

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
9:00 a.m.
June 21, 2006

MINUTES

STAFF MEMBERS PRESENT:

Derek B. Miller, Division Director
Mark Fagergren, Education/Licensing Director
Jon R. Brown, Enforcement Director
Dee Johnson, Chief Investigator
Blaine Ferguson, Assistant Attorney General
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Tiffeni Wall, Education Coordinator
Dave Mecham, Investigator
Jim Bolton, Investigator
Craig Livingston, Investigator
Carlos Alamilla, Investigator
Ken Benson, Investigator
Charles Smalley, Investigator

COMMISSION MEMBERS PRESENT:

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

GUESTS

Glen Welker, Salt Lake Board of Realtors, Education Committee

The June 21, 2006 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Burnham conducting.

Approval of Minutes

The minutes for May 17, 2006 were approved as written.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon R. Brown

Mr. Brown reported in May the Division received 47 written complaints, screened 25 complaints (no cases opened), opened 34 new cases for investigation, closed 15 cases, leaving 163 open cases. Of the 47 cases received they were broken down as follows: 8 were for loan fraud; 7 agency related (i.e., informed consent, agency disclosure, etc.); 5 breach of fiduciary duty; 6 trust account and earnest money disputes; 10 were

insufficient evidence; 5 jurisdiction; 3 misrepresentation issues; and, 3 were dishonest dealing issues.

DIRECTOR'S REPORT – Derek B. Miller

Director Miller announced some changes to the agenda. The hearing for Lynn McAdams will be moved to 11:00 a.m., and Lance Miller will give his presentation at 10:00 a.m. The public hearing on the T.I.C. Rule will still be at 1:30 p.m. and is scheduled to last one hour. Director Miller will be leaving at 2:30 p.m. and Mr. Fagergren will be the acting director for the remaining hearing.

ARELLO is having their annual conference in September in San Antonio, TX. The Division would like to have one of the Commissioners attend with the Division staff. Director Miller asked either Commissioner Peretti or Commissioner Sampson if they would like to attend. Chair Burnham said the UAR convention is usually the same time as the ARELLO conference, and upon checking, it was found the UAR convention will be on September 20, 21, and 22nd in San Diego, CA. The ARELLO conference is September 24 – 27th.

The Division is in the process of clarifying both to the public at large, and to our licensees, the purpose of the complaint process. The Division isn't a mediator and does not get into dispute resolutions with private parties. The purpose for the complaint process is one way to gather information used in regulating our licensees. Chair Burnham suggested an article be written on this topic for the next newsletter.

Director Miller said Enforcement has seen an increase in non-licensees who have attended a seminar on how to buy and sell real estate. The problem for the Division is these individuals are not licensees and we don't have jurisdiction

OTHER BUSINESS

Commissioner Sampson brought up the topic of licensees being able to pay their fines on a payment schedule. He is concerned when the Division raises the limits of the fines for stipulations, and people don't pay the fine in one payment, the Division will become a finance agency. Mr. Brown said it is helpful to Enforcement on trying to negotiate a stipulation to have a little leeway. Any person that does not pay as agreed will be sent to the State Office of Debt Collection.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said in 11 months the growth in new licensees is 15.5%, and over an annual period it would be 17%. He said when there are 22,000+ licensees, a 17% growth rate is very significant.

We are still seeing CE audits with \$1400 fines. It seems as though a certain amount of people are determined to defy the system. Director Miller said it is more difficult to cheat the system now than it was several months ago. The licensee can see what classes have been banked, and if they want to add courses to that they must fill in valid information.

Mr. Fagergren mentioned last month Ralph Little made presentation to the Commission for real estate school application. Today, Lance Miller is making a presentation about pre-licensing and CE distance education. Mr. Miller owns a mortgage school and has a course approved. The mortgage industry doesn't have the ARELLO requirement that real estate has, yet they allow distance education for CE and pre-license. Mr. Miller has a on-line 20-hour mortgage course and a 40-hour mortgage course approved. He will be presenting a streaming video on the internet, where every few minutes the person must interact or it will be stopped.

Mr. Fagergren suggested the Commission allow him to review these courses and bring his recommendations to the Commission. After discussion, the Commission has agreed with Mr. Fagergren to bring his recommendations to them.

A decision must be made as to what the next Division Core Course will be for July 2007-2009. The filming should begin in the Fall and be edited this Winter. Mr. Fagergren said we are thinking of having 30 minutes with Director Miller speaking about current rules and issues that are topical to present to the licensees. A topic of concern is mortgage loan fraud. He would like to have a 2 hour presentation with a focus on how a licensee can avoid participating in loan fraud, what kind of tips or clues they can look for. The last 30 minutes would be broker supervision. He will need a decision by the end of this summer.

Mr. Fagergren and Ms. Wall recently attended the REEA conference in Las Vegas, NV. REEA stands for Real Estate Educators Association. He wanted to announce that Karen Post received the single Annual Career Award for 2006. The Commission would like to see something in the next newsletter about her success.

Mr. Fagergren brought up the 12 hour new agent course in the first two years. The challenge is how to implement the tracking for new licensees. He suggested to have schools approved to teach this 9 hour course for new agents. The Commission approved this recommendation.

The Caravan has been completed and was very successful. We got some good feedback, and we will be going out again next year. Chair Burnham brought up the topic of having the REPC written in Spanish. She believes it would be a challenge to protect the non-English speaking buyers and/or sellers. Director Miller said they could contact their attorney for assistance.

Mr. Fagergren said last month the Commission brought up the topic of the confusion on the time frame to respond to offers. He said he needs more feedback before he can write an article for the newsletter. Chair Burnham said it should contain guidelines for good business practices, and being realistic (i.e., weekends, holidays, etc.).

10:00 Lance Miller, Presentation of request to approve an On-Line Core Course

OTHER BUSINESS

Ms. Wismer said there are 3 draft rules ready to be made effective. R162-10, Administrative Procedures. The Division and Commission have decided to conduct disciplinary proceedings as informal adjudicative proceedings instead of formal adjudicative proceedings. A motion was made to accept the changes, and was passed unanimously.

R162-2-2, Licensing Procedure. The purpose of this rule change is to set forth the qualifications for real estate licensure related to past criminal conduct by applicants and to turn a policy of the Commission and the Division into rule. This will give notice to potential applicants of the types of recent criminal convictions that will prevent them from receiving approval from the Commission to license or to renew an existing license. A motion was made to accept the changes, and was passed unanimously.

R162-8-8, Administrative Proceedings. There was some language that was duplicated in Administrative Rule 162-10 that will be deleted. A motion was made to accept the changes, and was passed unanimously.

Several draft rules were handed out for discussion. The first one was on CE banking and Director Miller asked it to be tabled until next month. R162-8-3, School Application for Certification. This is regarding name approval, and also is covered in R162-9.2.3. A motion was made to start this rule in the rulemaking process, and was passed unanimously.

R162-6.2.6.1 is a draft that will fill in the blank in paragraph 5 of the REPC for "Listing Broker" with either the principal broker's individual name or the principal broker's brokerage name. A motion was passed to start this rule in rulemaking process.

R162-6.1.3.1, Disclosure of Licensed Status. Regardless of whether a person's license is in active or inactive status, a licensee shall not fail to disclose in writing on any agreement to buy, sell, lease or rent any real property as a principal that the licensee holds a Utah real estate license. A motion was passed to start this in rulemaking process.

Director Miller wanted to recognize the great work that have been done by Chair Burnham and Vice Chair Jensen. This is the last meeting for both, and they will be missed.

Review of Criminal Convictions List for Commission Consideration:

Jeremy Olson
Tiffany Crippen
Evan Greg Stevens

Review of Stipulations

Elizabeth A. Mahon
Jason A. Smith
Daniel Rip
Jill Hesteltine
Edward T. Monson

LICENSING HEARINGS

11:05 Lynn McAdams – Application for Renewal
Steven Smith, Attorney

A motion to go into Executive Session was passed, and was held from 12:20 p.m. to 1:25 p.m. This was a working lunch.

PUBLIC INPUT SESSION

1:30 Public Hearing on T.I.C. Rule – Open to Public

Commissioner Blaine Walker joined the meeting via a conference call. In attendance were Shayne Miller, North Star Real Estate Services; Douglas Matsumori, Ray Quinney & Nebeker, with his clients from For 1031, LLC, Mark Ellison and Jeff Warr, and Mica McKinney, also from Ray Quinney & Nebeker. Director Miller said the purpose of the session is to seek and get input from the public. The T.I.C. rule that we have in draft form today is the culmination of the effort that also involved some public members. This is a starting point for us rather than a stopping point. The meeting was then opened for public comments.

Mr. Matsumori has submitted some comments in advance of this meeting to Director Miller, and they will be sent in again during the written comment period. There are two sections of concern to his clients, R162-11-3 and R162-11-4. Both of those have to do with structures in which T.I.C. interests are sold. The first section has to do with a master lease and the second has to do with a property manager. The way this draft is currently written would prohibit his client from doing business in Utah. He would like to see instead of prohibiting this type of structure, it would require disclosure.

Al Mansell, the chief sponsor of the bill said to Mr. Matsumori when the bill was first written it was done with the intent of this legislation to facilitate the use of tenant-in-common fractionalized interest in this state as a real estate product. Chair Burnham asked Mr. Matsumori if his clients believe the wording is prohibitive, and he said yes. Commissioner Walker said he is not convinced it is our job to define whether or not the product they are selling is a security. The only thing we can do is to regulate what happens in our state. Our concern is full disclosure and protection of the public. He doesn't have any problem with what Mr. Matsumori is presenting.

Shayne Miller, North Star Real Estate Services, asked if the rules were going to become effective on July 25, and how would this affect any transactions under way currently. Commissioner Walker said the law is currently enacted and in effect. Ms. Wismer said we can't regulate retroactively. It would apply from the day the rule goes into effect forward. Mr. Miller asked about R162-11.2.1.1. They are working with an entity in

California, and wanted to know if the rule applied to only those in Utah, or would the entity have to disclose it in California. Mr. Ferguson said he didn't believe it was the appropriate setting for the Division to be giving opinions about how the prospective rules would affect certain transactions.

Director Miller thanked those for attending and said the Division will take the input given and re-draft a rule for the Commission to review.

A motion to go into Executive Session was passed and held from 2:15 p.m. to 2:17 p.m.

LICENSING HEARINGS (Continued)

2:33 Michael Stevenson – Application for License
Kristin Graziano, Branch Broker, Coldwell Banker

A motion to go into Executive Session was passed and held from 3:05 p.m. to 3:12 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Lynn McAdams – Renewal was granted but will be immediately suspended for one year, fined \$1500 and payment is a condition of coming off of suspension.

Michael Stevenson - Granted

Stipulations:

Elizabeth A. Mahon - Approved

Jason A. Smith - Approved

Daniel Rip - Approved

Jill Hesteltine - Approved

Edward T. Monson - Approved

Criminal Convictions List:

Jeremy Olson – Schedule for hearing

Tiffany Crippen – Schedule for hearing

Evan Greg Stevens – Schedule for hearing

A motion was made and accepted to adjourn the meeting at 3:15 p.m.