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: **October 28, 2021**

Time: **9:00 AM**

Place: **In Person**
Taylorsville SOB
4315 S. 2700 W.
Bonneville Room
Taylorsville, UT 84129

Virtual
Google Meet

ATTENDEES

TITLE & ESCROW SUBCOMMITTEE

xChair, Cal Robinson *(Title & Escrow Commission)*
xChase Phillips *(Title & Escrow Commission)*
xBlake Heiner *(Industry)*
xJustin Sutherland *(Industry)*
xDarla Milovich *(Title & Escrow Commission)*
xAdam Martin *(Insurance Department)*
xMatt Sager *(Industry)*

DEPARTMENT STAFF

xReed Stringham, *Deputy Comm.*
Perri Babalis, *AG Counsel*
xSteve Gooch, *PIO Recorder*

PUBLIC

Joseph McPhie
Cort Ashton
Celesta Stevenson
Ed Bowler
Jessica Goodman
Richard Thurston
Nancy Frandsen
Jon Ivins
Randy Smart
David Buddingh
Scott Cope
James Seaman
Matt Ryden
Nathan Sprague
Rachael Ortiz
Kim Holbrook
David Moore
Scott Cravens
Wade Taylor
Kristen Jorgenson

MINUTES — *Not Approved*

General Session: *(Open to the Public)*

- **Welcome** / Cal Robinson, Chair (9:09 AM)
- **Telephone Roll Call**
- **Old Business**
  - Discuss changes to 31A-19a-209
    - The discussion was paused last month because the UID wanted more information about whether the regulation was even necessary.
    - The ULTA polled its members and found that 75% support the proposed amendments, and 94% support regulation by the UID.
    - Neighboring states — Arizona, Nevada, Colorado, and Idaho — all regulate escrow, whether it's file-and-use or another method.

- The ULTA continues to recommend the amendments it put forward. It solves the problems that have been discussed: it treats title and escrow as combined and gives the UID a way to measure rates. The industry is subject to RESPA so it's a good idea to follow a regulatory scheme.
- Reed notes that under the proposal, rates could get pretty close to $0 over time anyway. Someone may come in and offer half of the average, then the market meets it, then it's halved again the next year. If that happens, there will still be a race to the bottom, or more like a walk to the bottom. Will the walk to the bottom really happen?
- Matt says in non-regulated states like Texas and New Mexico, the race to the bottom hasn't really played out to any real concern. Title companies want to make money, but they want a level playing field. He supports the ULTA's proposal, but he'd be willing to let it play out and see if a walk to the bottom happens.
- Reed asks if there's no appetite for a race to the bottom, why do we need to regulate the fees? Matt says he's not sure the UID needs to regulate the fees, but this proposal provides a balance between regulating every aspect of the fee and allowing title companies to charge proper fees.
- Reed asks why the UID even needs to look into it if there's no appetite. Matt says it would be to determine whether certain fees are abused to create an inducement. Cort notes that Idaho has inducements under their file-and-use statements because they seem to go hand in hand. Cal notes that unfair inducement regulations are where the UID really has teeth. UID audits help people from offering unfair inducements.
- Matt asks if the UID has come to an opinion about whether regulation is necessary. Reed says no, but the legislature and governor are pretty laissez-faire, so he needs solid backing when he goes to pitch it to them. A 75% industry approval rate won't be very persuasive.
- Darla notes that title companies are supposed to be a neutral third party in a transaction. The unfair inducement regulations were put in place to encourage competition between larger and smaller title companies. If competition is eliminated, larger title companies could start working on behalf of their client, which is the realtor or builder — not the consumer — and could encourage less of a neutral function in a transaction and wouldn't be beneficial to the consumer.
- Chase says the industry has been regulating itself because of the threat of regulation. Nobody wanted to ever have to prove that they were operating at less than the cost of doing business. His concern is that having no active oversight would be detrimental.
- Rachael Ortiz says the industry has been working under an unclear regulatory framework, that was made cloudier due to the file-by-file vs. annual profitability issue. Yes, the industry regulated itself, but always with the understanding that there was oversight by the UID. She notes that title agencies don't market to consumers — they market to agents and lenders — which may end up driving down competition. Consumers don't really care who they sign with. The key to consumer education is enough competition in the market. Removing the fees could drive down rates, then once large companies eliminated smaller competition, the rates would be driven back up. The status quo has done well for the market, but not because there hasn't been any regulation — it's always been with the knowledge that they'll need to justify their fees if there's an audit. There aren't a lot of consumer complaints, which implies a good consumer market.
- Matt says the current statute requires either a drastic change to how the industry works, or a change in the statute. The ULTA's proposal maintains how the industry operates and gives the UID a way to regulate. It strikes the proper balance for both sides.
- Rachael says this is a middle step between the existing status quo and something that would require financial experts on the industry's and UID's sides.
- Cal suggests having the filing of fee averages happen every five years. Rachael says that would slow a walk to the bottom, and also a potential increase. However, companies may forget to file.
- Blake Heiner doesn't disagree with any of what has been said. It gives the UID an effective way of regulating escrow fees, but the question is what the industry is trying to accomplish by regulating escrow fees.

- Darla says regulating escrow will help prevent unfair inducement, and the 50% floor is the mechanism that will allow it.
- Rachael reiterates all the changes to state them clearly, and says it's all about consumer protection, while also keeping competition in the market.
- Kim says the thing that stands out to her is that it prohibits predatory practices and protects the consumer, whether prices go up or down.
- Reed says the arguments are clear and make sense, but under the proposal, if an agency gives big lenders a 50% off deal, will that be unfair inducement? No, because it's allowed under the statute. But if it's not an unfair inducement, won't there still be people getting sweet deals, forcing small businesses out, and creating a snowball effect? A 50% discount is a lot — if big companies did that, they'd get a corner on the business and a race to the bottom would happen. Rachael says that's a good point, and it's not mutually exclusive for a 50% discount to be an unfair inducement. If you charge 50% for some builders, but much higher fees for others, that's still unfair inducement. However, there are some transactions that you'd charge less for, like certain builders, because it costs less to do the work. It's not unfair inducement if it's based on a cost decision. If someone charges the lowest price possible, it's not inducement. The 50% rate does feel like a lot of flexibility, which is to allow for smaller companies in rural counties. Bigger companies in Salt Lake County will charge higher fees than a rural county. The 50% mark allows flexibility to create a statewide proposal, but you could also create an average for every county, or percent tiers by county. This proposal is an attempt to stay as simple as possible while giving flexibility. The proposal fixes a lot of what's being discussed, but there is room for improvement in some areas.
- Cal notes that some counties only have one title company, so if you go by county average, they could do what they want. You can't go county-by-county; this is as good as you can get statewide. He thinks filing averages longer than every year, it would slow the walk to the bottom.
- Matt's worry is that addressing the concern of consistent fees across the board would require a single file and use fee, but the industry would oppose that. It's not a viable solution for Utah. This proposal maintains the current course.
- Reed summarizes where his position is at the moment: Competition is a big issue. Large companies could drop their rates to give sweet deals to preferred clients. That would create a degradation of business and the race to the bottom. And if that's going to happen, why is the UID regulating? He says the answer that he's hearing is that the regulation would give companies some structure to work within. But 50% is a long way to go for that.
- Jon says there's competition that could and should be entertained. There is variability in pricing that won't allow one company to just run business out of town. Justin notes that if large companies drop its fees to 50%, smaller companies could compete on customer service.
- Rachael says a walk to the bottom is better than a race to the bottom.
- Cort says the 50% minimum gives statewide variability and allows agencies to bundle their fees for closing. It allows a lower fee for builders, which don't come to a title office or tie up space; they're low risk and low expense. They wanted to make it simple and give flexibility. Matt supports the 50% because if you reduce the flexibility, we'd be getting close to where the state is mandating a particular fee. He doesn't think any competitor should be forced to charge either the average or what their competitors charge. The 50% gives flexibility and doesn't create a state fee.
- Rachael says setting a minimum would require realtors and consumers to give input to set the actual fees.
- Darla says the industry has articulated why there's a need for a fee. They have only had 2-3 months to come up with a solution, and what the ULTA has proposed is the best possible solution in the time allowed. If the UID would like to bring it up down the line and ask for a better solution, that's fine. But if they need something for the omnibus bill, it's this.

Executive Session (None)

- **Adjourn** (10:31 AM)