



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: **October 17, 2022**

Place: **In Person**

Virtual

Taylorsville SOB

Google Meet

4315 S. 2700 W.

Big Cottonwood Room

Taylorsville, UT 84129

Time: **9:00 AM**

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*)

xHelen Frohlich, *AG Counsel - TEC*

DEPARTMENT STAFF

Jon 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*

xSteve Gooch, *PIO Recorder*

PUBLIC

Kim Connelly Cruz

Sam Bell

Frank Medina

Bob Rice

Michael Sumner

Nancy Frandsen

Nate Sprague

Kreg Wagner

Joseph McPhie

Matt Ryden

Wade Taylor

Carol Yamamoto

Cort Ashton

Matt Sager

MINUTES — Not Approved

General Session: (Open to the Public)

- **Welcome** / Kim Holbrook, Chair (9:02 AM)
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
 - Kim thanks everyone who attended the exam review and prep. It went really well.
 - **Motion by Darla to adopt minutes. Seconded by Chase. Motion passes 3-0.**
 - Yea: Kim, Darla, Chase
 - Nay: None
- **Concurrence Reports**
 - Licenses
 - Kim welcomes new licensees to the industry.
 - **Motion by Darla to concur. Seconded by Chase. Motion passes 3-0.**
 - Yea: Kim, Darla, Chase
 - Nay: None

- **Board Duties & Responsibilities / Perri**
- **Update on 2022 Goals**
 - ULTA report / Kim
 - The ULTA is doing a Zoom roundtable before the monthly Executive Board meeting. Members are encouraged to join in for info and discussion. There's a link to the meeting in the ULTA member newsletter.
 - The Executive Board met with the Real Estate Commission last week. Kim and Reed both attended. The purpose was to talk about statutory amendments to 31A-23a-409. It went well, and it was nice to educate the real estate industry about escrow and the need to regulate it.
 - Kreg Wagner agrees that it was a good meeting. He says Rachael Ortiz sent out a working copy of proposed modifications to the statute, which would repeal the below-cost language. It seems that even though the process has been lengthy, the end result will be positive, which outweighs the negatives or bumps in the road.
 - Cort Ashton says it's been good to have dialogue. The ULTA stands by the rule as the best option for today, and it appreciates the changes and dialogue. It looks like the best alternative and is a great solution for today. The ULTA is still supportive of passing a statutory fix to the problematic language, but continues to support the rule in its current form.
- **New Business**
 - Follow up on amendments to 31A-23a-409 / Reed
 - Reed says last week the UID wanted to amend 31A-23a-409 to remove the reference to "office" and substitute "branch". The reason is to keep money given to title agencies in depository institutions in Utah, at least as far as residence licensees are concerned. Some resident agencies wanted to send the money they'd received to banks out of state and may have had rented office space in the state, but no actual branches. The UID felt that didn't support the state's goal of keeping client money in the state. There's a concern that by doing this, some folks may want to impose the requirement on nonresident licensees as well. Reed asks if anyone is aware of any interest in the industry to actually do that. There are no comments.
 - Reed asks what would be the reasoning behind putting this resident licensee requirement on nonresident licensees, or anyone doing business in the state, as well? He understands the concern because nonresidents already have their systems set up, but wonders why someone would want to change it. Joseph McPhie says he has seen lawsuits filed where earnest money was held out of state, and being out of state made it difficult for transactions to proceed when the out of state closings refused to deliver the money to a seller on a breach of contract. There are a lot of good reasons for accounts to be in the state, including various regulations including premiums and accounts. Reed asks Joseph if he knows why the law currently only applies to resident licensees and not nonresidents. Joseph doesn't know, but it may have been for convenience. Reed wonders if it has to do with a legal problem with imposing that legal requirement on someone out of state.
 - Chase asks why it's a concern. If we're only concerned about nonresident licensees — doesn't it only apply to anyone who's not a title insurer directly? Reed says his understanding is that it only applies to producers, not insurers. He says Matt has a reasonable pitch that it may also apply to insurers. Chase says he'd like to move forward on the changes from "office" to "branch" but realizes there maybe more clarification needed.
 - Adam says until 3 years ago, the statute was implied. The resident/nonresident issue happened during an audit. Before that, it was implied because all agencies were resident. When the statute changed to allow nonresident agencies, that changed. To do escrow in this state, you have to have a brick and mortar office that's staffed by the escrow person. Reed asks if, in Adam's experience, nonresident licensee in this statute applies to an individual or agency producer, not an insurer. Adam says that's correct, and insurers are covered by another statute.
 - Randy says there was never really a requirement that title licensees had to be resident, it was just interpreted that way. A few years ago, there was an attempt to put it in statute, but the legislative

researcher said it would be unconstitutional, and nonresident licensees had to be allowed. A few nonresident licensees have crept in since then, and the UID has to allow it.

- Amendments to 31A-23a-406 / Reed
 - Reed says this was Cort's proposal, and he gives Cort the floor to discuss it.
 - Cort says ACH transactions have existed for a long time, but the industry has been concerned that they could be unilaterally reversed from a trust account. Cort was on the TEC when this came up last time, and they were dealing with stolen cashier check stocks that had been forged. They required wires at that time because they can't be pulled back. ACHs had more latitude to send and pull back money without permission. Cort distributes an email that shows the dispute process for an ACH, that came from a vendor who deals exclusively with ACH transactions. They're pretty secure today. There's a 60-day consumer dispute window in case of an unauthorized ACH transfer, and the only change allowed is the amount of the error. You can only reverse an ACH in 4 situations: a duplicate, if the amount is incorrect, if the recipient is incorrect, or if the dates don't match up. Reverses can only be done within 5 business days. Cort says the federal government only uses ACH in some cases. Cort thought it would be helpful to update the statute to allow for ACH and real-time payments, which bypasses the ACH clearinghouse to be a direct consumer to recipient transaction like a Venmo. The difference is that it uses the bank system and is bi-directional. It's more secure in terms of returning funds because of how it's originated.
 - Kim notes that ACH transfers are delayed a bit, and is concerned about disbursement. She says her understanding is that if she initiates the ACH transaction today, the banks would have to communicate, and if the other bank deposited it today, it wouldn't be cleared and collected funds. Cort says most agents do positive pay and positive pay ACH, where they just reject them unless they authorize them. The money comes in and then is rejected. Kim says she's been working to get ACH accepted, but the clearing period has always been a problem. Cort will look into it.
 - Joseph says one other issue is that some trust accounts have total blocks on ACHs except for a government entity as a fraud protection. It might be a concern if people start removing their ACH blocks. People would need to be informed about it. He says while ACH may technically be prohibited, it's what happens and he wonders how easy it would be for someone to go in and return or retrieve an ACH. Kim says the ALTA put out a statement on ACH blocks and filters that gives more information.
 - Reed says the UID will hold off on the proposed amendment until we hear back from the ULTA. He says the bill sponsor likes to have the UID's bill ready by mid-November, so we'll need changes in the next couple of weeks.
- Resolution on electronic meetings / Shelley
 - The OPMA was recently amended to require that all boards and commissions adopt a resolution regarding whether an electronic vote can be counted as quorum. The current statute allows the TEC to hold electronic meetings, but there is no provision to allow votes to be counted as part of the quorum. The proposed resolution would allow electronic votes to be counted as part of the quorum. The AG reviewed the TEC's bylaws and discovered that they're all already covered by statute. The UID recommends that the TEC repeal the existing bylaws, and to adopt the proposed resolution to allow electronic members to be counted as part of the quorum. Reed says this is a great catch and is something we need to do.
 - **Motion by Darla to adopt the resolution. Seconded by Chase. Motion passes 3-0.**
 - Yea: Kim, Darla, Chase
 - Nay: None
 - **Motion by Darla to repeal the TEC bylaws. Seconded by Chase. Motion passes 3-0.**
 - Yea: Kim, Darla, Chase
 - Nay: None
- **Old Business**
- **Other Business**

- Expiring board member terms / Steve
 - The TEC has two board members whose terms expire in June: Darla and Chase.
 - If any member of an insurer or agency would like to be considered for the TEC, they can send Steve an email at sgooch@utah.gov. The Governor's Office of Boards and Commissions uses a specific system, but has changed recently and Steve doesn't know what will be required. At the very least it will require a resume. If prospective members will include a resume with their email, he'll give them direction when it becomes clearer.

- **Hot Topics**

Executive Session (None)

- **Adjourn** (9:52 AM)
 - **Motion by Darla to adjourn. Seconded by Chase. Motion passes 3-0.**
 - Yea: Kim, Darla, Chase
 - Nay: None
- **Next Meeting: November 14, 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