

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

December 15, 2010

### **MINUTES**

#### DIVISION STAFF PRESENT:

Deanna Sabey, Division Director  
Dee Johnson, Enforcement Director  
Mark Fagergren, Licensing/Education Director  
Xanna Hardman, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Renda Christensen, Board Secretary  
Tiffeni Wall, Real Estate Education Coordinator  
Van Kagie, Investigator

#### COMMISSION MEMBERS PRESENT:

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

#### GUESTS:

Irene Kennedy	Curtis Bullock
Shelley Wismer	Rob Ponte
Tammy Lund	Kevin Swenson
Ron Duyker	

The December 15, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

#### Approval of Minutes

Motion: The Minutes from November 17, 2010 be approved as written. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries.

Chair Ashton introduced Xanna Hardman who is the Division's new Assistant Attorney General. Ms. Hardman recently transferred up from Las Vegas, Nevada.

Commissioner Hancock announced that past-Commissioner, Doyle "Sam" Sampson, Jr. is getting married on December 31, 2010. The Commission and Division want to pass on congratulations to the happy couple.

## **DIVISION REPORTS**

### DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said Ms. Hardman's office will be in the Division offices. It is a pleasure to have Ms. Hardman join the Division.

Director Sabey said we are continuing to work on the Division's bill. She has been discussing the bill with the UAR and others, and one of the issues becoming apparent is that there is still some confusion as to what a person has to report within the ten-day time limit. After some discussion, it was decided that we would change the reporting requirement apply to only to Class B Misdemeanors, Class A Misdemeanors, and Felonies.

On December 1, 2010 the Federal Trade Commission published the MARS rule. The MARS rule is the Mortgage Assistance Relief Services rule, and it requires disclosures, prohibits up-front fees, and outlines other prohibited conduct for those individuals who are conducting mortgage assistance relief services. The rule does not apply to those people marketing services to assist consumers in selling their properties.

Commissioner Hancock said the UAR's Legislative Committee has a package showing four bills, none of them numbered, and they don't have sponsors yet. The subject matter is diverse enough that there are plans for multiple bills. The topics covered are minimum services law; standards for reporting crimes; square footage issues; and broadening the continuing education subject matter.

Director Sabey said the meeting today will cover the square footage issue with Ms. Jonsson's report. The minimum services rule is being discussed with the UAR. We are trying to work out some of the issues there without prohibiting licensees from providing limited services to consumers. Director Sabey just addressed the reporting crimes issue earlier in her report, and the issue of expanding CE topics will be covered in Mr. Fagergren's report today. Director Sabey is concerned that consumers would no longer be able to hire flat fee service brokers if the brokers are forced by statute to provide minimum services.

Commissioner Hancock said that he, Vice-Chair Tugaw-Madsen, and Commissioner Walker are on the UAR Legislative Committee, and the UAR is the largest lobby group on the Capitol hill. Commissioner Walker wanted to make sure that the Division knows that they are very careful not to discuss Commission issues between themselves at UAR Legislative Committee meetings.

There was discussion about keeping the Commission involved in the topics that are being written in the Division bill. Commissioner Walker said that in the past there were some consumer groups concerned that the Commission should be made up of public members only, and not allow industry members on the Commission. The consumer groups felt that the industry members would: make it too restrictive to

get into the business; not be strong enough on members of the industry; and be pro-industry rather than consumer-oriented in their judgments. Commissioner Houston commented that the bill belongs to the Division and not the Commission.

Commissioner Hancock said occasionally there have been concerns about the rule on the residency for Commissioners, and since it will be announced today that the state will now have four legislative districts do we want to consider having an industry member from each of the four districts? Commissioner Walker said that this is a legislative issue and not in the statutes, but it is an interesting issue to consider.

#### ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in November the Division received 47 complaints; screened 3 complaints; opened 17 cases; closed 6 cases; leaving the total number of cases at 168.

Commissioner Hancock and Commissioner Houston brought up the topic of QR codes. A QR code is a hot link that is located on the picture in an MLS photo, and if you scan the code it can bring up more information on the property. There is some concern that if the person listing the property isn't careful about what is in the report, it may be a problem if the public has access to information that should not be given out. Mr. Johnson said enforcement will be watching for any problems that arise from using QR codes.

There are five stipulations to review today:

Carla Parker Lorimor

Sharlynn Benson

R. Greg Jensen

Joseph L. Olschewski

Charles Ekberg

All of the respondents were offered the opportunity to appear today, but have declined.

The topic of misleading or blind ads will be addressed in the next Division's newsletter under Kagie's Corner.

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the licensing numbers show a slight decrease.

Currently there are two industries regulated by the Division (Mortgage and Appraisers) that have deadlines coming up on December 31, 2010. Testing centers will be crowded until that time.

Chair Ashton asked if there are any red flags coming up regarding the mortgage and appraising industries regarding these deadlines. Mr. Fagergren said licensees need to make sure that mortgage companies and licensees still have licenses on

January 1, 2011. There is a link on the Division's website to the Department of Financial Institution's website to see if mortgage lenders who are registered with them have completed the process, and are actually registered to work.

Mr. Fagergren brought up the topic of electronic change cards. As of January 1, 2011 there will be no paper change cards used. The process for completing a transfer or change has been worked on to clear up a weakness built into the system. The Division is working on language in the instructions.

Both of the real estate and broker examinations have been worked on for several months now. The provider came out in June of this year, and some of the questions have been updated or changed. There are 24-hours that have been mandated for agents to learn about REPCs. Beginning January 17, 2011 sales agents will be handed two REPCs, and brokers will be handed three REPCs at the testing centers. They will be asked a number of questions about the details on those REPCs as part of the exam.

Mr. Fagergren brought up the topic of expanding the topics on continuing education. A committee was established consisting of Tammy Lund, Jim Bringham, Leron Little, and Commissioner Hancock. Any time the Commission wants to modify, add or remove topics, it can be done. If there is concern from the industry regarding CE topics, another committee can be reappointed to review topics. Mr. Fagergren said this issue does not have to be written in statute, because any time there is a need to change the topics, it can be done by rule.

#### COMMISSION AND INDUSTRY ISSUES

##### Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson wanted to make sure everyone knows that the reporting requirement has not changed, and will not change, until the bill passes. Please do not disseminate the message that it is anything different than what it currently says in the statute.

The committee established to review state-approved forms will meet on January 13, 2011.

Rule R162-2f concludes public comment today. It can be made effective on December 22, 2010 if the Commission will pass a motion to do so. A motion was made to that effect and the vote is as follows: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Houston, yes; Commissioner Hancock, yes. The motion carries.

Amendments regarding square footage and other items that have been brought to the Division's attention will be discussed at 2:30 p.m. today.

Commissioner Hancock said that fewer people have been reading the newsletter in its current format. He suggested there would be more participation from the public

if CE hours were given for attending meetings. Mr. Fagergren said this is currently being done for appraisers. His fear is that the Division does not have the ability to accommodate large crowds of people who might attend for free CE. We can give free CE for attendance, but we will have to consider how to with the numbers of people who are attending.

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries. The meeting was closed from 10:15 a.m. until 11:25 a.m.

Commissioner Walker briefly brought up the topic of out-of-state agents working in our state. He met with Director Sabey, Mr. Johnson, Mr. Fagergren, and a commercial broker who wanted some clarification regarding outside agents coming in to work with an agent within the state, as long as the in-state agent follows the transaction and is responsible for it. Commissioner Walker showed the Commission and Division a listing showing an out-of-state broker listing and advertising property in Utah. There is no local agent mentioned in the ad, or any cooperative type of agreement. He would like to discuss this matter later.

#### **OPEN TO PUBLIC**

#### **LICENSE HEARINGS**

10:40 Lynn A. Christensen – Application for Renewal

11:50 Mark Handy – Application for Renewal  
Patricia L. LaTulippe, Attorney, Witness  
Hank Kennedy, Principal Broker

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries. The motion passed and the meeting was closed from 12:53 p.m. until 1:42 p.m.

1:42 Marin Gogan – Application for License

2:30 William King – Application for Renewal  
This hearing has been rescheduled at Mr. King's request at a further date.

#### **OPEN TO PUBLIC**

Ms. Jonsson discussed the draft rule R162-2f, Real Estate Licensing and Practices Rule. Mr. Bullock and Mr. Ponte were here to discuss the pending rules.

Issues discussed: restricting use of similar names when registering companies; trust account management; square footage data; fixing errors in listing information on the MLS; and advertising regarding square footage. A clean draft of this rule will reflect the comments and decisions made today and will be made available in the January meeting.

A motion was made to be able to add additional people to the Forms Committee. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion passes.

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries. The motion passed and the meeting was closed from 3:14 p.m. until 3:35 p.m.

#### **CLOSED TO PUBLIC**

Discussion of Hearing  
Review of Stipulations

#### **OPEN TO PUBLIC**

Results of Stipulations:  
Carla Parker Lorimor - Approved  
Sharlynn Benson - Approved  
R. Greg Jensen - Approved  
Joseph L. Olschewski - Approved  
Charles Ekberg - Approved

A motion was made to adjourn the meeting. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries. The motion passed and the meeting was adjourned at 3:35 p.m.