

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
9:00 a.m.
August 17, 2005

MINUTES

STAFF MEMBERS PRESENT:

Jason Perry, Deputy Director for the Department/Acting Division Director
Mark Fagergren, Education/Licensing Director
Jon R. Brown, Enforcement Director
Dee Johnson, Investigator
Carlos Alamilla, Investigator
Van Kagie, Investigator
Blaine Ferguson, Assistant Attorney General
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Amanda Orme, Mortgage Education Secretary

COMMISSION MEMBERS PRESENT:

Dorothy Burnham, Chair
Maralee Jensen, Vice Chair
Bonnie Peretti, Commissioner
H. Blaine Walker, Commissioner
Doyle "Sam" Sampson, Commissioner

GUESTS

Karen Post

The August 17, 2005, meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Burnham conducting.

PLANNING AND ADMINISTRATIVE MATTERS

The new Commissioner, Doyle "Sam" Sampson, was sworn in by Administrative Law Judge Steve Eklund.

A motion was made to hold elections for Chair and Vice-Chair. Nominations were made to have Dorothy Burnham be the new Chair, and Maralee Jensen was nominated to be the new Vice-Chair. Both of these nominations were passed unanimously.

Deputy Director Jason Perry announced that Dexter Bell had resigned and Mr. Perry will be acting as Division Director until Mr. Bell's replacement is in place.

Approval of Minutes

The minutes for July will be reviewed next month.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown said there are now two reports each month, one for the investigations and the other report is for continuing education audit investigations.

In the month of July there were 35 written complaints, 31 cases opened for investigation, 27 cases closed, leaving the number of open cases at 198. On the continuing education audits, there were 44 cases opened for investigation, 32 cases closed, leaving the number of open cases at 118.

Chair Burnham asked what types of complaints are being seen by the Division, and Mr. Brown said there were quite a few agency issues (i.e., informed consent, not being represented, breach of fiduciary duty, etc.) and property management issues. There were not as many short sales issues this month, but fraud complaints have remained consistent. Mr. Johnson said fraud affects all three industries, appraisers, mortgage, and real estate. It may also include the underwriters and title industries.

DIRECTOR'S REPORT – Jason Perry, Acting Division Director

Mr. Perry announced that Dexter Bell resigned on August 15, 2005. Mr. Perry said the Executive Director of the Department, Francine Giani, will be stopping by this afternoon to let the Commission know who the replacement will be, and give a little background on his history. The new Director will be starting the first week in September.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics continue to show an increase, with the totals of active and inactive licensees just under 20,000.

He announced the Instructor Development Workshop ("IDW") is scheduled for December 1 and 2, 2005, which is a Thursday and Friday, at the Marriott Hotel. The instructor will be Marie Spodek, who is an author and nationally known for her training in real estate education. This year will be the first time all three industries (appraisers, mortgage, and real estate) will be included in this IDW. Since the first of this year, the mortgage industry now has pre-license and continuing education instructors. They will be invited as well as real estate and appraiser instructors. Mr. Fagergren said they are estimating 100 people will be attending.

Mr. Fagergren said the RFP on a new testing provider has been turned in for review. The current provider, Promissor, has been with the state since 1986, and they have been the sole provider of the licensing database. He is hoping a decision will be made by the first of September. Any change would be made on January 1, 2006. The provider needs to cover testing, exam writing, and CE courses being downloaded into our database system so there will be a way to track CE courses taken by licensees.

Commissioner Sampson asked how long the contract is in place, and Mr. Fagergren said the contract is for 5 years with an additional 3 year renewal option.

Mr. Fagergren said task force for pre-licensing education met last week and Karen Post she will be giving a proposal and recommendation from that task force. Ms. Post said the task force wrote a proposal with the following recommendations: 1) the 90-hour pre-licensing course should be adjusted to accommodate 8 more hours in state approved forms and settlement statements; 2) a 12-hour post-licensing course should be taken within the first 6 months after receiving a license. If the education isn't taken, the license will be placed on an inactive status; 3) the 12-hour post-licensing course will include the 3-hour core course. The remaining 9-hour course shall be taught live by a certified pre-licensing instructor; and 4) the 12-hour course would fulfill the licensee's CE requirements.

The recommendation of the task force is to create another task force to study the pre-licensing and/or post-licensing education of the new associate/principal brokers with the purpose of educating them to their new responsibilities with regard to supervision of their licensees. This project would probably include implementation of additional administrative rules that would further define the meaning of "supervision."

Mr. Fagergren said that to require continuing education within the first 6 months of a license would take statutory change. He said if the Division accepted the proposal from last month, it could be done now with an Administrative Rule change. Commissioner Walker said the goal is to protect the public and help the licensee become a better agent. He is in favor of adding a few more hours of education in the first licensing cycle for an agent, perhaps 18 hours during the first renewal cycle. Director Perry said if the Division decides this is what they want, the Department will help get the changes through the Legislature. He suggested the wording be very specific and clear when dealing with a statutory change.

Chair Burnham said the Commission is concerned about the criminal background problems they are seeing in hearing. She said the Commission would like to see the entry level application have higher requirements. Ms. Wismer said perhaps a statutory amendment that would say a person would not be able to apply if they are still on probation, or a certain number of years after a felony conviction with special emphasis on fraud, embezzlement, etc. Director Perry recommended checking the Security Statutes to see their requirements. He asked Ms. Wismer to draft some language to tighten the application process. Mr. Brown suggested the next core course be on broker/agent training and the Commission agreed with the idea.

A motion was proposed by Commissioner Walker, and unanimously accepted, to propose to the Director of the Division and the Department of Commerce, a statutory change be made to increase the numbers of hours in the first renewal cycle to 18 hours, and that six of those hours be taken during the first six months after receiving the license. If the 6 hours are not taken within the first six months, the license will be inactivated. The 6 hours are to be established by Administrative Rule.

OTHER BUSINESS

Ms. Wismer said R162-9-2, Education Providers, is ready to be made effective. This rule is about the education providers getting their coursed approved before teaching them, and not having the students apply for approval of the course on an individual basis. The public comment period is over and no comments were made. A motion to make this rule effective was made by Commissioner Walker and unanimously passed.

A second rule, R162-2-1, Exam Application, is also ready to be made effective. This rule requires the applicant to meet a minimum education level of a high school diploma, GED, or its equivalent. It also states the pre-licensing education must be taken before taking the exam. The public comment period is over and no comments were made. A motion to make the rule effective was made by Commissioner Jensen and unanimously passed.

Ms. Wismer handed out a draft of Rule 162-2.2.7. This draft covers equivalent experience for people who don't fit the normal applicant profile. This would allow the Division to determine if someone has equivalent of three years' full-time experience as a sales agent and qualified the applicant for a broker's license notwithstanding the applicant's experience exceeds the five year limitation. A motion was made by Commissioner Peretti to start the draft into rulemaking process. The motion was unanimously passed.

LICENSING HEARINGS

- 10:30 Janiel Wagner – Post-Revocation Hearing
 Paxton R. Guymon, Attorney
 Mark Fagergren, Education/Licensing Director
- 11:20 Quentin Solmonson – Post-Revocation Hearing
 Did not appear
 Renda Christensen, Board Secretary
- 11:35 Randy Lowder – Post-Revocation Hearing

OTHER BUSINESS

Chair Burnham asked the Division if they are behind on getting results back on fingerprint results. Mr. Fagergren said we have one person working full-time on getting results processed, but the BCI is backlogged on getting the results to us. They are currently 6 months to one year behind. Director Perry said the Department of Commerce has purchased a digital laser fingerprint scanner that will be connected to BCI's database which will mean a quicker time in turnaround on results.

Review of Criminal Convictions List for Commission Consideration:

David Adlard
Donald L. Anderson
Thomas Anderson

Bruce Armstrong
Oscar Burga
James Burroughs
Damaeon Byington
James Claiborne
Dennis Crapo
Monet Critchley
Jorey Dalling
James W. Gourley III
Crae Hancock
Terry Hark
Shaun Hilton
Torsten D. Holmgren
Gabriel R. Hornsby
Heidi Humphrey
Joely Kokesh
Colleen Kulluk
Darren Lum
Darren Lunt
Deborah Matyja
Vaughn N. Nelson
Scherrie O'Neill
Tara Paras
Mark Pepper
Brandon Ploehn
John B. Poll
Richard Chad Randall
Ryan Robinson
Trudy L. Root
Duane Schilowsky
Jared Seamons
Benjamin Shaver
Simon S. Singh
Kenneth Spelman, Jr.
Michael R. Spilsbury
Alexandra R. Swena
Robin Swinney
James L. Tippetts
Jeffrey Topham
Scott Twede
Michael Wagner
Melissa W. Wicknick
Meng Wu

A motion to go into Executive Session was passed, and was held from 12:00 p.m. to 1:00 p.m. This was a working lunch.

- 1:17 David Shanks – Post-Revocation Hearing
- 1:45 Jennifer Campbell – Post-Revocation Hearing
Brian T. Hunt, Attorney
Odean Bowler, Attorney
- 2:05 Dirk Gilmore – Post-Revocation Hearing
Todd Weiler, Attorney
Chair Burnham has recused herself for this hearing.

OTHER BUSINESS

In discussing the Criminal Convictions List, Ms. Wismer said there could be an Administrative Rule written for the Division to have a paper review on an application. It would be an informal review based on their application, and if they objected, they could apply for Agency Review.

Executive Director Francine Giani introduced herself to the Commission. The new Division Director will be Derek Miller, and he is scheduled to start the first week in September. Mr. Miller has a Master's Degree in Public Administration and a law degree. She thanked the Commission and Division for their hard work and the concern they have for the consumer's safety and the industry.

A motion to go into a second Executive Session was made and held from 2:40 p.m. to 3:20 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Janiel Wagner – Revocation was upheld.
Quentin Solmonson – Revocation was upheld.
Randy Lowder – Revocation was reversed.
David Shanks – Revocation was reversed.
Jennifer Campbell – Revocation was reversed.
Dirk Gilmore – Revocation was reversed.

Stipulations:

Kevin D. Crockett – Approved
Jim Carlson – Approved
Michael Q. Le – Approved
Troy B. Kotter – Approved
Leslie Riddle – Approved
Yvonne R. Low – Approved
Joseph Mardesich - Approved
Nancy Mills – Approved
Kevin T. McCloskey - Approved

Criminal Convictions List:

David Adlard - Approved
Donald L. Anderson - Approved
Thomas Anderson - Approved
Bruce Armstrong - Approved
Oscar Burga - Approved
James Burroughs - Approved
Damaeon Byington – Schedule for hearing
James Claiborne - Approved
Dennis Crapo - Approved
Monet Critchley – Schedule for hearing
Jorey Dalling - Approved
James W. Gourley III - Approved
Crae Hancock - Approved
Terry Hark - Approved
Shaun Hilton - Approved
Torsten D. Holmgren – Schedule for hearing
Gabriel R. Hornsby - Approved
Heidi Humphrey - Approved
Joely Kokesh - Approved
Colleen Kulluk - Approved
Darren Lum - Approved
Darren Lunt - Approved
Deborah Matyja - Approved
Vaughn N. Nelson – Schedule for hearing
Scherrie O'Neill - Approved
Tara Paras – Schedule for hearing
Mark Pepper – Schedule for hearing
Brandon Ploehn – Schedule for hearing
John B. Poll – Schedule for hearing
Richard Chad Randall – Schedule for hearing
Ryan Robinson - Approved
Trudy L. Root - Approved
Duane Schilowsky - Approved
Jared Seamons – Schedule for hearing
Benjamin Shaver – Schedule for hearing
Simon S. Singh - Approved
Kenneth Spelman, Jr. – Schedule for hearing
Michael R. Spilsbury - Approved
Alexandra R. Swena - Approved
Robin Swinney - Approved
James L. Tippetts - Approved
Jeffrey Topham - Approved
Scott Twede - Approved
Michael Wagner - Approved
Melissa W. Wicknick - Approved

Meng Wu - Approved

A motion was made and accepted to adjourn the meeting at 3:25 p.m.