State of Utah

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor
TODD E. KISER
Acting Commissioner

Insurance Department

State of Utah
Title and Escrow Commission Meeting
Meeting Information

Date: November 18, 2013 Time: 9:00 AM Place: East Bldg, **Spruce** Room

MEMBERS

COMMISSION MEMBERS

xChair, Kirk Smith, *Weber Cnty*
xCo-Chair, Larry Blake, *Washington Cnty*
xJeff Wiener, *Salt Lake Cnty*
xMatt Sager, *Maricopa Cnty, AZ*
Sylvia Andersen, *Public Member*

DEPARTMENT STAFF

xPerri Babalis, *AG Counsel*
xBrett Barratt, *Deputy Comm.*
xMark Kleinfield, *ALJ*
xSuzette Green-Wright, *MC Dir.*
*x*Tammy Greening, *Examiner*
xJilene Whitby, *PIO Recorder*
xRandy Overstreet, *Licensing Dir*

PUBLIC

Matthew Jagerson
Lincoln Scoffield
David Moore
Pete Stevens
Carol Yamamoto
Blake Heiner
Russ Nance

AGENDA

General Session: *(Open to the Public)*

- **Welcome /** Kirk Smith, Chair
  Kirk opened the meeting at 9:05am.
- **Adopt Minutes of Previous Meeting**
  Jeff made a motion to approve the minutes. Tammy noted that in the first bullet of New Business, the second sentence should read 150 title agencies and not branch offices. Matt then seconded the motion with the inclusion of the change suggested by Tammy and the vote was unanimous.
- **Reports**
  - **Concur with Licensee Report for October** / Suzette
    Kirk asked for reasons licenses lapsed. Suzette said they just failed to renew. It seemed to her that the number of lapsed licenses was declining. Motion by Jeff to concur and seconded by Larry. Brett noted that J. Spencer Ball's personal license had lapsed and been reinstated. Suzette said the Attorney Exemption has to do with the agency license.
  - **Concur with Complaint & Enforcement Report** / Suzette
    It was determined that Tammy would also report inquiries that don't result in the creation of a complaint file. Jeff said there was a need to see everything that comes into the Department related to title. Suzette said that normally consumer service people answer complaint calls, not Tammy and Adam. Those calls are noted on the Open and Closed Consumer Complaint Summary Report. Larry asked that on the Open and the Closed Investigation reports that the column marked "Alleged Violation" show "lapsed licenses" where applicable. That would be one way to tell what progress is being made in reducing the number of lapsed licenses knowing how many are doing business without a license. Jeff made a motion to concur with the report and seconded by Larry. The vote was unanimous.
  - **Request for Dual Licensee Expedited Request**: None
  - **Request for Attorney Exemption: J. Spencer Ball**
    Mr. Ball was not in attendance. Randy read his report to the Commission.

- Motion by Jeff to go to Executive Session to discuss Mr. Balls' character. Matt seconded the motion and the vote was unanimous.
- At 9:30 Matt made a motion to close Executive Session. Larry seconded the motion and the vote was unanimous.
- Jeff made a motion to not concur with the preliminary approval of the Department, Matt seconded it and the vote was unanimous.

- **Administrative Proceedings Action /** ALJ
  - **Stipulation & Order:** None
  - **Request for a Hearing**: William's Title: Dec. 9, Spruce Rm, after Commission Mtg Brett noted that the parties had been in discussion but no settlement had been reached yet. Hearing is still scheduled.
  - **Order to Show Cause:** None
  - **Informal Adjudicative Proceeding & Order:** None
  - **Formal Adjudicative Proceeding & Prehearing Conference:** None
- **Old Business**
  - **Discuss Proposed Rule Amendments to R592-2-7(2)**
    - Matt noted that the Department collects facts to enter into a Stipulation of facts. The Commission's roll should be to recommend penalty.
    - Larry would like the rule to state that the Department gathers the facts.
    - Matt said the Commission would recommend the penalty, propose it to the Department who takes it to respondent for concurrence and then the Commission would impose the penalty. Respondent can request a formal hearing anytime. If no concurrence between Department and Commission then the ALJ would have to handle the formal hearing. After ALJ determines penalty, Commission would concur. David Moore did not think the Commission could oppose the ALJ's findings and penalty. We need to determine what happens when there is a move to a formal hearing. Does Commission impose or concur with ALJ's penalty. Question: Should Commission hear the case if it goes to formal hearing and they have heard the facts.
    - Matt will continue to work on a draft with Perri and Brett.
    - Suzette said the amount at the end of the center column in Section 2-5(2) should be $1,250, not $250.
    - Referring to 7(3) Matt asked what the procedures should be after the Commission hears the facts. Would it be up to the ALJ to hear the case or would it be left to the respondent to choose between the Commission and ALJ?
    - Larry expressed concern about the $1,250 fine amount at the end of 5(2). What if an agency mistakenly fails to charge the correct amount? If there are multiple violations the fine could put the licensee out of business. Tammy said mitigating circumstances are always considered. If there is intent and violations occur more than once, that is different. Jeff thought the Department should recommend penalty and the Commission could concur. Matt said the question is, "What is a violation?"
    - Motion by Jeff that the rule be tabled and Matt, Perri and Brett make further changes to it for next month's meeting. Motion seconded by Matt and the vote was unanimous.
  - Randy noted that Rule R592-8 does not speak to what happens if the Commission does not concur with the Department regarding an attorney exemption. Perri told Randy to check with the Department's enforcement council. Brett asked that the applicant be informed of the decision and given their options.
  - **Update: SIRCON Sending Renewal Notices to Both Insurers & Agencies** / Brett Brett deferred to Randy. SIRCON is still working on the fix. Brett said the Department would continue to press for a resolution. This should be left on the agenda.
- **New Business**

- **Discuss Proposed Changes to Rule R592-11 as Required by HB47** / Brett
  - HB47 changed terminology for title individual and agency licensees. Attendees and Commission members were provided with copies of the title rules showing these changes. The rules have been filed.
  - HB47 made two substantive changes to Rule R592-11.
    - R592-11-4(2)(e) requires that individual title insurance producers or agency title insurance producers indicate in their annual report who the designated person is that is responsible for filing the Title Insurance Producer Annual Report.
    - R592-11-4(2)(a)(i) clarify that premium reporting for escrow and title services be reported separately. This also goes along with Bulletin 2013-6. David suggested the word "expenses," be added after the word "income."
    - Larry said the Commission should be reviewing controlled business as noted in 31A-23a-503-8(b) and (c). They need to see which areas are in violation and which are not. Larry asked that after these reports are filed with the Department the agenda show it so the Commission can review them. Tammy said these reports are always public.
    - It was suggested that the address of the Utah bona fide office be add to the annual report. It was agreed. Brett suggested that it be added as subsection 4-(2)(f).
    - Larry made a motion to add "expenses" to 11-4(2)(a)(i) and to the Utah bona fide address to the annual report, as discussed. Tammy reminded everyone that the addition of the Utah bona fide address to the annual report does not relieve licensee of notifying the Department's Licensing Division of the new office. Updates should be made in SIRCON. Motion was seconded by Jeff. Vote was unanimous.
- **Discuss Bulletin 2007-1, Prohibited Escrow Settlement Closing Transactions. Should Bulletin be Withdrawn?** / Matt
  Matt asked if Bulletin 2007-1 was an actual statement of Department rules and laws. If not, should we consider withdrawing it? The Bulletin was based on the Good Funds Law.
  - Larry and Jeff did not see a problem. Jeff said that it was a matter of disclosure. This Bulletin has been a safe harbor for our industry. Matt said there was a potential for disclosure fraud.
  - Jeff thought they could go to Real Estate law to craft wording. We do not want to determine when full disclosure is not met.
  - Matt's concerns were with commercial transactions. What should the industry standard be?
  - Pete suggested replacing the Bulletin with a rule, especially since bulletins have no force of law.
  - Jeff made a motion to make Bulletin 2007-1 into a rule and Matt seconded it. Jeff asked that the rule look much like the bulletin, noting that there can be carve-outs. The vote was unanimous.
- **Review 2014 Title Commission Meeting Schedule** / Brett
  proposed meeting dates for 2014 are at the bottom of the agenda. No opposition.

- **Other Business**

Executive Session *(Closed to Public)*
General Session: *(Open to the Public)*

- **Adjourn:** Motion to adjourn by Larry, seconded by Jeff. 11:09am.
- **Next Meeting:** December 9, in the Spruce Room.

2013 & 2014 Meeting Schedule
(*2nd Monday except in October*)

Dec 9, 2013	Jan 13, 2014		Feb 10	Mar 10	Apr 14	May 12
Jun 9	Jul 14	Aug 11	Sept 8	Oct 20	Nov 10	Dec 8