



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Insurance Department

JONATHAN T. PIKE
Insurance Commissioner

Title & Escrow Commission Meeting

(<https://insurance.utah.gov/licensee/title/tec>)

Date: **August 22, 2022**

Place: **In Person**

Virtual

Taylorsville SOB

Google Meet

Time: **9:00 AM**

4315 S. 2700 W.

Big Cottonwood Room

Taylorsville, UT 84129

ATTENDEES

TITLE & ESCROW COMMISSION

xChair, Kim Holbrook (*Insurer, Davis County*)

xDarla Milovich (*Agency, Salt Lake County*)

xVice Chair, Chase Phillips (*Agency, Weber County*)

xCal Robinson (*Agency, Iron County*)

xJeff Mathews (*Public Member, Morgan County*)

xPerri Babalis, *AG Counsel - TEC*

DEPARTMENT STAFF

xJon Pike, *Insurance Commissioner*

xReed Stringham, *Deputy Comm.*

xTracy Klausmeier, *P&C Dir.*

xMichael Covington, *CE Specialist*

xRandy Overstreet, *Licensing Dir.*

xAdam Martin, *MC Examiner*

Shelley Coudreaut, *AG Counsel - UID*

Patrick Lee, *Finance Dir.*

xSteve Gooch, *PIO Recorder*

PUBLIC

Matt Sager

Nate Sprague

Kim Cruz

Sam Bell

Blake Heiner

Bob Rice

Carol Yamamoto

Cort Ashton

Frank Medina

Johnny Stewart

Joseph McPhie

Krysta Pehrson

Matt Ryden

Rachael Ortiz

Steve Hiatt

Kristen Jorgensen

Nancy Frandsen

Branda Hansen

Jeff Wiener

MINUTES — Not Approved

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair (9:03 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - **Motion by Darla to adopt minutes.** Seconded by Cal. Motion passes 4-0.
 - Yea: Kim, Cal, Darla, Jeff
 - Nay: None
 - Abstain: Chase
- **Concurrence Reports**
 - Licenses
 - **Motion by Darla to concur.** Seconded by Cal. Motion passes 5-0.
 - Yea: Kim, Darla, Cal, Jeff, Chase

- Nay: None
- Continuing education
 - **Motion by Darla to concur. Seconded by Cal. Motion passes 5-0.**
 - Yea: Kim, Cal, Darla, Chase, Jeff
 - Nay: None
- **Board Duties & Responsibilities / Perri**
- **Update on 2022 Goals**
 - ULTA report / Kim
 - The ULTA had its convention at the end of June.
 - New members of the executive board were installed.
 - There were classes on wire fraud, cryptocurrency trends, cannabis, and a panel on employee retention with the ULTA's young professionals group.
 - The ULTA has been working on wire fraud, and had a collaborative meeting with the real estate folks and have a subject matter expert that works in Utah and other states and is available for classes. They've also been working on hacking and penetration testing for emails, and collaborating on R592-18 with real estate.
 - Reed asks if the ULTA's executive board membership is available publicly. Kim says it should be on the website, and they can figure out a way to pass it on to the TEC every year too.
- **New Business**
 - Discussion of whether to move forward with new rule R592-18 and repeal of R592-15 / Kim
 - Reed says the TEC's options are to 1) sit tight and wait for the legislative session, or 2) move forward and try to do something about the below-cost escrow statute. He says the UID's preference is to move forward for a couple of reasons: 1) we don't know what will happen with the legislature, and 2) we need some kind of standard. He thinks the industry ought to move forward and try to come up with a version it can live with.
 - Darla agrees. She says the topic was initially brought up because the UID is looking for a way to enforce the statute. Yes there's discussion ongoing with the Utah Association of Realtors (UAR) ongoing, but until an agreement is reached, we should move forward to find something that allows the UID to enforce.
 - Cal agrees and says they have to do something.
 - Chase agrees. He says the UID needs some way of enforcing this if it's on the books. The UID has been gracious as we go through the process, and it makes him nervous to keep pushing it off. He wouldn't mind running it through the legislative process if possible, but this is a good suggestion considering what they're trying to replace.
 - Jeff agrees with refining it and moving forward.
 - Cort Ashton says the ULTA had some meetings with the UAR and they were productive. The ULTA is willing to look at a statutory fix for the dual business notion that doesn't work with how the business works. They have a meeting in October to work on statutory language that can be brought to the UID for input. They focused primarily on the statutory change for item #1 (*Note: repealing the prohibition on below cost escrow*), then will discuss updating the rule at a later time.
 - Jeff Wiener has some concerns about the dates in the rule, saying they may be somewhat aggressive. He asks if the rule can be passed without the dates, so if nothing happens in the legislative session, at least the rule will be in place for April 2023.
 - Changes to R592-18 / Reed
 - This is Reed's attempt to address some of the things that were raised at the rule hearing, and are a way to generate discussion. Regarding Jeff's suggestion to not require filing until 2023, Reed thinks there's some wisdom to it, but the UID is eager to have something in place at some point. He was under the impression that it would be easy to get averages to the UID quickly. But he's OK with delaying as well.

- Kim agrees that the dates may be too soon. We don't want to catch people unaware, but if we feel that there will be a legislative change, let's not create change about dates or timelines. She doesn't think it would be a hardship and would be an easy ask, but we need to tell the agency owners what to prepare for. Turning in the data isn't a hardship, but the timeline may be.
- Darla says fees have always been tracked pretty well in her experience, so it's just a matter of pushing a button to find the fees. She doesn't think November 1 would be a problem. The market has slowed down, so it's more possible to make a two-month deadline than it would have last year. It's possible, and would give the UID some help with something they've been trying to achieve for a year.
- Reed confirms Kim's thought that the November 1 date is OK, but the December 1 date may need to be pushed out a bit. Kim says that's right, especially if there's a statutory change, to give people time to prepare. Darla says pushing it out would give the UID longer to crunch the numbers too.
- Chase confirms that the fee we're discussing is the requirement to turn in the average fee by November 1. Kim says that's correct, and that she believes automation will help with collecting the data on an average.
- Matt Sager notes that R592-18-4(1)(b)(i) only requires an insurer to file, so it will need to be fixed to require everyone to file.
- Jeff Wiener notes that the request behind this rule change is coming from the UID to interpret 209, but the rule says the authority is from the TEC. Reed says the TEC has rulemaking authority over Title R592. The UID can trump the TEC if there's a big difference in what to do, but the rules are promulgated by the TEC. Perri says that's correct. Any rule dealing with title and escrow is made by the TEC. Rules made by the UID that aren't about title and escrow are under Title R590.
- Chase asks if everyone submits their average charges by November 1, 2022, won't they be submitting the same data on April 30, 2023? Is there a reason we wouldn't just start it in 2023? Reed says it's because the UID would like to have something in place to enforce it sooner than July 2023. The concern is that the UID wouldn't be showing a good-faith effort to the legislature in performing its duties. He says maybe waiting until January 1 to make it effective is OK, and if the data for the April 30 filing is the same, that's OK too.
- Kim suggests collecting the data by November 1, with January 1 being the use date. Tracy and Adam agree.
- Cort says the UAR was anxious to work on a legislative solution. If that eliminates the need for the rule, would the UID stand down from enforcing the rule once the statutory change is effective? Reed says if we know there's going to be a change to the statute, the UID won't require everyone to file their average escrow charge. Cort asks if the statue is passed, would the rule just slide into the sunset and not worry about collecting the data and enforcing rule violations? Reed says yes. The UID would likely send out a bulletin on it. Perri has no concerns with that.
- Reed asks if there should be a separate average for refinances, and says he would prefer not to because it would result in a large number of average to administer. Kim agrees. She says residential refinances would be subject to the rule, but it would just be closing fees. Darla and Cal agree. Jeff and Chase have no comments.
- Reed says the original draft required an average for the buyer side and seller side of a transaction. First American suggested to Reed that it may be unnecessary, and he wants to know everyone's thoughts. Cal says the escrow contract says the transaction fees are split 50/50 so it's unnecessary. Darla agrees. Chase says an agency closing both sides will treat it as one file or transaction, and splitting between companies it is where the separation comes in. There's not a uniform process of whether you charge one fee for all agency expenses like document prep and wire fees, etc. Some agencies list them and some don't. He would like some uniformity to that. Is it going to cause a problem for calculating averages if one agency reports both sides? Would it inflate the average? Reed says if there's a split transaction, both companies are submitting their average and that will be taken account in the calculation. He asks how much granularity the industry wants in the

report. Does it matter that much if one side is doing \$175 and the other is doing \$125? Darla says what Chase is getting at is that there are some companies that itemize their fees, where others just lump the sum of all fees into one fee. She says it might be better to have the closing fee, doc prep fee, etc. all lumped into the average. Rachael Ortiz agrees and gives a different version of Chase's example to clarify the issue. She wrote the first draft of the rule and says the intention of describing the two sides was to figure out what the denominator is if you're doing both sides of the transaction. Would it be treated as a one or a two.

- Kim Cruz says it should be two, because it could escalate averages. She thinks they need to define what counts as a fee, and asks if pass-through fees count. There's discussion about whether to be specific about what fees count, and Reed says if something is important we need to say it. Matt says clarity is important, and the original draft didn't have it.
- Krysta Pehrson asks if the rule includes what fees are included in the closing/settlement fee.
- Cort says the original intent was that the only true passthroughs are recording fees that aren't marked up, while other fees like FedEx fees and wire fees may be marked up. He thinks that for simplicity, everything but recording could be added up and added in. Kim suggests defining passthrough to make sure the rule is clear. Cort says if someone has bundled their fees, it gives parity when looking at those fees. It helps drive the true number and cost to the consumer better. Reed suggests adding the language "shall include all costs except the recording fee." Cort agrees and says it's a better way to capture what's being charged to the consumer and removes subjectivity. Rachael agrees. Excluding recording fees makes it easy for the UID to see the actual fees charged. It also sets a more even standard and eliminates the bundling issue that Chase brought up.
- There's discussion about whether the closing protection letter (CPL) fee is a passthrough, and the determination is that it's a premium or fee filed in the title insurer's manual and is not a passthrough. It should be included in the costs.
- Reed says there was concern about a reference to a statute and the definition of "residence." Is the term "residential transaction" sufficient? Kim says she wasn't sure if a refi would be included in it because it says "sale." Matt thinks "sale or financing" would work because it would include any loan transaction. Chase asks if we want to tie it to the phrase "the issuance of a title insurance policy." Matt thinks we don't want to tie it to title insurance since we're just dealing with escrow. It may confuse the issue. Cort says adding "for a one to four family", so it doesn't include an apartment building, or the sale of land for an apartment building, which would meet the existing definition. "One to four family residence" would solve the problem. Matt suggests striking "for natural persons only" because the buyer doesn't change the structure.
- Reed asks how to deal with concerns about less populated counties. Should there be one average, an average broken down into different classes of counties, or allow a group or agency to petition the UID for its own average? Kim thinks simplicity is key, and giving smaller counties a remedy is a good idea. Cal agrees. He says he works with counties smaller than his, and they all have the same fees. Mike Sumner thinks there should be a standard across the board. He knows smaller counties can operate less than larger ones, but the same thing happens with real estate. He wants it to be a level playing field. He sees things being questioned and undone in legislation that the industry worked so hard for.
- Going forward, Reed will make the changes and the rule will be re-exposed for public comments.
- Reed would like to have a special TEC meeting after he gets the new draft finished, so it can be filed by the end of the month. The TEC agrees.

- **Old Business**

- **Other Business**

- Title assessment due August 31 / Adam

- Adam says there are 5 insurers and 46 agencies that have not paid their title assessment. It is due August 31. If it's paid late, there will be a \$50 late fee and he will send a letter. If it's not paid after that, things escalate. More than half of the industry has paid so far.

- Five-year review of R592-5 /Steve
- Steve says R592-5 was amended last year. Rules need to be reviewed every 5 years to make sure they're necessary or if changes need to be made. Changes can't be made during the review, but can afterward if necessary.
- Cort asks how many dual license requests the UID gets. Adam says he's gotten inquiries, but nobody has done one since 2006 at least. The rule states that title agencies can't compensate an individual who is also licensed as a real estate agent or mortgagee. Once he tells a requester that, they all back out.
- **Motion by Cal to retain R592-5. Seconded by Darla. Motion passes 5-0.**
 - Yea: Kim, Darla, Cal, Chase, Jeff
 - Nay: None

- **Hot Topics**

Executive Session (None)

- **Adjourn** (10:12 AM)
 - **Motion by Darla to adjourn. Seconded by Cal. Motion passes 4-0.**
 - Yea: Kim, Cal, Darla, Chase
 - Nay: None
 - No vote: Jeff
- **Next Meeting:** **September 12**, 2022 — Big Cottonwood Room, Taylorsville State Office Building

2022 Meeting Schedule

Jan 10	Feb 14	Mar 14	Apr 11	May 9	Jun 13
Jul 11	Aug 22	Sept 12	Oct 17*	Nov 14	Dec 19

*Proposed TEC/REC meeting immediately following