



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: August 10, 2015 **Time:** 9AM **Place:** East Building, Copper Room

MEMBERS

COMMISSION MEMBERS

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

DEPARTMENT STAFF

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

PUBLIC

Pete Stevens	Tim Krueger	David Moore
Blake Heiner	Matt Sager	Sheri Olsen
Mark Chandler	Wade Taylor	D. Adam Back
Russ Nance	James Swan	James Seaman
Glen Roberts	Mark Webber	

MINUTES

General Session: (Open to the Public)

- **Welcome** / Bob Rice, Chair (9:04 AM)
- **Adopt Minutes of Previous Meeting**
 - **Motion by Kirk to adopt minutes. Seconded by Larry. Motion passes 5-0.**
- **Reports**
 - Concur with Licensee Report / Suzette
 - One new agency license — Keystone Magellan — which is a merger.
 - Jeff asks for follow-up on a license noted last month that was being reinstated after 14 years. Suzette says that the Department is using a new system to create lists, and it has bugs. She also questions that there are no reinstated licenses this month, and will follow up on both items.
 - **Motion by Jeff to concur. Sylvia seconds. Motion passes 5-0.**
 - Concur with Complaint & Enforcement Report / Suzette
 - Only one investigation was opened in July. She included August's issues because they were interesting cases. No investigations were closed in July, but they got busy on August 4. The reason is the person who does a lot of these cases, Adam Martin, was out on military duty and vacation in July.
 - Kirk asks what I-Case #64416 is. Tammy says it ended up being nothing, and that complaints sometimes end up not being what they seem.
 - Jeff asks what "failure to file annual and controlled business reports" means, and if it's just alleged. Tammy says it's a starting point, and she has to work the case to figure out what it really is. There was a limitation in force at the time and she believes they may be in violation of that limitation.

- Bob asks if the narrative in the alleged violations column is based on the information that comes from the consumer. Tammy says it can be from many sources, including the consumer, another agency, Commerce, the Department, etc.
 - **Motion by Jeff to concur. Seconded by Larry. 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: True Concept Title Inc. (ENF #3625)
 - On November 6, 2014 the Department compiled a list of agencies that didn't have rates filed with the agency. True Concept was included on the list. Subsequent investigation revealed that the company had been licensed on December 13, 2010 but had never filed rates.
 - The Department sent a letter on November 12, 2014 requesting a list of all closings between December 13, 2010 and November 12, 2014. The company's response indicated 254 closings during that time.
 - On March 23, 2015 the Department requested a list of all title business conducted in Utah by Alfred Lucas Newman, as well as clarification as to why all HUD-1s and commitments listed the place of settlement as Clearwater, Florida. The company's response indicated 83 escrow closings and 164 signed commitments during that time. The investigation also determined that the company had used Newman's electronic signature to sign the commitments without Newman conducting the examination.
 - The department stipulated a forfeiture of \$7,500 paid in three monthly installments of \$2,500, plus 24 months of probation. The first installment will be paid prior to August 20. True Concept will also provide a monthly report describing the business they have done during the month.
 - Kirk notes that there were two closings during an 8-day period in which the respondent's license had lapsed. He wants to know if the closings happened during the same period. Judge Kleinfield says his understanding is that the period runs from December 2010 through when it was discovered in mid-November 2014. He says it was all discovered during the same investigation and settled as a lump sum to start True Concept back on an even keel.
 - Suzette says the two closings are from the lapse of the license from the end of December through the beginning of January, while the others were from the past time period.
 - Sylvia moves to accept the stip and order.
 - Tammy says she believes the stip and order isn't worded right and that it needs to be clarified a little. Her issue is in #3, Conclusions of Law. Jeff notes the Commission's options under the law. Bob asks if the Department would like to remove ENF #3625 from the Commission's consideration at this point. Tammy says yes, and would like it moved to next month.
 - **Moved to September.**
 - Order to Show Cause: None
 - Informal Adjudicative Proceeding and Order: None
 - Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities / None**
- **New Business**
 - R592-6 rule hearing comments
 - Jeff thinks the comments during last month's hearing were appropriate, and that the written comments were good as well. He has looked at them and the history of the rule, and thinks there has been a lot of need for some of these changes. The rule as written isn't perfect and it, like any rule, can be cleaned and clarified over time. But the proposed rule works and it addresses issues critical to the industry. If any clarification or interpretation is needed, the Commission can provide it in the future. He proposes that the Commission should move forward with the rule as written, in light of the comments.
 - **Motion by Jeff to move to complete the rulemaking process and enact the rule. Seconded by Larry.**

- Pete says that a lot of work has been done by a lot of people. The parties that objected were a part of the process. He asks why we didn't hear from the other side, and why they didn't speak up. Bob agrees, but says nobody is in a position to answer that question because they are not able to speak for other people. He notes that a subcommittee met at least three times to review and revamp the rule, and it had many attendees. Bob feels that a consensus was reached among those present and those who spoke.
 - **Motion passes 5-0.**
 - Kirk asks about the enforcement date. The Department will start enforcing the rule 45 days from the effective date of the rule. The motion is amended 5-0 to move forward with an effective date of August 10, 2015.
 - **Old Business**
 - R592-11 proposed language / Matt Sager
 - Matt's language is necessary in light of HB 352 that clarified certain language. The commission is free to accept, reject or change the proposed language.
 - Suzette asks about the enforcement date, which shows as 5 days after the effective date. Matt says there was no intent on his part regarding enforcement, and that the traditional 45 days is fine.
 - Tammy asks about the term "attorneys." Matt clarifies that attorneys are licensed as either an individual producer, an agency producer or a title insurer, so adding the term "attorney" before those is superfluous. Tammy asks about filing annual reports. Matt says everyone has to file annual reports, whether they're an attorney or not.
 - Jeff asks if an employee of an insurer can still have a license, but wouldn't be required to do separate reporting like an individual producer would. Matt says all individual producers will still be required to file. Jeff likes that, as it encourages licensing.
 - Jeff asks about "containing a verified statement of the financial condition, transactions, and affairs" in R592-11-1(2), and what's different about it. Matt says there was a previous proposal to take that language out. He suggests that 31A-23a-413 has that requirement. He's keeping the language in since it's already required by statute.
 - Larry asks on 413 if the required report is required by the department or can it be separate from the one required by the department, and should it be tied to the department's report. Matt says yes it should be contained within the report itself. Matt says he thinks the language is already there. Many attendees agree that it's clear.
 - [Sylvia is excused]
 - **The enforcement date in R592-11-7 will be changed to 45 days.**
 - **Motion by Jeff to begin the rulemaking process on R592-11, with the discussed change. Seconded by Larry. Motion passes 4-0.**
 - R592-15 proposed language / Matt Sager
 - **Bob would like to change the enforcement date in R592-15-11 to 45 days.**
 - Matt notes that he added "file electronically" to the definitions to provide clarity. Jeff asks if the changes to R592-15 were made to align with 31A-23a-413. Matt says that is correct, along with some other minor changes for clarification. One of those changes was in R592-15-7, which amends "agency title insurance producer or individual title insurance producer" to be "filer." "Filer" is a defined term in the rule, and the change just clarifies the intent.
 - Matt asks if going back to the prior language would cause a problem. Matt says yes it would, because the rule addresses who must file, which is a filer. The rule was redundant, and filer is acceptable because in R592-15-6(1) it says who must file. Jeff also notes that the rule uses "filer" throughout.
 - Matt notes that the only potential clarification is that the rule requires all filers to not file a charge that would cause them to operate for less than the cost of doing escrow. This essentially means that legally they would have to file at their highest denominator, but this isn't what the rule was intended to do.

- Cheryl Bradford of the Office of Boards and Commissions met with Governor Herbert on August 4. The Senate will next meet in October because they are doing site visits in September. We will get Senate confirmations of new commission members in mid-October.
- **Other Business**
- **Hot Topics**
 - Orlando Millenia LC v. United Title Services of Utah Inc., 2015 UT 55
 - The case interprets the scope and applicability of 31A-23a-407.
 - Jeff says it's important to note that the Supreme Court says in the opinion that this is a poorly written law that needs to have better legislation. He would expect to see something on 407 from the industry in conjunction with the Department, as we near the next legislative session.
 - Brett says the Department's view is different from Jeff's. He doesn't think that the Supreme Court says the legislation should be rewritten, but rather that if the Court's interpretation is inconsistent with the legislature's intent, it should be looked at; but if the rule is what the legislature intended, at least now there's finally clear guidance about what 407 means.
 - Jeff says the ruling has dramatic impact on the industry because it affects agents and small business.
 - Larry is concerned about small agents if the Supreme Court's ruling is the intent of the legislature. He thinks it will cause the demise of small agencies. The industry needs to get together as a group and talk to their legislators to help small businesses.
 - Bob says that while the ruling looks good for consumers, if something isn't done it will prove to be an anti-small-business statute that will greatly reduce competition in the state and have far-reaching implications. He encourages everyone in the industry to think about how it will affect their business and get behind whatever position they choose to take.
 - Jeff says the term "vicarious liability" makes him nervous.
 - Brett says it's important to keep in mind the efficacy of a closing protection letter and whether there's any value that consumers get from purchasing it for the lender.

Executive Session (None)

- **Adjourn** (10:36 AM)
 - **Motion by Larry to adjourn. Seconded by Kirk. Motion passes 4-0.**
- **Next Meeting: September 14**, 2015 — Copper Room

2015 Meeting Schedule in Copper Room

Jan 12	Feb 9	Mar 16	Apr 13	May 11	Jun 8 (Spruce)
Jul 13	Aug 10	Sept 14	Oct 5	Nov 9	Dec 14