

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

July 21, 2010

MINUTES

DIVISION STAFF PRESENT:

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education and Licensing Director
Judi Jensen, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Jill Childs, Assistant Board Secretary

COMMISSION MEMBERS PRESENT:

Gary R. Hancock, Chair
Kay R. Ashton, Vice Chair
H. Blaine Walker, Commissioner
H. Thayne Houston, Commissioner

GUESTS:

Kevin Swenson	Gary Larsen
Tammy Lund	Sylvia Larsen
David Bornemeier	Rob Ponte
Irene Kennedy	

The July 16, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Commissioner Tugaw-Madsen will be excused from the meeting to day.

Administrative Law Judge Masuda Medcalf administered the Oath of Office to Commissioner Ashton. He has been appointed to serve another four-year term.

A motion was made to postpone elections because Commissioner Tugaw-Madsen is absent today. In August the meeting coincides with the Utah Association of Realtors Convention. There will be at least two Commissioners absent in August, so a motion was made to postpone elections until September. Vote: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Houston, yes. The motion carries.

Approval of Minutes

A motion was made to approve the Minutes from the June 16, 2010 meeting. Vote: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Houston, yes; Commissioner Walker, yes. The Minutes were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey reported the Wall Street Reform Act was passed by both the House and Senate, and is now awaiting the President's signature. There are some pieces of the Act the Real Estate Commission will be interested in, and because the bill is huge (2,015 pages); Director Sabey gave a brief summary of the bill.

There are several provisions in the Act dealing with Appraisal Management Companies ("AMCs"). The Division's statute will probably need to be revised to bring us into compliance with the changes made on the federal level. The AMCs will be regulated on a federal level by the Appraisal Subcommittee.

There is a provision for the Home Valuation Code of Conduct ("HVCC") in the Act which states that the HVCC will sunset within 90-days after the Act's enactment. A rulemaking body will promulgate rules and, hopefully, will address some of the problems we have heard repeatedly from appraisers and real estate agents as to delays that HVCC has caused.

HUD has an interpretative rule of RESPA that specifically affects real estate agents and proposes to add home warranty companies to the definition of settlement service providers. Services of agents and brokers as additional settlement services are compensable if the services are actual, necessary, and distinct from the primary services provided by the real estate broker or agent, and if the services are not nominal, and the payment is not a duplicative charge. A referral is not a compensable service for which a broker or agent may receive compensation. The Division will have to review its rules and statutes to see if there are any inconsistencies versus what RESPA states.

Vice Chair Ashton recommended an article in the next Division newsletter to let all licensees know of these upcoming changes.

The Division has a number of state-approved forms on its website. Discussion was held on whether each form should be reviewed to update it (other than the REPC and addendum to the REPC), or do away with all state-approved forms altogether. Any time there are changes made to the state-approved forms it requires having the Attorney General's office involved. Director Sabey is proposing to keep the REPC and addendum, and to do away with the rest of the state-approved forms. After much discussion, it was decided to give it more consideration before any action is taken.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in the month of June the Division received 38 complaints; screened 32 complaints; opened 3 cases; closed 10 cases; leaving the total number of open cases at 69. Mr. Johnson complimented all of the investigators for working hard to keep the complaints addressed in a timely manner, and to keep the number of cases down. There is a backlog of cases that will show up in July and August.

There are no stipulations to present today.

Mr. Johnson informed Commission of a new scam the Division had seen. Checks are being received for earnest money from someone over the internet making an offer on a property where (for example) there is a \$500 or \$5000 earnest money. What arrives is a check for \$250,000 with instructions to deposit it in the broker's trust account. They ask the agent to notify them when the hold is removed from the check—not when cleared, just when the hold is removed. When the agent called to notify the person, a demand was immediately sent for \$230,000 of the earnest money to be returned. Upon checking this scam, in the four cases seen by the Division, in every instance it was a fraudulent check. Coldwell Banker put out a notice among their people, and Curtis Bullock was going to send out a memo from the UAR to inform people.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the number of licensees appears to be stabilizing, but with slight moves “up” and “down.”

There has been another meeting with Pearson Vue regarding the real estate agent and broker exams. Efforts are being made to categorize each of the questions in the appropriate outline area. The Division made it known again that we want the licensees tested on the Settlement Statement and the REPC, for both brokers and sales persons. In addition to the general topics, people coming in from other states will be tested on specific information that pertains to our state. We are hoping for an October roll out date for the updated test to go live, but it could be delayed slightly.

Last month Mr. Fagergren mentioned the updates in the RELMS system and the timeliness of data being reported. This morning an investigator asked Mr. Fagergren how long it would take for a licensing action taken to show up in the data base. A licensee had his license suspended this morning, and it showed up almost instantly.

The dates are being firmed up for the Instructor Development Workshop. It is anticipated the dates will be either October 4–5, or October 18-19, 2010. There are some outstanding presenters we are still firming up, but it should be an excellent workshop. Mr. Fagergren invited all of the Commissioners to attend.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said there were no new rules to discuss today. She is working on the restructure of the real estate rules, and is hoping to have these ready for discussion for the meeting next month.

Chair Hancock closed the public portion of the meeting at 10:00 a.m.

OPEN TO PUBLIC

LICENSE HEARINGS

10:30 Charles Ekberg – Continuation of Hearing
Commissioner Ashton was excused from this hearing.
Assistant Attorney General Tony Patterson

At 10:35 Director Sabey was called out of the meeting. A motion was made to take a brief break until Director Sabey returned. Vote: Chair Hancock, yes; Commissioner Hancock, yes; Commissioner Walker, yes. The hearing took a temporary break from 10:35 a.m. to 10:37 a.m.

Assistant Attorney General Tony Patterson was called down to answer questions from the Commission. Because it was considered attorney-client discussion, the Commission met privately with him from 10:40 a.m. until 11:02 a.m.

A motion to break for lunch was proposed. The vote was: Chair Hancock, yes; Commissioner Houston, yes; Commissioner Walker, yes. The meeting will continue at 1:30 p.m.

1:30 Tyson Holbrook – Application for License Renewal
Douglas Short, Attorney
Witness: Gary Larsen

A motion was made to enter an Executive Session so the Commission can meet with counsel, Tony Patterson, Assistant Attorney General. Vote: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Houston, yes. The motion passed and the meeting was briefly closed from 2:19 p.m. until 2:25 p.m. The hearing resumed at this point.

OPEN TO PUBLIC

A motion was made to adjourn the meeting. Vote: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Houston, yes. The motion passed and the meeting was adjourned at 5:48 p.m.