



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: **October 21**, 2019

Time: **9AM**

Place: East Building, Copper Room

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Nancy Frandsen (*Insurer, Salt Lake County*) James 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.* Michael Covington, *CE Specialist* xAdam Martin, *MC Examiner*
xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto Ronnie Cruz Kim Connelly Cruz
Frank Medina Tim Krueger Blake Heiner
Wes Jensen [PHONE] Cal Robinson [PHONE] Randy Cowdin [PHONE]
David Moore [PHONE] Mark Webber [PHONE]

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / Nancy Frandsen, Chair (9:02 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - Commissioner Kiser appreciates the poise that Nancy and Alison displayed when addressing the Administrative Rules Review Committee. He says it's not easy to be a witness in front of a legislative committee. He appreciates their depth of knowledge and poise when discussing the issue. They were clear and concise, and answered all the ARRC's questions.
 - **Motion by Alison to adopt minutes. Seconded by Randy. Motion passes 4-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by Randy to concur. Seconded by Alison. Motion passes 4-0.**
 - Penalties
 - Invictus Title Insurance Agency LLC (Docket #2019-4164)
 - Adam conducted an audit of Invictus on August 1 and found that they hadn't filed rates since June 15, 2015, and had conducted 531 closings between then and August 3, 2019. The maximum forfeiture under the audit rules is \$5,000.
 - Alison asks why the maximum is \$5,000. Adam says if you go by the forfeiture guidelines, the penalty could have been hundreds of thousands of dollars. Since it was the result of an audit, the penalty was lowered to give them an opportunity to correct the issue, and to use it

as an educational tool. Reed says the lower penalty was because the UID doesn't want to disincentivize companies to be cooperative during an audit.

- **Motion by Alison to concur. Seconded by Randy. Motion passes 4-0.**
- **Board Duties & Responsibilities / Perri**
- **Update on 2019 Goals**
 - ULTA report / James
 - Nancy will report in November.
 - REC report / Nancy
 - On September 18, Director Stewart said as of January 2020, all realtors will be fingerprinted and have a background check at license renewal. The UAR wants them to amend the statute of limitations on several statutes from 10 years to 4 years. They have 568 open investigations.
 - On October 16, Joy Natale was announced as their new analyst. The UAR wants to remove highlighted language about deadline dates on the REPC. They have 556 open investigations; 11 are with the AG's office.
- **New Business**
 - R592-15 and submission of escrow rates / Tracy
 - All companies have to file rates, rules, and forms with the UID. In 2007, these requirements were done via bulletin. The UID later converted the bulletins into rules.
 - In 2007, Tracy worked with Mickey Braun and the TEC to create a rule that combined multiple rules. The rule included how to file title rates, title rules, title forms, escrow rates, and the annual report. The rule went through the whole rulemaking process, but was halted in 2008 when the TEC asked for a rule that set the minimum rates, rather than having to file them. The rule was close to finished, but was ultimately voted down. She notes that the minutes from 2007 and 2008 weren't available to see what the reasons were.
 - In 2010, Tracy wrote another rule about filing escrow rates only, and it was approved in January 2011. This is the current rule: R592-15.
 - Tracy says escrow rate filing is a manual process. The agency has to email the filing to the UID or use SERFF. Once it's submitted, they have to pay a \$25 fee, and it's the only filing that has a fee. When the UID receives the filing form, an employee has to track it to make sure the UID gets the fee within 5 days. If it doesn't arrive, the filing is rejected. If it's rejected, the agency has to restart the whole process. Tracy thinks that's where problems happen, because agencies may not understand they have to redo everything. If the filing fee comes in, Tracy's staff has to enter the filing into SERFF, then update the UID's internal spreadsheet, then give it to Steve to add to the website.
 - Tracy proposes that we go back to the TEC setting the minimum fee. The industry would no longer have to file rates and pay the fee. The UID would no longer have to perform a long, manual process. She hopes the TEC will consider going back to the TEC setting the minimum fee by rule, rather than requiring agencies to file minimum fees.
 - Nancy says it would be nice to have the minutes. Tracy agrees, and says she recalls that all the instructions came from the TEC initially.
 - Alison thinks the TEC got beat up by the DRE for the minimum escrow rates. They said it was consumer-based concerns and price-fixing concerns. Tracy notes that this is just a minimum, and that the only other industry that has a minimum is the bail industry. Usually entities are filing the amount they need to collect to stay in business. The minimums are just the amount a title agency can't go below. It seems like it would be OK to come up with an average or the very base. Tracy says consumers call the UID to ask why they aren't getting the lowest escrow fee.
 - Nancy clarifies that this would be the TEC setting the base rate. Tracy says yes. It would be set by rule, but there would also be a legislative change.
 - Randy asks if there would be any filings that would be required. Tracy says no.

- Nancy asks if we know the range between the lowest and highest rates. Tracy says it's not much, and most everyone is the same.
- Chase vaguely remembers the discussions and that people who weren't involved with the TEC or ULTA were suddenly concerned about the government controlling rates, and real estate agents were concerned about increasing costs for their clients. He remembers when escrow rates were going to be tiered based on the amount of the sale of property of insurance purchased, and asks if Tracy is advocating any of that or just proposing a minimum filed rate, and the market will react like it does. Tracy says that's correct — the minimum is just the lowest rate that anyone can charge, but they can charge more if they want.
- Chase says he's all for making the process easier. He thinks the big problem in 2008 was that everyone realized they had an opinion on it at the last minute. He doesn't see an issue with setting a minimum, especially where there's a near-standard already.
- Alison thinks the other part of the previous discussion was about escrow having to be self-sustaining and concern about what a self-sustaining rate is. She asks what kind of research would need to be done to determine what a self-sustaining rate is. Tracy says the UID doesn't get justification with the filings; agencies send a spreadsheet with dollar amounts in it. She doesn't know how they're calculated or how agencies decide what to charge. She says it's hard to justify a minimum, and it's easier to justify why you charge what you charge.
- Nancy says you'd think it would be comparing oranges to oranges between title agents, but it wasn't. There was definitely more than just one rate.
- Randy asks how you'd determine a minimum if there's no basis for it. Tracy stays the low minimum on the UID's spreadsheet is \$75 and the high minimum is \$375. Nancy asks if \$75 is the average minimum. Tracy says, at a glance, the average is more like \$100 to \$120.
- Alison says if the TEC were to set the minimum, we'd need some firm data and labor costs. Tracy says there will be a lot of efficiency gains and no more forfeitures for not filing rates.
- Nancy doesn't think the TEC is ready to take action today. Tracy says she only meant to start a discussion. The UID can't do anything without a legislative change anyway. This is an area that is a small thing, but it causes a lot of work to perform the task.
- Alison asks if the UID will commit to backing up the TEC in whatever rate it sets if they go down this road. Commissioner Kiser says this would create some efficiency gains so we would want to consider it. We'd like some industry input to maybe go this way. If we don't see that, maybe how it is now is best. But if we can justify it, we'd like to make this recommendation and see if it works for the industry. If it doesn't work, we'll keep doing things like we're doing it now.
- Nancy will take it to the ULTA meeting today.
- Carol Yamamoto says her company does a time log for every file to measure how long the minimum filing takes. Alison asks if she knows how long an average file takes. Carol says it varies, but her team has a progress report and it could range between 60 to 90 minutes from beginning to end.
- Tracy would also like to know how often the minimum is charged. If it's just a basement rate that doesn't mean anything, then that could give everyone confidence that setting a minimum wouldn't harm anyone.
- Carol says a minimum rate for builders wouldn't take much time, and that would justify a minimum rate.
- **Nancy keeps this topic on the agenda for November.**
- **Old Business**
 - Increasing statutory cap on recoverable costs for title enforcement / Reed
 - At last month's meeting, the UID proposed increasing the statutory cap. Since then, the UID has come to believe that it's best to eliminate the cap in the statute because the legislature sets a different cap every year in the budgeting act. It makes more sense to repeal it versus continually amending it.

- Nancy asks if the costs stay under the \$135,000 cap for the next few years, would the UID bring the cap down? Reed says the cap would be whatever the legislature says it is. It's not an allocation of money for the UID to spend, it's just the authority to spend that amount.
- Alison thanks Reed for his work and answers to her questions. She says she's a lot more comfortable now.
- Randy asks if the legislature actually appropriates funds to the UID, or sets the limit the UID can spend out of the money it collects. Reed says it's what we can spend — there's no actual money given to the UID.
- **Motion by Alison to concur with UID's decision to repeal the cap on expenditures under the Title Licensee Enforcement Restricted Account. Seconded by Randy. Motion passes 4-0.**
- Proposed amendments to R592-11 / Reed
 - The UID wanted to make sure the TEC approves the proposed changes before it starts the rulemaking process.
 - **Motion by Randy to accept the recommended changes in R592-11. Seconded by Alison. Motion passes 4-0.**
- **Other Business**
 - 2020 goals discussion / Nancy
 - Nancy moves 2020 goals to the November meeting.
 - Alison notes that the remote notary language is moving ahead. The Lieutenant Governor's office is working on it and is taking the lead. Carol notes that she has a deal right now where the people are in New Zealand. They hired someone online for a remote notary. It came back to her notarized, but it may not be an original. Her counsel says they had to accept it because of the other state's rules, but she's struggling with that because she doesn't have the original. Alison agrees and says it will be a change for the industry for sure.
- **Hot Topics**

Executive Session (None)

- **Adjourn** (9:48 AM)
 - **Motion by Alison to adjourn. Seconded by Randy. Motion passes 4-0.**
- **Next Meeting: November 18, 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.