not insurance. He asked if an agent and insurance company would be held liable if a non-insurance product like the Foreclosure Report and Letter Report were represented as insurance. Cort made a motion to ask AG’s office to provide an opinion regarding the issuance of a foreclosure report and letter report, and if a CPL is a form of insurance and should a charge be made in connection with it, Larry seconded it and the vote was unanimous.

- **Other Business from Committee Members**

- **Adjourn:** 11:55am

- **Next Meeting:** September 12, 2011, Copper Room

**2011 Meetings**

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