



# Insurance Department

State of Utah

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

## State of Utah Title & Escrow Commission Meeting Meeting Information

**Date:** May 11, 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*)  
xSylvia Andersen (*Public Member, Salt Lake County*)

#### DEPARTMENT STAFF

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

#### PUBLIC

D. Adam Back	Canyon Anderson	Pete Stevens
Carol Yamamoto	Wade Taylor	Scott Cope
Tige Garner	Mark Webber	Frank Medina
Blake Heiner	James Seaman	Mark Chandler
Tim Krueger	Matt Sager	James Swan

## MINUTES — *Not Approved*

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

- **Welcome** / Jeff Wiener, Chair (9:00 AM)
  - Suzette is excused due to illness.
- **Adopt Minutes of Previous Meeting**
  - Kirk notes that "Stuart" should be changed to "Stewart" throughout minutes.
  - Larry says "issuance of a title requirement on second trustees..." should be changed to "issuance of a title policy on second trust deeds..."
  - **Motion by Larry to adopt minutes. Seconded by Bob. Motion passes 5-0.**
- **Reports**
  - Concur with Licensee Report / Tammy
    - Jeff asks if BNT of Utah has the proper domicile and if the name meets the guidelines (i.e. if it has "title insurance" in it). Tammy says if it isn't in the name, it must be on the marketing materials as stated in the rule. It is assumed that, in issuing them a license, they will follow through. They also must have a physical office in the state with an escrow line of authority.
    - **Motion by Kirk to concur. Seconded by Sylvia. Motion passes 5-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - Jeff asks if unlicensed activities will decrease due to passing the April 30 deadline. Tammy says she is in the process of reviewing them right now.
    - Sylvia asks how a company can have 10 infractions and still be in business (regarding ENF #3575). She is concerned about the frequency of issues since 2001, and notes that is almost one infraction a year. She also says there's a sizeable stip & order for ENF #3501, and they have had issues in many prior years as well. It shows a pattern of behavior that shows some bad players. Tammy says she will need to review the cases. Sylvia says the problem is that, if this is almost

- every year, how can we justify continuing to license a company that isn't playing by the rules? Tammy says it depends on the infraction. Sylvia says if one company has 10 infractions in 15 years, clearly they either don't understand the rules or they just disregard them. Where is the line that means they don't get a license?
- **Tammy will let the committee know in June what the infractions were and their severity.**
  - Jeff looks up ENF #3575 in the minutes and notes that the infraction is for not renewing the agency license, but cannot determine if all infractions are for non-renewal.
  - **Motion by Larry to concur. Seconded by Bob. Motion passes 5-0.**
  - Request for Dual Licensee Expedited Request: None
  - Request for Attorney Exemption: None
  - **Administrative Proceedings Action / Mark Kleinfield, ALJ**
    - Stipulation and Order:
      - Timios Title Agency of Utah (ENF #604)
        - The agency had not filed rates with the department as of November 6, 2014. Timios had been licensed since May 10, 2010 and had never filed proposed rates. They indicated to the Department that they had 839 closings between May 10, 2010 and November 12, 2014.
        - The Department and Timios agreed to a forfeiture of \$2,500 to be paid within 30 days.
      - Vantage Point Title Agency (ENF#3614)
        - The agency had not filed rates with the department as of November 6, 2014. Vantage Point had been licensed since September 17, 2009 and had never filed proposed rates. They indicated to the Department that they had 1,152 closings between September 17, 2009 and November 12, 2014.
        - The Department and Vantage Point agreed to a forfeiture of \$2,500 to be paid within 30 days.
      - Kirk asks if the department's enforcement matrix takes into account the number of years an infraction has continued. Tammy says the matrix is just a guideline, and it is per violation. So in these cases, every closing was a violation and over years it would become unreasonable to have \$2,500 per each of those 800+ and 1,000+ violations, so in most instances they look at it as a single episode. However, neither of these were Tammy's case, so she doesn't know the particulars.
      - Larry asks how it could go this many years without the computer notifying the Department that these companies didn't have filed rates. Tammy says it's because that's in the rates and forms area, not market conduct. Unless someone calls in to check a company's rates, they wouldn't be seen. It's not part of the annual report, so it wouldn't be looked at unless there's a reason to investigate. Larry asks if rates should be part of the annual report. Tammy says it would be a good idea if there was an attestation on the annual report that would require companies to at least consider their rates.
      - Jeff wants to encourage small business and title insurance agents, but how do we keep them informed? How do we educate agents who have issues and items to comply with? He thinks keeping the Department's website updated would be good, so agents will know what to do so they don't make these kinds of mistakes. Sylvia asks if there are education parameters or pre-licensing requirements for education. Is there a list of the most frequent or most grievous infractions for agents to consult? Tammy says the Department is updating the website with a more informative landing page. As for education, Tammy and Adam visit each agency within their first 6-12 months of operation, and she will remind them of trouble spots if she interacts with them prior to the visit. There is no education requirement for agencies, but there is for agents. Title has rules in R590 and R592, so education would be a good idea; however, agents are held responsible for their actions and should work with their underwriter for education. Tammy had a two-week deadline for her portion of the website to be delivered. Commissioner Kiser notes that the enforcement report is available online so people can find it.
      - **Motion by Larry to concur with both stip and orders. Seconded by Kirk. Motion passes 5-0.**

- 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**
  - Follow up on sample agenda for meetings beginning in June 2015
    - Larry asks if the commission will still be "concurring" with stip & orders. Perri says yes, that's the correct terminology. Bob asks to clarify that if the commission does not reach concurrence with the Commissioner, then the Commissioner does what he wants. Jeff notes that if the commission doesn't concur, it is to discuss the case and offer guidance to the Commissioner.
    - "Request for Hearing" is eliminated from the Administrative Proceedings Action section.
    - Larry thinks Hot Topics and Recommendations to the Commissioner both have their place on the agenda because some items may be one, but not the other. Bob wonders if we need Hot Topics, because while they might be informative for the group, the commission can't really do anything about them. Perri asks if ULTA is where Hot Topics should be discussed, or if they're better discussed in the T&E Commission meetings. Jeff says discussions at ULTA would only include ULTA members, not the wider industry. Bob thinks there just needs to be a place on the agenda for discussion about things that turn into recommendations. Perri thinks it could all be done in New Business, then continue on to Old Business. Jeff likes "Recommendations" because it's one thing to discuss it, but then recommending a course of action to the commissioner is an actual step. Jeff thinks there should be discussion, then the commission makes a recommendation to the department about what should happen.
    - Brett notes that Bramble's bill says one duty of the title commission is to "on a regular basis advise the commissioner of the most critical matters affecting the title insurance industry and request the commissioner to direct the department's investigative resources to investigate and enforce those matters." This indicates that the statute contemplates Hot Topics or something similar that will facilitate a public discussion, then forward the result to the commissioner for action.
    - "Hot Topics" will be kept on the agenda, and "Recommendations to the Commissioner" will be stricken.
- **New Business**
  - Annual License Testing Evaluation / Jeff
    - Randy says the testing is usually in July, but a new testing vendor started its contract with the state in January and not many tests have been taken yet. So, there will not be an exam workshop this summer because the switch was so recent. The next evaluation period will be next summer, and the department will notify the commission of the date well in advance. Jeff asks if the commission will need to send someone to the meeting. Brett reads the statute, which says the commission shall "in accordance with Section 31A-23a-204, participate in the annual license testing evaluation conducted by the commissioner's test administrator".
    - If all five commission members go, then it becomes an open meeting. This could cause an issue since it could reveal all the test answers. Jeff thinks one or two commission members should attend, then report back to the commission. Sylvia suggests sending one title and one escrow representative attend, so the commission can have a fully informed perspective. Tammy notes that if someone teaches CE classes, they cannot attend the review workshop. Everyone but Sylvia teaches CE. Tige says it's his understanding that you can't be on the review board if you teach courses that are specifically designed to help people pass a particular test, not CE courses in general.
    - For June, Jeff would like to have the CE piece verified and reported back to the commission as Old Business.
  - Discuss Possible Changes to Rules, Including:
    - R592-2 / Tammy Greening



- **Hot Topics**

- How to enforce R592-6-5(7) / Blake Heiner
  - Blake thinks this section of the unfair marketing rule was enforced against Bonneville Title in a way that is 180 degrees from how it has been enforced since the beginning. He would like clarity in how the department will enforce this section of the rule, particularly subsection (d). Jeff asks how it is being interpreted by the department. Perri says the department is currently interpreting it consistent with how it was enforced against Bonneville.
  - Jeff says he has had many calls about this issue over the past couple of months. He thinks the last thing someone teaching a CE course should worry about is, "Am I in violation?"
  - Larry notes that the subcommittee is zeroing in on fixing the rule, but he asks the department how they will interpret and enforce the rule between now and when the rule is finalized. Commissioner Kiser gives a speed limit analogy: If you get a ticket for speeding before the law changes, you broke the law. Until a law is changed, it's all just discussion. The expectation is that we have a law, and the department will enforce the law as it has been written.
  - Larry rephrases the question and asks, for instance, if you go to one ReMax office, you cannot go to a Coldwell Banker. This is correct. But you can then go to all ReMax offices, but not one Coldwell.
  - Blake says the rule was designed to prevent a producer from going to the same single office location every single week. The idea was that you can't go to the same office more than once per quarter. But now it appears that the department is saying producers can only teach one class per quarter in anybody's office. Commissioner Kiser thinks the Department needs to give more clarity. Blake says in all the years the rule has been in effect, it has never been enforced in this way until the Bonneville case. Mark Chandler says that means there are years of violations of that rule that have not been addressed. Canyon Anderson says there are decades and thousands of violations. He wonders why it would be interpreted differently now.
  - Larry says we're a few months from the rule being enacted, and asks if producers can abide with how the department has been enforcing the rule while the rule process completes. Commissioner Kiser says he thinks the rule can be done well before two months. Kirk asks how the Department will enforce the rule not only going forward, but going backward as well.
  - Mark Webber says businesses like stability, certainty and clarity. The new interpretation blindsided the industry, which created uncertainty in business. He asks why the interpretation changed all of a sudden. If it is a better interpretation, why not send out a bulletin or memo to provide clarity.
  - Jeff sums up the ruling as: If a producer teaches in one office of a client, they can teach multiple times per quarter in other offices, but cannot change to another client. **He asks for the department's resources to provide a bulletin or guidance about the Department's position today, and how the rule will be enforced.**
  - Commissioner Kiser needs a defensible position to change the way a rule is being interpreted. If the commission is making a recommendation on a rule, he can work with his legal staff to determine if he can issue a bulletin. If there is an actual rule in the process, he could potentially issue a rule at that point.
- Issuance of a title policy on second trust deeds with two different lenders on a single closing / Larry Blake
  - This happens when there are two separate lenders with two separate closings, and the second lender says they don't want title insurance on the closing. Some agencies in Southern Utah who are happy to accommodate it to get the order, but his understanding is that the only carve out to that would be Utah Housing. Other than that, there would be a policy for each closing. He asks for a bulletin to clarify the issue.
  - Bob says there's a statute that deals with the issue, but the language doesn't require a closing, it requires a transaction. The clarification needs to be whether closing the second position deed of

- trust is a transaction. Larry notes that the escrow instructions call for a policy, but in these cases the agent says they don't want it.
- Larry asks if, when there are two separate lenders doing different closings, is that two separate transactions or is it just one transaction. Pete asks if they're happening simultaneously, and Larry says yes. Pete says he thinks it's a single transaction. Larry asks how it's been enforced upon in the field, and Tammy says she hasn't had to enforce on it. James Seaman says they have been interpreted as being two transactions.
  - Tammy thinks it should probably be a statute change to make it effective, not a bulletin.
  - **This will be moved to Old Business for further discussion during the June meeting.**
- Loan Estimate & Closing Disclosure Documents for CFPB / Tim Krueger
    - CFPB changes many things effective August 1. He wants to know if anyone in the department has looked into it to see what will create issues. Jeff says the problem he sees with CFPB is that everything is an unknown right now. James thinks we need to know two things: 1) if there needs to be a second sheet about funding and dispersing off the closing disclosure or if producers can use ALTA's settlement statements, and 2) the Department needs to be aware of the title insurance rebate that will be put on the closing disclosure that is in violation of Utah law and is not really a rebate but is displayed that way.
    - Bob says this is the most pressing issue in the industry right now, but it's a federal regulation not a state regulation. Some statutes might become an issue alongside the new federal guidelines. James notes that how the forms deal with agent fees could be an issue, if everything is lumped together so it's unclear if agents are meeting their minimum fees.
    - James says the Department will need to tell the industry how they expect people to comply with the law. Larry thinks there will be a lot of closings backed up right before August 1 because the agents are afraid to move forward. Tammy says as long as you can prove that your files have everything in them regarding fees, agents will be OK.
    - Jeff asks Perri what the commission's ability is to hold emergency meetings. She says the chair has provision to call emergency meetings. Jeff thinks the industry could potentially become aware of huge issues on August 2 that could put title agents into a violation very quickly. He would like to be able to move quickly to provide clarity once they become apparent.
    - Mark Chandler says there is a bill in Congress that could delay enforcement of CFPB by 6 months. He wonders if there's something similar that can be done at the state level. Jeff thinks that having emergency meetings will give the Department a defensible position to fix things on the fly as they become apparent.
    - Jeff acknowledges that this topic is as hot as it gets, but doesn't think there's a way to know what to do until CFPB actually gets here. He thinks there may be more information to review at the July meeting.
  - **Committee goes into recess (11:35 AM)**
    - **Motion by Bob to recess. Seconded by Larry. Motion passes 5-0.**
  - **Committee returns from recess (1:30 PM)**
    - R592-6 Subcommittee Meeting Update / Larry
      - Jeff and Sylvia left during recess.
      - Kirk welcomes everyone back from recess.
      - James reads a proposed addition to R592-6-5: "(12) A title producer may provide a client the documents used to produce a title commitment. The title producer may provide access to the foregoing documents through any means."
        - It goes hand in hand with R592-6-4(20).
        - Matt thinks closing software should be specifically noted to clear any doubt.
        - "(13) A title producer may provide a client access to closing software as long as the access is related to a specific transaction identified in the title commitment."
      - Kirk entertains a motion to forward the rules to the department

- Motion by Bob to approve the changes to R592 as recommended by the Title & Escrow Subcommittee and begin the rulemaking process. Seconded by Larry. Motion passes 3-0.

*Executive Session* (None)

- **Adjourn** (1:41 PM)
  - Motion by Larry to adjourn. Seconded by Bob. Motion passes 3-0.
- **Next Meeting: June 8, 2015** — Spruce Room

**2015 Meeting Schedule in Copper Room**

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