

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

July 16, 2014

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Jennie Jonsson, Administrative Law Judge
Mark Fagergren, Education and Licensing Director
Jeffery Nielsen, Chief Investigator
Justin Barney, Hearing Officer
Elizabeth Harris, Assistant Attorney General
Renda Christensen, Board Secretary
Mykah Travis, Real Estate Education Coordinator
Mark Schaerrer, Investigator
Kadee Wright, Investigator
John Bickmore, Investigator

COMMISSION MEMBERS PRESENT:

Kay R. Ashton, Chair
Gary R. Hancock, Commissioner
Lori Chapman, Commissioner
Lerron Little, Commissioner
Calvin Musselman, Commissioner

GUESTS:

Shane Norris	Dan Naylor
Tammy Lund	Kevin Swenson
Susan Aguilar	Peter Christensen
Clayborn Ellis	Cressie Larson

The July 16, 2014 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

Vice Chair Booth is excused from the meeting this month.

PLANNING AND ADMINISTRATIVE MATTERS

Oath of Office - The Oath of Office was administered by Administrative Law Judge Jennie Jonsson to Calvin Musselman.

Commissioner Musselman introduced himself to those in attendance. He is from Monticello, Utah and now resides in West Haven, Utah. He has been in the real estate industry for 15 years, and was the past President of the UAR last year.

Approval of Minutes

A motion was made to approve the minutes from the June 18, 2014 meeting. Vote: Chair Ashton, yes; Commissioner Little, yes; Commissioner Hancock, yes; Commissioner Chapman, yes; Commissioner Musselman, yes. The motion passes.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart presented Commissioner Hancock a plaque for his service to the real estate industry, and publically thanked him for serving on the Commission for 8 years.

Commissioner Hancock said he has enjoyed the journey of serving on the Real Estate Commission. He said over the last 8 years everyone on the staff is new except for Mr. Fagergren and Ms. Christensen. Commissioner Hancock mentioned that he has been in the real estate industry for 42 years, and will continue but just slow down.

Director Stewart reported the replacement for Chair Ashton has not been chosen yet. A new name has been submitted and we are hoping that it will be approved shortly.

Over the last two months there has been discussion on updating the state approved forms. Director Stewart said forming a committee to work on the Uniform Real Estate Contract is an option. The Division had a meeting to discuss names to serve on the committee, and it turned into a meeting wondering if the form was really necessary. Director Stewart asked the Commission for their input on the form before establishing a committee.

Discussion was held and members from the Commission and public in attendance offered their opinions regarding the form. Commissioner Hancock said their brokerage uses the form often where traditional financing is not available. Others discussed not turning the Uniform Real Estate Contract into another version of the REPC now in use.

A suggestion was made to perhaps create a new state approved form for Agency Disclosure where licensees must disclose any involvement in the transaction. Also, the All Inclusive Trust Deed should be reviewed at the same time as the Uniform Real Estate Contract.

Director Stewart said the Division would like at least one Commissioner to sit on the committee, and Commissioner Booth was nominated to represent the commercial side. Commissioner Hancock said now that he is leaving the Commission, he will be glad to serve on the public side.

ENFORCEMENT REPORT - Jeffery Nielsen

Mr. Nielsen reported in June the Division received 44 complaints; opened 17 cases; submitted 1 additional case to the Attorney General's office; closed 9 cases; leaving the total number of real estate cases at 274.

Stipulations for Review

Gary Brown
Brent Scott

Both respondents were given the opportunity to appear today and have chosen not to appear.

EDUCATION AND LICENSING REPORT - Mark Fagergren

Mr. Fagergren reported there are 118 new or inactive agents that have activated; there is a loss of 31 inactive agents. When the market starts improving the inactive licensees choose to activate their licenses.

Mr. Fagergren reported that he and Ms. Travis went to the Real Estate Educators Association ("REEA") conference in Phoenix, Arizona. They found a speaker for the next Instructor Development Workshop which will be held on Wednesday and Thursday, October 22 and 23, 2014. The instructor is Carol Murray who teaches on a national basis. The Commissioners are invited as guests of the Division, and may be asked to sit on a panel discussion.

At this same conference there were instructors that had received the "DREI" designation ("Distinguished Real Estate Instructor"). There are only 5 in the country, and Utah has two. Mr. Fagergren wanted to congratulate both of these individuals for their accomplishments. One of these instructors is Eric Storey who is also a Certified General Appraiser, and was so impressed with the training at the Division's Instructor Development Workshops that his interest was piqued in developing his training abilities. Cheryl Knowlton has also been awarded this designation.

Over the years, Mr. Fagergren has received complaints from appraisers about real estate licensees having a low understanding of water law. Many are seeing consequences where agents simply don't know and have damaged a seller or buyer by their lack of understanding. Mr. Storey has proposed a class on water law that will be 3 hours in length. He requests approval of this CE course and requests the course be considered a Core topic. Over the past ten years Mr. Storey has been serving on the Board of Directors on the Weber Basin Water Conservancy District. To show the importance of water, in 2013 Governor Herbert created a 50 year water strategy for Utah, and part of this course would be covering that topic. Mr. Fagergren asked to amend the rule to modify the language by adding Water Law as a Core topic subject. The Commissioners agreed the course should be a Core course, and Mr. Barney will bring back amended wording on this rule next month to be reviewed by the Commission.

Mr. Fagergren said when he was an investigator he had an agent from the Ogden area that took a listing, and the agent's daughter sat at an open house in the agent's behalf. A buyer came through the open house, and the daughter entered into a contract to represent this buyer. This imposed an undisclosed dual agency representation on the seller.

There was a similar issue in the state of New York that has gone to an Appeals Court. A brokerage had a listing that had an open house. The broker happened to be there and he met with a person who came through the home and didn't enter into an offer at that point. He showed this buyer other properties, and then brought the buyer back to the property and an offer was written. The sellers refused to pay the commission to the brokerage claiming the broker was not entitled to a commission, because he had broken his fiduciary duty by acting as a dual agent and showing the buyer other properties. This went to court; the sellers lost; appealed the decision. The Appeal Judge said parties to the listing agreement did not specifically agree that the listing agents were required to decline a prospective purchaser's request to see other properties. Absent an agreement to the contrary, the agents owed no duty to the sellers to refrain from showing the buyer other properties without the seller's permission or knowledge. A contrary holding would unreasonably restrain brokers from potential clients at open houses. The court also held that the agent did not serve as a dual agent in the transaction. There was no agency agreement.

There are no stipulations for review this month.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Justin Barney

Mr. Barney said there are no new rules to review this month.

Mr. Barney presented a letter from Skyler Smith who had recently signed a Stipulation where he agreed to a civil penalty. He has paid one-half of the amount and is requesting for additional time of 30 days to pay the balance. Director Stewart said if the Commission finds good cause to extend a fine, and if the person has made an attempt to pay the fine, then the Commission can grant an extension on time. A motion was made and seconded to extend the date of the payment for 30 days. Vote: Chair Ashton, yes; Commissioner Hancock, yes; Commissioner Little, yes; Commissioner Musselman, yes; Commissioner Chapman, yes. The motion passes and Mr. Barney will notify Mr. Smith by mail.

There are no stipulations for review this month.

Commissioner Hancock brought up two issues. The first issue is regarding an out-of-state company that is listing in-state properties. In order to conform to the WFR rules they must take an exclusive right to sell the listing in order to place it over the MLS, which they have done. In the process of doing so it appeared to be offering

far less than minimum services. This particular listing has had numerous complaints about poor access to the property and/or poor access to anyone to actually discuss the property.

The second issue is a company seeking to purchase distressed properties, and are addressing people who are in trouble on their property by accepting a cash offer to get them out of the property. One particular instance that came out yesterday, advised the broker involved that it was a civil matter where the party trying to buy the property was trying to talk the seller, who had already listed his property with a real estate agent, to cancel the listing. In this on-line situation there is lengthy question and answer session, and Commissioner Hancock asked the question, "Will it matter if my house is listed with a real estate agent?" and got the response, "I suggest that you do submit your home's information to me before you list it with a real estate agent. But if it is already listed, I will definitely need to either talk with your agent, or you could have to cancel your listing agreement before I can make you an all cash offer." The second response was that the party would advise the client on how to get out of the listing. Commissioner Hancock suggested that Mr. Nielsen check into these two incidents.

OPEN TO PUBLIC

INFORMAL HEARING:

10:016 Clayborn Ellis - Appeal of Order

CLOSED TO PUBLIC

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Ashton, yes; Commissioner Hancock, yes; Commissioner Little, yes; Commissioner Musselman, yes; Commissioner Chapman, yes. An Executive Session was held at 11:07 a.m. to 11:57a.m.

OPEN TO PUBLIC

Results of Stipulations

Gary Brown – Approved with concurrence of the Director

Brent Scott – Approved with concurrence of the Director

Mr. Ellis will be notified by mail as to the outcome of his hearing.

A motion was made to adjourn the meeting. Vote: Chair Ashton, yes; Commissioner Hancock, yes; Commissioner Little, yes; Commissioner Musselman, yes; Commissioner Chapman, yes. The meeting adjourned at 11:58 a.m.