



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

Title & Escrow Subcommittee Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: Sept. 20, 2021

Time: 9:00 am

Place: In Person

Cottonwood Title

1996 E. 6400 S.

Murray, UT 84121

Virtual

Google Meet

meet.google.com/dui-uerc-ckw

631-517-3597 Phone

182 776 387# Password

ATTENDEES

TITLE & ESCROW SUBCOMMITTEE

Chair, Cal Robinson (*Title & Escrow Commission*)

Chase Phillips (*Title & Escrow Commission*)

Blake Heiner (*Industry*)

Justin Sutherland (*Industry*)

Darla Milovich (*Title & Escrow Commission*)

Adam Martin (*Insurance Department*)

Matt Sager (*Industry*)

AGENDA

General Session: (*Open to the Public*)

- **Welcome** / Chase Phillips
- **Telephone Roll Call**
- **Approve minutes of Sept. 13 meeting**
- **New Business**
 - Discuss potential changes related to 31A-19a-209(3) and R592-15

Executive Session (None)

- **Adjourn**

31A-19a-209. Special provisions for title insurance.

(1)

(a)

(i) The Title and Escrow Commission ~~may~~ ~~shall~~ adopt rules subject to Section 31A-2-404, establishing rate standards and rating methods for individual title insurance producers and agency title insurance producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurers, individual title insurance producers, and agency title insurance producers.

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurers, individual title insurance producers, and agency title insurance producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the examining of public records to determine insurability of title to real redevelopment property.

(2)

(a) A title insurer, an agency title insurance producer, or an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall file with the commissioner:

~~(i)(A) a schedule of the escrow charges that the title insurer, individual title insurance producer, or agency title insurance producer [proposes to] will use in this state for services performed in connection with the issuance of policies of title insurance; [and]~~

~~[(ii)(B) any changes to the schedule of the escrow charges described in Subsection~~

~~(2)(a)(i)(A)].; an annual certified statement of the average escrow fee charged by the filer for the prior calendar year.~~

~~(C) a certification by a title insurer, an agency title insurance producer, or an individual title insurance producer that each charge in the schedule of escrow charges, or each change that reduces a charge, is not less than the cost of providing the service associated with the charge.~~

~~(D) a certified public accountant's statement that, based on a review of the files of the title insurer, agency title insurance producer or individual title insurance producer, each charge in the schedule of escrow charges, or each change that reduces a charge, is not less than the cost of providing the service associated with the charge.~~

~~(b) Except for a schedule filed by a title insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.~~

~~(c) The commissioner shall establish an industry average escrow fee by taking the average of the escrow fees submitted under Subsection (2)(a).~~

~~(i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes effect on the day on which the schedule of escrow charges is filed.~~

~~(ii) Any changes to the schedule of the escrow charges required to be filed by Subsection (2)(a)(ii) takes effect on the day specified by the filer [in the change to the schedule of escrow charges] except that the effective date may not be less than 30 calendar days after the date of filing [day on which the change to the schedule of escrow charges is filed].~~

(3) A title insurer, an agency title insurance producer, or an individual title insurance producer ~~[, individual title insurance producer, or agency title insurance producer]~~ may shall not charge an escrow fee for its escrow services:

(a) in an amount less than 50% of the industry average escrow fee established under Subsection (2)(b); or

(b) unless there is a changed circumstance, in an amount that differs from the escrow fee originally disclosed to the consumer. file or use any rate [or other charge] relating to the business of title insurance[, including rates or charges filed for escrow] that would cause the title insurer [insurance company, individual title insurance producer, or agency title insurance producer] to:

(a) — operate at less than the cost of doing[:

(i) —]the insurance business; or

[(ii) — the escrow business; or]

(b) — fail to adequately underwrite a title insurance policy.

(4) A “changed circumstance” shall mean:

(a) an extraordinary event beyond the control of any interested party;

(b) an unexpected event specific to the consumer or the transaction;

(c) a material change to the information relied upon at the time of the original disclosure.

~~(a) All or any of the schedule of rates or schedule of charges, including the schedule of escrow charges, may be changed [or amended] at any time, subject to the limitations in this Subsection (4).~~

~~(b) — Each change [or amendment] shall:~~

~~(i) — be filed with the commissioner, subject to review by the Title and Escrow Commission; and~~

~~(ii) — state the effective date of the change [or amendment], which may not be less than 30 calendar days after the day on which the change or amendment is filed.~~

~~(c) — Any change [or amendment] remains in force for a period of at least 90 calendar days from the change’s [or amendment’s] effective date.~~

~~(5) — A title insurer, an agency title insurance producer or an individual title insurance producer may not charge an amount for an escrow service that deviates from the charge for the service in the schedule of escrow charges.~~

~~[(5)](6) While the schedule of rates and schedule of charges are effective, a copy of each shall be:~~

~~(a) — retained in each of the offices of:~~

~~(i) — the title insurer in this state;~~

~~(ii) — the title insurer’s individual title insurance producers or agency title insurance producers in this state; and~~

~~(b) — upon request, furnished to the public.~~

~~[(6)](7) Except in accordance with the schedules of rates and charges filed with the commissioner, a title insurer, individual title insurance producer, or agency title insurance producer may not make or impose any premium or other charge:~~

~~(a) — in connection with the issuance of a policy of title insurance; or~~

~~(b) — for escrow services performed in connection with the issuance of a policy of title insurance.~~

31A-19a-209. Special provisions for title insurance.

(1)

(a)

(i) The Title and Escrow Commission may [~~shall~~] adopt rules subject to Section 31A-2-404, establishing rate standards and rating methods for individual title insurance producers and agency title insurance producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurers, individual title insurance producers, and agency title insurance producers.

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurers, individual title insurance producers, and agency title insurance producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the examining of public records to determine insurability of title to real redevelopment property.

(2)

(a) A title insurer, an agency title insurance producer, or an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall file with the commissioner an annual certified statement of the average escrow fee charged by the filer for the prior calendar year.

(b) The commissioner shall establish an industry average escrow fee by taking the average of the escrow fees submitted under Subsection (2)(a).

(3) A title insurer, an agency title insurance producer, or an individual title insurance producer shall not charge an escrow fee for its escrow services:

(a) in an amount less than 50% of the industry average escrow fee established under Subsection (2)(b); or

(b) unless there is a changed circumstance, in an amount that differs from the escrow fee originally disclosed to the consumer.

(4) A "changed circumstance" shall mean:

(a) an extraordinary event beyond the control of any interested party;

(b) an unexpected event specific to the consumer or the transaction;

(c) a material change to the information relied upon at the time of the original disclosure.

§ 31A-19a-209. Special provisions for title insurance

(1)(a)(i) The Title and Escrow Commission may adopt rules subject to [Section 31A-2-404](#), establishing rate standards and rating methods for individual title insurance producers and agency title insurance producers.

(ii) The commissioner shall determine compliance with rate standards and rating methods for title insurers, individual title insurance producers, and agency title insurance producers.

(b) In addition to the considerations in determining compliance with rate standards and rating methods as set forth in [Sections 31A-19a-201](#) and [31A-19a-202](#), including for title insurers, the commissioner and the Title and Escrow Commission shall consider the costs and expenses incurred by title insurers, individual title insurance producers, and agency title insurance producers peculiar to the business of title insurance including:

(i) the maintenance of title plants; and

(ii) the examining of public records to determine insurability of title to real redevelopment property.

(2)(a)(i) A title insurer, an agency title insurance producer, or an individual title insurance shall file with the commissioner:

(A) a “Schedule of Escrow Charges” in compliance with ¹Utah Code Ann. § 31A-23a-402(2) and ² Utah

¹ Utah Code Ann. § 31A-23a-402 (2)(a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

(i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

(ii) any special favor or advantage not generally available to others;

(iii) any money or other consideration, except if approved under Section 31A-2-405; or

(iv) material inducement.

(b) “Charge made incident to the issuance of the title insurance” includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

(c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:

(i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

Code Ann. § 31A-23a-402(8)(b) and file a proposed change to the Schedule of Escrow Charges if any change reduces a filed charge for services performed in connection with the issuance of policies of title insurance; and

(B) a certification by the agency title insurance producer or an individual title insurance producer acknowledging the title producer will use the Schedule of Escrow Charges as filed; and

(a) a certification by one or more title insurer(s) that each proposed change that reduces a charge, complies with ³§ 31A-19a-209.

(b) Except for a schedule filed by a title insurer under this Subsection (2), a schedule filed under this Subsection (2) is subject to review by the Title and Escrow Commission.

(c)(i) The Schedule of Escrow Charges required to be filed by Subsection (2)(a)(i)(A) takes effect on the day on which the Schedule of Escrow Charges is filed.

(ii) Any proposed changes to the Schedule of Escrow Charges required to be filed by Subsection (2)(a)(ii)(B) takes effect on the day specified by the filer except that the effective date may not be less than 30 calendar days after the date of filing.

(3) A title insurer may not file or use any rate relating to the business of title insurance, including business

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- (ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
 - (iii) a builder;
 - (iv) an attorney; or
 - (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

² Utah Code Ann. § 31A-23a-402(8)(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

³ Utah Code Ann. § 31A-23a (2)(a)(i)(A) a “Schedule of Escrow Charges” in compliance with ³Utah Code Ann. § 31A-23a-402(2) and ³ Utah Code Ann. § 31A-23a-402(8)(b) that the title insurer, individual title insurance producer, or agency title insurance producer will use in this state for services performed in connection with the issuance of policies of title insurance; and

reasonably incidental thereto, that would cause the title insurer to operate at less than the cost of doing the insurance business or fail to adequately underwrite a title insurance policy.

(4)(a) All or any of the schedule of rates, including the Schedule of Escrow Charges, may be changed at any time, subject to the limitations in this Subsection (4).

(b) Each change shall:

(i) be filed with the commissioner, subject to review by the Title and Escrow Commission; and

(ii) state the effective date of the change or amendment, which may not be less than 30 calendar days after the day on which the change or amendment is filed.

(c) Any change or amendment remains in force for a period of at least 90 calendar days from the change or amendment's effective date.

(5) While the schedule of rates and schedule of escrow charges are effective, a copy of each shall be:

(a) retained in each of the offices of:

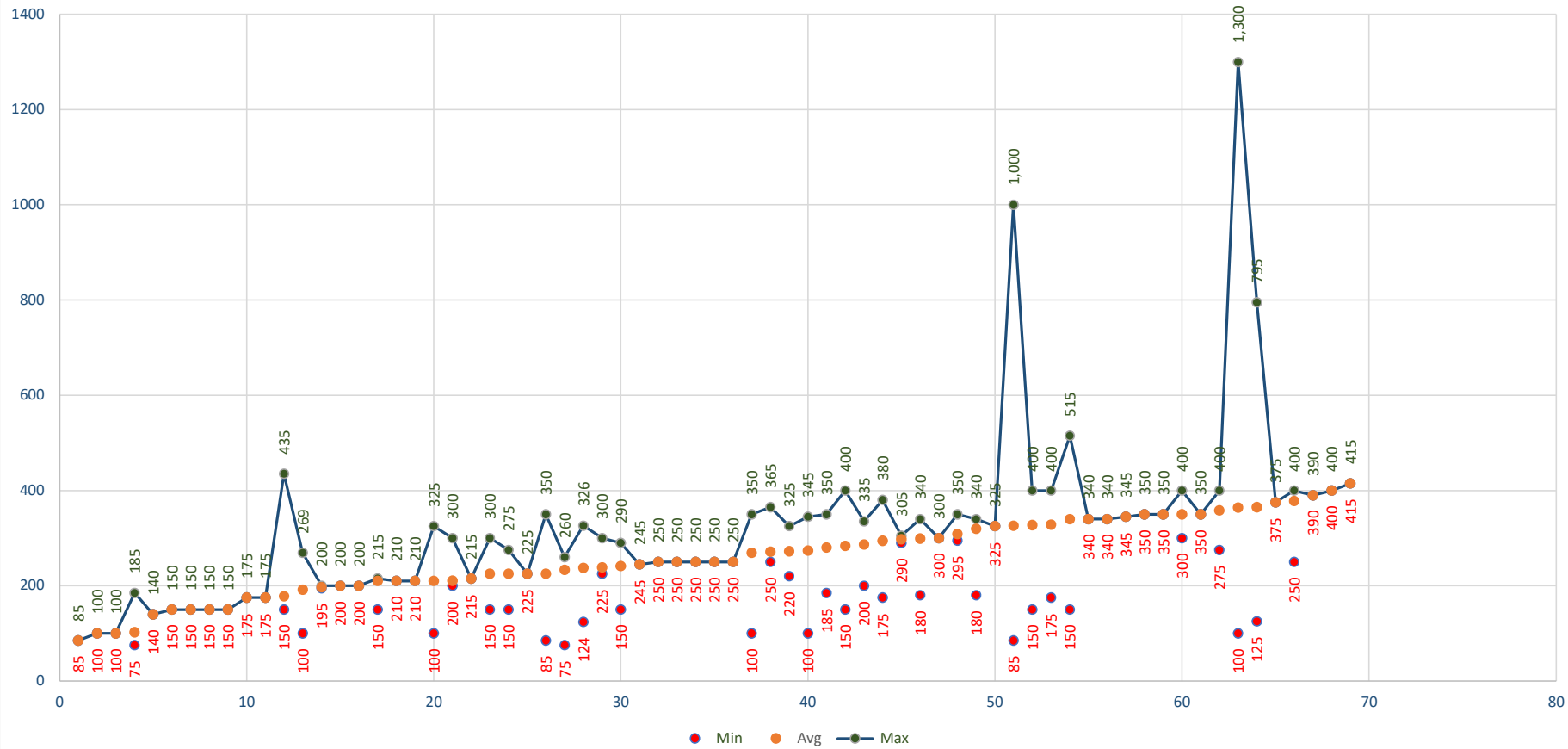
(i) the title insurer in this state;

(ii) the title insurer's individual title insurance producers or agency title insurance producers in this state;
and

(b) upon request, furnished to the public.

(6) Except in accordance with the schedules of rates and schedule of escrow charges filed with the commissioner, a title insurer, individual title insurance producer, or agency title insurance producer may not charge less than the filed schedule of rates or schedule of escrow charges in connection with the issuance of a policy of title insurance.

Average/Min/Max Escrow Fee on 935 Splits from 69 Competitors



#	Count	Min	Max	Avg
1	1	85	85	85
2	1	100	100	100
3	1	100	100	100
4	4	75	185	103
5	2	140	140	140
6	1	150	150	150
7	2	150	150	150
8	1	150	150	150
9	1	150	150	150
10	1	175	175	175
11	1	175	175	175
12	41	150	435	178
13	23	100	269	192
14	3	195	200	197
15	1	200	200	200
16	1	200	200	200
17	138	150	215	210
18	1	210	210	210
19	1	210	210	210
20	6	100	325	210
21	17	200	300	210
22	1	215	215	215
23	2	150	300	225
24	3	150	275	225
25	1	225	225	225
26	48	85	350	225
27	7	75	260	234
28	36	124	326	238
29	13	225	300	238
30	4	150	290	241
31	1	245	245	245
32	1	250	250	250
33	1	250	250	250
34	1	250	250	250
35	1	250	250	250
36	1	250	250	250
37	93	100	350	269
38	10	250	365	272
39	2	220	325	273
40	15	100	345	274
41	7	185	350	280
42	25	150	400	284
43	3	200	335	287
44	68	175	380	294
45	2	290	305	298
46	25	180	340	299
47	1	300	300	300
48	8	295	350	309
49	22	180	340	320
50	1	325	325	325
51	12	85	1,000	326
52	58	150	400	328
53	35	175	400	328
54	108	150	515	340
55	1	340	340	340
56	1	340	340	340
57	1	345	345	345
58	1	350	350	350
59	1	350	350	350
60	2	300	400	350
61	1	350	350	350
62	3	275	400	358
63	46	100	1,300	364
64	3	125	795	365
65	1	375	375	375
66	7	250	400	378
67	1	390	390	390
68	1	400	400	400
69	1	415	415	415
69	935	75	1,300	260

- Question: If it is not broken, why fix it?
- Answer: Because the statute is at odds with the rules.

However, Utah consumers have:

- Lower settlement fees, and
- A lot more choices, and
- The ability to split the escrow, and

Utah settlement providers have:

- Lower operation costs (no audited financials)
- Flourishing competition, and

Utah regulators have:

- Few legitimate consumer complaints
- No defalcations and many acquisitions; then

So, why not amend the statutes and rules to change the standard for escrow fees and escrow operations from “not operate at a cost less than the cost of doing business” to a new standard that addresses the spirit of Section 402, in reliance upon the statute that says escrow is incidental to the business of insurance.

- Question 2: Can insurers provide necessary over site instead of the State?
 - Insurers have contractual over site with agents thru underwriter agreements
 - Insurers have contractual over site with insureds thru Closing Protection Letters
 - Insurers have statutory over site thru Section 407
 - Insurers have statutory over site apart from Title 7 escrow
- Question 3: If the State must regulate escrow fees then to what end?
 - Not profitability
 - Not overcharging
 - Not bad actors
 - Not defalcations
 - Not consumer complaints
 - Not RESPA complaints
 - Not restricted competition
- Question: If the State is to regulate escrow fees, consider the following options:
 - A. Rating Bureau
 - B. Rebuttable presumption of Section 402 violation if:
 - Schedule of fees are:
 - Not “acknowledged” as adequate by filer, or
 - Not “acknowledged” as adequate by insurer, or
 - Not disclosed to Payor within
 - ___ days of opening; and/or
 - ___ days of closing, or
 - Not charged as disclosed

- Settlement closing fees are less than ____ % of:
 - Annual title premiums; or
 - The total charges of any single transaction; or
 - State average of reported settlement closing fee; etc.