



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: **December 19, 2022**

Place: **In Person**

Virtual

Taylorsville SOB
4315 S. 2700 W.
Big Cottonwood Room
Taylorsville, UT 84129

Google Meet

Time: **9:00 AM**

ATTENDEES

TITLE & ESCROW COMMISSION

- | | |
|---|--|
| xChair, Kim Holbrook (<i>Insurer, Davis County</i>) | Darla 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

- | | | |
|--|---|---------------------------------------|
| xJon Pike, <i>Insurance Commissioner</i> | xReed Stringham, <i>Deputy Comm.</i> | Tracy Klausmeier, <i>P&C Dir.</i> |
| xRandy 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

- | | | |
|----------------|-----------------|-------------------|
| Matt Sager | Nathan Sprague | Kim Cruz |
| Kreg Wagner | Canyon Anderson | Jessica Goodman |
| Mike Koloski | Lonn Litchfield | Alison McCoy |
| David Moore | Rachael Ortiz | Dan Orullian |
| Matt Ryden | Meg Watson | Carol Yamamoto |
| Bob Rice | Wade Taylor | Susan Houghton |
| Tammy Greening | Joseph McPhie | Kristen Jorgensen |

MINUTES — Not Approved

General Session: (*Open to the Public*)

- **Welcome** / Kim Holbrook, Chair (9:02 AM)
- **Telephone Roll Call**
- **New Business**
 - Comments on elimination of TEC / Jon/Reed
 - Commissioner Pike says the Governor's Office has requested that all agencies look at their boards and commissions to see which are still needed. There are around 400, so it's a good exercise to go through. He notes that eliminating the TEC would be done by the legislature, and we can pass along any comments if there are concerns.
 - Reed suggests two guidelines for today's discussion:
 - It should not be about how important it is for the UID to work with the industry on title regulation. Everyone knows that and the UID would be dumb to not continue working with

the industry. The UID has informal advisory councils that represent the property and casualty, life, and health lines of insurance. Those lines are much larger than title, and the meetings of those groups are well attended and effective. He expects that the UID would set up a similar council for title and escrow. He notes that the advisory councils are organized and scheduled by the relevant industry association, and coordinate with the UID on what the agenda will include. The agenda will not include approval of minutes, formal reports, concurrence votes, or statements about an anchor location. There aren't any motions, ayes, nays, questions about Robert's Rules of Order, or trainings on open meeting laws. He says the next P&C Advisory Council meeting is on January 10 from 2:30-4:00pm, and anyone is welcome to attend.

- It should discuss the particular value the TEC provides — just the TEC itself. The most productive comments will be about why the TEC in particular is useful and necessary.
- Matt Sager says the TEC's one great value is oversight of rules and the ability to propose and adopt them. Reed asks if there has been a problem in the past where the TEC hasn't been able to get a rule put into place and have had to rely on that authority. Matt notes that there was a lot of discussion about the marketing rule in 2018. Without the TEC, it would have been harder to get it passed. But he says, to Reed's point, the details were still worked out by the industry, and the UID plans to continue working with the industry. Reed says that's correct, and that expects to engage in the exact same process for it. He notes that, if push comes to shove, the commissioner has final say on rules. The authority, while important, is a bit illusory in the sense that it's not final and is more of a recommendation. He hopes everyone feels the UID wants to hear from everybody and will have the same kinds of discussions, input, and concerns with an advisory council vs. a formal TEC.
- Randy asks if the Advisory Council would be its own entity, or part of the P&C Advisory Council. Reed says it would be separate, and there's brief discussion about how often meetings would occur. Generally quarterly, but more often if the need arises, is a good starting point.
- Matt asks if the sole driver of the potential elimination of the TEC is Gov. Cox's request, or are there other reasons. Commissioner Pike says, as far as he's concerned, it's just because the governor asked the UID to look at it. He says it appears that other agencies aren't looking at it closely enough, and the UID was asked again to consider it. The UID only has two boards — the TEC and the Bail Bond Board — and has taken up the challenge to look at both of them. The decision isn't final and can still be reviewed, but ultimately it's the legislature's decision. The governor's request is what got the discussion started, and due to the complexity and magnitude of the industry, there isn't a reason title couldn't be handled differently from other industries.
- Reed thinks it will be easier to interact with the industry in the form of an advisory council and without having to worry public meeting requirements. He'd rather get down to the business of consulting about regulation.
- Chase asks what the benefit is for the UID to work with the TEC. Reed says he heavily relies on the industry to understand the ins and outs of the title industry. He talks with a lot of people across the industry to understand how the industry operates and how the UID can benefit the industry. Chase says he was initially unnerved to think the title industry wouldn't have a voice, so he appreciates the clarification about setting up an advisory council to give the industry access and input. He notes that he's been thinking about TEC meetings for the past few years, and it feels like the TEC doesn't have as much info as they'd like on concurrence and other topics, which makes a lot of meetings feel like rubber stamp meetings. He asks, if the TEC continues, is there a way to get more info to the TEC members to be more involved in enforcement items? He notes that making rules is good, but it would also be good for the TEC to hold people more accountable to the rules. There have been times votes have happened and he wished he had more info about the situation. If that's not possible, he's beginning to understand what the UID is proposing regarding an advisory council.
- Carol Yamamoto says there's a lot going on with title companies not being in compliance with guidelines. She says she's called the state, but nothing can be done because of lack of personnel.

- So she's confused about what the rules do. Commissioner Pike says that's the first time he's heard that, and isn't familiar with a lack of resources. Reed agrees and hasn't heard anything about non-enforcement. Carol says there was a recent issue she called about that would require someone to physically go see what she was talking about, but it wasn't possible. Commissioner Pike asks if that's something that has come before the TEC, because it's something he'd like to know about. It's a perfect example of something the TEC or an advisory council should bring before the UID. Kim and Chase both say this is the first they've heard of it. Chase says there's talk in the industry about frustration with enforcement actions, but he thinks that's a misunderstanding of procedures.
- Matt asks if the TEC would be limited regarding the information they could access about an investigation. Reed says yes. Matt says the UID is very receptive when he brings issues to the table, and doesn't feel that issues have been unaddressed.
 - Commissioner Pike thanks the industry for the letters and comments they have sent. He and Reed have read them all and will consider them.
 - Canyon Anderson says the industry self-polices as best it can, and there's always some challenge with UID resources. He's sent in lengthy complaints and has never received a response that they've been looked at or followed up on. He notes that resources are always a concern and may have been a reason for the TEC in the first place. Regarding rules, he says the R592 rules wouldn't be around today without the TEC's rulemaking authority. He is concerned whether an advisory council would allow for input, suggested language, or comments. How would detailed words and language be encouraged by the industry? He says the industry has never been in a more important time to work with the UID. The industry is facing affiliated business arrangements, competitive forces, and the legislature not understanding the amount of escrow in real estate transactions. If objectivity and fiduciary roles are diluted, the industry would lose significant safeguards for the public. The TEC and industry have helped significantly with those risks. With a lack of business, revenue, and resources that the industry is facing right now, the industry needs a viable council that will listen to them and provide good information to the UID.
 - Commissioner Pike says the monthly meeting with the Utah Health Insurance Association, rules are a standing agenda item. The H&L director brings a list of rules that are in progress, and holds discussion about rules that ought to be looked at. He notes that the UID doesn't view advisory council meetings as UID meetings — meetings belong to the industry associations. The industry sets the agenda and the UID is conscious about not cramming things into the meeting. There will absolutely be an opportunity to discuss rules with the industry, and he doesn't see a difference in the UID's part to accept rule recommendations and language any more than they would now. Reed agrees 100% and notes that Kim and Cort Ashton came to the UID with an idea to make changes on how funds are received and disbursed. It was done entirely outside the TEC, and will be part of the UID's bill. He thinks the process will be similar for an advisory council. Commissioner Pike says the UID wants to have those questions and comments regardless of the source.
 - Matt says the industry and UID have a good relationship and it's good to know that the TEC has the authority to start making a rule. What assurances does the industry have that the UID won't unilaterally take up a rule without the advice of the council? Reed says that could happen even with the TEC, because the UID could just decide to make a rule regardless of the TEC's concurrence. This is due to the Commissioner having final determination on rules. Perri notes that if the UID were to enact a rule and the industry wanted to make comments, accepting comments is part of the normal rulemaking process. Matt says the process is currently within the TEC to recommend a rule. Commissioner Pike says it's both, but the commissioner has the ultimate authority to make a rule. However, regardless of what happens, the process will still be public. Reed also notes that there is a provision in the Administrative Procedures Act that allows anyone to request that the UID commence administrative proceedings to undertake rulemaking.
 - Carol asks when the REC will get on the same page as the TEC. It seems like they make up their own rules as to what title can do regarding title rules. Reed says the law isn't set up that way. If

the statutes regarding the TEC are repealed, that would eliminate the requirement for title rules to be sent to the REC.

- Sue Houghton says the bottom line is that clients are heavy-handed and a lot of the title industry is concerned that the TEC will be set up under another division. There are a lot of title agencies that can't withstand the pressure of the DRE, and may do things they shouldn't do. She is extremely concerned about the DRE taking over title and escrow. Reed says he doesn't know what advantage the TEC has in that circumstance. Matt says there's a lot of talk about the title industry be taken from the UID and instead be regulated by the DRE. Reed asks what advantage the TEC provides, in that case, that an advisory council wouldn't. Matt says the TEC and advisory council would provide the same advice, but both would require a statutory change. Reed says the UID would take the same messages from the industry, regardless of whether they come from the TEC, or an advisory council, or a call to the UID directly. He understands that this is an important concern, but he's not sure the TEC provides any resistance to the move, because it has to be done by the legislature, which the UID can't control. However, the UID will listen as it always has and will give the same messages regardless. He has already expressed that moving title and escrow to the DRE is a lousy idea, and will continue to. Commissioner Pike says he doesn't see there being less power in the message whether it's coming from an advisory board or the TEC under statute.
- Lonn Litchfield likes the idea of doing away with the TEC. As long as there's an advisory committee to talk things over with the UID, that's sufficient. He's not sure a separation of power makes sense here. The most important part of regulating the title industry is making sure title companies are available and able to pay claims, making sure there's no fraud, and ensuring a fair playing field. Those are all things the industry can do with out the TEC, but regardless the UID can do better than the DRE.
- Rachael Ortiz can understand the arguments on both sides and she appreciates the UID being willing to work on an advisory board. The flexibility makes sense. She thinks part of the resistance to the idea is that it feels like the industry is taking on a lot of changes all at once. It would go a long way if the UID sent a message to the industry that the UID is still here and wants to understand the industry. She notes that Reed has spent a lot of time to understand the industry's issues, and she appreciates it. She thinks it would be good to have some messaging that the industry won't become a free-for-all with the removal of escrow fees and the elimination of the TEC. She's not saying don't do it because the timing is bad, but just consider the timing and consider issuing a message that the UID is still here and regulating the industry. There have been a number of regulatory changes, and the market's next two years look very different from the past two years, and it feels like a lot. She asks that the UID consider a message to the industry that the UID isn't loosening the reins, and reminding them that the UID will still take appropriate action against bad actors. Reed agrees and hopes that today's discussion has conveyed some of those messages, because it's definitely the UID's attitude. He may reach out to her for help with messaging to the industry.
- Kim agrees that Rachael's comments on timing is a good point. The two years the industry is moving into will not be like the two years we're moving out of, and that fact causes a lot of change and uncertainty in the industry. Timing has a lot of effect on the perception of things.
- Education for the consumer on bogus land sales / Kim
 - Kim saw an article about the Department of Commerce and vacant land scam fraud. She remembers that there was a wire fraud campaign a few years ago, and wondered about an opportunity to provide additional education to the consumer. She notes that it's healthy for the industry to educate the public so they don't lose their life savings. She wondered if this was something for the TEC to work on with the REC. Reed will look into it.
- Invitation from UAC Recorders Standards Committee / Chase
 - The Cache County recorder called Chase regarding the Utah Association of County Recorders' (UACR) Standards Committee. A state representative is looking to run some legislation to create a single statewide appointed county recorder. The ULTA legislative committee may want to look

into it. The UACR is looking to create a standards committee to bring uniformity to recording documents. When certain affidavits are recorded, some allow corrections and others don't, some require certain information and others don't, etc. The standards committee will be made up of county recorders, but they're also looking for two members who aren't county recorders to serve on the board as well. They would like insight into appropriate industry standards so they have a guideline to work with. They thought it would be good to have someone from the TEC serve on the board. Chase says if the TEC doesn't continue, he would recommend that it be someone from the ULTA. Then at least it's someone from a formal body that represents the industry.

- Kim notes that this was discussed at the last ULTA meeting, and it was decided that Cort Ashton will represent the ULTA. She thinks a volunteer from the TEC would be great, and if the TEC ceases to exist, we could get another specialist from the ULTA or industry. She asks if Chase would be interested in being the TEC volunteer. Chase said he'd be happy to participate if someone else doesn't volunteer. Kim asks what the timeline is; Chase doesn't think there's a timeline and that this is just exploratory. He thinks the UACR meets quarterly and have an annual convention. He believes the request is for a title representative attend when there are specific agenda items, not to attend every full meeting.
 - Meg Watson says they want to meet starting in January, and the Standards Committee will meet separately.
 - The volunteers are Chase Phillips for the TEC, and Lonn Litchfield, Carol Yamamoto, and Nathan Sprague from the public. Chase will report that to the UACR.
 - Kim notes that the ULTA is involved with the UACR and both organizations work directly together.
 - Alison McCoy is on the auditing side of the UACR. She says Devron is the legislative chair for the UACR and is a good contact. She says the Standards Committee is meant to show a good faith effort from the recorders that they want standardization across the state, so they can maintain local control and not have a single state recorder that doesn't know local issues.
- **Adopt Minutes of Previous Meeting**
 - **Motion by Chase to adopt minutes. Seconded by Jeff. Motion passes 4-0.**
 - YEA: Kim, Chase, Cal, Jeff
 - NAY: None
 - **Concurrence Reports**
 - Licenses
 - Kim notes that there's a new agency — Ohana Title Insurance Agency — and a new license for Alpine Legal Title Insurance Agency.
 - **Motion by Chase to concur. Seconded by Cal. Motion passes 4-0.**
 - YEA: Kim, Chase, Cal, Jeff
 - NAY: None
 - **Board Duties & Responsibilities / Perri**
 - **Update on 2022 Goals**
 - ULTA report / Kim
 - The ULTA met on Monday, December 12. There was a roundtable before the meeting that was helpful for informing members about current topics. They talked about the commissioner's request for comments on whether to keep the TEC, and urged the members to comment. Many have sent in comments, which is appreciated. There was discussion about the upcoming convention on February 9-10 in Springville, and a management course that will be held January 11. There were discussions about lunch-and-learns, a legislative update on escrow fees, good funds statute changes, and RON and wet signature recordings. Cort Ashton volunteered to represent the ULTA on the UACR's Standards Committee.
 - **Old Business**
 - **Other Business**

- Kreg Wagner notes that the DRE's bill will address predatory service agreements where people are liening or encumbering properties for a 40-year period. Marie Mclellan is in the title industry and serves on the REC, and is aware of the issue and will notify people about it. Kreg has been in contact with Cort and Rachael about it, and they will be meeting Wednesday to discuss it with the DRE. The language that they're modeling is from the American Title Association.

- **Hot Topics**

Executive Session (None)

- **Adjourn** (10:15 AM)
 - **Motion by Cal to adjourn. Seconded by Chase. Motion passes 4-0.**
 - YEA: Kim, Chase, Cal, Jeff
 - NAY: None
- **Next Meeting: January 9, 2023** — 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

2023 Meeting Schedule

Jan 9	Feb 13	Mar 13	Apr 10*	May 8	Jun 12
Jul 10	Aug 14	Sept 18	Oct 16*	Nov 13	Dec 11

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