



## 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:** **Sept. 12, 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*)

Cal Robinson (*Agency, Iron County*)

Jeff 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.*

xRandy Overstreet, *Licensing Dir.*

Patrick Lee, *Finance Dir.*

xAdam Martin, *MC Examiner*

xShelley Coudreaut, *AG Counsel - UID*

Michael Covington, *CE Specialist*

xSteve Gooch, *PIO Recorder*

#### *PUBLIC*

Nate Sprague

Matt Sager

Kreg Wagner

Joseph McPhie

Matt Ryden

Rachael Ortiz

Carol Yamamoto

Bob Rice

Andrea Frisby

Wade Taylor

David Moore

Cort Ashton

Kim Cruz

Lonn Litchfield

Scott Cope

Steve Hiatt

### **MINUTES — Not Approved**

#### *General Session: (Open to the Public)*

- **Welcome** / Kim Holbrook, Chair (9:02 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meetings**
  - August 22 - regular meeting
    - **Motion by Chase to adopt minutes. Seconded by Darla. Motion passes 3-0.**
      - Yay: Kim, Darla, Chase
      - Nay: None
  - August 26 - special meeting
    - **Motion by Darla to adopt minutes. Seconded by Chase. Motion passes 3-0.**
      - Yay: Kim, Darla, Chase
      - Nay: None
- **Concurrence Reports**

- Lenses
    - Kim welcomes a new agency that was licensed last month.
    - **Motion by Darla to concur. Seconded by Chase. Motion passes 3-0.**
      - Yay: Kim, Darla, Chase
      - Nay: None
- **Board Duties & Responsibilities / Perri**
- **Update on 2022 Goals**
  - ULTA report / Kim
    - The ULTA talked about updating their prelicensing courses.
    - There's a ULTA-sponsored CE course every month for CE or professional development.
    - The ULTA legislative committee has been working with the Utah Association of Realtors (UAR) on various items.
- **New Business**
  - Commissioner's annual report to the TEC / Reed
    - Kim looked through the report and asks how the 23 complaints stacks up against prior years. Adam says last year was 29, and the previous was 30-something. They seem to go down every year.
  - Department audits of title insurance agencies / Reed
    - Reed says in the past 6-8 months, a penalty came before the TEC that was discovered during an audit. The UID has an internal rule that caps audit penalties at \$5,000. There's no rational justification for that rule because a violation is a violation, and there's nothing special about an audit that warrants a cap. Audit violations will be treated like any other violation going forward.
    - Tracy says Adam has done audits on all agencies. Going into the second round, which takes about 5 years to audit all agencies, everyone has gone through the process once and everything should be fixed. Now is a good time to move to this new line of thinking.
    - Adam agrees. He says there are 182 title agencies and he audits 3 a month. Some newer ones haven't been audited yet, but the older ones have been audited and he has used any findings as education opportunities.
    - Tracy notes that Adam does a mini-review of licensing and whatnot when agencies file their annual report.
    - Chase says he always appreciated the UID's approach, in that it seems like the intent is to make sure everyone is operating as they should. He says agents are more likely to be open and honest during their audits if they suspect things may not be properly done. He likes that agents don't need to feel afraid of the audit. He asks if there was any desire to make it an official rule and continue the policy. Reed says they considered it, and notes that the UID has the authority to seek information from anyone who has a license. A licensee isn't doing the UID any favors by opening up, because they're required to anyway. There's no legal basis for the cap, and someone may be less than forthcoming if they know of violations and just want a \$5,000 cap. It presupposes that people won't be honest without the cap.
    - Tracy agrees with Reed. Now that everyone has been through the process once, issues have been taken care of. When someone is doing the same thing over and over, if they know there's a cap, they'll be less inclined to fix it in the future.
    - Adam says 99% of agencies do things correctly, and the others have minor mistakes. The UID has only brought forward 2 fines for \$5,000. The UID and industry have a good rapport. When he asks for something from an agency, he gets it back that day. He expects that to continue.
    - Kim agrees that removing the cap is the right way to go. She will let the ULTA know so they can put it in their newsletter.
  - Proposed changes to Utah Code Sections 31A-19a-209, 31A-23a-409, and 31A-23a-415 / Reed

- Reed thanks everyone who contributed to the rulemaking process for R592-18. The rule is filed properly and will be published at the end of the month, after which there's a 30-day comment period and then can be made effective.
- The changes to 31A-19a-209 are the result of filing the rule. It eliminates the requirement to file base escrow charges. He's open to questions now or later, as this will be part of the UID's bill.
- The change to 31A-23a-409 addresses a requirement that money be held in escrow be held in trust in a depository institution. Because of how the statute is written, people think it could be held in an office of a depository institution in Utah. So if a bank doesn't have a branch in Utah, they could nevertheless hold the trust money in a warehouse or a rented room with filing cabinets acting as an office. The intent of the change is to make it clear that it has to be a branch of a depository institution in the state.
- The change to 31A-23a-415 deals with the UID's budget for regulating the title industry. Years ago, the UID agreed to a cap that equates to 1 FTE for title matters. That doesn't work anymore because more than 1 FTE work on title matters. The UID's main account has been subsidizing title work. This change fixes that and addresses the requirement that the TEC make a rule every time it approves the UID's budget for regulating the title industry.
- Darla asks about 31A-19a-209(1)(b). The last line says "peculiar to the business of title" — should that be "particular"? Reed doesn't know, but thinks that's an excellent point. He will change it to "pertaining". Darla also asks about "redevelopment in (ii) and whether that's necessary. Reed says this is the way the statute has been for quite a while. Matt Sager agrees that it doesn't make sense, and it's proper to remove that word. Darla, Chase, and Kim agree.
- Matt asks if 31A-23a-409 is only applicable to resident licensees, not foreign. Reed says yes.
- Kim says there will likely be additional comments on 31A-19a-209 from the ULTA, and maybe the REC and public.
- Rachael Ortiz says the ULTA's legislative committee and the UAR are scheduling a meeting early in October to discuss 31A-19a-209 as a whole. They would welcome Reed's attendance if he'd like to participate, or they can have the meeting and bring the results to the TEC meeting in October. Reed says he would like to be there to see how things develop and move forward. It would be nice to have that as background versus seeing the presentation cold. Rachael will let Reed know when the date is scheduled.
- Kreg Wagner echoes Rachael's comments. The UAR would like to have discussions about the statutory modifications of below cost escrow, and would be interested in repealing the language. They recognize that there's been a lot of work going into the rule, and if it's repealed the rule would be moot.
- Joseph McPhie asks Reed why there isn't a proposal or change to 31A-19a-209(2) that discusses operating at less than the cost of doing escrow. Does R592-18 resolve the issue in this section? Reed says yes, the rule sets a definition of "less than the cost of doing the escrow business". Then everyone knows, and know that if they go below the line they will not be operating equal to or above the cost of doing escrow business. Joseph asks if there's a reason to outline that strategy in the statute. Reed says we tried that during the last legislative session and the real estate industry opposed it, and it had to be removed from the bill. We took the rule approach so we could get something on the books to enforce the rule. The legislature says the UID has to enforce the regulation that nobody can operate at less than the cost of doing escrow business. Joseph understands, but it wondering if this part of the statute can refer to the UID's authority to set a rule to satisfy the conditions, so there's a statutory reference to the UID's rulemaking authority. Reed says there isn't anything in this statute that says either way what "the cost of doing escrow business" means. The TEC has authority to define that phrase, which is done in R592-18, which is typically how it's done. The rule refers to the statute, so it's clear the two are connected.
- The items Reed presented are expected to be in the UID's bill. He invites anyone with questions or comments to reach out to him.

- **Old Business**

- **Other Business**
  - Biannual meeting with REC / Steve
    - There is a tentatively scheduled TEC/REC meeting on October 17. Steve wants to know if that date is still good. Kim says it is, and proposes that we hold it at 10:00am.
    - Kim notes that October is Cyberfraud Prevention Month. She would like to discuss sharing materials from the ULTA, ALTA, and title industry with the real estate folks to help them educate consumers. Kim has some materials I can send along with the agenda.
    - Kim would also like to talk about the proposed changes to 31A-19a-209.
    - Darla is good with the agenda items, but wonders if we ought to wait to set the agenda until after the October meeting of the ULTA/UAR meeting goes. She asks if the agenda needs to be set during a public meeting, or if it can wait until after that meeting. *[NOTE: The room technology stopped working here. The recording continues, but the room attendees could not participate.]*
    - Cort Ashton says it's typically the prerogative of the chair to set the agenda. As long as you give notice of the agenda, you don't have to approve the agenda items, in his experience.
    - Darla says maybe Kim can set the agenda after the ULTA and UAR meet. We want to make sure everyone's concerns are included.
    - Chase says as long as items are on the agenda within the proper notice going out, you can add items as needed.
    - *[NOTE: The room tech resumes working.]*
    - Kim says they would like to firm up extending a meeting invitation to the REC for Oct. 17 at 10am. We can add agenda items as we get closer as well. Anyone with additional agenda items can send them to Steve.
  - Exam review workshop / Randy
    - Randy notes that there is an exam review workshop tomorrow afternoon from 1-5pm. It will be held virtual. He's waiting on further instructions on how attendees can login. Darla asks if the UID would rather have 2 TEC members attend, or is it OK to have everyone show up? Randy says if everyone shows up, there will be 7 people in addition to UID staff, and 4-7 people would be fine. If people don't get their credentials, they can contact Randy.
- **Hot Topics**

**Executive Session** (None)

- **Adjourn** (9:51 AM)
  - **Motion by Darla to adjourn. Seconded by Chase. Motion passes 3-0.**
    - Yay: Kim, Darla, Chase
    - Nay: None
- **Next Meeting:** **October 17, 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