



# 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: February 8, 2016**    **Time: 9AM**    **Place: State Capitol, Centennial Room**

### MEMBERS

#### COMMISSION MEMBERS

xChair, Bob Rice (*Insurer, Ada County, ID*)                      xMatthew Jagerson (*Agency, Utah County*)  
Co-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*                      Brett Barratt, *Deputy Comm.*  
xSuzette Green-Wright, *MC Dir.*                      xReed Stringham, *AG Counsel*                      Tammy Greening, *Examiner*  
Greg Soderberg, *ALJ*                      Adam Martin, *Examiner*                      xSteve Gooch, *PIO Recorder*

#### PUBLIC

Wade Taylor                      Tim Grubb                      Carol Yamamoto  
Tim A. Krueger                      Blake Heiner

### MINUTES — *Not Approved*

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

- **Welcome** / Bob Rice, Chair (9:05 AM)
- **Adopt Minutes of Previous Meeting**
  - **Motion by Sylvia to adopt minutes. Seconded by David. Motion passes 4-0.**
- **Reports**
  - Concur with Licensee Report / Suzette
    - There were no new licenses and no lapsed licenses. Two licenses were reinstated with both agencies and individuals, and they were inactive for less than a month, which is a great improvement.
    - Bob asks what a lapsed license is. Suzette says licenses can lapse for a variety of reasons, like the agent forgets to renew or they choose to exit the business. A reinstated license shows the actual expiration date along with the date they renewed. Sylvia asks if they could be both lapsed and renewed. Suzette says yes, especially if they lapse in one month and then are reinstated in another month. Bob asks if someone goes to each lapsed licensee to find out how many closings they have done. Suzette says yes: Adam does.
    - **Motion by Sylvia to concur. Seconded by Matthew. Motion passes 4-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - Some of the cases are fairly old and convoluted, but they are being worked on. They're taking a lot of back-and-forth. "Alleged unlicensed business" is what shows up when a license lapses, and that's what Adam investigates. We do the same thing with bail, so title isn't the only industry being looked at.
    - January was light, with only 7 new open cases and 8 closed cases. Of those 8, many had no violations, one was an audit, and one was a private letter of admonition. There were no fines. We're catching them so quick that people might not have done many closings. When we catch

them quickly it's better for the industry as a whole. We haven't had an e-case come before the commission for several months.

- **Motion by David to concur. Seconded by Sylvia. Motion passes 4-0.**
- Request for Dual Licensee Expedited Request: None
- Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Greg Soderberg, 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
- **New Business**
  - Discuss legislation
    - **HB 163 Second Substitute**
      - Bob notes that this was discussed thoroughly at last week's ULTA convention. David asks what the consensus was. Wade Taylor says the second substitute is the consensus, and it included the discussion from the ULTA convention.
      - Suzette says the department's bill — HB 36 — is sitting on the House floor. Perri says there's a title piece that cleans up the title recovery fund.
    - **Other bills**
      - Bob says the only other bill (HB 199) that he's aware of is one that deals with deeds upon death. It allows a grantor to deed property upon their death. Sylvia asks about the ramifications. Bob says he thinks the purpose of deed upon death statutes in general is to provide a mechanism by which people can avoid probate. It's basically a contingent grant. The deed is recorded now, but the effective date is upon death. David says they're usually done by a single person upon their death. Wade says the recorder's association opposes HB 199 because it creates some issues in their mind with regard to record keeping and indexing. They met with the Rep. V. Lowry Snow, but he doesn't know how hard he's going to push to get the bill through committee. Suzette says it creates an actual form that has to be used. Wade notes that the same bill was run a few years ago, but it didn't make it out of committee at the time.
      - David says SB 22 deals with foreclosure upon rental properties, and a notice requirement for such cases.
- **Old Business**
  - R592-11 confirmation message / Tammy
    - Tammy was out sick since Wednesday of the prior week.
    - **This moves to March's meeting.**
  - CFPB subcommittee update
    - Scope of subcommittee
      - Elliott Snow is not in attendance.
      - David notes that nothing was discussed in January, but they were going to start working on it. Carol asks if David got any emails from Elliott; he did not, and neither did Carol.
      - **This moves to March's meeting.**
- **Other Business**
- **Hot Topics**
  - Tim Grubb asks about 407 and how escrow interests are being protected. He asks if better E&O or other insurance could be provided to consumers in case of problems with the escrow side. Currently, underwriters are looking to keep liability with escrow agents. He wants to know how the industry can better protect the consumer.

- Bob says there are some requirements on agencies for either an E&O or a fidelity bond, or some financial protection approved by the department. David says in some cases he's seen, he has suggested that attorneys look at E&O policies, but there are a lot of exclusions in them. He's also seen two E&O policies that have no retroactive date. They're doing that to save premium costs and scope of coverage, but there's no protection whatsoever to the consumer, the underwriter or anybody.
- Bob says most underwriters require their agents to carry E&O insurance. The gaps he's seen are what David saw: 1) the claims-made issue and 2) most E&O policies have exclusions for failure to follow escrow instructions, which is one of the triggers to liability under 407. The other exclusion under E&O is theft by the company principals, which would only be covered by a fidelity bond. He thinks it might be a good idea to require a fidelity bond and E&O over a certain amount because they cover different things.
- David says in other states they do require a fidelity or surety bond in addition to E&O. That might be something to look at in the next year, but it might need to be done through legislation.
- **David suggests that the department look at putting E&O and fidelity bond requirements in future legislation. It is added to new business for March.**
- Bob says one other issue that goes along with HB 163 and 407 is how the existing 407 and its interpretation (along with HB 163) impact the monoline statute for title insurance. **This is added as a hot topic to March's meeting.** Bob will send me the statute number.
- Tim Krueger asks if the commission would like to readdress cybertheft this year. Bob suggests reviewing it under the E&O and fidelity bond discussion. Part of the issue was that we didn't know the costs of cybersecurity coverage. Tim thinks it might be a good idea to have an E&O company come discuss cybertheft with the commission. David says there's a company in Chicago that had a policy that included theft by a principal under E&O that also included cybertheft if you ordered the whole package. The costs weren't too bad, but the E&O coverage with the fidelity bond was to a specific underwriter. So if you had multiple underwriters, you had to have multiple policies. He suggests having the ULTA discuss the issue. David says there was an agent that had their account hacked and had \$200,000 moved to China. Bob says that agent's E&O denied coverage. Tim suggests having discussions about it, because we don't want another 407 that dumps the liability back on the underwriter. Bob says he thinks we'll see underwriters requiring more comprehensive E&O including cybertheft and maybe a fidelity bond in addition. It will be legislatively moot if the underwriters do it themselves already. Tim says it would be nice to have higher capitalizations, which would be accomplished by a surety bond.

**Executive Session** (None)

- **Adjourn** (9:35 AM)
  - **Motion by Sylvia to adjourn. Seconded by David. Motion passes 4-0.**
- **Next Meeting: March 14, 2016** — Copper Room

**2016 Meeting Schedule in Copper Room**

<del>Jan 11</del>	Feb 8 ( <i>Centennial</i> )	Mar 14	Apr 11	May 9	Jun 13
Jul 11	Aug 8	Sept 12	Oct 17	Nov 14	Dec 12 ( <i>Aspen</i> )