

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

November 18, 2009

### **MINUTES**

#### DIVISION STAFF PRESENT:

Deanna D. Sabey, Division Director  
Dee Johnson, Enforcement Director  
Mark Fagergren, Education and Licensing Director  
Traci Gundersen, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Dave Mecham, Chief Investigator  
Renda Christensen, Board Secretary  
Tiffeni Wall, Real Estate Education Coordinator

#### COMMISSION MEMBERS PRESENT:

Gary R. Hancock, Chair  
Kay R. Ashton, Vice Chair  
H. Blaine Walker, Commissioner  
Stefanie Tugaw-Madsen, Commissioner  
H. Thayne Houston, Commissioner

#### GUESTS:

Scott Sabey  
Irene Kennedy  
Kevin Swenson  
Curtis Bullock  
Jack Marinello

The November 18, 2009 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

The Minutes from the October 21, 2009 meeting were approved as written.

### **DIVISION REPORTS**

#### DIRECTOR'S REPORT – Deanna Sabey

Director Sabey reported the Division newsletter will be sent via e-mail to all licensees on December 31, 2009, and will also be available on the Division's website. Having licensee's e-mail addresses allows the Division to keep them informed on any rule changes, and to keep them informed on issues that arise.

The Division is also launching an on-line complaint process at the beginning of the year. Individuals can fill in an on-line form and submit any documents they have to help the investigations.

On January 1, 2010 the new RESPA rule goes into effect which requires the new Good Faith Estimate and the new HUD-1's to be used.

The credit Congress has established for new home buyers, which was originally scheduled to run out at the end of November, has been extended. The extension has parameters for new home buyers of \$8,000, and the income level for both singles and couples has gone up substantially. There is also a new provision for current home owners who want to purchase new homes. That credit is \$6,500, and there are limits they must close by July 1, 2010, and for the first-time home buyer they have to be under contract by April 30, 2010.

Chair Hancock asked Director Sabey about the Division's bill this year. Director Sabey said the bill hasn't been numbered yet by the Office of Legislative Research and General Council. She will let everyone know when it has been numbered and out for review. The bill is a basically a clean-up bill, and these changes will keep us in compliance with the SAFE Act. Chair Hancock mentioned that he, Commissioner Walker, and Commissioner Tugaw-Madsen sit on the legislative committee. They are usually asked what the Division's opinion is on certain topics. Director Sabey said she will keep them informed on any news regarding the bill.

#### ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported that Dave Mecham, Chief Investigator, has returned to work. Mr. Mecham has been out on a medical leave for a short time, and is now back in the office.

In the month of October, the Division received 37 complaints; screened 12 complaints; opened 17 cases; closed 16 cases; leaving the total real estate cases at 125.

There are four stipulations being presented to the Commission. The respondents were given the chance to appear to answer any questions the Commission might have and two have declined to attend. The attorney representing Ms. DeLay and Ms. Saltas appeared to answer questions.

The Commission has asked for a brief recess from 9:15 a.m. to 9:25 a.m. to review the Stipulations.

The Commission asked Mr. Johnson and Mr. Scott Sabey, counsel for Ms. DeLay and Ms. Saltas, to answer questions regarding these Stipulations. Mr. Sabey read a prepared statement from his client, Ms. DeLay, into the record.

#### Review of Stipulations:

Stanley Beckstrom  
Merrill James Palmer  
Babette DeLay  
Paula Saltas

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said if you look at all active individuals over the last eleven months, the total dropped 9.2%. The number of inactive licensees has dropped 10.5%. The combined total of these is a decrease of 9.5% over the last eleven months.

Mr. Fagergren reminded those in attendance that pre-license hours will increase from currently 90 hours up to 120 hours at the first of the year. Individuals who sign up in 2009 have until the end of March 2010 to complete licensing under the previous requirement of 90 hours. Any applications received after the end of March will be returned for additional hours.

There are quite a few changes coming up for the mortgage licensees. All of the new licensees at the first of the year have several things happening: their hours increase from 20 hours to a total of 60 hours; and, where the Division's application form is a simple one-page form, the NMLS application form is much more complicated. The Division will change license names to reflect "mortgage loan originators" instead of the current "officers." Letters are being sent out to all originators and entities to announce what they need to be doing for the NMLS. Vice Chair Ashton commented that mortgage is a split industry, because depositories don't have to be licensed, just registered, with the DFI.

Commissioner Walker recently attended the ARELLO conference and reported to ARELLO that the Division has increased its licensing requirements, as well as their continuing education. He is curious about how much time is spent on the appraiser area, mortgage area, and real estate area, and where the resources are being spent. Commissioner Walker is wondering if the fees need to be re-evaluated to equalize what is being paid for their management. Mr. Fagergren said this information has already been reviewed, and that Director Sabey has the information.

Commissioner Tugaw-Madsen asked Mr. Fagergren if he had reviewed the request for reciprocity from Nevada. He said their 10-page application is very complex and in-depth when compared to our application. Commissioner Walker said there are two issues; the listing side, and the sale side. An out-of-state broker can not come in Utah, take a listing, advertise, and do business in the state. The broker could list an in-state property from their state and advertise it on a national basis, and Utah doesn't have any control over that. The broker should have a co-broker arrangement with another brokerage in Utah.

Commissioner Walker handed out copies of ARELLO's Licensure Recognition policy, and also a document supported by the NAR referring on the five recommended

elements of reciprocity. He believes that we need to keep the ability to have inter-state commerce open and have requirements to those who come in to our state. Utah is in a stronger position to defend itself as a state in trying to keep federal regulation from interfering with what we do and keep things local. ARELLO does have a data base so we need to make sure that we are updating information so anyone can go on and check the status of a licensee on a regular basis. Mr. Johnson commented that if a broker had been approached by an out-of-state-broker, and he took all the precautions, then our safe harbor laws would apply to him.

#### COMMISSION AND INDUSTRY ISSUES

Chair Hancock said Equity Capital Group has a foreclosure marketing program, and is currently holding a self-promotion of the company, by holding a presentation at a local theater. The company claims they are trying to catch people before they enter into a foreclosure and help them save their equity. It appears that the presentation being held is an attempt to get a reality-based television program on the company.

Commissioner Tugaw-Madsen said the Broker Price Opinion ("BPO") committee has held one phone meeting. Director Sabey said the Appraiser Board has been reviewing their statute on BPOs to see if there is some way to define the terms to help sort out the problem of having real estate agents conducting BPOs in a situation that does not involve the purchase or sale of real property. Commissioner Walker said there is a problem with sales agents taking money for BPOs and not running it through their brokers.

Commissioner Walker gave a brief recap of his attendance to the ARELLO conference he attended. He gave copies of recent decisions made on cases that came before ARELLO. In Nova Scotia, they have a printed document on advertising guidelines, and also on understanding designated agency transaction brokerages. Other countries are also joining ARELLO and the group is expanding.

Ms. Jonsson said there are two rules currently in the works. On one of them, the comment period ended on November 16, 2009, and she is asking the Commission for a vote. This bill increases the amount a person can be paid (\$50 - \$150) and the bill can be made effective on November 23, 2009. A motion was made, and unanimously passed to make the rule effective. A second rule is also in the public comment period, which ends on December 1, 2009 and can be made effective on December 8, 2009. This is the rule that adds the word "non-duplicative" to the continuing education course requirement so that one course can not be taken repeatedly. A motion was made, and unanimously passed to make this rule effective, providing no comments come in from the public before December 8, 2009.

Director Sabey commented on an article in the Tooele Transcript regarding private transfer fees that some developers are requiring every time the property changes

hands for the next 99 years. The Commission said they are opposed to transfer fees, and Director Sabey said the Division would support some legislative ban on these fees. These fees would restrict the ability to transfer property, adds to the costs of the property, and is very self-serving on behalf of the developers. If this bill were to pass, it would require the modification of the REPC.

A motion was made and accepted to go into Executive Session from 11:10 a.m. to 11:30 a.m.

**LICENSE HEARINGS: CLOSED TO PUBLIC**

11:30          Dustin DeToro – Application for License

A motion was made and accepted to go into Executive Session from 12:21 p.m. to 1:00 p.m.

1:00          Joseph Knudson – Application for Renewal of License  
Mr. Knudson chose not to attend the hearing in person or by phone.

**OPEN TO PUBLIC**

RESULTS OF EXECUTIVE SESSION

Results on Stipulations:

Stanley Beckstrom - Approved  
Merrill James Palmer - Approved  
Babette DeLay - Approved  
Paula Saltas - Approved

A Motion was made and accepted to adjourn the meeting at 1:10 p.m. The Motion was passed unanimously.