



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. 13, 2021

Place: In Person
None

Virtual
Google Meet

Time: Immediately
following TEC
meeting

ATTENDEES

TITLE & ESCROW SUBCOMMITTEE

Chair, Cal Robinson (<i>Title & Escrow Commission</i>)	xDarla Milovich (<i>Title & Escrow Commission</i>)
xChase Phillips (<i>Title & Escrow Commission</i>)	xAdam Martin (<i>Insurance Department</i>)
xBlake Heiner (<i>Industry</i>)	xMatt Sager (<i>Industry</i>)
Justin Sutherland (<i>Industry</i>)	

DEPARTMENT STAFF

xReed Stringham, <i>Deputy Comm.</i>	xTracy Klausmeier, <i>P&C Dir.</i>	xSteve Gooch, <i>PIO Recorder</i>
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PUBLIC

Scott Cope	Jonathan Ivins	Rachael Ortiz
James Seaman	Wade Taylor	Joseph McPhie
Kim Holbrook	Nathan Sprague	Perri Babalis

MINUTES

General Session: (Open to the Public)

- **Welcome** / Cal Robinson, Chair (9:48 AM)
- **Telephone Roll Call**
- **Approve minutes of August 25 meeting**
 - Approved
- **New Business**
 - Discuss potential changes related to 31A-19a-209(3) and R592-15
 - Chase says the industry had some concerns about Reed's proposed language, but they appreciate the separation of escrow from title.
 - The industry is concerned about having CPAs involved in their work. Many small agencies would be significantly burdened by requiring a CPA review. If the UID needs to verify that an agency is operating at less than the cost of doing business, the industry proposes removing the CPA requirement but moving forward with no longer separating title and escrow.
 - Matt thinks the language Joseph McPhie drafted addresses everything in the most direct way. His changes to the rule and statute encompass what the subcommittee has been discussing.
 - Chase notes that there has been a lot of debate and evolved thought since the last meeting. The statute tries to force escrow to stand on its own, which is not now the industry has ever done business, or how the UID enforced it.

- Reed questions why the industry would want a statute that says a company that operates at a loss is violating the law. That would be difficult to explain to the legislature. Chase and Matt agree that requiring profits is not a good idea. Reed suggests removing that requirement.
- Blake says the idea of having agencies operate at a profit arose to prevent large companies from acting in a predatory fashion to undercut the market.
- Jonathan Ivins says a primary concern is consumer protection. It's a huge consumer protection issue if a company isn't operating at a profit. And if title and escrow are regulated separately, separate charges may arise, which would also be a consumer protection issue. In other states, escrow charges are made separately and can run into the thousands of dollars. He says it's important for the UID to ensure agencies operate at a profit and are solvent, but the industry just doesn't want the submission of certified financials to be a requirement.
- Jonathan notes that the ULTA's proposal is to adopt current practices into the statute, instead of making drastic change. Darla asks how enforcement would happen with ULTA's and Joseph's proposals. Reed says the standards are nonspecific and would require a financial examiner review. He says it sounds like the industry wants rate regulation in the escrow business.
- Matt says R592-15 is where the idea of "minimum" came from, but the statute requires an actual charging of filed fees. There should be a statutory and rule change to get rid of "minimum". Jonathan says the ULTA would support removing "minimum" as long as the businesses are combined and not treated separately.
- Matt thinks filing a clear fee would be easy to enforce. The UID has never done it before because it always allowed "minimum" fees. Reed asks how the UID would know if a filed rate is not less than the cost of doing business. Darla says the UID would need to look at a profit and loss statement.
- Jonathan, Darla, and Matt agree that keeping the language disallowing operation at less than the cost of doing business should stay in the statute. Joseph thinks keeping the government out of determining rates is a better route.
- Darla notes that the issue at hand is how will the UID enforce the statute: a simple comparison of filed escrow charges, or dollar-cost averaging. Chase says we'd decided on escrow filings. Darla suggests accepting the proposed changes to the statute and having the TEC make a final determination. Then Adam can enforce based on what each company has filed. Matt says the subcommittee needs to keep working after proposing the statutory language so it can create well-drafted regulatory language to propose to the TEC before opening the rule.
- Reed asks what the statutory standard is: will it be rates that are adequate, or rates that aren't less than the cost of doing business? He is concerned about the burden it will put on the UID to evaluate profit and loss statements. That will add to the UID's obligations and will require more personnel. He suggests that if a licensee could assert that rates are adequate, that's fine; but if the UID has to investigate, the UID doesn't have the personnel to do it.
- Reed asks if a CPA-lite review is a non-starter. He's not asking for a full-on audit-based opinion — just a CPA review. That's a much less rigorous evaluation that would involve the licensee presenting numbers and a justification to the CPA, and the CPA reviews and approves it. If that was required up front, the UID wouldn't need to worry about whether to evaluate fees for adequacy. Chase says the concern was about small agents that don't have the budget to bring a CPA on, but knowing now that it's less involved is helpful. Darla asks how that will work with an investigation. Reed says the UID would trust the CPA review, and Adam would only look to make sure the charges are consistent with what's been filed. He says the CPA review would only need to be done once, then only if a licensee changes its rates. He suggests that maybe a review would be unnecessary for any change over 10% or something. Jonathan says a review shouldn't need to be required if the fees are increasing. Matt says adding a change shouldn't require a review either. Reed says that makes sense. The concern is a race to the bottom.
- Matt suggests, for sake of time, that the subcommittee use Joseph's language for the statute, then fix the rest by rule.

- The word "fees" needs to be added to 31A-19a-209(1) because an escrow fee is not the same thing as a rate.
 - Chase summarizes that the plan is to move away from the language requiring escrow to be separate from title, continue to require filed escrow fees, and add that those fees must be independently certified by a CPA.
- **Adjourn** (12:45 AM)
 - **Next Meeting: September 20**, 2021 — Cottonwood Title, 1996 E. 6400 S., Murray, UT 84121