REAL ESTATE COMMISSION MEETING
Heber M. Wells Building
Room 210
9:00 a.m.
October 19, 2016
TELEPHONE MEETING

MINUTES

DIVISION STAFF PRESENT:
Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator
Justin Barney, Hearing Officer
Elizabeth Harris, Assistant Attorney General
Amber Nielsen, Board Secretary
Jennica Gruver, Real Estate Education Coordinator
Van Kagie, Investigator
Hillarie Murray, Division Staff
Lacey Vawdrey, Division Staff
Connie Mickles, Division Staff
Faruk Halilovic, Division Staff

COMMISSION MEMBERS PRESENT:
Lerron Little, Chair
Lori Chapman, Vice Chair
Russell K. Booth, Commissioner
William O. Perry, IV, Commissioner
Calvin R. Musselman, Commissioner

GUESTS:
Tammy Lund             Kreg Wagner
Shane Norris           Heather Swanger
Dan Naylor             Kevin Swenson

The October 19, 2016 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Little conducting.

PLANNING AND ADMINISTRATIVE MATTERS
Approval of Minutes – A motion was made and seconded to approve the minutes as
written from the September 21, 2016 meeting of the Commission. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved.

There was no Public Comment.

DIVISION REPORTS

DIRECTOR’S REPORT – Jonathan Stewart
Director Stewart reported the Division has new employee in a new position. Eric Stott has been hired as the Real Estate Analyst. He will be handling the drafting of the majority of the stipulations as well as handling licensing hearings in the future.

Director Stewart spoke with Representative Froer and the drafter last week. There is a special mortgage meeting this afternoon to discuss possible legislation on the mortgage section. Once that decision is made that will be the final item that would be added to the bill. The drafter is waiting on that decision. The Division is hoping that the bill will go for an interim committee hearing in November. Once the bill has been drafted he will share that with the Commissioners.

ENFORCEMENT REPORT – Kadee Wright
Ms. Wright reported in the month of September the Division received 22 complaints; opened 48 cases; closed 17 cases; the Division reassigned some old cases from past investigators, leaving 315 open cases. There are 72 cases assigned to the AG's office.

Stipulation for Review
Brady T. Tanner
Brandi Hammon
James D. Graham

As part of the review discussion, Commissioner Musselman introduced a discussion on brokerages instructing agents to have all earnest monies deposited with title companies; he has concerns with the title company releasing the earnest money to the buyer or seller without the consent of the other party if they default. He believes only the broker on the contract has the right to release the earnest money based on a default. Dan Naylor stated he believes unless there are separate escrow accounts, the title company would have the same instructions as the broker. He believes the title companies are now not releasing the funds unless there are escrow instructions. Commissioner Musselman believes there is confusion in the industry about how this should work. Commissioner Booth stated the Utah Title Association created a form which requires all signatures and reinforces their position that they need all signatures. Mr. Fagergren clarified that Commissioner Musselman is stating the industry is acquiescing to the title company requirement
and giving up responsibility of earnest money. Commissioner Musselman is asking for clarity on two issues. The first is that the Division state what the broker has the right to do and has the responsibility to do with earnest money and enforcing the contract. The second is what the responsibility of the title company is with earnest money. He believes there should be more explanation in order to be able to protect the public. Mr. Barney stated this may be an issue of individuals not wanting to be responsible for managing the earnest money, which would be an industry issue. Kreg Wagner stated on the new REPC, there is not a check box for the earnest money to be deposited with the title company.

**EDUCATION AND LICENSING REPORT – Mark Fagergren**

Mr. Fagergren reported over the past eleven month there has been a growth of 1,052 active sales agents and brokers and 182 inactive licensees for a total growth of 1,234 individuals.

Mr. Fagergren announced the Instructor Development Workshop will be next week on October 25th and 26th. The Keynote Speaker will be Eric Storey. The IDW will be held at the Park City Marriott.

Mr. Fagergren presented the application for Angela Igo to the Commission for consideration of GED or diploma equivalency.

Mr. Fagergren discussed the experience to become a broker regarding non-exclusive agency relationship. He presented some proposed language to R162-2f-501 which would give a quarter of the points for a non-exclusive transaction. The Division does not see this issue with property management, so the Division is recommending that language only be added to the section regarding sales.

Mr. Fagergren announced the Division has hired a third licensing specialist, Connie Mickles. The licensing section is now fully staffed.

There are no education stipulations for review.

**HEARING OFFICER REPORT – Justin Barney**

There are no licensing stipulations for review.

**COMMISSION AND INDUSTRY ISSUES**

Mr. Barney presented a proposed rule amendment to R162-2f-501 which would limit experience gained in a non-exclusive manner. There was a discussion regarding the language on the rule proposal. Some revisions were recommended to the proposed language. A motion was made to approve the rule amendment with revisions and submit to public comment. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner
Musselman, yes. The motion was approved.

Chair Little and Mr. Barney presented the proposed rule amendments R162-2f-102 and R162-2f-401 regarding the advertising rule as recommended by the Advertising Rules Committee. A motion was made to approved the rule amendments as written and submit to public comment. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved.

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 Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 10:09 a.m. to 10:36 a.m.

OPEN TO PUBLIC

Results of Executive Session

Results of Stipulations
Stipulation for Review
Brady T. Tanner – Approved with Division Concurrence
Brandi Hammon – Approved with Division Concurrence
James D. Graham – Denied with Division Concurrence

Ms. Igo will be notified of the Commission’s decision.

Commissioner Musselman wanted to further discuss the issue of depositing money in escrow accounts. He looked at the rules regarding trust accounts and broker requirements; he stated the rule says the broker cannot release the funds unless the REPC authorizes the disbursement. Commissioner Musselman believes title companies as a whole will not release funds unless both parties sign on a default; whereas, brokers will release if there is a default. Commissioner Musselman would like to discuss this further. Chair Little asked that the Division and Commissioner consider this and that this issue be added to the agenda for the next meeting.
Chair Little announced Ms. Wright was appointed as the new Chief Investigator.

Commissioner Booth congratulated Commissioner Musselman on being awarded Realtor of the year.

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved. The meeting adjourned at 10:50 a.m.