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This document includes the transcribed minutes from Utah's Title and Escrow Commission's April 11, 2011 meeting, the Agenda with line references to the definitions for Escrow and Settlement, the Notary issue, and the proposed move of title insurance regulation to the Division of Real Estate are included.

Every effort has been made to capture the entire meeting. However, the recording devices are not perfect, voices trail off, there is cross talk, and other activity where the conversation is inaudible. You will see _____ to denote something is missing. And sometimes there is not a recording at all.

Please feel free to email me at pstevens@joneswaldo.com with questions or suggestions.



State of Utah

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor
NEAL T. GOOCH
Insurance Commissioner

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: April 11, 2011

Time: 9:30 AM

Place: East Bldg, Copper Room

MEMBERS

Commission Members

Chair Cortlund G. Ashton, Salt Lake Cnty
Co-Chair Garry M. Goodsell, Iron Cnty
Dirk Keyes

Canyon W. Anderson, Davis Cnty
Jerry M. Houghton, Tooele Cnty

Department Staff

Perri Babalis, *AG Counsel*
Tammy Greening, *Examiner*
Adam Martin, *Examiner*

Suzette Green-Wright, *MC Dir.*
Jilene Whitby, *PIO Recorder*

Mark Kleinfeld, *ALJ*
Brad Tibbitts, *P&C Dir.*

AGENDA

General Session: (Open to the Public)

- **Welcome and Introductions** / Cortlund Ashton, Chair
- **Adopt Minutes of March Meeting**
- **Executive Session** - If needed (*Closed to the Public*)
- **General Session** - (*Open to the Public*)
- **Reports**
 - Concur with Licensee Report
 - Concur with Complaint & Enforcement Reports
 - Request for Attorney Exemption: None
- **Administrative Proceedings Action**
 - Pre-Hearing: None
 - Stipulation & Order:
 - Home Abstract & Title Co. Inc.
 - Summit Escrow & Title Insurance Agency, LLC
 - National Title Agency
 - Tyler Cisneros
- **Old Business**
 - Update on LSI / Suzette
Update in May
 - HB333 Changes to 31A-23a-402(8) - "are" to "is."
 - Discuss Comments and Final Actions to R592-15 and Repeal of R592-3, R592-4
 - Discuss Comments and Final Actions to R592-14.
 - Discuss Comments and Final Actions to R592-6-4.
 - Setting Search Standards / Jerry
 - Dual Licensing Discussion - Continued / Cort
 - Does an Agency's Surety Bond Cover a Notary?
 - Update on Letter to Industry Re: Mobile Notary Performing Escrow Services / Tammy
 - Appointment Process for Two New Members / Brad
- **New Business**
 - What is the Function of the Escrow that Requires the License / Canyon
- **Other Business from Committee Members**
- **Adjourn:**
- **Next Meeting:** May 9, 2011, Copper Room

Line
1
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2011 Meetings

| | | | | | |
|---------|---------|---------|---------|---------|---------|
| Jan. 10 | Feb. 14 | Mar. 14 | Apr. 11 | May 9 | Jun. 13 |
| Jul. 11 | Aug. 8 | Sep. 12 | Oct. 11 | Nov. 14 | Dec. 12 |

1 BEGIN SEARCH DISCUSSION 40.32 MINUTES INTO RECORDING

2 Cort: Okay, next up. Setting search standards, Jerry.

3 Jerry: All right. This, again, just for everyone, this was an initial stab to get started on a
4 requirement that was coming up in an insurance bill that ended up passing in
5 Lines 3005 to 3007 of 31A-23a-406 where it stated (a) if a title insurance
6 producer conducts a search for real estate located in the state, the title insurance
7 producer shall pick up a minimum mandatory search as defined by rule made by
8 the Title and Escrow Commission subject to Section 31A-2-404. So what this
9 was to start was my initial staff to start to put something together so that we'd
10 have something to discuss and so it's out there and I know that received some
11 comment from Jon Bartlett as to some comments proposed – what I'm proposing
12 for ____ which has not gone officially into the rule making process, we just kind
13 of in comment from working on it so. I'll let Jon talk to his changes or his
14 interpretation of what we've got so far.

15 Cort: Thank you Jerry. I think Jon you had passed out to everybody both a copy of the
16 proposed rule as well as some of the comments. Is that correct?

17 Jon: I think that all the folks at the table have a copy. (Not the public in attendance.)

18 Cort: Okay. Jon, would you, I would love to hear from First American on the
19 comments matter and would love to have you walk us through your thoughts on it
20 if you would.

21 Jon: Thank you. Um, first of all, this is my first meeting and so I don't want to break
22 any rules so, give me some leeway. I want to thank Cort and for sending me a
23 note that said this was coming up, but I appreciate that and it gave me – Cort
24 didn't really tell us what was proposed and so we were quite worried that the
25 commission might want to – we didn't think so but we thought the commission
26 might want to lower the standards and we certainly didn't want that and so I want
27 to thank Cort for sending over the proposed rule and at First American we were
28 very pleased and relieved to see the proposed rule. There were, however, a
29 couple of little things that we wanted to bring up because they could if interpreted
30 a certain way have quite an effect on our industry as we know it. We've met with
31 some of the folks at First American and some of them are here and I just wanted
32 to tell everybody who was here. Connie Bell is our state title manager and so this
33 is right up her alley. Next to Connie is Keith Peterson, senior underwriter for
34 First American. Matt Seger who had to step out for another meeting is our senior
35 underwriting counsel and then Jack Marinello who is here all the time and that's
36 one of his functions. So this is an important issue to us and I think that the
37 underwriters would agree that it's an important issue to them. We are, as I said,
38 relieved to see the proposed rule that, and very pleased about the efforts that the
39 commission's making and certainly recognize that it's something that they should
40 be doing. The title searching license is very different, as you all know from the
41 escrow license. The law clearly says that, you know, you can't even walk in the

42 escrow room unless you have an escrow license. But title is different because
43 when you start out in the title business, you, at least for me, I started out as a title
44 searcher and became over the next 2-1/2 years or so, became able to do a search
45 and exam with very, very little supervision and before I got licensed, and once I
46 got, once I felt very proficient about what I was doing as a title searcher, then I
47 went and got licensed, and I hope that that's still what we do. I'd hate to license
48 people that have never opened an abstract book. And so, I think, we have to look
49 at escrow and title differently.

50 To talk specifically about the proposed rule, my comments for Line 1 and 2 are
51 similar, and that is, I'm a little concerned about the, what it means to supervise a
52 search and exam. From my own experience, I know that my first few weeks or
53 even months in this title business I needed a lot of supervision. You know, the
54 first week I needed, I'm trying to remember who, it was thirty years. Um, I
55 needed them by my side the whole time teaching me what the search process was
56 and as time went on and I became to understand a little bit about what I was
57 doing, I needed much less supervision and certainly towards the end to where I
58 was ready to go get my license, my company felt very comfortable with the work
59 that I did with the only supervision that was needed was somebody there to
60 answer a question when one came up.

61 So the concern that we have with the word "supervision" is how it's defined. If
62 "supervision" is defined as someone looking over a non-licensed searcher's
63 shoulder on every commitment, then we think that's too strict of a definition. If
64 it's someone there to answer questions, then we're very comfortable with that
65 term. The problem is when you go to define "supervision" you end up with a
66 whole list of new problems and so I, in my notes, I try to suggest some possible
67 changes or ways to get around this definition of "supervision" problem. Of
68 course, the main comment is that if every commitment has to be reviewed and
69 supervised specifically, I think that's too strict of a standard, so I would hope that
70 we would not have to review every commitment specifically or look over the
71 shoulder of the non-licensed searcher on every commitment. Another idea came
72 to me over the weekend in –

73 Canyon: Jon, can I ask you a question – not to change your thought but when you're
74 discussing the notion of not looking at every commitment –

75 Jon: Well, I don't mean to say that.

76 Canyon: Yeah, I don't think you intend to say that.

77 Jon: Yeah, I don't. Just not looking over the shoulder of the searcher every minute of
78 the day. I just, just would add too much cost and stuff and I hope the commission
79 will agree to that.

80 An idea that come over the weekend is maybe if the rule was to require that a
81 certain ratio of commitments per title or licensed title searcher personnel. So, for

82 example, in my example on page 3 of the handout, I was thinking about a young
83 title agency that had a title manager and the title manager while the agency was
84 young and small was also the main searcher and examiner and that title manager
85 would be able to search and examine and be the title manager of a small title
86 operation for a certain amount of searches per month, if you will. And if the title
87 agency were to grow – say 150, but you guys probably know that better than I do,
88 being owners of agencies. If 150 were the right number that a title manager could
89 search and examine, you know, without help, then if the agency grew a little over
90 that, they may want to hire a rookie to come in and help them with some overflow
91 while they're being trained, and, in the beginning this rookie would be not very
92 effective and may be able to do, you know, after a couple of weeks, may be able
93 to 50 orders a month. But as time goes on and that young – would have to be
94 young – the rookie title searcher became more proficient, still not licensed, they
95 could get up to maybe 200 orders a month, or even more. If the title agency grew
96 above that, then the company would need to decide: do we hire another licensed
97 person or do we hire another rookie and get our regular guy licensed – our newer
98 guy licensed. And so, I'm just trying to think through the growth of a title agency
99 at what point would another licensed title searcher be required and, in my simple
100 mind, kind of thought between 400 and 500 orders, you should at least have two
101 licensed title searchers on staff. So it's just another idea, another way to skin the
102 cat, is to have a ratio of title officers per searches per month.

103 And then another thought came to me that we have jack-of-all-trade title gurus in
104 this industry, some in this room, that spend most of their day on an escrow desk,
105 but are wonderful advisors to a title department. And so it might be a mistake to
106 say that all of the title licensed people have to be solely in the title department,
107 and so that was just another in the triad.

108 Sorry for that long explanation, but we're a little concerned about the definition of
109 "supervised searches." Another comment for Line 2 is – it says "reports," and I
110 think that the whole industry has moved to "commitments" and "reports" have a
111 very different meaning now days, and so we may want to change the word
112 "report" to "commitment" in Line 2. And then another thought that we had is that
113 we may want to add the word "guaranty." I know that a trustee sale guaranty is
114 becoming a major product and certainly should be part of what's required in this
115 title rule. In Line 4 –

116 Male: Jon, can you go back to Line 3?

117 Jon: Okay, Line 3?

118 Male: Cause I think you made . . .

119 Jon: Oh, the wet signature?

120 Canyon: Yeah, you made the comment about signatures and I was going to ask you if –
121 how would you feel about having a title commitment which I think the word

122 needs to be changed and subsequent policies and endorsements whether we have
123 guaranties or not, that would otherwise, I think be included. What about the
124 notion of being reviewed, approved and counter-signed if underwriter required?
125 In other words, assure the notion that there's been a review of the commitment
126 and the policy approval and if needed a wet signed and if not, but at least a
127 licensee has done that.

128 Jon: Thank you. Thank you for keeping me on track. Yeah, I believe that
129 commitments should be reviewed by a licensed title person. Taking the further
130 step to have a wet signature on the commitment and policy causes First American
131 problems, because our policy jackets don't have a place for a second counter-
132 signature, You know, they're already signed and counter-signed and to have a
133 second wet counter signature, it would take us a lot of re-tooling and so . . .

134 Canyon: Just counter-signed if required or needed by the underwriter.

135 Jon: Yeah, thank you. Thanks for that. On 4, it talks about doing a search according
136 to the Marketable Record Title Act and in our last legislative session, there was a
137 change to the Marketable Record Title Act and a copy is attached at the back.
138 This change to the Marketable Record Title Act – I don't know how to word this
139 – but there are fewer things that can be ignored by the forty-year chain of title
140 rule. And we are currently looking into the effect of this new law, Senate Bill 87,
141 to see if Senate Bill 87 by itself requires us or for it would be in our best interest
142 to do a full search back to patent on every transaction. Frankly, we're a little
143 concerned about this Senate Bill 87 and the review is going to take quite a bit of
144 consultation between lawyers and underwriters and business people and we'd like
145 to have the ability to decide if we need to go back to patent or not and with the
146 way Line 4 says that we need to go according to the marketable record title, we're
147 not sure if it says that we have to go back and do a patent search on each
148 transaction.

149 Canyon: I think it's actually giving more latitude, Jon, rather than less.

150 Jon: You do? Okay.

151 Canyon: Cause it deals with extinguishing a number of various and varied interests, public
152 and otherwise, and says you don't need that marketable record title in those cases
153 so I think you'll find that it gives more latitude . . .

154 Jon: Okay.

155 Canyon: . . . and not more restrictions. My take is that it's going to be okay, just –

156 Jon: Okay, thank you. In paragraph 5, our concern was we appreciate this new
157 commission allowed us to use starters. But the paragraph 5b says starters
158 containing chains and, frankly, starters don't contain chains and for us to get a
159 starter, which is a previous policy and a chain of title that went along with that to
160 create that policy, would be quite an added burden that we're not used to and we

161 hope the commission would agree that that's not a necessary added burden.
162 Thank you.

163 Canyon: Sorry to keep asking questions Jon, but while you're here, and making these
164 comments it's helpful. If you don't have the chain, that you use a starter, as I
165 understand a policy, an owner and a lender, if you have a continuation of
166 warranties, so I wanted to ask why wouldn't an owner's policy or lender's policy
167 that hasn't been broken by a foreclosure or a special warranty deed, why wouldn't
168 he be able to simply go back to those and if you need more than one – and you do
169 – but why wouldn't that continuation of warranties, Jon, meet this standard? Or
170 what, just your input?

171 Jon: So, you're suggesting that the chain is the starter plus warranty deeds after that?
172 Oh, well, I think that would be okay. I was worried about the previous policy
173 plus the chain of title before the policy.

174 Male: Jon, aren't we dealing – that we've talked about a forty-year marketable record
175 title. Aren't we talking about a chain of warrant, root and title? And as long as
176 you have starters that are – that contain those warranties, some of your products
177 do not. They wouldn't qualify for a continuation of a warranty but if you had a
178 product that did and you went back to that point and you had warrants through
179 that, at least back to that point you'd be okay, wouldn't you? Conceptually?

180 Jon: Well, I think it would be. I think the underwriters would like to be able to decide
181 whether or not that would be an acceptable risk.

182 Male: I'm just asking while you're here.

183 Jon: Yeah, I don't know that we're necessarily okay but I think that it becomes in our
184 mind an acceptable risk. But B says starters containing chains and so that should
185 make the chain of title before the starter or obtain the title that created the starter
186 and so that's not the commission's intent.

187 Male: Well, if you have a series of starters, wouldn't at some point – now the
188 requirement to attain your evidence is only what – 15 years?

189 Male: Right now you mean?

190 Male: You may have to keep our evidence for 15 years, is that?

191 Male: Oh, the files?

192 Male: So, we got some issue there already I suppose that we need to consider.

193 Male: Yeah, 15 years and then I think earlier for an escrow file.

194 Jon: Okay, another concern that we had was that we have some products, the industry
195 has some products that don't come to the level of an ALTA, owners, lenders or

196 _____ sale guaranty policy. They are a lesser product and allow for a lesser search
197 and so we hope that the commission would agree to allow for a lesser product to
198 have a lesser search.

199 (cross talking)

200 And then the last comment is if this rule goes into effect in 45 days and if it would
201 require us to re-tool our documents, you guys all have computer systems and you
202 know how long that can take. We would hope that you would consider giving us
203 more time to do that.

204 Cort: Thank you, Jon, and Jerry thanks for getting us something to talk about here. It's
205 a great place to start and your comments and your written information, Jon, is
206 very helpful. Thank you for being here. Pete, I saw your hand during the
207 comments there. Do you have something you want to add?

208 Pete: I appreciate Jon's comments and support what he said. I think this would
209 probably be an item that all of the underwriters should be involved in and as you
210 look at what – define the duties of what the state is or what your commission
211 responsibilities are, I don't believe it rises to the level of defining a search. I
212 mean, aren't certain states that say a reasonable standard under the reasonable
213 search, others to back 40 years. But with the limited resources that this state has,
214 I think it should be something that the underwriter takes full responsibility for and
215 supervises its agents. Jon's got a series of products that another underwriter may
216 or may not have. And so to hold, you know, to hold everybody to Jon's
217 standards, they would be in violation. If you had a looser standard on certain
218 products and another underwriter may not have. So, you know, I think this is an
219 interesting conversation and it's one that needs to be had because of the question
220 that – questions had been raised on searches. And my suggestion is that you look
221 before you get like you did on this last stuff, you've got a year invested in it and
222 now you're almost back to the same point as Garry said you started and you
223 diverted a little bit. This is a very critical issue but it's most critical for the
224 underwriters. They're the ones that are assuming responsibility for these agent's
225 actions. So I think we might like to look at that first before we spend, you know,
226 the state's resources in determining what we think or the agents in this panel think
227 would be a reasonable search, only to find that you're going to be reviewed by
228 some of the underwriters and it's not going to be an open forum.

229 Cort: Thank you Pete.

230 Comments?

231 Moore: Cort, just to follow up maybe with adding a little to Pete. I understand it's an
232 underwriter's responsibility but there is a practice now that a lot of underwriters
233 now coming back against the agents under the agency contract recalling search
234 _____ faulty. So it works, so I think this is more than just an underwriting issue.

235 We need to make sure that everybody understands what their minimum
236 requirements are.

237 Male: Can I just make a comment? I can see in the law where you are required to make
238 a definition of what a search should be and we're okay with that. We realize that
239 we need to co-exist and we're happy to have follow-up discussions about, with
240 whoever on how to make something that works for everybody.

241 Cort: Other comments? Glen?

242 Glen: Just to follow up and not to belabor this point, I have some very specific
243 comments with respect to the language and I don't know if we want to go through
244 now. It seems to me that we do have to – you do have to pass a rule with respect
245 to what a search is. And if I have to go through my specific comments, some of
246 which were covered by Jon.

247 Jon(?) You know, I wonder if we could perhaps entertain forming a subcommittee and
248 meeting, inviting the underwriters to get two or, anybody who wants to participate
249 and have another meeting just where we start to hack working on it.

250 Male: Do you want the sub – the underwriters to sit in a room together? (laughing)

251 Glen: Can we and as long as we don't talk about rates.

252 Male: I thought Pete made the first motion that way Glen. The other part, the
253 underwriters can sit in a room as long as there's some supervision. (laughing and
254 cross talking.)

255 It worked before. If the state request that they're there, then it's not a violation.

256 Male: Okay.

257 Male: That might be better because like I said I have some very specific comments with
258 respect to language and just really drag this thing out. We might be able to beat
259 that up a little bit better in a different format.

260 Male: I think we need that personally, so if we – can we Perri help us through it. If we
261 want to have an informal, we don't need minutes, we're just gonna get together
262 and start hashing things out, can we do that number one . . .

263 Perri: Yes.

264 Male: . . . cause we're not a legislative body, right?

265 Perri: Yeah, you can do it. So it's a subcommittee meeting, no decisions can be made.
266 You can discuss all decisions have to come back here and be voted on. I think it's
267 wise to still let everyone know that you're meeting, so whoever wants to be there
268 can be there.

269 Male: We definitely do. We just, maybe a little less formality than this setting perhaps
270 can we have . . .

271 Perri: Yes.

272 Male: . . . okay.

273 Perri: Yes, yes.

274 Male: And do we need minutes and all . . .

275 Perri: You can take little notes just, you know, if you want to be on the up and up it
276 helps. (cross talking) Not necessary. Like I said, no decision at all can be made
277 in that subcommittee meeting. It all has to be brought to this body to vote.

278 Male: Right. okay. So, Jerry, what do you think? You're kind of the champion on this
279 for us. Does that sound reasonable?

280 Jerry: (in audible)

281 Male: Does it sound like a good course of action? Shall we entertain a motion then to
282 create a subcommittee to schedule a meeting – the subcommittee can consist of
283 any or all of us that want to participate. But at a minimum, two of us probably
284 ought to be there. I don't know. What's a definition of a subcommittee, Perri?

285 Perri: I mean you can have people here on the committee on the commission and also
286 some people be part of the subcommittee.

287 Cort(?): Okay. Yeah.

288 Canyon(?): Could, does somebody on the commission have to be part of the subcommittee?

289 Perri: Yes.

290 Cort: Okay, Pete?

291 Peter: Would it be unreasonable to suggest that you send a notice to all the licensed
292 underwriters in the state?

293 Cort: Yes.

294 Peter: To participate?

295 Cort: That would be the intent that we have. Any representation from any and all
296 underwriters and that we also, that we just use this as a framework for discussion
297 just to get us going and then we can have Glen's comments on specific language
298 and start working on some things that way or entertain some other language
299 perhaps there. So, how about a motion then to that effect?

300 Male: I'm happy to make a motion that the commission approve of the formation of a
301 subcommittee to discuss the language and the proposed minimum mandatory
302 search standards and requirements but that as a part of that formation, we send a
303 notice to the licensed underwriters to attend and participate.

304 Cort: As members of the committee?

305 Male: As members of that committee.

306 Male: Does the subcommittee need a chair?

307 Male: Someone has to be in charge and I suggest Jerry.

308 Cort: Okay.

309 Tammy: I would suggest someone from the commission make that motion.

310 Male: I'll just add to that motion that Jerry serve as the chair on that subcommittee.

311 Cort: Okay.

312 Garry: I'll second that motion.

313 Cort: A second by Garry. Any other discussion? All in favor say I. Any opposed?
314 Motion passes. Do we need to set a date for that?

315 Tammy: You don't have to _____.

316 Cort: Okay.

317 Tammy: If you want to just to get more notice out, that'd be great.

318 Cort: Jerry, do you have any dates in mind on when you'd like to maybe convene that
319 subcommittee?

320 Jerry: The first time that I have available would be sometime next week and what I'll try
321 to do is get some emails out to the underwriters and I'll courtesy copy
322 _____.

323 Cort: We may want to in that invitation forward what we have so far and because their
324 underwriters probably aren't in the loop and give them sufficient time to maybe,
325 you know, schedule it for two or three weeks out is what I'm thinking perhaps.
326 Okay, so Jerry's going to take that and help us with that subcommittee. Thank
327 you, Jerry.

328 END SEARCH DISCUSSION

329 Okay, I, this is on there. I didn't know if we ever got a final determination from
330 our discussion on dual licensing. Did we ever, I know there was some – we

331 weren't involved in agreement on what that meant and I thought we were gonna
332 try to get the attorney general or somebody to help us out with that cause we --
333 anybody, Tammy do you know where that stands by chance?

334 Tammy: No.

335 Cort: Brad? Were you there for that discussion?

336 Brad: I think I do recall Cort is that you very clearly stated what your understanding of
337 the situation was. I don't recall anybody coming back with anything to question
338 that position or that status. Now, whether or not we need to review that and put it
339 in some kind of more formal situation or not, I don't know.

340 Cort: Well I think some folks in market conduct didn't think that I was right.

341 Brad: I can't believe that.

342 Cort: It was kind of the issue and so we were looking for a little clarification. I think
343 we as a commission were in agreement. But we didn't have -- so I'm not sure
344 where we go with that. Perri, we had a little . . .

345 Perri: I'm not remembering this.

346 Cort: . . . you probably remember meeting in February, January, February. We talked
347 about . . .

348 Perri: Oh, right, right, right.

349 Cort: . . . about dual licensing for an active real estate agent as well as somebody who
350 was an active title license and we had a little different interpretation from the
351 commission versus market conduct and so where do we go to get a final ruling?

352 Perri: Well, I think we've discussed that as a department and . . .

353 Cort: Okay.

354 Perri: . . . and I believe we're all on the same page. It's my understanding . . .

355 Cort: Which page was that?

356 (cross talking)

357 Perri: The commission but I shouldn't say.

358 Cort: Okay. And Suzette's not here.

359 Peter: I think there were two issues. They came in the February session. One was does
360 a licensed realtor or mortgage loan officer need to have a title license if they
361 participate in receiving any part of the compensation from a title client? I think

362 the deciding answer is yes – that we'd have a dual license. Second, we discussed
363 how often does that get approved? I thought we agreed it was every 18 months.

364 Perri: I remember the second case, but –

365 Cort: So, Jack?

366 Jack: As I seem to recall that discussion, an individual who holds either a title or escrow
367 license would have to give permission prior to utilizing that license from the
368 commission and then they could utilize that only once every 18 months and after
369 the utilization of that, that real estate license would have to go back on inactive
370 status. You could not have an active real estate license, an active escrow title
371 license held at the same time without prior consent per specific transaction or ____,
372 specifically approved by the commission. Is that?

373 Cort?: Well, I'm not sure that you were there because we would of, I would have loved
374 to have your thoughts on that, but.

375 Jack: Well, I think that this had to do with –

376 Male: There's something in the unfair inducement rule about compensating somebody.

377 Cort: Right, right. It all ties to dual licensing and the unfair inducements are all tied
378 together in that regard and I just – if there was – we left that meeting with kind of
379 a – we weren't all on the same page and I didn't know if we figured a way to get
380 on the same page or if we need to get, you know, an opinion from the attorney
381 general or somebody else.

382 Male: I think that rule they – a person who had a real estate license who chose to be a
383 marketing representative for Inwest . . .

384 Cort: He did.

385 Male: . . . had to choose of the four real estate transactions they were involved in, they'd
386 use one and the other three had to go back to their principal broker. If they
387 wanted to do that – like use that license again – it would be 18 months before they
388 could do it again with the prior consent of the commission.

389 Cort: Close, I mean there's a little wrinkle there in that it's only authorization for a title
390 company to pay a licensed realtor who's also a licensed escrow and we probably
391 don't want to dig into that if we have really come to an agreement, I guess we can
392 move on.

393 Male: What is the agreement? That it cannot be done pertaining to the unfair
394 inducement?

395 Cort: There was a circumstance, there was a gentleman here in a prior meeting who has
396 an active title license and also had an active real estate license as a broker and was

397 being paid currently by his title company on an ongoing basis and was also
398 involved in a real estate transactions. I thought by definition that was impossible
399 under the rule to do that. That it was only for a licensed realtor to once every
400 18 months be paid by a title company once every 18 months, not on an ongoing
401 basis. So it didn't allow a title agent to go in every 18 months and do a real estate
402 transaction, well, if it only allowed a real estate agent every 18 months to come do
403 a title transaction. I thought it was only one way and that was part of our
404 discussion, so.

405 Male: And I think it's an important part of the discussion and Perri that's where market
406 conduct didn't know it if they saw it that way. And the commission's asking is
407 there a difference of the _____ and application of the dual licensing statute?

408 Perri: Right. So the department met, there was discussion on it, I would appreciate
409 Suzette being present so that . . .

410 Male: Okay.

411 Perri: . . . my memory is –

412 Cort: Okay, so, I guess we'll leave it on. I mean unless I would love to know that it's
413 _____, cause it was left open.

414 Perri: Brett, do you feel comfortable?

415 Brett: Yeah, and that's fine.

416 Cort: Okay.

417 Brett: Let's handle it that way.

418 BEGIN NOTARY DISCUSSION 1:20:51 INTO RECORDING

419 Cort: Okay, so, we'll leave that one on our agenda items. Next up is an agency surety
420 bond cover a notary. I'm not sure who this came from. Is anybody
421 ready/prepared to speak to that?

422 Moore: Dave Moore, Mr. Chair, brought up some instances in which he raised this issue.
423 And I think we tapped that into the mobile notary rounds. He said, wait a minute,
424 all that a mobile notary can do is to acknowledge, copy certification and jurat and
425 oath. I'm not sure where the broad statement that does an agency's surety bond
426 cover a notary. Of course, each notary has to be bonded. So they're already
427 bonded, so I wasn't sure what the broad question meant cause they already have
428 to have a bond.

429 Tammy: How should it be stated?

430 Moore: So I'm not sure what else the question was.

431 Cort: Okay. And I wasn't here so I can't help anybody.

432 Male: Dave Moore do you remember?

433 Moore: I don't remember that discussion of, you know, the surety bond. I think that the
434 next item on the agenda is where we really got into some discussion.

435 Male: Right, right, it was. So I think Jilene that that statement probably can be removed.

436 Jilene: Okay.

437 Cort: Okay. We'll remove that from our agenda ongoing. Then let's use that to lead us
438 into the next item which is update on _____ industry regarding mobile notary
439 performing escrow services. And Tammy it happens to have your name on it.

440 Tammy: I spoke to the Lt. Governor's office and I need to get him some information but I
441 think I sent you all an email that he has since sent to me -- the one that had the
442 bull's eye on my head about the department employee that was forbidding these
443 _____ closings, did you all get that?

444 Male: I don't think so.

445 Tammy: It was quite the -- it was a forwarded email from Spencer because at the
446 Lt. Governor's office cause he didn't know quite how to answer it. But, it was the
447 one that I said if there's a question as to whether or not the word is getting out
448 about mobile notaries.

449 Cort: Oh, I saw that.

450 Tammy: Did you read through? Did you go to the -- you had to go through all the way
451 through to the word document.

452 Cort: I didn't see the word document.

453 Tammy: Okay, I can pull it up here and I'll show it after the meeting. But, the word is
454 getting out. They are posting it on the notary blogs or the notary marketplace I
455 guess where they all kind of go to get state-to-state information. And typically
456 the information is like a service link pane, how does, you know, Chase how are
457 they paying? Are you paying timely, that kind of a thing. But, basically between
458 Spencer and I, we're going to work out together and I'm going to send him the
459 last letter that the department sent out which was in 2006 just to help him. And he
460 said, you know, he's happy to help us try to get some understanding cause he gets
461 one or two emails a week.

462 Cort: So, if we --

463 Tammy: _____ and forward them to me.

464 Cort: If we have, do we give those to Lt. Governor's office if we know about violations
465 on that or not?

466 Tammy: Yeah, and typically the way that he explained it to me and I think Perri brought
467 this up as well is they don't have an enforcement that's equal to ours. But if there
468 is for instance, say if in one of my findings I find that someone in addition to
469 breaching their fiduciary duty with something on the title side if that also involved
470 their notary, then I would make a complaint to him and they would review it after
471 findings and make a determination. But as far as whether they – and Perri help
472 me out – whether they have an – they have no enforcement.

473 Perri: So my office has received a couple of complaints so if there is an attorney in our
474 office that represents the Lt. Governor's office and he's forwarded everyone to
475 me, so their office, their counsel are not willing to do anything. From an
476 enforcement side with a notary license.

477 Cort: So, we can have a rule and we can have a statute or whatever, we can have letters
478 but there's really not much of an enforcement mechanism.

479 Male: Now, Perri you thought the department could issue a cease and desist.

480 Perri: On the notary issue only.

481 Male: Because they're acting as an escrow.

482 Perri: So, yes, on that but we can't enforce the notary statute so if they're doing
483 something else and I think that's where Tammy's going. Cause if they're doing
484 something else, we certainly can issue the cease and desist.

485 Male: But they are. Then they will receive documents, pamphlets, they transfer them
486 and meet.

487 Perri: So it's on that issue?

488 Male: It's on that issue and if we can make some headway on that issue it would be
489 helpful for the industry. So, I think, Tammy, the uphill battle certainly is the
490 Lt. Governor's office and the AG's office against notaries but maybe we can just
491 need some kind of just a formalized process. Even the commission would be glad
492 to help.

493 Perri: I'm going to look at their statutes.

494 Male: We need to send out a notice to the industry I think through the ULTA Cort that if
495 we see or note or have a suspicion that a notary is escrowing documents, they're
496 acting as an escrow agent, they're violating state law. And we need to – we can
497 help if we want to have a boiler plated document that the commission or the
498 department sends, let's at least do something. Let's start somewhere.

499 Cort: Dave?

500 Moore: ___ continue with that thing. I mean, you know, the problem we've got is, you
501 know, the notaries are acting as escrow agents and I think you can see this is
502 where we gotta go. But I think you also need to get the word out to some title
503 companies because I'm aware of title companies who or remote closings within
504 the state may use a mobile notary who's not licensed as an escrow officer to get
505 documents signed. And so I think the word needs to get, you know, disseminated
506 to all the title companies or everybody's license, saying, you know, you cannot
507 use to close a transaction somebody that's not licensed.

508 Cort: Thank you – good point. Okay, anything else?

509 Perri: I'm just reading the notary statute and it says that they can be revoked or
510 suspended for violating the chapter.

511 Male: We don't know why.

512 Perri: We can't do that. They need to and why they're not I don't know.

513 Tammy: Like Spencer Hadley, he expressed to me that if I were to do like a cease and
514 desist because of the activities that they're doing on the escrow side, which is my
515 jurisdiction, that he would look at it. Whether or not he would do anything, to me
516 he certainly wants to be made aware. Whether or not it would go any further, I
517 don't know.

518 Male: So would that come into play – is there character requirements to notary start?

519 Moore: You have to be breathing. (laughing and cross talk)

520 Perri: You have to be 18, lawfully residing in the state for 30 days, be able to read, write
521 and understand English and submit an application. (cross talking.) Be a resident
522 so that you're not an illegal immigrant and be endorsed by two people.

523 Male: Tammy would it help for the commission to co-sign a letter or a bulletin or
524 anything – would that be helpful or is that – we don't like having targets on your.

525 Tammy: Oh, heavens, it just means I'm doing my job. No, it's fine I mean I just – I'll do
526 when I get together with Spencer then he can see what we previously hope to do.
527 Between Jerry and Fran Fisher, we're dealing with retired _____ -- so.

528 Cort: All right. Anything else on that then? Thank you for that. I think we'll start to
529 get the word out through the ULTA as well. Help spread the word, so.

530 END NOTARY DISCUSSION

531

532 So, next up the performance that appointment process for two new members.
533 Brad, this one has your name on it.

534 (1:29:36)

535 Brad: I don't know that I've got a whole lot of information for you. I know we have
536 three applicants so far. I didn't realize we're close to date on that.

537 Perri: Yes, it seems like it's like the 15th of this month.

538 Male: I have some _____ that have applied and have no idea if it's been received and
539 accepted.

540 Perri: There haven't been any changes to that website for the Governor's website for
541 three weeks at least. So there have been three that have applied. I checked last
542 week. The three are still there and no additions have been – there have been no
543 changes to that.

544 It says on the website and you'd have to take another look. I don't have that right
545 with me. But it seems like it's about the 15th or 25th of this month that
546 applications are due to the Governor.

547 Cort: Well, we will spread that word with the ULTA as well.

548 Jon: Cort?

549 Cort: Yes. Jon.

550 Jon: What areas – the _____ have to be in certain area right?

551 Cort: No, they just can't reside in the same county. Okay, so with the exception of Dirk
552 can live anywhere I think. So, I live in, I'm staying, I live in Salt Lake County.
553 Jerry's Tooele and so the other two can be from any other – they just can't be
554 from Salt Lake or Tooele Counties.

555 Male: Or from the same companies.

556 Cort: Or if it's the same company. Thank you.

557 Male: Is it where you live or where your office is?

558 Cort: I think it's where you live.

559 Male: It's where your residence is. That's the Canyons, it's Davis County.

560 (stopped transcribing at 1:31:20)