

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

September 21, 2011

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Kent Nelson, Chief Investigator
Mark Fagergren, Licensing/Education Director
Jennie Jonsson, Hearing Officer
Xanna Hardman, Assistant Attorney General
Renda Christensen, Board Secretary
Van Kagie, Investigator
Charles Smalley, Investigator
Jill Childs, Division Staff
Kathy Archuleta, Division Staff

COMMISSION MEMBERS PRESENT:

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

GUESTS:

Kevin Swenson	Kent Nelson
Paul Naylor	Curtis Bullock
Tammy Lund	Sara Saylor

The September 21, 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 August 10, 2011 meeting. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Ashton, yes. The motion carries.

Commissioner Hancock announced that in August the Utah Association of Realtors held its convention, and two of our Commissioners were recognized for their outstanding service. Each year the UAR recognizes the "Realtor of the Year" as the person whose conduct has been outstanding. The award for 2011 has been given

to Chair Tugaw-Madsen. Also, at the same meeting, occasionally a realtor is recognized for distinguished service. This year Commissioner Walker was given that award.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart said the Division has sent to the Commissioners our 2012 outline for proposed legislative. It is important to get the Commission's input about legislation, and we welcome any comments about the proposed legislation prior to next month's commission meeting where it is scheduled to be vetted.

The Division has made a lot of changes in the enforcement section, and Mr. Nelson will outline those changes in his report. Director Stewart and Mr. Nelson will be attending the ARELLO Annual Conference next week and will be reporting on that next month.

The Commission had a few comments on the proposed legislation. Commissioner Hancock asked if there was any way for appraisers to be prohibited from going outside their area of expertise, principally in geography. Commissioner Walker brought up the topic of repealing the requirement for sales agents to report personal bankruptcies to the Division within ten days of the filing.

The subject of all licensing decisions being made based solely on a criminal history being made by the Division, with an appeal right to the Commission was discussed. Commissioner Hancock expressed some concern about this proposal.

In the past, the Division has handed off criminal fraud cases to the Attorney General's office for them to investigate. It often takes years to have a case investigated and brought to a conviction through the Mortgage Fraud Task Force. Now, the Division is keeping those types of cases and doing the investigations in house to cut down on the amount of time.

ENFORCEMENT REPORT – Kent Nelson

Mr. Nelson asked the Commission for any suggestions or guidelines they may have in stipulations. The Division tries to be consistent in fines and/or probation for the same offenses and stating the reasoning for that decision.

The Division has three new criminal investigations this month, and has met with prosecuting attorneys and issued subpoenas for records. Cases in the past may have resulted in suspension or revocation of a license for severe violations are now also being done on a criminal basis. There will be a licensing action taken but we, as the Division, are not going to stop at that point. The criminal cases will now be prosecuted.

Mr. Nelson reported that in August the Division received 48 complaints; screened 209 complaints; opened 103 cases; closed 30 cases; leaving the total number at

250 cases. In the past, when a complaint came in, it went through a screening process that took longer than it should have to be acted upon. The numbers now reflect the fact that those screenings have been completed and cases opened and assigned to investigators. The process has been changed so different people are responsible for screening the new complaints that come in from the public.

Other changes that have been implemented are to notify people when complaints are filed against them, and also, to follow up with people who submit the complaints to let them know what has happened.

Stipulations for Review:

Kristie Lynn Nelson
Jenny S. Loveless
Ward Rasmussen
Christopher D. Broadhead
Michael V. Shields
Dee T. Stephens
Reid J. Whyte

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

Commissioner Ashton asked for a list of the outstanding fines that are due to the Division.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the number of licensees is still declining, and there are fewer people applying for licenses. Last month the pass rate was 72% and that does not include repeat test takers, of which we had two. One person passed the exam on the thirteenth attempt, and another person failed the test on the twelfth attempt. Their scores were 51% on the national portion, and 56% on the state portion.

The Division's office hours have changed. There have been people who have been upset because our doors have not been open after 5:00 p.m. It will take some time for the public to get used to the 8:00 a.m. to 5:00 p.m., Monday through Friday schedule.

The annual Instructor Development Workshop will be held on October 24-25, 2011 in Park City. The Commissioners are invited as our guests. A great instructor from Missouri will be coming in. He is a former president of the Educators Association, an author, and a great communicator. On the second day, there will be a panel discussion with some Commissioners, administrators, and Division reports.

The Division's newsletter is being finalized for this month. There are two articles that will be of some interest. One article is on the consequences of practicing with an expired license, and a combined article by the Chair of the Appraiser Board,

Craig Morley, and Board Member Debra Sjoblom who is a Realtor®. The article is about mutual cooperation between appraisers and real estate licensees, emphasizing how to better encourage more successful transactions, and how the two professions can work together.

Mr. Fagergren said that we have received an application from a British applicant who does not have a United States high school diploma, GED, or its equivalent. He has submitted his English credentials for his secondary education, which is considered high school. The Commission must review this application to determine whether the applicant's education is acceptable.

There is a former licensee here today to discuss the experience that is required to become a broker. The Division's statute states that a licensee must have three active years within the last five years to be qualified. This licensee is here today to ask the Commission if they would consider waiving the six months he is short on his qualifications. Ms. Jonsson and Ms. Hardman have drafted a rule that would say that if a broker (for whatever reason) allowed the license to expire for up to two years and then reapplied for a broker, we would look back seven years instead of five years to find qualifying experience. Out of the seven years, there would have to be three active years. Mr. Kent Nelson addressed the Commission with his request.

A motion was made to approve the draft rule as explained. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Ashton, yes. The motion passes.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson reported that a rule has been made effective since the last meeting in August. This is the rule that requires the Division to give an applicant or respondent thirty days notice to prior to a hearing. The Commission gave Ms. Jonsson the approval to make the rule effective if no public comments were received, and none were. The rule was made effective on August 22, 2011.

When we added the rule regarding square footage to subsection R162-2f-401(a) that changed the numbering of that section and added a new number which made several references within the body of the rule incorrect. Ms. Jonsson has updated those numbers through a non-substantive change which doesn't have to be approved by the Department Director or the Commission. All of the rule references should now be correct.

With regard to the square footage rule, we did not receive any comments prior to making it effective other than those the Commission addressed throughout the process. After it was made effective, the Division received a comment from an appraiser. Since the comments came in after the deadline for public input, Ms. Jonsson wrote him a letter to respond that she would share his thoughts with the

Commission.

On April 21, 2011 this Commission issued an order on the application of Ian Crowe. It imposed certain restrictions on his license that would be lifted upon his resolving criminal issues, including paying fines, etc. He has sent in a letter asking that restrictions be removed from his license, and outlined what he believes would satisfy the Commission's order. The Division does not consider that the conditions outlined in the order have been satisfied, so we have his letter, the order, and the current court docket for the Commission to review and to determine if the terms of the order have been satisfied. The Commission can review these documents during their executive session. Mr. Crowe was advised that he could attend the public session and answer any questions the Commission might have, but he has not appeared.

Commissioner Hancock said the Commissioners have not received the updates to the rules for quite some time, and has requested the updates be printed off so they can update their books. Ms. Jonsson said that we can also burn off the statute and rules on a CD, if the Commission would like. The updates are currently on the Division's website.

Commissioner Walker mentioned the National Association of Realtors has changed the appraisal committee's name to the Appraisal Valuation Committee. All types of valuations will now be reviewed.

Chair Tugaw-Madsen mentioned an update on the lead based paint disclosure. She and Commissioner Walker sat on a committee yesterday. She would like to present any suggestions that the Commission and Division come up with back to the UAR and to the Attorney General's office. Ms. Hardman said that the Attorney General's office is dealing with the issues of what is federally required in the language.

A brief recess was taken at 10:50 a.m.

OPEN TO PUBLIC

INFORMAL HEARINGS:

11:00 Tim Airmet – Disciplinary Hearing
Mr. Airmet did not appear today.
Division witness: Charles Smalley

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 11:12 a.m. to 12:10 p.m.

OPEN TO PUBLIC

Results of Stipulations

Kristie Lynn Nelson - Approved

Jenny S. Loveless - Approved

Ward Rasmussen - Approved

Christopher D. Broadhead - Approved

Michael V. Shields - Approved

Dee T. Stephens - Approved

Reid J. Whyte - Approved

Ian Crowe - Denied

Steven Presbury - Approved

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 12:11 p.m.