

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
9:00 a.m.
April 20, 2005

MINUTES

STAFF MEMBERS PRESENT:

Dexter Bell, Division Director
Mark Fagergren, Education/Licensing Director
Jon Brown, Enforcement Director
Shelley Wismer, Assistant Attorney General
Blaine Ferguson, Assistant Attorney General
Dee Johnson, Investigator
Dave Mecham, Investigator
Renda Christensen, Board Secretary
Amy Corak, Real Estate Education Secretary
Amanda Webster, Mortgage Education Secretary

COMMISSION MEMBERS PRESENT:

Gage Froerer, Chair
Dorothy Burnham, Vice Chair
Maralee Jensen, Commissioner

GUESTS

Kevin Swensen
Curtis Bullock

The April 20, 2005, meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Gage Froerer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes of the March 16, 2005 meeting were approved as written.

DIVISION REPORTS

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown reported in March 38 complaints were logged, 27 new cases were opened for investigation, 20 cases were closed, leaving the number of open cases at 217. The CE audits being conducted are increasing the number of cases. The hiring freeze that has been in place has been lifted, and the Division is now able to place an advertisement for an additional investigator.

DIRECTOR'S REPORT – Dexter Bell

Director Bell said Commissioner Blaine Walker would join the meeting by conference

call at approximately 9:40 a.m. during the meeting.

Director Bell reported the number of licensees have been going up approximately 100 per month. He commended Dave Mecham on his work closing 20 cases last month. He is an asset to the Division.

Director Bell asked the Commission for their approval to send Mr. Fagergren to the REEA Convention in Myrtle Beach, SC in June. Both Director Bell and Mr. Fagergren believe it would be beneficial to also send Jennifer Eatchel and Amy Corak, who share the job of Real Estate Education Secretary. Amanda Orme, who is the Mortgage Education Secretary will also attend but will be paid for out of the Mortgage Fund. The Commission has approved the travel authorizations.

The CE audits must meet due process. The Division will file a formal petition against licensees who have failed the audit if they do not want to voluntarily settle the case by stipulation. There are basically two types of problems showing up on the audits: not responding, and not telling the truth. The Division is recommending a \$500 fine and a scale that is tied to the number of CE hours the licensee is short. Mr. Johnson mentioned the statute states the fine is limited to \$500 per violation. Ms. Wismer mentioned the licensees who renew online have the ability to not tell the truth, the licensees who renew by mailing in hard copies of CE certificates do not. She asked the Commission how they feel about intentionally false renewals, and if they should only get a fine or if they should have their license revoked. Ms. Wismer also brought up the second area of those who attempt to comply, but have taken the wrong courses, such as no Core Course. Commissioner Burnham stated that to level those who renew online versus by mail, it must be something to get the licensee's attention, such as revocation. Mr. Ferguson stated the individual has made a misrepresentation so revocation would be an option. Ms. Wismer said the full range of penalties are available, anything from fines, suspension, or revocation. Mr. Brown suggested an automatic 30-day suspension to go with the fine. He is concerned that licensees will be thinking of a fine on the lines of the cost of doing business, and will not take it seriously. The opinion of the Commission is the more severe, the better.

Director Bell brought up the topic of securities, and has two items to discuss. The first issue is securities licensees selling TIC's (tenants-in-common). The second item is real estate licensees selling TIC's. The first issue came up because SB64 raised awareness of the real estate code. The real estate code states if you are a securities licensee selling a security that has real estate as a necessary element of the transaction, and it is registered (either with the state or the federal government), then you do not need a real estate license to sell it. Most real estate sold as a security is sold as an exempt security under federal and state securities laws. The exemption is for accredited or sophisticated investors. An accredited investor is someone who has high net worth, a sophisticated investor is someone who is exposed to business affairs and should understand the investment. The laws are much more relaxed if you are selling to those people, and they are exempt from registration—not disclosure—but from registration.

This means the people selling the property as a security don't have to register the security. But the real estate code exemption for selling it as a securities licensee doesn't apply to exempt securities. The securities division enacted a rule permitting exempt securities to be registered so the real estate code was not altered. This was an emergency rule and went into effect on May 2, 2005, so the real estate code was not altered.

To be exempt from the real estate code, a real estate security must be registered as a security.

A conference call was placed to Commissioner Blaine Walker who is attending an NAR meeting. Director Bell told Commissioner Walker what the Commission and Division had been discussing, so he would be brought up to speed on the conversation. Director Bell would like to schedule a meeting next week with the Commission in which they will come up with a solution, because we have a bill that becomes effective on May 2, 2005 (SB64), and the bill says the Division will establish rules for the administration of that bill. The funding to get the full-time employee, who is the person that will be in charge of drafting the rules, doesn't take place until July 1, 2005. Commissioner Walker said it was the intent to use many of the disclosure forms that are currently used in real estate. From there we need to set up some guidelines on leases, master leases, and management issues.

Ms. Wismer and Mr. Ferguson are concerned on the time frame to get these rules in place, because on May 2, 2005, the Division is responsible to have these rules in place. Director Bell is suggesting an emergency rule by the Commission to continue to use the disclosures already in place on the securities side until the Division and Commission have time to come up with regulations to replace them. Commissioner Walker is concerned that if we start adopting the same rules as the securities division, then we are in effect saying that it is a security, and we are going to deal with it like a security.

He believes we shouldn't adopt the same rules as the Securities Division. Without looking at the documents closely, we are premature in adopting their rules and regulations for now, and then amending them later. He is concerned the changes will never get made in the rules. Mr. Ferguson reminded Commissioner Walker that the Division does not have the legal option of not having rules in effect by May 2, 2005. The policy decision of what rules are established is completely up to the Commission, but what is not an option is to do nothing. Director Bell suggested a meeting on April 28, 2005 to set up some emergency draft rules in place.

Ms. Wismer passed out a copy of the draft rule that was proposed last month. This adds to R162-6.1 (Improper Practices). There was discussion on what type of power of attorney was needed. Ms. Wismer suggested that it might be best to have a completely separate rule that forbids an agent from getting a general power of attorney from their principal. A motion was passed to remove 6.1.13 (Changes to documents after signature), and renumber 6.1.14 to be 6.1.13 and publish it as written.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported on what the pre-licensing education committee has been discussing. Commissioner Walker has added a fifth item to the original four items approved by the Commissioner last month. The committee will meet again next week to see what can be cut in the 90 hour curriculum. Mr. Fagergren reminded the committee that these changes might effect reciprocity with other states, but the committee did not see it the same way.

Mr. Fagergren brought up the issue of getting courses approved before the course was taught. He has seen an influx of instructors telling students to send in their CE applications for approval after the class has been taught. The instructors are trying to get around the process, and are telling student they can all apply individually to get approval. This is causing a problem with the number of applications coming in. Ms. Wismer will work up a draft rule change to fix this problem.

Mr. Fagergren discussed the area of extending the one year deadline for education. The rules say the 90 hour education is good for one year. He is asking if we could come up with some language to authorize an exemption to the 90 hour requirement for some other qualified things (i.e., a degree, etc.). Commissioner Jensen suggested a point system similar to the brokers, and maybe have it apply to sales agents as well. The Commission asked Ms. Wismer to come up with a draft on this issue.

LICENSING HEARINGS

- 10:43 Sonja Ellis – Application for License
 Dale Silvester, Broker, Signature Group
- 11:12 Corey Coleman – Application for License
 Angie Coleman, Wife
- 11:30 Joseph Johnson – Application for License
 Allowed to re-schedule.

Review of Lesser Criminal Convictions:

Douglas Baker
Darrell Billups
Kevin Brockbank
Kent Christiansen
Edward Coyle
Troy Erickson
John Foote
David Irwin
Jason Jenson
James Kelton
Matthew Lewis
Steve Longnecker

Kenneth Mitchell
Grieg Morrison
Theresa Newport
Nathan Reynolds
Kellie Roring
Lisa Scfhelaikjer
Martin Schije
Todd Stitton
Caryn Stott
Jaylin Stuart
William Wilkin
William Wickens
Jann Wilcox

A motion to go into Executive Session was passed, and was held from 12:00 a.m. to 1:00 p.m. This was a working lunch.

- 1:00 Trisha Dent – Application for License
William Cooper, Principal Broker, ERA Legacy Realtors
Aaron Dent, Husband
Lorraine Ekberg, Mother
- 1:35 Rick Sanchez – Post-Revocation Hearing
- 1:50 Kerby Petersen – Application for License

OTHER BUSINESS

Ms. Wismer brought in a revised draft of R162-2-2 (Licensing Procedure). This draft was on waiving part of the pre-licensing education requirements for sales agents. If this is a college degree, regardless of how long in the past the courses were taken, it could be used to waive part of the education. If it was not a college degree, the courses would be have a 12 month limit on the education. It was corrected to read, "The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other education was taken within 12 months prior to the application." A motion was passed to start the rulemaking process.

The revised draft R162-9-2 (Education Providers) was also reviewed. This is about requiring CE providers to get their courses pre-certified before they teach the course. It was decided to work more on the wording before any decision is made.

A motion to go into a second Executive Session was made and held from 2:27 p.m. to 2:37 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Sonja Ellis – Approved on probation pending broker notification
Corey Coleman – Approved on probation pending broker notification
Joseph Johnson – Allowed to re-schedule
Trisha Dent – Approved on probation pending broker notification
Rick Sanchez – Revocation was reversed
Kerby Petersen – Approved on probation pending broker notification

Stipulations:

Laron Zaugg - Approved
David R. Burningham - Approved
Michael Fink - Approved
Brandee Fox - Approved
Mark Lindsay - Approved

Lesser Criminal Convictions:

Douglas Baker- Approved
Darrell Billups - Approved
Kevin Brockbank – Schedule for hearing
Kent Christiansen - Approved
Edward Coyle - Approved
Troy Erickson - Approved
John Foote - Approved
David Irwin - Approved
Jason Jenson - Approved
James Kelton - Approved
Matthew Lewis – Schedule for hearing
Steve Longnecker - Approved
Kenneth Mitchell - Approved
Grieg Morrison – Schedule for hearing
Theresa Newport - Approved
Nathan Reynolds - Approved
Kellie Roring – Schedule for hearing
Lisa Scfhelaikjer - Approved
Martin Schije - Approved
Todd Stitton – Schedule for hearing
Caryn Stott - Approved
Jaylin Stuart - Approved
William Wilkin - Approved
William Wickens - Approved
Jann Wilcox - Approved

Rex B. Bushman - Approved
Liza McKenzie – Denied

A motion was made and accepted to adjourn the meeting at 2:45 p.m.