

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 205
8:30 a.m.
May 19, 2004

MINUTES

STAFF MEMBERS PRESENT:

Mark Fagergren, Licensing and Education Director
Jon Brown, Chief Investigator
Dee Johnson, Investigator
Blaine Ferguson, Assistant Attorney General
Shelley Wismer, Assistant Attorney General
Renda Christensen, Secretary
Amanda Webster, Division Staff

COMMISSION MEMBERS PRESENT:

Danny M. Holt, Chair
Gage Froerer, Vice Chair
Thomas M. Morgan, Commission Member
Dorothy M. Burnham, Commission Member

GUESTS

Arnold Stringham
Paul Naylor
Linda Leavitt

The May 19, 2004, meeting of the Utah Real Estate Commission began at 8:35 a.m. with Chair Danny Holt conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes for April 21, 2004 meeting were reviewed and found that there were no corrections or additions. A motion was made by Ms. Burnham, seconded by Chair Holt, and unanimously passed to accept the minutes with no changes.

Other Business

Director Bell and Ms. Jensen were not able to attend the meeting today.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown told the Commission that in the month of April there were 9 written complaints logged, 18 new cases opened for investigation, 6 files closed during the

month, leaving the number of open cases at 225.

Mr. Brown brought up the topic of limited service or entry only listing contracts and how there is a need to address the rule Ms. Wismer proposed on this issue. He believes with the frequency with which it is happening, it really needs to be addressed.

Ms. Burnham mentioned there was an agency issue involved, and Mr. Brown said that the issue hasn't held up in court that an agent has to attend a closing if their listing contract excludes them from having to attend. He mentioned the Division has a rule that you must have your contractual relationship in writing and define the scope.

One issue driving up the amount of complaints is short sales. The only person that is happy at the end of a short sale is the agent that got his/her fee. It appears there are quite a few agents are specializing in this area. Short sales are a result of over appraised properties 2 and 3 years ago. He doesn't know how much longer it will last.

Mr. Morgan said UAR has a forms committee and they have given Dave Johnson three short sale documents for his review. Mr. Brown said another area increasing in complaints is property management where there are many accounting problems.

Mr. Brown said the Mortgage Asset Research Institute (MARI) report that has just been released said Utah was high on the list for fraud. Ms. Wismer said she will hand out copies of the report for the Commission to review. Ms. Burnham and Mr. Morgan both agreed that publishing these findings for articles in the major newspapers might make the public more aware.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren started his report by letting the Commission and the public individuals who were attending the meeting know the Division is approximately four weeks behind in issuing new licenses. The Licensing Department is trying to get licenses out timely, but they are backlogged. There are now approximately 17,300 licensed real estate agents, and the number seems to be increasing.

Mr. Stringham asked if there was a way to issue a temporary license so the agent can begin working. As it stands now, if the person has a receipt from the Division, they can work until the license gets processed. The problem is the Boards of Realtors will not recognize the receipt and wants a license number. Mr. Fagergren said if the person checks with their bank to see if the check has been cashed by the Division, and thinks they have submitted a completed application, they are approved to work. The problems are when the application is not complete, or if they have answered "yes" to a criminal conviction, they are not approved, but they are still out there working. It makes it hard on the staff to handle all of the calls that keep coming in from people asking if they have been issued their licenses yet. Mr. Fagergren said the Division is not happy with the length of time it is taking now, but we are working very hard to shorten the time frame.

Mr. Fagergren said that he has been receiving quite a few people walking in and thinking they can get a CE class approved the same day. He told the Commission that as of right now, we are approximately four weeks out on new CE course approvals.

Ms. Burnham suggested that an article be written in the newsletter to let everyone know the current time frames.

Mr. Fagergren brought up the topic of extending the number of hearings that are currently scheduled for each Commission meeting. He mentioned that Ms. Christensen is now only scheduling six hearings for each meeting, but that she is now into the month of August, and people are very frustrated in having to wait so long. After some discussion, it was to schedule two more hearings per meeting. It was also agreed to start scheduling 15 minute breaks to help with the longer schedules.

OTHER BUSINESS

Ms. Wismer told the Commission the public comment period has passed on proposed Rule 162-3, and it can now be made effective. The changes execute the recent statutory changes to accommodate on-line renewals. Mr. Morgan asked Ms. Wismer how the individual will certify their required continuing education if they are no longer required to send in the completed certificates. She told him they will now just click on the box that says they certify that they have met all the education requirements, and they understand that if the Division audits them and finds otherwise, their license will be revoked.

Mr. Stringham asked Ms. Wismer how the public would know about any rule changes. Ms. Wismer told him if they monitor the Administrative Rules website they would find the information. The Division strictly complies with notifying the public about changes by publishing them in the State Bulletin. Anyone interested in rule changes can access that website and look for rule changes. Mr. Stringham asked how someone would find the website, and Ms. Wismer suggested there might be something published in the next newsletter describing the rule making process and how to find them on the website. Mr. Fagergren told Mr. Stringham that during the first part of every Commission meeting there is public discussion on rule changes, and that everyone is invited to these meetings. If there were any questions, they could be asked at that time. Ms. Wismer also reminded Mr. Stringham that the minutes of every meeting are posted on the website, and the public can read about what took place. Chair Holt suggested an article in the newsletter might help by adding a section discussing the upcoming rule changes or any upcoming changes.

A motion to approve the proposed rule changes on R162-3 was made by Mr. Morgan, seconded by Ms. Burnham, and passed unanimously.

There was a brief discussion about stigmatized properties and the ethical obligation to disclose this information to the individuals involved. Mr. Morgan brought up the example of selling a house to a registered sex offender that was located directly across the street from a day care center. Ms. Burnham mentioned that she had contacted the legal division of the UAR and their answer was that the agent is not obligated to disclose to the buyer that a property is stigmatized (i.e., suicide, murder, AIDS, HIV, etc.). But, she was told that if the question ever came up, to always err on the side of

disclosure.

LICENSING HEARINGS

- 9:30 Billie Crocker – Application to Renew License
Request for Continuance of Informal Proceeding was received from Scott R. Sabey, Attorney. Continuance was granted.
- 9:55 Frank R. Kilby – Application for Licensure
Mr. Kilby's attorney, Mary A. Nester, has sent a letter saying that he will not be attending the meeting today and wanted to be considered for licensure on the material he submitted.
- 10:18 Lynn Aaron Jenkins – Application for Broker's License
- 10:55 Babs DeLay – Continuing Education Instructor Certification
- 11:22 Mark W. Provost – Application for Licensure
David A. Reeve, Attorney
Kendall Wardle
Neil Smith

A motion to go into Executive Session was brought by Ms. Burnham and seconded by Mr. Morgan Executive Session was from 12:05 to 1:05 p.m. The Commission decided to make this session a working lunch.

- 1:10 Stuart D. Beins – Application for Renewal of License
Christopher Beins, Attorney

LIST OF LESSER CRIMINAL CONVICTIONS

Leann Mott
Brad Daybell
Danna Brisband
Brett Cutlip
Chris Kohnealy
Pat Munson

A motion was made to have a second Executive Session, seconded, and passed unanimously. The session went from 1:55 to 2:10 p.m.

OTHER BUSINESS

Discussion of the James Beech case.

It was decided by the Division and the Commission to close this discussion. A motion was made by Ms. Burnham, seconded by Mr. Froerer to close the meeting. It passed unanimously. Mr. Morgan recused himself from this discussion. Discussion went from

2:10 to 2:55 p.m.

RESULTS OF EXECUTIVE SESSION

List of Lesser Criminal Convictions:

Leann Mott – Approved for Licensure
Brad Daybell – Approved for Licensure
Danna Brisband – Approved for Licensure
Brett Cutlip – Approved for Licensure
Chris Kohnealy – Approved for Licensure
Pat Munson – Approved for Licensure

Results of Executive Session:

Billie Crocker – Allowed to reschedule
Frank R. Kilby – Denied
Lynn Aaron Jenkins – Denied for Principal Broker's License
Babs DeLay – Granted but on probation for the term of CE certification
Mark W. Provost – Granted, probation with broker notification
Stuart D. Beins – Approved on probation for term of license

A motion was made, seconded and approved to adjourn. There being no further business or discussions, the meeting adjourned at 3:00 p.m.