

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

March 17, 2010

### **MINUTES**

#### DIVISION STAFF PRESENT:

Deanna D. Sabey, Division Director  
Dave Mecham, Chief Investigator  
Mark Fagergren, Education and Licensing Director  
Traci Gundersen, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Renda Christensen, Board Secretary  
Pam Radzinski, Assistant Board Secretary

#### COMMISSION MEMBERS PRESENT:

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

#### GUESTS:

|               |                 |
|---------------|-----------------|
| Jennifer Gray | Dan Christenson |
| Tammy Lund    | Tracy Medina    |
| Irene Kennedy | Rob Ponte       |
| Fred Repman   | Chad Ahearn     |
| Kevin Swenson | Jack Marinello  |

The March 17, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

#### **PLANNING AND ADMINISTRATIVE MATTERS**

Commissioner Houston will be excused today because he is attending an out of state conference.

Mr. Johnson will be excused while he is on a medical leave. Mr. Mecham will be representing Enforcement while Mr. Johnson is absent.

The Division has a new employee, Pam Radzinski, who will be assisting Ms. Christensen as the Assistant Board Secretary. Ms. Radzinski has transferred over from the Division of Securities where she has worked for eight years. Chair Hancock and the Commission welcomed her to the Division of Real Estate.

### Approval of Minutes

The Minutes from the February 17, 2010 meeting were approved as written.

## **DIVISION REPORTS**

### DIRECTOR'S REPORT – Deanna Sabey

Director Sabey made the Commission and public aware that two bills relating to the real estate industry have passed. These bills are HB-275, the Division's bill, and HB-53, on loan modifications and foreclosure rescues. This bill specifically requires anyone performing foreclosure rescue and short sale services to have a real estate license. The bill, soon to be a statute, will also enumerate prohibited conduct of licensees. This and other information will be included in the Division's e-newsletter that will be coming out at the end of the month.

Director Sabey also wanted to mention SB-182, Utah Common Interest Ownership Act which is a draft bill that Senator Neiderhauser is working on for the 2011 session. The Senator has worked on this bill with UAR representatives, homebuilders associations, and other groups. This bill spells out specific requirements for HOAs and condominium associations. This will include the creation, termination, expansion and contraction of the common interest ownership groups, by-law requirements, association rules, and design guidelines. The bill outlines an association's duties and powers, recordkeeping requirements, and GRAMA requests. It requires Board meetings to be open to the unit owners, and describes the removal process of Board members. The bill also describes the maintenance responsibilities of the HOAs, condominium associations, rules regarding assessments, and approvals for budgets. The bill also describes reserve accounts and mandates that they must be kept separate from other funds, and also describes the process for HOAs or condominium associations to put a lien on a particular unit owner's property. This is a 120-page bill, and Director Sabey tried to just give the Division and Commission a brief overview.

Commissioner Ashton said there is increasing difficulty in selling condominiums because of financing problems. Director Sabey said that HOAs and condominium associations will not be regulated by the Division; they will be regulated by the associations. Ms. Lund asked if there were fines owing who they would be paid to, and Director Sabey said the homeowner has a private cause of action for which the fine would be the remedy. Any input from the public or Commission would go directly to Senator Neiderhauser.

### ENFORCEMENT REPORT – Dave Mecham

Mr. Mecham reported in the month of February the Division received 32 complaints; screened 18 cases; opened 5 complaints; closed 17 cases; leaving the balance of open cases at 83. This is the first time the number of cases has been below 100 in quite some time.

There are no stipulations to review this month.

## EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the overall number of licensees is still declining. He welcomed Ms. Radzinski to the Division. In addition to working with Ms. Christensen, she will be working with Director Sabey in performing some administrative duties, and also be trained in the mortgage review process.

Last month Mr. Fagergren spoke of the staff and how good they are overall and also how current we are in issuing licenses. Out of the three staff members, one has had a child and is on maternity leave, and another one was sick last week, leaving everything for one person to handle. We are a little behind on our processing, and Mr. Fagergren promoted using the on-line renewal process for an instant license. In a manual renewal process it will take longer.

The Division newsletter is coming out at the end of the month, and it will include charts, graphs, and quite a bit of information for the mortgage industry because of their upcoming deadline of May 31, 2010. We are three months into a five-month process. This far, 24% of licensees have turned in their records. Out of those the staff is working hard to keep up, and there is still 75% of licensees who have yet to submit their records.

Mr. Fagergren informed the Commission and those present from the public that the Division Caravan is coming up soon. There are seven different locations: April 20 – Logan; April 27 – Layton; April 29 – Provo; May 4 – Park City; May 11 – St. George (with two sessions); May 12 – Richfield; and, May 13 – Moab. The Division will be going over issues of concern and gathering feedback from those in the outlying areas.

## COMMISSION AND INDUSTRY ISSUES

### Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said there has been some time scheduled this month for the Commission to discuss the rule that is currently in place that says a licensee may renew his license if, during the term of the past license, that person has entered a plea in abeyance to a felony, regardless of the type of felony. Ms. Jonsson prepared some options for the Commission as to what the rule might look like if they decided to make a change.

After some discussion, the Commission chose to implement Option “C” as presented by Ms. Jonsson. This addition would read as follows:

- The division shall review the application and may
- grant the license;
- grant the license subject to a period of suspension;
- grant the license on a probationary status; or
- refer the application to the commission for a hearing.

Any appeal rights would come before the Commission. A motion was made to change 2.2.10 to allow for the Division add “—deny the license”. The motion was

seconded and passed unanimously.

Another issue involves demand letters provided by a lender who is going to accept a short pay-off on a short sale. There is concern that these letters are being shared with various parties to the transaction, or in some instances, if the transaction falls through, being used by a real estate licensee to guide the next buyer in as to what that buyer might offer. The question is if we need to promulgate some type of rule to identify a short sale demand letter as a document that needs to be protected or made confidential.

On this issue, the Commission and Division have agreed that this would be misrepresentation to the seller, and a breach of fiduciary duty to disclose this information to another party without their client's approval. Commissioner Ashton said this should be an article for the newsletter. In order for the Division to take action against an agent it must have all the information available. Oftentimes the Division will hear people complaining, but unless detailed information is received, the Division can not proceed with any action against the agent.

A motion was made and passed to close the public portion of the meeting at 10:07 a.m.

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

10:30 Collin Perkins – Application for Renewal  
Shelley Perkins, Wife  
Lloyd Allen, NAI Utah

11:35 Zach Brimhall – Application for Renewal

A motion was made and accepted to go into Executive Session from 1:00 p.m. to 2:55 p.m.

3:00 Ryan Dastrup – Appeal of Order  
Jennifer Mascaro

A motion was made and accepted to go into a brief Executive Session from 3:25 p.m. to 3:39 p.m. The hearing continued at 3:39 p.m.

A motion was made and accepted to go into Executive Session from 4:22 p.m. to 4:42 p.m.

#### **OPEN TO PUBLIC**

#### RESULTS OF EXECUTIVE SESSION

A Motion was made and accepted to adjourn the meeting at 4:44 p.m. The Motion was passed unanimously.