



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 Special Meeting Information

Date: September 25, 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* xPerri Babalis, *AG Counsel* xBrett Barratt, *Deputy Comm.*
Mark Kleinfeld, *ALJ* xSuzette Green-Wright, *MC Dir.* xTammy Greening, *Examiner*
Reed Stringham, *AG Counsel* Adam Martin, *Examiner* xSteve Gooch, *PIO Recorder*

PUBLIC

Wade Taylor	Russ Nance	Rod Newman
Pete Stevens	Dan Hall	Mark Webber
Sandy Day	D. Adam Back	Scott Cope
James Swan	Frank Medina	Canyon Anderson
David Moore	Cal Robinson	Nancy Frandsen
Lincoln Scoffield	Sheri Olsen	Suzanne Hogan
Jim Hickman	Jessica Goodman	Cameron Court
Justin Sutherland	Duane Phillips	Cort Ashton
James Seaman	Tom Roberts	

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / Jeff Wiener, Co-Chair (9:00 AM)
- **Roll call**
- **Special Meeting Request**
 - In order to hold a special meeting, three members from the T&E Commission must request the meeting.
 - Jeff Wiener requested the meeting
 - Sylvia Anderson requested the meeting
 - Kirk Smith requested the meeting
 - Larry Blake requested the meeting
- **New Business**
 - Discuss and recommend a proposed bulletin to address an interpretation of R592-6
 - R592-6 has come up a number of times this year for fines. Larry led a subcommittee that worked to revise the rule. The rule was passed, became effective on August 10 and became enforceable September 24.
 - Jeff thinks it's critical for the industry to have a bright-line rule that is clear to understand. This version of the rule has done a number of things well, like clarifying continuing education, social media, and additional ways to deliver information. One area that needs clarification is what can

be provided as a property profile. He thanks ULTA and the Department for their efforts in providing insight to the bulletin.

- Brett appreciates the draft the ULTA submitted. It included ways to provide information that are "automated" and "non-automated" and didn't seem to follow closely what the rule is. The Department used it as a basis and reformatted the bulletin to more closely follow a plain reading of R592-6-5(10). The rule says property profiles can only contain four elements, which is what the bulletin says. Brett says the rule could use some nonsubstantive formatting changes, because it is essentially just a restatement of the rule. If the Commission approves moving forward with the rule, he asks for the Commission's leave to work on nonsubstantive formatting of the rule before submitting it to the Commissioner for his approval.
- Jeff clarifies that the property profile is limited to four pieces of information, there are various forms of property profile that deliver more than those four pieces of information, and the bulletin prohibits providing that information. It also speaks to the property profile being property-specific, which would prohibit radius searches and farm reports.
- Jeff asks for those who would like to comment. They are: Mark Webber on behalf of the ULTA, Rod Newman, Pete Stevens, and Sandy Day.
 - Mark Webber, on behalf of the ULTA
 - ULTA met as an association and has taken an informal poll of their members. He notes that Commissioner Kiser admonished the industry to put together a rule because of frustration and fines in the industry. Mark thinks the rule did 3 things well: clarified CE training, clarified social media and clarified dollar amounts. However, the marketing side can be slippery and was not done right. The rule as stated is unclear and in the opinion of the ULTA it proposes language that is inconsistent with the industry and where the industry is going.
 - Title agents across the state are providers of information, and they give information to their customers, who are real estate agents, developers, attorneys, commercial real estate brokers, builders and consumers. Title agents are often called before a transaction is listed or entered because they are experts in this information and they have access to it. This is a very important part of the business because it ties them to their customers and the industry.
 - The rule as proposed limits the information that they can provide to their customers to a property profile of four items. They provide a lot of other info on a regular basis and have for years. Some of that information includes farm packages, radius searches, "extended property profiles," etc. All of the information is helpful to customers because it helps them make a wise decision about a transaction.
 - The info is easy to get and inexpensive to provide. A farm package could cost 7-8 cents a contact, and a property profile costs pennies. They provide a lot of information that customers would enjoy seeing before buying a house.
 - The rule and bulletin takes all of that away. It alienates the industry from its consumers because customers then won't contact them for information because they can't give it to them. It takes the industry out of the loop. The challenge is that title agents are set up to do this and have been providing it for years. Customers are accustomed to getting this information from them.
 - The ULTA met and took an informal poll, and across the board — large or small, rural or urban — the vast majority of agents want the rule opened up so they can continue to provide the information to their customers that they are accustomed to and that they are set up to provide at a low cost. They put together a bulletin that they thought helped outline that. The ULTA bulletin says two things: 1) if a customer wants a property profile, they can get it by accessing an app or online to get the 4 things listed in the rule; 2) if they call the office or come into the office, they can get access to an extended property profile that includes much more information. They don't want to limit the

information that can be given out. The bulletin's context is that they want to be able to provide information as they have in the past. They're in favor of opening the rule at the next Title & Escrow Commission meeting.

- Commissioner Kiser says the department isn't enforcing against what is common practice, we're enforcing the law. His sense is that we would have to change the law to accommodate what ULTA is asking. The bulletin needs to reflect what is effective in statute. Perri agrees. At present, ULTA's proposed bulletin would exceed the current statute and rule.
- Mark appreciates Perri's opinion and Commissioner Kiser's guidance, but he thinks the bulletin is within the rule. The way the rule is written, the language says "access," so if you're providing access to information, then it's limited to those four items. But if you're getting information besides getting access, then they're not providing them access, they're giving them information. He says the rule provides for that, and his bulletin fits within the rule.
- Kirk notes that Mark distinguished between accessing information by automated means vs. person to person. He wants to know where that comes from. Mark says it's based on how the rule is written.
- Bob hasn't seen the ULTA rule, but he notes that 31A-23a-402(2)(a) which prohibits illegal inducements. The rule interprets that statute, and provides a safe haven for what you can provide that won't be considered an inducement. A bulletin cannot change what the rule says, but by rule they could expand what is included in a property profile. In the current rule, he doesn't see a distinction between what can be provided and how it can be provided. It says information can be provided by any means that you want. Just because you can provide a property profile electronically, it doesn't allow you to provide additional information if they come into your office. It's not a delivery issue, it's an issue of what can be provided.
- Jeff reads 31A-23a-402(2)(a).
- Mark says R592-6-4(18) talks about furnishing or providing access. In (20) it says "a title producer cannot provide a client access to any real property information that the title producer pays to produce, develop, or maintain except as otherwise permitted by R592-6-5" which is the property profile. He says if a client has access to their website or app, they only can get the four items in the property profile, but if they come to the office they're able to provide them any information they have been providing them that would help them put together a transaction.
- Larry says one thing to look at is that R592-6-4(6) prohibits furnishing services not reasonably related to a bona fide transaction. He thought they clarified it such that once you issue a commitment, that's when you can furnish the documents used to make the commitment, but not before. The property profile was limited to the four items, then after you get the listing or order from a contract, then furnish the commitment, then you can furnish the other items related to the search.
- Pete Stevens says that this is a public meeting with an agenda that says we're here to "discuss and recommend a proposed bulletin to address an interpretation of R592-6." The rule has been opened under Mr. Webber's comments, and Mr. Webber's comments are inappropriate. The meeting is about this bulletin and one or two sentences at the end of it, not what the ULTA sends out to its selected members. The meeting should be conducted by an independent party or the insurance department to all agents. He doesn't think the ULTA can claim to represent the industry as a whole. He says this meeting is out of order, and Perri should be asked for an opinion as to whether any further comment is appropriate unless it deals with the last paragraph of the bulletin on the agenda.

- Perri says she agrees and that there was a great deal of comment that is not about the bulletin, but was about a proposed future rule. Discussion of the rule today is not appropriate. The agenda solely about the bulletin.
- Rod Newman
 - Passes on comment.
- Pete Stevens
 - Comment was made previously.
- Sandy Day
 - Passes on comment.
- **Motion by Larry to recommend that Commissioner Kiser move forward with issuing the bulletin.**
- Kirk asks if they can make suggested changes to the bulletin. Perri says yes.
- Mark Webber says he thought his comments were about the bulletin, and that they were intended to provide feedback by the ULTA and suggestions for the UID's bulletin.
- Jeff thinks that having an interpretation of the rule this extremely bulletin is valuable to the industry, whether we agree with it or don't agree with it. It provides clear guidance as to what they can or cannot do going forward. Some of the fines that have come to the Commission have been brought about because of various interpretations of the rule. He hopes this bulletin will provide clarity so there aren't any inadvertent violations regarding the rule.
- Kirk asks if the department would change anything about the bulletin as written in light of the comments today. Brett says nothing substantive. The department worked on a redline version, and the bulletin isn't as artful as the department would have liked. He would make changes for formatting and flow, and to give more explanation.
- **Motion dies for lack of a second.**
- Bob notes that he has no objections to the bulletin because it restates what's in the regulations. In his opinion, less is more and it's important to keep things simple by not putting out unnecessary bulletins. In his opinion, the bulletin as proposed doesn't add anything so he doesn't see the necessity of it, but he doesn't see it doing any harm either.
- Larry says there are likely a lot of parties out in the industry that don't know the rule is in effect. The bulletin notifies agencies that the rule is now in effect and it will be enforced. He agrees that it doesn't add anything to the rule, it just gives notification to the industry that it will be enforced effective September 24.
- Jeff says he thinks having clarity is valuable.
- Kirk asks if voting is closed. Jeff says he thinks Larry is off the line. Larry says he's still on. Kirk says since we're just talking about the bulletin and not relooking at the rule, he'll second the motion. Jeff notes that he has already closed the motion, and asks if Larry's motion is still open. Larry says yes.
- **Motion by Larry to recommend that Commissioner Kiser move forward with issuing the bulletin. Seconded by Kirk. Vote passes 4-1. (For: Larry, Kirk, Jeff, Sylvia.)**

Executive Session (None)

- **Adjourn** (9:46 AM)
 - **Motion by Sylvia to adjourn. Seconded by Kirk. Motion passes 5-0.**
- **Next Meeting: October 5, 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