

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 205
February 18, 2004
8:30 a.m.

MINUTES

STAFF MEMBERS PRESENT:

Dexter Bell, Division Director
Mark Fagergren, Licensing and Education Director
Jon Brown, Lead Investigator
Dee Johnson, Investigator
Shelley Wismer, Assistant Attorney General
Blaine Ferguson, Assistant Attorney General
Ron Kunzler, Assistant Attorney General
Renda Christensen, Secretary

COMMISSION MEMBERS PRESENT:

Gage Froerer, Vice Chairman
Thomas M. Morgan, Commission Member
Dorothy M. Burnham, Commission Member
Maralee Jensen, Commission Member

GUESTS

Arnold Stringham

The February 18, 2004, meeting of the Utah Real Estate Commission began at 8:37 a.m. with Vice Chairman Gage Froerer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes for the January 21, 2004 meeting were reviewed and found that there were no corrections or additions. A motion was made by Ms. Burnham and seconded by Ms. Jensen. The vote was taken and passed unanimously to accept the minutes with no changes.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown stated that the total amount of complaints received for the month of January were 25, new cases accepted were 17, and 8 files were closed in the month.

There are now 200 open cases. One of the investigators, Joe Campbell, is retiring which leaves enforcement short by two investigators. Out of the 200 cases open, 173 are in open investigative status. 81 of the cases are at Mr. Campbell's desk. The majority of the complaints are about property management. In Park City, an overnight rental company was seized recently by the Internal Revenue Service and there have been many complaints.

DIRECTOR'S REPORT AND LICENSING/EDUCATION REPORT – Mark Fagergren

Director Bell is attending the Legislative session this morning and will not be present for the first part of the meeting. Mr. Fagergren gave Director Bell's report.

The UAR bill dealing with CE hours has had some substantial opposition by legislators. There is no distinguishable connection between CE hours and reduction in complaints. The data that we have can't be controlled by one variable, because there are many varying factors that come into play (i.e., economy, location, etc.). This makes it hard to say that by increasing CE hours, complaints will be reduced. Ms. Wismer told the Commission House Bill 357 is still alive, but all references to increasing the number of CE hours have been removed. The only language left in the bill is that it will allow the Commission and the Division to exempt a licensee from their CE requirement for up to 4 years for military service. Unfortunately, the Division's attempt to fix the "inactive for one day" problem was also removed from the bill. In response to a question from a commissioner, Ms. Wismer stated that the real estate boards are free to say that in order to maintain a membership, more CE hours are required, than the number required by the state.

Mr. Morgan mentioned that the REPC needed to be covered in more detail in the real estate schools. Mr. Fagergren stated that if a company is going to take on agents, they have the responsibility to train those agents, either by in-house training or in schools. Ms. Burnham brought up the possibility of correcting this by administrative rule. Mr. Stringham suggested that maybe the 90 hours required for licensing should be reviewed in detail to allow more coverage in the core courses. He felt that additional CE is a very important issue. Mr. Fagergren thinks that pre-licensing is working very well. Something needs to be done to cover the additional training needed, such as broker training or CE.

The state of New Mexico has submitted a reciprocity agreement to the Division. The Division has a standard form that it uses with other states, and each one differs slightly. Director Bell wanted Mr. Fagergren to bring the differences on the New Mexico contract to the Commission's attention.

Reciprocity agreements can be made with states that have substantially similar licensing laws. New Mexico has made further changes to the agreement. Mr. Fagergren told the Commission that other states have made significant changes to the agreement, such as Wyoming. They require 30 hours of CE, while Utah requires 90 hours. Mr. Froerer said that if you want to be licensed in Wyoming or Idaho, a person

just needs to send in a copy of the Utah license along with the fees. No other additional CE hours are required. Mr. Fagergren noted that if a person had listed a CE class about the Wyoming REPC, it would not be counted in Utah because it would be too specific to that state. Mr. Froerer mentioned that the only other difference is that a trust account is required in each of the other states.

Ms. Burnham asked Mr. Fagergren to state the specific differences between the New Mexico versus the Utah agreement. Ms. Wismer told the Commission that before they could decide to enter into the agreement, a decision would have to be made that New Mexico licensing is substantially equivalent to Utah's requirements.

The New Mexico agreement lacks the following provisions that Utah's has:

1. Utah requires non-resident brokers to keep their records in Utah.
2. A broker's trust account in a Utah bank or depository.
3. The agreement will be administered in Utah by the Utah Division of Real Estate.
4. No real or personal property shall be required.
5. The Division's ability to deny licensure for just cause.
6. All funds necessary to finance the program will be taken from license fees and will be borne by the person seeking licensure.
7. This agreement supersedes any previous agreements.

There are several technical/mechanical issues, but the Division does not know what is included until they look at New Mexico's licensing requirements.

Mr. Froerer asked for input on the changes from the Commission. Ms. Burnham suggested that the Division do the research on the licensing and bring it up at the next meeting. She asked if there was a need to hurry on this agreement, and Mr. Fagergren mentioned that it has been delayed for some time. Mr. Morgan asked if there was anything in the agreement that mentioned background checks. Mr. Fagergren said that new licensees need to be fingerprinted. Mr. Froerer said that both Wyoming and Idaho require fingerprinting, and would like Mr. Froerer to check on this issue. Mr. Froerer also mentioned that when he applied with Wyoming and Idaho, both states required a license history to be submitted with the application.

LICENSING HEARINGS

9:33 Aundrea Kotter – Application for Licensure

9:53 Trevor J. Satrom – Application for Licensure

10:25 Monico Segura – Application for Licensure

NOTE: Director Bell returned from Legislative meeting at 10:15.

1:05 Karl Koenig – Oral Argument on Koenig’s Motion to Vacate Updated Order. Represented by his counsel, Harold Reiser

Director Bell gave an update on the progress of the Division’s bill. He reported that HB 357 includes the four year period for waiving CE during military service. Raising the required CE hours lacked legislative support, so it has been removed. ARELLO sent the Division data showing that raising CE does not lower complaints. What reduces complaints are investigating and enforcing complaints, and the expense of the licensing fee. Studies show that the higher the fee, the lower number of complaints.

Several people mentioned to Director Bell that the individual boards have the right to require CE for themselves.

Mr. Morgan asked how many states have a mortgage division set up like Utah. Director Bell said that there are very few, because almost all states have mortgage licenses regulated under the Division of Finance (DFI). A year ago there were only four or five states licensing mortgage offices, now 15 or 16 have done so or are considering it. DFI doesn’t license individuals, they license the company. Mr. Morgan said that he believes the reason House Bill 102 came about is because of all the lawsuits being brought up. He believes that this is a further reason as to why CE is needed. He asked who does not need to take the test, and Ms. Jensen responded that bankers, credit unions, etc. do not. Mr. Morgan mentioned that quite a few mortgage brokers are going over to larger institutions so they don’t have to take the test. Director Bell stated that House Bill 102 would require the Division to enforce RESPA and make state chartered banks, credit unions, and title companies to license their mortgage officers.

Director Bell reported on the mortgage bill. It establishes a principal broker style of license, a recovery education fund, and pre-licensing education. He was ready to speak on the bill today, but the capitol was evacuated because of a bomb threat, so his presentation was postponed until Friday. There are three other bills that are interesting, one in particular. Representative Harper’s high cost loan bill has gotten out of House committee to the floor. It prohibits negative amortization, financing points and fees, and single premium-credit life insurance and other practices. Reverse mortgages have been exempted because they are HUD approved. Ms. Jensen has encountered instances of abusive reverse mortgages.

Two rules have now passed the public comment period and need to have a decision. The first one is R162-7-3, 7.3. This rule is in preparation for when the Division does on-line renewals. This gives the Division explicit authority to investigate applications for license renewals. The applicants will declare that they have taken their required

CE, and the Division will perform spot audits to confirm compliance. The public comment period is over and there have been no comments. Ms. Jensen moved to make the proposed rule change to effective, Mr. Morgan seconded it and it passed unanimously.

Rule 162-3 also is about on-line renewals. In Section 3.5, Activation, the Division was trying to solve the "inactive for one day" problem, which is that the current statute requires that even if you are inactive for a very short period of time, you must take an extra 12 hours CE to reactivate. Ms. Wismer advised that the proposed rule would be inconsistent with the statute it would not be valid. She therefore advised the Commission to not enact the proposed rule as it is currently written. Mr. Froerer suggested that the Commission take some time to review the correct wording suggested by Ms. Wismer. Ms. Burnham moved to table the Section 3.5 of the rule until the end of the Legislative session, which was seconded by Ms. Jensen. The vote was unanimously in favor.

The rule change to eliminate the survey addendum has been published. The earliest that it could become effective is in April.

The Commission began a new discussion of the proposed changes to Rule 162-3. Ms. Wismer said that what the Commission could do is to amend the proposed rule and re-write this activation part so that it does strictly comply with the current statute. That way the Division could keep the rest of the proposed changes moving, and if something different happens in the Legislature, then we can go back and change the activation section. Ms. Burnham moved to withdraw the earlier tabling of the rule, which motion unanimously passed. Ms. Burnham moved to amend the proposed rule so that Section 3.5 complies with the current statute, and then republish the rule. The motion was seconded by Ms. Jensen and passed unanimously.

Director Bell said that he had two highly qualified candidates to replace the two commissioners whose term ends in June. He mentioned that both of these candidates are from Salt Lake County. Director Bell thinks that it should be appropriate to have two commissioners from the largest county of the state, which has 40% of the state's population. But the current statute permits no more than one commissioner from any county.

Mr. Morgan said that a short sale addendum is very much needed. He asked if the UAR could put one out, and Ms. Wismer said that UAR could come to the Commission and the AG's office and ask for approval for it to be a state approved form. Mr. Morgan said that he would bring the topic up to the UAR.

A motion was made and approved to go into Executive Session and have a working lunch. The Session ran from 12:30 until 1:00 p.m.

The Oral Argument on Karl Koenig's Motion to Vacate Update Order was held from 1:05 p.m. until 1:40 p.m. After the hearing, the Commission moved to hold a second

Executive Session. This session ran from 1:40 until 2:14 p.m.

Results of Executive Session

Stipulation – Joan Lloyd, approved. Mr. Morgan has abstained from this stipulation.

List of Lesser Criminal Convictions:

Brion A. Sabbatino, approved for Licensure

Todd Harris, approved for Licensure

Steven R. Wallace, schedule for a hearing

Erik J. Smith, approved for Licensure

James Wells, approved for Licensure

Informal Hearings:

Aundrea Kotter – granted with the first term of license on probation, broker must be notified if she activates her license.

Trevor J. Satrom – granted, and suspended until he is released from probation

Monico Segura – approved for licensure

Karl Koenig's Motion to Vacate Updated Order – The updated order was vacated and remanded to Administrative Law Judge Eklund.

There being no further business, a motion was made, seconded and passed to adjourn. The meeting adjourned at 2:30 p.m.

