

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Room 210
9:00 a.m.
February 15, 2017

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator*
Justin Barney, Hearing Officer
Judith Jensen, Assistant Attorney General*
Eric Stott, Real Estate Analyst
Amber Nielsen, Board Secretary
Jennica Gruver, Real Estate Education Coordinator
Van Kagie, Investigator
Mark Schaerrer, Investigator
Sarah Nicholson, Investigator
Chris Martindale, Investigator
Teresa Larsen, Investigator
Hillarie Murray, Division Staff
Lacey Vawdrey, Division Staff
Connie Mickles, Division Staff
Faruk Halilovic, Division Staff

COMMISSION MEMBERS PRESENT:

Lerron Little, Chair
Russell K. Booth, Commissioner
Calvin R. Musselman, Commissioner
William O. Perry, IV, Commissioner

Bruce Dibb, Administrative Law Judge*

*Present for the Formal Hearing only

GUESTS:

Shawn McMillen	Janice Kimball
Heather Swanger	Shane Norris
Michael Kermizis	M. Scott Quinney
Amanda Mendenhall	Paul Smith

The February 15, 2017 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Little conducting. Vice Chair Chapman was excused from today's meeting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – A motion was made and seconded to approve the minutes as written from the January 18, 2017 meeting of the Commission. Vote: Chair Little, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The motion was approved.

There was no Public Comment at this time. The Salt Lake Housing Authority is on the agenda to address the Commission later in the meeting.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported the Division Bill, HB 196, had a Senate Committee hearing last Wednesday. The bill is currently on the Senate floor. Director Stewart imagines the bill will pass this week. The bill has already passed in the House of Representatives.

Director Stewart presented a revised Executive Order from Governor Herbert dealing with establishing effective oversight over state agency rule making. The changes are geared to make sure that rule makers keep in mind the public and small businesses. The main changes require that the agencies use an analysis tool to estimate fiscal impact when making rules.

ENFORCEMENT REPORT

Director Stewart reported the enforcement statistics in Ms. Wright's stead. In the month of January the Division received 51 complaints; opened 14 cases; closed 33 cases; leaving 339 open cases. There are 40 cases assigned to the AG's office. Ms. Wright stated the computer system was seemingly counting the same case multiple times.

Mr. Barney presented the stipulations for review.

Stipulation for Review

Amada Villegas Zubiri

Michael J Kermizis

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported the Real Estate License Management System had some features which were not working for quite some time. There has been a software update and the roll-out was successful. All the features in the system should now be up and running.

HEARING OFFICER REPORT – Justin Barney

Mr. Barney reported he has no stipulations for review.

COMMISSION AND INDUSTRY ISSUES

Director Stewart reported the Salt Lake Housing Authority was seeking an exemption from the licensure requirement. The Division met with them to discuss their issue. After exploring the options, the Division has looked into rule making authority to provide an exemption; and, to have the Salt Lake Housing Authority to present their situation to the Commission.

Janice Kimball of the Housing Authority of Salt Lake County presented an outline of their organization. Shawn McMillen presented some more information on their mission helping extremely low-income and hard to house individuals find housing. Mr. McMillen presented the organization's plan for the housing project. Chair Little asked why they believe they should be exempted when other organizations might not be exempted from the requirement. The Commission asked some questions regarding the structuring of the proposed project. Chair Little expressed some concern with having unlicensed individuals practicing under this exemption. Mr. Fagergren expressed his belief that a licensed individual may be able to achieve the Housing Authority's aim without the use of an exemption. Commissioner Booth stated one of the main things to consider would be how this exemption would affect other organizations, other counties, etc. Ms. Kimball stated the Housing Authority would work with the Division more to see if there is a workable solution already available under the current requirements. The Commission is concerned with the unintended consequences of an exemption. The discussion concluded with an agreement to work with the Division to find a solution within the current requirements.

Commissioner Musselman announced there will be a committee meeting to discuss the Earnest Money Deposits and Title Company concern next Thursday. Commissioner Musselman asked for any input from the public or any other concerned party in advance of that meeting.

Mr. Barney presented two proposed rule changes which were discussed at the last meeting. Director Stewart stated both changes reflect changes adopted by the Division Bill. The first change would add section *R162-2f-202d Property Management Sales Agent Licensing Fees and Procedure*; this rule coincides with the Division Bill. At the previous meeting the term "dual agent" was used and the Commission expressed concern with confusion from the use of that term; the Division felt the term "property management sales agent" was ultimately the best term for that designation. The second change would clarify section R162-2f-207 by allowing termination notification to be sent through RELMS. The Commission discussed the changes.

A motion was made to approve the changes and submit the rule proposal for public comment. Vote: Chair Little, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion passes with concurrence of the Division Director.

Director Stewart reported that until this fee is presented to the fee committee for

addition to the fee schedule, the Commission would decide the fee in the interim. Commissioner Musselman stated he believes there will be a large number of individuals requesting that designation. Possible fee amounts were discussed.

A brief recess was held from 9:58 a.m. to 10:03 a.m.

The meeting resumed at 10:03 a.m. with Administrative Law Judge Bruce Dibb presiding.

FORMAL HEARING:

10:03 a.m. Kimberly (Tucker) Bowen – Respondent
 J. Thomas Bowen – Counsel for Respondent

A brief recess was held from 11:29 a.m. to 11:39 a.m. The hearing continued following the brief recess.

Ms. Bowen’s hearing concluded at 12:05 p.m.

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; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 12:06 p.m. to 1:14 p.m.

OPEN TO PUBLIC

Results of Executive Session

Results of Stipulations

Amada Villegas Zubiri - Approved with Division Concurrence
Michael J Kermizis - Approved with Division Concurrence

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

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 1:15 p.m.