Utah Insurance Department
TODD E. KISER
Insurance Commissioner

Title & Escrow Commission
NANCY FRANDSEN, Chair

September 4, 2019

Chairman Anderegg & Chairman Roberts,

The Utah Title and Escrow Commission would like to the thank the Administrative Rules Review Committee (ARRC) for the opportunity to discuss the title insurance industry and the implications of Senate Bill 121 (2019.) As requested by the Committee, the Title and Escrow Commission has engaged in the following review and research of statutes and rules regulating the methods of competition related to title insurance in Utah:

- On June 24, 2019, the Commission reviewed Rule 592-6 in preparation for meeting with the ARRC. After Commission discussion, and input from the insurance department and other concerned members of the public, the Commission voted 5-0 to recommend to the ARRC that no change be made to the current rule. (Attached- Meeting Minutes from 6/24/19 meeting)
- On July 15, 2019, the Commission again reviewed Rule 592-6 following the testimony before the ARRC. After an extensive discussion where several ideas were considered, the ultimate feeling of the Commission was that the current rule was effective and provided proper protections for the consumer while allowing for fair market competition. (Attached- Meeting Minutes from 7/15/19 meeting)
- On August 1-2, 2019 the Utah Land Title Association held its annual summer conference where the topic of Rule 592-6 was discussed. No conflicting recommendations were forwarded to the Commission from the ULTA Board.
- Finally, on August 12, 2019 the Commission again discussed Rule 592-6. The consensus of the Commission is that the current rule is effective and that changing the rule in response to SB 121 may be premature. The preference of the Commission is to observe the impact of SB 121 and adjust the rule at a later time, if necessary.
- Discussion in all meetings has included independent agents, underwriters, agency owners, agency employees, members of the public, and representatives from the insurance department.
- The Commission has observed that several States address marketing in a manner similar to Utah. For example, 16 of 44 States surveyed by the National Association of Insurance Commissioners (NAIC) regulate affiliated business arrangements. (NAIC Title Insurance Task Force, 2019)

- Federally, title insurers and affiliated business arrangements are regulated by the Real Estate Settlement Procedures Act (RESPA) which provides further protections for consumers participating in real estate transactions.

Given the research, discussion, and prior precedent of title insurance marketing laws and rules, it is the recommendation of the Utah Title and Escrow Commission that no change be enacted to these rules at this time or in response to SB 121 (2019.) The Commission is confident that the regulations currently in place provide for fair competition and adequate consumer protection. Should problems or issues arise regarding these rules, the Commission is committed to working with the Utah Insurance Department to address perceived deficits within the rules. The Commission would like to again thank the ARRC for their interest in our industry and for the opportunity to review these standards.

Sincerely,

Nancy Frandsen
Utah Title & Escrow Commission Chair

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

Insurance Department

State of Utah
Title & Escrow Commission Meeting
Meeting Information

Date: June 24, 2019 **Time:** 3:00 PM **Place:** Teleconference

This special meeting was called at the request of the Insurance Commissioner under 31A-2-403(6)(c)(i)

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

Todd Kiser, *Ins. Commissioner*	xReed Stringham, *Deputy Comm.*	xTracy Klausmeier, *P&C Dir.*
Randy Overstreet, *Licensing Dir.*	xAdam Martin, *MC Examiner*	xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto	Joseph McPhie	Michael Hendry
Wade Taylor	Mark Chandler	Jonathan Ivins
Scott Cope	Kirk Smith	Brandon Allison
Jessica Goodman	Matt Ryden	Nuria Rivera
Jane Lancaster	Susan Elton	Matt Sager
Frank Medina	James Seaman	Mark Webber
John Bartlett	Cherry Dornbier	

MINUTES — *Not Approved*

General Session: *(Open to the Public)*

- **Welcome** / James Swan, Chair (3:02 PM)
- **Telephone Roll Call**
- **New Business**
  - Discuss TEC position on increasing or eliminating dollar limits on certain inducements in R592-6
    - The UID emailed the TEC to tell them about an Administrative Rules Review Committee hearing on June 25 at 1pm.
    - The UID and James wanted to have this meeting to discuss the topic of the meeting and get the industry's and TEC's feedback as to the position the UID should take when providing testimony. James will attend the ARRC hearing as well.
    - The ARRC asked the UID about whether the marketing dollar amount should be increased from $50 or done away with entirely after SB121. It's possible that the discussion could move to other marketing rules.
    - James thinks the $50 rule should be kept or modestly increased for the integrity of the industry. Doing away with the rule entirely would lead to chaos and have a negative impact on the

industry. He's not in favor of opening or changing the marketing rule generally. We need time to see how SB121 will affect the industry before we make sweeping changes. The rules have been in place for quite some time and are the result of years of experience and are there to protect the industry. The UID has gotten quite a few phone calls from Realtors and lenders who are learning about marketing rules the marketing rules and are frustrated with them. James says that's good feedback to hear and it should have been expected. It was his understanding that, during negotiations, everyone knew the marketing rules and that they would stay in place after SB121. He says the rule prohibiting the sharing of money or commissions are separate from the affiliated business statute, so it's correct that most realtors and lenders would not receive any monetary benefit because they're not owners of title companies in most cases. James says the UID has received questions about whether real estate companies need to be licensed with insurance and vice versa; he thinks the answer is no in both cases. The title company is a part owner, so it doesn't need a real estate license, but its partner does. James is concerned about any testimony that encourages the Legislature to consider any modifications to the affiliated business statute or title insurance regulation at this time.

- Alison is not in favor of getting rid of what's currently in place. If anything, the amount needs to be lowered or only modestly increased. Most of the time, marketing dollars don't benefit clients; they're used for marketing to lenders or realtors. We want to make sure we don't get off course about who the real client is. One of the TEC's main purposes is to make sure the consumer is protected, and that's what these rules do. We should be looking to make sure the consumer is at the forefront of what is being considered, and we're doing our best to protect them, not looking for more ways to create business.
- Nancy thinks it's too soon to make changes. SB121 is a large enough change to the industry that we need to let it play out and see how many additional players come into the market. Because there's dual oversight, we need to see how that plays out based on the rules already in place. She notes that the Real Estate Commission has 595 open investigations. We need to be careful about changing things and hope that they can whittle that number down. The rules we have in place are already in line with RESPA, and people coming in may not know what they need to do to stay RESPA compliant. She notes that California has controlled business and they don't allow any money to be spent. We need to keep the rule as-is and let time pass and see how it goes.
- Randy says there are limits and restrictions in other areas of insurance regarding dollar amounts for inducements. It doesn't make sense to completely eliminate them in this area versus all other areas. He thinks we should keep these limits at some level.
- Reed did some research and found that the first inducement rule was enacted in 1989. In looking over the iterations of the rule during the past 30 years, there are two clear protections: 1) title agencies that spend excessively in marketing will pass it to their consumers, which adversely affects consumers, and 2) realtors, lenders, and builders will tell clients to use the title agency that pays them the most benefits rather than the one that gives the best service. These are the articulated reasons in the history of the rule and why it was enacted. Reed plans to point those out to the ARRC because consumer protection is the focus of the UID.
- Tracy asks James to elaborate on how keeping the rule in place protects the industry. He says harm to consumers can happen by passing on costs and giving recommendations based on who gives the best perks. The public looks at title as a neutral third party in a transaction, and that independence and integrity takes a hit when the industry sells itself this way.
- David says he came in late but has a comment. He says these things are based on RESPA to allow certain things to happen, and they're in other states as well. They need to stay.
- James Seaman provides a statement from the ULTA (attached).
- Carol Yamamoto says the amount shouldn't be eliminated, but $50 a day has been a little difficult for some events. She feels that, having been around when title agents would buy tires or pay for weddings for real estate agents, the service is the most valuable part of the transaction rather than the marketing bribes, or whatever you want to call it. A lot of title and real estate agents have lost

sight of that, and she hopes we don't go back to the older way. It should stay similar to what it currently is.

- Mark Webber says that during the negotiations of SB121, it was very clear that the current marketing rules would stay in place and would be enforceable against everyone currently in the industry and the new affiliated businesses. It's disingenuous to come back 3 months later and want to address the rules when we just went through them in coming up with SB121. He's in favor of the rules staying in place, and that was a key component of the negotiation. He says Utah Title defalcated because of the inducements they were paying to lenders and agents. They paid out too much and didn't have enough to run the company anymore. That's a big part of how the marketing rules came into play.
- James says it appears that the TEC and industry are unanimous in their statement that the marketing rules are important and serve an important role. Making changes to the rules would be a mistake and would cause harm to the industry and consumers.
- Alison asks if there needs to be a recommendation or vote by the TEC to give direction. Reed thinks it would be better to have James or a representative of the TEC to speak to the TEC's view. The TEC has primary rulemaking authority and is the entity who drives the rules.
- Motion by Alison that the TEC recommend to the ARRC that no changes be made to the current rule. Seconded by David. Motion passes 5-0.
- Mark Webber reminds Reed that the TEC didn't exist when the marketing rules were put into place. While the TEC has primary authority, these rules were put into place by the UID to protect consumers. It's important for the UID to express support for the rules because of what happened when the rules weren't in place. Reed says he understands and that makes perfect sense. He needs to talk to Commissioner Kiser and notes that the consumer interest is clear in the rule.
- Randy notes that the rule is consistent with other rules about inducements and social courtesies.

Executive Session (None)

- **Adjourn** (3:39 PM)
  - Motion by Nancy to adjourn. Seconded by Alison. Motion passes 5-0.
- **Next Meeting: July 15**, 2019 — Copper Room

2019 Meeting Schedule in Copper Room

~~Jan 14~~	~~**Feb 11**~~	~~Mar 11~~	~~Apr 15~~	~~**May 28**~~	~~Jun 10 – Canceled~~
Jul 15	**Aug 12**	Sept 9	Oct 21	**Nov 18**	Dec 16

* bold dates denote quarterly required in-person meetings.

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

Insurance Department

State of Utah
Title & Escrow Commission Meeting
Meeting Information

Date: July 15, 2019 **Time:** 9AM **Place:** East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

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

DEPARTMENT STAFF

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xRandy Overstreet, *Licensing Dir.*
xSteve Gooch, *PIO Recorder*
xReed Stringham, *Deputy Comm.*
xMichael Covington, *CE Specialist*
Tracy Klausmeier, *P&C Dir.*
xAdam Martin, *MC Examiner*

PUBLIC

David Moore
Bob Rice
Blake Heiner
Matt Ryden [PHONE]
Tim A. Krueger
Helen Hayden
Adam Back
Carol Yamamoto
Matt Olsen
Canyon Anderson

MINUTES — *Not Approved*

General Session: *(Open to the Public)*

- **Welcome** / James Swan, Chair (9:00 AM)
- **Telephone Roll Call**
- **Administer oath of office to new commission member** / Adam
  - Chase Phillips
- **Recognize David Moore's service to the Title & Escrow Commission** / Commissioner Kiser
  - Commissioner Kiser thanks David for his service from October 21, 2015 to June 30, 2019.
  - James offers his thanks to David as well, and says it's been a pleasure serving with him.
- **Adopt Minutes of Previous Meeting**
  - Motion by Alison to adopt minutes. Seconded by Nancy. Motion passes 4-0; Chase abstains due to not being a commission member at the time.
- **Concurrence Reports**
  - Licenses
    - Motion by Randy to concur. Seconded by Alison. Motion passes 5-0.
  - CE Quarterly Report : ~~January~~ / ~~April~~ / July / August / November
    - James notes that the CE rules require specific topics and wonders if all the classes have a connection to title insurance. Michael says yes. If she has worries about any potential classes, she asks Adam about them. She says rejecting a class is rare, but she did reject one in July, which will show up on the next report.
    - Motion by Randy to concur. Seconded by Alison. Motion passes 5-0.
- **Board Duties & Responsibilities** / Perri

- Perri will do her annual board member training at the August meeting.

- **Update on 2019 Goals** / James
  - ULTA report / James
    - The ULTA is preparing for its convention on August 1-2. Anyone in the title insurance business is welcome to attend. There's a good agenda and a lot of pertinent content, including affiliated business, fraud, and other things.
    - ULTA was involved with the Administrative Rules Review Committee hearing by holding a meeting before the hearing and preparing a statement.
  - REC report / Nancy
    - As of the June 19 meeting, the REC is seeking outlines for mandatory real estate CE courses. As of next year, Realtors will have to take mandatory annual courses.
    - As of June 19, the DRE has 595 open investigations. Commissioner Kiser asks what the number was the last time the TEC met. Nancy says a couple of months ago they had 300+ investigations on forms. The chief investigator at the time said the number of open investigations they had reported was tremendously low. The next month it came in at the high 500s and has stayed there. They know they're close to 600, and they close around 4-6 investigations a month.
- **New Business**
  - ABA disclosure / James
    - James says Scott Cope suggested at the last meeting that the TEC and UID should consider a required disclosure of affiliated business on the state's website where title licensing info is shown. This would be similar to the title agent warning that's on there now when a title agent is no longer affiliated with an underwriter.
    - James notes that RESPA requires disclosure in writing at the time of referral. Scott's suggestion would be above and beyond what RESPA requires. James says he's all for disclosure, but doesn't think going above and beyond RESPA is pertinent and necessary. He doesn't have strong feelings and wouldn't be opposed to it, but doesn't think it's necessary. He doubts that consumers visit the UID website very often to look at licensee information.
    - Alison says realistically the consumer would see the affiliated business disclosure at the closing table. James says they're supposed to see it at the time of referral, so early in the process. By the time you get to the closing table, it's too late. The timing gives people the opportunity to shop around if they're not OK with the affiliated business relationship.
    - Reed says that Alison made an excellent point that the important time to disclose the information is when you're getting ready to move forward. He says after the initial discussion, he looked into how difficult it would be to implement and it would be very difficult. The UID agrees with James' thoughts.
    - Chase asks if part of affiliated business is supposed to be regulated under the DRE, would it be more appropriate to have a disclosure on the DRE's website rather than the UID's. The concern would be whether the agents are disclosing appropriately. James says he's not sure the DRE would have jurisdiction over what appears on the UID's licensing information. There's already a question over who has jurisdiction over what issues.
  - Request for position statement from Commission on effect of 31A-23a-402(2)(a) on an affiliated title insurance agency / Reed
    - Reed says there's a statute that says a producer can't give indirect consideration to a Realtor as an inducement to get title business. On its face, the statute prohibits any kind of sharing of income with an affiliated arrangement; but on the other hand, a sharing of profits is not the same as the indirect consideration prohibited by the statute. He's looked at the issue and talked to others and can't come up with a satisfactory answer. The UID would like some input from the TEC on this issue.
    - James can't speak to the legislative intent of 31A-23a-402, but will speak to the intent behind SB121. His opinion is that 121 wasn't intended to be in conflict with 31A-23a-402(2)(a). He thinks they saw the distinction between sharing commissions and distributing profits to the

owners, who may also be brokers or real estate agents or lenders. He says RESPA 26-07(c)(4)(c) allows a return on the ownership interest or franchise relationship. One of the concerns is that most realtors/lenders won't get any money even after SB121 because most won't also be owners. There's a very small percent of licensed realtors who will get profits, because it will be a small percentage of realtors who will be owners.

- James agrees that 402 needs clarification or a line that allows the payments under SB121, but he thinks the title insurance industry would be opposed to opening the legislation anywhere near affiliated business. He thinks the consensus is waiting to see what happens over the next several years before making changes. The title insurance industry is willing to endure a bit of ambiguity over the next few years to see how it works and what other statutes need to be addressed.
- Randy O asks if clarification can be done in a rule. James says he'd have to look and see what authority the TEC has.
- Randy S asks if it's possible for the UID to put out a bulletin with its interpretation. If it's left open-ended, we'll have more issues. Reed says that was his intent in coming before the TEC, to get it figured out and on the same page.
- Alison thinks sharing profits and commissions is muddy waters, but she understands that the RESPA standard already allows for it. Maybe that's where we take the direction from, for now.
- Canyon Anderson says we want to avoid having anyone enforcing RESPA deciding for us, and make sure the state has clarity on the issue.
- Alison asks about state-county rules and whether the state can be more restrictive than RESPA. James says since the controlled business statute has been in existence we've already been more restrictive than RESPA. He says, to Canyon's point, that the UID is likely not so worried about federal regulation as it is finding a law that's in conflict with SB121 and whether to allow distributions to affiliated businesses as a result of this law. He thinks if the drafters new about the conflict, they would have addressed it at the time. Canyon says the definition fits the window of "profit".
- Blake Heiner says if the statute is amenable to two different interpretations, one of which would be coincident or non-conflicting, then if the UID is enforcing the statute, all they need to do is take the tack that it won't conflict with SB121. Reed says that's the point: Can you overlook the plain term "indirect consideration" and does that somehow not encompass a distribution of profit. Blake says he thinks looking not only at the term, but is the distribution of profit an inducement. He thinks it could be argued that it isn't. Reed thinks that's the only reason these affiliated companies would exist. Blake says not necessarily: As owners get into the business, they will find that brokers don't control their agents, but can incentivize them to go with a particular company. There's an argument to be made that it's not an inducement, but he hasn't fully thought it through.
- Alison asks at what level it would become an inducement. Blake says he doesn't know because it's just a hypothesis. It would be simple enough for the UID to say that it's not going to conflict with SB121 in terms of its interpretation of the statute.
- James thinks there's enough room to thread the needle concerning direct transaction-specific inducements because there's a disconnect when the money has to flow all the way through the business. It becomes so disconnected from an individual transaction that the level of inducement is reduced. Distribution of profits isn't a transaction-specific inducement — it's a different animal.

- Rule review following passage of SB 121 / James
  - The UID was invited to testify before the Administrative Rules Review Committee in June. The ARRC requested that the TEC look at the rules and regulations governing title insurance business and see if there's anything that can be done to additionally restrict inducements. We have not received the promised letter from the ARRC, but we'll start the conversation today.
  - James says the $50 rule was discussed most during the hearing. There was talk at the hearing of either raising or getting rid of the rule altogether. However, after conversation during the hearing, the ARRC came out in favor of reducing or eliminating it. James says in zero-tolerance states, it hasn't reduced the number of complaints because a true zero-tolerance policy means zero. He can

only imagine the small, ticky-tack violations that would be reported and that we avoid here because of the small amount that's allowed. The ARRC was concerned that the UID was too involved with small violations, but James thinks decreasing to zero would increase the number. He thinks it should stay at some amount and thinks $50 seems reasonable, but would consider a small increase. It allows people to build relationships over lunch in a way that doesn't rise to the level of inducement. He doesn't think the TEC should be afraid to go back to the ARRC and say the rules are working and have worked for a long time. Newer entrants to the industry may need to get used to the rule, but the focus should be on complying with existing rules rather than restricting them in ways that don't make sense.

- Alison testified during the ARRC hearing that the amount should stay the same or be less. She supports James' ideas and says she doesn't have the appetite to go all the way to zero, but she'd be fine staying where we're at.
- Randy thinks the amount needs to be low enough so it's not an inducement for business. This is seen in all areas of insurance.
- James asks if Adam is seeing any abuse of the rule or increasing violations. Adam says he got a complaint about it 2.5 years ago. Otherwise, there have been no complaints since then.
- Commissioner Kiser says inducement was a huge issue when he took the commissioner job. He remembers when the level was at $2, then was increased to $10 because companies wanted to give larger items, like a road atlas or a blanket, when people got a quote. On the other end was the agent who lost a contract because agents of larger organizations could take clients to Jazz games in a suite. The UID looked at it for 2 years to find the right limit. They decided that taking someone to a round of golf was a good limit, and $100 is a fair amount for golf at a country club. That's where the $100 limit for P&C and health came from. Does title want to follow that same limit? He's not sure it matters whether the amount is consistent across the industry because other areas aren't consistent, like with fines.
- Nancy didn't attend the ARRC meeting, but she did listen to the full recording. She's trying to figure out the correlation between passing SB121 and the immediate need to fix R592-6. She thinks it could be due to people coming into the state. Her preference is to leave it as-is or lower it slightly, so instead of an inducement a title company can use it to thank clients for their business. Leaving it as-is will keep it based on relationships and good customer service, and will tell people coming into the industry that they're coming into our arena and need to abide by our rules. If anytime this group wants to tweak a rule and it gets tweaked, the door gets opened and the process breaks down. She agrees that if it goes to zero, title companies will turn into policemen and will stop focusing on their own transactions in favor of watching everyone else.
- Randy notes that the code says, other than title insurance, there's an amount of $100 if it's not conditioned on a quote; if there is a quote, it's $10. He thinks the distinction might be a good idea.
- Chase agrees with most of what everyone has said, and points out that brokers would want the rule to go to zero to limit competitors from creating relationships with someone in their brokerage. He doesn't think lunch is an inducement, but rather it's about building a relationship that makes the transactions smoother. He thinks the dollar amount makes it better for the client because everything happens more smoothly. He can see this as being a tool to further restrict the open market. He thinks the affiliated business companies would see a benefit to the amount going to zero, and that some amount of money is necessary.
- Carol Yamamoto can understand both points of view, but it makes it confusing if you split up the conditions like Randy and the statute suggest — someone will do the higher because they've interpreted it that way. She says building a relationship can take place anywhere, not just at lunch. She feels that her agents really care about the level of business and professionalism that they're getting and could care less about a lunch. It's sad because it's an inducement no matter the dollar amount. She says it's great whether it stays at $50 or goes lower, but if it goes away, so be it. It's hard for small title agencies to compete with the big guys. We need to find something that's conducive to all agencies, not just the big dogs. It needs to be fair.

- Nancy asks what the TEC is required to do with respect to the ARRC's request. James says he doesn't think they have any oversight or the ability to tell the TEC what to do, but they can make recommendations to the legislature and have asked the TEC to report back, which they will do. He thinks they're looking for the honest opinion of the industry. Commissioner Kiser says the ARRC is one of the more powerful committees and they want to make sure agencies are writing rules to comply with state law. If the UID and TEC weren't complying with the law, the ARRC would tell us to change it and we would have to. He thinks they're trying to figure out the right thing to do with inducements, and thinks they're doing it with an eye toward the next general session. They'll put something in the statute rather than rule if they need to. He thinks they want to know where "right" is, and they're asking for an opinion. He thinks it's an area where they don't know where the right place is.
- James thinks the title industry isn't well known to the public or legislators. The TEC would be doing a disservice to the industry if it didn't provide candid feedback.
- Adam Back asks if James knows where the conversation came from. He said it sounded like Sen. Anderegg brought the conversation to the table, and he was impressed that the senator seemed to change his views. Adam thinks the topic wasn't coming from Sen. Anderegg, and wonders who brought it to him and why. Chase heard that it had to do with him. He said some of it came up during his committee appointment interview. If that's where it came from, it was unintentional because he realizes this is a hot topic. James says Sen. Anderegg brought Chase up because Sen. Anderegg may have interpreted Chase's comments as being that there may be room to remove burdensome regulations after SB121.
- Adam notes that 5-6 years ago, there were people in favor of going to zero. He disagrees with zero, but after listening to Commissioner Kiser's comments, it makes him think that $50 is a made up number that generalizes activities. If that's the intent, why not just list the activities. He thinks if there's going to be a move, it shouldn't be over $100; he's not opposed to it going down, but it should be something.
- Alison says what she's hearing today is that everyone is OK with, or at least not opposed to, where it's at right now.
- Helen Hayden says if there's no issue prompting a rule change, why not leave it as it is. James says the only reason we're talking about it is because the ARRC has asked the TEC to take a look at it. Taking Commissioner Kiser's comments into account, the TEC will provide feedback and hopefully they'll feel like it complies.
- Commissioner Kiser believes that, based on personal conversations he's had, they're considering both zero and unlimited. In the retail market, there are a lot of "unlimiteds" in Utah, and the marketplace says unlimited is where we need to be to some legislators. We don't regulate other industries to prohibit "thank you" offers for buying a product. He doesn't know where it will land between zero and unlimited, but he thinks that's what's on the table right now. He would disagree with unlimited because he thinks rebates are unhealthy in the industry.
- Alison asks if unlimited came up, would the UID take a position. Commissioner Kiser says he would look at rebate law with Reed and Perri to see what the law says. It's possible that he'd take a position, but he'd review it with the Governor's staff to see what their position is. His personal sense is that unlimited in title would be unhealthy. He describes how a company called Zenefits came to the state and offered free services as part of their health management offerings. The law was changed to allow an insurance agency to provide certain administrative services for free. The little agencies couldn't offer free services, but the legislature said they were going to allow it. Commissioner Kiser sat in a meeting with the Governor and a large agency that was complaining that small-business-friendly legislators controlled the legislature that catered law to small businesses. The Governor's response was that if the agency didn't like it, they should get their people elected to change the law. Commissioner Kiser thinks that's what's happening here. Some of the big businesses may have the ears of some of the legislators. He says when he was in the legislature on the Business and Labor Committee, a lot of them were small business owners and

tended to look at small business concerns because 85% of Utah is small business. In this position, he doesn't know where right is. In a lot of other industries, unlimited is fine. Where is right? It's an interesting question the legislature is trying to work out.

- James says it's a widely held belief in the industry that unlimited would be universally opposed and would likely be a RESPA violation.
- Canyon says there have been numerous inducement discussions going back decades. One of the difficulties is trying to implement a minimum escrow fee. In the past there was no charge, but when they tried to increase it they were accused of being self-serving. However, escrow is fiduciary. The last time there were no checks and balances, if a company couldn't pay their bills, they used their escrow accounts. That's how people get hurt. The legislature has a difficult time grasping that idea.
- Adam says the money in question (the $50) isn't going to the people getting the service — it's going to the agent. In retail or other lines of insurance, it goes to the insured. He notes that there was a senator in the hearing who said their real estate agent had their own deal, but the senator was the one who was hurt by it. It's not the insured person who gets the inducement for the terrible experience, it goes to someone else.
- James thanks everyone for their input and says he'll look for the letter and the date by which the TEC needs to respond.

- **Old Business**
- **Other Business**
  - Elect new chair and vice chair
    - Alison nominates Nancy as chair. Randy seconds.
    - Chase nominates Alison as vice chair. Nancy seconds.
    - Both motions pass 5-0.
- **Hot Topics**

Executive Session (None)

- **Adjourn** (10:32 AM)
  - Motion by Alison to adjourn. Seconded by Chase. Motion passes 5-0.
- **Next Meeting: August 12**, 2019 — Copper Room

2019 Meeting Schedule in Copper Room

~~Jan 14~~	~~**Feb 11**~~	~~Mar 11~~	~~Apr 15~~	~~**May 28**~~	~~Jun 10 — Canceled~~
Jul 15	**Aug 12**	Sept 9	Oct 21	**Nov 18**	Dec 16

* bold dates denote quarterly required in-person meetings.

	69. Does state law limit or restrict the use of affiliated business arrangements? If yes, how? An affiliated business arrangement means an arrangement in which a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than one percent in a provider of settlement services and either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.
AL	No
AR	No
AZ	No
CA	Yes. Affiliated business arrangements are required to comply with the Controlled Business Source law. Insurance Code Sections 12396-12399, including record keeping and reporting of closed title orders from controlled business sources, an intent to not rely on more than 50% of such from controlled business sources, and active competition in the market place. In addition, companies must also comply with anti-kickback, rebating provisions in Insurance Code Section 12404 et. seq.
CO	Yes -- generally in the same way RESPA restricts AFBA's.
CT	Yes. Disclosure of the financial interest to the buyer, seller or lender required. See Conn. Gen. Stat. §38a-416
DC	No
FL	Yes, only to the extent that affiliations may be illegal because entities are being paid for services they did not provide, or for services the entity is not licensed to provide. Sections 626.8412, 626.9541 and 627.782, F.S.
HI	As relating purely to the application of title insurance laws, no.
IA	
ID	Yes, generally, in the same way that RESPA restricts the use of AFBAs.
IL	No
IN	No
KS	Yes, no title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 70% or more of the closed title orders of that title insurer or title agent during the 12 full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.
LA	No
MA	N/A
MD	Licensees of the Maryland Insurance Administration are required to comply with the federal law regarding disclosure - 12 U.S.C. Section 2607 (c)(4), 24 C.F.R. 3500.15, and Appendix D to 24 C.F.R. Part 3500, as applicable, regarding disclosures of affiliated business arrangements, as defined in 12 U.S.C. Section 2602. Licensees of the Maryland Insurance Administration are also required to comply with the Annotated Code of Maryland, Real Property Article, Title 14, Subtitle 1, Section 14-127.
ME	No
MI	
MN	No
MO	Yes, to the parties to the transaction and annually to the DIFP
MS	N/A
NC	No
ND	No
NE	Yes. A) The party making the referral discloses the referral at the outset and provides the customer with an estimate of the charges; and B) Not required to use a specified title agent or title insurer; and C) The only thing of value received is a return on the ownership interest
NH	
NJ	N/A
NM	No
NV	No
OH	Yes
OK	No
OR	
PA	No
SC	Yes, if it's a domestic company and has filed a Form D. Refer to Code Section 38-21- 250.
SD	Yes, Insurers must file for approval by the director.
TN	No
TX	No
UT	Yes, It is not permitted by statute.
VA	No
VT	
WA	No
WI	Yes, individuals in engaged in certain affiliated business arrangements may be regulated in accordance with s. Ins 3.32, Wis. Adm. Code.
WV	WV Rules of Professional Conduct for Lawyers. In WV closing and settlement activities are considered the practice of law.
WY	Regulations governing the transaction of controlled business by title insurers and title agents.