

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

January 19, 2011

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:

Rob Ponte	Kevin Swenson
Shelley Wismer	Curtis Bullock
Linda Leavitt	Brian Davis
Irene Kennedy	
Tammy Lund	

The January 19, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Mr. Fagergren announced to those in attendance today that continuing education credit will be available. He reminded everyone who wishes to get credit that they must sign in, and Ms. Wall will be monitoring their attendance.

Approval of Minutes

The minutes from December 15, 2010 were found to need two corrections. On page 3 the word "realtors" needs to be changed to "licensees." On page 5 the reference to Commissioner Walker meeting with the Division and an out-of-state broker, should be changed to "broker." A motion was made to approve the minutes as corrected. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes;

Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey and Mr. Johnson spoke to a group of real estate agents about short sales and short sale scams. One of the things that we realized with the questions that we received, both during and after the presentation, is that there seems to be some confusion on when a short sale becomes a foreclosure rescue. Our statute requires that if there is a foreclosure rescue service being provided, the individual providing the service has to give the consumer a notice that they have a three-day right to cancel after they enter into that foreclosure rescue agreement between the broker and the consumer. The statute's definition of foreclosure rescue requires that the individual broker is offering to assist the borrower in preventing foreclosure. There has to be this offer up-front.

The federal Mortgage Assistance Relief Services ("MARS") rule states that anyone providing mortgage relief services is subject to an FTC rule that became effective December 29, 2010. Many of the short sales that we have been describing will fit into this rule.

The Division's bill is getting close to being released to the public. Last month there was some discussion as to some of the language in the bill regarding flat fee services. There are two general concerns expressed by the industry about flat fee service providers. One is that consumers may not be sure of what services they are being provided in exchange for the flat fee. The second concern is that the buyer's agent may get into a dual agency-type situation with a seller who has contracted for flat fee services with a real estate broker. In order to address those concerns, but not limit consumer choice, the Division is proposing legislation to deal with those concerns in two different ways. The first is to require the flat fee service provider to give specific disclosure to the seller-consumer that specifically describes what services they are providing. The second is the concern of the buyer's agent that they will be caught in some type of potential dual agency relationship. Utah law doesn't support the idea that simply answering a couple of questions that the seller might have is going to open up the flood gates of dual agency. In order to have some type of protection here for the consumer and for the buyer's broker, we are looking to have the buyer's broker give a disclosure to the seller saying that they are not in an exclusive relationship with them, not providing any services to them, and they represent the buyer and the buyer only. The document will make it clear to everyone that a relationship does or does not exist between the buyer's agent and the seller who has contracted for flat fee services. The other thing that will be provided for the buyer's agent is that the Division would basically have a safe harbor if the seller's agent had a disclosure, then the Division would not be going after them for some kind of implied dual agency relationship between the buyer's agent and the seller.

There was quite a bit of discussion on this issue. Director Sabey said that this is about giving the consumer options, and the Commission and members of the real estate industry felt consumers have a choice with a full-service broker. The consumer can negotiate with the broker about what type of services they want and the fees for that service. Director Sabey left at the end of her report to go up to the Legislative session.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said for the past several months the Commission has seen before them stipulations on the subject of blind ads. There are four such stipulations being presented here today. Many complaints the Division has received regarding blind ads have been because the person has used an on-line service. The Division has contacted this on-line service and had discussion with them.

Stipulations for review:

Adam M. Speth

Corey Hadley

Wanda K. Kubat

Melanie K. Andersen

R. Monte King

Randi Lynn Hadley

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

Mr. Johnson reported in December the Division received 38 complaints; screened 14 complaints; opened 3 cases; closed 18 cases; leaving the total number of real estate cases at 157. There are ten cases that exceed over twelve months.

Mr. Johnson will be sitting in as Acting Director in Director Sabey's absence today.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics show over the past eleven months the industry has lost approximately 1,000 agents.

There are new examinations for sales agents and brokers that went into effect this week. Agents and brokers will be handed REPCs and settlement statements and be asked to respond to specific questions based on the sample contracts they have. The past exam pass rate has been high for first-time takers. In the month of December, 80% passed for first-time takers; however, repeat test-takers dropped to 36% pass rate.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said last month we worked on some changes to language on R162-2f, and she handed out a clean copy of the changes made for the Commission to review. The sections that were addressed in this revised draft were R162-2f-205,

R162-2f-403, R162-2f-201(a), and R162-2f-401(f).

A change was suggested to R162-2f-401(a)(ii). County records and appraisals can't be changed or corrected, so it was suggested that the "correct such error" should be changed to read "correct or disclose."

A motion was made to approve the rule with the above correction. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Houston, yes. The motion carries.

OPEN TO PUBLIC

LICENSE HEARINGS

10:45 Rebecca Poppe

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 11:24 a.m. until 11:43 a.m.

CLOSED TO PUBLIC

Discussion of Hearing
Review of Stipulations

OPEN TO PUBLIC

Results of Stipulations:

Adam M. Speth - Approved
Corey Hadley - Approved
Wanda K. Kubat - Approved
Melanie K. Andersen - Approved
R. Monte King - Approved
Randi Lynn Hadley - Approved

Commissioner Tugaw-Madsen requested to have a discussion on the findings of the Forms Committee added to the agenda for next month. She gave a quick update as to their findings today. The findings are as follows:

REPC – keep this form, no changes

REPC for Residential Construction – keep this form, update

Uniform Real Estate Contract - eliminate

All Inclusive Trust Deed - eliminate

All Inclusive Promissory Note Secured by All Inclusive Trust Deed - eliminate

Addendum to Real Estate Purchase Contract – keep this form

Seller Financing Addendum to REPC – eliminate, make it a standard supplementary clause

Buyer Financial Information Sheet - eliminate
FHA/VA Loan Addendum to REPC – keep this form
Assumption Addendum to REPC – eliminate, make this a standard supplementary clause
Lead-based Paint Addendum to REPC – eliminate, make this a standard supplementary clause
Disclosure and Acknowledgement Regarding Lead-based Paint or Lead-based Paint Hazards – keep this form, update

The Committee suggested asking the UAR for permission to get the REPC for Land as a state-approved form, and keep it standardized with the other two REPCs, as well as a REPC for Commercial real estate and ask that be a state-approved form. The Committee would like to standardize all four forms. Commissioner Walker mentioned not having a specific form for the Commercial REPC, and Ms. Jonsson said the Attorney General's office was doing some research on this form, and they will give us a memorandum or letter giving their opinion on their recommendations.

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 11:54 a.m.