



Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Date: **March 11**, 2019

Time: **9AM**

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, James Swan (*Insurer, Salt Lake County*) xNancy Frandsen (*Insurer, Salt Lake County*)
xVice 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.*
xRandy Overstreet, *Licensing Dir.* Michael Covington, *CE Specialist* xAdam Martin, *MC Examiner*
xJill White, *Recorder* Steve Gooch, *PIO Recorder*

PUBLIC

Frank Medina Carol Yamamoto Hugh (Tige) Garner
Tim Krueger Blake Heiner Adam Back

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (9:00 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Alison to adopt minutes. Seconded by Nancy. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by David to concur. Seconded by Nancy. Motion passes 5-0.**
 - Penalties
 - ServiceLink Title Insurance Agency of Utah LLC (Docket #2019-4074)
 - ServiceLink involved several different violations that Adam discovered based on a random sample of files that he reviewed: 14 involved someone processing escrow without a Utah license, 15 involved someone not designated by the agency processing escrow, and 20 involved a depository institution without an office in Utah.
 - The agency agreed to a forfeiture and 24 month probation. The probation is in place because the UID suspects that there were similar problems outside the sampled files.
 - James asks if the agency had an office in Utah, and if they do, was one of the violations the people in the Utah office not being the ones conducting escrow? Adam says they have an office in Utah and used their qualifier to issue the title commitments. He says this case was going on for 2 years and 2 investigators had it before Adam. The initial complaint was an individual being asked to use a specific title company, but she wanted to use another one and thought her choice was being restricted. It turned out the seller thought she had to pay for title on both sides and specified the one she wanted to use. Adam looked at the file and it was someone licensed to another state and she did all the closings and Tim Krueger did nothing

on them. There were several random samplings and of the 20 files, 14 were processed by someone other than Tim Krueger and all 20 used the master trust account for the company and not the one set up for Utah.

- Alison asks if this company has been before the TEC before. Adam says yes, the last time was 5 years ago, and it was a title search issue. It was a previous violation of a different license type.
- Alison notes that the penalty is \$7,000 for 20 violations, and asks if concurring with the penalty is all the TEC can do. Reed says the UID is changing the way it's assessing forfeiture amounts and trying to make the calculations more transparent. The UID takes the prior amount per violation and doubles it, then use that amount to calculate the forfeiture amount for the pending violation. In this case, the last forfeiture was \$100,000, but there were 17,000 violations, which works out to \$5.70 per violation. Doubling it takes it to about \$12 per violation, and an extra \$100 was added because of the prior violation. That works out to \$112 per violation, multiplied by the total number of violations, which made up the \$7,000.
- David clarifies that ServiceLink had a trust account in a Utah bank, but they were using another trust account. Adam says yes, they had their own but were using the parent company's trust account.
- **Motion by Nancy to concur. Seconded by David. Motion passes 5-0.**
- Amrock Utah Inc. (Docket #2019-4077)
 - Amrock's violations were uncovered by an audit. The first was an escrow account in a non-Utah bank, and when they switched to a Utah bank they had the wrong tax ID number on the account. For audit investigations, the forfeiture amounts are capped because the UID wants to encourage people to be forthcoming and present their files so they can be taught the correct way to do things.
 - Alison says she thought "title insurance" had to be in the name. David says it used to be, but that's no longer the case. There was an amendment years ago to R590-154.
 - **Motion by Randy to concur. Seconded by Nancy. Motion passes x-0.**
- **Board Duties & Responsibilities / Perri**
- **Update on 2019 Goals / James**
 - ULTA report / James
 - The ULTA has been very busy with the legislative session. A number of bills have been addressed at the legislature on a number of topics. Controlled business and remote online notarization were a couple of big ones, along with boundary line issues, mechanics liens, and taxes on services.
 - There's another meeting today, and legislation will likely be the main topic again.
 - REC report / Nancy
 - The REC has a new board member, Rick Southwick.
 - SB 140 is the bill they were most interested in, and it passed.
 - They have 2 new investigators on their team and 407 open cases.
 - Johnny Stewart sent Nancy a copy of the PSA and said the UID is welcome to put it up on the website. Nancy has a copy on her computer and plays it for everyone to see. She'll send it to Steve for him to post on the UID's site.
- **New Business**
- **Old Business**
- **Other Business**
 - Legislative update / Reed
 - The UID's bill passed. The new TEC meeting schedule will take effect in June.
- **Hot Topics**
 - SB 121: Controlled Business in Title Insurance Repeal / James
 - This has been a very hot topic in the title insurance world over the past few weeks of the session.

- The House Business & Labor Committee heard the bill on Thursday and passed the first substitute out favorably 10-2. There was discussion in the meeting about potential minor tweaks to make sure the 70/30 split of controlled business included all types of transactions, not just federally regulated mortgages.
- James invites members of the TEC and public to make comments regarding SB 121. He notes that the TEC doesn't have influence over the bill itself and can't directly make changes, but if there are questions they're happy to do so. It appears that the UID will remain the regulator for all title insurance companies, including all affiliated businesses that are formed if the bill is passed into law. The one exception is that the Division of Real Estate will regulate only the affiliated business portion of the law, if it's passed.
- There's discussion about what part of the legislative process the bill is in. Commissioner Kiser describes how the remainder of the session works and what route the bill will take over the next few days before the session ends. He notes that the substitute bill was less intrusive to the UID than he thought it would be, although it's still quite intrusive to the title industry.
- Frank Medina asks how the regulation of affiliated business by the DRE will interact with the UID's regulation of title. Reed says the DRE only addresses the three aspects that are regulated in SB 121: the 70/30 split, the minimum capital requirement, and the disclosures. Everything else involving a title agency will be regulated by the UID. While there is dual regulation, it doesn't overlap. Frank asks if an agency would have to do a controlled business report to the DRE rather than the UID. Reed says yes.
- At first, Commissioner Kiser thought any business transacted by an affiliated business would be regulated by the DRE, and that would be very dysfunctional. He went to the Governor's chief of staff and said so, and they agreed. The state government is looking at ways to streamline and improve workflows, but having two different entities regulating didn't make sense at all.
- David says it appeared to him that the bill says title agents shall report to the DRE, and that may need to be clarified. If an agency has no controlled business, do they need to report to the DRE? Reed says as he understands it, the controlled business statute is gone, so any requirement in the rule to report it is also probably not valid. He notes that there will be some cleanup work to be done, and the UID anticipates doing that as soon as the bill passes. David reads a section of the proposed bill that says "before March 1 each year, each title licensee shall submit a report to the Division" that contains associated business for the year. He thinks that needs to be cleared up: is that agent or agency? The definition is looked up in 402, which indicates that it's each agent.
- David notes that title licensees aren't licensed by the DRE, so what authority does the DRE have over them? James says the statute gives them authority to take punitive action against title licensees. Commissioner Kiser notes that they only have authority over the affiliated branch. If a title agency isn't affiliated in any sense, then the UID has complete regulatory authority. The UID will need to take a closer look at the minutiae to be certain.
- Adam Back says the DRE is regulating capital requirements, so wouldn't agencies still be regulated regardless of affiliated business? He also notes that most agencies report 0% or 1% on their Annual & Controlled Business report because in all reality, all agencies have a little affiliated business because of them directing their own business or their employees. His understanding is that they would have regulatory authority regardless.
- Reed notes that the bill says every title licensee has to report capital and net worth to the DRE, along with other information the DRE deems necessary. Alison says the DRE takes over market capitalization requirements too. James says they're taking over the application of RESPA, and capital splits are all pieces of RESPA. Maybe it's easier to think about DRE regulating the application of RESPA as implemented in state law. The DRE is granted rulemaking authority for regulating this as well.
- Nancy asks if that means the report that agents have been sending to the UID will go away. David notes that that one report is two: the Annual report and the Controlled Business report. Reed says the UID won't get any controlled business reports anymore. Nancy asks if the TEC wants her to

take anything to the REC meeting next month. James says everyone is probably speculating at this point, but it's good to have the conversation.

- Adam Back says as we go through the transition, he thinks they need to monitor how the departments work together. He doesn't know if the DRE's intent is to do audits of title companies for controlled business, and notes that they already have 400 open investigations. However, the UID is already doing them. Nancy is a perfect bridge between the Division of Real Estate's Real Estate Commission and the Insurance Department's Title & Escrow Commission. Nancy agrees, but her concern is that the REC's meetings are very different from how TEC meetings work. It would be hard for her to give any input because of how their meetings are structured. She notes that she's developed a relationship with Johnny Stewart that may allow her to have her comments heard.
- James says lines 180-181 of the bill say there's a ramp-up period even to enforcement of the 70/30 split, so there won't be a lot of enforcement until 2021. We may not even have answers in May or June.
- Frank says it might be wise to have a representative of the title industry on the REC. David notes there's a general public seat, but specifically adding a title person would require legislation.
- David says Utah has been lucky to have controlled business restrictions up to now, even though it looks like it's going away. But we still have a lot of controls. They talk about one-stop shopping, but the UID has a cohabitation rule, the unfair inducement rule, the good funds rule and others. These companies will be regulated by the UID through its rules and regulations. It will probably take a year or two to work through the conflicts.
- Adam Martin reminds everyone that the Annual and Controlled Business reports are due by April 30, despite everything going on. These reports are for 2018.

Executive Session (None)

- **Adjourn** (9:46 AM)
 - **Motion by Nancy to adjourn. Seconded by Alison. Motion passes 5-0.**
- **Next Meeting: April 15, 2019** — Copper Room

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