



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 26, 2022

Place: In Person
None

Virtual
Google Meet

Time: 9:00 AM

This special meeting was called at the request of the Insurance Commissioner under 31A-2-403(6)(c)(i)

ATTENDEES

TITLE & ESCROW COMMISSION

- | | |
|-------------------------------------------------------------|-----------------------------------------------------|
| xChair, Kim Holbrook (<i>Insurer, Davis County</i>) | xDarla Milovich (<i>Agency, Salt Lake County</i>) |
| xVice Chair, Chase Phillips (<i>Agency, Weber County</i>) | xCal Robinson (<i>Agency, Iron County</i>) |
| xJeff Mathews (<i>Public Member, Morgan County</i>) | xPerri Babalis, <i>AG Counsel - TEC</i> |

DEPARTMENT STAFF

- | | | |
|--------------------------------------------|-----------------------------------------|----------------------------------------|
| Jon Pike, <i>Insurance Commissioner</i> | xReed Stringham, <i>Deputy Comm.</i> | xTracy Klausmeier, <i>P&C Dir.</i> |
| Randy Overstreet, <i>Licensing Dir.</i> | Patrick Lee, <i>Finance Dir.</i> | xAdam Martin, <i>MC Examiner</i> |
| Shelley Coudreaut, <i>AG Counsel - UID</i> | Michael Covington, <i>CE Specialist</i> | xSteve Gooch, <i>PIO Recorder</i> |

PUBLIC

- | | | |
|---------------|----------------|----------------|
| Blake Heiner | Carol Yamamoto | David Buddingh |
| David Moore | Frank Medina | James Hickman |
| Joseph McPhie | Kirk Smith | Kreg Wagner |
| Marc O'Brien | Matt Ryden | Mike Crandall |
| Wade Taylor | Jessica Meade | Nancy Frandsen |
| Branda Hansen | Nate Sprague | Beau Pili |
| Jeff Wiener | Michael Sumner | Spring Johnson |

MINUTES — Not Approved

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair (9:00 AM)
- **Reading of Anchor Location Determination**
- **Telephone Roll Call**
- **Old Business**
 - Discuss updated draft of R592-18 / Reed
 - Perri submitted some great edits that Reed agreements. He would like to focus on the most pressing part, which is R592-18-4(2)(c).
 - The problem is trying to decide what's included in the escrow fee. The question originally arose because of the phrase "any cost incurred incident to [...] the issuance of title insurance." That

language would include the title premium. He would like to eliminate it if possible. Kim agrees. Chase says they had talked about avoiding phrasing that would allude to the title premium itself to keep the charges separate. He agrees with striking it. Cal agrees with taking out "or the issuance of title insurance."

- Kim received an emailed suggestion to simplify it to "shall include any fee separately charged to a party to the transaction for escrow services, excluding fees for recording." That removes any confusion about what is title premium and what is escrow, and gives the ability to include all escrow fees except the recording fee.
- Reed notes that someone mentioned closing protection letters (CPL) being referenced in this subsection. Should that happen? Darla says they need to be excluded because they're kind of part of the underwriter premium, in that it goes directly to the underwriter. Chase agrees because it's a filed rate for a specific product by underwriters and should be excluded. Cal agrees. Kim agrees that it can be confusing to people because the CPL is commonly included with escrow fees. Chase says the CPL is quoted along with escrow fees, but so are title premiums and endorsement premiums. The CPL offers assurances on the escrow transaction by the underwriter and there's a filed fee for it. It shouldn't be rolled into a single fee because of the type of product that it is.
- Reed suggests that R592-18-4(2)(c)(i) indicate what the industry average residential escrow fee shall include, then (ii) will say what isn't included in the average. Cal says the CPL is a straight fee that can't be changed. He thinks we should leave it out entirely. Darla says sometimes people group the CPL into its lump sum escrow fee. If that's what they're doing, it needs to be excluded because it can't be altered. She thinks it needs to be kept in for clarity's sake. If there's one title and escrow company that has the grouped fees together, we want to make sure they're removing the \$25 from their fee if they've lumped it together. Kim agrees. Excluding premiums, endorsements, and the recording fees make sense, and it makes sense to add the CPL to that list also. Reed asks about an endorsement fee. Kim says those are always premium.
- Subsection R592-18-4(2)(c)(ii) will exclude the CPL and recording fee.
- Perri suggests defining "filer," but Tracy says "filer" is already defined in R590-225-4(5). The definition says a filer is "a person who submits a filing." Kim, Darla, and Cal agree that's fine.
- Joseph McPhie asks if the average residential escrow fee is a calculation based on the averages provided by each filer, or is it the total number of all escrows in the state divided into the total amount of escrow fees. He thinks it will make an important distinction in the rate itself if we're calculating the number of producers providing the report vs. the number of transactions being done. It would give less weight to the total number of transactions if it was done by the number of producers providing the report. Kim says it would be each agency turning in its average fee, with the UID would use to create the industry average. It would not be the total transactions. Reed agrees. When this approach was originally presented, that's what was put forward and what we have been operating under.
- Joseph says under this approach, a large insurer will producer one number for 10,000 escrows, and the weight of it would be equal with a small title company in rural Utah. The weighting by producer has a huge capacity to skew the numbers. He thinks the two numbers that should be submitted are the number of sides and the average escrow. That would be more accurate and a better gauge of what's actually happening. Chase says this has been discussed and gives an example to clarify it. If a company in SLC charges a \$500 escrow fee and does 5,000 to 10,000 closings a year, vs. a rural company that does \$325 fee for 1,500 a year. The average in that case means that counting \$500 10,000 times weights it in the wrong direction and gives too high of a minimum average. Doing it by an average between a \$500 average and a \$325 average seems like a fairer way to calculate it.
- Joseph ran some calculations for 1,000 split transactions and the variance in a lot of splits was pretty significant. Coming up with one average for 50 companies vs. the thousands of transactions, there will be a big difference between those numbers. He recommends increasing the number of total calculations to get a better number. It's skewed quite a bit if we only take an

average per entity vs. the total transactions. Chase asks if the average escrow charge was lower when based on transaction. Joseph says, as an example, one of the splits has a \$100 fee consistently and does relatively few transactions. He says it would provide a heavier weight to that lower number and it will skew in the wrong direction. He doesn't want to give those charging an very low fee an extremely high weight. Cal says in that case they'd have to tell the UID how many escrows they did and the total amount of escrow fees, and they'd have to add it all together and divide by the total number of transactions statewide. James says that's correct: You'd provide the total number of sides and the total escrow costs. Darla says that would provide a much more accurate look at the industry average vs. each company taking its own average.

- Mike Sumner says at the last meeting, there was discussion about the UID coming up with a standard fee, then companies with smaller volume could petition the UID for a lower fee. Reed says his impression was that was considered and rejected because everyone thought it would be better to have a statewide average.
- Kim says we don't know what the average is, and she doesn't want to create a hardship for a smaller county or set a minimum that doesn't make sense for their costs. She thinks it's important to allow for that, and doesn't want someone to have to raise their fee if it doesn't make sense.
- Blake Heiner agrees with Joseph. The whole conversation argues toward a procedure that was proposed in the rule hearing, which is gathering the information first to see what it looks like before making the rule. He thinks it's a good idea to call for information and have the UID see what the number is. It would help everyone analyze if the approach makes sense. Cal and Chase agree.
- Chase says there was discussion about the way to analyze numbers and get averages. He asks if the ULTA had gathered numbers to help guide the discussion. It's important to know how this is going to be calculated.
- Reed says it seems that a philosophical decision needs to be made. Are we going to take an approach that favors the high volume agencies and gives them more weight under Joseph's idea, or one that will favor low volume agencies and give them equal weight compared to the other agencies.
- Cal asks how the weighting works. Reed gives an example. If you have three agencies, and one agency does 100, one does 50, and one does 10, if you do it the way the rule is written right now you'd get the average fee of those three agencies; they would all have a third weight of influence. If you do it based on the number of transactions, the agency that does the most transactions would carry the most weight in determining the average. It seems that it's a philosophical judgment about whether to weigh in favor of larger agencies or to give smaller agencies the same weight in determining the overall average.
- Kreg Wagner asks if there were any calculations done regarding the fees. He is wary of unintended consequences that would make title agencies increase their fees. Is there any verification with regard to the fees, or is there a declaration of what the average fee is? And is there any incentive to include the ancillary fees to increase the average fee? He wants to make sure we're not creating an industry floor that raises the fees being charged. Reed says he doesn't think anyone has run any numbers, and the approach is that agencies are honest and they will honestly report their numbers. We have to keep in mind that we're making a rule to determine if someone is making charges below the cost of escrow; it's not trying to make a rule to keep a status quo. The statute says an agency can't charge less than the cost of escrow. If some people need to raise their rates, that's the consequence of the statute, and is what the legislature has decided needs to happen.
- Kreg says he understands what the rule is trying to do, but if someone can charge less than the standard and it's not less than the cost of escrow, they're being penalized for operating more efficiently. He says in trying to enforce the statutory language it's setting an industry standard that may not contemplate someone operating below the industry standard but above the cost of doing escrow. Reed says that begs the question of whether we ought to take this approach or audit every

company to see what they're doing. We've decided we can't do that. There are going to be consequences to doing a rule, but it's just as likely that if someone is operating below the standard, it's just as likely that they're charging less than their cost as they are being efficient. It's speculative either way, and we don't want to go back to proposing to audit companies. Everyone decided that wasn't the right way to go when we started looking at this. Kim agrees. Being able to audit each escrow file isn't practical for the way the business works. She says the point is to give the UID a tool to enforce the statute.

- Blake says Kreg's comments get back to the core of the issue, which is how to determine the cost of doing escrow. Nobody likes the idea of doing audits because everyone claims they can't find the cost of doing escrow. He says this is an artificial way of finding out the cost of doing business. He says Reed has correctly identified that the question is whether we're going after an industry average fee — which would require taking all of the fees and dividing it by the number of transactions — or if you're trying to weight things so the small company has more weight than the large companies, you do it according to the number of agencies. But he disagrees that running the numbers before creating a rule is somehow a bad way to regulate. He says it's better to run the numbers and gather the info before coming up with a rule that will govern for some time and may need to be redone.
- Reed says if we run the numbers and some companies will have to raise their rates, what do we do with that? Do we see if they're actually operating less than the cost of doing business or are they being efficient? Yes, we get the info, but how does that change the decision? It's entirely possible that nobody is below the minimum. Blake says at least we'd know what's going to happen before the rule goes into effect. Reed says there's no value in knowing if companies will operate below the standard or not. Blake says we need data from the people being regulated before we make the decision. If the industry thinks it doesn't make sense, then you're back to the drawing board. You need data before you make a decision about how this will be calculated. Reed says if there are some companies that are going to have to raise their rates, how does that affect the decision? Do we throw everything out? Do we audit them? He doesn't see the value in getting that data. Blake says before you impose a plan on 165 companies, those companies should know what's coming and have input on it. We may find when we gather the data that it's faulty somehow. He doesn't see that there's anything to lose by gathering the data beforehand. Reed says it's an exercise in futility because he doesn't know what they'd do differently.
- Darla says in the UID's defense, the UID has given the industry a year to consider it. The UID has been extremely fair in giving everyone a say in what's going to happen. The ULTA has passed it on to the membership several times in the past year. If the rule ends up where some companies need to raise their rates, it will likely be a very nominal amount. The question is whether we want every company's average to have the same weight or get a true transactional average, then we can change the verbiage to say each company needs to report their total escrow fees and transactions. Then the UID can create a transactional average vs. an industry average. She says it is fair what the UID has done, and we need to give the UID some grace and allow them to have a way to enforce this, as they requested over a year ago.
- Joseph says he's run 1,000 numbers that include just split transactions regardless of transaction type, and only used the closing fee. They will make a point but don't reflect the actual reality of the industry. If he calculates by number of transactions, he ends up with \$297. If he calculates by agencies, he ends up with \$431. His concern is that by doing agencies only, it artificially inflates the 50% minimum, and it's more accurate to calculate all the escrow fees, understanding that it gives a lower minimum cost. If we take the minimum cost right now, there are a lot of minimums set below \$125. An agency calculation would move the theoretical minimum from \$100 to \$216. He's not saying \$216 isn't the cost of doing escrow, but it's different from aggregating all the transactions in the state vs. just the agencies.
- Chase says, as a member of the TEC, we have a statute on the books and we need to make sure the UID is able to enforce it. To Blake's point, he would feel better knowing how this would be

handled and calculated by the UID and how it would be enforced. To Reed's point, the problem that could come up is agencies negatively impacted by this rule who would come to the TEC and ask them to throw it out. He's not convinced that's really going to happen. We need to have something we can enforce and don't want to set a minimum that would let people charge less than the cost of business so they could obtain business unfairly. This was created to make sure agencies are healthy and stable and able to maintain their files. We need to have something that allows the UID to enforce this rule. If we ran the numbers and it showed several agencies would have to raise their fees, he would still be compelled to move forward the rule. We don't want to create a situation that's negative for the industry, and he thinks that this rule will have a minor impact overall. He would feel better if we had the data, but he doesn't think having the data would change what the TEC and UID are doing.

- Mike Crandall says he thought the purpose of the rule was so larger companies don't undercut smaller ones. He ran some numbers that show a few smaller or larger fees aren't going to have any effect.
- Reed says everyone knows how the fee will be calculated: It's on an agency basis. To come in at this late stage and suggest something else is frustrating. The UID has been working on this for a very long time, and we've had to rehash it a few times. The idea of getting data and determining the regulation afterward sounds like the industry saying how they'll be regulated. It's the tail wagging the dog and doesn't look good. There's been concern about rural counties not being accounted for sufficiently. This is addressed by how the rule is written because each agency has the same weight on how the rates are done.
- Joseph says he supports Reed's comments about moving forward. He thinks the TEC and the UID understand that it would be a step forward and we can modify or adjust as we need to. He just wanted everyone to be aware of the statistical difference.
- Reed says the next step is whether the industry wants to submit numbers for the UID to calculate based on transaction or agency, see the results, and then go from there. Darla agrees with Reed and that we need to proceed with the rule as drafted, including the changes discussed in this call. The UID needs to be able to move forward in the way that's been proposed. Kim asks if Darla means calculating on an agency basis. Darla says that's correct. Cal says submitting total transactions, total fees, and an average in the first submission could let the UID analyze it however they want, but he's good either way. Kim says if we want to move to number of transactions, we need to change the rule. Cal says agencies is fine, he was just saying the other way would let the UID gather information. He's good with either way. Jeff agrees with Cal. Chase says he's fine with how it's currently written, but wants to know what the UID is expecting to see. He asks if getting total transactions, total fees, and an average in the first submission would be helpful. Would it create a headache for the UID and how helpful would it be? Doing so would continue the debate. Will getting both types of data be helpful? Reed says gathering both types of data wouldn't be helpful. It won't make much of a difference based on the comments that have echoed that view. We could do it, but we would need to amend the rule further to provide for that one filing. Chase says it wouldn't change what we're doing here. He suggests moving forward with the rule as proposed, and with the changes discussed today. Kim says taking all of that into consideration, we will be moving ahead with accepting the rule and starting the 30-day comment period.
- **Motion by Darla to move forward with the draft including the changes as discussed. Seconded by Chase. Motion passes 5-0.**
 - Yea: Kim, Darla, Cal, Chase, Jeff
 - Nay: None
- There's some discussion about the rule filing dates and deadlines. Kim says the November 1 deadline for filing may not work. Reed asks if December 1 works, and the reporting will be for calendar year 2021. The UID will do the calculations and have the average ready by January 1.
- Kim, Darla, Cal, Chase, and Jeff all agree that December 1 works.

Executive Session (None)

- **Adjourn** (10:32 AM)
 - **Motion by Cal to adjourn. Seconded by Darla. Motion passes 5-0.**
 - Yea: Kim, Darla, Cal, Chase, Jeff
 - Nay: None
- **Next Meeting: September 12, 2022** — Big Cottonwood Room, Taylorsville State Office Building

2022 Meeting Schedule

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|-------------------|-------------------|-------------------|-------------------|------------------|---------------|
| 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