

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

May 10, 2017

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator
Justin Barney, Hearing Officer
Eric Stott, Real Estate Analyst
Amber Nielsen, Board Secretary
Jennica Gruver, Real Estate Education Coordinator
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
Lori Chapman, Vice Chair
Russell K. Booth, Commissioner
Calvin R. Musselman, Commissioner
William O. Perry, IV, Commissioner

GUESTS:

Kreg Wagner	Mike Hebert
Amanda Mendenhall	Kevin Swenson
Dan Naylor	Peter Christensen
Tana King	Melissa Lescoe
Alexis Nicholls	Nacole Ackerland
Jeffrey Alsop	Steve Burrows
Nikki Burrows	

The April 12, 2017 meeting of the Utah Real Estate Commission began at 9:03 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 April 12, 2017 meeting of the Commission. Vote: Chair Little, yes; Vice Chair, Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

There was no Public Comment at this time.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart the bill went into effect yesterday; and the rules which clarify and implement the changes in that bill have passed the public comment period and will be discussed later in the meeting.

Director Stewart reported he received an email from Representative Froerer regarding California Legislation about real estate advertising which passed through California Legislation. In response to the public being unable to identify the individuals or teams involved in a transaction, the legislation requires all real estate teams to register a fictitious business name with the state. He outlined a few exemptions to that requirement. This is also in response to individuals advertising and branding themselves as independent real estate practitioners. Vice Chair Chapman asked how enforcement is handling these violations. Ms. Wright stated in the past the violation has only been enforced against one individual who claims responsibility over posting the advertisement; however, the Division will not be seeking action against all members of the team. Mr. Fagergren noted it is difficult to track who was a member of the team on a given date. Chair Little stated he feels the team members are responsible but the broker should also be held responsible.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported in the month of March the Division received 17 complaints; opened 8 cases; closed 31 cases; leaving 410 open cases. There are 36 cases assigned to the AG's office.

Ms. Wright stated there is a potential for many upcoming enforcement hearings; she asked if the Commission would be open to having late meetings or possibly second special meetings. The Commission reached a consensus that long meetings would be preferable.

Stipulations for Review

Lincoln Taylor
Chad Buttars

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported there were 166 more agents since last month.

Mr. Fagergren reported that with the bill going into effect, the licensing is working on integrating the changes into the system particularly with the property management sales agent endorsements update. Currently, there is a change card and application on the website; and the Division is working with the IT Department to be able to have some way to track the change. They are also working to make sure the multiple broker option has caused some trouble and the Division is working to make sure that this doesn't impact the monthly reports.

Mr. Fagergren reported the Division is about midway through the Caravan. There has been a good turnout and a good reception for the course. There is another course tomorrow in Layton, and next week there will be four courses in various parts of the state.

Mr. Fagergren presented a course which was submitted in January for 7 hours. The Division reviewed the course and felt they could only grant 1 credit hour for that course. The course was revised and resubmitted and the Division felt at most the revised course would only be eligible for 3 ½ credit hours. The course provider asked that the course be presented to the Commission for their consideration on whether this course should be approved for credit. Mr. Fagergren went through the course outline. The Commission discussed the merits of the course. It was noted that while the information in the course could be very beneficial, they did not feel it met the criteria to be granted credit for continuing education. A motion was made and seconded to not approved the course for credit. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

HEARING OFFICER REPORT – Justin Barney

Stipulation for Review

Kent Marchant

COMMISSION AND INDUSTRY ISSUES

Mr. Barney outlined the history of the purpose of the committee regarding the Earnest Money Deposits and Title Companies. Mr. Barney stated there will be an addendum presented today for consideration. Mr. Barney also noted that this issue may not be resolved today as the Department of Insurance oversees Title Companies and would have to pass their own rule changes to accomplish some things. The addendum would warn of possible delays in releasing the earnest money deposit. If the addendum were approved today, it would be sent to the AGs office for consideration to become a state approved form. Kreg Wagner clarified that the addendum would clarify where the earnest money is being deposited, as the REPC states the money is being deposited with a broker. Mr. Fagergren asked

for clarification when this form would be required, it approved as a state approved form. Commissioner Musselman stated that since the REPC states the money is being deposited with a broker, this form would be used to state that money is not being deposited with a broker but being deposited with the title company. Vice Chair Chapman asked what this does regarding the enforcement of this with Title Companies. Mr. Barney stated this does not do anything to Title Companies and the Division has no jurisdiction over them; however, they are working on language to present to the Division of Insurance for changes to the title rules. Vice Chair Chapman reiterated that this doesn't have regulatory implications for title companies, but informs all parties on the REPC regarding the actual deposit of the earnest money. Commissioner Musselman outlined some of the language on the addendum. There was some additional discussion on the merit of the addendum, and the process for approval. A motion was made and seconded to forward the draft addendum to the AGs office for consideration to become a state approved form, and to direct that the proposed language be presented to the Department of Insurance. Commissioner Booth wanted to ask if the license number of the title company be added as a field on the addendum. The logistics of adding that was discussed. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

Mr. Barney updated the Commission on the rule amendment which had previously been filed in March regarding the PMSA designation and the termination of an agent through RELMS email. The public comment period ended. One public comment was received in favor of the change. A motion was made and seconded to make the rule effective. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

Chair Little prepared to turn the time over to Mr. Wagner to discuss and present the proposed changes to the REPC. Before so doing, Chair Little noted prior to the meeting he had received emails expressing approval regarding the REPC. Commissioner Musselman stated that the Commission has had a copy of the proposed REPC and that he shouldn't need to go through all the changes point by point. Mr. Wagner stated the committee worked with the NAR Forms Committee and with the Division through this year and a half process. This was not meant to be a wholesale change. This was sent to the Real Property Section and the Bar Association and did not receive any comments back from them. This was sent to the Bankers' Association who responded back with minor preferences regarding language which were non-substantive changes. He gave some brief examples of the changes to the REPC. He stated they would like to be able to present this updated form at their convention this fall. Chair Little asked if the change to add an (s) to allow for more than one licensee was added as discussed in the meeting last month. Mr. Wagner stated he has no problem adding that into the REPC. Commissioner Musselman asked if there should be additional space added to

accommodate teams of up to 10 individuals on the REPC. It was determined that if the agents cannot fit their information in the given space they can add their information to an addendum. Chair Little had a question regarding lead based paint in the Seller Disclosure. Mr. Wagner stated that information was moved since it is a Seller Disclosure requirement. Commissioner Musselman agrees this is a good move. Vice Chair Chapman had some concern over the inclusion of short-term lease agreements in the REPC, since it doesn't seem to be common practice. Commissioner Musselman feels it makes sense since it is folded into the other lease options. One of the goals with the REPC was to make it easier to follow. A motion was made and seconded to forward the updated REPC to the AGs office for consideration to become a state approved form with the addition of the language to allow for more than one agent. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

A brief recess was held from 10:23 a.m. to 10:32 a.m.

The meeting resumed at 10:32 a.m. with Commissioner Musselman revisiting the discussion on the Earnest Money Deposit Addendum. He discussed the paragraph which begins with word "attention." He feels there is some concern over the language of that last line. The language was discussed. Chair Little and Commissioner Booth feel that language may seem somewhat punitive. Commissioner Perry and Vice Chair Chapman feel the language may seem harsh, but may accurately reflect the nature of depositing money with a title company. This issue was discussed at length. New language was discussed and drafted. A motion was made and seconded to rescind the earlier motion to forward the draft addendum to the AGs office for consideration to become a state approved form. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved. A motion was made and seconded to forward the draft addendum to the AGs office for consideration to become a state approved form with the updated changes to the language as discussed. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, 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 Musselman, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 10:46 a.m. to 10:58 p.m.

OPEN TO PUBLIC

INFORMAL HEARING:

11:00 a.m. Tana King – Respondent
Melissa Lescoe, Alexis Nicholls, Nacole Ackerland, Jeffrey Alsop,
Steve Burrows, Nikki Burrows – Witnesses for Respondent

Mr. Evans’ hearing concluded at 12:08 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; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 12:08 p.m. to 12:18 p.m.

OPEN TO PUBLIC

Results of Executive Session

Results of Stipulations

Lincoln Taylor – Approved with Division Concurrence
Chad Buttars – Approved with Division Concurrence
Kent Marchant – Approved with Division Concurrence

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

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 12:19 p.m.