

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210  
10:00 a.m.  
January 18, 2006

### **MINUTES**

#### STAFF MEMBERS PRESENT:

Derek Miller, Division Director  
Jon R. Brown, Enforcement Director  
Mark Fagergren, Education/Licensing Director  
Shelley Wismer, Assistant Attorney General  
Renda Christensen, Board Secretary

#### COMMISSION MEMBERS PRESENT:

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

The January 18, 2006, meeting of the Utah Real Estate Commission began at 10:00 a.m. with Chair Burnham conducting.

#### **PLANNING AND ADMINISTRATIVE MATTERS**

Chair Burnham turned the floor over to Director Miller. He said Ms. Wismer was able to negotiate a stipulation for Annie Lois Johnson, who is scheduled to appear today. Ms. Wismer gave the details of the oral stipulation to the Commission.

Ms. Wismer said the Division's concern with Ms. Johnson's renewal application was with a civil judgment. This judgment is not yet final because there have been several pending motions at the trial court level that the Division hoped would be resolved by today. Those motions are still pending. In light of the judgment not being finalized, the Division proposes that Ms. Johnson's application for renewal be renewed conditionally. The conditions would be that Ms. Johnson immediately inform the Division of the outcome of these pending motions at the trial court level. If there is still a judgment against her based on any findings of forgery or dishonesty, then the Division will bring her before the Commission for them to decide what will happen to her license. Chair Burnham asked who would monitor what happens with the trial. Ms. Wismer said Ms. Johnson would be agreeing to inform the Division what happens at the trial hearing. If she didn't, then she would be in violation of the agreement.

A motion was made to accept the recommendation of the Division that Ms. Johnson be allowed time to go back to court to see the outcome of the judgment. If the judgment is upheld, Ms. Johnson will be scheduled for a hearing before the Commission,

otherwise the license will be issued on a conditional basis as recommended by the Attorney General's office. The motion passed unanimously.

#### Approval of Minutes

The minutes for December 21, 2005 were reviewed and found to have the comment by Karen Post regarding the recent Instructor Development Workshop missing. Ms. Post made the comment that Mr. Fagergren and his staff did a great job on the Instructor Development Workshop. She wanted to pass on the compliments by others at the workshop, as well as herself. The minutes were approved with this correction.

### **DIVISION REPORTS**

#### INVESTIGATIONS REPORT – Jon Brown

Mr. Brown said the Continuing Education audits in December had 42 new cases opened, 58 cases were closed, leaving 149 open cases. He said mortgage licensees will now be required to have continuing education, and they will be audited starting in February.

Mr. Brown reported in the month of December the Division received 38 written complaints, opened 23 new cases for investigation, closed 25 cases, screened and closed 20 cases, leaving 180 open case files. He said the types of complaints the Division has been receiving are for unlicensed activity, agency, property management, loan fraud, and breach of fiduciary duty.

#### DIRECTOR'S REPORT – Derek Miller

Chair Burnham asked Director Miller if he would be speaking at the UAR Director's meeting. He said he wouldn't be attending that meeting, but he is planning on attending the Legislative Day on the Hill for the UAR. Chair Burnham she would give the Division report at the UAR Director's meeting.

Director Miller said the newsletter is at the printers and we should have it back by Friday and mailed out. He said it is about 25 pages long, with two-thirds of it being disciplinary sanctions. There articles on broker responsibilities, the PLM happening on the mortgage side, and the new appraiser rules in 2008.

Director Miller said he met with Commissioner Walker last week on the TIC rule. He also met with Ms. Wismer to draw a new draft that will be sent out to the task force, and that there is a meeting scheduled with the task force at the end of the month.

The rule change for the 12 CE hours in the first term of licensure is being worked on, as well as the rule regarding felonies and misdemeanors. There will be a draft of this rule handed out later in the meeting.

Director Miller said the Division has a challenge with renewing people for their license and checking on their CE when they have recently activated their license from inactive to active. He gave the example of a person that has an inactive license, and the license was renewed a couple of years ago as inactive. A year later, this person

decided to activate the license. At this time the person is required to submit 12 hours of CE. When the person renews the license again, sometime within the next year, he will owe another 12 hours of CE. This is the way it works in real estate and in mortgage. The purpose is that we don't allow people to get around taking the CE by renewing as inactive and a week later they activate the license. There is an issue where someone is inactive and they want to renew as an active license. The question is whether or not they are required to take the 12 hours of CE, and another 12 hours of CE because they were inactive before. There are two parts to this question: 1) is this the right thing to do?; and 2) when people renew on-line, the system can't tell those people are different than any other renewal. All the system knows is if you are renewing as active, you owe 12 hours of CE. There is not an easy way for us to identify those people and then tell the system they really owe 24 hours of CE.

Director Miller said there are two things to consider. If the Commission decides they want it to be 24 hours of CE, then the Division will have to tell those people they can't renew on-line. We would then have to figure out a way to identify who those people are. Mr. Fagergren pointed out that this applies to someone who was inactive at the time of their last renewal cycle. Director Miller said his recommendation is that we only require 12 hours of CE. If a person has been inactive for those two years, then they are not required to take the CE because they were inactive. For the people who are renewing as active, they are required to do the 12 hours of CE.

Ms. Wismer said a person could beat this problem by renewing as inactive on-line, so they don't have to have any CE, and then one day later they come in and activate, and only owe 12 hours. This way they get out of the extra 12 hours. Chair Burnham said if a person has been out of the business for four years, they really need the classes to bring them up to speed. She suggested they might have certain required courses, such as the Core Course, to get them current again. Director Miller said he believes the Core Course should be covering things everyone should know. He believes a person should only be required to take 12 hours of CE, and not the 24 hours.

Commissioner Walker asked what it would take to change from the 24 hours to just requiring the 12 hours. Director Miller said we would need to clarify the rule so that it mirrors the rule on the mortgage side.

Commissioner Peretti asked Director Miller if the fines the Division receives from stipulations actually stay with the Division. He said the money goes into the Recovery Fund account, so it will stay with the Division. Chair Burnham said the Commission should be reviewing the money in the Recovery Fund from time to time.

Director Miller brought up the draft rule for dealing with applicants having felonies and misdemeanors. The intent is to have something as clear and understandable as possible. The real advantage is to get the information out on the street to the educators, boards, etc. The rule changes begin with R162-2-2.9, Qualifications of Licensed Applicants. Ms. Wismer said at the last meeting it was discussed that the Commission has the authority to make the rule because they have the authority to set

qualifications for license applicants. The scenario would be if a person was convicted of, or entered a plea in abeyance to, or you have just gotten out of jail because of a felony within the five years preceding the application, you would be denied. If any of those things have happened with respect to a misdemeanor which involves some kind of dishonesty or theft or fraud, within the last three years preceding the application, you would be denied. On renewal, it would also be considered if they have been convicted of a felony or entered a plea in abeyance since their renewal, or the same kinds of misdemeanors since their last renewal.

The current rule was also revised on things that the Division would look at in determining whether a person is fit for a license or not. Rule 2.2.11.5 is an explicit statement saying whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition. Ms. Wismer explained a diversion agreement is one step down from a plea in abeyance.

Chair Burnham asked about checking a person renewing their license. Director Miller said that in order to do this, we would have to require fingerprinting for renewals. He said once the Division has the state hooked into the electronic fingerprinting, then the fingerprints would be kept on file and we could run those again as part of the renewal process. Mr. Fagergren said sometime in February they thought the system would be in place.

A motion was made to begin the rulemaking process on the changes to R162-2. The motion passed unanimously.

There will be a public hearing on the proposed bill within a 30-day period of it going into the rulemaking process.

#### EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics seem to have leveled off over the previous months. He said if the rule that was just passed to start in the rulemaking process is approved, it will be critical that we instruct the schools to let people know that the criminal histories are not debatable.

This spring the Caravan will be visiting outlying areas, and it is in the process of being finalized now. It will cover St. George, Moab, Vernal, and Logan areas.

The Division is trying to schedule now for the next Instructor Development Workshop. The tentative time will be in October, and we are working on getting the facilities reserved.

CE Banking has now started. Schools and providers have been notified that as of the 13<sup>th</sup> of this month they can bank their CE hours. It appears the people that do a lot of it really love it. The ones with the biggest challenge are those who don't do as much. There are currently approximately 817 CE courses between mortgage and real estate.

The feedback has been positive so far.

Mr. Fagergren announced Amy Corak, one of the real estate education secretaries, has decided to accept another position and is leaving. There are 13 candidates scheduled to be interviewed, starting as early as this afternoon.

A year from now we should be filming our new Core Course. You have given feedback that you want to address broker supervision and some of the challenges that brokers have in management. Please let us know if you have topics that you feel are important. Director Miller noted that this would be our one shot at telling people what they should know about CE.

### LICENSING HEARINGS

11:00 Annie Lois Johnson – Application for Renewal of License

#### Review of Criminal Convictions List for Commission Consideration:

Jose Francisco Arvizu III  
Jana M. Woods-Uban  
Robert Lee Youngblood II

#### Review of Stipulations

Robert Lindsey  
Brian R. Ellis  
Ron Ragona  
Robert T. Richards  
Anisa L. Lignell  
Ryan C. Fenton  
Chad B. Elkins  
Karla Coltharp  
Jamen Wood  
Aaron Haaga  
Trond Pedersen  
Jennifer Hatton  
Cameron Sevy

A motion to go into Executive Session was passed, and was held from 11:50 a.m. to 12:15 p.m.

### RESULTS OF EXECUTIVE SESSION

#### Informal Hearings:

Annie Lois Johnson - The Division has accepted the oral stipulation presented.

#### Stipulations:

Robert Lindsey – Approved  
Brian R. Ellis – Approved

Ron Ragona – Approved  
Robert T. Richards – Approved  
Anisa L. Lignell – Approved  
Ryan C. Fenton – Approved  
Chad B. Elkins – Approved  
Karla Coltharp – Approved  
Jamen Wood – Approved  
Aaron Haaga – Approved  
Trond Pedersen – Approved  
Jennifer Hatton – Approved  
Cameron Sevy – Approved

Criminal Convictions List:

Jose Francisco Arvizu III – Schedule for hearing  
Jana M. Woods-Uban – Schedule for hearing  
Robert Lee Youngblood II – Schedule for hearing

OTHER BUSINESS

Mr. Brown said the Division has found a government agency that is a forensic computer group. The group will support all government investigative units of the state. This group goes out to retrieve all information previously thought erased from hard drives.

The Division audited a mortgage company last month and were there for about 5 hours. We thought there were going to be two computers, and there turned out to be 8. They called for a second team to come and help to retrieve the information. They certify that they do not damage the computer and put it back together before they leave.

All the investigators in the Division are at a training class to day to get familiar with this process. The Division will tell this agency what information they are looking for, and they will pull all the information together for us.

Ms. Wismer said there is another draft rule change to discuss. This is R162-10-1, Formal Adjudicative Proceedings. The way the disciplinary action was phrased says that if there is any suspension or probation of a real estate license, or a fine levied, it has to happen in a formal proceeding. Quite often in our informal licensing hearings, we put people on probation and occasionally suspend someone. It would be best to rephrase the rule so there won't be any conflict. It would clean up any inconsistencies in this rule. A motion was made and passed to accept the changes to R162-10-1 and start it in the rulemaking process.

A motion was made and accepted to adjourn the meeting at 12:22 p.m.