

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

February 16, 2011

MINUTES

DIVISION STAFF PRESENT:

Deanna Sabey, Division Director
Thad Levar, Deputy Director/Commerce
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
Jill Childs, Division Staff
Kathy Archuleta, Division Staff

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:

Rob Ponte	Tammy Lund
Brian Davis	Kevin Swenson
Jack Marinello	Chad Ahearn
Curtis Bullock	Lance Miller
Ron Duyker	Irene Kennedy

The February 16, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes from January 19, 2011 were approved as written. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey gave the Commission an update on the Division's bill, HB-91, and also some bills of interest to the Division related to real estate.

HB-91 has cleared out of the House Labor and Business Committee and is now 42nd on the third reading calendar for the House, so we expect that by tomorrow morning it will pass and move on to the Senate.

There are a number of bills that deal with non-judicial foreclosure of trust deeds. These are bills that various legislators have put out trying to see if they can resolve one of the biggest problems in the foreclosure arena, and that is the problem that borrowers are having such a hard time tracking down lenders and trying to negotiate or otherwise deal with the lenders in resolving the foreclosure issue. HB-379 which is Representative Webb's bill has some language that changes the non-judicial foreclosure process and requires specific information to be included in the notice of default. This also requires the trustee to provide a certification that the trustee has complied with the law.

Senator Bramble has SB-218 which requires that a court determine fair-market value of the foreclosed property in a deficiency action. There are two different qualifiers for the court to determine what fair market value is in a deficiency action.

Representative Christensen has a bill, HB-326, focusing on owner-occupied properties. It requires mandatory mediation for loan modifications if the debtor requests loan modification mediation. There are special notices of default requirements for owner-occupied properties. It states that if the lender does not participate in the mediation, a court may enter an order requiring a loan modification or a stay of the foreclosure. There is also a tolling period of up to six months if the defaulting borrower makes one or more payments after the notice of default is recorded.

HB-260, is Representative Clark's bill dealing with mechanic's lien revisions. It gives construction loans priority over mechanic's liens.

Commissioner Walker said SB-151 is a bill dealing with Tenant in Common issues. Six years ago there was a bill enacted for tenants in common. The bill included a couple of lines later interpreted by some of the courts and a number of attorneys to mean any type of investment that involves real estate cannot be a security. If it has a real estate component it could not be a security, which was not the intent of the bill. There are some attorneys who are using that interpretation as an escape clause for their clients, specifically Southwest Partner out of St. George. An attorney down there is arguing that, since the transaction had a real estate component, it is not a security. Therefore, the Division of Securities cannot go after his client for securities fraud. The intent of the bill was to define a fractional interest in a property. With SB-151, the problematic lines were stricken and a couple of other modifications gutted the bill. Senator McAdams, who sponsored the bill, was very gracious as was the head of the Securities Department to make the

modifications and handle the problem without totally destroying the intent of the original bill. It has come out of committee and has been passed by the full Senate.

Director Sabey continued her report after Commissioner Walker concluded his remarks. An article in the Salt Lake Tribune states the commercial real estate industry is growing stronger and looking brighter. The article is titled, "Amid Pain, Outsiders Seek a Resilient Utah," and states a number of wonderful things that are happening in Utah. For example, many retailers in 2010 saw record sales and are aggressively expanding. Vacancy rates have been edging downward after peaking the first quarter of 2010, and lease rates are ticking upward and are back at 2007 levels. For the industrial sector, demand is up and vacancy rates were down in 2010. Our commercial real estate industry is moving in the right direction.

Forbes magazine stated that Utah is the most fiscally-fit state for 2010, and the best state for business. Business Facilities magazine in 2010 stated that Utah is rated the best quality of life. Gallup Healthways Well-Being Index states that Utah has the best work environment, and Utah is number two among top ten pro-business climate states, according to Pollina Corporate Real Estate, Inc. Salt Lake City is number five in the best cities in the next decade from Kiplinger's Personal Finance magazine in 2010. We hope to see both commercial and residential industries continue to grow and strengthen.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in the month of January the Division received 55 complaints; screened 4 complaints; opened 27 cases; closed 9 cases; leaving the total number of real estate cases at 175.

Stipulations for review:

Samuel C. Dodd

Dustin J. Godnick

Todd L. Porter

Annalysha Hedberg

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

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the month of January compared to the month of December shows an additional loss of 126 agents, 20 associate brokers, and 94 inactive licensees. In the eleven-month report we have lost 1,007 active agents and 498 inactive agents. In the first year of this recession, licensees jumped from being active agents to being inactive agents, but at this point, there is double the number of active agents falling out of the industry as opposed to inactive agents.

In three years, since the end of 2007, the number of active agents declined from 19,453 to 14,974.

We have an individual who has applied for a real estate license and our rules state that a person has to have a minimum education of a high school diploma, GED, or equivalent education as approved by the Commission. This person has been licensed for four years in California, is 35 years old, and doesn't have the required education. Mr. Fagergren left the application packet for the Commission to review in their Executive Session.

The Division's Caravan dates and locations are:

April 26, 2011	Logan, Bridgerland Applied Technology College
April 28, 2011	Ogden, Ogden-Weber Applied Technology College
May 3, 2011	Lindon, Noah's
May 5, 2011	Park City Marriott
May 10, 2011	St. George, 9:00 a.m. – Noon and 2:00 – 5:00 p.m. at the Dixie Center Auditorium
May 11, 2011	Richfield, Sever County Administrative Building
May 12, 2011	Moab, Grand Center

The Division looks forward to meeting with the public and receiving their feedback as the Caravan moves around the state.

This year there is not going to be a Salt Lake City meeting. Last year, there were 3,000 people registered to attend and only one-half showed up. The Division's perception was that licensees have more opportunities for continuing education locally, and it is not as meaningful to them as those in the outlying areas of the state.

Mr. Fagergren reported the Appraisal Subcommittee will be arriving next week for a 3-day audit of the appraisal records and files.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said the Administration of the Department of Commerce has reviewed the rule the Commission approved last month, and they have asked for a change. The wording has a provision that requires a licensee to correct an error in any advertising that a third-party service provider might rely on and over which the licensee has control to correct an error. They have asked us to remove that language so that a licensee is not required to correct the error.

There were comments and discussion to delete the requirement that the square footage data source be disclosed on all advertising. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. Motion carries. Ms. Jonsson will run these changes before Administration for their review, and explain the changes and the rationale behind them. Assuming that they will be fine with that, this should be submitted by the March 1st deadline and it would be published for comment on March 15, 2011.

It would be able to be made effective on April 22, 2011.

Discussion of State Approved Forms – Commissioner Tugaw – Madsen
Commissioner Tugaw-Madsen said the committee to review the state-approved form consisted of: Commissioner Tugaw-Madsen, Commissioner Walker, Tammy Lund, Assistant Attorney General Tony Patterson, Assistant Attorney General Xanna Hardman, Heather Hall, Darrell Catmull, and Jennie Jonsson.

The following are the recommendations for the state-approved forms:

Forms to Remain State-Approved Forms:

- Real Estate Purchase Contract
- Real Estate Purchase Contract for Residential Construction (Bring current)
- Real Estate Purchase Contract for Land (Not currently a state-approved form and would require the UAR to grant the ability to use)
- Addendum to Real Estate Purchase Contract
- FHA/VA Loan Addendum to Real Estate Purchase Contract
- Disclosure and Acknowledgement Regarding Lead-based Paint (Update)

The reasoning behind keeping these state-approved forms is to keep them standard throughout the state for consistency.

Standard Supplementary Clauses

- Seller Financing Addendum to Real Estate Purchase Contract
- Assumption Addendum to Real Estate Purchase Contract
- Lead-based Paint Addendum to Real Estate Purchase Contract

The reasoning behind using clauses for these situations is that it allows for the state to have standard language in the clauses, but also allows for the trade organizations to draft language and provide forms in a timely manner.

The committee did not review the existing Standard Supplementary Clauses. There are sixteen of those forms, and nine of the sixteen the UAR already has as an Addendum or wording that they use. These can be reviewed further once we get along in the process.

Eliminate as a State-Approved Forms

- Uniform Real Estate Contract
- All Inclusive Promissory Note Secured by All Inclusive Trust Deed
- All Inclusive Trust Deed
- Buyer Financial Information Sheet

The reasoning behind removing these forms is that these forms have not been taught or utilized in years; form is normally prepared by a title agency; or form was originally drafted prior to mortgage licensing under the state.

The committee also discussed having a "standard" that the Division could potentially put into rule in order to determine what qualifies as a state-approved form. Some of the factors include:

- Avoid the unauthorized practice of law
- Protection of the public
- Protection of the licensee
- Time element
- Instruction
- How customized is the situation
- Consistency
- Outside forces (builders, banks, etc.)
- Seller/Buyer or Lessor/Lessee vs. Licensee/Client contract
- Demand/Public need

Ms. Hardman said the statute requires that the forms be approved both by the Commission and the Attorney General. Motion to eliminate the Uniform Real Estate Contract, All Inclusive Promissory Note Secured by All Inclusive Trust Deed, All Inclusive Trust Deed, and Buyer Financial Information Sheet, and to submit the Seller Financing Addendum to Real Estate Purchase Contract, Assumption Addendum to Real Estate Purchase Contract, and the Lead Based Paint Addendum to Real Estate Purchase Contract as Standard Supplementary Clauses to the Attorney General for approval.

Commissioner Hancock said that he was not ready to give an affirmative vote on these forms yet. The forms will be submitted to the Attorney General's office for review. These comments will then come back before the Division and then out for public comments. He would like to see the results of any of those comments before his final vote. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Houston, yes; Commissioner Hancock, no. Motion carries.

Chair Ashton thanked all those who were on the forms committee for their work, and closed the meeting for a brief break from 10:20 a.m. to 10:30 a.m.

OPEN TO PUBLIC

LICENSE HEARINGS

10:30 William E. King – Application for Renewal
Richard G. Uday, Attorney

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. Motion carries. An Executive Session was held from 11:30 a.m. to 12:00 p.m.

A lunch break was taken from 12:00 p.m. until 1:30 p.m. Chair Ashton opened the meeting again.

OPEN TO PUBLIC

Results of Stipulations:

Samuel C. Dodd - Approved

Dustin J. Godnick - Approved

Todd L. Porter - Approved

Annalysha Hedberg - Approved

Ms. Jonsson made the recommended changes to the draft rule presented earlier. The Commission has verified those changes, and the earlier motion was upheld.

1:50 Michael Speth – Application for Renewal
Shawn Janke
Commissioner Hancock knows Mr. Speth, and Mr. Speth has no problem with him remaining for the hearing.

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. Motion carries. Executive Session held from 3:46 p.m. to 3:59 p.m.

CLOSED TO PUBLIC

Discussion of Hearing

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. Motion carries. The meeting was adjourned at 4:00 p.m.