

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

January 20, 2010

MINUTES

DIVISION STAFF PRESENT:

Deanna D. Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education and Licensing Director
Traci Gundersen, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Van Kagie, Investigator
Kurtis Hughes, Investigator

COMMISSION MEMBERS PRESENT:

Gary R. Hancock, Chair
Kay R. Ashton, Vice Chair
H. Blaine Walker, Commissioner
Stefanie Tugaw-Madsen, Commissioner
H. Thayne Houston, Commissioner

GUESTS:

Irene Kennedy
Tammy Lund
Rob Ponte
David Bornemeier
Chad Ahearn
Kevin Swenson

The January 20, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The Minutes from the December 16, 2009 meeting were approved as written.

Chair Hancock brought up an issue regarding the posting of Minutes on the Division's website in a timely manner. Ms. Christensen said the Division has a new employee who posts the Minutes. Once they have been approved, the Minutes are now posted in a timely manner. There shouldn't be a backlog in the future.

Another issue being discussed was the Division's newsletter being sent out by e-mail. There was concern that not everyone has access to review the newsletter. Director Sabey said the Division is in the process of educating licensees about keeping a current e-mail address, and that the newsletter is available in two different formats. The e-mail notifications can cover notices, alerts, and a variety of communication to licensees. There are hard-copies of the newsletter available upon request. Commissioner Walker mentioned checking the spam filters on their e-mail accounts, and that possibly it might be a problem.

There are two different ways to print the newsletter: the e-version, and the full text version. The e-version allows the licensee to have access to hotlinks to various references or websites. To receive disciplinary the sanctions, licensees just click on the industry, and then on the individual name. The full text version will allow all of the text to print like the previous newsletters. Director Sabey said the Division will save approximately \$80,000.00 annually by not printing the newsletters.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said she recently gave a presentation to the Utah County Association of Realtors. She handed out a five (fiscal) year look back to show how the number of licensees has changed. There is a general pattern showing the existing licensees, but there is a decrease in new licensees entering the industry.

On January 6, 2010, Director Sabey attended the Governor's Summit on Real Estate Lending. The presentation showed trends that have taken place, and that most federal policy now is geared to first-time buyers. The prediction is that medium prices will continue to fall, and the prices for the high-end houses will have to come down. Developers have purchased lots at a certain price, but to get the inventory to turn over, the prices will have to be reduced.

Director Sabey received a letter complaining about short sales. When a short sale occurs the seller will get a letter from the bank where the lien holder will agree to accept less than the balance owed. This letter is being shared with lenders as part of the financing package. The concern expressed is that the agent was unintentionally breaching his fiduciary duty of confidentiality by sharing this document. The Commission and Division discussed this concern, and concluded that the personal information (i.e., social security numbers, and other identifying information) in the letters provided by the bank should be redacted before sharing it to prevent any possible identity theft.

The Commission asked Director Sabey about the Division's bill. She said that she is prohibited under GRAMA from releasing any specific details. The Division has been working closely with the Office of Legislative Council to create a draft that will correct the poor organization of the real estate statutes in the past. The concepts are still the same, but they have been reorganized in a much more user-friendly

way, and some statutory language is changed. There is a proposed increase in maximum fines from \$2,500.00 up to \$5,000.00, and there are some word changes from "individuals", and "persons", to "individual." The sponsor is Representative Froerer.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said the "hot buttons" for Enforcement now are short sales and foreclosure schemes. On the mortgage side, it is loan modification schemes, monies up front for doing nothing for people; and, on the appraiser side it is AMC's and HVCC requirements. Companies are being formed claiming they are short-sale experts, and have been approaching potential sellers and finding people who are in trouble. These companies tell people they can help them out by handling their short-sale. The Division's response is they may do this as long as they have a real estate license. They must have a mortgage license to be in the loan modification business.

Some attorneys have said individuals are going to form an LLC and claim this will allow their 100 employees to conduct short-sales. These attorneys are stating that since they are exempt from being licensed, these employees can all fall under the attorney's umbrella. In the mortgage statute, attorneys are exempt from being licensed only if the transaction falls under the normal course of their business (i.e., bankruptcy problems, etc.). If the attorney is soliciting for business such as loan modifications, they must be licensed with the Division.

Commissioner Walker asked if these people are short-sale "experts", what fees are they charging people. Mr. Johnson said they are trying to charge the buyer, by telling the buyer they can get the money from the lender if the lender approves, and in some cases, the lenders are approving a facilitator's fee. There are even some licensees who are collecting a real estate commission, and in addition to that, collecting a facilitator's fee. The Division's position is if this action leads to the transfer of title, and it is the offering of real estate, then these people must be licensed with the Division.

Mr. Johnson said on the appraiser side, the problem with AMC's is spilling over on to the real estate arena by trying to get appraisals done in a timely, efficient, and professional manner. It has ruined many real estate transactions recently because appraisers face a special problem because they are supposed to be a reaction to the market, and are not supposed to set the market. In the real estate industry, the appraiser's job is to determine a value based on the history of that sale, whether the current one is of the same value, less value, or more value, and appraisals are tending to be conservative.

Mr. Johnson said in the month of December the Division received 45 complaints; screened 19 complaints; opened 16 cases; closed 24 cases; leaving the total number of cases at 109. The numbers of complaints coming in continue to be high. The Division is taking on and considering more serious cases, and trying to

address those who are less involved before they have to take more time. Often we find that more education will help to set the issue straight. Commissioner Walker complimented the number of cases closed, especially in the last three months. Vice Chair Ashton said it was noticeable in the last Division newsletter by the increased amount of sanctions handled by the Division compared to the Commission.

There are two stipulations being presented to the Commission. The respondents were given the chance to appear to answer any questions the Commission might have and both have declined to attend.

Review of Stipulations:

Troy U. Jensen

Jody Don Rasmussen

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren thanked Ms. Wall for her work on the Division's newsletter. Ms. Jonsson and Mr. Hughes both helped with the hotlinks.

Mr. Fagergren said the statistics show an entire year this time, and it has allowed him to compare these figures with previous years to see the trends. In 2008 we lost 2,037 active agents, and that was a 10.5% reduction in the total number of licensees. The number of inactive agents in 2008 grew by 944, which was a 17.8% increase. The average of those two numbers show a net loss of 1,093 agents, or a 4.4% loss.

In 2009 we lost 1,687 active agents, which was less than the year before, and the percentage drop was 9.7%. Inactive agents dropped another 717, and if you combine the actives and inactives there is a drop of 2,404 or 10.2% reduction in licensees for the year 2009.

The year end had two licensing events simultaneously happen. Licensees were trying to get in under the deadline by completing a January renewal in December, to avoid having to take six additional hours of additional CE. There were also a few people who believed that since prelicense hours have increased from 90 to 120, they had to be licensed by the end of the year. People were coming into the office until 6:00 p.m. on New Year's Eve.

Mr. Fagergren went on to discuss the different types of CE. As of the first of the year, licensees need 18 hours of continuing education to renew. The Legislature granted the change and this was approved by the Commission. There is another issue involving reinstatement CE. If a person's license expires more than 30 days, they are in a reinstatement period, and in addition to the 18 hours required, they will need an additional 12 hours according to our rules. If the licensee has expired over six months, they will need 12 additional hours. The breakdown in continuing education hours is 18 hours required for on-time renewals; if the person is expired over 30 days, an additional 12 hours of CE is required for a total of 30 hours. If a person's license has been expired over six months, they will need an additional 12

hours for a total of 42 hours of CE.

Mr. Fagergren brought to the Commission's attention two references in Rule 3.5.1 that need to be updated from 12 hours to the new 18 hours to reflect the statutory change. The rule also needs to be updated to show the requirement of core hours has changed from six hours to nine hours. Commissioner Walker discussed the amount of additional CE required for expired individuals, and believes that to add the extra 12 hours for late, and another 12 hours for being expired over six months is an excessive amount of CE. He is speaking on the record against this change. Ms. Jonsson said in statute 61-2-9, section 2b, states that for a period of 30 days after the expiration, you may reinstate by paying the renewal fee and late fee, after that 30 day period and up to six months later you can pay a renewal and late fee, complete the 12 hours with 12 additional CE hours. After six months to one year, you pay the late fee plus and the 24 hours of CE. The rule presented will mirror the statute.

A motion was made to make the change on 3.1 and 3.5 to change it to the current 18 hours. The motion was then amended to state 18 hours with 9 core hours. The amended motion was seconded and passed unanimously.

In addition to the CE just mentioned, there is still a 12 hour new agent course that must be taken by agents renewing the first time.

There was a change to the statute last year that states, "the Commission with the concurrence of the Division, may exempt a licensee from all or part of this continuing education requirement for a reasonable period of time upon a finding of reasonable cause including", and in the instance that Mr. Fagergren is asking about, "the individuals have been elected or appointed to government service, the individual's government service during which the individual spends a substantial time addressing real estate issues and under conditions established by rule according to the Administrative Rules Act." Mr. Fagergren presented a situation to the Commission, and asked for their decision on how many hours should be waived. This person doesn't renew until 2011, and is an elected official, and has six hours of current CE banked. He is stating that his job entails the review of the master plan of his community and other development issues, and this licensee believes that this statute should exempt all or part of his CE. Mr. Fagergren is asking the Commission for the number of hours that should be waived, if any, in this situation, and any similar situations that may come up. The Commission will review this request in their Executive Session.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said there are three rules on the table. One of those, R162-3-6, the Commission has already reviewed. The changes here are to simply track the wording changes to match the statute to keep our rules up to date. A motion was made to accept the changes made, seconded, and passed unanimously.

The next rule is R162-4-1.4 regarding settlement statements. This language was previously approved and has now been implemented into the rule. A motion was made to accept the modifications, seconded, and passed unanimously.

Ms. Jonsson mentioned in last month's meeting, an individual was denied under the felony rule because he had a plea in abeyance to a felony charge. The Commission had asked Ms. Jonsson to prepare some ideas and options to modify the rule, and these are being presented today. The Commission will review these in their Executive Session.

Chair Hancock said Ms. Lund asked to express her concerns in a specific issue. Ms. Lund brought up the issue that recently the lenders began to require for condominiums, planned unit developments, and any sub-division that has a Homeowner's Association, up-to-date minutes and financial information to guarantee to the lender that the HOA is solid before they loan on it. Meanwhile, we have condominium associations where nobody wants to be involved, having somebody take on the task and is the last man standing. Often times, these people have no idea of how to manage a bank account for an entity, and they co-mingled and borrowed funds to pay their groceries. When they have a request for the bank statements, these people won't give them, get frustrated, and leave. Now we have the buyer who becomes frustrated and leaves. Then we have a seller who can't sell to anybody except an investor who will low-ball them on the price because they are paying cash, because that's the only way they can sell. This topic has been discussed in her broker class, and she is now asking the Commission to consider the idea of requiring somebody who is going to manage a Homeowner's Association to register with the Division the same way we license timeshares. Ms. Lund believes this might prevent some of the problems and allow for lending to continue in these situations. She isn't sure if it would require legislation or if it can be addressed by rule. Commissioner Walker mentioned the co-mingling of funds, and said that these must be small condominium associations. Most condominium projects have a management company help the elected members of the Homeowner's Association to work through these issues. In many cases, they are not handling the money, they are working with someone from the Homeowner's Association who has some background in financial management. Ms. Lund stated in larger associations this is the case, but there are many out there who are small and have just voted in one of the residents to handle financial matters. She believes this will potentially affect the marketplace. Vice Chair Ashton stated that it is not a lender requirement, this is being driven by FHA right now. From a lender's perspective, it is a big challenge.

A motion was made and passed to close the public portion of the meeting at 10:30 a.m.

LICENSE HEARINGS: **CLOSED TO PUBLIC**

10:40 David F. Shamy – Disciplinary Hearing
Crystal Zank, Daughter, Witness for Respondent
Sharon Shamy, Wife, Witness for Respondent

Van Kagie, Investigator, Witness for Division

A motion was made and accepted to go into Executive Session from 12:42 p.m. to 1:50 p.m.

OPEN TO PUBLIC

RESULTS OF EXECUTIVE SESSION

Results on Stipulations:

Troy U. Jensen - Approved

Jody Don Rasmussen – Approved

The Commission has decided to approve waiving nine hours of elective continuing education for the licensee who is the appointed government official.

1:51 Commissioner Training – Tony Patterson, Assistant Attorney General

A Motion was made and accepted to adjourn the meeting at 4:17 p.m. The Motion was passed unanimously.