

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210  
9:00 a.m.  
October 18, 2006

### **MINUTES**

#### STAFF MEMBERS PRESENT:

Derek B. Miller, Director  
Jon R. Brown, Enforcement Director  
Mark Fagergren, Licensing/Education Director  
Dee Johnson, Chief Investigator  
Shelley Wismer, Assistant Attorney General  
Renda Christensen, Board Secretary  
Tiffeni Wall, Real Estate Education Coordinator

#### COMMISSION MEMBERS PRESENT:

H. Blaine Walker, Chair  
Doyle "Sam" Sampson, Commissioner  
Gary Hancock, Commissioner  
Kay Ashton, Commissioner

#### GUESTS

Kevin Swenson  
Lance Miller

The September 13, 2006 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Walker conducting.

#### Approval of Minutes

The minutes for September 13, 2006 were approved as written.

### **DIVISION REPORTS**

#### DIRECTOR'S REPORT – Derek B. Miller

Chairman Walker said they were in San Antonio earlier this month attending the ARELLO conference. Commissioner Peretti and Chairman Walker attended a class called the Commissioner's College. Chairman Walker discussed with Director Miller having Blaine Ferguson from the Attorney General's office hold a training class for the Commissioners. He believes this orientation and training would be good for the new Commissioners, as well as a good update for others.

Director Miller agreed with Chairman Walker's comments on the meetings they attended. He believes Utah is on the cutting edge in many areas and it was very instructive and interesting to hear what the other states were doing.

Director Miller said the majority of his report will deal with the fees for the upcoming year. Every year the Department of Commerce and Division of Real Estate have a meeting to review the fees being charged. The Division makes recommendations to the Department, and a hearing is then held before an Administrative Law Judge. This hearing is a public hearing where the public can make comments. The final product goes to the Legislature for their approval.

Director Miller has reviewed a number of the Division's fees and has a few recommendations for the Commission. When Director Miller was reviewing the fees he kept in mind if there was equity or fairness between the industry's fees.

Additionally, Director Miller compared the fees with the required workload. Some license types require more work and time to process than others. The fees should reflect this workload. An example would be the time and paperwork to register a new company. Currently the Division charges \$25.00 for this process. It is one of the most time intensive things the Division does. On the mortgage side, the same process to start a new company will cost \$250.00.

A motion was made and passed to approve the modifications presented by Director Miller. The motion carried unanimously.

Director Miller said the public hearing before the Administrative Law Judge will be held sometime in the beginning of November. The Commission is interested in when the date will be so they can attend.

Ms. Wismer reported there are 5 rules through the public comment period and are ready to start the rulemaking process. The first is rule R162-9-2, Education Providers.

A summary of the rule change is that providers of continuing education who want their schools to be certified by the Division of Real Estate will be required to seek approval of the school name from the Division of Real Estate before registering the name with the Division of Corporations.

Rule 162-8-3, School Application for Certification. The summary of this rule change says pre-licensing schools who want to be certified by the Division of Real Estate will be required to seek approval of the school name from the Division of Real Estate before registering the business name with the Division of Corporations.

The Commission discussed both of these rules, and a motion was made to start both in the rulemaking process. The motion passed unanimously.

R162-6-2, Standards of Practice. A summary of the amendment to this rule says the rule change provides that either the principal broker's individual name or the principal broker's brokerage name may be filled in on the blank for "listing broker" on the Real Estate Purchase Contract.

The Commission had discussion of this rule change, and a motion was made to start

the rule in the rulemaking process. The motion was unanimously passed.

R162-6-1, Improper Practices. A summary of this rule change is a licensee who is a principal in real estate sales or lease transaction will be required to make a written disclosure of licensed status in the written agreement for the transaction.

R162-11, Undivided Fractionalized Long-Term Estates. The summary of this rule change is the term "investor" is changed to "purchaser" throughout. A subsection is added requiring disclosure of whether any affiliate of the sponsor is a master lease tenant or whether the sponsor is an affiliate of any master lease tenant. Subsections containing certain restrictions on the structure of the master lease and the management agreement are deleted. A reference to the right of presentment is also deleted from Subsection 11.2.1.2(h).

The Commission had discussion on these two rule changes, and a motion was made to start the rule in them rulemaking process. The motion was unanimously passed.

R162-9-8, Continuing Education Banking. The purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number, the date the course was taught, and the names and license numbers of all students who have successfully completed the course. All course providers will be required to bank continuing education within ten days after the course was taught. A student must provide the provider within seven days of course attendance the accurate license number and the name registered with the Division. This is a draft rule that has not been started in the rulemaking process.

After discussion, a motion was made and passed to start the draft in the rulemaking process.

Ms. Wismer said there are two more rules that are in various stages of process. The new agent core course rule is in the public comment period, and the earliest possible effective date would be after the next commission meeting. The draft that would go to the Department for approval has not yet been started in the rulemaking process. This rule would change the course approval from 60 days to 30 days.

Mr. Johnson said the two best things that happened on the trip were the T.I.C. Roundtables and the Timeshare Roundtables. In the T.I.C. Roundtables, Mr. Johnson was surprised how many states had no idea of what was being talked about on T.I.C. discussions. The Roundtables and explanations that went on led Mr. Johnson to believe Utah is in forefront on T.I.C. rules. He complimented Chairman Walker for the great job done.

#### INVESTIGATIONS REPORT – Jon R. Brown

Mr. Brown reported in the month of September the Division received 56 written

complaints, screened 40 complaints (no cases opened), opened 28 new cases, closed 17 cases, leaving 141 open case files.

The breakdown on the types of complaints received were as follows:

Unlicensed activity: 10, breach of fiduciary duty: 8, property management: 6, trust account or earnest money disputes: 9, misrepresentations: 11, short sale: 1, no jurisdiction: 11.

The continuing education audits showed 26 new cases opened, 40 cases closed, 1 Stipulation/Order signed by the Commission, leaving 30 cases opened for investigation.

#### LICENSE HEARING: **CLOSED TO PUBLIC**

10:05            Scott Beckstead – Application for License by Reciprocity  
Chris Beckstead, Wife

#### EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren thanked the Commissioners for submitting their biographies for the newsletter. The Division's goal is to have it out by the end of the month.

Mr. Fagergren said that he, Mr. Johnson, and Jim Bolton returned last night from the AARO Convention in Washington, DC. One day was a fraud seminar and it was very informative. There were representatives from the Department of Justice, FBI, HUD, Fannie Mae, etc., giving very timely information. The top 10 in FBI fraud charts continue to show Utah on the list. One statement made about Utah regarding fraud was "notorious, possibly improving."

Mr. Fagergren reminded the Commissioners about the Instructor Development Workshop being held on October 26<sup>th</sup> and 27<sup>th</sup> and invited all to attend.

In the September minutes it showed the Commission had voted to include the topics of adverse possession and eviction proceedings to be in curriculum outline. He will submit these additions to Promissor and it will form the basis for the Utah portion of the exam. Chairman Walker said the question the Commission had was why the topics were taken out of the outline, because they felt the topics needed to be left in. Mr. Fagergren said he didn't believe the last outline had them listed. These two topics will be added to the outline.

There was a public hearing held last month to discuss distance education and the core course. Mr. Fagergren is interested in the Commission's thoughts. The Division has thought about whether or not they should be providing a detailed outline to the schools and have them prepare the courses. The Division has also thought about doing an RFP to solicit courses to be submitted for a core course.

In looking at the mortgage industry as an example, Mr. Fagergren believed they would

be following the real estate model and be pushing to have a core course similar to real estate. In practice, it appears the mortgage industry has something better instead of one core course. The committees meet on a monthly basis and have courses approved for CE that are timely. The Division has to do the core course two years or more before some attendees take it. The mortgage process comes up with topics that are specifically focused on training on a monthly basis. There are advantages in letting the experts in the field develop the education.

Mr. Fagergren has serious concerns about meeting the time schedule to have a new core course out by July 1<sup>st</sup>. One of the big concerns is that someone anywhere in the state can take the core course on-line. We have seen having the industry provide the classes is a good thing. The Division is concerned more about the timetable.

There was an outstanding fraud speaker at the AARO Conference they just attended, and Mr. Fagergren would like to talk with her. She is hired by mortgage companies to investigate their loans to determine where fraud exists. She has a lot of information for all three industries (mortgage, real estate and appraisers), about the kind of fraud going on. Mr. Fagergren would recommend the first part of the core course be an outline of rules and/or forms and take anywhere from 45 minutes up to an hour, whatever time the presenter needs to cover everything. The remaining time would be cover loan fraud. He recommends doing the core course in this manner, and in the next two years opening it up for providers to submit courses. He believes it would better reflect the marketplace if the providers created the core course topics.

Chairman Walker said he believes separating the providers from the industry are two different things. He sees that schools/providers are in the education business and they are creating whatever will make money for them. Someone from the industry is out to discuss the current needs of the industry. Director Miller said the Division is working with the industry to find out what the needs and problems are, and then developing the subjects and topics. We will then go to providers and tell them this is what the Division wants them to develop a course on and then let the market fill the need based on economic incentives.

Mr. Fagergren asked if the Commission wanted the Division to create a rule to modify the current pattern. He was optimistic that we could possibly do away with active vs. passive education. The Division would say if a course is approved by the Division, it counts as education. There would be no distinction between live or passive. Director Miller suggested the Division draft a rule spelling out in clear terms on what it would take to get a course approved as distance education. There would be no need to specify if it was either live or passive. A motion was made for the Division to draft a rule doing away with the distinction between active and passive education, and that education classes are approved on their merits. Also, that the Division move forward with developing a new framework to replace the current "core course." There being no further discussion, the motion passed.

#### Review of Stipulations

David R. Atkinson  
Ryan W. Gygi

A motion was made to go into an Executive Session from 11:33 a.m. to 12:05 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Scott Beckstead – The license was approved on probation during the licensing period. A recommendation was made for a trust account audit to be conducted during the licensing period.

Stipulations:

David R. Atkinson - Approved  
Ryan W. Gygi – Approved

A motion was made and accepted to adjourn the meeting at 12:11 p.m.