



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 17, 2020

Time: 9AM

Place: Teleconference Only

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Nancy Frandsen (*Insurer, Salt Lake County*) xDarla Milovich (*Agency, Salt Lake County*)
xVice Chair, Alison McCoy (*Agency, Tooele County*) xChase Phillips (*Agency, Weber County*)
xRandy Smart (*Public Member, Salt Lake County*) xEddie Vasquez, *AG Counsel - TEC*

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xReed Stringham, *Deputy Comm.* xTracy Klausmeier, *P&C Dir.*
Randy Overstreet, *Licensing Dir.* xDanny Schoenfeld, *Finance Dir.* xAdam Martin, *MC Examiner*
xMichael Covington, *CE Specialist* xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto Blake Heiner Matt Ryden
Matt Sager Nathan Sprague

MINUTES — *Not Approved*

General Session: (Open to the Public)

- **Welcome** / Nancy Frandsen, Chair (9:01 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Chase to adopt minutes. Seconded by Alison. Motion passes 5-0.**
- **Concurrence Reports**
 - Licenses
 - **Motion by Darla to concur. Seconded by Alison. Motion passes 5-0.**
 - Attorney exemptions
 - Samuel Bell
 - Nancy notes that the UID got Mr. Bell's request on July 10, and he was notified of the UID's approval on July 31.
 - **Motion by Chase to concur. Seconded by Darla. Motion passes 5-0.**
 - Continuing education
 - Michael is continuing to approve CE classes, which is nice. Webinars have really taken off due to COVID. It's easy to hold a webinar because there are only a few requirements and they seem to do well.
 - **Motion by Alison to concur. Seconded by Darla. Motion passes 5-0.**
- **Board Duties & Responsibilities**
 - Annual board member training / Eddie Vasquez
 - The Open and Public Meetings Act (OPMA) is found in Title 52, Chapter 4. The goal of OPMA is to make sure the public body deliberates and takes action openly and transparently.
 - The first requirement is public notice. A public body must provide 24 hours' notice before every meeting. The notice must specify the date, time, and place of the meeting. Normally, the place

would be a physical location, but with the pandemic that has changed a bit. The notice must have an agenda that includes reasonable specificity as to the topics the public body will consider. The notice must be posted on the public notice website. It should also be posted at the location of the meeting, and be sent to a newspaper or local media correspondent. A public body may discuss an item that isn't listed on the agenda, but it cannot take final action on that item.

- A public body must keep written minutes and a recording of all meetings. The recording of the open portions of the meeting must be posted online within 3 days after the meeting, and drafts of the minutes must be made available within 30 days after the meeting. Approved minutes and public materials must be available within 3 business days after their approval.
- Due to the pandemic, Governor Herbert signed Executive Order 2020-5, which has now been codified as 52-4-207. The Order and now the code suspends some of the OPMA requirements, particularly the anchor location requirement if having an anchor location causes a risk to the health or safety of the people in attendance. To hold a meeting without an anchor location, the public body's chair must make a determination to suspend the anchor location requirement. The public needs to be provided the ability to observe and comment despite the absence of an anchor location.
- **The chair has signed a document that allows this body to not have an anchor location.**
- The OPMA allows meetings to be closed to discuss a person's character, competence, or health. This is for a physical human person, not a corporation. There are a list of other reasons a closed meeting can be called, but many don't apply to the TEC. To close a meeting, the body needs a 2/3 vote with a quorum present, and must announce in the minutes the reason for closing the meeting.
- The OPMA includes provisions for emergency notice, which does not require 24 hours' notice if a situation arises of an urgent and unforeseen nature. It requires that there be an attempt to notify the members of the public body.
- Nancy asks about the Executive Order: The flyer notes that the order is effective until June 30, 2020. Eddie says the provisions of the Order have now been codified in statute.
- **Update on 2020 Goals**
 - ULTA report / Nancy
 - Nancy met with the ULTA executive committee on Monday. She gave an update on the July TEC meeting and then the conversation turned to the ULTA's concern with affiliated business arrangements (ABA). Cort Ashton mentioned that the ULTA wants the DRE to make a rule or statutory law regarding affiliates, but the DRE is reluctant to do it. However, they said they will publish an FAQ on their website and in their newsletter. Nancy said she's read their newsletters back to the passing of SB121, and there isn't anything. They said it was clear from Commissioner Kiser that the UID will continue to regulate everything title related, except infractions of ABA rules which will remain with the DRE. Nancy is bringing it up because she wants to make sure that the UID is comfortable with what was said in the executive meeting. They said marketing infractions go through the UID. The ULTA legislative committee is discussing forming a subcommittee for the purposes of ABA discussion, and will work with the UID and the DRE.
 - There's a concern about ABAs that are side companies sharing space with the larger company: what is allowed, are they allowed to operate using the space of the larger company, etc. It's a concern in the industry.
 - Chase appreciates Nancy bringing this to the TEC's attention. When this rule came about, every broker in the state decided they wanted their own title company. Very few of them took the time to determine what the rules are and what they're subject to. Many thought they could have existing title companies provide services, or have escrow officers begin sitting in the real estate offices and be down the hall from the agents, or share space. The industry on the real estate side did a poor job of interpreting or learning the rules ahead of time. As they've attempted to get licenses, a lot of them have figured it out and that's good, but there are a lot of agencies that have opened shop and are in violation. There are some that are breaking cohabitation rules. He thinks the industry ought to discuss how to help the DRE understand what's happening by not addressing

- it yet. We have the risk of agencies setting up a whole organization structured that way, then finding out it's illegal. That would be devastating for the agency. Anything we could do to raise awareness would be good. He would hate to be an agency like that and think you have the green light because you're licensed, but then get in trouble when the DRE gets around to enforcing the rules. He would like the TEC to think of things it can do to help spur it on. **Nancy agrees and suggests keeping it on the agenda going forward.** Her understanding is that cohabitation still falls under the UID. Reed and Adam say that's correct.
- REC report / Nancy
 - Darla says the REC hasn't put ABAs on their agenda in any way since she's been attending. It's been frustrating. It's important that they be aware of the rules and regulations that guide title companies. It will help them survive with their agencies and protect the consumer. She has wondered what the standard is for potentially bringing the TEC and REC together in a quarterly public meeting. She doesn't know how it would work, but thinks it would be a good idea. The REC is good at enforcing the rules, and if they're responsible for enforcing ABA restrictions, she would think they would want to have the rules in place to enforce. It surprises her that they haven't yet.
 - Commissioner Kiser says when he started as commissioner, he did a travelling roadshow called Conversations with the Commissioner to do a 2-3 hour meeting with agents across the state. Agents would get CE for attending. He doesn't know how we'd do it with COVID-19, but he thinks we could do some kind of CE and invite ABAs to participate, if we could get a list of who they are. Reed notes that he's asked, and it's up to the DRE to collect information about ABAs when companies submit their annual reports.
 - Commissioner Kiser asks if ABAs have a CE requirement. Nancy says yes. She's talked to Director Stewart before, and she's going to talk to him again to see if she can get the list to provide CE opportunities to them. The companies that were operating in 2019 should have filed their annual reports by now.
 - Nancy asks if the UID would be willing to do a roadshow or something similar via teleconference. Commissioner Kiser says yes, but there have been difficulties with people breaking into meetings. The UID has elected to stay with phone conferences for meetings, but if we know who's invited, we can do a Google Meet. If we can control who the participants are, that could work.
 - Alison says she thought ABAs needed permission to operate. Why do we need to wait until after annual reports are filed to find out who they are? Reed says the UID doesn't regulate the licensing or registration of those entities. The DRE has determined that the only way they can know if an entity is an ABA is to receive the annual report. He doesn't know why that is, but that's what the DRE has said. He thinks a simple change in the law could fix that. He agrees that fixing the problems on the front end is better than waiting until these entities are already created and operating.
 - Alison asks if ABAs need to be approved by the DRE, or if they just start and then file with the DRE later. Reed says that's correct, but if they're creating a new legal entity, they have to file with the Department of Commerce. But other than that, they don't have to do anything until they submit the annual report.
 - Nancy agrees that there may need to be a legislative change because ABAs could easily fall below the radar. She will follow up with Director Stewart to see about a list of ABAs. She thinks there should be a 2021 goal regarding ABAs and their oversight.
 - Darla says at the REC meeting, there were 568 total cases pending, 19 complaints, 8 closed cases, and 6 sent to the AG. Nancy asks if the REC is meeting over teleconference, and Darla says they're doing their meetings over Zoom.
 - **New Business**
 - Five-year review of R592-1 / Steve

- Steve says the legislature requires that all departments review their rules every 5 years to make sure they need to stay on the books. All we need today is a vote that the rule should be kept.
- **Motion by Chase to approve keeping this rule. Seconded by Alison. Motion passes 5-0.**
- **Old Business**
- **Other Business**
- **Hot Topics**
 - Elect new chair & vice chair
 - **Motion by Nancy to nominate Chase as chair. Seconded by Alison. Motion passes 5-0.**
 - **Motion by Alison to nominate Nancy as vice chair. Seconded by Chase. Motion passes 5-0.**

Executive Session (None)

- **Adjourn** (9:51 AM)
 - **Motion by Chase to adjourn. Seconded by Darla. Motion passes 5-0.**
- **Next Meeting: September 28, 2020** — Copper Room

2020 Meeting Schedule in Copper Room

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|---------------------------------------|---------------|--------------------------------------|---------------------------------------|---------------|--------------------------------------|
| Jan 13 Canceled | Feb 10 | Mar 9 Canceled | Apr 13 Canceled | May 11 | Jun 8 Canceled |
| Jul 20 | Aug 17 | Sept 28 | Oct 19 | Nov 9 | Dec 14 |

* bold dates denote quarterly required in-person meetings