



# 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:** April 13, 2015

**Time:** 9AM **Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

xChair, Jeff Wiener (*Insurer, Salt Lake County*)      xBob Rice (*Insurer, Ada County, ID*)  
xCo-Chair, Kirk Smith (*Agency, Weber County*)      xLarry Blake (*Agency, Washington County*)  
Sylvia Andersen (*Public Member, Salt Lake County*)

#### DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner*      xPerri Babalis, *AG Counsel*      xBrett Barratt, *Deputy Comm.*  
xMark Kleinfield, *ALJ*      xSuzette Green-Wright, *MC Dir.*      xTammy Greening, *Examiner*  
xRandy Overstreet, *Licensing Dir.*      Adam Martin, *Examiner*      xSteve Gooch, *PIO Recorder*

#### PUBLIC

D. Adam Back	David Moore	Pete Stevens
Carol Yamamoto	Wade Taylor	Scott Cope
Tige Garner	Mark Webber	Frank Medina
Blake Heiner	James Seaman	Mark Chandler
Sanford J. Bleich (telephone)		

## MINUTES — *Not Approved*

### *General Session: (Open to the Public)*

- **Welcome** / Jeff Wiener, Chair (9:00 AM)
  - Sylvia is excused
- **Adopt Minutes of Previous Meeting**
  - **Motion by Kirk to adopt minutes. Seconded by Larry. Motion passes 4-0.**
- **Reports**
  - Concur with Licensee Report / Suzette
    - On the new licenses for individuals, Clayton Hansen is highlighted because he is not renewing his license, he added a line of authority in March. He will renew in July. There were no lapsed or reinstated licenses in March.
    - **Motion by Larry to concur. Seconded by Bob. Motion passes 4-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - There's one old investigation still open. They're still gathering information to send it to the Fraud division. It is very close to the point where it will move out of Market Conduct's system. The AG's Office is moving through items quickly, and Suzette thanks them for it.
    - **Motion by Larry to concur. Seconded by Kirk. Motion passes 4-0.**
  - Request for Dual Licensee Expedited Request: None
  - Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Mark Kleinfield, ALJ
  - Stipulation and Order:
    - Bonneville Superior Title Co. Inc. (ENF #3501)
      - Kirk is excused.
      - In October 2012, there was a complaint that Bonneville Superior was cohabitating with a client — the law firm of Mark Chandler & Associates — which was operating from within

the interior of Bonneville's offices without external advertising. MC&A had a financial interest in the respondent that was not indicated in reports extending from 2011-2014. The result of the negotiation was that Bonneville Superior will have 18 months of probation to be supervised by Stuart Title Co., and MC&A will be removed from the premises within 60 days of the signed order. The investigation found that an MC&A employee was included on Bonneville Superior's payroll; this employee will be removed from the payroll of MC&A. Mark Chandler may not be compensated by Bonneville Superior or participate in its management until his real estate license is made inactive through the Utah Department of Real Estate. Bonneville Superior also must not be involved with any title & escrow closings that involve Mark Chandler as the real estate licensee. There will be a forfeiture of \$45,000, with \$22,500 stayed pending successful completion of the 18-month suspension. No continuing education may be offered by Bonneville Superior during the 6-month suspension, and Mark Chandler cannot conduct insurance CE programs on behalf of Bonneville Superior for 12 months.

- Bob notes that the stip & order says Bonneville Superior closed 93% of the short sale transactions negotiated by MC&A, and asks how many transactions that was. Tammy says it was more than 200.
- Bob asks who are the principal owners of Bonneville Superior. Tammy says it is 85% Stuart Title, 10% Mark Chandler, 5% Kirk Smith. Bob asks if it's a conflict of interest to have Stuart overseeing the probation of one of its subsidiaries. Tammy notes that the Department did not take any action against Stuart in the matter. Bob is concerned that the majority owner is supervising the probation of the entity that is being fined, and of which it owns 85%. Tammy says yes, and the Department is OK with it.
- Jeff notes that Stuart Title will need to ensure that MC&A vacate within 60 days, that no CE is offered as stipulated, that Mark Chandler's license be made inactive, and supervise the other recommendations.
- Larry asks Tammy if the Department will be following up to ensure that the stipulations have been implemented, and Tammy says yes.
- **Motion by Larry to concur.**
- Bob says there's an inherent conflict in having the owner of a company oversee the probation of a company they own, regardless of how mundane the terms are. Jeff notes that page 7, item H of the stip & order says, "*Within sixty days of the fully signed Order, Respondent shall provide a supervisory plan created with Stuart Title Company to address the issues herein, subject to approval by the Department.*" He says his understanding is that Bonneville will work with Stuart, but the Department will continue to monitor and enforce the stipulation and the probation period.
- Suzette says this puts Stuart on notice that they have a responsibility, and if the probation doesn't go through correctly, they will have failed on their part.
- Tammy says the reason for having Stuart oversee is because they're not involved day to day in Utah, so it would require that they now become involved in their business and employees.
- There is some discussion about parliamentary procedure and if Bob can second the motion, but then vote against it. It is determined that Jeff is allowed to break ties as chair.
- **Motion by Larry to concur. Bob does not concur. It is determined that this is a tie, and Jeff seconds Larry's motion. Motion passes 2-1.**
- First American Title Insurance Company (ENF#3547)
  - The department investigated a number of complaints regarding a software app — "MyFirstAm" — that is offered by First American. There were at least 38 occasions when the app was downloaded, promoted or marketed to Utah individuals or agencies. The Department and First American agreed in December 2014 to a forfeiture of \$55,000 paid within 30 days

of the commission's approval of the stipulation; however, the Commission rejected it in January 2015. Under this amended stipulation and order, First American will forfeit \$32,500. Respondent is also prohibited from providing real property information through the app in Utah, except for specific closings.

- Jeff asks if they will be required to discontinue the app entirely, or just turn off access to property information. Tammy says only property information that is disallowed by law will be turned off.
- **Motion by Kirk to concur. Seconded by Bob. Motion passes 4-0.**
- Request for a Hearing: None
- Order to Show Cause: None
- Informal Adjudicative Proceeding and Order: None
- Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities / Perri**
- 2015 Title & Escrow Bill Training — SB 143 and HB 352
  - HB 352: Amends 31A-19a-209 to require individual title producers that are employees of a title insurer are exempt from filing their escrow rates. It also amends 31A-23a-413 it exempts the same group from filing annual reports. 31A-23a-415 exempts attorneys who are issuing 12 or fewer title insurance policies in a 12-month period from the assessment requirement. Bill takes effect May 12.
  - SB 143: Makes changes to the duties of the title & escrow commission and the Utah Insurance Commissioner. The Commissioner now imposes penalties for title insurance matters. The Commissioner will seek concurrence with the commission, but if concurrence is not reached, the Commissioner the ultimate decision lies with the commissioner. Also, the commission no longer conducts administrative hearings and no longer advises the commissioner on administration or enforcement on matters affecting the title insurance industry. The commission does advise the Commissioner on the most critical matters affecting the title industry, and requests that the Commissioner direct Department resources to investigate those matters. The commission also must participate in the annual license testing evaluation conducted by the Commissioner's test administrator. Rulemaking stays with the commission, and rules created by the commission are made with the concurrence of the Commissioner; however, the commission cannot make rules regarding the adjudicative process. Annual assessment cannot exceed \$100,000. Individual producers and agency producers must maintain a fidelity bond or professional liability insurance with a face value of \$250,000. Bill takes effect May 12.
  - Annual License Testing Evaluation: When the evaluation meeting date is scheduled, it will be added to the agenda so everyone knows it's coming up. Randy says it usually takes place in July. It is an all-day event and the questions are confidential, so they should not become public. **Discussions about how to comply with this requirement will happen during the May meeting.**
- **New Business**
- Licensee Naming / Randy Overstreet
  - R590-154-5(2) states:
    - *A producer, limited line producer or consultant agency licensee shall comply with either of the following:*
      - (a) *The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.*
      - (i) *Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.*
      - (ii) *"Insurance consulting," "insurance consultants" or similar words shall only be used if the agency is licensed as a consultant.*
      - (b) *The agency shall state that the licensee is an insurance agency in any letterhead, business*

*cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah.*

- Basically the law states that an agency must either have words such as “insurance agency” in their name OR in their marketing materials. It has to be clear to people receiving the materials that the company is an insurance agency if it’s not clear just from the name itself.
- Randy thinks the origin was that large national agencies wanted to be licensed in Utah, but they couldn’t because they didn’t have “insurance” in their name. So then (b) was added to the rule as a way to facilitate their licensing.
- Mark Webber asks if having “First American Title” on their outside signage and then “First American Title Insurance Agency” on their printed materials would be compliant. Randy says yes, that’s what the law says. Suzette says she isn’t aware of fining anyone over noncompliant signage, but rather they educate and help fix it.
- Companies can advertise under a DBA name as long as it is registered with the Department. Suzette says Enforcement wants to have whatever name the company is going by — whether it’s their full legal name or a DBA — on their signage, then the other can be on their materials.
- Jeff would like to see an update to the website that will provide clarity to the naming issue.
- Larry notes that using a DBA can be very confusing, and asks if the Department is checking licenses to make sure a legal entity is being licensed, rather than just a DBA name. Randy says they are not, because it goes against the national Producer Licensing Model Act, which was adopted by the Department and the Legislature.
- Jeff says what the commission would like at this point is for the Department to tell the commission and the industry how this issue will be enforced and how they can comply appropriately. Potentially the commission could write a rule to codify it if necessary. He says there is a lack of understanding in the industry, and he would like the Department to be specific. This information should be added to the website as well.
- Suzette says that Tammy and Adam go visit a new company within their first year of operation to give constructive criticism. Bob says the issue with that is by then the company will have bought all of their signage, stationery, business cards, etc., which is quite expensive. He would like the Department to tell them what they need to do to comply right out of the gate.
- Commissioner Kiser asks how we educate new entities today, and whether they get a copy of the state law or statute. He thinks we need to work with Perri to define it better, and maybe work with new agents so they know what’s expected of them.
- **Move to Old Business for the May meeting**
- **Old Business**
  - R592-6 Subcommittee Meeting Update / Larry
  - Legislative Update / Commissioner Kiser
- **Other Business**
- **Hot Topics**
  - Title searches from insurers or agencies that aren’t licensed in the State of Utah / Bob Rice
    - The statute recently changed with SB 143, regarding who must be licensed to do a search. It used to be that you had to be licensed to do a search, but the new statute says you have to be licensed to do an examination. Brett says SB 143 appears to have changed the word “search” to “examination” because it’s more reflective of what happens in the industry.
    - A license to do a title search (now examination) is a subline authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer. Anyone can do a public title records search without a license, but the issue is who can correct or take any action on what they get from the search, such as issue a policy or get a commitment.
    - Larry says that his understanding is that you can have a single licensee designated by his underwriter, but 10 other people doing searches that do not need to be licensed. This would mean that you could have an entire department of unlicensed employees doing searches, but a single person with a license who processes them.

- Jeff thinks licenses are a good thing for people in the industry, because it requires CE which is essential as things change. But what is the standard for companies that solely provide searches to other companies?
- Randy asks if individuals doing searches are issuing policies too. Jeff explains that individuals often do searches, then sell the search to an agency, which will examine it and issue a policy. So the searcher wouldn't be licensed, but the company that buys the search is.
- Larry asks what the Department's stand is regarding designated licensees, and whether it is acceptable to have a single licensed designee and the rest of people working in search/exam be unlicensed. The answer is yes.
- Brett thinks the question about third-parties doing title searches for a fee isn't addressed in the law, but maybe should be. The Department and Legislature would like input in that area. He also says from the department's perspective, more CE is better.
- Pete says that because creating a search company would require a licensed searcher and an escrow agent, part of the issue is nonresidents that are trying to get licensed in Utah. They can't be licensed because you must be a resident to get a license. Brett notes that HB 24 has specific provisions for nonresident licenses (e.g. the designated home state piece).
- Blake Heiner asks for clarity in how R592-6-5(7) will be enforced. This will be added to Hot Topics for the May meeting agenda.
- Larry would like "issuance of a title requirement on second trustees with two different lenders on a single closing" added to Hot Topics for May.

*Executive Session* (None)

- **Adjourn** (10:58)
  - Motion by Kirk to adjourn. Seconded by Bob. Motion passes 4-0.
- **Next Meeting: May 11**, 2015 — Copper Room

**2015 Meeting Schedule in Copper Room**

- |                     |                  |                   |        |        |                |
|---------------------|------------------|-------------------|--------|--------|----------------|
| • <del>Jan 12</del> | <del>Feb 9</del> | <del>Mar 16</del> | Apr 13 | May 11 | Jun 8 (Spruce) |
| • Jul 13            | Aug 10           | Sept 15           | Oct 12 | Nov 9  | Dec 14         |