

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
North Conference Room – First Floor
9:00 a.m.
February 16, 2005

MINUTES

STAFF MEMBERS PRESENT:

Dexter Bell, Division Director
Mark Fagergren, Education/Licensing Director
Dee Johnson, Investigator
Dave Mecham, Investigator
Brad Pyne, Investigator
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Amy Corak, Real Estate Education Secretary
Amanda Orme, Mortgage Education Secretary
Denise Halligan, Division Staff

COMMISSION MEMBERS PRESENT:

Gage Froerer, Chairman
Dorothy Burnham, Vice Chair
Maralee Jensen, Commissioner
Bonnie Peretti, Commissioner
H. Blaine Walker, Commissioner

GUESTS

Kevin Swensen
Karen Post

The February 16, 2005, meeting of the Utah Real Estate Commission began at 9:05 a.m. with Chair Froerer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes of the January 19, 2005 meeting were reviewed and found there was a correction needed on page 4. The second paragraph under Commission Member Training (Continued) should say "The UAPA allows either formal or informal proceedings. The hearings before the Commission are proceedings that have been designated by the Division as informal proceedings." The minutes were approved with this correction.

DIVISION REPORTS

INVESTIGATIONS REPORT – Dee Johnson

DIRECTOR'S REPORT – Dexter Bell

Director Bell reported the total number of licensees has gone up approximately 1,000 in one year. He said the real estate industry keeps growing every year.

The Division received the new figures for loan fraud from the Mortgage Asset Research Institute, and the figures were much better for Utah than last year. Utah has dropped dramatically in both prime and sub prime residential mortgage fraud.

Director Bell stated that two-thirds of the mortgage licensees are not renewing, and of that number, approximately two-thirds are renewing online. In real estate, the numbers are reversed. Two-thirds of the licensees are renewing, and one-third are renewing online.

Director Bell reported on the Division's technical "clean-up" bill pending at the Legislature. It proposes having a commissioner serve until replaced, granting the Commission the authority to delegate hearings to the Division, charging a fee for change cards, and making funds collected for fingerprinting non-lapsing. Also, the revocation standards for reporting criminal history falsely would be the same as in the mortgage industry, and the minimum mandatory revocation period would drop from five years to one year. It would also allow sales agents to receive commission payments through their Subchapter S corporations.

The Construction Services bill, HB302, would take the Construction Services Board, one-third of the employees from DOPL and thousands of construction licensees, and transfer them to the Division of Real Estate. The Division would be greatly affected by this because it now has 18 employees, and it would then have 40 additional employees (10 new and 30 existing from DOPL). Director Bell is concerned that this would cause real estate to be over-shadowed by the construction trades.

Director Bell reported that SB64 would draw a clear line between what is an active tenant-in-common investment that is therefore subject to regulation by the Division, and one that is passive and is therefore subject to Securities regulation. The bill provides that a TIC investment subject to DRE regulation is one in which the investors may terminate the management agreement or the master lease with one year's notice. Commissioner Walker said they would like to have the master lease part of the bill exempted for real estate deals. The issues of management agreement and master leases need to be separated. Each individual management agreement must stand on its own. Director Bell noted that if the bill passes, the Division would be granted one full-time employee to handle this subject.

Director Bell brought up the subject of future legislation to extend the period to reinstate a license. In DOPL, the reinstatement period is two years, compared to the Division's period of 6-months.

Director Bell informed the Commission that on April 27th there will be a public session to discuss the problem of mortgage lenders advertising specific houses. The proposed

rule will allow mortgage lenders to advertise their services on a FSBO (for sale by owner) house, but not to give any contact information other than their business name. The mortgage industry has commented that they feel pressed by real estate agents to pay for their advertising.

PUBLIC INPUT SESSION

Chair Froerer called the public input session to order at 10:05 a.m. The Commission would like to review the content of pre-licensing education licensees. The issue is the value and utility of existing pre-licensing license education for both brokers and agents, in its content and structure.

Those who spoke at the session were:

Randy Benolt, Weber-North Davis Association of Realtors Education Committee:

Craig Frazer, Salt Lake Board of Realtors Education Committee:

David Jones, Past Investigator for the Division, Pre-license instructor and Director, Real Estate Educators Association:

John Schoppe, CEO and Director Advocates of the Commonwealth Licensing School:

Karen Post, Post Exchange, former Education Manager at the Division of Real Estate:

Keith Hayes, The Proactive Group

Marty Stringham, Stringham Real Estate School

Diane McGuire, Utah Department of Transportation:

Kurt Solomon, Director, American Site of Home Inspectors:

Arnold Stringham, Stringham School:

Lee Holt, Market Edge Real Estate in Ogden, CPA, former pre-licensing instructor:

Seaton Prince, Director, Park City Board of Realtors:

Linda Leavitt, The Real Estate School:

Gary Neilson, Broker, Pre-licensing Instructor:

Derrick Sorensen, Principal Broker, Resorts West:

Nate Affleck, Prudential Real Estate:

Max Burdick, Associate Broker with Keller Williams:

The commenters' suggestions were to:

1. Increase pre-licensing hours up to 180
2. Require more time to be spent on forms
3. Allow for splitting the 90 hours into general subjects and electives
4. Require further hours after practicing for a time – 30 hours after 3 or 6 months, either as part of the 90 or added to it
5. Require apprenticeship or mentoring
6. Require a high school degree or GED to obtain the sales agent's license
7. Make sales agents graduate to operating on their own after a minimum period

Chair Froerer: Excellent issues were brought up today. A task force will be established within the next 30 days to discuss these concerns. Please feel free to send in your comments to the Division if you were not able to comment today.

CLOSE OF PUBLIC INPUT SESSION

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren told the Commission about the impact on the number of licensees on the Division. On the List of Lesser Criminal Convictions today there are 23 people. Ms. Christensen has spoken with each one of these people, many several times, to get all the necessary information. She then turns all this information over to Mr. Fagergren, and it is reviewed to see if they either are put on this list or scheduled for a hearing.

The January statistics sheet of licensees shows that the number of licensees has grown substantially recently. The Education staff for Real Estate consists of one full-time position and Mr. Fagergren. Currently these duties cover: 10 real estate schools, 475 CE courses, 350 instructors, newsletter, website maintenance, updating the data base, keeping the rule and statute books current, education waivers, license histories, instructor development workshop, contracts for printing and filming the Core Course, interacting with the test provider, plus all the phone calls regarding these topics. Online renewals and a two-year renewal cycle for these courses will help with the workload, but the staff is very much affected by the increase in numbers of licensees.

Director Bell said four years ago there were 16,000 licensees and 17 employees. Today, we have 36,500 licensees and we have 19 employees. The Commissioners are concerned that at some point there will be a breaking point in the work load for the currently employees if additional help isn't brought in. Director Bell stated there is a current hiring freeze so immediate help will not be forthcoming.

Applicants with Lesser Criminal Convictions or License Discipline:

Nate Bartlett
Stephanie Boushley
Donald Byrd
Cory Coleman
Sonja Ellis
Glen Gardner
Christopher Green
Joanna Henderson
Erin Hernandez
Gregory Jackson
Christine Johnson
Nathan Julian
Michael B. LaPay
Danielle Lopez
Guy Matthews
Michael McAllister
Elizabeth McMahan
Nicholas Obad

Condee Stephens
Jacob Stevens
Ajsa Sukav
Keith Thomas
John Willis

LICENSING HEARINGS

11:35 David McReynolds – Post-Revocation Hearing
Jim Williams, Broker

A motion to go into Executive Session was passed, and was held from 11:40 a.m. to 1:10 p.m.

LICENSING HEARING - Continued

1:10 Frank Kilby – Application for License
Shelley Wismer, Assistant Attorney General
Mary A. Nestor, Attorney
Will Rodgers, Attorney
Roxanne Kilby, Wife
Carolyn Koskan
Keith Koskan
James Bolton, Investigator for the Division
Charles Smalley, Investigator for the Division
Blaine Ferguson, Assistant Attorney General

Director Bell and Chair Froerer recused themselves from the Kilby application. Vice-Chair Burnham is conducting the hearing, and Mr. Fagergren will be the Acting Director

A motion to go into a second Executive Session was made and held from 3:30 p.m. to 4:25 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

David McReynolds – Revocation was overturned.

Frank Kilby – License was granted on probation, pending broker notification

Lesser Criminal Convictions:

Nate Bartlett - Granted

Stephanie Boushley - Granted

Donald Byrd - Granted

Cory Coleman – Schedule hearing

Sonja Ellis – Schedule hearing

Glen Gardner – Schedule hearing

Christopher Green - Granted
Joanna Henderson - Granted
Erin Hernandez - Granted
Gregory Jackson - Granted
Christine Johnson - Granted
Nathan Julian - Granted
Michael B. LaPay - Granted
Danielle Lopez - Granted
Guy Matthews - Granted
Michael McAllister – Schedule hearing
Elizabeth McMahan - Granted
Nicholas Obad - Granted
Condee Stephens - Granted
Jacob Stevens - Granted
Ajsa Sukav - Granted
Keith Thomas - Granted
John Willis - Granted

OTHER BUSINESS

Director Bell said the Utah Association of Realtors is proposing an amendment to the Division bill that would permit the Real Estate Education Fund to pay the expenses for outside legal counsel to draft state approved forms and amendments. Director Bell handed out a draft of a proposed amendment to the Education and Recovery Fund statute. There was much discussion on the proposed change. The Commission objected to the proposed language and suggested alternative language to take to Legislative Counsel.

Director Bell said he will give the Commission information on the proposed rule to have licensing proceedings on documents only, at next month's meeting.

Commissioner Peretti would like to see the final draft of the Qualifying Questionnaire before it actually goes out.

A motion was made and passed to adjourn the meeting at 4:50 p.m.