



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

MEMBERS

COMMISSION MEMBERS

xChair, Bob Rice (*Insurer, Ada County, ID*) xMatthew Jagerson (*Agency, Utah County*)
xCo-Chair, Jeff Wiener (*Insurer, Salt Lake County*) xDavid Moore (*Agency, Salt Lake County*)
xSylvia Andersen (*Public Member, Salt Lake County*)

DEPARTMENT STAFF

Todd Kiser, *Ins. Commissioner* xPerri Babalis, *AG Counsel* xBrett Barratt, *Deputy Comm.*
xSuzette Green-Wright, *MC Dir.* xReed Stringham, *AG Counsel* Tammy Greening, *Examiner*
Mark Kleinfield, *ALJ* Adam Martin, *Examiner* xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto James Seaman Elliott H. Stone
Tim A. Krueger David E. Smith Blake Heiner
Matt Sager Pete Stevens Tige Garner
Frank Medina Mark Webber Wade Taylor
James Swan Canyon Anderson Bryan Quesenberry (phone)

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / Bob Rice, Chair (9:05 AM)
- **Adopt Minutes of Previous Meeting**
 - **Motion by Jeff to adopt minutes. Seconded by Sylvia. Motion passes 3-0.**
- **Reports**
 - Concur with Licensee Report / Suzette
 - No agency licenses lapsed in October.
 - Suzette asks about an agent named Matthew Barber who showed up on the license report, but nobody knows who he is. He doesn't seem to have a license. Suzette has not yet tried to contact him because of timing.
 - **Motion by Jeff to concur. Seconded by Sylvia. Motion passes 3-0.**
 - Concur with Complaint & Enforcement Report / Suzette
 - The first page is open investigations. "Alleged unlicensed businesses" are those whose licenses lapsed, but were reinstated some days later. That is the majority of the investigations. The last page is closed investigations, and most of those didn't do any business. We're doing better as an industry.
 - There were no complaints this month.
 - One stipulation is 2/3 paid. It's the only one left on the enforcement report that has an outstanding fine.
 - Bob asks about Case #66100 on the first page, which is about someone that produced a phone app that may violate R592-6. Suzette says that's all that's in the system; someone complained, and the department is doing the investigation now.

- **Motion by Jeff to concur. Seconded by Sylvia. Motion passes 3-0.**
 - Request for Dual Licensee Expedited Request: None
 - Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Mark Kleinfeld, ALJ
 - Stipulation and Order: None
 - Order to Show Cause: None
 - Informal Adjudicative Proceeding and Order: None
 - Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities** / Perri
 - What is CFPB?
 - Skipped. May come back under Hot Topics.
 - Elliott Stone, public member, makes comment:
 - It's important for the commission to appreciate where it stands relative to CFPB. It's unclear to him, and he suggests having a subcommittee that sets up a position for where the committee stands relative to CFPB. He thinks CFPB issues should be handled proactively, not reactively, and he volunteers as a public member on that subcommittee.
 - Jeff asks about a CFPB whitepaper that is coming from the NAIC. Brett says the NAIC's Title Insurance Working Group is currently working on a consumer guide; he isn't familiar with a whitepaper being drafted by the states regarding the CFPB.
 - Elliott says it's important to appreciate that the NAIC, ALTA, etc., are looking at it from a national perspective. They won't give the local perspective that is needed for enforcement. The commission needs to know where there are linkages between the federal and state levels.
 - Sylvia notes that within the last 8 months there was a conflict between state law and the recordkeeping that banks were requiring. She thinks it would behoove the industry to find out if there are more conflicts that are similar, and we need to know where we sit with regard to federal regulations. Should the state law supersede what federal guidelines say?
 - Jeff wants to check with Perri to make sure that's within the commission's scope. Bob notes that the commission can recommend rules to the department for adoption. He thinks the commission can probably recommend an industry position that way as well. However, any statement should come from the department, not the commission. He agrees with what Elliott says, but this may not be the right body. State law can't be any more liberal than the federal law, but it could be more strict. At the end of the day, whatever law is most protective will trump the other.
 - Carol Yamamoto notes that from working with various title companies, everyone has a different understanding and nobody knows where the violations will come from.
 - Brett suggests a starting point of finding laws and rules that may be inconsistent with CFPB. One of his questions is under Utah law a title producer can give a gift or meal — is that inconsistent with CFPB, and where does it say that under CFPB? Bob thinks some of the confusion is with CFPB's TILA-RESPA disclosures. Pete thinks there's a conflict with the practices, such as split closings. There are already agents on lenders' do-not use lists.
 - Elliott notes that there are two buckets of regulation in CFPB: 1) the TILA-RESPA integrated disclosure and 2) the policing, enforcement and rulemaking for kickbacks. Those are the areas the commission should take a position on and make recommendations to the commissioner. Agents don't know whose rules to follow, which will undermine the public's trust.
 - **Jeff would like to add a review of CFPB laws compared to state laws, to December's agenda.** He will meet with the department and Elliott Stone as a start.
 - New commission member orientation
 - New commissioners were sworn in out of order, at approximately 10:09AM (or 1 hour 4 minutes into the meeting).

- Cathy Burton, notary, has Matthew Jagerson take the oath of office and sign the oath document, then she notarizes it.
- Cathy Burton, notary, has David Moore take the oath of office and sign the oath document, then she notarizes it.
- Both are now full members of the commission.
- New commission member orientation occurred out of order, at approximately 11:25AM (or 1 hour 20 minutes into the meeting).
 - Perri notes that the duties of the commission are laid out in 31A-2-404(2). It talks about what the commissioner and the title commission shall do.
 - Each commission member will be given a copy of the handbook for boards and commission members. It's prepared by the Governor's Office and it talks about roles and responsibilities. It also includes a section about GRAMA.
 - Utah Code 52-4-1 through 10 is the state's open meetings law. It says that all meetings must be open and accessible to the public, and outlines times the board can enter a closed session. This can happen when there are discussions about an individual's character, competence, or physical/mental health. This generally happens when there are concerns about a license. Closed sessions are also allowed for strategy sessions about pending or reasonably pending litigation. A board member must make a motion to enter a closed session, there must be a vote, and no action may be taken in a closed meeting. Closed meetings are never required. There must be minutes taken during closed meetings.
- **New Business**
 - Renumbering of R590-190 and R590-212 / Suzette
 - These are both title rules, but they have not yet been numbered under R592. The commission should look at those two rules and see if they want to continue or modify them.
 - Bob asks if they have provisions for other lines as well. Suzette says 212 is title-only, but 190 might need pieces pulled out and a new rule created in R592.
 - Jeff asks what the renumbering process entails. Steve will need to check with the Department of Administrative Rules to find out what the process is.
 - Jeff asks if there was an effort made by the UID to find rules to add to R592. Suzette says no, they were looking for something else and Tammy found them. There was an effort to find rules for R592 when the commission was created in 2005, but there hasn't been an effort since then.
 - Jeff wants to know what the renumbering process is and if there needs to be an effort to find all rules for R592 once and for all.
 - **Add renumbering R590-190 and R590-212 to December's agenda, and what the process is for it.** Jeff would also like to know the last time they were revised; Perri says we'll look at them.
 - **David suggests looking at 212 to see if it needs updating. Suzette says it was last reviewed in 2011. It is added to December as well.**
- **Old Business**
 - Revisit alleged unlicensed businesses / Jeff
 - Jeff spoke with Suzette about how the department currently handles this issue. It's been a continued focus over time because there have been a high number of these violations.
 - Jeff verified that the license renewal form is only sent via email. One question he had is if an email is sent to an agency producer or underwriter when an individual needs to be renewed. Suzette says no. He also asks if you change your email, is there a way to make sure it has taken effect. Suzette says yes, but you have to wait 24 hours. Then you can check in Agent Search on the Department's website. The same goes for physical address changes. Jeff asks how far in advance the email is sent prior to payment being required. Suzette says 75 days. Jeff asks when it can be paid; Suzette says as soon as you get the email. This is why it is in state statute that licensees must have a current email address on file with the department. Jeff confirms that once

his license has been paid and renewed, he can go into Sircon and print his license. Suzette says yes.

- Jeff says that licenses often lapse for a very short period of time, after which Market Conduct verifies the number of searches conducted and the number of closings conducted, but do they verify any marketing that has been done. Suzette says she doesn't know. Jeff asks what the procedure is. Suzette says that the T&E Commission asked Market Conduct to monitor lapses, so a program was created to give such information in a report. The last page has reinstated licenses, which also gives the original license date, renewal date and expiration date.
- Bob asks at what point Market Conduct starts issuing fines. Suzette says it depends, because licensees may not do any business during the period they're lapsed. An agent may not do any business in two months of being lapsed, but they could also do a large volume even in as short as ten days. At that point they would fine. Bob asks why that is, because the violation is the same in both cases. Suzette says the violation is doing business while their license is lapsed, not letting their license lapse.
- Bob asks what the statute is that allows licensees to reinstate their license within one year. Suzette says it's 31A-23a-113.
- Bob would like to see the department concentrate on more substantive issues. He would like to see a statute or law that says if you reinstate within 30 days, it's like the license never lapsed at all. Suzette says that would take Utah out of uniformity with national law.
- Jeff says if he's an agency producer or insurer, he's responsible for his agents. If only the producer is notified when their license lapses, how does he track it or have access to it? He also thinks for those licensees whose licenses lapse for 30 days, that's just a missed deadline; if they're within a 30-day window, we do say their license lapsed, but maybe there's a set fine rather than a full investigation. Suzette says agencies or insurers would know about lapses by looking at their appointments or designations, because it will show agents drop off.
- Sylvia says, from a public standpoint, these are people who deal with finances every day and whose job is to deal with details that make sure they are accurate. As a consumer, she would hope they would be accurate to the point where they care if their license is valid. If they can't keep that straight, how is her trust of that entity validated? Those are details that are critical to their job. If we're lenient on that, then they'll take the full 30 days afterward. The law is the law, and as a consumer she thinks they should cover every detail of their validity and their licensure.
- James Seaman notes that this was discussed a long time ago, and that Sircon would take six months to get an agency email function added. But, it never happened.
- Pete Stevens supports what Sylvia said: the law is the law. When they get their license, they know that it will expire in two years. The law is uniform across the country: if you don't have a license, you can't sell, solicit or do anything a producer would do.
- Bob asks why licensees' renewal dates are staggered. Suzette says it's because licenses lapse at the end of an individual's birth month.
- David Moore notes that the issue isn't failure to renew, it's doing business without a license.
- Jeff says the request isn't waiving a penalty, it's that as an agency he's affected if his agents don't get renewed. He would like a way to monitor it. We also spend a lot of time verifying the number of transactions that are done. Do we need to spend all this time on investigative resources when we know they just missed their date?
- Carol notes that if her notary's license expires, they're out of business. They get plenty of notice for a notary's expiration. She agrees with Sylvia that it's no different from anyone that carries a license: if you carry a license, you should know the criteria of that license and make sure it doesn't expire.
- Sylvia asks if there's software or some method that will let you track license expiration dates for employees. Carol says there's a person at her company that tracks that. Sylvia suggests doing the same with other companies.

- Suzette notes that it was the T&E commission that asked the Department to do the lapsed license check. Sylvia thinks, as a consumer, it's very important if someone is doing transactions without a valid license.
 - **Removed from old business, without taking action.**
 - R592-6 working group report / Jeff
 - Since the last meeting, the Department issued a bulletin that should take care of the issue.
 - Jeff and a small group met with the Department prior to the bulletin's issuance. The rule has not been opened and we are not proposing to open it at this time. Bob thanks the Department for clarifying the rule. Brett says Perri, Jeff, Adam Back, Matt Sager and Joseph McPhie deserve a lot of thanks too.
 - **Removed from old business, without taking action.**
- **Other Business**
- **Hot Topics**
 - Enforcement of 31A-23a-407 / Pete Stevens
 - Pete says it's clear because of the Orlando Millenia case that underwriters have liability for funds received from escrow agents. He would like to know why the Department isn't enforcing this law. It needs no additional support, and he and his clients would like to see it enforced. Title agents shouldn't have to litigate against their own customers and the underwriter. The Department should draw the line in the sand because it's already been drawn.
 - Brett notes that when the Department gets a complaint from the consumer, they do an investigation. The Department's interpretation of 407 was the same before Orlando as it is after. If specific complaints have been made to the Department that Pete or his clients feel haven't been done adequately, he'd like to talk with Pete about them.
 - Jeff notes that there are two insurers on the commission, and he isn't aware of any action they're not taking.
 - Bryan Quesenberry, counsel for Orlando Millenia, has similar concerns to what Pete raised. The Orlando litigation was filed in 2008, and has been fought since then. His client doesn't think they should have to foot the bill, time and expense to enforce this statute, when there's an administrative body here that can do that.
 - Jeff notes that the T&E Commission is not an enforcement body. Bob says from his perspective, it's an advisory body; the Department is the enforcement body.
 - Blake Heiner says it's not the commission's job, nor is it the department's job to enforce the statute. The department responds to complaints — it's the court's job to enforce the law.
 - Closing protection letters / Pete Stevens
 - There is no more use for closing protection letters (CPLs), and hasn't been since the Orlando decision. All consumers that have been charged for CPLs since have been overcharged. They should be reimbursed and all CPL charges should stop. Pete indicates that the board is all of a sudden not an enforcement board, and two members of the commission collect CPL fees, for which there is now no service provided to the consumer. He notes that the commission is supposed to discuss matters that affect the industry each month with the commissioner, and why haven't CPLs been classed as a matter that affects the industry?
 - Sylvia says she is concerned with Pete's statement that the commission is "all of a sudden" not an enforcement board — it wasn't all of a sudden, it was passed by the legislature that the T&E Commission is not an enforcement body. She also states that the tone is getting too personal, and comments cannot and should not be personal. She asks that all comments be made to the commission as a whole, not specifically directed to any member of the commission.
 - Bob notes that CPLs are statutorily allowed, as are the fees. The fees were approved by the UID, and he doesn't think any underwriters operating in the state are doing anything incorrectly by following the statute and using the rates filed with the UID.
 - As far as the commission's role, Bob says the T&E Commission is an advisory panel at this point, and Pete is partially responsible for that. The commission has no authority anymore as far as

- enforcement actions go. If Pete has an issue with that, Bob suggests that Pete take it up with legislators he knows who address those issues.
- Blake says title agents and companies don't issue CPLs without being directed to by their customers. It's not a decision that should be made by the Department, the commission or by agents. Whether or not there's a benefit of CPLs above and beyond the statute isn't an issue for the department — it's an issue for the customer who chooses a direct, contractual cause of action back against an insurer regarding the matters covered by the CPL.
 - Brett says he doesn't recall making an absolute decision on CPLs one way or another. He references the October minutes to clarify that his statement wasn't an absolute one way or another. It is rather something that may want to be revisited.
 - CFPB compliance bulletin / Brett
 - The bulletin was sent to Brett by the NAIC, and he thought the commission would benefit from seeing it. It's provided as an informational piece. Sylvia and Brett said it was helpful to their understanding of CFPB.
 - Elliott thinks it's too general for most people in the room, but it's important for the industry to know what's permissible and what's not. He again asks the chair to consider putting together a working group. He says a lot of the rules aren't new, but it would be helpful for the industry to know real-world do's and don'ts.
 - Other matters
 - Mark Webber says he would support a more lenient interpretation of the rules regarding lapsed licenses. He thinks people are doing their best, but mistakes happen. As a lawyer, if you miss your renewal you pay a late fee, but they don't track anything or fine you for your actions.
 - David Moore asks that we include the call-in number on the agenda, and on the website.
 - Brett asks Cathy Burton about producer notifications. Producers get an email at 75 days, but they don't get others as they get closer to renewal. They get an actual letter after their license lapses.

Executive Session (None)

- **Adjourn** (10:35 AM)
 - **Motion by Jeff to adjourn. Seconded by Sylvia. Motion passes 5-0.**
- **Next Meeting: December 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 19	Dec 14