

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
8:30 a.m.
March 15, 2006

MINUTES

STAFF MEMBERS PRESENT:

Derek Miller, Division Director
Mark Fagergren, Director Education/Licensing
Jon R. Brown, Enforcement Director
Dee Johnson, Chief Investigator
Dave Mecham, Investigator
Carlos Alamilla, Investigator
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary

COMMISSION MEMBERS PRESENT:

Maralee Jensen, Vice Chair
H. Blaine Walker, Commissioner
Bonnie Peretti, Commissioner

GUESTS

Linda Leavitt, Preferred Real Estate School
Hamid Hosseini, Preferred Real Estate School
Irene Kennedy, Stringham Real Estate School
Arnold Stringham, Stringham Real Estate School
Tammy Lund, The Real Estate School
Jaren Davis, The Real Estate School, immediate past President UAR
David Harmon, Harmon Real Estate Academy
Curtis Bullock, UAR
Rick Southwick, Keller Williams Realty

The March 15, 2006, meeting of the Utah Real Estate Commission began at 9:35 a.m. with Director Miller conducting. Because of the heavy snow storm, the meeting was delayed in starting from its regularly scheduled 8:30 a.m. time.

PUBLIC INPUT SESSION

The public input session began at 9:35 a.m. with Director Miller conducting the meeting. Commissioner Walker made the comment that the Legislative Committee of the UAR has had quite a few comments on this proposed change. Most of the comments have all been extremely positive. The only comments not completely supportive were those that said the rule should be tougher on the applicants. The UAR represents approximately 12,000 of those in the real estate industry, so this was a good cross-section on comments. Commissioner Peretti said she was pleased to have

been involved in the proposed changes to the rule. She said she would like to see the rule implemented and would like to see a smoother transition and a better industry.

Ms. Wismer gave an overview of the proposed changes to R-162-2-2, Licensing Procedure. The proposed changes would prohibit certain people from obtaining a license if they had certain kinds of crimes. This would include felonies within 5 years preceding their application, and certain misdemeanors involving dishonesty or theft within 3 years prior to their application. It would also provide that if an existing licensee has a certain kind of conviction he would be ineligible for renewal.

Director Miller said the public input session would go for at least one hour and if there are any who would like to submit written comment on the rule, the information would be included with the packet of information on moving the rule forward.

Comments of the public input session included:

having a document the schools could provide to the potential students regarding the criminal background;
a concern for safety regarding the lock boxes and entry to homes; and,
possibly having fingerprints taken and reviewing the reports before a person applies.

Director Miller said all applications are issued on a conditional basis until the background checks are returned. If there is a positive report regarding a criminal history that has not been reported on the application, the license is then immediately revoked.

Each application with a "Yes" answer is reviewed on a case by case basis. The Division has the authority to make a decision on an application. Mr. Johnson has been designated as the Hearing Officer for these cases. Director Miller and Mr. Johnson said there is a problem with people calling them directly and discussing their applications. Typically, someone will call in and give specific details of their case which shouldn't be discussed outside of a hearing. It is inappropriate for either Director Miller or Mr. Johnson to speak to these individuals outside a formal setting of a hearing. If an applicant speaks with Mr. Johnson and discusses the details of their case, he would possibly have to recuse himself from the hearing. This would mean the person would have to be heard by someone else as the Hearing Officer, or come before the Commission in a scheduled hearing.

Mr. Fagergren, who was the previous Hearing Officer for quite a period of time, said many times people will hear only what they want to hear when he speaks with them. Some people use the fact that they spoke to him and say he has approved the application.

The topic of expungement was brought up. Director Miller said the Division would counsel education providers to help students make sure the record has been actually expunged instead of dismissed. Nine times out of ten people will believe their record

has been expunged, and it hasn't. Often times people believe a Plea in Abeyance will mean their record will be clean, or when they stand in front of a judge and he will say, at the end of 24 months your probation will be over. The Division replies that having an expungement done is a very formal and specific judicial process, and strongly encourages applicants to check their records. An expungement does not happen automatically.

Director Miller said the time for the public input session will remain open, but the Commission will now continue on with the public session of the meeting. Vice Chair Jensen was delayed by the heavy snow and arrived at 10:00 a.m. There is now a quorum of Commissioners and Vice Chair Jensen will conduct the meeting.

The next matter of business is The Real Estate School's request for a name change. Director Miller said there were representatives of the school present and they would be presenting their case before the Commission. Tammy Lund and Jaren Davis, both with The Real Estate School, introduced themselves to the Commission and began their presentation.

Ms. Lund contacted the Division of Corporations website for Corporate Name Availability. The website states the Division of Corporations will not approve requested names which imply in any way that is an agency of the state. She reserved the business name and applied for the DBA as Utah Real Estate School. The Division of Corporations approved the name in January. Ms. Lund contacted Mr. Fagergren and asked how to change the name of the school to "Utah Real Estate School." Mr. Fagergren denied the request to change the name and told Ms. Lund that it had been tried in the past to use this name and was also denied at that time. He said it was misleading and confusing to the public.

Ms. Lund formally wrote a letter to Director Miller and Mr. Fagergren stating why she wanted to change the name. She said the existing Real Estate School name does not match their website and it is confusing for their students. Mr. Fagergren responded in writing to Ms. Lund's letter denying the name. His reason was that there are 12 licensing schools in the state which means the Division has a closer relationship with the pre-licensing schools, and the Division wanted to avoid any possible confusion for the public.

Ms. Lund went to the surrounding states and went to the Idaho Real Estate Commission, Colorado Real Estate Commission, and from their website pulled their pre-licensing school providers. Nevada and Arizona also had schools with their state names in the school's name. She believes the name change is being unreasonably denied.

The meeting was opened up for public comments. The first comment was that The Real Estate School is a franchise, and that students should know the reason for the school is for recruitment purposes. The Real Estate School is Coldwell Banker and it was felt that this should be in the school's name to not deceive the public. Ms. Lund agreed and said she was in the mist of changing the enrollment forms showing there is

a relationship and they are owned by NRT (National Real Estate Trust). NRT is a wholly owned subsidiary of Cendant, who also owns ERA and Century 21.

Other comments were that Coldwell Banker has guardianship over The Real Estate School. Ms. Lund said the school is owned by NRT and managed by Coldwell Banker. Also, there was agreement with the Division as to the possibility of confusion on the name, and they felt it would give the public the impression that it was something in which the State of Utah was involved.

Mr. Fagergren brought up an example used in terms of the confusion issue. The Utah Association of Realtors had an Ethics course which is given to real estate people. There were thousands of licensed real estate people who have to do continuing education every two years. These people believed this course was the course taught by the Utah Association of Realtors and was the Division of Real Estate's Core Course. Both courses were on an ethical topic, but the difference between those two courses would be greater than this name confusion issue. Mr. Fagergren spoke to people who were not licensees just to get their opinions. The comments he received from several unlicensed people were that they thought there was a connection between the school and the Division of Real Estate.

Mr. Davis brought up the issue of other states allowing the use of their names in schools and businesses. Mr. Fagergren said he called Florida and spoke with them. Florida has only one rule saying if the name gets approved, it can be used. Utah is different in that there are two Divisions that must approve the name. Just because the Division of Corporations approves a name, does not mean it will be approved by the Division of Real Estate.

Commissioner Peretti asked Ms. Lund why the school couldn't change their website to match the schools name. She said the website is garnering a lot of business for them, and Mr. Davis said the name "The Real Estate School" was taken on the website.

Director Miller said the Commission will meet in Executive Session to make a decision. Under normal circumstances, the Division Director would have concurrent authority over that decision. Director Miller said he was going to recuse himself from that concurrent authority position, because he has spoken with Mr. Davis on the phone about this issue. Since he has had outside communications on this topic, he feels it would be necessary to recuse himself. He has also read and approved of the letter written by Mr. Fagergren denying the name of the school. Ms. Wismer stated that since this is not a formal hearing, Director Miller does not need to recuse himself.

Vice Chair Jensen said there is one other person with a comment on the public input session on the proposed change to R162-2-2. Mr. Southwick is an agent with Keller Williams Success Realty in Ogden. In general he is supportive of the changes, but he is aware of one instance where one of their agents had a problem, and with the way the rule is proposed, would no longer be able to practice. He said from his reading the rule, there is zero percent where the Commission and Division would have any review

at all, under any circumstances. Mr. Southwick is concerned this employee might be prevented from practicing because she had been convicted of a felony during the time she was licensed. Ms. Wismer said it might conceivably happen that she would not be renewed at her regular renewal time because of this conviction. Mr. Southwick is concerned if this rule is adopted as written, the Commission and Division would not have any opportunity to review any mitigating circumstances.

Mr. Johnson asked Mr. Southwick if his concern was only related to renewals and not to new applications. Mr. Southwick is referring to the renewal process. Mr. Fagergren said in a worst case scenario, it would only be for a three year period before they could reapply. Director Miller said this would be similar to the mortgage rule that says the Commission could make an "exception." With those few words, it has created what is happening in real estate now. Everyone thinks they are the exception.

Vice Chair Jensen asked Mr. Southwick to describe an unusual circumstance that would be an exception to the rule. He gave the example of someone who is a long time practitioner of real estate, who has never had a complaint against them from the public, and who made a mistake that did not deal with their practice of real estate.

Section 2.2.10, Qualifications for Renewal, would seem to preclude any person from getting reviewed if it were passed as written. Commissioner Walker asked if Mr. Southwick had some specific verbiage to offer on any changes. He suggested that maybe pass Section 2.2.9 and striking 2.2.10. Director Miller thanked Mr. Southwick for his recommendations and said they would be taken under consideration.

A motion was made and passed unanimously to close the public input session.

Approval of Minutes

The minutes for February 15, 2006 were approved as written.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown reported there were 38 written complaints logged in February, 17 new cases opened for investigation, 18 cases closed, and 14 complaints screened and closed (no case opened). This leaves the number of open cases at 170.

Some items not on the report are trust account audits completed, 3; subdivision registrations, 3 (2 were in St. George and 1 in Zion's). Since last November the Division has exempted 18 subdivisions who have registered with HUD. The type of complaints consisted of the following: 4 agency related complaints, 5 on property management, 3 earnest money disputes, 6 breach of fiduciary duties, 7 on unprofessional conduct, 6 misrepresentations, 2 accuracy of listings, and 1 dishonest dealing.

Mr. Brown said the biggest concern investigations has currently is people who are teaching people how to use buyer contracts, notices of interest, and "strange" kinds of

deeds to buy property, but not really buy property. It causes concerns in the appraisal industry because the appraiser has to track who has fee title and whose interest they are appraising. Transactions start to get camouflaged with all the fake documents. Mr. Brown said when the Division goes on the Caravan this week to the southern part of the state, they will be telling agents to watch out for issues like these. This problem is in at least 14 other states, and seems to be growing.

Mr. Brown said the Division is having a real problem with altered appraisals being done by mortgage brokers. There is software out that makes the process easy, and the problem is growing quickly.

DIRECTOR'S REPORT – Derek Miller

Director Miller said the on-line change cards are in process. This will be a good thing on both sides, the industry and the Division, to have a self-service license management capability. If there are errors in the system, it will be because the individual hasn't entered or updated their information.

In speaking with our on-line contractor, the process of on-line change cards will have a big benefit for brokers and Principal Lending Managers ("PLM"). This process will allow the broker/PLM to check their rosters and see potential licensees trying to sign on with their company. The broker/PLM will be able to either accept or deny the licensee, and if there is currently someone on the roster that needs to be removed, it will be an easy process to remove them. The broker/PLM will be able to check the license status of the licensees at any given time.

Another area where the on-line contractor is currently working is to allow principal and branch brokers to be able to renew on-line.

Commissioner Walker raised the question of when is a person actually licensed. Is it when they have a number, or is it when they have the license in their hands? Mr. Fagergren said there is an article in the April newsletter about this topic. The answer is when the person has the license in their hand. A person can not work off of a receipt number. Mr. Johnson said several large companies are telling their people that as soon as they are in the state's computer, they can start working. This is not correct.

Commissioner Walker said people are wondering why it takes so long to get their licenses. People are telling him they have been waiting several weeks to a month after they have turned in their applications. Director Miller said if it has been a month, there is an issue with the application and it is being reviewed. Ms. Christensen said the current turnaround time on a new license is 7-10 working days, if it doesn't have to be reviewed. Mr. Fagergren reminded the Commission and all in attendance, that currently the Division has 2 people processing applications, one for real estate and one for mortgage. Every time someone calls wanting to have them look up something in the system, it just delays the system.

Director Miller said for the next legislative session he would like to ask for one more

licensing specialist for real estate, and one more for the mortgage side. Mr. Fagergren said the Division has 2 secretaries to handle 21,000+ licensees and the schools. Vice Chair Jensen asked if the Division could hire a temporary person without going to the legislature, and Director Miller said that we would still need the money to pay the temporary person. Vice Chair Jensen asked how much of the money the Division brings in stayed with the Division, and Director Miller said approximately 60%. The remaining 40% goes into the General Fund. Commissioner Walker said we need to ask the legislature to allow for some of the money from the Education and Recovery Fund to be used by the Division for the educational staff. He would like to see more of the money brought in by the Division to remain with them. The Commissioners are all in agreement on this issue.

Mr. Brown said the dedicated TIC investigator will start on Monday. He has 12 years in the real estate industry and a Master's Degree in criminal justice. His name is Ken Benson and the Division is very pleased to be getting his help. He will be currently working on 3 cases that are pending.

Director Miller said there has been a change on the licensing side. We have replaced one of our employees and hired a new real estate person. She is still being trained, but is a quick learner and will be a good asset to the Division.

Vice Chair Jensen asked if there was any discussion on the Draft of R162-2-2. The question is what is a good example of an "exception," and should it be just limited to the renewal of a license. Director Miller said perhaps keeping the language of the felony, fraud, etc., and removing the misdemeanor wording on Section 2.2.10. This would allow for the application to be reviewed. Ms. Wismer asked if there was a consensus on changing the wording on Section 2.2.10 to have a period after the word "felony" and leave off the phrase about misdemeanors. A motion was made and approved to amend Section 2.2.10 as discussed.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren mentioned the Caravan will be next week, and in May there will be a second Caravan going to Tooele, Utah County, and Logan.

There will be another Division newsletter going out in April.

Licensing is very busy on the mortgage side with the Principal Lending Manager applications. It is taking 2 employees who will have to process 2200 applications by May 1st. There have been a very small number of people who have been licensed as of today.

Review of Criminal Convictions List for Commission Consideration:

Doyle Clarence Kelstrom

Review of Stipulations

Candace Seidel

Rand Holley
D. Brent Gudgell
Debbie L. Devore
Ruth Gezelius
Turid V. Lipman

A motion to go into Executive Session was passed, and was held from 12:38 p.m. to 1:25 p.m.

RESULTS OF EXECUTIVE SESSION

Stipulations:

Candace Seidel - Approved
Rand Holley - Approved
D. Brent Gudgell - Approved
Debbie L. Devore - Approved
Ruth Gezelius - Approved
Turid V. Lipman - Approved

Criminal Convictions List:

Doyle Clarence Kelstrom – Schedule for hearing

OTHER BUSINESS

The request for a school name change voted and passed on a motion to recommend to the Division to not approve the name change. The recommendation to the Division was to work with the Division of Corporations to identify names for the future that would not be allowed.

A motion was made and accepted to adjourn the meeting at 1:30 p.m.