

**REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building  
Room 210  
9:00 a.m.  
January 21, 2015

**MINUTES**

**DIVISION STAFF PRESENT:**

Jonathan Stewart, Division Director  
Mark Fagergren, Education and Licensing Director  
Jeffery Nielsen, Chief Investigator  
Justin Barney, Hearing Officer  
Judith Jensen, Assistant Attorney General  
Elizabeth Harris, Assistant Attorney General  
Renda Christensen, Board Secretary  
Mykah Travis, Real Estate Education Coordinator  
Van Kagie, Investigator  
Kurtis Hughes, Investigator  
Mark Schaerrer, Investigator  
Kadee Wright, Investigator  
John Bickmore, Investigator

**COMMISSION MEMBERS PRESENT:**

Russell K. Booth, Chair  
Lerron Little, Vice Chair - Attending by phone  
Lori Chapman, Commissioner - Attending by phone  
Calvin Musselman, Commissioner  
William O. Perry, Commissioner

**GUESTS:**

Roger Reeve	Mike Herbert
Paul Smith	Kevin Swenson
Shane Norris	Dan Naylor
Gary Hancock	Peter Christensen

The January 21, 2015 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Booth conducting.

**PLANNING AND ADMINISTRATIVE MATTERS**

Approval of Minutes

A motion was made and seconded to approve the minutes from the December 17, 2014 meeting as written. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Jonathan Stewart**

Director Stewart gave an update on the Division's bill. A conference call was held last Friday to clarify a few questions. The bill is still currently protected, but Director Stewart is hoping it will be numbered by next week.

A proposed change in 61-2f-202 was made to try and close a loophole in this statute. The Division has discussed this internally and with the Commission to see if the wording covers this issue. After discussion, the Commission approves this change and has approved moving forward.

Director Stewart said the sponsor for the Division's bill is Representative Gage Froerer.

Director Stewart said the Division was made aware last week of a bill that needs to be brought to the attention of the Commission. HB96, Real Estate Transaction Amendments, deals specifically with a real estate rule having to do with the disclosure of undivided fractionalized long term interest in real estate. The wording at the end of the draft bill would do away with the rule giving details about what disclosures are required of anybody who is offering one of these, as well as taking away the Commission's rulemaking authority as it applies to this situation.

Director Stewart and the Division are meeting with Representative Brian Greene who is sponsoring this bill and several others that have to do with real estate. Vice Chair Little said he would attend the meeting next week if we need him. A motion was to made convey the Commission's displeasure and concerns with this bill, and will take further action if necessary. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion carries.

Director Stewart said during the last session there were two administrative expungement bills, and these two bills are proposed again this year. One of them is sponsored by Representative Greene.

### **ENFORCEMENT REPORT - Jeffery Nielsen**

Mr. Nielsen reported in December the Division received 19 complaints; opened 17 cases; referred no new cases to the Attorney General's office; 45 cases are with the Attorney General's office; 11 cases were closed; leaving 247 total cases.

#### Stipulation for Review

Zach W. Archer

Mr. Archer was given the opportunity to appear before the Commission today and has chosen not to.

Mr. Nielsen said there are two large formal hearings scheduled for the next few

months. The Division is trying to settle with Stipulations, but they have not come through yet. The Division would like to hold a phone meeting with the Commission to discuss this proposed Stipulation because of a strict timeline in this case. After discussion on this matter, a date of January 29<sup>th</sup> at 2:30 p.m. was chosen for the meeting.

### **EDUCATION AND LICENSING REPORT - Mark Fagergren**

Mr. Fagergren said the Division is in the final states of scheduling the dates for this year's Caravan locations. Once they are firmed up, the information will be made available to everyone.

Mr. Fagergren said that Paul Smith is scheduled to talk about an issue today. The last few months Mr. Fagergren has had some novel and unorthodox broker applications.

### **COMMISSION AND INDUSTRY ISSUES**

#### **Discussion of Proposed Rules – Justin Barney**

Mr. Barney said that the public comment period is over on R162-2f-206, Water Rights & Transfers, with no comments from the public. The Commission made a motion to make the rule effective. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes. This course will now be the twelfth course on water rights and transfers.

There have been a number of proposed rule amendments mentioned and will be discussed today.

#### **Discussion: Proposed Property Management Rule Change – Paul Smith**

Mr. Smith is with the Utah Apartment Association and is asking the Division and Commission to amend R162-2f-401j. This discussion was tabled for further discussion at a later date.

Mr. Smith discussed the Division's points table for brokers. He would like to see some differentiation between points earned for activities while under a licensed broker, and points earned for similar activities while a licensed agent, who is the owner of those rental properties or personal properties. The Division's response is that certain activities are exempt under the statute as an owner, and up to this point, historically the Division has not awarded experience towards becoming a broker, by performing unlicensed or exempt work experience.

#### **Discussion: Proposed Rule Amendment – Rebecca Jensen**

Ms. Jensen is seeking to make a change to R162-2f-401. A survey was done by MLS to their brokers asking if they wanted to have the change made to have the data sold for profit. Over 85% of the brokers responding said that Utah has worked hard to remain a non-disclosure state, and that privacy of the transaction

information is often a prerequisite.

Ms. Jensen and Mr. Guyman suggested that specific privacy rights be clarified be made to R162-2f-401. The Division's position is based on if the information is confidential then they have statutory authority to make the proposed change. If the information isn't confidential, the Division's position is that they don't have statutory authority. A motion was made to adopt the proposed rule change and begin the process of rule finding. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes.

**Discussion: Roger Reeve Stipulation – Roger Reeve**

Mr. Reeve has asked the Commission to change the amount of the civil penalty that was imposed by Stipulation dated September 17, 2008. The Commission told Mr. Reeve that they could not change the Stipulation that was approved by the previous Commission.

**CLOSED TO PUBLIC**

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion carries. An Executive Session was held from 10:57 a.m. to 11:03 a.m.

**Results of Executive Session**

Zach W. Archer – Approved with concurrence of the Division

A motion was made and seconded to adjourn the meeting. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes. The meeting adjourned at 11:04 a.m.