



Insurance Department

State of Utah

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

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: September 8, 2014 **Time:** 9:00AM **Place:** East Bldg., Copper Room

MEMBERS

(Attendees = x)

COMMISSION MEMBERS

xChair, Jeff Wiener (*Insurer, Salt Lake Cnty*) xMatt Sager, (*Insurer, Maricopa Cnty, AZ*)
xCo-Chair, Larry Blake (*Agency, Washington Cnty*) Kirk Smith, (*Agency, Weber Cnty*)
xSylvia Andersen, (*Public Member, Salt Lake Cnty*)

DEPARTMENT STAFF

xPerri Babalis, *AG Counsel* xBrett Barratt, *Deputy Comm.* xMark Kleinfield, *ALJ*
xSuzette Green-Wright, *MC Dir.* Tammy Greening, *Examiner* xJilene Whitby, *PIO Recorder*

PUBLIC

Pete Stevens James Seaman David Moore
Carol Yamamoto Jay Blake Tige Garner
Wade Tayler Mike Smith
Blake Heiner

MINUTES – NOT APPROVED

General Session: (Open to the Public)

- **Welcome** / Jeff Wiener, Chair at 9:00AM
Recognized presence of Commissioner Kiser and excused Kirt Smith.
- **Adopt Minutes of Previous Meeting**
Sylvia **moved** to adopt the minutes, seconded by Larry, vote was unanimous.
- **Reports**
 - **Concur with Licensee Report** / Suzette
Suzette noted that there was nothing unusual about the report. Matt made a **motion** to concur, seconded by Sylvia, vote was unanimous.
 - **Concur with Complaint & Enforcement Report for July & August** / Suzette
Suzette said a large number of enforcement cases will be added by next month due to tardiness and problems with annual reports. Sylvia made a **motion** to concur, seconded by Larry, vote was unanimous.
 - **Request for Dual Licensee Expedited Request:** None
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action** / Mark Kleinfield, ALJ
 - **Stipulation & Order:**
 - **Magellan Title:** ECase 3511
License lapsed February 2014, reinstated within a week. Three employee licenses lapsed and were reinstated. Two had performed 13 closings. Larry made a **motion** to adopt, seconded by Matt, vote was unanimous.
 - **Fidelity National Title Ins. Co. & Chicago Title Ins. Co.:** ECase 3376
Companies sold 41 title policies and conducted 41 escrow closings without filing escrow rates. Proposed forfeitures of \$123,000 for insuring title policies directly without bona fide Utah Offices; \$102,500 for conducting escrow closings without filed escrow rates. Half of the total forfeiture of \$225,500 will be paid by each party. Respondents also agreed to

prepare comprehensive corrective action plan. Sylvia made a **motion** to concur, seconded by Larry, vote was unanimous.

- **Request for a Hearing:** None
- **Order to Show Cause:** None
- **Informal Adjudicative Proceeding & Order:**
 - **Artisan Title Insurance Agency, Inc.:** ECase 3528
Mark reported to the Commission that both Artisan and Real failed to file a timely annual business report.
 - **Real Advantage Title Insurance Agency, LLC:** ECase 3527
See above.
- **Notice of Formal Adjudicative Proceeding:** None
- **New Business**
 - **Who is Responsible for Escrow Records When Title Agency Closes?** / Matt
Rarely are title and escrow files kept separately. If not separated then files need to be maintained for 15 years as per 31A-20-110. The department's position is that insurers are responsible for the files of their agents.
 - Matt said this statute was to determine if one had sound underwriting principles when they created the file. It is not a matter of who must keep the files but what must be kept.
 - Larry said that when the public have a complaint or need to search the records there needs to be someone with more skin in the game to protect them.
 - Matt said the company stands behind policies issued by their agents. Fifteen years is exorbitant since the policy provides the coverage and not the file.
 - James asked if "search" was defined. Perri said it is in 31A-23a-102(11). James said coverage was based on the policy and not what was in the file.
 - Jeff responded that title licensees are responsible under 31A-23a-412, to maintain records for 3 years, plus the current year.
 - Commissioner Kiser said the insurer was responsible for acts of the agent. If there is a disagreement with how the policy was issued, the file will clear up the issue.
 - Perri asked where files go when an agency closes? Matt said to storage. This is an added cost to insurers. It is also a problem when there are multiple insurers involved. Sylvia if the state could take them since their law requires their retention. Pete said no. The state is not a member of the contract. He suggested insurers increase their fees to pay for the added expense of storage. Brett suggested maintaining files electronically to lessen the cost.
 - A member of the public suggested agencies be required to have a cash surety bond to cover expenses of going out of business.
 - Pete suggested contacting all the underwriters to get their concerns.
 - A member of the public said he calls insurers all the time with questions regarding files of agencies that are out of business.
 - Sylvia said the main need is to unify the retention time-lines to maintain a unified record of escrow and title files all in one piece.
 - Jeff suggested a legislative push for one time-line. Statutes are outdated and need to be addressed.
 - Pete: Costs are not going to be absorbed. Discussion followed regarding a fee.
 - Sylvia said that if they wanted to make a legislative change they needed to start now. Discussed requiring electronic or/and hard copies of files. Perri noted electronics are always evolving, which can be a problem in storage.
 - Carol said her company separates title and escrow already. They don't keep anything on paper after a certain time. Jeff said the law would need updating occasionally.
 - Jeff suggested putting together a subcommittee with members from ULTA, the Department and the AGs office to explore possibilities.

- Regarding the legislative history of the 15 year retention, Jeff said the lending community came up with the law to regulate the destruction of files.
- Brett will coordinate the subcommittee meeting. Jeff asked that he include two Commission members.
- **Motion** by Sylvia to form a subcommittee to look at legislative approach to this topic. Pete suggested getting input from all insurers. Larry amended the motion to keep the topic on the agenda under Old business and to add escrow and title records to the agenda. **Restatement of amended motion** to form a subcommittee that will invite all underwriters, the Insurance Department, the ULTA and anyone else on our industry mailing list to participate in a legislative update to 31A-20-110 and 31A-23a-412. Motion seconded by Larry, and vote was unanimous.
- Jeff suggested the meeting be held within first two weeks of the month. Conference call-in will be made available.
- Proposed language will be drafted and sent by the Department.
- **Old Business**
 - **Status of Rule R592-16: Prohibited Escrow Settlement Closing Transactions** / Brett Rule was filed August 28, 2014; hearing will be held October 27, 2014 at 9am in the Copper Room (Commission meeting commence directly after the hearing); and comment period will end November 3, 2014.
 - **Discuss Retention of Escrow Records Bulletin** / Matt, Jeff, Brett, Perri
Brett provided bulletin in packets.
 - Matt said the main reason for the bulletin is to be able to give to lenders.
 - Bulletin advises industry of escrow requirements. Brett was concerned that this could be misinterpreted as 3-year retention for all files. Matt did not want the bulletin referring to retention, just escrow. Jeff re-read the Wells Fargo letter and noted that there were three retention requirements.
 - Jeff reviewed changes to the bulletin. Delete last sentence of second paragraph, change code citation in second paragraph of second page to 31A-20-110(1), and eliminate last paragraph starting with, "In the event that...." Brett will rework it and have it ready for the subcommittee meeting.
 - Jeff asked that the agenda item in New Business entitled, "Who is Responsible for Escrow Records..." be combined with this one and be entitled, "Discuss Retention of Title and Escrow Records."
- **Other Business**
- **Hot Topics**
 - Brett and Perri noted that we can talk about hot topics but cannot take action unless the topic is on the agenda. They should be put on the agenda by 9am the Friday before the meeting.
 - The Title Commissioner meeting October 20 will begin directly after the hearing for R592-16 that starts at 9AM.

Executive Session (Closed to Public)

- **Adjourn**
Matt made a motion to adjourn at 10:35AM, seconded by Larry and vote was unanimous.
- **Next Meeting: October 20, 2014, Copper Room**

2014 Meeting Schedule
(2nd Monday except in October)

Jul 14 Aug 11 Sept 8 **Oct 20** Nov 10 Dec 8