



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: August 12, 2019

Time: 9AM

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Nancy Frandsen (*Insurer, Salt Lake County*) xJames Swan (*Insurer, Salt Lake County*)
xVice Chair, Alison McCoy (*Agency, Tooele County*) xChase Phillips (*Agency, Weber 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.* xMichael Covington, *CE Specialist* xAdam Martin, *MC Examiner*
xSteve Gooch, *PIO Recorder*

PUBLIC

Tim Krueger	Matt Olsen	Steve Strong
Frank Medina	Blake Heiner	Jeff Wiener
Mark Webber	Matt Sager [PHONE]	Bob Rice [PHONE]
David Moore [PHONE]	Stephanie Cotton-Betteridge [PHONE]	Kirk Smith [PHONE]

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / James Swan, Chair (9:01 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meetings**
 - June 24 (teleconference) and July 15, 2019
 - **Motion by Randy to adopt minutes. Seconded by Alison. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - James notes that Keystone Title's license expired at the end of June and was reinstated on July 10. He asks if they did any closings during that gap. Adam says he is sending a letter to find out.
 - **Motion by Alison to concur. Seconded by James. Motion passes 5-0.**
 - Penalties
 - Kyle Dean Johnson (Docket #2019-4153)
 - A new penalty process started a couple of months ago, and it's significantly lower than it used to be. It's based on history with the UID, number of violations, etc. 31A-2-308 states that the forfeiture shall be two times the profit received. The legislature changed it to "up to two times the profit received."
 - Kyle Johnson's license was reinstated a week before the new law went into effect. His forfeiture is \$150 for using his license 3 times while it was down. It could have been \$300, but it was cut in half because he has a good record.

- Alison asks how profit is determined. Adam says he asks the licensee, and it's minus any gains and expenses. Alison asks if it's self-reported. Adam says Kyle gave him a ledger showing his expenses and whatnot.
 - Nancy asks if this is a new procedure. Adam says it started about 3 months ago, and this is the first one that's come through. Reed says it's a new approach and is a work in progress. He thinks the document Adam provided gives a good look at how the UID works through things in these cases.
 - **Motion by James to concur. Seconded by Alison. Motion passes 5-0.**
 - Quarterly continuing education report
 - This is just for July to catch up with the new schedule.
 - Nancy asks if there are any changes or issues with the process. Michael says no, but notes that she rejected two courses this time.
 - **Motion by Randy to concur. Seconded by James. Motion passes 5-0.**
- **Board Duties & Responsibilities / Perri**
 - The annual board member training will be done when the new commission member starts.
- **Update on 2019 Goals / James**
 - ULTA report / James
 - The ULTA convention happened in early August in Park City. It was a great convention with lots of good information about industry trends and title business. There was a lot of good discussion about e-closings which will become more prevalent in the future. There was some discussion about affiliated business, and many of the approved classes on Michael's CE list. It was a great convention and was well attended.
 - REC report / Nancy
 - Lerron Little is the new chair of the REC. Director Jonathan Stewart was interviewed by the Salt Lake Tribune about the PSA campaign, and they have lengthened the billboard contracts with Reagan Advertising so the billboards will be out there longer.
 - For the first time, their stipulations went down. They closed around 20 investigations. They now have 572 open investigations, of which 20 are with the AG's office. The DRE just hired a new investigator named Jenni Myers. Nancy asks if Bulletin 2019-2 was sent to the DRE too. Steve thinks it was. Nancy thought that since they were going to have some oversight, it would be good for them to have it. Reed also thinks we did and will double check after the meeting.
- **New Business**
 - Proposed amendment of R592-11 / Reed
 - This rule change takes controlled business out of the annual report requirement.
 - James says this was a much needed change, and has some suggestions. He thinks a few things that were taken out should be put back in because they aren't just about affiliated business and pertain to some statutory provisions that remain in effect.
 - 31A-23a-406(1)(g): The reference to maintaining a physical address should not be taken out.
 - It would be helpful to keep a balance sheet and income statement, as well as title premium reimbursement income and escrow income expenses weren't addressed by SB 121.
 - Subsections 2c, d and e were not modified by SB 121.
 - Essentially he proposes not making changes to section 2, and reinstating some of those items.
 - He notes that there weren't any changes to 31A-23a-204 in the code, which may affect the annual report form and what the UID wants to see in the form. He thinks title agencies are accustomed to reporting those items over the years, and SB 121 didn't change them. He proposes keeping status quo on those items.
 - Reed explains that the changes were meant to streamline the process, and while some of those things weren't affected by SB 121, the information involved wasn't necessary or helpful for the UID to collect. However, maybe the prudent course is to take it a piece at a time by only doing the SB 121 parts and then decide later whether we need the rest.

- Alison says that 5 at the bottom takes out the language that protects the reports, but thinks agencies would still like that protection. Reed notes that other statutes already provides for that, so it was taken out for being duplicative. However, he doesn't mind putting it back.
 - Chase asks what the UID is doing with the information that's being submitted every year. Is it being reviewed or being filed and held because it's required to be reported? Reed says we'd need to sit down and go through the list, but he thinks a lot of the information isn't necessary. Adam confirms and says the annual report is used for the assessment. What we really need to know is the amount of premium that's written on behalf of insurers. The other stuff is maintained in a file and he does a mini-audit on each file. He says we're trying to streamline it to one page so people don't have to report extra information.
 - Chase asks whether the information is being reviewed. Adam says yes. Chase asks if it's useful in making sure agencies are in compliance. He wants to make sure the info that the UID is getting is valuable, and if there's extraneous information, it's probably a good time to take it out.
 - Alison notes that some of it is for consumer protection and it would be a good idea to keep that.
 - Nancy notes that there was a time that escrow fees were collected because it was useful for finding out whether title companies were subsidizing escrow. Did this report give that information in the past? Is there any reason the UID would still want to know how much profit is from title and how much is from escrow? Adam says the reason for splitting the profit reporting is because if it's combined, it would make the premium look higher than it was. He notes that he can figure it out during an audit. He notes that he does audits alphabetically and does two every 45 days but will add others as necessary.
 - Reed says he will add back in everything except for the parts that were specifically affected by SB 121. Then he and Adam can prepare a report explaining why some things don't need to be in the rule and the TEC can make a determination.
 - James says it comes down to the value we see in self-reporting every year. There may be some value in it as a self-check for compliance, but maybe not.
 - Nancy asks if there will be another report that title agencies will have to file with the DRE. Chase thinks that's currently being determined by the DRE. Steve Strong says he doesn't know if it's being discussed, but it's definitely in the statute. Chase assumes the report will only happen if you have an affiliated business arrangement, but it will alleviate the burden on those who don't.
- **Old Business**
 - Rule review following passage of SB 121 / James
 - James reads the letter from the Administrative Rules Review Committee (ARRC). He notes that several ideas were batted around at last month's meeting, but the general consensus was that while the rule isn't perfect, they all have a history and reason why they are what they are today. Generally, the TEC and industry were not in favor of making sweeping changes to the rule. However, going back to the ARRC with nothing presents a risk. He thinks it might be a good idea to toss around some other ideas.
 - He thinks it might be good to make a change to the part of the rule that limits the info that can be provided to consumers. There are rules that made sense at the time, but title companies have greater access to technology and data that they can use to help consumers make choices about where to live. The rules limit and restrict the amount of information that can be provided to clients and consumers without charge; those restrictions don't exist in many other states. He thinks making a change to this area could benefit consumers and clients. Specifically, the property profile rule in R592-6-5(10), (12), and (13).
 - He also suggests a change to R592-6-4(20), which restricts the ways title companies can provide access to information. Technology has progressed in a way that title companies can provide that information in many ways and the rule may be outdated.

- The open house rule doesn't allow open houses on a client's premises, but it could be beneficial to add a restriction from having open houses at client events to minimize co-advertising.
- James reiterates that going back to the ARRC empty handed could result in them legislating around the TEC and industry, and this could prevent that. Nancy thinks it's important to give them something because they are expecting it. James says he is not in favor of opening the rule at this time, but it's a good idea to consider suggestions in case it comes down to it.
- Alison asks if a good course of action would be to send the ARRC a letter stating that the TEC had some good discussion and would like to take a measured approach to see where the issues are, versus taking a knee-jerk reaction when we don't know what the issues will be yet.
- Chase asks when the next five-year review of R592-11 will be. Steve looks it up and it will be in 2024.
- Chase notes that the ARRC was very focused on the dollar figure, and wonders if we should be interpreting it so narrowly. Is that what's at the heart of this matter, or does the ARRC have something specific in mind?
- Jeff Wiener says that during the legislative process regarding SB 121, they reviewed statutes from across the country and worked very hard to put in a statute that learned lessons from many other states. He knows there are inducement rules in all the other states that had affiliated business arrangements. Some states are really strict and others have rules like ours. Maybe the ARRC needs to understand that Utah's rule is like the others.
- Mark Webber agrees with Jeff's statements and notes that during the discussions about SB 121, this specific rule was discussed and it was agreed that it would be kept in place. He says the hearing was confusing because at first it seemed that they wanted to increase the amount, but then decided that they might want to eliminate it by the end of the hearing. He thinks that over the years, the industry has come into a balance and has found a good, safe spot where companies can market to clients but not go broke doing it. There's a check and balance to help companies stay in line. He thinks communicating that to the ARRC would be beneficial. He asks Commissioner Kiser if he has any insight or has heard anything. Commissioner Kiser says he believes there's sentiment that the legislature has been small business friendly in the past and maybe should be more large business friendly. He appreciates the reasonable approach that the TEC took last month in its discussions.
- Commissioner Kiser notes that the ARRC's letter is asking for the industry's input and guidance. He thinks the TEC's best move will be to tell them what the industry thinks will be the best policy going forward.
- Jeff points out that the inducement rules for lines of insurance concern inducements for consumers, but this rule doesn't deal with consumers at all — the client in this case is other providers of real estate services. He thinks that's an important distinction.
- Commissioner Kiser notes that the trend he's seeing in the legislature is a possible shift away from small business and toward large business.
- Jeff thinks the whole concept of the one-stop shop can be offered by a large business and a small business, but these rules make sure it's a level playing field. He says the title industry is mostly small business oriented and doesn't see why there needs to be a shakeup.
- Alison asks if it would be a good idea to make motion saying the TEC has looked at the rules and is confident in where they're at, but is open to reviewing them later. Commissioner Kiser thinks a letter would be good, and it would be especially good to note that it was also discussed by the ULTA and with industry. This was a broad discussion across the industry that reached a conclusion to keep the rules the same.
- Alison will draft a letter and Nancy, as chair, will sign it.
- Chase thinks it would be a good idea to cite what other states are doing in similar situations.
- Nancy thinks it's important to put in the letter that the TEC looks out for the consumer and whether a rule change will benefit the consumer.

- Motion by Alison to draft a letter responding to the ARRC's concerns that will be presented to the TEC before its next meeting. Seconded by Chase. Motion passes 5-0.
- Other Business
- Hot Topics

Executive Session (None)

- Adjourn (9:58 AM)
 - Motion by James to adjourn. Seconded by Alison. Motion passes 5-0.
- Next Meeting: **September 16**, 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 16	Oct 21	Nov 18	Dec 16

* bold dates denote quarterly required in-person meetings.