



# 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:** June 13, 2016 **Time:** 9AM **Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

Chair, 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*)  
Sylvia Andersen (*Public Member, Salt Lake County*)

#### DEPARTMENT STAFF

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

#### PUBLIC

Carol Yamamoto                                      Tim A. Krueger                                      Timothy Grubb  
James Swan    Frank Medina                                      Blake Heiner  
D. Adam Back    Sandy Day    Joseph McPhie [PHONE]  
Tyrone Johnson [PHONE]                              Nuria Martindale [PHONE]                              Wade Taylor [PHONE]  
Pete Stevens [PHONE]                                      Matt Ryden [PHONE]

### MINUTES — *Not Approved*

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

- **Welcome** / Jeff Wiener, Co-Chair (9:02 AM)
- **Adopt Minutes of Previous Meeting**
  - **Motion by David to adopt minutes. Seconded by Matthew. Motion passes 3-0.**
- **Reports**
  - Concur with Licensee Report / Suzette
    - The industry is getting better at not having licenses lapse. There were only two individuals and two agencies last month.
    - **Motion by David to concur. Seconded by Matthew. Motion passes 3-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - The front page shows very few open investigations, some of which are failure to file controlled business reports. Many of them show up on the closed investigations reports and were handled during the same month; they were the ones who didn't file anything.
    - There's one revoked license.
    - David asks about audits and whether they're mail-in or on-site. Tammy says they're both. Sometimes there are desk audits, and other times they'll go visit with notice so they can have the info ready.
    - David asks about #67150 on the last page of closed investigations. This is an investigation where the agency is closing, and they asked for department input to make sure they do it right. Suzette notes that this is common.
    - **Motion by Matthew to concur. Seconded by David. Motion passes 3-0.**

- 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**
  - Department's Most Wanted finally apprehended / Tammy
    - The offender in question is Shawn Anne Parker. Tammy says the best the Commission can do is revoke a license, but she referred the case to the Fraud Division, who caught her. It took a year to get her, but ultimately it happened because her employer turned her in.
    - David asks if she was working in the industry. Tammy says no.
    - Jeff asks if there's really a Most Wanted list. Tammy says yes, and it's on the Fraud Division website. Parker was the Most Wanted for title.
    - Jeff thanks the department and notes that Parker took \$25,000 of trust funds and is now no longer licensed in title and has been apprehended.
  - Email blast for subjects of concern / Tammy
    - The department is often asked to prepare bulletins based on things happening in the industry. Instead of doing a bulletin, Tammy suggests doing an email blast to remind agents of relevant topics. Two things that arose lately are cohabitation and the holding of construction funds.
    - Jeff says he likes the idea, but what's the difference between an email and a bulletin. Tammy says neither has the force of law, but an email is quicker. Bulletins take time, and the relevance can be lost by the time it's out. We could send an email blast, then follow up with a bulletin if necessary.
    - David likes the idea, and would like the email contents put on the website like we do with bulletins. He'd like to have them there as a reminder, in case we don't do a bulletin.
    - Jeff likes it because it informs the industry. His concern is that a bulletin has some opinion to it that isn't legally binding, whereas an email blast is just for reminder sorts of things, and should be opinionless as far as the Department is concerned. He thinks it would be ok for statements and reminders of what is included in statute or rule.
    - Jeff asks if we would want to add the email's drafting to the T&E Commission agenda. Tammy says we could definitely do that. Jeff asks if the Department would need to approve it. Tammy says she would run it by Suzette, and if we need to run it up the chain of command we can.
    - Jeff says let's go with it. He doesn't think approval is necessary, but it would be nice to know if there are emails that have been sent. They should be brought to the Commission, and the Commission can submit topics as well.
- **Old Business**
  - Exam Review Workshop report / Randy
    - The Department, industry and exam vendor PSI held an exam review workshop shortly after the last T&E Commission meeting. Bob was unable to attend, so Jeff attended as a T&E Commission representative.
    - Title exam questions were reviewed and the committee decided what test questions were appropriate and whether some should be removed. Tammy and a PSI rep have been working to make sure new national laws and rules are included by doing keyword searches, but there aren't any that are specific to title. We will have to create questions that are representative of the title industry. These questions will be about the new national standards that have been passed.
    - Jeff says this was his first time attending a workshop with PSI, as is now required by statute. He thinks it's beneficial for people to attend, with the caveat that those who teach prelicensing CE cannot attend. His experience is that the questions being reviewed are those that either everyone

is getting right or everyone is getting wrong — they're either too hard or too easy. What concerned him is that they didn't get to see the whole bank of questions. There have been a lot of changes in the industry, and not seeing any questions related to that is a concern. The fear is that a lot of questions are going to be outdated. Tammy is working with PSI to develop new questions, but changes won't take place until January 1.

- Randy says that other states have title exams that we can borrow from, but state-specific questions are the ones we have to do.
  - David notes that outdated questions are always an issue, and he makes sure to address that in his precicensing CE trainings. His issue is that PSI tests on title in a lot of other states, but they don't test on escrow in any other states.
  - David says that in past exam meetings, they've given statistical data about who passed what. He thinks it would be interesting for the Commission to see those numbers. Randy says there likely won't be statistical data for a couple of years. He has requested it, but with one year of experience and very few people taking the test, it won't be very helpful yet. David thinks it would be good to see because letting people into the industry because we have too easy a test wouldn't be good.
  - Jeff asks Tammy how the industry can help her with creating questions. Tammy says she'd be happy to take suggestions about what people should know from an industry perspective.
  - Adam Back asks about the keyword searches she is doing and if there are any questions about the new marketing rule. Tammy says she could see the whole bank of questions for the marketing test, and it didn't appear that any of our marketing rule was in there. We'll have to come up with state-specific questions. She also got a follow up email from PSI that showed no questions in the other tests either. It appears that no Utah marketing rules are in the test right now, and haven't been previously.
  - Jeff clarifies that all marketers are now taking tests that don't speak to the unfair marketing rule for the state of Utah. Tammy will be sending an email to the industry to solicit questions for the bank of questions she will have to create regarding R592-6.
  - Carol Yamamoto was at the meeting and says that a lot of the questions are dependent on the person's position. Escrow agents vs. title agents would see different answers to the questions. She thinks it could be either/or depending on who's taking the test. She says there need to be some changes with respect to the audience. Some of the questions were a little misleading and some weren't even applicable. It also has nothing about TRID, so a lot of the things that are important to follow CFPB aren't on the test.
  - Jeff says the test is definitely outdated and not Utah-specific. The key is that it shows that people who are interested in the industry are out there studying and can meet minimum competency standards. However, there's a need to create more relevant questions.
  - Jeff suggests that we start with an email blast to ask for questions to be submitted to Tammy. Then she and Randy can report back with the results and some options.
  - **Added to Old Business for next month as "Exam review".**
- **Other Business**
    - R592-11 / Steve
      - R592-11 is up for a 5-year review. Nothing in the rule gets changed at this time — it just needs to be reviewed for continuation. The process is just a way to make sure agencies are reviewing rules and making sure they are necessary. The options are either to keep it or eliminate it.
      - Jeff would like it added to the July agenda for public comment. However for now, the rule will be kept. Steve will also add reminders to add 5-year reviews to agendas prior to their renewal date.
      - **Added to Old Business for next month as "R592-11 review".**
- **Hot Topics**
    - Controlled business public notice and audits / Joseph McPhie
      - Joseph has two questions: 1) How can realtors, lenders or developers have a stake in a title company? and 2) Will the Commission or Department require a public facing notice on the controlled business' website so people are aware of it?

- Joseph notes that currently, if a licensee receives a license that has a restriction against a controlled business, no public notice is required. The only people who know that is the Department.
- Tammy doesn't understand quite what he's asking. Joseph restates to ask whether the Department or Commission will consider making licensees publish notice that the agency has a controlled business restriction on its license. He makes the analogy that it's like a driver license with a motorcycle endorsement on it — will the Department consider making that condition public. Without it we have realtors, developers, and lenders acquiring interest in title companies, but nobody knows it outside the Department.
- Pete Stevens says it's surprising and that he doesn't believe there's such a thing as a restricted license. He can't remember a time that anyone has said that a company owned interest in a title company and they have a restricted license. Tammy says they can issue licenses with a restriction, probation or limitation, but that isn't currently made public on our website. Pete says those terms are usually only on there as a result of an administrative action. Joseph says if the Department is going to issue licenses with a restriction, first he thinks it shouldn't be allowed, but if it is going to be allowed, it should be noticed publicly.
- Pete asks if any licenses have been granted by the Department as indicated. Tammy says yes. Pete asks how that doesn't fly in the face of controlled business discussions that have happened for months now. Jeff says he's brought it up previously because he wants to know what the limitations are, in case he ends up dealing with someone who has such a limitation. He has two questions: 1) can the Department issue licenses with restrictions before a violation happens? (he would like to know the basis in the law), and 2) If those limitations or restrictions are placed, what's the basis for not making them public especially if they're able to be issued upon issuance of a license?
- Pete says the other part is that the party who is going to use the vendor doesn't really care. If his license says he can't do business with ABC, they don't really care. This is an administrative thing. Why would the Department issue these licenses now, contrary to how it's been done prior? How many are there? Why do we have a controlled business report if it doesn't matter?
- David asks if there's a requirement that a change of ownership be reported other than during the controlled business report. Jeff thinks there's already that requirement. Tammy says that's for a designation, but she doesn't think there's anything for ownership. But Producer Licensing understands that the title industry has a controlled business issue, and she has asked that if a change in ownership comes through for a title agency, it be sent to Market Conduct so they can review it like it's a new agency. **Jeff asks Reed to investigate the requirements for a change in ownership.**
- Joseph asks if the Department will allow controlled businesses, will those businesses be required to have an audit done at their own expense? Pete thinks the department should disclose who these licensees are, and there should be an attorney general opinion as to if this should be allowed when the department has never allowed them before. He's very surprised that it's allowed and notes that it's contrary to Brett's response 2 months ago.
- David asks if you can put a notation on a license, it would be nice to know if a company is also on probation when looking up a license. Suzette says that it would cost a lot of money to have Sircon develop that, but she can find out what other states are doing. She notes that we do currently issue brand-new licenses with probation. Pete asks why the names of those agencies can't be disclosed at this time.
- Adam says going to the website and looking at administrative actions is difficult. Is there a way to have a page that lists all the companies that have a current administrative action. He'd like that page to be more user-friendly for the public.
- **Jeff asks the department to investigate what it would take to have Sircon list restrictions on the license and be able to search them.**

- Tammy clarifies that when a license is issued with a restriction because one or more owner has a mortgage license, the restriction is that the title agency cannot do any business with that person or entity. Assuming that the licensee abides by that restriction, there would be no controlled business. Further, there's one agency that has a restriction and she has done an audit on them to make sure the business they're doing isn't involved with the business on the restriction.
- Pete notes that all of this is public information and we shouldn't be talking in hypotheticals. He says Tammy should be able to name names. He doesn't know why that can't be disclosed now. Jeff says that's what he has Reed working on, since that hasn't been done historically. The department will answer that next month. Pete disagrees and says if the department is doing something contrary to what they've said, the T&E Commission and industry need to be aware of it. He doesn't think it's inappropriate to ask the department to disclose the names of those agencies and their owners. Jeff understands and says the question has been asked and we need to allow the Department time to prepare their response to the question next month. Brett agrees that this is a healthy discussion and legitimate questions. We can't disclose names today because we don't have that information right now to give an accurate accounting. However, we will be ready next month to tell the Commission how many restricted licenses there are, and what solutions we see in terms of disclosing it. He says this is a serious issue and complicated statute that is very fact-specific. He stands by his statement two months ago that nothing has changed as far as he is aware regarding enforcing controlled business. He appreciates the industry bringing it to his attention that something may have changed.
- Matthew asks if there's a set of rules that requires unchanging language on the license, like when you grant a license would it clearly state "you cannot do business with \_\_\_\_\_"? Tammy says that's a question for Randy because she only makes recommendations from a Market Conduct point of view. She knows Randy issues a letter that becomes an Order of the Commissioner, but she hasn't ever seen one of those letters.
- **Jeff asks that the department add Randy to discuss the process and why it's done, once a recommendation is made, as well as what language is on the license or order.**
- Blake Heiner says the controlled business report is public information. If they're public information, there should be no doubt that the licensee who is involved in a controlled business situation is public. He thinks Tammy could say right now who has a restricted license based on controlled businesses. Brett says he doesn't know how many there are and whether Tammy could say with confidence how many there are. He asks for the opportunity to review our records to make an accurate accounting. Tammy says she knows of one company, but she hesitates to say the agency's name because it has a similar name to another agency and doesn't want to give the wrong name. She will prepare the list for Suzette's report.
- Joseph says he has heard from a realtor who said they were aware of two other realtors who have acquired interest in a title company and this realtor wanted to do the same thing. It needs to be addressed as urgently as possible.
- Jeff says this is an extremely slippery slope that will be almost impossible to enforce. While there's difficulty with the controlled business statute, this is something that goes against historic policy and if we're issuing restrictions on licenses, that does seem to be a departure from what historic policy has been. If we go down that path, he doesn't know how we would enforce it.
- **Jeff asks that this topic be added to Old Business for next month.**

**Executive Session** (None)

- **Adjourn** (10:35 AM)
  - **Motion by David to adjourn. Seconded by Matthew. Motion passes 3-0.**
- **Next Meeting: July 11, 2016** — Copper Room

**2016 Meeting Schedule in Copper Room**

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