

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Room 210
9:00 a.m.
July 19, 2017

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
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
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

GUESTS:

Tammy Lund	Heather Swanger
Angie Watson	Kreg Wagner
Josh Stern	Shane Norris
Mike Hebert	Dan Naylor
Alison McCoy	Nancy Frandsen
John Benson	Heather Lund
Mike Morgan	

The July 19, 2017 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Little conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Administering of the Oath of Office

Director Stewart administered the Oath of Office to Vice Chair Chapman for her second term as a member of the Commission.

Elections of Officers

A motion was made to nominate Commissioner Musselman as Chair. The motion was not seconded. A motion was made and seconded to nominate Commissioner Chapman as chair. Vote: Commissioner Little, yes; Commissioner Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

A motion was made and seconded to nominate Commissioner Musselman as Vice Chair. Vote: Chair Chapman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Musselman, yes; Commissioner Perry, yes. The motion was approved.

Commissioner Little continued conducting the meeting.

Approval of Minutes – A motion was made and seconded to approve the minutes as written from the June 21, 2017 meeting of the Commission. Vote: Chair Chapman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

A motion was made and seconded to approve the minutes as written from the July 12, 2017 meeting of the Commission. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes. The motion was approved.

There was no Public Comment at this time.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart announced the Division was sad to report Eric Stott will be leaving the Division. The Division appreciates all the work Mr. Stott has done for the Division. Director Stewart announced the Division will be working to find a new Real Estate Analyst.

Director Stewart reported there have been some security issues in the building which might result in changes to the security procedures in the building. These changes might affect people attending the Commission meetings. This might require visitors to go to the front desk to get visitor passes.

Director Stewart reported he received the quarterly ARELLO Newsletter which went over the NAR Survey Spotlights. He reported the statistics reflect an increase in younger members, the impact of residential property inventories, and an increase in income and sales volumes. The NAR's 1.2 million members account for over half

of the approximately 2.2 million active real estate licensees in the U.S. He listed more statistical information from that report.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported in the month of June the Division received 31 complaints; opened 30 cases; closed 22 cases; leaving 393 open cases. There are 46 cases assigned to the AG's office.

Stipulations for Review

J Howard Rowley
Jared B Bryson
Joshua H Stern
Spencer Clawson
Aaron A Wagner
David Musselman

All respondents were given the opportunity to appear before the Commission. Mr. Stern attended to discuss the stipulation with the Commission. Vice Chair Musselman recused himself from the David Musselman stipulation.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported in anticipation for the updated REPC, the Division is working with the testing center to get the test updated with that information. He mentioned there might a projected date for when the new RECP will be usable and a date when it will be required.

COMMISSION AND INDUSTRY ISSUES

Director Stewart mentioned the topic of property management exemptions for family members is not yet ready to be presented today.

Mr. Barney presented draft language for propose rule changes to R162-2f-401a, 401b, and 401c, regarding branch broker duties which were discussed at last month's meeting and prior informed consent being added which supports the rules already in place. This also corrects a few typos. There is also a change, which would change owner to owner(s). The Commission briefly discussed the branch broker duty requirement, which matched the discussion from last month. Commissioner Little asked about adding the s to owner and how that requirement would work if a corporation were the owner. Mr. Barney clarified that the corporation would need an appointed individual or manager to sign the written consent. The Commission discussed what would happen if a handful of individuals own a property together. Mr. Fagergren notes this is in an attempt to ensure that the agent has authority to advertise the property. The Commission discussed the merits of this change.

A motion was made and seconded to approve the changes for filing to public comment as written. Vote: Chair Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

Chair Chapman asked for clarification on the timing of the prior written consent. Ms. Wright stated it was prior to executing a binding agreement.

Director Stewart reported the new REPC was approved by the AGs office. He reported the Division would recommend an effective date when the new REPC may be used as September 1, 2017 and replacing and superseding the old REPC on January 1, 2018. He stated that should give educators enough time before the mandatory effective date. Tammy Lund stated her major concern would be testing. Mr. Fagergren said he would let the educators know when the test will be updated with new REPC information. He doesn't anticipate the change to the test being too difficult, however he does not have a date for the test change yet. Chair Chapman asked if the recommended dates work for the UAR. Mr. Wagner stated the UAR is fine with that.

A motion was made and seconded to approved the recommended dates for the commencement of use for the new REPC: being option on September 1, 2017 and mandatory on January 1, 2018. Vote: Chair Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

Mr. Barney stated he is still working with the Department of Insurance regarding the rule change to the earnest money deposit and title company situation. Ms. Harris reported the AGs office has approved the REPC Earnest Money Addendum form. Alison McCoy spoke briefly regarding the DOI's rule change. She stated at the last meeting they asked their AG representative to look into whether their commission had statutory authority to make that rule. Nancy Frandsen reported that they had just received word back from their AG that they do not have statutory authority to make that rule change. This means it will take a statutory change to make that rule change.

Director Stewart noted that the Earnest Money Addendum form approved by the AGs office is a new form, and will need a rule change to add that form to the state approved forms. Ms. Harris also noted the rule will need to be changed to reflect the new date on the REPC.

A motion was made and seconded to amend the previous motion regarding rule changes to update the dates in the rule regarding the REPC and to approve and add new REPC Earnest Money Addendum form. Vote: Chair Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

Director Stewart reported Ms. Harris had researched the owner exemptions from

various other jurisdictions. He stated as the rules are currently written the Commission does not need to limit the owner exemption qualification, but they may. He noted there is not an overwhelming trend in the other jurisdictions; and he noted the Division does not have a clear consensus on where any limits should or should not exist. Ms. Harris went through some of her findings with the other jurisdictions. The Commission discussed the various options. Director Stewart noted that there is a rule which states if you are doing anything to try to avoid licensure, then you are in violation; but proving that is difficult. The discussion continued. Due to the time constraint of this meeting, the discussion on this topic was tabled to be continued at another meeting.

Ms. Wright presented some examples of advertisements which the Division receives complaints regarding. The advertisements are mass mailings which do not contain brokerage information. The mailers are being sent as an offer to purchase the property on their own. Chair Chapman and Vice Chair Musselman both feel strongly that the agent should need to disclose their brokerage information. Ms. Wright presented a couple arguments which would counter the position that the agent would need to disclose brokerage information since they would be acting as an exempt person in this case. The Commission discussed this issue at length. Vice Chair Musselman stated his understanding that not disclosing the brokerage information on these mailing would be a violation. Shane Norris stated that as the rule is currently written he believes that determination is not enforceable. Chair Chapman stated that a change to the language might be the best course of action. This issue is to be added to the agenda for another meeting. The Commission advised Ms. Wright to proceed with investigating these mailings as possible violations.

A brief recess was held from 10:30 a.m. to 10:38 a.m.

The meeting resumed at 10:38 a.m. for the Informal Hearing.

INFORMAL HEARING:

10:12 a.m. John Benson – Respondent

Mr. Benson's hearing concluded at 11:50 a.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 Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 11:51 a.m. to 12:42 p.m.

OPEN TO PUBLIC

A brief recess was held from 12:42 p.m. to 1:01 p.m.

The meeting resumed at 1:01 p.m. for the Informal Hearing.

INFORMAL HEARING:

11:23 a.m. Heather Lund – Respondent
Mike Morgan, witness for respondent

Ms. Lund’s hearing concluded at 2:09 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 Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 2:10 p.m. to 2:35 p.m.

OPEN TO PUBLIC

Results of Executive Session

Results of Stipulations

J Howard Rowley – Approved with Division Concurrence
Jared B Bryson – Approved with Division Concurrence
Joshua H Stern – Approved with Division Concurrence
Spencer Clawson – Approved with Division Concurrence
Aaron A Wagner – Approved with Division Concurrence
David Musselman – Approved with Division Concurrence

Mr. Benson and Ms. Lund will be notified of the Commission's decision.

A motion was made and seconded to adjourn the meeting. Vote: Chair Chapman, yes; Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 2:36 p.m.