

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210  
9:00 a.m.  
July 20, 2005

### **MINUTES**

#### STAFF MEMBERS PRESENT:

Jason Perry, Deputy Director of Department  
Dexter Bell, Division Director  
Mark Fagergren, Education/Licensing Director  
Dee Johnson, Investigator  
Blaine Ferguson, Assistant Attorney General  
Shelley Wismer, Assistant Attorney General  
Renda Christensen, Board Secretary  
Craig Livingston, Investigator  
Carlos Alamilla, Investigator  
Charles Smalley, Investigator  
Van Kagie, Investigator  
Dave Mecham, Investigator  
Amanda Orme, Mortgage Education Secretary

#### COMMISSION MEMBERS PRESENT:

Gage Froerer, Chair  
Dorothy Burnham, Vice Chair  
Maralee Jensen, Chairman  
Bonnie Peretti, Chairman  
H. Blaine Walker, Chairman

#### GUESTS

Karen Post  
Curtis Bullock  
Linda Leavitt  
Al Bingham  
Arnold Stringham

The July 20, 2005, meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Gage Froerer conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

The Minutes of the June 15, 2005 meeting were approved as written.

### **DIVISION REPORTS**

#### INVESTIGATIONS REPORT – Dee Johnson

Mr. Brown is out of town and Mr. Johnson is giving the report. In June there were 86 written complaints logged, 67 new cases opened for investigation, 22 cases closed, leaving the number of open cases at 300. Of these 300 cases, 106 are CE audit cases. Mr. Johnson introduced Carlos Alamilla to the Commission. Mr. Alamilla is the new investigator for the Division.

#### DIRECTOR'S REPORT – Dexter Bell

Director Bell announced the Governor has nominated Doyle "Sam" Sampson to be the replacement member of the Commission to replace Chair Froerer. Mr. Sampson should be approved today by the Senate, and will be ready to serve at the next Commission meeting. Director Bell acknowledged Chair Froerer for his great service on the Commission.

Director Bell said the statistics show a gain in approximately 400 licensees in one month.

Director Bell announced a new Executive Director of the Department. Mr. Skousen, who was appointed in January, resigned about two weeks ago. He has been replaced by Francine Giani, who should be confirmed in August. Ms. Giani has been a Division Director for twelve years, and is the Director of Consumer Protection.

One of the ramifications that will specifically apply to the Division is the proposed rule regarding licensees responding to offers and counter-offers within the timeframe set up in the REPC. Executive Director Skousen objected to the proposed rule. Director Bell will present the proposed rule to Ms. Giani for her review.

Director Bell handed out TIC Rules Under Consideration: Draft IV for the Commission's review. The differences from the last draft include 3A(j), an appraisal, except for certain properties: triple net, all cash single tenant; 3B(b), financial statements of master lessee, audited per GAAP; and, 3C, any offering that is compliant with SEC Regulation D is automatically in compliance with these rules (the statutory requirement of a real estate license for Reg D offerings would still apply).

Director Bell asked the Commission to pass a motion to instruct Ms. Wismer to start drafting rules so they can be presented for the August meeting. Mr. Ferguson said the Attorney General's office has some concern about being given an outline without details, and then being told to draft rules. Ms. Wismer said she needs more than just a concept before she can draft rules. Commissioner Walker said the TIC Committee for ARELLO has a document with more definite suggestions, and he will e-mail this Draft IV to them for their review and suggestions. He will let Ms. Wismer and the Commission know how they responded.

Chair Froerer said it was too premature to make a motion for rulemaking at this time. Director Bell asked for a skeleton rule to get the process started. The Commission gave their permission to go forward with the draft rule.

Director Bell said the new Executive Director announced in a management meeting that she would like the Division to be conservative in travel, especially out of country travel. This means Commissioner Jensen, Director Bell, and Ms. Christensen, will not be going to the ARELLO Conference in Toronto. As of now, only Mr. Fagergren will be going from the Division. Commissioner Walker will be attending and is being sponsored by NAR, so there is no cost to the Division. The Commission feels since the Division won't be paying for Commissioner Walker, another person should be allowed to go with Mr. Fagergren. They said the larger numbers attending would provide better education, and it would be important to keep a good relationship with ARELLO. They feel Director Bell should be allowed to attend the convention to establish a relationship with other directors. Director Bell said he would discuss the matter with Executive Director Giani.

#### EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the Commission assigned a Pre-license Educational Task Force which is currently being headed by Karen Post. The Task Force has met four times and have brought with them recommendations that can be immediately integrated in solving some problems. He introduced Ms. Post to give the recommendations to the Commission and Division.

Ms. Post said Randy Benoit, Chris Sloan, Mike Gable, John Harr, Arnold Stringham, George Richards and Mr. Fagergren are on the Task Force. She said Mr. Fagergren is an invaluable help to the Task Force in keeping them updated with current ideas. The topics for discussion regarding real estate pre-licensing education are: forms, high school graduation or GED, distance education, additional training requirement during the first two years of license, and, educational credits for other real estate classes.

The Task Force's proposal includes the following: (1) Distance education being left in place with the minimum of 45 hours being live courses. (2) The 90-hour pre-licensing course will be adjusted to accommodate eight more hours in state approved forms and HUD 1 settlement statement. A significant change would be the Utah Law portion of the 90-hour requirement, which should be increased from 12 hours to 16 hours, and the general portion of the 90-hour requirement will be reduced from 78 hours to 74 hours. (3) 12-hour continuing education course required of each new licensee within the first licencing period after receiving license taught only at a certified pre-licensing instructor.

The Task Force agreed a large part of the problem lies with principal brokers who are either unable or not willing to provide education and support for each new licensee. The Task Force suggested a second task force be created to study the pre-licensing and/or post-licensing of the new associate/principal brokers with the purpose of educating them to their new responsibilities regarding supervision of licensees.

Commissioner Walker asked why it must be a pre-licensing school versus a pre-licensing instructor. After much discussion, it was agreed the recommendation should be change to say a certified pre-licensing instructor instead of school. It was also suggested to strengthen the definition of supervision by Administrative Rule.

Ms. Post asked if the Commission would like the Task Force to meet again and come back with a statutory proposal that the Commission and Division can work on for the future. Mr. Fagergren suggested the Task Force might create an outline to help fill in the education courses.

Ms. Post then brought up a proposal to change the law regarding inactive to active status of licensees. She suggested instead of having 12 hours of continuing education to return to active status, that it be changed to say 12 hours for each renewal period the licensee was inactive, with a maximum of 48 hours to renew. It would require statutory change.

Mr. Fagergren stated the statistics show a 15% increase in active agents in the last year. The normal rate is about 10% per year turnover, but as these numbers show, it is now the turnover rate plus the increase, so there are many people coming into real estate. He said approximately one-third don't renew. This increase is keeping licensing busy. Mr. Fagergren gave an update on the number of courses. Real Estate has 511 CE courses, 285 different providers, and 11 real estate schools. Since the first of the year, mortgage has the same regulations and they now have 110 CE courses, 27 providers, and 14 schools.

#### OTHER BUSINESS

Ms. Wismer handed out a draft of R162-9-3, Course Certification Criteria. Additions would now include professional development and customer relations skills to the list of acceptable subjects. The new addition to the rule would be to give the Division discretion to reject a course if it didn't have acceptable subject matter. The person could then have appeal right to the Commission if they had been denied.

Ms. Wismer discussed the draft of R162-9-1, Objective and Specific Hour Requirements. This would make the rule consistent with the information on the website, which states the Division considers ARELLO certified courses to be live education. The term "live" doesn't really fit a computer course, but this change would help to clarify the issue. A motion was made and unanimously passed to start changes to rules R162-9-3 and R162-9-1 into the rulemaking process.

Ms. Wismer handed out a copy of R162-6-1, Improper Practices. This rule has passed the public comment period, and would require that agents to have a power of attorney to sign for their principal. It also states that a licensee would be required to use the State-approved form for counteroffers instead of altering the offer form. A motion was made and passed to accept the rule as written.

#### LICENSING HEARINGS

10:40 Jeff Stam – Application for License  
Randall D. Cox, Attorney

11:00 Amori Shaw – Application for License

Allowed to reschedule.

11:23 Roy Laycock – Petition for Re-evaluation of Experience

### OTHER BUSINESS

Jason Perry, Deputy Director of the Department of Commerce, and Blaine Ferguson, Assistant Attorney General, opened the meeting for a discussion of on-line renewals, and more specifically, continuing education audits. The issue was whether the NAR's Code of Ethics course was being confused with the Division's Core Course, which happens to be on the same topic (i.e., ethics). Executive Director Russell Skousen had a few licensees contact him regarding the Core Course confusion, and he has since changed his mind on the issue. Licensees have also been contacting Mr. Perry and the Governor to express their concerns.

Mr. Ferguson said all of these cases involve people that would potentially be coming before the Commission, Division, and ultimately on Agency Review. The issue is what would be considered a fair sanction. Commissioner Burnham stated she teaches Code of Ethics for the National Association of Realtors at Board Orientation, and it is very clearly stated at that time, the course is required once every 4 years and is not the Division Core Course. Certificates are handed out at the end of the course giving 3 hours of continuing education, and there is no reference to Core Course on the certificate. The NAR requirement is taken once every 4 years, and the Division Core Course is taken every two years. She thinks the on-line renewal process had brought this problem to light.

Commissioner Walker has taken more hours than required, including both the NAR Code of Ethics and the Core Course. He had to contact the Division to make sure he had actually taken the Core Course before his renewal, so there would not be an issue. His point is he believes there could be some confusion with a few licensees as to which one was the Core Course. He said the Commission took a hard line stand on the issue by saying these individuals are all responsible adults and should know that NAR requires their Code of Ethics every 4 years, and should not be confused with the Division Core Course.

Chair Froerer said the issue was the probability of people confusing the two courses. He said it has been discussed at length that the NAR Code of Ethics and Core Course are two different courses and hard to confuse. He does not feel it is the Commission or Divisions problem to "babysit" those licensees to make sure they took correct course. Chair Froerer said there would be a very small group who took the Code of Ethics and not the Core Course.

Commissioner Peretti said when the Commission decided to hold a strong line on the issue, it was because implementing the fine system and the seriousness of the situation would pay off quickly in the long run. The education and duties as a realtor are to be taken seriously, and there should be no exception to their rules. The

Commission felt like they had to take a strong position on the issue. Now it appears the instructors will have to be responsible for their students, because the students are not being responsible for themselves. She thinks it is important the Commission and Division send a message that will not be seen as a short term message, but be taken seriously. She thinks by changing the rules 6 months into the process it will only open the door for chaos.

Ms. Wismer stated when the renewal notices are sent out, an instruction sheet is included which specifically states the licensee needs to take 12 hours of continuing education including the Core Course. The notice says half of the hours must be taken "live" versus "passive." The wording for on-line renewal has the same instructions.

Director Bell stated the on-line procedure will be changed to say "Stop, if you don't know what the Core Course is, click here for more information." Mr. Fagergren said it will now show the actual certificates that are acceptable instead of just describing them. Part of the confusion is the deadline for the NAR had their 4 year limitation, and this is the end of that time frame. The deadlines coincide. The Boards and Associations use the word "required" when licensees ask if this is the course they need.

Director Bell proposed a standard that would be an objective measure, and not a case by case basis. If a licensee has at least 12 qualifying hours of CE, and they took the NAR course instead of the Division course, we would fine them \$100 and publish you in the newsletter under a separate section "Failure to take Core Course." Commissioners Burnham and Peretti didn't agree with this, and prefer to leave it as is.

Mr. Perry thanked the Commission for their comments and will consider all of the options. He will come back before the Commission to let them know any decisions made.

A break was taken from 12:50 p.m. to 1:10 p.m.

- 1:10 Stormy Corn – Post-revocation Hearing
- 1:24 Richard Starley – Application for License
- 2:00 Monica Hebert – Application for License  
Scott Quinney  
Joyce Preese, Mother

Review of Criminal Convictions List for Commission Consideration:

John Adams  
Matthew Bagley  
Christina Brooksby  
Justin Cracraft  
Brittany Cook

Gina Distefano  
Cory Ferguson  
Sunny Gledhill  
Mark Goodwin  
David Grover  
Tyler Heyman  
Jason L. Johnson  
Leslie Kerr  
Nader Khodaberdian  
Nichole Limones  
Stephen Long  
Allen Martindale  
Lacee Osmund  
Eric Petterborg  
Jake Rasmussen  
Brock Rawlings  
Sally Reilly  
Mason W. Risher  
Darlene Sallee  
Kathryn Scarmato  
Gary Sneddon  
Douglas Stewart  
Jacob Terry  
Eric Tolman

A motion to go into a second Executive Session was made and held from 2:47 p.m. to 4:00 p.m. This was a working lunch.

#### RESULTS OF EXECUTIVE SESSION

##### Informal Hearings:

Jeff Stam – Denied  
Amori Shaw – Allowed to reschedule  
Roy Laycock – Denied  
Stormy Corn – Revocation was reversed  
Richard Starley – Denied  
Monica Herbert – Denied

##### Stipulations:

Kyle L. Heaton – Approved  
Robert Porter – Approved  
Paul Bradley – Approved  
Matthew Lennon – Approved  
Orion Dale Quinlan – Approved  
James S. Wiley – Approved  
Ronald S. Franzman – Approved

Criminal Convictions List for Commission Consideration:

John Adams – Schedule for hearing  
Matthew Bagley - Approved  
Christina Brooksby – Schedule for hearing  
Justin Cracroft - Approved  
Brittany Cook - Approved  
Gina Distefano - Approved  
Cory Ferguson - Approved  
Sunny Gledhill - Approved  
Mark Goodwin - Approved  
David Grover – Schedule for hearing  
Tyler Heyman – Schedule for hearing  
Jason L. Johnson – Schedule for hearing  
Leslie Kerr - Approved  
Nader Khodaberdian - Approved  
Nichole Limones - Approved  
Stephen Long - Approved  
Allen Martindale - Approved  
Lacee Osmund - Approved  
Eric Petterborg - Approved  
Jake Rasmussen - Approved  
Brock Rawlings - Approved  
Sally Reilly - Approved  
Mason W. Risher - Approved  
Darlene Sallee – Schedule for hearing  
Kathryn Scarmato - Approved  
Gary Sneddon - Approved  
Douglas Stewart - Approved  
Jacob Terry – Approved  
Eric Tolman - Approved

A motion was made and accepted to adjourn the meeting at 4:05 p.m.