

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 2B

9:00 a.m.

March 19, 2008

TELECONFERENCE MEETING

MINUTES

STAFF MEMBERS PRESENT:

Mark B. Steinagel, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Blaine Ferguson, Assistant Attorney General
Laurie Noda, Assistant Attorney General
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator

COMMISSION MEMBERS PRESENT:

H. Blaine Walker, Chair
Doyle "Sam" Sampson, Jr., Vice Chair
Bonnie Peretti, Commissioner
Gary Hancock, Commissioner
Kay Ashton, Commissioner

GUESTS

Jack Marinello
Michael Welker
Kevin Swenson

The March 19, 2008 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Walker conducting.

Approval of Minutes

The minutes for February 13, 2008 were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Mark B. Steinagel

Director Steinagel gave an update of the Division's bill, HB346. The Commission is now granted rulemaking authority to define the process for approving legal forms that may be used by the real estate professionals. He introduced Mr. Ferguson and Ms. Noda who are in attendance for a brief review the new REPC form. The Mortgage Fraud bill passed the last week of the session. Another MARI report came out last week and Director Steinagel had four media interviews on the State's rating on the report. This bill will be a very important effort to define mortgage fraud, set penalties for it, fund a prosecutor in the Attorney General's office, and have an automatic

revocation of any license issued by the Division a licensee who is convicted of mortgage fraud. He believes this bill will help the Division along with the efforts of the Mortgage Fraud Task Force.

The Legislature has also funded a Real Estate Fraud investigator. The Division's hope is to always have someone on staff with law enforcement background who can coordinate with the Mortgage Fraud Task Force and the Attorney General's prosecutor to ensure the Division is getting our cases prepared for the criminal side and coordinating closely with the prosecutor and other entities that may want to take up some of our cases.

There are changes to the licensing fees currently being charged by the Division. The broker and agent renewal fees will be going down. Overall, some fees went up and others went down, but the net result is a reduction of approximately \$600,000 in revenue to the Commerce Service Fund. The two main purposes for the fee changes were to stop the subsidization of other government programs as the money gets transferred to the General Fund. The second purpose was started over a year ago when then-Director Miller and the Division staff undertook a study to see what was being brought in from each of our fees and what it cost us to administer the programs under each of those fees. The study undertook equity issues in aligning costs with services.

HB223, Representative Mark Walker had a bill that would modify the Division's exemptions for licensure for a real estate license. Last year we exempted a regularly salaried employee of a city or town when performing an act on behalf of the city or town, and this year we expanded it to include counties. Also exempt was a regularly salaried employee of the Utah Department of Transportation when performing an act on behalf of UDOT which has been expanded this year at UDOT's request to say a regularly salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation.

Director Steinagel addressed the draft rule, R162-201-15, Marketing of Continuing Education Courses. He asked the Commission for a motion to move forward in the rulemaking process. A motion was made to start R162-201-15 in the rulemaking process and passed unanimously.

Chair Walker and Commissioner Hancock received an e-mail with concern to the rule on R162-6.2.12, "Gifts and Inducements." The issue deals with gifts and inducements and Chair Walker will read the rule for discussion purposes, "A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must notify the party who will pay the commission that the inducement will be

offered. This rule does not authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied." Chair Walker said the concern addressed the confusion in the interpretation of that regulation. A real estate company has sent this company a notice that as a standard practice they give back a certain amount of money to the buyer for using their services. This company has given a copy of their rebate notice and is asking for the sellers to sign this form. The form gives an explanation of how things work and is basically an advertisement for the company. The concern is the first company doesn't want to have to submit it to their clients because they feel it is a solicitation of their clients.

Chair Walker brought up the question that he is not certain that real estate clients are required to sign a full disclosure of how commission monies are being spent. His question is that the rule says it is a principal broker and does this include an agent if the agent gives a gift to a client? Mr. Fagergren said in the pre-licensing education course this question falls back to fundamental training that the broker is the agent and affiliated licensees in the office are sub-agents. The agents are performing duties on behalf of the broker. The broker is the one that has the contract, not the listing or sales agent. Mr. Ferguson agrees with Mr. Fagergren's interpretation. Chair Walker said the other concern that has been raised is what about giving your total commission to a child or family member that is purchasing a house. Does this need to be disclosed to the seller? Commissioner Hancock said he believes it may be a less than full-service company taking advantage of a full-service company and not on a level playing field.

Mr. Johnson said it may be a case of over-disclosing. On one hand we have to be careful not to approach anything that would be considered anti-trust, but at the same time, he doesn't believe the Commission or Division should be in a position to pass judgment on the services that somebody chooses to offer.

Chair Walker said perhaps at the next meeting the Commission and Division should spell out what inducement means, spell out the principal broker issue, and set limits on limiting it to the amount of inducements actually paid.

Director Steinagel asked the Commission how they would like to discuss the new REPC form. It was decided to involve the Commission and the Attorney General's office and have it open to the public. Mr. Ferguson said there will be a new Assistant Attorney General joining the Division on April 21, 2008 who will be handling work for the Division of Real Estate. When that happens Ms. Noda will handling work for a different Division. The new Assistant AG's name is Tracy Gunderson. Mr. Ferguson has committed to have the AG's office review the new REPC form and will meet with the Commission in the next meeting in April.

Director Steinagel said he has met with the UAR and they would like to have the form approval done quickly. Chair Walker said he has heard the same comment and added the UAR would like to have the new form approved for their convention in September of this year. Commissioner Peretti asked to have more time allotted for discussion than

the normal one hour for reports. Ms. Christensen said there are only two hearings scheduled so far for next month, and Director Steinagel suggested to hold the hearings in the morning as scheduled and then have the afternoon to discuss the new form. It was agreed to have the discussion open to the public begin at 1:00 p.m.

INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson reported in February the Division received 45 complaints, screened 66 complaints, opened 7 cases, closed 11 cases, leaving 128 open cases. There are three Stipulations for the Commission's consideration. The respondents have been given the opportunity to appear and all three have chosen not to be here.

Review of Stipulations:

James P. Crandall
Renee Disick
Inwest Title Services, Inc.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported the Education Committee has met again regarding pre-licensing education. The new broker members are Ryan Kirkham, George Richards, and Bob Hill. Mr. Fagergren said the meeting went well and has advanced the cause in having greater broker participation. He has spoken with Pearson-Vue, the testing contractor, and alerted them and they are looking at July or August, 2008 to come out to look at both mortgage and real estate exams, as well as the broker exam.

Mr. Fagergren thanked the Commission for the rule approved today to start the rulemaking process and he said it should help avoid confusion.

When individuals renew their licenses on-line there has currently been a provision on the renewal page that says if they have taken courses that have not been banked, an individual can enter those courses. Since we have been renewing on-line for over two years and all courses have been approved, there should be no reason for adding a course at the time of license renewal. In July the Division is planning to remove the "bypass provision" that allowed adding classes. We have tracked some of those courses and not all of them have been valid. Removing the bypass option will allow only banked CE hours to count at renewal. The Division has rules stating the provider must bank the hours within 10 days. When an individual waits until the very last day to take a course, the provider can take the 10 days to bank the course and the person will find they are short on their CE when they try to renew. Mr. Fagergren is suggesting the Division come back next month with some language to say that licensees need to renew their licenses from only banked education. It would be wise to complete the education by the 15th of the month to prevent any potential problems with the education not banked for renewal.

The 2008 Caravan will start next month and this year the Division will cover 8 locations. Announcements are already in the mail to the counties in which the Caravan will be going, or the adjacent counties. It is primarily based on outlying areas.

The final edit is being done on the newsletter and it should be out by the end of this month. It includes information about the Caravan, and half of the newsletter is disciplinary issues. There is also an article about the real estate licensing system encouraging people to plan ahead and get their education in by the 15th of the month.

CLOSED TO PUBLIC

A motion was made to go into an Executive Session from 10:03 a.m. to 10:20 a.m.

OPEN TO PUBLIC

A motion was made and accepted to have Director Steinagel sign the Closed Meeting Act document and also the Stipulations on behalf of the Commission for the telephonic meeting today.

Results of Executive Session

Stipulations:

James P. Crandall - Approved

Renee Disick - Approved

Inwest Title Services, Inc. - Approved

A motion was made and accepted to adjourn the meeting at 10:21 a.m.