



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: September 12, 2011 **Time:** 9:00 AM **Place:** East Bldg, Copper Room

MEMBERS

COMMISSION MEMBERS

(Attendees=x)

xChair, Dirk Keyes
xCo Chair, Cortlund G. Ashton, Salt Lake Cnty
xKirk Donald Smith, Weber Cnty
xJerry M. Houghton, Tooele Cnty
xLarry Turner Blake, Washington, Cnty

Department Staff

xPerri Babalis, AG Counsel
xTammy Greening, Examiner
Adam Martin, Examiner
Suzette Green-Wright, MC Dir.
xJilene Whitby, PIO Recorder
xBrett Barratt, Deputy Commissioner
xMark Kleinfield, ALJ
xBrad Tibbitts, P&C Dir.

Public

David Moore
Lincoln Scoffield
Doug Anderson
Matt Sager
TeJay Rasband
Blake Heiner
Al Newman
Clayton Hansen
Peter Stevens
Jeff Weiner

MINUTES

General Session: (Open to the Public)

- **Welcome** / Dirk Keyes, Chair, started the meeting at 9:02AM.
Brett Barratt, the new deputy commissioner for the department, introduced himself.
- **Adopt Minutes of Previous Meeting**
Motion by Cort to accept the minutes, Larry seconded it, the vote was unanimous.
- **Executive Session** – (Not needed) (Closed to the Public)
- **Reports**
 - **Concur with Licensee Report**
Report unavailable. It will be added to next month's report.
 - **Concur with Complaint & Enforcement Reports**
Motion by Jerry to concur with report, seconded by Kirk, vote was unanimous.
 - **Request for Attorney Exemption: A. Douglas Anderson**
Mr. Anderson defended his qualifications for an exemption: he has worked for an attorney firm for two years, and before law school he worked for a real estate agency. Jerry asked if he had conducted title searches. He said he had done one. He has conducted property searches and other research for collections. He was asked if he represented anyone in a closing. He said not as an attorney but had set in on about 15 to make sure paperwork was accurate. An attorney exemption releases an attorney from the requirement to have three years licensure as long as person is a member of the Bar with real estate experience. The rule requires a certain level of experience before obtaining an exemption. Jerry made a **motion** to concur with the department's denial of Mr. Anderson's application because he did not have reasonable experience within the title business.
- **Administrative Proceedings Action**
 - **Pre-Hearing:** None

- **Default and Default Order:** None
- **Order on Hearing: Mark Kleinfeld**

Mark told the Commission that he was unable to file a Notice of Formal Adjudicative Proceeding and Pre-Hearing Conference in time for today's agenda. He will have it added to October's agenda and then ask the Commission if they want to hear a pre-hearing conference on October 12.

 - **Advantage Title Company & Spencer Ball & Associates**

Both Advantage and Spencer Ball failed to pay the last title assessment. The department recommends a forfeiture of \$750 each plus pay the past due assessment. The respondents had not paid because they were not doing business in Utah and therefore thought it was not required. The position of the department is that if they have an active license for any period of the year the fee is payable. So far their licenses have not been withdrawn. **Motion** by Cort to accept recommendations, seconded by Larry, the vote was unanimous.
- **Old Business**
 - **Search Standard Rule - Formation of Subcommittee / Jerry**

Take off the agenda until further research can be done.
 - **Discussion of Rule Regarding Definition of Escrow & Mobile Notaries**
 - Take "Mobile Notaries" off agenda heading. Instead it should say "Unlicensed Activity."
 - Tammy was asked about the status of her investigations regarding unlicensed activity. She stated that there are open investigations being worked on. Tammy was asked if she was going to issue a Cease and Desist. Tammy stated one could be issued. The Commission asked that it be issued if possible.
 - The Commission asked how they could help with enforcement. Tammy said she did not need help enforcing unlicensed activity, however if enforcement was challenged, defining "Escrow Settlement" would be helpful. It will need to be done legislatively.
 - Tammy reported that the 2006 letter issued by Darrell Powell had been sent to the Lt. Governor's Office. A member of the Lt. Governor's office attended the Title Commission meeting last month.
 - Dirk read parts of the letter sent to the department by the NNA regarding the Associations understanding of the duties of notary and signing agents and licensure requirements of escrow officers.
 - The department does not have authority to direct the Lt. Governor's office in matters concerning notaries. The Lt. Governor's Office does not have an enforcement arm. However they will review any referrals sent by the department. Cort will prepare a letter from the Commission to go to the Lt. Governor's Office requesting that they send a letter to all notaries with the department's letter of July 2006 attached and address the issue of conducting an escrow.
 - **Split Closing Instructions / Cort**

Take off agenda. Leave to the industry to take care of this.
 - **Is there liability with Non-Insurance Reports / Cort & Perri**
 - Perri reported that she researched the question of whether foreclosure reports, letter reports and closing protection letters (CPLs) are title insurance. Legal opinions are mixed in other states regarding CPL's. New Jersey and Wisconsin permit CPL'S's while Virginia, Alabama and Florida do not citing they are not title insurance. Perri's opinion is that Foreclosure reports, letter reports, and CPL's are not title insurance.
 - New Jersey and Wisconsin say closing protection letters are insurance. Virginia, Alabama and Florida say they are not.
 - In Utah, the definition of insurance is the transfer or distribution of risk. A CPL is not a part of the title unit. Transfer of risk does not occur in a CPL as required by Utah

law. Cort asked why the other reports are not insurance. Perri said they tend to be information based not an insurance product. Cort said foreclosure reports includes such language as: "Our liability is limited to the amount paid." Does that statement make it insurance? Perri said she would need to look at the entire document. Matt will give her other examples. Many of these reports speak of liability and that they certify something is being done. There is no stamp on the reports that they are information only.

- Pete said that where there is a transfer of risk there must be an assumption of risk. Al said everyone issues these reports. We provide information for a price the consumer can afford. Title insurance replaced abstracts. Cort asked if title insurance agents who issue title foreclosure insurance, are transferring risk? Perri said if they are they should not be. Cort wanted to know if he should issue these reports or is he acting outside of the law when he does?
- Not an underwriter insurance product. Not in rate manual as per Jeff. Perri said the Insurance code defines "insurance" and "business of insurance." The definition of insurance will kick out some of these reports from the business of insurance. If it is insurance should we be charging for it? Perri said that due to the definition of insurance, it is not insurance. Jess thought it was. Pete said that in 1997 or 1998 a letter from the department said a CPL was not title insurance. Another said that some were becoming personally liable for CPLs issued by them. David said Pennsylvania agents charge for CPLs. This has blown up on them. Illinois requires a CPL on every closing. Charges go to underwriters only. Matt said defalcations could increase. Preemptory action needs to be taken.
- Jeff is looking at charging for CPLs due to claims. ULTA is considering a standardized form in today's meeting. Pete suggested making underwriters strictly liable for their agents. Currently the code says they are directly and primarily liable. As a result the company can go back on their agents. By making companies strictly liable they cannot go back on their agents. Minnesota and other states are considering this change. Matt said many agencies would be wiped out if this change was made. Cort suggested changing the wording in 31A-23a-407 to strictly. Pete said "strictly" needs to be defined.
- Cort said to take this off the agenda for the time being. Bring back when ready to figure out how to protect consumers.
- **National Notary Assn. Letter** / Dirk
 - Department received a letter from National Notary Association. The letter acknowledges letter they had received from the department and confirmed what notary agents are not authorized to do. They have no control over charges.
 - The Lt. Governor's Office does not seem to feel there is a problem.
 - Pete suggested looking at unlicensed activity as an overall issue. Larry asked if the laws had enough teeth to enforce violations or do we first need to define escrow? Yes. Perri said there were not enough teeth yet regarding escrow. There is nothing in the law to say what an "escrow" is as far as closings and settlements go. Matt said there was an adequate definition in Chapter 7 of Financial Institution's code but it does not apply to the Insurance code. He suggested using their definition for the insurance code. Perri said Suzette may have started work on that definition and legislation.
 - Leave on next month's agenda. Perri will check with Suzette and make sure it is done.
 - It was suggested that the department send a letter to all notaries about the requirement of a license for escrow related activities. Pete stated that this is not the department's role and it should not be burdened with sending the letter. Cort made a **motion** that he write a letter to the Lt. Governor's office consisting of some background and asking

that they notify their notaries reaffirming position of the 2006 letter. Larry seconded Cort's motion and the vote was unanimous.

- **New Business**

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

Perri was going to find out if there were any problems with the changes proposed to the "good funds" legislation, 31A-23a-406(5)(c). There is a problem if an agent or agency receives a cashier's check a couple of months prior to disbursement. This needs to be fixed right away if possible and put into the department's bill if it is not too late. Larry noted that everyone was in violation of this code section so it needed to be changed. Perri will check with Suzette on this and see what needs to be done to put it in the department's bill.

- **Other Business from Committee Members:** None

- **Adjourn:** Jerry made a motion to adjourn at 10:30am, Kirk seconded it.

- **Next Meeting:** October 17, 2011, Copper Room

2011 Meetings

Jan. 10	Feb. 14	Mar. 14	Apr. 11	May 9	Jun. 13
Jul. 11	Aug. 8	Sep. 12	Oct. 17	Nov. 14	Dec. 12