

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Second Floor - Room 210  
9:00 a.m.  
April 16, 2008

### **MINUTES**

#### STAFF MEMBERS PRESENT:

Mark B. Steinagel, Division Director  
David Mecham, Chief Investigator  
Mark Fagergren, Education and Licensing Director  
Laurie Noda, Assistant Attorney General  
Renda Christensen, Board Secretary  
Julie Price, Division Staff

#### COMMISSION MEMBERS PRESENT:

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

#### GUESTS

Tammy Lund	Shelley Wismer
Arnold Stringham	Lance Miller
Kevin Swenson	Chad Ahearn
Karen Post	Michael Welker

The April 16, 2008 meeting of the Utah Real Estate Commission began at 9:05 a.m. with Chairman Walker conducting.

#### Approval of Minutes

The Minutes of March 19, 2008 were found to one error on page 3, paragraph 4, the term "commissions" should be replaced with "inducements." With that correction, the minutes were approved.

### **DIVISION REPORTS**

#### DIRECTOR'S REPORT – Mark B. Steinagel

Director Steinagel announced that on Monday, April 21, 2008, the Division will be getting a new Assistant Attorney General, Traci Gundersen. Ms. Noda will be available to help Ms. Gundersen in the training and change process, but this will be Ms. Noda's last official commission meeting.

On April 7, 2008 the Division had three rules go into effect. They are the Utah Housing Opportunity Restricted Account; the rule requiring pre-license schools to provide

written disclosure about criminal background checks; and, qualifications for renewal where an applicant for license renewal may not have been convicted of or had a plea in abeyance for a felony, or finding of fraud, misrepresentation or deceit. These new rules are now on the Division website. The Division did not receive any comments from the public on any of the three rules.

In addition, the marketing rule that was approved will be sent out to the state within the next week so it will then be open to a public comment period. This is the rule that requires course providers to get a course approved before they can advertise it as an approved course.

In the packet sent to the Commissioners was a copy of the rule voted on last month R162-3-6, Renewal and Reinstatement, regarding having the continuing education completed by the 15<sup>th</sup> of the month of expiration. This rule was also discussed before the Mortgage Commission last month and that Commission has approved modification of the mortgage rule, R162-207-2.3, Renewal Process.

Chair Walker wanted to have discussion on R162-6.2.12, Gifts and Inducements, that was discussed in the meeting last month. Chair Walker read into the minutes part of the rule: "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 the real estate brokerage, or in appreciation for having used the services of the brokerage is permissible and is not an illegal sharing of commissions. If an inducement is to be offered to a buyer or seller, lessor or lessee, he will not be obligated to pay real estate commission in the transaction. The principal broker must notify the party who will pay the commission that the inducement will be offered. This rule does not authorize the principal broker to give any type of inducement that would violate the underwriting guidelines that applied to the loan in which a borrower has applied."

Chair Walker said the concern raised by a brokerage that has been approached by another brokerage who is a minimum type brokerage that they notified the brokerage that called and wrote. The concern was that they had a form they wanted the brokerage to give to their seller informing the seller they would be returning a portion of the commission to the buyer, or giving some inducement to the buyer. Basically, it went beyond a disclosure. It also laid out their full marketing program, how they offered the inducement, how they did their advertising, and everything else. The concern by the brokerage receiving the document was that it was really nothing more than an advertisement approach and would attract clients to that minimum services broker. The question is does the rule need to be modified? The intent of the rule was just to make sure than if an inducement was given that there was a disclosure to make sure there was no fraud involved. Director Steinagel said the Division will work up a draft and send it via e-mail to the Commission for their review.

Director Steinagel brought up a subject in which both the Appraiser Board and Mortgage Commission are interested. The Attorney General of New York, Andrew Cuomo, sued Fannie Mae and Freddie Mac stating they didn't do their due diligence.

His goal is to protect the independence of appraisers. Mr. Cuomo got both groups to agree to a settlement which is under a public comment period right now. What the settlement does is create a Home Valuation Code of Conduct, and the most important provisions of the settlement are that mortgage brokers may not order appraisals. It also states that lenders can not order appraisals through a secondary company where they have an ownership stake. The goal is to provide independence to the appraisals but the real concern is that this relationship is being targeted to shift appraisal selection to an appraisal management company over which the Division usually doesn't have regulatory authority. It would also set up an institute with \$24 million from FannieMae and Freddie Mac whose purpose would be to take complaints from appraisers when somebody believes that the independence of an appraiser has been violated. This institute has no authority other than to act as a clearing house for complaints.

#### INVESTIGATIONS REPORT – Dave Mecham

Mr. Mecham is sitting in for Mr. Johnson who is on vacation. Mr. Mecham reported that in the month of March the Division received 53 complaints, 38 complaints were screened, 5 cases were opened, and 8 cases were closed. There are 125 total open cases. The complaints received showed an increase in people being victims of mortgage fraud.

Mr. Mecham said the respondent was offered the opportunity to appear before the Commission to answer any questions on the stipulation but has decided not to attend.

#### Review of Stipulation:

John E. Whitaker

#### EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported that since December the number of sales agents has dropped by 179, but since December the number of agents has held consistent at 15,228.

The broker pre-license exam and curriculum committee met and have been making steady progress. Marti Stringham is the chair person and the committee is progressing well. There is a lot of information to be reviewed and to reduce down to 120 hours. The broker management and Utah law sections have grown considerably. Mr. Fagergren has scheduled the week of July 14<sup>th</sup> to have the test provider, Pearson Vue, to come out and work with the Division on making sure the exam properly reflects the curriculum that will be approved.

One topic that came up with the education committee was something that has been seen as a problem. There are basic Division rules about what a "team" can do, but there are some issues that are unspecified or unclear. An example would be the Division looks at who signs a purchase contract or a listing as the individual who gets the experience points credits toward becoming a broker. It has been a policy the Division has adopted in order to say who gets credit. There currently is nothing in rule that expounds on this topic. Enforcement has issues as to if there is a complaint action

taken against the team would this mean that all the members of the team are included in the complaint? How is the Division to account if someone on the team was out of town when the complaint was filed, but would they still be responsible because they are on the team? The brokers are answering by saying it is the team doing the closing, for example, and the teams are saying the Division needs to speak with the broker because he is the responsible person. This team issue seems to be growing, and the Division would like feedback from the Commission and industry.

After discussion on this topic, it was suggested to Mr. Fagergren to take the issue of having the team leader be an Associate Broker. There was also a suggestion to have an article in the next newsletter regarding enforcing the signage rule.

Mr. Fagergren said the Division Caravan begins next week. This year the route will cover 8 locations instead of the 6 covered last year.

#### LICENSE HEARINGS: **CLOSED TO PUBLIC**

10:14 Thomas Grover – Application for Renewal of License  
William R. Grover, Witness for the Division  
Richard Grover, Witness for the Division

11:00 Joseph Umbertino – Application for Renewal of License

A motion was made to go into an Executive Session from 12:30 p.m. to 1:00 p.m. This is a working lunch.

#### **OPEN TO PUBLIC**

1:07 DISCUSSION ON NEW REPC FORM

In attendance from the public were: Kevin Swenson, Curtis Bullock, Ryan Kirkham, Mike Abear, Mike Hebert, Karen Post, Shelley Wismer, Jeff Parr, and Michael Welker.

In attendance from the Attorney General's Office were: Tony Patterson, Laurie Noda, and Blaine Ferguson.

In attendance from the Division of Real Estate were: Kurtis Hughes, Carlos Alamilla, Charles Smalley, Ken Wamsley, Dave Mecham, and Julie Price.

Chair Walker welcomed all those in attendance today. This will be an informal discussion of the proposed new Real Estate Purchase Contract ("REPC") form. This is not the final form so he admonished those in attendance not to refer to the draft used in the meeting today. There will be a public comment period at the June 18<sup>th</sup> meeting and hopefully it can be finalized at that time. On behalf of the Commission he thanked those from the Utah Association of Realtors and others, title companies, those from the

mortgage industry, who have been involved in making the proposed changes to come up with this draft we are reviewing today.

Chair Walker introduced Curtis Bullock, counsel for the Utah Association of Realtors, to give an overview of the proposed changes. Mr. Bullock introduced Ryan Kirkham, 2008 Chairman of the UAR Forms Committee, and Mike Abear, Vice Chair of the UAR Forms Committee.

Mr. Bullock said one of the main reasons as to why the UAR took an exhaustive review of the REPC was that it has been in circulation for approximately a decade. Along the way there have been a few deficiencies and things that need to be clarified. In doing this, their hope is to help protect the public by creating a clean, concise contract, and also to help the licensees to help understand the form better.

Mr. Bullock mentioned a few of the highlights in the contract. One of the two main changes is found in Section 8, "Buyer's Conditions of Purchase." Sections A and B are the due diligence sections which list things a buyer should consider. A major change from that in the current REPC is the buyer can submit written objections to the seller which triggers the seven day clock, or the response period, and then there is a three day period in which the buyer can cancel the contract. In this new form, in the interest of clarity and simplicity, the seven day response period has been taken away and a "drop dead" deadline has been used in its place with a specific date.

In the current REPC, Section 8.2, "Approval of the Appraisal" the buyer has an appraisal deadline and then another three day window in which the buyer can give a copy of that appraisal to the seller. This section has been removed with a firm deadline date.

Mr. Kirkham commented that Section 8 will be a more simple approach than the current form. He mentioned 80% of those using the form do not understand this section. The UAR felt this would be a much more simple approach for both buyers and sellers.

Mr. Bullock said the Forms Committee decided to get rid of the loan denial letter in the Financing section. This has been subject of abuse on what exactly is a loan denial letter. This has been done in the interest of protecting the public and making this document a little easier to understand. In Section 8.3, Financing, the buyer can still check the condition upon financing with a financing deadline. The buyer can work up until that deadline. If they don't get a loan and don't get financing, of course, they can cancel the transaction. In Section 8.4 there has been wording added to put more emphasis on the earnest money deposit. If the buyer's deadline passes while he is trying to get a loan, up front the seller and buyer can negotiate an additional deposit that would be given to the seller in the event the deadline comes and goes. This would act as further security to better protect the seller. Mr. Kirkham said that what they are seeing is that licensees are creating addendums and causing problems, so by adding this in the proposed form, it would be better to address the issue in the new form.

Commissioner Hancock complimented the UAR on doing a remarkable job. He has one concern which he wanted to mention. In attempting to make the form a little more neutral one change has been made that is significantly in the favor of the buyer, and that is Section 2B, New Loan. By eliminating the blocks, the important parts of the contract or as we would analyze it, is not the same as the seller looks at the contract. The seller looks at it as "what's my bottom line going to be." They often look at the Seller's Net Sheet and the net the seller will receive. There is some wisdom in stating what the loan is up front so the seller can make an informed decision about what his net is going to be. He would propose to add the check boxes back in to the form.

Mr. Ferguson suggested perhaps a group could be formed to discuss these proposed changes and make recommendations. He suggested the group consist from members of the Commission, the Division, and the Attorney General's office to help fine tune the wording and details. This might help move things along to meet a time frame as discussed.

Mr. Bullock agreed that forming a group to discuss the changes would definitely help move things along. He will briefly highlight some of the changes and then the wording can be fine tuned. Section 10.2 of the proposed contract is a significant shift. Under the current REPC the seller is obligated to warrant certain items on the property. A couple of those warranties we have retained in the proposed REPC, and those are that the property still needs to be in broom-cleaned condition and free of debris. The other item that is retained in the proposed REPC is the fact that the property needs to be in the same general condition as it was on the date of acceptance. What has been changed is Section 10.2 (b) and (c), the seller warranties of the heating, cooling, plumbing, electrical, etc. The property must be free of leaks in the foundation and the roof known to the seller. What has been done under this proposed REPC is the property was inspected and those items will be sold in their "as is" condition. There will be no personal responsibility on the part of the seller or to warranty those particular items. This would be a significant shift in the interest of making the contract even handed.

These are the two most common problems (Section 8 and Section 10.2) in the current REPC. Other areas in the proposed form were discussed, and Chair Walker opened the meeting for questions from the Commission and public.

Commissioner Sampson asked about split closings by having one entity holding the documents still giving the buyer a chance to choose the company they want to use, but deliver everything to one company. Commissioner Hancock asked if there might be a simple paragraph saying that the seller was going to pay such and such title insurance to be ordered by seller and paid by whom the buyer, and his insurance pre-ordered by him and paid by him. Mr. Bullock said they have spoken to someone in the title industry and they gave him some proposed language for that. The Committee waited to see if there was going to be a rule adopted by the Commission.

Chair Walker asked Mr. Ferguson if the Attorney General's office had any comments. Mr. Ferguson said there are several places in the proposed form where language is added to the form. Any time something is put into the language of a form it has the effect of making it as not as negotiable because it doesn't come to the attention of the parties. Other wording that they would like to discuss cover "any personal property has no value", water rights, split closings, drop-dead deadlines, lead based paint addendum, home warranty, and default.

Chair Walker thanked everyone for their comments. The Commission asked Commissioner Hancock if he would represent the Commission in the committee and he accepted.

A copy of the proposed REPC and the Memo from the UAR explaining the proposed changes will be made part of these Minutes.

#### RESULTS OF EXECUTIVE SESSION

##### Stipulation:

John E. Whitaker - Approved

A motion was made and accepted to adjourn the meeting at 2:30 p.m.