



Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Date: June 24, 2019

Time: 3:00 PM

Place: Teleconference

This special meeting was called at the request of the Insurance Commissioner under 31A-2-403(6)(c)(i)

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, James Swan (*Insurer, Salt Lake County*) xNancy Frandsen (*Insurer, Salt Lake County*)
xVice Chair, Alison McCoy (*Agency, Tooele County*) xDavid Moore (*Agency, Salt Lake County*)
xRandy Smart (*Public Member, Salt Lake County*) xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

Todd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* xTracy Klausmeier, *P&C Dir.*
Randy Overstreet, *Licensing Dir.* xAdam Martin, *MC Examiner* xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto	Joseph McPhie	Michael Hendry
Wade Taylor	Mark Chandler	Jonathan Ivins
Scott Cope	Kirk Smith	Brandon Allison
Jessica Goodman	Matt Ryden	Nuria Rivera
Jane Lancaster	Susan Elton	Matt Sager
Frank Medina	James Seaman	Mark Webber
John Bartlett	Cherry Dornbier	

MINUTES — *Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (3:02 PM)
- **Telephone Roll Call**
- **New Business**
 - Discuss TEC position on increasing or eliminating dollar limits on certain inducements in R592-6
 - The UID emailed the TEC to tell them about an Administrative Rules Review Committee hearing on June 25 at 1pm.
 - The UID and James wanted to have this meeting to discuss the topic of the meeting and get the industry's and TEC's feedback as to the position the UID should take when providing testimony. James will attend the ARRC hearing as well.
 - The ARRC asked the UID about whether the marketing dollar amount should be increased from \$50 or done away with entirely after SB121. It's possible that the discussion could move to other marketing rules.
 - James thinks the \$50 rule should be kept or modestly increased for the integrity of the industry. Doing away with the rule entirely would lead to chaos and have a negative impact on the

industry. He's not in favor of opening or changing the marketing rule generally. We need time to see how SB121 will affect the industry before we make sweeping changes. The rules have been in place for quite some time and are the result of years of experience and are there to protect the industry. The UID has gotten quite a few phone calls from Realtors and lenders who are learning about marketing rules the marketing rules and are frustrated with them. James says that's good feedback to hear and it should have been expected. It was his understanding that, during negotiations, everyone knew the marketing rules and that they would stay in place after SB121. He says the rule prohibiting the sharing of money or commissions are separate from the affiliated business statute, so it's correct that most realtors and lenders would not receive any monetary benefit because they're not owners of title companies in most cases. James says the UID has received questions about whether real estate companies need to be licensed with insurance and vice versa; he thinks the answer is no in both cases. The title company is a part owner, so it doesn't need a real estate license, but its partner does. James is concerned about any testimony that encourages the Legislature to consider any modifications to the affiliated business statute or title insurance regulation at this time.

- Alison is not in favor of getting rid of what's currently in place. If anything, the amount needs to be lowered or only modestly increased. Most of the time, marketing dollars don't benefit clients; they're used for marketing to lenders or realtors. We want to make sure we don't get off course about who the real client is. One of the TEC's main purposes is to make sure the consumer is protected, and that's what these rules do. We should be looking to make sure the consumer is at the forefront of what is being considered, and we're doing our best to protect them, not looking for more ways to create business.
- Nancy thinks it's too soon to make changes. SB121 is a large enough change to the industry that we need to let it play out and see how many additional players come into the market. Because there's dual oversight, we need to see how that plays out based on the rules already in place. She notes that the Real Estate Commission has 595 open investigations. We need to be careful about changing things and hope that they can whittle that number down. The rules we have in place are already in line with RESPA, and people coming in may not know what they need to do to stay RESPA compliant. She notes that California has controlled business and they don't allow any money to be spent. We need to keep the rule as-is and let time pass and see how it goes.
- Randy says there are limits and restrictions in other areas of insurance regarding dollar amounts for inducements. It doesn't make sense to completely eliminate them in this area versus all other areas. He thinks we should keep these limits at some level.
- Reed did some research and found that the first inducement rule was enacted in 1989. In looking over the iterations of the rule during the past 30 years, there are two clear protections: 1) title agencies that spend excessively in marketing will pass it to their consumers, which adversely affects consumers, and 2) realtors, lenders, and builders will tell clients to use the title agency that pays them the most benefits rather than the one that gives the best service. These are the articulated reasons in the history of the rule and why it was enacted. Reed plans to point those out to the ARRC because consumer protection is the focus of the UID.
- Tracy asks James to elaborate on how keeping the rule in place protects the industry. He says harm to consumers can happen by passing on costs and giving recommendations based on who gives the best perks. The public looks at title as a neutral third party in a transaction, and that independence and integrity takes a hit when the industry sells itself this way.
- David says he came in late but has a comment. He says these things are based on RESPA to allow certain things to happen, and they're in other states as well. They need to stay.
- James Seaman provides a statement from the ULTA (attached).
- Carol Yamamoto says the amount shouldn't be eliminated, but \$50 a day has been a little difficult for some events. She feels that, having been around when title agents would buy tires or pay for weddings for real estate agents, the service is the most valuable part of the transaction rather than the marketing bribes, or whatever you want to call it. A lot of title and real estate agents have lost

sight of that, and she hopes we don't go back to the older way. It should stay similar to what it currently is.

- Mark Webber says that during the negotiations of SB121, it was very clear that the current marketing rules would stay in place and would be enforceable against everyone currently in the industry and the new affiliated businesses. It's disingenuous to come back 3 months later and want to address the rules when we just went through them in coming up with SB121. He's in favor of the rules staying in place, and that was a key component of the negotiation. He says Utah Title defalcated because of the inducements they were paying to lenders and agents. They paid out too much and didn't have enough to run the company anymore. That's a big part of how the marketing rules came into play.
- James says it appears that the TEC and industry are unanimous in their statement that the marketing rules are important and serve an important role. Making changes to the rules would be a mistake and would cause harm to the industry and consumers.
- Alison asks if there needs to be a recommendation or vote by the TEC to give direction. Reed thinks it would be better to have James or a representative of the TEC to speak to the TEC's view. The TEC has primary rulemaking authority and is the entity who drives the rules.
- **Motion by Alison that the TEC recommend to the ARRC that no changes be made to the current rule. Seconded by David. Motion passes 5-0.**
- Mark Webber reminds Reed that the TEC didn't exist when the marketing rules were put into place. While the TEC has primary authority, these rules were put into place by the UID to protect consumers. It's important for the UID to express support for the rules because of what happened when the rules weren't in place. Reed says he understands and that makes perfect sense. He needs to talk to Commissioner Kiser and notes that the consumer interest is clear in the rule.
- Randy notes that the rule is consistent with other rules about inducements and social courtesies.

Executive Session (None)

- **Adjourn** (3:39 PM)
 - **Motion by Nancy to adjourn. Seconded by Alison. Motion passes 5-0.**
- **Next Meeting: July 15, 2019** — Copper Room

2019 Meeting Schedule in Copper Room

Jan 14	Feb 11	Mar 11	Apr 15	May 28	Jun 10 —Canceled
Jul 15	Aug 12	Sept 9	Oct 21	Nov 18	Dec 16

* bold dates denote quarterly required in-person meetings.