

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

August 10, 2011

### **MINUTES**

#### DIVISION STAFF PRESENT:

Thad Levar, Interim Division Director  
Kent Nelson, Chief Investigator  
Mark Fagergren, Licensing/Education Director  
Dee Johnson, Assistant Chief Investigator  
Jennie Jonsson, Hearing Officer  
Xanna Hardman, Assistant Attorney General  
Judith Jensen, Assistant Attorney General  
Renda Christensen, Board Secretary  
Van Kagie, Investigator  
Charles Smalley, Investigator

#### COMMISSION MEMBERS PRESENT:

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

#### GUESTS:

|               |               |
|---------------|---------------|
| Rob Ponte     | Robert Wilson |
| Kevin Swenson | Kim Brown     |
| Paul Naylor   | George Iliff  |
| Tammy Lund    | Sara Saylor   |
| Jonny Stewart |               |

The August 10, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Tugaw-Madsen conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

A motion was made to approve the minutes from the July 21, 2011 meeting. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries.

### **DIVISION REPORTS**

#### DIRECTOR'S REPORT – Thad Levar

Interim Director Levar introduced Jonathan Stewart as the new Director for the Division of Real Estate. Mr. Stewart has been with the Department of Commerce for seven years as a fraud investigator, and has been with the Division of Consumer Protection and the Division of Securities. He will begin as Director for the Division of Real Estate on Monday, August 22, 2011. This is the last meeting where Mr. Levar will be acting as Interim Director.

On September 6, 2011 the Department of Commerce will be open Monday through Friday, 8:00 a.m. to 5:00 p.m.

#### ENFORCEMENT REPORT – Kent Nelson

Mr. Nelson reported in July the Division received 58 complaints; screened 38 complaints; opened 54 cases; closed 18 cases; leaving the total number of real estate cases at 177.

#### Stipulations for Review:

David A. O'Baghey  
Dee T. Stephens  
Jefferson Camp  
Travis F. Davies

All of the respondents were offered the opportunity to appear today, but each has declined.

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics for July show a reduction of 343 expired individuals and 99 inactive individuals. The numbers usually show a slight drop when the Board fees are due.

The Federal Trade Commission has issued the Mortgage Acts and Practices – Advertising Rule, which will take effect on August 19, 2011. The rule lists 19 prohibited deceptive claims ranging from misrepresentations about fees, costs, and interest rates to unsubstantiated representations about a homeowner's ability to refinance a mortgage. The rule parallels the FTC's long-standing ban on false and misleading claims and will allow the FTC to seek appropriate relief-- including civil penalties against violators.

The FTC also stated that the stay does not apply to real estate professionals who provide other types of mortgage assistance relief, such as loan modifications. Despite industry opposition to the proposed FTC advertising rule, the rule now includes agents and brokers. There is also a 24-month record requirement.

Mr. Fagergren recommended several websites for additional information:  
[www.ftc.gov/os/2010/R911003mars.pdf](http://www.ftc.gov/os/2010/R911003mars.pdf),  
[www.ftc.gov/os/2011/07/110714marsrealestatepolicy.pdf](http://www.ftc.gov/os/2011/07/110714marsrealestatepolicy.pdf),  
[www.ftc.gov/os/fedreg/2011/07/110719mortgagead-finalrule.pdf](http://www.ftc.gov/os/fedreg/2011/07/110719mortgagead-finalrule.pdf).

## COMMISSION AND INDUSTRY ISSUES

### Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said there are four rules that are ready to be made effective. R162-2f-102, "Residential property" is defined as real property consisting of, or improved by, a single-family one to four-unit dwelling.

R162-2f-205, this amendment states that an entity may not register under a business name that closely resembles the name of another registered entity or that the division determines might otherwise prove confusing or misleading to the public.

R162-2f-401a, this amendment outlines standards that a licensee must follow in disclosing to a buyer in a residential purchase transaction the source from which the licensee obtains square footage data of a property.

R162-2f-403, this amendment clarifies that a principal broker may not pay a commission out of a trust account without first depositing the withdrawn funds into an operating account, unless the parties who have an interest in the funds have otherwise agreed pursuant to Subsection R162-2f-403(6)(a).

There have been no comments received on any of these rules. A motion was made to make these rules effective today. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Interim Director Levar concurs, and the motion carries.

The amendment made to the rule to increase notifications from ten to 30 days has received no comments. The public comment period will end on August 15, 2011, and the amendment can be made effective on August 22, 2011 if approved. A motion was made to make this amendment effective on August 22, 2011 if no public comments have been received. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Interim Director Levar concurs, and the motion carries.

Mr. Melvin Glen Aitken has written a letter to the Commission and Division asking to have the time limit on paying his fine on his 2009 stipulation extended. Mr. Aitken was given the opportunity to appear today and has chosen not to. The Commission will review his request during Executive Session.

The subject of unpaid fines was discussed, and the Commission has asked the Division to prepare a list of unpaid fines for their review at the next meeting.

### Industry Issues – Gary Hancock

Commissioner Hancock discussed advertisements on web sites where brokerage

names appear to be omitted. In addition, the advertisements guarantee 30 showings in seven days, 5 offers in seven days, or they will pay the person \$1,000.00 in cash. Commissioner Hancock said that the only way someone could stand behind that promise would be to list the property at a fraction of its value. He passed the specific information on to Mr. Nelson for enforcement to review.

Commissioner Hancock also brought up the topic of appraising. The presidents of the four local boards of UAR have been involved some teleconferencing meetings. The issue being addressed is that the state statistically shows 30% of offers are failing, and of that 30%, 72% of those failures are because of appraisal issues. The general trend of the appraisal industry and the orders they are receiving from the Appraisal Management Companies ("AMCs") are causing problems in the industry. Commissioner Walker said the problem is with the federal mandates. Interim Director Levar said that every committee/board meeting that he has been on has agreed to help the problem at a state level, but there doesn't appear to be an answer to this issue.

**CLOSED TO PUBLIC**

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. Executive Session was held from 10:12 a.m. to 10:30 a.m.

**OPEN TO PUBLIC**

INFORMAL HEARINGS:

10:30 Robert Wilson – Application for License  
Andrew Kim Brown

**CLOSED TO PUBLIC**

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. Executive Session was held from 11:32 a.m. to 12:30 p.m.

**OPEN TO PUBLIC**

Results of Stipulations

David A. O'Baghey - Approved  
Dee T. Stephens - Rejected  
Jefferson Camp - Rejected  
Travis F. Davies - Approved

The request from Mr. Aitken was denied.

INFORMAL HEARINGS (Continued)

12:30 Kenneth Western – Application for License

1:34 George Iliff – Application for License

**CLOSED TO PUBLIC**

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. Executive Session was held from 2:10 p.m. to 2:30 p.m.

2:45 Braxton Tulin – Application for Reinstatement

3:53 Kirk A. Johnson – Application for License  
Greg Skordas, Attorney

**CLOSED TO PUBLIC**

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. Executive Session was held from 4:52 p.m. to 5:21 p.m.

A motion was made to adjourn the meeting. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. The meeting was adjourned at 5:21 p.m.