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This document includes the transcribed minutes from Utah's Title and Escrow Commission's November 14, 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: November 14, 2011 Time: 9:00 AM

Place: East Bldg, Copper Room

MEMBERS

COMMISSION MEMBERS

Chair, Dirk Keyes

Jerry M. Houghton, *Tooele Cnty*

Co Chair, Cortlund G. Ashton, *Salt Lake Cnty*

Larry Turner Blake, *Washington, Cnty*

Kirk Donald Smith, *Weber Cnty*

Department Staff

Perri Babalis, *AG Counsel*

Brett Barratt, *Deputy Comm.*

Mark Kleinfeld, *ALJ*

Suzette Green-Wright, *MC Dir.*

Brad Tibbitts, *P&C Dir.*

Tammy Greening, *Examiner*

Jilene Whitby, *PIO Recorder*

AGENDA

General Session: (Open to the Public)

- **Welcome** / Dirk Keyes, Chair
- **Adopt Minutes of Previous Meeting**
- **Executive Session** – (If needed) (Closed to the Public)
- **Reports**

Line Nos.

93-

- Concur with Licensee Report / Tammy
- Concur with Complaint & Enforcement Reports / Suzette
- Discussion Re: Whether Commission Can Receive Information Regarding Criminal Investigation of Title Licensees / Perri

255

- Request for Attorney Exemption
 - Tyler Hawkes

362

433

• **Administrative Proceedings Action**

- Stipulation & Order: LSI Title Insurance Agency of Utah, Inc. / ALJ
- Petition for Reconsideration by Mike Jensen / Brett (Attachment #1)

575

764

966

• **Old Business**

- Discuss Definition of Real Estate Escrow Settlements & Real Estate Closings (Notary)
- Proposed New Language for 31A-23a-406 / Perri
- Discussion of Regulation of Title Insurance
 - Advisory Council on Optimizing and Streamlining State Government

989

1086

• **New Business**

- Department to Prepare Bulletin Regarding Intent of 31A-23a-406(5)(c) / Suzette
- Approval of Title Insurance Assessment / Tammy

• **Other Business**

• **Adjourn:**

- **Next Meeting:** December 12, 2011, Copper Room

2011 Meetings

Nov. 14 Dec. 12

1 **TITLE AND ESCROW COMMISSION MEETING**

2
3 **November 14, 2011**

- 4 Dirk: I'd like to welcome everybody to the Title and Escrow Commission meeting for
5 November 14th. And the first item of business would be to adopt the minutes
6 from the previous meeting.
- 7 Cort: Mr. Kerry, I had a couple of things, clarifications that I'd like to _____ like to
8 suggest if I could. On page 2 under _____ returning exemption, I believe,
9 Mr. Hansen represents Attorney Title Guarantee Fund instead of First American
10 Title.
- 11 Jilene: That's been corrected.
- 12 Cort: Oh, did it? Okay.
- 13 Jilene: We took it – I just took out any reference to who he represented.
- 14 Cort: Okay. I printed this once and saw that correction. And then it might clarify,
15 continuing that item, under the bullet point that begins 'Kirk noted that the Code
16 says nothing about age or years of experience,' continuing on in that paragraph,
17 Cort said, he [meaning Mr. Fox] had more experience than others in the crew. So
18 just add Mr. Hawks.
- 19 Jilene: Is that all the same thing? Oh, no, it's the second page – 32.
- 20 Cort: Yeah, second – next page and the second bullet point down that page, at least on
21 my copy. 'Cort said . . .'
- 22 Jilene: Mr. Fox?
- 23 Cort: Mr. Hawks.
- 24 Jilene: Hawks, oh, excuse me.
- 25 Cort: Had more experience than others did. Approved and then on the last bullet point
26 item, I believe the motion that I made that failed was to send it back to the
27 department for reconsideration rather than concurrence, but it died anyway, so.
28 Those would be a couple of _____ pick one of them up. With that, I move
29 to approve the minutes.
- 30 Dirk: Okay, motion by Cort, do we have a second?
- 31 Male: I'll second.
- 32 Dirk: _____ All in favor?

33 Group: Aye.

34 Dirk: Opposed?

35 Cort: Is that okay, Jilene, do you want me to hand you this or do you –

36 Jilene: That would be great.

37 Cort: Okay.

38 Dirk: I'm not aware of a need for an Executive Session _____.

39 Okay, then on to the Licensing Report.

40 Male: Mr. Chair, can _____ concur with the Licensing Report?

41 Dirk: Well, should I dare?

42 Male: I'll second that motion.

43 Dirk: Cort? All in favor?

44 Group: Aye.

45 Dirk: Passes. The Complaint and Enforcement Reports.

46 Cort: I just had a question on this new item – it's on the open investigations, and just a

47 yes/no, I think maybe Ken. Is this an example of – is Tammy still here?

48 Woman: She's right there.

49 Cort: Oh, there you are; I'm sorry. Is this an example of something that would be also

50 referring to Division of Real Estate for them to work on as well, I mean, could the

51 real estate and appraisers involved perhaps, or is this kind of – just in light of our

52 conversation last month where we talked about really the only overlap we have in

53 investigations with Division of Real Estate is when there's multiple players, or

54 conspirators, actors _____ in the alleged incident. So I was just, is this

55 one of those kinds that we would also be working cooperatively with DRE?

56 Tammy: Which, which report are you referring to?

57 Cort: So I'm looking at this new, I don't, my I-case number isn't showing up, but it was

58 – came in on 10/12 of 11, Open Investigation Summary Report. Skimming on

59 escrow files, forgery, charging fees for services not rendered.

60 Tammy: So you want to know if that's, that was a referral from the Division of Real Estate

61 or am I going to refer?

62 Cort: Yeah, is that an example of one where we would be working cooperatively with

63 DRE?

64 Tammy: It would be, it would be a mortgage licensee.

65 Cort: Mortgage licensee, okay.

66 Tammy: Yeah.

67 Cort: Okay. Okay. Well, I just – so, because we talked last week about, you know, this
68 – we also have the advisory council on streamlined – optimizing a streamlined
69 state government. That was one of their big justifications for how, for the
70 justification to move insurance over to real estate – or title insurance over to real
71 estate, but on our – at least on our open investigations summary we only have, as I
72 look at it, two where there could be overlap into, into the DRE and their scope of
73 what their license is. So, just kind of recom – you know wanted to clarify that
74 and have you reiterate that that really doesn't spill over that much in the real
75 world.

76 Tammy: No, and it should be noted, too, that even though our being involved, involved
77 more than investigators of the Division of Real Estate, it doesn't necessarily mean
78 that any of their licensees have any allegations against us.

79 Cort: Right.

80 Tammy: We quite often work together, them as well as with me to get the guts of the file to
81 add to – they don't always know all of our laws pertaining to their licensees and
82 vice-versa, so it's a lot of, you know, push and pull with that. But even this
83 particular one that you brought up, the only reason that this particular, that the
84 Division of Real Estate would be involved is just, it would be, it was just a
85 notification because there's less violations as well. So, it's more along those
86 lines. There's no allegations that their licensees _____.

87 Cort: Okay. Great, thank you.

88 Kirk: Mr. Chair, I make a motion to approve the Complaint and Enforcement Report.

89 Dirk: Motion by Kirk.

90 Cort: Second.

91 Dirk: Second by Cort. All in favor?

92 Group: Aye.

93 **START "WHETHER T&E CAN RECEIVE CRIMINAL INFORMATION ON TITLE LICENSEES"**

94 Dirk: Passes. _____ secretary is the action _____ whether the commission prints
95 the information about ongoing criminal investigations.

96 Female: And I don't recall really this discussion, but maybe we can talk about that a little
97 bit. Is it something that you wanted to receive criminal information while the
98 investigation was ongoing or backward?

99 Cort: Well, I think, maybe _____ the discussion I remember talking about and I
100 think I had a _____ conversation with Brett Barrett about this is whether or
101 not it would be helpful for the Commission to help screen some of those things
102 similar to how the Division of Real Estate screens some of their complaints. And,
103 you know, if there's a way to redact or if there's, you know, a way to make those
104 part of Executive Session or is there a way that we could be helpful—of
105 assistance in helping to look at those.

106 Female: So, what I looked at is, you know, what responsibilities the Commission has. The
107 Commission has regulatory authority. So, that would be, you know, of the
108 complaints that we receive and you certainly have the authority to look at that. In
109 looking at your responsibility, I don't see anything with regards to the
110 Commission's duties with regards to criminal investigation, but it sounds like
111 you're really asking something different. Can you maybe just assist the
112 department or, I guess it wouldn't be the _____, right?

113 Cort: Well, or, marketing violations. It wouldn't have to be – I, I didn't think we
114 narrowed it to criminal –

115 Female: I think that you get the marketing.

116 Cort: I didn't remember any discussion necessarily regarding criminal, but I missed the
117 first part of the last meeting, so perhaps something came up there. The question I
118 had kind of in discussion with some folks about is whether or not, you know, we
119 can, we can even be involved in helping to screen those, whether they're redacted
120 for names to help us, you know, protect us, or whether they're part of Executive
121 Session.

122 Female: Well, and I think this discussion came up when I was going through the meeting
123 act . . .

124 Cort: Right.

125 Female: . . . and one of the reasons you can go _____ closed session is to discuss criminal
126 misconduct. But I think that's, was the natural flow.

127 Cort: So, for the regulatory, marketing kinds of things, yes.

128 Female: Right. And if, if it fits within what we would normally receive and give to you
129 and if it goes to the criminal level, yes, it would come to you. But if it were solely
130 just being looked at under a criminal situation, I doubt it would come here. I
131 don't know that the department would have it, you know.

132 Cort: Somebody has to have had it , though, don't they?

133 Female: Right.

134 Cort: I mean, to determine, make that determination if it rises to the criminal
135 _____.

136 Female: Yeah. And they don't have to ___ for a fraud Commission, yeah, _____.

137 Female 2: If it rises to a level of criminal activity, then we will send a referral to Fraud, and
138 likewise if they receive something that was received as, insurance fraud and it
139 doesn't rise to that level, they'll in turn give us a fraud referral – from Fraud to us
140 and we will deal with that.

141 Cort: So they can go both ways?

142 Female 2: It can, yeah. And information is not shared both ways. We can share with them,
143 but once they begin a criminal investigation, they cannot share it with us.

144 Cort: Right.

145 Female 2: Once it's complete then, of course, then we can, then we can see the details and
146 ask questions, but a lot of times they're dealing with grand juries and things like
147 that, and we're not privy to that because that doesn't fall within our scope.

148 Cort: Sure. Sure. So, if we could, maybe is it – under what conditions could we or
149 could we help in those screening or guiding? Let me throw out the first –

150 Female: Well, I think it, it's always going to come here and then if it rises to the level of
151 fraud or criminal misconduct it will go to Fraud Commission.

152 Cort: Okay.

153 Female: And once it's there, then we can't do anything.

154 Cort: Right. But for the regular, everyday, here's something, here's an allegation, right
155 now it goes to the Tenth and she's the only screener, only filter, but I think that
156 one's involved in some of the licensing things and so we only see a number and
157 what section of the Code we think there was a problem. This last one I was just
158 talking about, that would obviously be something you're probably referring to
159 Fraud, is that?

160 Tammy?: Not at this point. It's still under investigation.

161 Cort: So, you haven't risen it to the level yet?

162 Tammy?: No, and I don't know that it will.

163 Cort: Okay.

164 Female 2: So, we're in essentially asking to get more detailed information about the cases?
165 Criminal or not?

166 Cort: Well, what I'm – here's the common conversation that goes on, okay? The
167 industry, you know, I hear it all the time from the ULTA, I go to meetings. You
168 know, we have a person that we, you know, the we, the industry, and we're gonna
169 talk about the budget item here later today that we're paying for, to help us police
170 ourselves and clean up our, our, you know, the companies that may need
171 reminders or may need correction in some of their business practices and their
172 marketing practices. And the frustration is that from the industry's perspective
173 they don't see any, they don't see an acknowledgement of a complaint; they don't
174 see a determination of the complaint. And so, you know, Larry and I were talking
175 this past summer and how the Division of Real Estate has a different model.
176 Their commission vents some of those things, and they listen to 'em and they say,
177 oop, looks like we might have something to work on here. And they kind of do a
178 little pre-screen is how I understand it. I haven't been to a commission meeting,
179 but they do a little screen. And if it would be helpful to the department, it would
180 be helpful to the industry, is that something we could be engaged in? In some
181 fashion whether it's – I think it would, you know, I'd prefer if it were redacted so
182 I didn't know the names, but black out everything but the settlement statement
183 and the contract or whatever it might be, you know, the names on the contract to
184 be able help determine if there's, you know, there's something that would, you
185 know. I think that was part of the idea of the Commission was you've got four
186 industry experts and one public member who can be of some assistance in helping
187 us regulate, helping the department regulate us.

188 Female: Just looking through your duties. You've got broad duties. It's very possible, and
189 we'd probably have to change a lot of the processes.

190 Cort: Right. But we're not restricted, so if we, I guess _____ restriction.

191 Female: Yeah, I mean, there may be when it comes specifically to criminal . . .

192 Cort: Right.

193 Female: . . . but if it's not.

194 Cort: Yeah, then could we say, oh, it looks like we need to roll this up the, up the chain.
195 Let me ask another question, if I could while, if, we occasionally get phone calls
196 because we're members of the Commission and people individually ask us about
197 things. And they'll say, and if we were to get asked about a circumstance or a
198 situation or a transaction that didn't involve, you know, we were just asked as a
199 member of the Commission or, to look at something, do we have a duty to bring
200 that forward as a violation? Is there – I know the underwriters do. If the
201 underwriter –

202 Female: So, if someone, someone asks you a question . . .

203 Cort: Yup.

204 Female: . . . and in your mind you believe it's a violation of the Code?

205 Cort: Yup. Do I, do I have a duty to bring that forward, theoretically, hypothetically?

206 Female: Well, I mean, there's nothing in the statute that says you have that duty.

207 Cort: There is for an underwriter, though. I think the underwriters are bound. If they
208 discover something there, I just didn't know.

209 Female: But you can always make a referral.

210 Cort: Right. Okay. Thank you. So, I, I was –

211 Female: So, I guess bottom line, we would have – if that's something the Commission
212 wants to do is to hear all the cases, I think we would have to change the whole
213 process. Obviously with the department's involvement.

214 Cort: Right, and that's just, you know, as we try to figure out a way to interface better
215 with the department and be of assistance, I just wanted to know for my, you
216 know, is it possible? And do we want to do it is another question, but, at least –

217 Female: There could be some hurdles because of your specific duty of essentially being
218 the administrative law judge although you've delegated that duty. So, if you hear
219 the investigation part, I don't know that you could then hear the matter.

220 Cort: Okay.

221 Female: There could be problems there.

222 Cort: Okay.

223 Female: But that would be something we would all definitely have to work through.

224 Cort: Sure. Thanks.

225 Female 2: Cort, if I'm right on something, there is – even though we don't discuss the
226 investigation while it's in process, once an enforcement action has been taken
227 against somebody and for those instances where it has to be concurred with by the
228 Commission, those are posted on our website, so, if the industry is aware of that,
229 then there is an end result. But, but typically we don't discuss the investigations
230 while they're ongoing.

231 Cort: Sure. And I guess, you know, the – and I know when, you know, if you're at the
232 meetings you kind of hear, you see the stipulations and orders and there's a few
233 things that are part of the public view, but for the perception of the people who
234 are out there, you know, I'm trying to find a way that we can communicate better
235 with the industry that we really are, you know, the department, you guys are

236 working hard at evaluating and resolving and prosecuting where need be, you
237 know, these cases, right now I think the industry doesn't feel that that's
238 happening. Just because it may not be, may not be, being communicated, we may
239 need to find a better way of communicating it. So I brought this up if it were part
240 of our agenda, you know, then it's, it's a little bit more in the public eye. It
241 would, you know, would, or maybe there's just a – I know that the consumer
242 complaint side has a more proactive reporting schedule and follow-up to the
243 consumer side, than, or maybe we could adopt some things to respond back. Just,
244 I know for example, I've, I've reported several things and nothing has been ever
245 reported back. They're either, hey, you know, thanks for sending this stuff in.
246 We looked into it and there was no violation. Or, hey, thanks for reporting it.
247 We've just completed the matter and here's the end result. It's just kind of a –
248 you send it out there and it goes in a black hole. So the industry has really by and
249 large, I think, stopped sending and stopped reporting, because they just don't, I
250 don't know that they think that the process works very well. And so that's just, I
251 guess, trying to solve one little problem there. It's just, you know, how to let the
252 industry know better what efforts were – that you were all expending in trying to
253 get – the department's expending in trying to get these things resolved. Maybe
254 we can find a way to communicate that back sometimes, so.

255 **START: ATTORNEY EXEMPTION**

256 Dirk: Discussion? Alright. The Request for Attorney Exemption for Larry's benefit,
257 this was on the agenda last month and it was a split vote, and so, where we were
258 four last month, now there are five. So, we'll have it again so. I guess, is
259 Mr. Hawkes here?

260 Hawkes: I am here today. Nice to meet ya. I apologize for not being able to be here last
261 time. But I talked to Blaine a little bit and I think he was, he did a great job in
262 representing my position and some things. I want to be here too just to clarify, if I
263 could, a little bit about my experience, just to give the Commission a chance to
264 fully view the evidence and figure out what's going to be best. As far as my title
265 experience, I know Jerry mentioned before that he was concerned about the depth
266 of my experience when I was working at Founders, and I did start as a runner in
267 high school, a runner. But it expanded to be more than that. I was working – they
268 had a search operation in Syracuse that did all their search for Davis and Weber
269 Counties, and I was helping to pull deeds, looking through abstracts, updating title
270 prior to recording, doing a lot of the things that, you know, are done as you're, as
271 you're closing deals. And, so I did that for a couple of years and then kinda got
272 into the mortgage side of things. Worked as a year in just marketing and then
273 after that I actually got my mortgage broker's license and for three years was
274 closing deals, so. I was taking applications, you know, getting people approved
275 and then reviewing the HUDs and preparing everything, you know, for closing as
276 those came back from the title company. So I just kinda want – I feel like my
277 situation's a little bit different than an attorney just straight out of law school
278 who's been doing real estate law for a year and a half which is what I've been
279 doing but that by itself, I think, is pretty limited, but my pre-law school

280 experience I feel like is, is a, is quite a bit more substantial than maybe some of
281 the other applicants that you see come before the Commission, so. I don't know
282 if there's any questions for me about, about that or what the Commission's
283 feelings are on that, but I don't _____ either. I guess the other thing too
284 real quick . . .

285 ?: _____.

286 Hawkes: Yeah, I talked about it too, that this, the rule the way I understand it, I'm not an
287 expert on it, but it says, an attorney with significant real estate experience and it
288 outlines some of the things that are real estate experience and licensed mortgage
289 broker – that counts. You know, and doing title searching and lots of things that
290 I've done, those count as real estate experience, so that's just kind of my position
291 on that, so.

292 Dirk: Do any of you have any other questions for Mr. Hawkes?

293 Larry: No, I've read his letter and I read the minutes. I wasn't here for the discussion. I
294 don't know whether there was a whole lot of discussion _____ in the
295 minutes.

296 Male: You missed a lot.

297 Larry: Well, okay. Are you looking to me to be, to be the final vote, is that what you're
298 saying?

299 Dirk: Well –

300 Male: It works out that way.

301 Cort: We could go back to that original motion which was that, I think Gary made it in
302 the minutes, that – to sustain the department's denial – was the original motion.
303 And it, it's two to two. I don't know if that –

304 Larry: And the denial from the department was because of, did not rise to the level of –
305 do we know? Did it rise to the level of experience that was normal?

306 Hawkes: Well, yeah. My understanding from the email I received was that it was a lack of
307 real estate experience, which kinda of – especially kind of caught me off guard
308 because it's this, you know, I feel like I have almost a decade of substantial and
309 legitimate real estate experience based on the language of the code and the rule,
310 but, yeah, that's my understanding anyway, so.

311 Male: Well, some of this information that Mr. Hawkes has presented we weren't aware
312 of at the last meeting.

313 Hawkes: Right.

314 Male: So, this, some of this is new information, so.

315 Hawkes: Yeah, I don't – I probably wasn't real clear as I could have been on kind of the
316 specific activities that I'd done at Founders and, you know, First Horizon is where
317 I worked as a mortgage officer, so.

318 Dirk: Thank you _____. There's a motion _____ a motion for . . .

319 Male: Well, Mr. Chair I make a motion that we approve Mr. Hawkes' request for his
320 exemption under the statutes.

321 Cort: So, I think it would be to send it to the department for reconsideration.

322 Male: Okay, right.

323 Male: Technically, yeah.

324 Male: Send it back to the department for reconsideration then.

325 Female: To ask them to concur with your –

326 Hancey: Cort, can I make a comment?

327 Cort: Yes.

328 Hancey: My name is Bruce Hancey, former co-owner and president of Founders Title
329 Company. And I would just say that the information contained in Mr. Hawkes'
330 letter relative to what he did when he was employed at Founders Title is
331 somewhat _____ relative to escrow experience and foreclosure
332 experience that he alludes to in his letter. He was not experienced or employed at
333 all doing any sort of escrow. Founder Title has never done trustee sales and, you
334 know, I don't want to make anybody look bad here. And I think the Commission
335 needs to know that some of that is somewhat _____. Thank you.

336 Hawkes: Maybe, if I could just speak to that a little bit. I think part of that might be, again,
337 a lack of clarification on my part. Is there something in particular that you – did
338 you talk to Jim Morris?

339 Hancey: Uh-huh. Yes.

340 Hawkes: Okay. And is there something _____ just the foreclosure, because my, my
341 – and again this was approximately eight years ago and my understanding what a
342 lot of the work that we did back then is, with regards to trustee sales and those
343 types of things, were, you know, I was, I was involved on the title side, you know
344 and so.

345 Hancey: Right. As far as trustee's sale, trustee, as far as doing anything other than a search
346 and maybe a limited examination for a foreclosure report, that's not necessarily

347 what is stated in this letter. Escrow – if you were in Syracuse working with Ron,
348 which I know you were . . .

349 Hawkes: Right, Ron _____.

350 Hancey: . . . has nothing to do with any of the escrow stuff, and, you know, let's just, you
351 know, call it like it is.

352 Hawkes: Okay. And that's fine.

353 Hancey: Not necessarily like it was.

354 Hawkes: Okay. Well, again, I apologize. I felt like I was accurate with the Commission
355 and didn't feel like I had enhanced anything beyond what had happened, but.

356 Dirk: Let's just go on. So, motion by Kirk to re____ the department for
357 reconsideration. Any concurrence? Any concurrence?

358 Male: I'll second that.

359 Dirk: All in favor.

360 Group: Aye.

361 Dirk: Any opposed. Okay.

362 **START: LSI STIPULATION & ORDER**

363 Chair: Alright the Stip and Order for _____ work.

364 Male: Yes.

365 Mark: I believe you – this was attached to your agenda and minutes and that, so
366 hopefully you've had an opportunity to review it. I'll just kind of summarize the
367 findings and fact. This is the stipulation entered into between the parties as of
368 October 27, 2011. And I received it that same day and looked through it and
369 passed it on and recommend it to you. And the facts based upon that, sometime in
370 January of 2011, the department apparently received some information, a
371 complaint, in regards to LS Title Insurance Agency of Utah, Inc. In reviewing in
372 February – from that time, January through February, the control of business
373 reports, the department sent correspondence to respondent requesting further
374 information regarding trust accounts for the years 2008 and 2009, an itemization
375 of premiums paid to insurers for that same two-year time frame. The
376 investigation determined information regards to trust accounts of Bank of
377 America and National City Bank and US Bank which are summarized that trust
378 account monies had not been deposited in federally insured depository institutions
379 as required by 31A-23a-409. Trust accounts are not established with an
380 appropriate or a federal employee identification number _____ licensee as

381 required by Administrative Code § R590-170-4, and apparently non-licensees
382 were permitted to be signatories on some of the trust accounts when the non-
383 licensee was not an employee with specific responsibility for trust accounts as
384 required by R590-170-4. And a fourth reference is the investigation also
385 determined that trustee's sale guarantees and other insurance products were
386 signed by an individual not licensed in the state of Utah pursuant to 31A-23a-302.
387 It is noted that the respondent was cooperative and diligently responded to the
388 various requests and most, if not all, and I don't know what items may not be
389 fully corrected, but it says most, if not all, corrective action items are completed.
390 The parties in their discussions, Mr. Lemmon representing the department through
391 the AG's office, agreed to a \$5,000 administrative forfeiture trust account
392 violations at \$1,000 forfeiture for the reference to unlicensed individuals – named
393 individuals but they allowed unlicensed parties to be on the signatories. And so a
394 total recommendation of \$6,000 administrative forfeiture to be paid within
395 30 days of their approval that we received that.

396 Cort: Mr. Chair, if I may, Mark, is there any note or do you have any indication of the
397 number of transactions that were conducted without a license?

398 Mark: I don't. And I'm not sure if Ms. Greening dealt with that matter or not. I'm not
399 sure who the investigator was.

400 Cort: Tammy, do you have any?

401 Tammy: Not without reading any of my notes, I don't.

402 Cort: I guess the problem or the difficulty I have with this is two years ago there's a
403 gentleman in this room today who we hit him with a thousand dollars per
404 violation/per transaction. And it's been our practice, you know, to look, you
405 know, when we have marketing violations, we have, you know, so much per
406 violation and then this would, this stipulation/order would leave me to believe that
407 there was maybe just one incident where there was – I mean, we're only hitting
408 one violation for an unlicensed individual violation. And I would imagine there
409 were multiple people signing ERs, and signing commitments for title insurance,
410 signing escrow settlement statements and over, you know, as many as in the
411 findings of fact, you know, or in the – sorry, they reviewed trust accounts for
412 years 2008 and 2009, it doesn't say anything about 2010 and 2011, but I guess
413 I'm, I have a little heartburn with the inconsistency, or apparent committee
414 inconsistency, of not doing any kind of a per violation assessment. We don't have
415 those facts.

416 Mark: Understandable that you're concerned. As I say, I don't take part of the
417 discussions

418 Cort: Right. Right.

419 Mark: . . . that presented to him or reviewed them. I do have in the back of my mind my
420 past experiences and your past thoughts and that's why I pass it on to you. That's

421 why it's a recommendation and you're the ultimate decider of that. I'm not
422 giving you legal direction which you have a counsel for is, you certainly could
423 send it back to have those facts further developed and detailed in that regards.
424 That's the only thing I could see. Or go forward with what you've got and have a
425 vote on it.

426 Cort: Well, for discussion, to make that, I'll make a motion that we send it back for
427 further clarification on the number of violations and the – with at least my
428 comment that it doesn't seem appropriate, perhaps what might be the nature and
429 scope of the violation could be.

430 Jerry: I'd second that. I think we need to be consistent.

431 Chair: Seconded by Larry to District _____. All in favor?

432 Group: Aye.

433 **START: RECONSIDERATION FOR MIKE JENSEN**

434 Chair: Any opposed? Okay, thank you. Okay, so Petition for Reconsideration by Mike
435 Jensen is granted _____.

436 Brett: Yeah, thank you Officer Chairman and members of the Commission. This staff –
437 what I'll do is initiate this so that you understand what you have in your Board
438 packets. I essentially have three documents. You have a letter from Mr. Jensen,
439 which the Department is considering a petition for a brief review of the Order that
440 the – the Stipulation Order that the Commission agreed to back in 2009. That
441 Stipulation and Order indicated that – or this agreement that Mr. Jensen pay and
442 administer forfeiture in the matter for \$25,000 in two separate payments as the
443 facts were indicated in the third document that you have before you, which is a
444 Proposed Amended Order for your consideration. Mr. Jensen did pay the bank
445 one payment, so he did pay \$12,500 of the \$25,000 he owed – you know
446 businesses have changed and I'll let Mr. Jensen speak to that, but we ___ today –
447 I just wanted to point out that – where we are. I also wanted to point out that one
448 of the reasons – why I'm frustrated is – oh, my gosh, \$25,000. That's a serious
449 fine, but then in reading the Stipulation and Order, I recognized that maybe one of
450 the reasons it was such a large amount was that the facts here indicate that there
451 were 1,056 title insurance policies that passed through his office for him after his
452 license had expired and so because there's so many I think that may have been the
453 reason for such a large fine. So, unless the Commissioner has any questions, I'll
454 let Mr. Jensen address this and speak on some of –

455 Mike: Thank you for letting me meet with you today. There are a few extenuating
456 circumstances, one being that when this all happened, we were in a move. We
457 were moving from one building to a new building. We were all excited, all are
458 efforts were going towards that. The renewal form came to our old address, was
459 sent back to the state as undeliverable. Two months later, I sent in my annual
460 report and sent in my annual report on a timely basis from that point on. It was

461 never discovered by us, maybe some companies run and hide, I pay based upon
462 what comes across my desk bill-wise and _____ everything else out, have a
463 specific date laid out – this is when this is coming due and so on. That’s what
464 happened, there was no intentional diversion as far as funds were concerned, not
465 to pay the state, not to do anything illegal or anything like that. I’ve been in the
466 title insurance business for forty years, a third generation – actually four
467 generation, my great-grandfathers rose in the title business spending it as an
468 abstractor. I love this business, it’s the only thing I’ve ever done and would do
469 nothing to deface it in any way. I’ve served in several capacities, including
470 executive secretary through the Utah and Title Association for ten years and
471 second vice, first vice and president of that same association, as well as doing
472 business on the outside of the Home Builder’s Association for several years as
473 well. This is something that bothered me greatly but it was something that was
474 totally unintentional. I’ve been in the business long enough to know that people
475 intentionally break the law around this state. They do it on a daily basis in our
476 business, especially, they do it on a daily basis and have for several years that
477 profited by it. I have not done that. I did not profit by what I did in not paying
478 this fee. As soon as I found out about it, interestingly enough, I found out about it
479 by a realtor who was upset about a \$23.00 fee and decided to see if we were
480 licensed or not and brought that to our marketing person’s attention and used that
481 against us and several of our clients. That’s how I found out about it. I reported
482 myself, the state did not come to me, I self-reported albeit through the wrong
483 channels. My son-in-law, who is friends with the Attorney General Shurtleff,
484 talked to him about it, got kind of fired up in that area and I know now that that
485 was a wrong area to stir up to start it in, but it got started that way. I did pay the
486 \$12,000 – was set up to pay two payments, \$12,500 each payment. I paid the first
487 \$12,500 on time. The second \$12,500 was due this last summer, at which time I
488 wrote that letter to the Commissioner and explained to him why I thought that the
489 second \$12,500 should be discontinued – that I felt that I had learned my lesson,
490 I’m not in business any more. I lost my business. At the time this fine was
491 levied, we had three people in the company working, including myself. I was
492 unable to work through the last three months of that, I was studying for the test. I
493 was not able to do closings, I was unable to do searches. We lost a lot of
494 business. I lost several large commercial deals that we had in play. I felt that I
495 had lost enough without paying the second \$12,500..I’m not a criminal, I am not a
496 person who breaks any laws, I never have in this business. There’s people in this
497 room that I’ve served with for over 30 years that know me that know that I don’t
498 and that’s all that I have to say.

499 Male: Thank you very much.

500 Male: Mr. Chair, I have a question and maybe this should be addressed to the
501 department. Was the fact that the amount of the number of policy issued – was
502 that, he said that was a factor – the original fine?

503 Mike: You know, the Stipulation and Order pre-dates my experience with the
504 department, so I wouldn’t be able to speak that to directly, but I would assume,

505 and it's my understanding, that because there were – because of the number of
506 title transactions that processed during the period of lapse, certainly I would think,
507 it came into play in the determination of the fine amount.

508 Chair: Well _____, if he were less successful during that period, the fine would have been
509 less and that's seems like –

510 Cort: Potentially, you know, when we look at the Code – the fines are, the way the law
511 reads, is on per violation basis and so those that violate the law more often – the
512 way the law is written would imply that they should be fined more money.

513 Mike: White's case is the case I was referring to when I made my previous comment and
514 inconsistency and comparing the inconsistency of you know, what we're looking
515 at with our last agenda item and what the Commission, the department previously
516 undertook and continues to look at the violation in the nature and whatever else
517 that they had to look at. So, I just wanted to clarify that.

518 Chair: In my recollection of – the discussion that we had on – on that, we weren't
519 assessing per violation, but we did look at the numbers that seemed what it rose to
520 and then I think we ended up – because I think this is one that we went back and
521 forth with the department as to what the fine was – the final fine was going to be.

522 Cort: And, you're the only surviving member of that original verdict. I didn't start until
523 the fall in August or I started, I think the following September, I think, so.

524 Female: If I could add something, I was one of the investigators on this. Mr. Jensen's
525 licensed, his individual license also made up the Agency license and in cases
526 similar to that where the individual is the Agency, we did not take any action on
527 the Agency at all. So, his fine could have been twice as much. So that's
528 something to consider when you're dealing with an individual whose license also
529 makes up the Agency requirement. So, technically, during the four years that he
530 was not licensed, the Agency was not technically able to operate. So, it could
531 have been a double jeopardy kind of a situation.

532 Chair: But technically, I'm sending my annual report in on an annual basis. I am in
533 business as far as the state is concerned. At what point, do they check to see if the
534 Company – the people running the Company are licensed or not? If – the way it
535 was discussed with me when I asked that question is that we're not in charge of
536 making sure that you are licensed or not and I guess I can understand that. But, if
537 I get something back in the mail that says, undeliverable, but I'm getting an
538 annual report from the same company at a different address, at what point does
539 somebody check on that and find out if this company is really in business or not?
540 \$75.00 or whatever it is to register, is certainly not enough for somebody to cheat
541 on a deal because if it is strictly a deal where we were busy and there was three of
542 us and, you know, we didn't get something to respond to, that's about all it was.
543 It certainly wasn't done intentionally or to cheat anybody out of any money. So –

544 Male: Suzette?

545 Suzette: It's just about procedure. Annual reports come to Tammy, why couldn't he have
546 _____ from Tammy? It's a whole different division. So, you know, but
547 she saw them, that they looked good, she – it wasn't her place to go check if the
548 business was licensed.

549 Cort: If nobody else wants to make a motion, I'll make a motion that we stop the
550 motion to amend the order and we approve whatever we appropriate to tax
551 _____. We have an amended order in front of us and that the appropriate –

552 Female: So, it looks like it's drafted such that it's your motion and then it would go to the
553 Commissioner –

554 Cort: Right.

555 Kirk: I'll second that motion. Mr. Chair?

556 Chair: I'll second. Cort is seconded by Kirk. All in favor?

557 Group: Aye.

558 Chair: Any opposed?

559 Male: Mr. Chair, if I may just for the minutes, one, to make sure that we have the correct
560 address.

561 [Laughter]

562 Male: It's 6137 Burnetts Cove 84121?

563 Mike: No.

564 Male: No. Okay.

565 Mike: And, I have just moved in – right now, it's with my sister-in-law. We've moved
566 in with my sister-in-law and I don't – I've been there three days, so I don't –

567 Male: Okay. We'll keep me guessing.

568 Mike: I'll get the address to all of you.

569 Female: This specific form is required, when you have a change of address. This that you
570 can obtain from the website. And that has to be submitted to ___ the License
571 Board.

572 Mike: Okay.

573 Female: You have 30 days to do it.

574

575 **START: DEFINITION OF REAL ESTATE SETTLEMENT & CLOSINGS**

576 **REALLY THE NOTARY ISSUE**

577 Male: All right, onto Old Business – we visited a section of the real estate escrow
578 settlements and closings.

579 Cort: Do we have any working items here? Oh wait – I think, didn't we – Suzette
580 maybe you could help on this definition of real estate escrow settlements and real
581 estate closings. We forwarded some language to you and then you mashed it
582 around with all the rest of the input that you received and you forwarded
583 something to the department's bill, is that right?

584 Suzette: Not on ____.

585 Male: No, on this one.

586 Suzette: No. You turned it down and therefore, we're waiting for you to come up to the
587 Commissioner _____ I couldn't get agreement.

588 Cort: Okay. So, there's lack of agreement.

589 Brett: Now, if I could speak to that too, that the Commissioner is running a clean-up bill,
590 uh, probably about _____ speakers that we've heard this week. And,
591 because there was not a consensus with the language, it didn't seem appropriate to
592 go into a clean-up bill that probably wouldn't be fair to the Commissioner or the
593 sponsor of the bill whose understanding is that it is a clean-up bill and its, you
594 know, non-controversial items. Not that this is especially a controversial item,
595 but once the areas that we seek and continually get hung up in is the use of the
596 word "delivery" – delivering documents because ____ it could be FedEx'd and this
597 department was uncomfortable with that or much of the input we got from
598 industry felt strongly about keeping that word "delivery" in and so it's really what
599 we ought to do is sit down and see if we can come up with something and have it
600 ready to go if we have an opportunity or certainly, industry or the Commission
601 may engage the support of a legislator and move forward with the definition.

602 Cort: Okay. Thank you. So, I guess it's up to us to figure out we want to try to reach a
603 consensus. I know we had sent, I think, Matt Sager had ____ smart
604 recommendation that gave us a place to start talking and working on some
605 discussion, but do we want to work on that, continue that or do we want to just let
606 the ULTA try to work on that or, how do we make that _____?

607 Male: Is the ULTA dealing with that right now, Cort?

608 Cort: Well, change _____. I mean, you kind of helped come up with the
609 language originally, I think. Do you guys have any other proposed alternatives
610 for definitions at all? James is shaking his head no.

611 Male: I've seen the different stabs at it that would come from that and different people
612 and –

613 Male: If the whole hang-up is on the word “delivery” maybe, so that one word and the
614 definition, try to define it slightly differently.

615 Male: _____ are you have anything else gets excited about a sticking point that was –

616 Brett: You know, as I recall, that was a primary area that we just couldn't get a
617 consensus on. The Department is certainly committed to working with industry
618 or Commission or whoever we want to move forward now that there we are
619 committed to work with you and, you know, hopefully we can come up with a
620 definition of escrow or a title closing that helps give Tammy the tools she needs
621 to address [inaudible – background] referred to as the mobile notary issue where
622 there's allegedly notaries that are doing more than just notarizing documents and
623 maybe gaveling or going too far into title and escrow business without the
624 appropriate license issued by the Department.

625 Male: Is there a time frame, a reasonable time frame. I know we've missed the cleanup
626 portion of the bill, but –

627 Male: Where the industry certainly would have an opportunity like anybody to possibly
628 seek an amendment to the Commissioner's Bill, which will be herding maybe this
629 week and just kind of gets a head start for when the Legislature convenes in the
630 spring. So, that may be one option. I don't know, I understand this
631 representative from the Lieutenant Governor's Office here today. We might also
632 engage with them so that we're all on the same page and make certain we have
633 what we need so that there may be other opportunities there or certainly engage
634 support from the Legislature or what – how to get a minor change. So I think
635 there are a couple of options, but I would think that this is something the sooner
636 we get it done, the sooner we have it ready to go and the more options we may
637 have a bill.

638 Cort: Okay.

639 Tammy: Let me add something. It's not so much the definition as it is the act. Glenn says
640 there is nothing in the statute that says that a title officer, so the title producer's
641 license with the search line of authority must sign a PR. I know that, you know
642 that, but if ever that is challenged, there's nothing in the statute that kind of
643 outlines the duties of the actual license, so title search, title escrow and then
644 marketing. We all have a sense of what that is because we've worked in the
645 industry. We all know that a licensed escrow officer, if that it going through a
646 title agency, must sign the HUD. Anybody can sign HUDs, but if it's going
647 through a title agency, then the person signing in behalf of the Agency, who's
648 authorized to act in behalf of the Agency, has to be that licensed person. So, if
649 that helps give you some idea of, I mean, it's kind of like a – I think a great
650 attorney once gave me the – the Supreme Court doesn't really know and pardon

651 my reference, can't really give you an example of what pornography is, but if they
652 see it, they'll tell you it is or isn't. I can give you an example all day, every day
653 and tell you that I think this should be title, I think this should be escrow, I don't
654 think that – I mean a marketing person can quote fees but they can't sign HUDs.
655 Do you see where I'm going with this? So we need to outline the duties. They
656 don't need to be – you can make it as broad as you want or you can define them
657 and somehow we can work it into statute on _____ the powers that be can
658 assist, but I'm clear on what an escrow is, I'm clear on what a title search is, I'm
659 clear on what the respective responsibilities are. But I skipped 17, now 20 with
660 regulation in the industry, so, it's just going to take one person to challenge me
661 and maybe it's that notary public who said that they didn't step outside the
662 bounds, but if we challenge them, and they say well where is it written in statute?
663 So, if that helps you kind of get to where we need to be? I'm competent in my
664 skills to seek enforcement on something, but I'm always up against somebody
665 who's going to challenge me and that's what we have to look at, who's going to
666 challenge this?

667 Chair: So, what _____.

668 Male: _____. Do you have a definition?

669 [Laughter]

670 Troy: So, how many notaries have you had, that you've actually gone after? I mean,
671 how many have you sent cease and desist orders to or?

672 Tammy: I've tried with one.

673 Troy: So you've had one?

674 Tammy: I've tried. I submitted it to the AG's office. But, the problem is, is that unless
675 I'm sitting at that home closing, or unless I can get signed statements on
676 somebody who was sitting at that closing saying –

677 Cort: Like the _____ borrower.

678 Tammy: Like the borrower, yeah. But, typically the borrower doesn't know. Well, maybe
679 _____. So unless it turns into a "he said / she said" and even though I have a
680 preponderance of the evidence as far as being the level that I have to go to, I have
681 a hard time. This particular person that I saw a D&B on, she told me what she
682 does and so based on that statement, I submitted that to my AG and it's with the
683 AG still. So, that was kind of hard. Now, again, unless I'm sitting there, I almost
684 had an opportunity, I had a department employee that was doing a refi that was
685 actually gonna to go to her house and we're sending out a notary. Someone(?)
686 was going to be there so I can go see him on closing – the refi so – so, unless I get
687 signed statement, in fact, I have a referral from Cort, a gentleman that said that – I
688 got the name from Cort. I asked him to get me names and addresses, they were

689 the reverse closings and I never heard back from them. So, you know who that
690 was, Cort.

691 Cort: I do know about that.

692 Tammy: Yeah. So I need dates and times and I need – I mean, if you told me the people, I
693 can go get the statements, that’s what I do, but it just becomes very common, so
694 why in particular go, and seek enforcement on site, when that’s a notary saying
695 they’ve stepped over the boundaries and performed escrow duties. If they decide
696 to challenge me, well then what exactly – where –

697 Cort: _____?

698 Tammy: Escrow duties.

699 Troy: I just, I guess, some of my frustration is, this Committee is going after notaries –
700 and we have one _____. This is not a personal attack, okay? It seems like
701 it’s a lot of effort to police an industry that’s not even under your jurisdiction and,
702 we’re outside of that. We notarize documents, I’m not doing escrow. I don’t
703 commit escrow, I don’t commit a lot of things – I’m not doing that. We may have
704 a few notaries who – if the notaries are so, I mean, the way they have been
705 represented in this Commission, is that they’re so inept, that they don’t understand
706 escrow so how could they be doing escrow, in essence, I mean. Most of ‘em
707 don’t understand how to get a notary license then how in the world are they going
708 to be doing escrow or explain the docs and ___ ownership? Okay. Now, I’ve
709 been in lots of title companies, okay, with guys who are supposed escrow officers
710 who rented licenses or are loan officers and I’ve been in the industry for over 20
711 years, I do bank conversions. I have done bank conversions, acquisitions starting
712 with bank from scratch and understanding all the regulatory stuff that goes into
713 that and then running this business for over ten years. So I’ve got 20 years of
714 understanding this information, okay. And I’ve walked into title companies cause
715 they ask me to come in there as a notary and guess what I found. I find licensed
716 escrow “escrow officers” who couldn’t find the difference between an APR and
717 an APY, okay. So, I think it’s more important that maybe they regulate their own
718 licensed officers than worrying about notaries that supposedly know nothing
719 about the escrow business.

720 Troy: I just want to run my business, I don’t want to be – have to come here every
721 month. I’m not placing blame on anybody, I just want to be able – I don’t do any
722 of that stuff. I simply provide an opportunity for people to sign their documents
723 without having to come into a title company. You can use my services, as an in-
724 state title company, out-state title company’s use my services. I’m just – I guess
725 I’m just kind of befuddled as to why you’re using so much energy on this issue?

726 Male: I think some of the things is – we have tried to go away from the notary issue
727 more to just unlicensed tax _____ just cause it really doesn’t matter, the notary.

728 Male: Yeah, but if it’s unlicensed, it’s unlicensed.

729 Male: The unlicensed activity, a person acting on behalf of an escrow officer that's
730 unlicensed regardless of what other licenses are certification thing ___ is
731 irrelevant. They're unlicensed to that _____ duty – that's the issue.

732 Troy: I mean, I think you would be more concerned about licensees who don't
733 understand their own industry well enough to explain it to the borrower. You
734 know, when they get in a borrowing situation, you have somebody who's trying
735 to explain a HUD to them is obvious – who obviously doesn't know how to
736 explain a HUD to them. So, it's obvious to me that maybe the licensing
737 procedure or the testing procedure or whatever it is - is not, how do I want to say
738 that?

739 Female: Apt.

740 Male: Apt. I'm not, you know, I'm not trying to rip on anybody, I'm just saying that it
741 seems like, you know, I get to some closings and I'm listening to this person try to
742 explain to this other person what this really means and its baloney. And how do I
743 know that? Because I spent lots of years in the industry and I know it's baloney,
744 so they're misrepresenting to that individual what the HUD means. Now, it's not
745 happening a ton, but it happens more than this than the notaries explaining it to
746 them.

747 Cort: Mr. Chair, for our discussion, I'd be happy to take some input from the
748 department and the Lieutenant Governor's office, perhaps and make some – try
749 and get those contact information and have another stab at – in the language for us
750 to consider and if anybody would like to join me, I'd welcome their help and
751 suggestions.

752 Male: I'll try to get involved, Cort.

753 Cort: Okay.

754 Male: So we'll try to get some _____. Tammy, Cort and I will head that up and
755 when do you want us to be done for next month, hopefully we'll some further
756 clarification in that length of time, so do we have any further comment on that?

757 Cort: We will have one more bite at the apple. If we miss this Wednesday, we'll have
758 another one as it, as it comes to the regular legislative committee, too. So, let's –

759 Male: What's the time frame there?

760 Cort: Well, during the sessions all day, during the session. Probably early in the session
761 I would think.

762 Male : Thank you.

763 Male: So.

764 **START: NEW LANGUAGE FOR 31A-23a-406**

765 Male : We propose a new language for 31A-23-406. Everyone have that?

766 Group: Yes.

767 Woman: _____, you've got that in your packet. Really, our team is begin on
768 line 2537. I'm not sure why line 2546 is crossed out. I'm not sure what it's
769 supposed to be.

770 Cort: Yeah, I think that was my question when I read it.

771 Woman: Just for –

772 Cort: Because it doesn't agree without it.

773 Woman: Yeah, it – I don't, I don't know that that was already checked. Suzette, is this
774 from _____ counsel?

775 Suzette: _____ of the bill, but I don't think it should be crossed out. It
776 shouldn't.

777 Cort: Yeah.

778 Woman: So, the changes from when you saw it last time are on line 2538. _____.
779 Or we say – we added this last phrase: May be disbursed on the same day as the
780 check is deposited. We didn't have anything there, so it's – it's not, not a
781 complete thought. So, it will now read as used in the subsection 5, the money is
782 considered to be collected and cleared – if you look at that. It may be disbursed
783 as solids from net 3 the check issued by a farm credit service, authorizing the
784 Farm Credit Act; may be disbursed on the same the check is deposited. So we
785 need to know if that is appropriate. If that meets with your approval – that last
786 phrase.

787 Cort: What we're stating that by doing this is that it's, it was cash. But _____ wire – or a
788 wire. And do we, you know, do we want to give it that level of treatment or do
789 we want to call it like a cashier's check in days of old and say disbursed the next
790 day? Functionally, the bank isn't going to put those funds in our account that
791 same day. Maybe, if anybody knows differently, just jump in but –

792 Male: Well that's the whole issue. If the money is actually not in your account on that
793 day.

794 Cort: Yeah.

795 Male: That we're disbursing, so you're technically overdrawing that – your cash is in the
796 account, the wire's in the account, the cashier's check isn't, blunt credit check is
797 not in the account. I'm not sure why we're giving it that level other than –

798 Woman: No, please recall that we sent out this urgent email last week asking for your
799 opinion on this and everyone agrees this is the appropriate thing to – we may have
800 a little difficulty changing it, but I’m bringing it to your attention.

801 Male: All right.

802 Male: Mr. Chair, I just have one question. Why would we distinguish between the
803 check issued by a farm credit service and a check from a principal broker,
804 associate broker? Why did you make that differentiation?

805 Cort: Well, the de minimis – I mean what we looked at were originally for discussions
806 hearing. Dirk may be wrong here for it. I think it was – if you’re looking at, you
807 know, a half million dollar check, it’s different from looking at a check for
808 \$2,000. And so we put a little curve out in there to facilitate transactions and
809 when the amounts were limited to less than \$10,000. I think the other change was
810 exactly what we needed to do on line 2560. That allows for other checks and
811 other instruments to come in to earnest money deposits or others – give them a
812 definition for when they could be considered disbursed and considered good
813 funds. So that may be something _____ up nicely.

814 Woman: So, you know, we definitely made a change by there being a Farm Credit Act
815 check under subsection B giving it a new number, as opposed to being a
816 subparagraph and a romanette III.

817 Woman: I’ll look at it.

818 Male: Did we have any original language, same day?

819 Woman: _____.

820 Woman: So the old language is if you look at 31(a)23 and 406, subsection 5(e)(3), it states
821 that the “proceeds of one or more of the following financial instruments may be
822 disbursed on the same day the financial instruments are deposited if received from
823 a single party to the real estate transaction and if the advocate of the financial
824 instruments for the real estate transaction is less than \$10,000.” And then that
825 was the farm credit was E up there – a check issued from the Farm Credit Service
826 authorized under the Farm Credit Act.

827 Male: So it _____.

828 Male: So we were considering a part of that account _____.

829 Woman: Except it was part of the \$10,000.

830 Male: Right.

831 Woman: So, by moving it up it’s, it doesn’t appear to be more than \$10,000.

832 Cort: So that's – okay. That, that, that makes sense then, with what we were –

833 Male: We're not really changing it. It rolls to that level on the, in the –

834 Cort: Right, with the caveat it's less than 10, all of those instruments have to be less
835 than \$10,000.

836 Male: Right.

837 Cort: And so I don't know how often we would receive a check for part or less than
838 \$10,000 so I think it does have a ___ in some section and perhaps we just need to
839 treat it like, you know, like maybe next day availability like the old days of
840 cashier's checks _____.

841 Woman: So ,we, so now with the added this may be disbursed on the same day the check's
842 deposited?

843 Male: Yeah.

844 Woman: To be consistent with –

845 Cort: What it was underneath –

846 Woman: Right.

847 Cort: But to be totally consistent we have to say and is for less than \$10,000.

848 Woman: Right.

849 Male: So –

850 Woman: But you're saying with that _____.

851 Male: Yeah, in practice.

852 Woman: Which is why we _____

853 Cort: Yeah. I'd be more comfortable if we could find a way to amend that, Mr. Chair,
854 and call it either next day – at least the next day to allow the bank to catch up with
855 us instead of same day. Has anybody ever watched one of those _____ to
856 see how?

857 Male: [Inaudible] _____ it's not going to be there either.

858 Male: Instead of same day _____.

859 Cort: Next business day.

860 Male: I say it probably not going to hit the next day either.

861 Cort: Well, but neither did the cashier's checks . . .

862 Male: I understand.

863 Cort: . . . on days gone by.

864 Male: They weren't sold to be that –

865 Cort: What we tried to do is, is we tried to solve part of the problem by saying okay, if
866 it's more than \$10,000, we would wire cause then we know we've got good funds
867 and limit our exposure for cashier's checks and on fraudulent or otherwise
868 _____ cleared for whatever, you know, the bank goes out of business or
869 whatever reason, we had some cashier's check for us there. Official checks for
870 _____ issue that we were concerned about.

871 Woman: Well, maybe if you're concerned about it, you just, it needs to be deleted and then
872 it fits with under –

873 Male: Other funds?

874 Woman: It's under not specified by these minutes upon notification from the financial
875 institution the money –

876 Male: So take out the clause _____.

877 Male: Take it all out.

878 Woman: I don't know why that was given a special –

879 Male: Special seniority.

880 Woman: Yeah.

881 Male: This is just historical _____.

882 Woman: There must be some reason for this –

883 Male: I think it was part of the old Code. Yeah, before the change.

884 Male: So that takes out 2537 and 38?

885 Cort: Uh, huh.

886 Woman: _____. And 39?

887 Cort: I think. I don't know.

888 Male: 39 _____.

889 Woman; Suzette, what is the process at this point?

890 Suzette: Then we'd have to get an amendment. The clients can get an amendment or
891 _____ sponsoring the bill . . .

892 Cort: This is in the clean up, too?

893 Suzette: Yes.

894 Cort: Okay. Well I think we're probably – we're making motion, we'd probably be
895 unanimous that my, I don't know, that with that we're to have a unanimous
896 motion, we might be able to go to the sponsor and just explain in our haste we, we
897 missed this original \$10,000 cap. This is why we need to amend it, but, is there
898 anybody – I don't know maybe, Mr. Chair, who could ask or we can give our
899 members that our joining us if they have any thoughts on their experience with
900 farm credit checks and –

901 Those who are doing business in rural counties perhaps more than I am might
902 have more experience with those, but –

903 Male: Cort, _____ bureau checks that come in are not necessarily checks. They
904 come in most often as an ACH – automated clearing house. So it's –

905 Cort: So maybe this is an antiquated old carry-back from –

906 Male: Yeah. There was – the only ACH's that I'm sure – that underwriters authorize
907 seems to use otherwise, you cannot accept ACH. So they are – it's as those that
908 are _____ deposit. So –

909 Male: It's not as good as a wire but it's pretty close.

910 Cort: You don't think they'll unwind them?

911 Male: We don't worry about – well, who knows, we've got _____. We don't worry too
912 much about the farm credit bureau unwinding an ACH.

913 Cort: Thank you. I make the motion that we maybe approach the sponsors as delete
914 that entire reference as it now appears to be obsolete, both business practices.

915 Suzette: Just interject that when whoever approaches the sponsor might just clarify that
916 lines 25 to 46 is not completed.

917 Cort: It should be back in?

918 Suzette: That should be in.

919 Cort: I'll include that in my motion.

920 Male: And this is the ____.

921 Male: A motion by Cort to make those changes – who'd like to second?

922 Male: I'll second it.

923 Male: _____. All in favor?

924 Group: Aye.

925 Male: Any opposed?

926 Male: So, with that, at this point in time, what's the best way to get representative down
927 again to - would it be to email him on behalf of the Commission with the
928 proposed changes or how is it best to do that?

929 Female: Do you have an answer to that?

930 Male: You know, I don't know quite sure what the answer is. We could ask
931 Representative Duncan if a – make that change when commissioner presents the
932 bills _____. You'd want _____ to note that in his testimony –
933 his presentation, so I suppose we could try and localize.

934 Cort: I would think we probably have to have a substitute ready to go or something by a
935 member of the process.

936 Female: If you add 15 words or more it has to be a substitute, so they can do
937 _____. They can I believe – they can _____.

938 Cort: Unlimited words?

939 Female: I'd have to double check on that _____ . . .

940 Cort: Okay.

941 Female: . . . but it goes – the Chairman by 15 words or less.

942 Cort: So we're not adding any word – well we're adding back in one of those.

943 Female: All between the _____ strike _____. I don't think that would be adding
944 _____.

945 Cort: Okay.

946 Male: Exactly 15 words or _____?

947 Cort: That's 15 words.

948 Male: How much you counting _____ others _____.

949 Male: So, is there anything – I just want – from our side that it would be best to say that
950 the department _____ but the minutes – is that all we need to take the
951 minutes _____ Commissioner or what? What would we need to prepare to
952 make sure that gets done by Wednesday? Or we could get it today?

953 Male: I think we have what we need as long as Perry and we're certain of exactly what
954 changes you want which is 2537 to 2540. You want that out. You want 2546
955 back in?

956 Cort: Or leave romanette IV on 2540.

957 Male: Right.

958 Male: 2540. Okay.

959 Cort: Yeah.

960 Male: And, and on 2557 to 2560, I was less clear on what you wanted there.

961 Woman: I think that's good.

962 Cort: That's good _____.

963 Male: 2540 so that fits back in.

964 Male: Got it.

965 Male: Thanks for your help.

966 **START: REGULATION OF TITLE INSURANCE**

967 Male: Okay. Next discussion I have would be the regulation of title insurance.
968 _____ real estate.

969 Cort: I'll throw a little item out here. We have the District President from Utah Land
970 Title Association sending me back a _____ and Wayne has
971 reached out to the Commissioners – Commissioner Guch's office to set a meeting
972 with Commissioner Guch to talk about this in December 6th I believe.

973 Male: The 5th.

974 Cort: The 5th - December. So we've got handful of members of ULTA as well as me
975 as a member of the Commissioner and ULTA is Gerry I think, are you talking to?

976 Male: Yes.

977 Cort: So we've got a small contingent that's going to meet with the Commissioner to
978 talk about that further. I don't know if we have any other updates on from any
979 from our last meeting. I know we missed the deadline. The Commissioner had a

980 report from what I understand what we had in our minutes that, that the
981 Commissioner expressed his oppositions to the plan at least moving the regulation
982 of title insurance when he responded to the Governor as well. Any further
983 updates, I guess from Brad or anybody that –

984 Male: Yeah, I remember this anything further as you pointed out, Cort. The
985 Commissioner did communicate with the Governor's office about this issue, _____
986 when she's moving that title under real estate is not the Commissioner's desire.
987 Many of you, if not all of you, probably also saw what was termed the "white
988 paper" that was submitted to, I believe, it was the Governor's office in response to
989 really a more global concept of potentially moving the insurance department
990 under – look into banking or somehow consolidating it with other agencies and
991 so, if the Commissioner was pleased, that was not in this report that's in front of
992 you. And it's my understanding that the ULTA also sent a letter to the
993 Governor's office, again, expressing its concerns with that concept – has indicated
994 that before.

995 Cort: So, I think maybe we'll leave it on and we'll give a report from our meeting,
996 perhaps, in our next meeting we will have had a chance from our meeting today
997 and meet with Commissioner Guch and we can give a report then, so.

998 **START: INTENT OF 31A-23a-406(5)(C)**

999 Chair: Okay. Thank you. Okay, under New Business, the public bulletin regarding the
1000 intent of the 31A-23406. This is at –

1001 Female: I need some clarification because I'm not sure what I even have to ____.

1002 Cort: So, Suzette, what we talked about before in our last meeting was with the
1003 ambiguity in the – and the problem in 406 the way that it reads, we were hoping
1004 the Department would just write a letter to the industry to say: this is where we're
1005 headed with our amendment, this is what we are going to enforce or not enforce
1006 or just give a little guidance because, you know, there's some title companies who
1007 are trying to ask for wires and they're taking shots from their clients for doing that
1008 when other title companies aren't and so we just thought maybe to clarify, really,
1009 what the original intent of that legislation was and to get some direction from the
1010 industry as to what they should be doing, you know, or if there's some things they
1011 should be doing or is they're okay. Because the big problem is, if you get a
1012 cashier's check for \$10,001 or more, what do you do? Because right now the
1013 Code doesn't really tell us when we can disburse that the way that it is currently
1014 written and so some title companies are, like I say, insisting I've got to have a
1015 wire, I've got to have a wire" – people show up with cashier's checks – what do
1016 you do? Send 'em back to their bank and get a wire? So, it's kind of
1017 inconsistently being interpreted and applied and maybe changing – _____ ULTA's
1018 perspective, you might have some more input for us on that but –

1019 Male: I don't know from ULTA's perspective, but from my personal perspective, I think
1020 there's a lot of confusion in the industry among realtors what is and isn't an
1021 accepted practice. And you do take a lot of heat for _____ whoa, it's over
1022 \$10,000, I'm gonna to have to wait for it to be collected and cleared which could
1023 be ten days.

1024 Female: And I had to take a call from a consumer who wanted to know if it wasn't in fact
1025 true that the state only allows wire transfers. Is that what her title agency told her
1026 and I explained that it's more of an agency preference. However, if your amount
1027 is, and I went through the account, so – I was happy that a consumer called to
1028 verify the information. She was a little upset because the difference in payment
1029 for a cashier's check that she gets for free because of the type of checking account
1030 she has versus a wire is \$30. So, to her, to the consumer, it's a significant
1031 difference. So, \$30 as opposed to free. And then she was upset that the title
1032 agency said that the state said – which I get a lot, too. She said – so, I don't know
1033 if that again, I don't know if that was true, but I said it could have been an agency
1034 practice. And here's the reason why I think they might have said that because
1035 cashier's checks don't clear necessarily within 24 hours, so.

1036 Cort: Well, and right now, the way 406 reads there is no allowance or provision for
1037 other than less than \$10,000 cashier's checks, wires or cash. There's no – you, I
1038 can't find a section that I can put a \$100,000 wire in. It's like we can't receive
1039 them because they tell us in Code specifically, what is collected and cleared and
1040 when you can disburse on it for everything but a personal check, a cashier's
1041 check, you know, personal check for more than \$500. For example, an earnest
1042 money deposit doesn't really fit anywhere and so, you know, in strict application
1043 of the Code, you can't accept the way it reads now, you can't accept – the title
1044 company can't accept a cashier's check for \$10,001. I don't think, because I read
1045 it and we tried to fix the problem. So, the hope was that maybe the department
1046 could write something to say, "In our last legislative effort, we tried to do this –
1047 here's where we're headed with our new effort and we're only in a – this is what
1048 we're going to enforce and – it was just a little guidance to the industry, so.

1049 Suzette: That changes me because the title insurance _____ accounts –

1050 Cort: You're right.

1051 Suzette: You keep saying the department –

1052 Cort: No.

1053 Suzette: The department would do what you were asking us to do.

1054 Cort: I understand. And I don't know if it happened in drafting or, you know, or where
1055 we got derailed. Somewhere we got derailed.

1056 Suzette: And the fact that you came _____.

1057 Male: It sounds like to me it's an enforcement issue. If we had a letter that said: we will
1058 not enforce if you do this.

1059 Suzette: Well I don't necessarily know if we can say that. But I think common sense
1060 would prevail. I mean I've never known the difference, so, and really I'm –

1061 Male: It will be a verbal, not in writing.

1062 Suzette: Yeah. I can't tell you I'm not going to enforce on something, but I can tell you
1063 that other than the consumer call and other than the confusing calls from industry,
1064 that's never really been an issue in at least my time here that. oh, my gosh, they
1065 disbursed before they were supposed to. Even if we were – if you based it on the
1066 prior statute, oh, you know, they have cashier's check and they moved on it the
1067 same day. That's very rare that I get those kinds of complaints. That's not to say
1068 that I don't look for those things when I'm doing an audit, but it's typically not a
1069 complaint that I receive. Not like somebody took doughnuts to so and so's office.

1070 Female: Is that your office _____?

1071 Male: We don't doughnuts, we take flowers.

1072 Female: Oh, okay. You can't share flowers.

1073 Male: Al?

1074 Al: What? Why do we keep trying to pass regulations that everybody has to violate
1075 to our customer, our consumer is good work done – keep happy and get business.
1076 And, just like the lady that called here and had to make a phone call to find out:
1077 what am I going to do when somebody comes in with the \$10,001 cashier's
1078 check? Am I going to send it back to get a wire? Hell no! And I don't think
1079 anybody in this room would, so why don't we just make it – when the check's
1080 cleared, when it's good funds and then this goes on later on and in effect says if I
1081 think that producer that gave me the check is good then I can disburse. So I can
1082 disburse based on another title company's check, but I can't disburse on a
1083 cashier's check over \$10,000. It's the other title companies in the past history that
1084 I don't want to disburse on their funds. I've refused to not handle the funds on a
1085 split closing in some cases.

1086 Cort: Okay. Well, that was the discussion item so I guess that was the, you know, the
1087 answer to the question. We'll just wait for, you know, only a couple months later
1088 than the legislative session as it stands, so.

1089 Male: So in the absence of a bulletin then, it's just left to everybody's interpretation,
1090 right?

1091 Male: I make a motion that we drop this and take it through the legislature – let people
1092 go forward with the way they've been doing it in the past. I don't see that we can
1093 – if we're not gonna do a letter, if we're not gonna make a statement, just wait

1094 and wait and make the change during the legislation process – the legislative
1095 process.

1096 Male: Okay. _____ about ready to take the – move that up to business items.

1097 [Inaudible]

1098 **START: APPROVAL OF TITLE ASSESSMENT**

1099 Chair: The title insurance assessment, Tammy?

1100 Tammy: I need more copies of that. This is for – this is for a breakdown – the top left-
1101 hand corner – it just shows that the amount of the title is there –

1102 [Inaudible]

1103 Male: Sorry about that. [laughter]

1104 Tammy: The branch offices ____ which is the assessment that pays for the market conduct
1105 examiner one position. It looks like we’re gonna by statute, we’re permitted to
1106 use 250 and 150 – 250 for a primary and 150 for secondary offices but we will be
1107 utilizing that whole amount. The way that the statute’s written is up two, but in
1108 this particular case with the number of title agencies we have with primary and
1109 secondary offices, we will come up a little short so you’ll notice that we come up
1110 to 79,500 – you see that in the top left-hand corner in that box, with the total of
1111 the agencies, total branch offices with the agencies, and then total branch offices
1112 with the companies. You’ll see that the total assessments 79,500 – and our budget
1113 is 80,000. And so the \$500 difference will be taken care of by all the insurers
1114 who have direct premiums in Utah. And that will get us to our 80,000 and then,
1115 of course, we get 3,800 that’s been given to us from the general fund. Any
1116 questions on that part?

1117 The produce your totals that you’re seeing in the top right-hand corner, I wasn’t
1118 able to get the individual licensee totals. This is a for information and this is – I
1119 believe that the 164 is a current number but it’s the number that I’ve used to get
1120 for the fiscal year. So maybe, you know, next week we might have one more or
1121 one less. So just keep in mind that it’s – we have to have a cutoff date to use the
1122 number of agencies. So, currently we have 164 title agencies in the state.

1123 Cort: So, Tammy can you help me understand – I would have thought the primary
1124 office total would match that agency total. How come we’re numbers off
1125 something different?

1126 Tammy: Where are you looking at?

1127 Cort: Well if I look at the – on your left upper box . . .

1128 Tammy: Uh-huh.

1129 Cort: . . . you've got primary office total 249 . . .

1130 Tammy: Correct.

1131 Cort: . . . so you have 249 companies with a primary office. Is that what the numbers –

1132 Tammy: No. We had 164 title agencies and whatever primary is in a county.

1133 Cort: Okay. So, it's counties?

1134 Tammy: Yeah, so like, First Amer – yes, so First American will and always use that.
1135 They've got – they have an office in Salt Lake County and then they have
1136 secondary offices.

1137 Cort: And that's what that ____?

1138 Tammy: Yeah. And they have an office in Utah County . . .

1139 Cort: Perfect.

1140 Tammy: . . . which is assessed with the primary rate so that's the reason for the difference.

1141 Cort: Okay.

1142 Tammy: But just for your knowledge compared to last year, yeah, 178 agencies that we
1143 were using for the calculation purposes and we're down to 164. And then insurer
1144 totals there's 15 total insurers that write in the state of Utah – five of which have
1145 offices here. They're included in the branch office – assessment first statute. So,
1146 just to give you an idea, we have five of those in the state.

1147 Cort: And the statute also say that we insurers make up the difference?

1148 Tammy: Yes. The insurers make up the difference which in this case is the \$500 to get us
1149 to the 80,000. And then if ____ your premium _____. And their direct premiums
1150 are not from the college but I can tell you that First American is the winner in
1151 direct premiums. Unless you count the Fidelity companies and if you combine
1152 Fidelity and Chicago then they take the lead – it's not according to race or
1153 anything. But then that percentage is delineated out based on their direct
1154 premiums, so. And some of 'em won't even get invoices like, for instance, what
1155 like American guarantee their percentage is ____ invoice. It's gonna cost us that
1156 much in net worth to send it out. So, I have a little bit of a tolerance. I have about
1157 \$5.52, but our goal is to make sure that we collect 80,000 because I – ___ meeting
1158 is my budget, I can't spend more than 80,000. I need that extra pair of shoes so
1159 we need this \$5.52.

1160 Cort: So, theoretically, you can lower the agency assessment and the underwriters make
1161 up the difference. [Laughter]

1162 Tammy: [Inaudible response]. So, for those insurers who are not getting an invoice, I'm
1163 gonna use attorney's time _____. There in worst ____ – do you mind if I say
1164 the amount? It's a whopping 22 cents for the deficit. But since you're already
1165 being invoiced for a branch office they will get that 22 cents, so.

1166 Male: When will this go out?

1167 Tammy: As soon as we get your concurrence, we're gonna send out the invoices this week.

1168 Male: But we've been at the max in prior years?

1169 Tammy: The last two years we were. Prior to that it was a different type of calculation
1170 because in 2008, we switched over from the 1%. Remember how everybody had
1171 to hold their 1% of premium?

1172 Cort: Right.

1173 Tammy: We switched over to the recovery fund. And so the bands have remained the
1174 same. The zero to, is it ten million I believe. I guess zero to ten million in
1175 premiums and then you get the recovery fund assessment. That will also go out as
1176 part of this. That's already established by statute and rule. We'll have to
1177 remember that by July 1st of every year, if you want to change the band, like the
1178 dollar amount, to raise the recovery fund amounts, then we'll have to look at that
1179 before we head into the next fiscal year. And keep in mind, this is fiscal year
1180 _____. So, we're kind of – the assessments are billed in arrears so if you get
1181 questions, it's for agencies in business throughout the year in 2010. Now, the
1182 count has been excluded by those agencies who are no longer in business. Just
1183 like with Salt Lake Title, her concern, so we've excluded her, so. And you can
1184 see on the, in the bottom right-hand corner. Last year our budget was 75,000 and
1185 at that point we got 5,200 from the general fund. We were \$262 short in our
1186 collections but our expenses outweighed that so any time we're short like that if
1187 we don't collect it, we obviously don't spend it, and then anything that we have
1188 left over has to go back to the general fund and that's what that 2172 is. So your
1189 concurrence would be on the amount of 250 per primary office and 150 per
1190 secondary office.

1191 Male: I make that motion we approve the assessment.

1192 Male: I'll second that.

1193 Male: All in favor?

1194 Group: Aye

1195 Male: Do you have any other business that needs to come before the Commission?

1196 Female: Did we approve the licensing report?

1197 Male: [Inaudible]. If we have no other business, do we have a motion to adjourn?
1198 Male: So moved.
1199 Male: I'll second that.
1200 Male: All in favor?
1201 Group: Aye.