

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

March 16, 2011

MINUTES

DIVISION STAFF PRESENT:

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Licensing/Education Director
Xanna Hardman, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator

COMMISSION MEMBERS PRESENT:

Kay R. Ashton, Chair
Gary R. Hancock, Commissioner
H. Blaine Walker, Commissioner
H. Thayne Houston, Commissioner

GUESTS:

Rob Ponte	Jack Marinello
Mike Welker	Kevin Swenson
Tammy Lund	Paul Naylor
Irene Kennedy	

The March 16, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

Vice Chair Tugaw-Madsen has been excused from the meeting today. She gave birth to their first child, Madilyn Kay Madsen, on March 3, 2011. The Commission and Division send their best wishes to the family.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes from February 16, 2011 were found to need a clarification. Commissioner Hancock had voted "No" on a motion that was presented regarding state-approved forms. He wants to have it noted that his decision was based on having the Attorney General's office review these forms and give their findings to the Division. At that time, the state-approved forms will go out for public comment and then back to the Commission for a final vote. He reserves his affirmative answer based on those comments.

Commissioner Hancock asked for a few minutes to readdress the topic of state-approved forms. There are two forms in particular, Uniform Real Estate Contract and All Inclusive Trust Deed, he has some concern about. After the last meeting, Commissioner Hancock checked around and found there are some agents who do not even know what these two forms are, let alone how to use them. There is pre-licensing instruction on what these forms are and how they can be used. Newer agents involved almost exclusively in new financing and cash transactions are not aware of the forms or their use. Those who have been in the business for a number of years have seen in the 1980's these forms came into existence to help people try and get into homes.

In Commissioner Hancock's office, they close approximately 120 transactions per month, and of those transactions approximately 2 per month are done with Uniform Real Estate Contracts. Approximately one every other month is done with an All Inclusive Trust Deed. These two forms are used in the market today where we are trying to help buyers who otherwise could not get a new loan to purchase property.

Agents who have been in the business for quite a while or work with disadvantaged buyers seem to know what the forms are, and are using them. The Uniform Real Estate Contract is a non-recordable document and title doesn't pass, so this is an important document in helping someone get into a property when they don't have a large down-payment. Commissioner Hancock would like to see these two forms kept as state-approved forms. The UAR has shown some interest in using these forms if the Division chooses not to use them any longer. The Uniform Real Estate Contract hasn't been updated in probably 25 years, and will need to be reviewed. In other states the Uniform Real Estate Contract is referred to as a Land Purchase Contract.

Commissioner Walker spoke to the issue and noted that both he and Ms. Jonsson were also on the committee to review the forms. He said those comments came up in the meeting, and they were good questions. Commissioner Walker has used the Uniform Real Estate Contract many times, and closed many sales in the 1980's.

In the new decade of the 2000's, the industry found that mortgage licensees should perhaps be licensed. Now, there is federal oversight stepping in the mortgage industry. It was the concern of the committee that when you sell a property and you are arranging financing, either through a Uniform Real Estate Contract or Trust Deed, it then borders on arranging mortgages or a lien on the property. The question then came up "does the state want to approve these forms and advocate their use?" It doesn't mean that the forms could not be used, and it does not mean that the state does not recognize them; it is just that the Division of Real Estate is not saying "this is an approved form by the state." It borders on the practice of law and arranging mortgages.

It also means that now a licensee can't be a real estate agent and a mortgage loan officer in the same transaction. If someone wants to buy or sell a property for their

own personal use, it would be different because it is a personal transaction between a seller and a buyer.

Chair Ashton said he believes the discussion from last month was that the forms would now go the Attorney General's office for review, and then come back to the Division and Commission for discussion. If that is everyone's understanding, it should be amended in the minutes to proceed in that direction. A motion was made to approve the minutes as amended. Vote: Chair Ashton, yes; Commissioner Hancock, yes; Commissioner Walker, yes; Commissioner Houston, yes. Motion carries.

Ms. Hardman said she wanted to clarify the question the Commission had regarding the two forms mentioned in the above discussion. Chair Ashton said the Commission wants to know if it is legal to still use the Uniform Real Estate Contract and the All Inclusive Land Deed, and what implications does the state have to continue to have them available as approved forms. Ms. Hardman will discuss this with the Attorney General and report back with the information.

Commissioner Walker mentioned the commercial REPC, and asked if the AG's office was doing some research on this form. Ms. Jonsson asked Ms. Hardman what would be involved in getting this a state-approved form. Ms. Hardman said it was her understanding that the committee had decided to look at the commercial REPC. Commissioner Walker said currently there are two commercial REPCs being used. One that is prepared by Mr. Dee (who is an attorney) and prepared by CCIM Institute, and the other is an old one that has been out there for years. Ms. Lund mentioned the committee wanted to have the AG's office look at the REPC for Land Purchase because the committee wanted to create some consistency throughout the state.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey wanted to inform the Commission and those in attendance today that the Division's bill, HB-91, has passed. The effective date is May 10, 2011. After that date licensees will no longer have to report Class C misdemeanors, only Class A or B misdemeanors and felonies. There is also a change that allows appraisers who are also licensed real estate agents to provide Broker Price Opinions ("BPOs") as long as they are doing so in their capacity as a licensed real estate professional, not an appraiser. All other changes were minimal or dealt with appraisal, and not real estate.

SB-151 has also passed. This is the bill dealing with the exemption of real estate from licensure under securities laws for certain types of real estate transactions. This would include the undivided fractionalized long-term interest in which there had previously been some ambiguity before. Some individuals had used the language of the statute previously to argue that they could get out of both the real estate and securities laws and that they didn't apply. Hopefully, this will close that

loophole.

Commissioner Walker said the concern in SB-151 was the way the tenant-in-common bill was originally written. Some attorneys and judges were saying if the transaction had a real estate component, it was not a security. Therefore, those that were creating investment vehicles tried to say that since it had a real estate aspect to it, it was not a security, and did not fall under the jurisdiction of the Securities Division. These people were trying to circumvent the law, and the Securities Division was concerned about that, so the language was removed.

HB-104 has passed regarding Homeowner's Associations. This bill requires both existing and new Homeowner's Associations ("HOA") to register and update their information with the Department of Commerce. The reason for this is that title companies and others trying to contact Homeowner's Associations will have a way to do that. The penalty for non-compliance with the statute is that the HOA cannot enforce its lien. Also, when a closing agent requests payoff information, the HOA will be required to respond to the request within five days or the HOA can't enforce its lien. That was Representative Webb's bill.

HB-260 was passed and will be effective August 1, 2011. This is the mechanic's lien revision. This now creates a priority for mechanic's liens that would occur before the construction lenders priority. The construction lender has to file a Notice of Loan in the State Construction Registry. The construction lender also has to file the Notice of Default with that database. There are a number of smaller changes, but if you work in commercial lending or commercial real estate, you would definitely want to pay attention to this.

During our last meeting, Director Sabey reported on some bills that were starting to move through the legislature on changing the foreclosure process for notices of default and notices of sale. HB-379, HB-326, and SB-218 all of these bills failed.

HB-328 has passed. This is not a real estate bill; however, it does relate to the Division of Real Estate. It requires the Division of Real Estate to be open Monday through Friday for nine hours each day, and will end the current four-day work week. This will become effective on September 17, 2011 with the first Friday occurring on September 23, 2011.

Director Sabey said there was a foreclosure bill that passed, Senator Bramble's SB-261 Third Substitute. It will provide civil liability for an unauthorized person who exercises the power of sale. The civil liability will be for actual damages or \$2,000.00, whichever is greater, plus the plaintiff's costs and attorney fees. The other piece of Senator Bramble's legislation requires the lender to send a notice to the trustor of the intent not to defer the notice of sale. This would occur in a situation where the lender has agreed to alter payments in a loan modification situation, but the loan still will continue on the foreclosure track. It is presumed that the lender is stopping the foreclosure track if it has entered into a loan

modification, unless the lender has sent this notice of intent not to defer the notice of sale.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in February the Division received 53 complaints; screened 29 complaints; opened 13 cases; closed 23 cases; leaving the number of real estate cases at 165. This number is 210% of where we were last March at this time.

Stipulations for review:

Curtis J. Christensen
Michael R. Homes
Christie L. Wilkes
Jimmie Blake Priest
Justin D. Johnson
Kayla A. McKellar

Each of the respondents was offered the opportunity to appear today, but have declined.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said there were 94 active agents that left the business last month, but in reverse, there were 146 agents that have gone inactive. The net shows an increase in 52 licensees because of the surge of inactivations.

The Division's newsletter will be out by the end of this month.

Mr. Fagergren said last month we covered the times and dates of those towns that will be covered on the Division's Caravan. There is now an on-line registration method for Caravan so the licensee can confirm the date and also confirm a seat. There will be a \$10.00 no-show fee for those who have reserved a seat and not shown up. The on-line registration will also show how many seats are available at the time the reservation is made.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said the rule amendments that we have been working on the last several months were all published for public comments yesterday. They will be ready for review and to take a vote at next month's meeting. All comments are published in the Utah State Bulletin, and there will be an update in the Division's newsletter.

Changing Dates on Upcoming Meetings – Renda Christensen

Ms. Christensen mentioned that in last month's meeting Commissioner Houston had brought up the topic of the upcoming UAR convention in August, and believed that it was going to be held at the same time as our regularly scheduled Commission

meeting. The UAR dates are August 16, 17, 18, 2011 and it will be held in Park City. After reviewing the calendar, it was decided to move the Commission meeting up a week to Wednesday, August 10, 2011.

Chair Ashton thanked all those who were on the forms committee for their work, and closed the meeting for a brief break from 10:20 a.m. to 10:30 a.m.

OPEN TO PUBLIC

LICENSE HEARINGS

10:34 Jerome Brienholt – Application for License

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Ashton, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries. An Executive Session was held from 12:07 p.m. to 1:05 p.m.

A lunch break was taken from 1:05 p.m. until 1:30 p.m. Chair Ashton opened the meeting again.

1:30 Russell Bollow – Application for Renewal
Walter Bugden, Attorney
In lieu of a hearing, Mr. Bollow has decided to accept the Stipulation previously offered by the Division. The Commission will now vote on whether or not to accept the Stipulation.

CLOSED TO PUBLIC

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Ashton, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries. An Executive Session was held from 2:00 p.m. to 2:30 p.m.

OPEN TO PUBLIC

Stipulations for review:

Russell Bollow - Approved
Curtis J. Christensen – Approved
Michael R. Homes - Approved
Christie L. Wilkes - Approved
Jimmie Blake Priest - Approved
Justin D. Johnson - Approved
Kayla A. McKellar - Approved

2:30 Donald Guy – Application for License

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an

individual. Vote: Chair Ashton, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries. An Executive Session was held from 3:24 p.m. to 3:30 p.m.

CLOSED TO PUBLIC

Discussion of Hearings

A motion was made to adjourn the meeting. Vote: Chair Ashton, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries. The meeting was adjourned at 3:30 p.m.