



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: December 10, 2018

Time: 9AM

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, James Swan (*Insurer, Salt Lake County*) xNancy Frandsen (*Insurer, Salt Lake County*)
Vice Chair, Alison McCoy (*Agency, Tooele County*) xDavid Moore (*Agency, Salt Lake County*)
xRandy Smart (*Public Member, Salt Lake County*) xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* xTracy Klausmeier, *P&C Dir.*
Randy Overstreet, *Licensing Dir.* xSteve Gooch, *PIO Recorder*

PUBLIC

Tim A. Krueger Frank Medina Adam Back
Wes Jensen [PHONE] Kirk Smith [PHONE]

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (9:04 AM)
 - Alison is excused.
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Nancy to adopt minutes. Seconded by Randy. Motion passes 4-0.**
- **Concurrence Reports**
 - Licenses
 - Reed didn't see anything in the report that merited comment, but he can answer questions or get answers from Randy O.
 - Nancy asks Reed to thank Randy O. for updating the report for October.
 - **Motion by David to concur. Seconded by Nancy. Motion passes 4-0.**
 - Penalties
 - Juab Title & Abstract Company (Docket #2018-4009)
 - Previously, Juab Title was put on 24 months of probation in June 2017 because it had provided financing in a transaction in which it had also provided title and escrow services, which is an inducement. It did this five times. It had also cohabited with a client, which was the finance company that provided the financing for the transactions. For these infractions, Juab Title was put on probation for 24 months and assessed a \$20,000 forfeiture.
 - This current penalty was assessed because Juab Title's license lapsed, during which it closed 6 transactions and issued 12 policies. Typically the UID has imposed a \$1,500 forfeiture, which is what was imposed in this case.
 - Last month, David asked why the standard fine was used when the company is already on probation. Reed investigated and it comes down to a misunderstanding of the law on the UID's part. The market conduct examiner was under the impression that we couldn't take any additional action because there wasn't a provision for it in the June 2017 probation order.

Reed doesn't think the UID would revoke the license for such a minor offense anyway, even though they're on probation.

- The UID has created a new forfeiture worksheet that all market conduct examiners will use. This will provide a more transparent and objective way of determining forfeitures in the future. James asks if the UID will make the worksheet available to the public. Reed says yes. If a licensee wants to challenge a forfeiture amount, they would be entitled to know the criteria.
- James has no further questions and believes the punishment fits the crime, even considering the probation. Reed says other than this small hiccup, Juab has been a model probationer. It has paid its forfeiture installments on time and has been compliant with its probation.
- **Motion by Randy to concur. Seconded by Nancy. Motion passes 4-0.**
- Provo Land Title Company (Docket #2018-4027)
 - Provo Land Title concerns a loan of \$35,000, and the lender took a lien on real property to secure it. Provo Land Title was instructed to file the lien and transfer the title to the creditor if it wasn't paid in a year. The property in question is in California — not Utah — the lien was never filed on the property, and the title was never transferred. The issue went on for 4 years before Provo Land Title transferred the real property title to the creditors.
 - Last month, David asked why the fine was only \$1,500 for such a serious violation and such a long amount of time. Reed investigated and the market conduct examiner who prepared the case is no longer with the UID. Nobody knows why the fine was so low in this case. The current market conduct examiner would not have done that amount. It was submitted to the ALJ as an informal agency action. She approved it and signed it. David also asked about an encumbrance that fouled the chain of title. Reed says there was no lien filed, so it never affected the chain of title.
 - Randy asks what caused Provo Land Title to ultimately make the transfer. Reed says we don't know for certain, but a lawsuit was filed. It didn't involve Provo Land Title, but it might have been in part because the creditor wasn't pushing it.
 - Reed notes that this type of issue will also be covered by the new forfeiture worksheet, and so shouldn't happen again.
 - Nancy asks if it's problematic that Provo Land Title did the property and warranty deed on property in California. David says it's a bigger problem because you can't act as an escrow unless you're writing title insurance. Since there was no loan recorded and it's California property, they're not doing title insurance. It's a violation of the statute that says you can't do escrow if you don't do title insurance. David asks if the TEC doesn't approve the penalty, can the Commissioner approve it or renegotiate. Perri says that's correct.
 - James asks if the UID can reopen an investigation based on the new facts that have just arisen (i.e. doing escrow without issuing a policy). Reed says he believes the UID could reopen and look at that particular aspect of the transaction. James says he thinks the TEC would feel better about approving this penalty if they felt like there would be an investigation into the other potential violations that weren't addressed. The other commissioners all agree.
 - **Motion by David to concur, but with a request that the UID look at further violation of the escrow without title insurance provision. Seconded by Randy. Motion passes 4-0.**
- **Board Duties & Responsibilities / Perri**
- **Update on 2018 Goals / James**
 - ULTA report / James
 - The ULTA board has been meeting regularly plus some additional meetings to discuss legislative issues, particularly remote online notarization. The board is in the process of polling members to get everyone's position. The ULTA has not yet taken a formal position. David asks if a bill has been proposed. James says yes, it's being run by Rep. Craig Paul. The ULTA sent agencies a copy of the bill and a poll to share their opinions.

- Real Estate Commission Report / Nancy
 - The REC doesn't have phones at their meetings for call-in attendance. Amber Nielsen is their administrative person, but she is no longer with the DRE. They put meeting recordings on their website about a week after each meeting.
 - The REC is finalizing a script for a public service announcement about wire fraud and email hacking. The script is completed and is before the commission for approval.
 - They're also thinking about legislation to stop sales agents from taking files to other brokerages, and agents contracting out record maintenance. Both of these are property management issues.
 - Cal Musselman, the current REC chair, just won an election in Weber County. This may change the composition of the commission.
 - David asks if the REC puts something on their website, like a video or PSA, can the UID link to it on the TEC section. Steve says yes depending on what form it's in and if they'll allow it.
- **New Business**
 - Discussion on 2019 goals / James
 - James does a review of the 2018 goals:
 - Testing should still be relevant.
 - Continue to work with the REC.
 - Continue to work with ULTA.
 - James proposes focusing on wire fraud education from consumer and company standpoints in 2019. At the very least, people should be made aware of the problem since they only buy a home once every several years. One of the challenges is hackers spoofing unsecured email accounts, like Gmail, Yahoo, and Hotmail. People are having their life savings stolen when hackers send fraudulent last-minute wire instructions. Leveraging the REC's materials would be a good thing if we can make it happen.
 - Nancy agrees and notes that it's the REC's top issue too. Consumers trust their title company completely — we don't want them to stop trusting title companies.
 - David says the industry generally does well, but a lot of the problem is that the wire comes in from a real estate office or an individual. Whatever the TEC can do to help get the word out is beneficial.
 - James says his company invested in a secure portal to avoid email use. He notes that if someone loses their money, consumers often sue everyone they can to get their money back. He said it wouldn't surprise him if the UID saw a complaint against a title company and it wasn't the company's fault.
 - James says it might be a good idea to consider budgeting some UID funds in 2019 to a consumer awareness campaign. It may not need to be a lot considering that other agencies are already making things.
 - **James requests that a discussion of 2019 goals continue on January's agenda.** He asks that commission members bring ideas for discussion.
 - 2019 TEC meeting schedule / Steve
 - James says we'll discuss meeting schedule and legislation shortly. He notes that it wouldn't take effect until May. He says we should consider the schedule under the current law, then can adjust the schedule after May as necessary.
 - Steve scheduled all monthly meetings up through December. Quarterly dates can be scheduled later.
 - David says 2 members leave in June so maybe that's a good time to revisit the schedule. Those commission members are James and David.
- **Old Business**
 - Draft language for changes to TEC meeting schedule in legislation / Reed

- James says the goal was to have monthly meetings as a baseline standard, but also to build in flexibility, the ability to cancel meetings, and the ability to teleconference. However, one in-person meeting would be required at least quarterly.
- Perri asks if the statute should require monthly meetings. James says yes, but with the option to meet via conference call except for one meeting per quarter. He says the meetings could still be based out of the Copper Room, but nobody may show up in-person. However, if there's nothing substantial on the agenda, the TEC could cancel the meeting.
- David and Randy are concerned about the timing for cancelations. James says Steve sends stuff the Tuesday beforehand, so that would be a good time to cancel, which would be 6 days notice. David asks if the statute should be changed to require 5 days notice of a cancelation. James says he would prefer not to, to keep more flexibility, but to keep the Open Meeting requirement and also have a goal of more time.
- David asks about how the schedule works if they cancel the designated calendar meeting. James suggests working around the statutory language to make it work. They could designate the quarterly meeting as the first month of the quarter, then kick the can down the road to other months in the quarter if necessary.
- Randy asks how cancellations would work — wouldn't they need to be done more than 24 hours ahead of time? Perri says yes, it's 24 business hours, which would be Friday. Steve says he posts materials and meeting notice on the Thursday night before the meeting, just to be safe. He's never had to do a cancelation, but could just post a canceled meeting. James suggests adding "Except as set forth in Subsection (6)(b)" to the beginning of Subsection (6)(a). That would eliminate conflicting language. Steve notes that he sends materials to TEC members, staff, and other interested parties on Thursday. He could send out cancelations Thursdays as necessary. David suggests adding an email line to the sign-in form so they can get notice of meetings.
- Reed thanks James for his hard work on this item.
- James suggests that Steve host a monthly meeting in the Copper Room (unless it's canceled) in case people want to attend. Otherwise, it'll be people on the phone unless the meeting has been designated as the quarterly in-person meeting. Then there will always be an option for an in-person meeting if people want.
- **Motion by David to recommend that the UID include the revisions to 31A-2-403 in the Department's Bill, with the change to add "Except as set forth in Subsection (6)(b)" to the beginning of Subsection (6)(a). Seconded by Nancy. Motion passes 4-0.**
- Randy wonders if people should attend in person if they're available. What message does it send if the meeting isn't important enough for people to be here. James says the trend over the years is that important business has decreased, which means people come for little reason.
- James notes that June or July is the earliest this will start.
- **Other Business**
 - Legislative update / Reed
 - The Department's Bill was passed out of committee favorably. It's not up on the website because we're still tweaking it. There's a big section on captive insurers, some on healthcare, criminal insurance fraud, insurers with international connections, and a required annual disclosure of corporate governance, which may affect some title companies.
- **Hot Topics**

Executive Session (None)

- **Adjourn** (10:00 AM)
 - **Motion by Randy to adjourn. Seconded by David. Motion passes 4-0.**
- **Next Meeting: January 14, 2019** — Copper Room

2018 Meeting Schedule in Copper Room

Jan 8	Feb 12 (<i>Aspen</i>)	Mar 12	Apr 9	May 14	Jun 11
Jul 9	Aug 13	Sept 10	Oct 1	Nov 5	Dec 10

2019 Meeting Schedule in Copper Room*

Jan 14	Feb 11	Mar 11	Apr 15	May 13	Jun 10
Jul 8	Aug 12	Sept 9	Oct 21	Nov 18	Dec 16

* as currently scheduled; may change after Legislative Session