

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

May 19, 2010

MINUTES

DIVISION STAFF PRESENT:

Deanna 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

COMMISSION MEMBERS PRESENT:

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

GUESTS:

Tammy Lund	Peter Christensen
Irene Kennedy	Paul Naylor
Fred Repman	Jack Marinello

The May 19, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Commissioner Ashton will be excused today because he is out of state. Chair Hancock said he attended the Caravan last month in the Layton session, and the presentations were very professional and well done.

Approval of Minutes

The Minutes from the April 21, 2010 meeting were found to need one clarification. On page 2, second paragraph, the wording should be changed from "using" to "investigating." With this change, the minutes were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said there was an article in the Wasatch Front edition of the Salt Lake Tribune today regarding home construction plummeting down in the U.S., but

up in Utah. In April of 2010 new building permits for construction were up 37% from last year. She said this article was one of the most optimistic pieces of news in Utah in quite some time.

Both HB 53 and HB 257 became effective on May 11, 2010. In the Caravan presentations, Director Sabey went into detail about the changes and new provisions that are now included in the Division statutes and rules. In HB 53, both loan originators and those doing foreclosure rescue services (including short sales) must be licensed with the Division of Real Estate. Anyone negotiating a short sale must be licensed as a sales agent or broker. Anyone doing loan modification services must be licensed as a loan originator. In the Division's last newsletter, Director Sabey's article listed prohibited conduct and practices for those licensees who engage in foreclosure rescue services and loan modifications.

Also effective May 11, 2010, any individual who is providing foreclosure rescue services must offer, in writing, to the client a right to cancel the agreement within three business days after the date on which he/she enters the agreement.

Some prohibited practices include suggesting to a person that the licensee has a special relationship with his or her lender or loan servicer; falsely representing or advertising that you are acting on behalf of a government agency, lender or loan servicer, or a nonprofit or charitable institution; recommending or participating in a foreclosure rescue that requires a person to transfer title to you or to a third party with whom you have a business relationship or financial interest; advising a person to make a mortgage payment to anyone other than his or her loan servicer; and, telling a person to refrain from contacting his or her lender, loan services, attorney, credit counselor, or housing counselor.

Director Sabey wanted make the Commission and public aware of an FTC proposed rule that governs mortgage assistance relief services, or the "MARS" proposed rule. In this proposed rule, the FTC is proposing to regulate mortgage assistance relief services including short sales. This would prohibit up-front fees without a documented offer from a lender or servicer. Some of the prohibited conduct provisions are similar to our statutes. There are specific required disclosures that are far beyond what our statutes now require. If this proposed rules goes into effect as is, there are some inconsistencies between our statutes and the proposed rule. The public comment period is over, and two of the many entities that commented on this proposed rule were the NAR and the American Bar Association.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported that in April the Division received 72 complaints; screened 17 complaints; opened 15 cases; closed 9 cases; leaving the total number of real estate cases at 84. Mr. Johnson said this is the highest number of complaints received in a month for many years. The overall number of complaints received for the first quarter was just short of 250.

There are three stipulations to review this month. All of the respondents were given a chance to appear, but have chosen not to appear.

Stipulations

Michael N. Cragun

Lurae Stanger

William J. Ross

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the number of licensees seems to have bottomed out, and we are starting to see a gradual increase in numbers.

The scheduled Caravan appearances were completed last week, and we are trying to make arrangements for a Salt Lake location sometime in June.

Mr. Fagergren thanked the Commission for submitting names for the committee to meet with Pearson Vue June 7-10, 2010. Two days will be spent reviewing real estate exams, and two days will be spent reviewing mortgage exams. There is still some available space for one or two more names. He said there are individuals from Centerville and Logan, but more are needed in Salt Lake and southern Utah.

There is a new system on the Division's website that began on May 17, 2010. The new addition is a continuing education course search engine, which makes it easier way for licensees to find out what courses are available. The licensee will now be able to search for specific classes such as core courses or property management, etc. The Division is adding the links to those courses, and Mr. Fagergren said to those educators in attendance that they need to keep the website addresses current.

Mr. Fagergren said that mortgage has a major deadline coming up on May 31, 2010. The mortgage licensing staff is being overwhelmed with the number of calls coming into the Division. The amount of calls has averaged at approximately 50 calls per person, per day. In addition, they are trying to get all the transitions processed. If the licensee doesn't transition their license over to the NMLS system by the end of May they will have to start over with 60 hours of education and pass two tests.

The dedicated real estate licensing staff is not being used to help out in the mortgage area. With the end of the month approaching they are busy keeping the real estate applications processed. Mr. Fagergren encouraged everyone to use the on-line system for renewal, address changes, etc. so this can free up the licensing staff. By doing this they can assist licensees or those who are interested in becoming licensed. He suggested to the educators present today that perhaps they can create a course to teach licensees how to use the RELMS system for their licensing needs.

Mr. Marinello asked if anyone has had problems banking their mortgage CE credits

with Pearson Vue recently. His company has been trying to bank mortgage hours with Pearson Vue using the new NMLS numbers, but they won't go through. Mr. Fagergren said those mortgage licensees in the process of transitioning are given a new license number. The continuing education is now found in two separate places. The NMLS license number shows there are hours under that license, and there are also hours posted under the Division's license number. We are trying to get these two license numbers to merge so a licensee doesn't have to search in both locations.

The current process to bank CE hours is as follows: the provider banks the information to Pearson Vue; Pearson Vue sends the information to the Division; the Division then sends it to Utah Interactive to be banked. The IT people are working on the time gap between Utah Interactive getting the information from the Division.

Currently, the Division sends out a renewal notice approximately six weeks before the licensee expires. The Division is working on having electronic e-mails before and after the expiration dates. Commissioner Houston asked if the Division had given any thought of changing the color of the postcards sent out with the renewal information. He suggested using a bold color to help them differentiate between junk mail direct marketing. Director Sabey mentioned the Utah Bar Association has been effective in sending out their renewals on yellow card stock. Commissioner Houston reminded everyone in attendance that it is a courtesy by the Division that they have been sending out renewal notices, because they are not required by law to notify licensees of their expiration dates.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said the public comment period has passed on the rule amendment that was published on R162-2.2. This is the rule that allows the Division to exercise more discretion when there is an applicant who has entered a plea in abeyance to a felony or to a misdemeanor that involves some sort of misrepresentation. The public comment period ended on Monday, May 17, 2010, and there were no public comments. This rule can be made effective on May 24, 2010. A motion was made and unanimously approved to have the rule be made effective on May 24, 2010.

Rule 162-4.1 is still open for public comment until May 31, 2010. The Commission gave Ms. Jonsson a motion and vote to allow the rule to be made effective on June 7, 2010 unless public comments have been received before May 31, 2010. This rule changes the verbiage from "closing statement" to "settlement statement" and doesn't require someone to be physically present at the closing. It just requires the principal broker ensure that the documents are correct. The motion was made and approved unanimously.

Ms. Jonsson asked the Commission if they wanted the Division to write a rule specifically dealing with expungements. Mr. Fagergren said, historically, the Division has received a notice of expungement. We are then required to pull that

information and put it in a sealed file so it will not be made part of the general file. The Division treats an expungement as if the event never happened. Ms. Gundersen said that an applicant must disclose a conviction even if they are in the process of expungement. The Division and Commission must consider the application as of the date they apply. Even if the applicant has filed for an expungement and it is received after the license is issued, we still need to consider the application as it was presented to us. Ms. Jonsson said that many applicants are under the impression that expungement happen quickly, and she stated that this is not correct.

Ms. Jonsson said she will have information on using electronic signatures next month for the Commission to review.

Commissioner Houston asked the Division how to handle a specific situation. A licensee initiated a transaction six years ago, and then moved brokerages three or four times. That transaction was never documented at the brokerage. The transaction is now in progress, and the agent needs to know which broker pays him? This was an unrepresented transaction and the agent was acting as a consultant. Mr. Johnson said even though there was not a brokerage designated as to the listing/selling side; it had to have been dated. The date that applies to the ratification of the contract is the brokerage where the commission is due.

Commissioner Tugaw-Madsen has a report from NAR's joint BPO workgroup dating back to June of 2006. She has an update on this which shows they have not moved forward much since then. In one of the meetings, Nevada did pass new legislation that says they can use BPOs for loan modifications. Director Sabey said under the federal loan modification program, the federal government has said they will allow BPOs. There are quite a few people upset about this action of allowing BPOs to be used in loan modifications. This could be why Nevada has also decided to allow this action.

A motion was made and passed to close the public portion of the meeting at 10:03 a.m.

CLOSED TO PUBLIC

A motion was made and accepted to go into Executive Session from 10:15 a.m. to 10:25 a.m.

LICENSE HEARINGS: CLOSED TO PUBLIC

10:30 Shawn Kirby – Application for License

11:30 George Jepson – Application for License
Scott Fausett, Friend

A motion was made and accepted to go into Executive Session from 12:58 p.m. to 1:49.

CLOSED TO PUBLIC

EXECUTIVE SESSION

Review of Hearings
Review of Stipulations

OPEN TO PUBLIC

RESULTS OF EXECUTIVE SESSION

Results of Stipulations

Michael N. Cragun - Approved
Lurae Stanger - Approved
William J. Ross - Approved

A Motion was made and accepted to adjourn the meeting at 1:49 p.m. The Motion was passed unanimously.