

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
8:30 a.m.
April 19, 2006

MINUTES

STAFF MEMBERS PRESENT:

Derek Miller, Division Director
Mark Fagergren, Education/Licensing Director
Jon R. Brown, Enforcement Director
Dee Johnson, Chief Investigator
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Amanda Orme, Mortgage Education Secretary
Tiffeni Wall, Real Estate Education Coordinator
Jody Colvin, Licensing Supervisor
Ken Benson, Investigator

COMMISSION MEMBERS PRESENT:

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

Guests

Curtis Bullock, UAR
Karen Post

The April 19, 2006, meeting of the Utah Real Estate Commission began at 8:32 a.m. with Chair Burnham conducting.

Director Miller introduced two new employees to the Division. Ken Benson is the new TIC investigator. Mr. Benson has 12 years of real estate experience and a Master's Degree in Criminal Justice. Mr. Fagergren introduced Tiffeni Wall as our new full-time Education Coordinator. Ms. Wall is replacing Jennifer Eatchel who is leaving the Division after 9 years. He also introduced two current employees, Amanda Orme as the Mortgage Education Secretary and Jody Colvin as the Licensing Supervisor.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

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

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon R. Brown

Mr. Brown reported in the month of March there were 58 written complaints logged, 27 complaints screened (no cases opened), 30 new cases opened for investigation, and 54 cases closed. The number of open case files is 146. Out of these cases that were opened, 10 were on agency issues, 12 for fiduciary duty, 8 for trust account and earnest money problems, 11 were for unlicensed activity, 14 for lack of jurisdiction, and 3 were for advertising.

The number of continuing education audits show 3 new cases opened, 29 cases closed, 2 stipulations/orders signed by the Commission, leaving the number of audit investigative files at 66. Mr. Brown said on the recent Caravan they told the people in attendance they have just as good a chance in getting audited when they turned in their applications in person or mail, as to using the on-line renewal process.

DIRECTOR'S REPORT – Derek Miller

Director Miller began by following up with a few issues from the last meeting. The first one was the request made for a name change on a school. The Commission voted in support of the Division's decision not approve this change. This made the school revise the name change they originally submitted to "Utah Real Estate School, NRT." This satisfied the Division's concern as to any possible confusion and includes the name of the company, and the name was approved.

The issue of the Division's budget and how it was broken down was also mentioned in the last meeting. Director Miller spoke with the Division's budgeting officer and the explanation was that there is no direct connection for any revenue producing agency on the amount taken in and the budgeting amount. The budgeting is handled in two separate processes, one is bringing in a certain amount of money, and the other is a budget approved by the legislature. He also spoke with Francine Giani, the Executive Director for the Department of Commerce. Executive Director Giani is supportive of the concept of our licensees receiving more services for the money they pay. The best way to do this is for the Division to have the number of people and resources available to handle and process the requests from licensees. This has been a problem in the past, especially with the licensing side. There is currently only been one person for real estate, and one for mortgage. Director Miller would like to see at least one more person for each industry to help with the work load. The budgeting process starts in the early fall, so it's not too soon to start thinking about getting the request started.

Commissioner Walker said he was told the money generated by the Division should stay with the Division, so Executive Director Giani would have quite a bit of say in how the money was budgeted. He understands the Division would make a request, but it is still the Division's money. He is struggling with the idea that would make the Division have to go back to the Legislature. Director Miller said the money does not get earmarked for the Department. The money the Division receives is from the General Fund, not Department or Division revenue.

Commissioner Walker said the Division needs to be represented at conventions such as

ARELLO and AARMR. He recently returned from an ARELLO meeting last week, and it was very apparent the Division was not present. He said Director Miller, Mr. Benson, Mr. Fagergren, and Mr. Brown all need to be in attendance. There is a wealth of information and contacts at these conventions, and it would be in the best interest of the Division to have employees attend. Director Miller said Executive Director Giani is supportive of this, and he believes there will be a change.

Director Miller suggested the Commission start the time of the meetings at 9:00 a.m. instead of 8:30 a.m. After a brief discussion, it was agreed to begin the future meetings at 9:00 a.m.

Director Miller brought up the issue of licenses on probation. He reviews the final draft of all newsletters before being sent to the printer. The typical wording is the licensee will be on probation for the first term of their licensure, with broker notification and return notification to the Division. Licenses are now printed with the words "Active on Probation" on the license. He is concerned as to what the licensee actually tells their broker. The Division would like to not only continue printing the probation status on licenses, but require the licensee to provide a copy of the Order putting them on probation to the broker. This way the broker can actually see what happened. Chair Burnham would like to see this information put on the website.

A draft copy of the TIC rule was handed out for discussion. One issue for discussion was the financial strength instead of the financial background of the sponsor. The requirement of a current certified financial statement and credit report was added. The next comment was defining any conflicts of interest between the sponsor and any affiliate of the sponsor. Commissioner Walker said there can't be any conflicts of interest between the sponsor and any third party regarding third party reports (i.e., title insurance, inspections, engineering, etc.). Director Miller said perhaps what is needed is disclosure of whether or not any of these third parties are affiliates of the sponsor. The wording was added to disclose any business affiliate relationships between the sponsor, instead of conflict of interest. Mr. Johnson suggested looking at the ABA section RESPA. One is a generalized portion and the other section is very specific.

Director Miller said the Division will go forward with the changes in the draft rule, and bring back the revised copy for the Commission to review. Commissioner Walker said Ray Quinney & Nebeker has submitted a request for a public review of the draft. He said there have been a number of people watching what is happening in Utah, and suggested having a public hearing.

LICENSING HEARINGS

9:35 Doyle Kelstrom – Application for License

DIRECTOR'S REPORT (Continued)

Director Miller asked Commissioner Walker to give a report on the ARELLO conference

he recently attended. He said ARELLO has now hired a staff attorney. The TIC Task Force meeting had standing room only, because interest has grown from the last meeting. Commissioner Walker made a motion to include NASAA (North American Securities Administrators Association), ARELLO's counterpart on the securities side. The Chairman of NASAA is Alan Wineger, who is the Deputy Secretary of the Department of Corporations in California. This Department handles both securities and real estate. ARELLO is going to meet on May 18 in Washington, DC, with NAR. Both of these groups have invited NASAA to meet with them about common grounds with any overlap between the real estate and securities side. Denise Crawford, who is the head of the Securities Department in Texas, was at the TIC conference and indicated she would like to be involved in the process as well. It appears that TIC's will be handled on a state basis rather than let the SEC come in and take over.

Commissioner Walker said there were breakout sessions covering issues such as education and licensing. He attended the Division Four meeting with people attending from Montana, Oregon, Washington, Wyoming, Hawaii, Idaho, and Alaska. California did not attend, and Commissioner Walker was the only one from Utah. He said it was very beneficial to be there because you can find out what is happening in other states.

He said one important thing for the Commissioners to be aware of is the Commissioner College. This is a training program for Commissioners and will be offered in conjunction with the San Antonio meeting this fall. Commissioner Walker said it would be a good idea for all the Commissioners to attend and participate in the training. Ms. Wismer said Karen Post was the person who originally started this Commissioner College idea, and Ms. Post said she wrote the manual they are currently using. Commissioner Walker said the price of the Commissioner College will be included in the full price of the conference. He is planning on attending this meeting in October.

Commissioner Walker gave some quick updates on licensing. Nevada has a 45-hour brokerage management course prior to getting a broker license. Montana is looking into single license, Oregon has a single license, and Washington is looking into a single license. Hawaii has just re-done their condominium law, so it would be a good state to access to see what they have done. Dual agency was discussed a lot, and many states are trying to deal with this topic. Other topics that were highly critical were higher education and requiring additional education. He explained the problems Utah had in trying to get this through, and Oregon has seen a reduction in the amount of complaints since their increased education requirements went into effect. Chair Burnham asked if by higher education it meant additional hours, and Commissioner Walker confirmed that it was the case. With increased educational requirements, there are E&O providers indicating they may decrease their premiums in states that have the higher education requirements. He said if we can document that, it would be a great thing to take back to the Legislature, because it would help the industry get on board. Mr. Fagergren asked if this was pertaining to continuing education or pre-licensing education. Commissioner Walker said it was higher additional education prior to licensing. Alaska has a state consumer pamphlet for consumers looking into by a home giving guidelines and cautions. Ms. Wismer said the Division used to have a pamphlet like this, and Mr. Fagergren said all of our information is all on the website

now.

Commissioner Walker ended his report by saying the region was setting some goals. These include the following: consistency in licensing history formats, standardized license applications, reciprocity agreements, and defining substantial equivalency. These are some of the topics the region will be working on. He said this is why it is important for the Division to attend these conferences, to bring back to Utah these updates. ARELLO is also forming an education foundation, and the corporation will be housed in Utah.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the Caravan went to St. George and there is good news and bad news to report. The good news was that it was very well attended, the bad news is as many people who got in, got turned away. Mr. Brown said some frustrations were expressed by those who were "turned away" due to inadequate space. The Division will be going back down to St. George for a second time, and have now booked the facility for the entire day in case there is a need to have more than the morning session. There are over 430 people who have enrolled, and this does not count any of the walk-in people. He said in times past, there might have been 50 to 75 people attending.

Mr. Fagergren said the Caravan also went to Price and Moab. Most of the people attending were real estate licensees, with very few mortgage licensees. He said there are 59 mortgage licensees are currently signed up now to attend in St. George. There are also 11 appraisers, and the balance is real estate.

The Caravan will be going to Logan on May 2nd, Tooele on May 4th, Utah County on the 16th of May, and Vernal on May 18th.

Mr. Fagergren said the licensing numbers show March 2005 versus April 2006 have grown 14.5% in active licensees. There is a huge number in the increase of monies being taken in. It used to be approximately \$20,000 for an end of the month deadline. In the last 4-5 days, there have been 3 days where the deposits have been that large. The stack of applications coming in with checks is huge, and the receptionist has had to stay after hours to get it all entered. Mr. Fagergren said the numbers are growing, and even when you figure in a 10-15% dropout rate, there is a 30% turnaround in new growth in just this last year. He had Ms. Orme compare the statistics from August of 2001 versus where we are today. Presently, there are 24,560 in real estate, in 2001 there were 16,700 licensees. The statistics for appraisers show we are now at 1,506, and in 2001 it was approximately 900. The mortgage industry numbers are now 15,500, and in 2001 it was 4,488. The total number of licensees, including entities, is now 41,600 licensees being regulated by the Division. In 2001 it was 22,000 licensees. We have nearly doubled in the number of licensees.

Mr. Fagergren reported April 30th is the deadline for the mortgage industry to have a Principal Lending Manager in place for each entity. This is comparable to the Principal

Brokers in real estate. There are 1,776 entities who will be required to have an active PLM. As of today, the Division has received 1,390 applications. This means 250-300 people haven't even applied. Of that 1,390 who have applied, there have only been 350 licensed as PLM's, and 29 licensed as Associate Lending Managers. The Division is encouraging all of those who have applied to complete the job. Mr. Fagergren said there is an outline in the test booklet as to where the test questions come from, but there is no one book that consolidates the information. Mr. Brown said it will effect the real estate industry in trying to get loans. Mr. Fagergren said real estate licensees should get used to asking the question, "Do you have a PLM?"

Commissioner Walker asked if the heading "Revoked/Suspended/Probation/Expired" on the statistics could be broken down to reflect how many were in each category. Ms. Christensen will break out these numbers for the next months statistics.

Mr. Fagergren said branch offices don't have to have a PLM in place. Some companies, instead of closing down, are becoming a branch office of a company and will assume their name. Commissioner Jensen said she has heard of companies who are going to say they are part of a company that has a PLM in place, and still use their own names. Mr. Fagergren said this can't be done. They have to assume the name of the entity.

The newsletters are now done and are being mailed out. Mr. Fagergren handed out copies to the Commissioners.

Mr. Fagergren said Tiffeni Wall will be a big help to the Division. Ms. Wall has been with Recovery Services for a number of years. She has done newsletters and been an investigator. Ms. Wall will be full-time and be integrally involved in CE course approvals and pre-license course approvals.

Director Miller encouraged the Commissioners to attend any of the Caravan meetings in their area. The location of the Utah County meeting will be finalized, and the Commissioners will be given the information.

Chair Burnham asked if there was a follow-up rule to for additional hours for new licensees. Director Miller said it is not for additional hours, but a draft rule which will break down the 12 hours into specific components. Ms. Wismer said she will get the information from Mr. Fagergren and Ms. Post, and have something ready for next month. Chair Burnham said she and Commissioner Jensen would like to see this done before they leave in June. Commissioner Peretti asked if the rule could be made retroactive, and Ms. Wismer said it couldn't be done.

OTHER BUSINESS

Ms. Wismer said there is one rule that is ready to be made effective. R162-10-1, Formal Adjudicative Proceedings, would make technical corrections to the Administrative Procedures Act rules for proceedings involving real estate licensees. A motion was made and unanimously passed to approve the rule being made effective.

Review of Stipulations

Catherine Hughes
Eric D. Bingham
Kandy Clayton
George W. Bible
Jed F. Willets
Robert T. Keddington
Gregory W. Smith
Keith Jeppson
Kent Frei
Dirk R. Gilmore
Kathy Devenney
C. Robert Kallas
Seth M. Phillips
Adam Griffiee
Brett Sampson

A motion to go into Executive Session was passed, and was held from 11:25 a.m. to 12:00 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearing:

Doyle Kelstrom – Denied

Stipulations:

Catherine Hughes - Approved
Eric D. Bingham - Approved
Kandy Clayton - Approved
George W. Bible – Not approved
Jed F. Willets - Approved
Robert T. Keddington - Approved
Gregory W. Smith - Approved
Keith Jeppson - Approved
Kent Frei - Approved
Dirk R. Gilmore - Approved
Kathy Devenney - Approved
C. Robert Kallas - Approved
Seth M. Phillips - Approved
Adam Griffiee - Approved
Brett Sampson - Approved

A motion was made and accepted to adjourn the meeting at 12:05 p.m.