

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

May 21, 2009

MINUTES

DIVISION STAFF PRESENT:

Dee Johnson, Enforcement Director/Acting Director

Mark Fagergren, Education and Licensing Director

Traci Gundersen, Assistant Attorney General

Renda Christensen, Board Secretary

Tiffeni Wall, Real Estate Education Coordinator

Amanda Orme, Mortgage Education Coordinator

Julie Price, Division Staff

COMMISSION MEMBERS PRESENT:

Doyle "Sam" Sampson, Chair

Gary R. Hancock, Vice Chair

H. Blaine Walker, Commissioner

Kay R. Ashton, Commissioner

Stefanie Tugaw-Madsen, Commissioner

GUESTS:

Tammy Lund

Ron Duyker

Linda Leavitt

Max Thompson

Rob Ponte

Elizabeth Watts

Irene Kennedy

David Bornemeier

Jack Marinello

Paul Naylor

Kevin Swenson

The May 21, 2009 meeting of the Utah Real Estate Commission began at 9:02 a.m. with Chair Sampson conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The Minutes from the April 15, 2009 meeting were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Dee Johnson

Mr. Johnson reported that Director Steinagel is up at the Legislature this morning and he will be sitting in for him today.

The Caravan has been completed with the Division covering seven cities, with eight different presentations, and had approximately 600+ licensees in attendance. We

were well received at each location and had a good time.

The committee to review the commercial REPC was cancelled and Commissioner Walker will give an update during the Commission and Industry Issues report.

Mr. Johnson said the issue of nightly rentals with the exemption of thirty days or less within the property management code had been previously mentioned in the Commission meeting. There is an exemption in the code for less than thirty days, and the question is after some publicity and a few complaints that the individuals in the newspapers were not able to meet their payout to their own clientele, do we want to do something about it? The Division has brought this question before the Commission and is asking the Commission for any discussion they might want to cover. The problem seems to be the companies will receive advance reservation fees, and these funds will be placed in the general operating fund to carry them through the year.

Mr. Johnson said for many years the Division has not received any complaints on the issue of nightly rentals, and believes that it has to do with the economy and what has transpired in the real estate industry in general. Mr. Johnson said the Division received two separate complaints on this issue. Chair Sampson said with only a few complaints in the past 15 years there should be no reason to over react and change the statute. The decision was that the Division will check into any issues that may come up in the future, and let the Commission know if there is any concern for the future.

In HB-86 there was a change directed toward the ability of a real estate broker to give instructions to the title company, to be able to if they chose, to have a check cut to a sales associate. It would be then given to the principal broker to give to the sales associate, if they chose to operate that way. There is a proposed rule, R162-4-4, Written Instructions for Commission Distribution by Title Insurance Agent, which would, in addition to the statute, declare and disclose this process. In addition, Coldwell Banker was kind enough to share with the Division what they proposed as their commission instruction to escrow.

The Commission reviewed the proposed rule and after discussion it was decided to have a clarification that two checks need to be cut: one to the agent, and one to the principal broker. If an agent has expenses after they have been paid by the principal broker, they need to sit down and pay their own expenses. The broker would then receive the agent's money and pay their expenses out that money. Mr. Johnson said he and Ms. Gunderson and would sit down with Director Steinagel and re-word some of the issues discussed today. There will be a revised draft for the next meeting.

The issue was brought up to revise the Commission calendar for the month of August. Ms. Christensen informed the Commission that she is currently scheduling applicants in the month of September. She asked the Commission if they would

change the month of August from a telephonic meeting to a live meeting to accommodate these applicants. The Commission agreed to the change. Commissioner Walker said that he would not be at the June meeting.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said in the month of April the Division received 29 complaints; screened 36 complaints; opened 12 cases; closed 8 cases; leaving a balance of 118 cases.

There are three stipulations being presented to the Commission. The respondents were given the chance to appear to answer any questions the Commission might have and declined to attend.

Review of Stipulation:

John C. Sittner

Robert S. Notman

Michael S. Robinson

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said currently our statutes allow a Principal Broker to act in the capacity of a Dual Broker. That means he can have a real estate brokerage and a property management brokerage under different names. The Division has had some inquiries as to having an Associate Broker working for a real estate brokerage, to allow that Associate Broker to become a Principal Broker of a property management company. The Division has a statute 61-2-10 paragraph 3, which states that no sales agent or associate broker may affiliate with more than one principal broker at the same time. The Division's view is that this would require a statutory change if the Commission wanted this change. Another suggestion was that a Branch Broker have the same prerogative. Commission Walker said in years past this statute was changed to avoid confusion, liability and responsibility. The Commission decided a change was not necessary at this time.

Mr. Fagergren said the Caravan has been completed. The Division received some comments that the Education Committee will be reviewing on CE, rules and what should be covered in a course, what is allowed and what isn't, and better definition on courses. The Chair of the Education Committee is Tammy Lund and would like to report to the Commission next month on CE. The following month would give a review on pre-licensing CE.

The Division newsletter has been sent out.

COMMISSION AND INDUSTRY ISSUES – Sam Sampson

Chair Sampson asked if the Committee to discuss BPO's (Broker Price Opinions) has met yet, and who is on the committee on the Appraiser side. Ms. Christensen said Craig Morley and Debra Sjoblom were the representatives from the Appraiser Board.

Commissioner Walker gave an update from the ARELLO conference. One of the problems coming out of the different regions was BPO's. The issue is with all of the repossessions, REO's, etc. that are out there, there is a huge demand by lenders, and there is also a huge question as to how much you can actually provide on a BPO. Commissioner Walker said getting this Committee going as soon as possible is critical for each state, because there is a greater demand for BPO's. Commissioner Walker believes it is not only a problem with residential properties, but will soon become an issue with commercial properties as well.

Commissioner Walker asked Mr. Fagergren to read the current rule regarding teaching classes on approved courses. Mr. Fagergren read Rule 9.2.1, "Courses in the following subjects may be certified as core: state approved forms and contracts, ethics, agency, prevention of real estate and mortgage fraud, federal and state real estate laws, and broker's trust accounts." Commissioner Walker wanted to address the state approved forms and contracts. He said the question being raised by the UAR and others is a form being currently used by a great share of realtors, the commercial REPC, has not been approved by the state. There are many large firms that are using some recommended forms currently being used. Commissioner Walker would like to suggest to the Commission have the Attorney's General office and the Division to work up wording allowing these commercial REPC forms being currently used, to be taught as a core topic. Ms. Lund stated the Education Task Force is presently reviewing that topic and will be ready to make recommendation as to modify the form. The suggested language would modify the rule to read, state approved forms, "contract issues" (for lack of a better word), something that deals with contract law, so that whether it is franchise forms, or other commercial forms, they would then be allowed to be approved under contract issues. Mr. Fagergren said the Education Task Force is trying to give the Commission a proposal for expanding the core topic language before the next Commission meeting.

A Motion was made and accepted at 10:25 a.m. to close the meeting for licensing hearing.

LICENSE HEARINGS: CLOSED TO PUBLIC

- 10:25 Corby Patrick – Application for License
Darla K. Florez, Principal Broker
- 10:55 John Sittner – Disciplinary Hearing
Mr. Sittner chose to sign a Stipulation with the Division.
- 10:57 Schuler Bennett – Application for License

A motion was made and accepted to go into Executive Session from 11:53 a.m. to 1:05 p.m.

1:08 Thomas Belchak – Appeal of Order

2:00 Gregg Perry – Application for Reinstatement
Karen Perry Misrasi, Cousin

A motion was made and accepted to go into Executive Session from 2:55 p.m. to 3:30 p.m.

RESULTS OF EXECUTIVE SESSION

Results of Stipulations:

John C. Sittner - Approved

Robert S. Notman - Approved

Michael S. Robinson - Approved

A Motion was made and accepted to adjourn the meeting at 3:32 p.m. The Motion was passed unanimously.