

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

June 15, 2011

MINUTES

DIVISION STAFF PRESENT:

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Licensing/Education Director
Xanna Hardman, Assistant Attorney General
Judith Jensen, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Dave Mecham, Chief Investigator
Kurtis Hughes, Investigator
Van Kagie, Investigator
Craig Livingston, Investigator
Travis Cardwell, 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:

Linda Leavitt	Tammy Lund
Kevin Swenson	Paul Naylor
Michael Welker	Chad Ahearn
Rob Ponte	Ronald Crittenden
Brent Simpson	

The June 15, 2011 meeting of the Utah Real Estate Commission began at 9:05 a.m. with Chair Ashton conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Elections were held for the 2011-2012 year. The results of the elections are Commissioner Tugaw-Madsen is the new Chair, and the new Vice Chair is Commissioner Houston.

Approval of Minutes

A motion was made to approve the meeting minutes for May 18, 2011 and May 23, 2011. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Hancock, yes; Commissioner Walker, yes; Commissioner Houston, yes. Motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said there is an article in the Salt Lake Tribune reporting that Ronald Haycock has been sentenced to 5 ½ years in federal prison for mortgage fraud scams. This was a referral a few years ago that the Division made to the Utah Mortgage Task Force. It is nice to see that the case has gone through the system and justice has prevailed. Mr. Haycock will also have to pay \$2.38 million in restitution. There were two other individuals who took part in the mortgage fraud scam. Lyle Smith has reached a plea agreement and now is serving 56 months in federal prison, and James Johnson was convicted in jury trial of 27 federal fraud counts. Mr. Johnson will be sentenced later in July.

To give an idea of what the scam entailed, Mr. Haycock had a company called Paramount Strategies that recruited straw buyers to act like they were purchasing homes. The participants also obtained inflated appraisals for houses that were being sold by their owners, and then they created false documents to obtain loans. They then skimmed off the difference between the actual sales and the loans.

This shows that it may take a few years to get prosecutions in the criminal system, but the Division does get convictions of those individuals and they are no longer able to harm the public. Mr. Haycock and Mr. Smith were licensees with the Division and both of their licenses expired in 2005. The Division regularly refers many people to the Mortgage Fraud Task Force, Attorney General's office, or sometimes county prosecutors in addition to taking licensing actions. The Division can only take so much action, and these bad actors need criminal prosecution. The Division will report to the Commission on all of the cases we have referred out for prosecution.

Director Sabey said that the Division needs to start preparing for the next legislative session so we can compile a draft to submit to the Office of Legislative Council by September. We are looking at concepts and ideas for things that might need attention in the statutes. One thing that could reduce regulation rather than adding more regulations might be removing the 10-day reporting requirement as to bankruptcies. There was a lengthy discussion as to what these changes would be.

A second suggestion in reducing regulation would be to reduce or eliminate the

requirement for continuing education of formally inactive licensees. Inactive licensees require 18 hours of CE to activate within the prior year. In our statute, we also propose continuing education requirements for licensees who are in reinstatement. An inactive licensee who wants to activate and is in the reinstatement period has to take the 18 hours of CE, plus the penalty CE which can be up to a total of 42 hours. The 24 additional CE hours would be if the person waited over 31 days to six months (18 + 6), and from six months to one year is 42 hours (18 + 24). Director Sabey's proposal would be to reduce out the penalty CE for inactive licensees who are activating. Discussion covered the penalty CE being a "gentler and kindler" rule, because previously if a licensee was expired over six months, he had to re-license as a new person and take 120 hours of education. A possible alternative would be to have the inactive person take 18 hours of continuing education over the past two years instead of one year. The issue of reinstatement continuing education is a complex idea and requires further discussion and consideration.

A suggestion was made that instead of additional CE, there could be greater fees. Also, the Division's statutes currently state that a person who is caught working without a license can be fined the amount of the commission the person received. This would be the recommended action to enforce. If the individual didn't receive a commission, then the Division can fine up to \$5,000 per listing. It was suggested to have an article in the next Division newsletter regarding this issue.

The Division currently has a requirement in rule that states "no real estate activity may be conducted by a property management company." The licensing and education for working in property management are the same as in selling real estate. The question would then be why is there a prohibition against engaging in any real sales activity? Director Sabey said that there is a dual license category where a broker can have a real estate company and a property management company and not have to hire a separate broker. But if the real estate business that is being conducted by a property management company is not the bulk of their business, why should this be prohibited? Director Sabey's suggestion would be to change the rule so that a property management company may engage in real estate activity if that company is primarily engaged in the business of property management. Property management is already a term defined by statute. Discussion covered issues of separate trust accounts, unlicensed employees versus licensed employees, and keeping the statute the way it is currently written.

The Commission would like Ms. Jonsson to prepare draft rules covering the changes suggested to continuing education and bankruptcies to be reviewed at next month's meeting.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in May the Division received 36 complaints; screened 33 complaints; opened 12 cases; closed 14 cases; leaving the total number of real estate cases at 155. These numbers will increase next month based on what is

currently in the system.

Stipulations for review:

Bruce R. Tucker

Tara L. Jones

Babette De Lay

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

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said June was the first month in the past nine months with no drop in licensees. Numbers have been consistently dropping since 2007.

Mr. Fagergren said in a previous meeting Vice Chair Tugaw-Madsen asked if the Division's Caravan presentations could be on the Division's website. He said that they have now been added in each individual industry.

Idaho seems to be more discriminating in continuing education that they allow licensees that are dual licensed. If you are licensed in Utah and want to get credit for CE taken in Utah, Idaho seems to be particularly stringent in not wanting to accept those hours. In this month's ARELLO Boundaries newsletter, there is an article titled "Idaho addresses out of state brokerage practice." Mr. Fagergren read some of the changes Idaho has taken with regard to this issue and how it differs from Utah's position, which allows a broker in Utah to have a co-brokering relationship with someone out of state rather than becoming licensed through reciprocity. The out-of-state broker can affiliate with one of our Utah brokers who is responsible to make sure the correct forms are used, and they can split fees.

The article states:

"... that over the year the Commission has received a multitude of complaints regarding unlicensed brokerage activity in Idaho by brokers and sales persons from other states who are not licensed in Idaho. According to the bulletin investigations received only from the complaints reveal that there is quite a bit of misunderstanding and confusion about the activities that an out-of-state licensee can and can't perform without an Idaho real estate license."

Consequently, they have reissued their Guideline #2:

"The Idaho code flatly prohibits any person from engaging in any act as a defined real estate brokerage who is acting in this state without an active Idaho real estate license."

Idaho specifically states that no co-brokering is allowed.

"There is no statutory mechanism that allows a person who does not hold an Idaho license to co-broker Idaho property with an Idaho licensed broker. Similarly, an Idaho-designated broker violates the law in several particulars if they co-broker Idaho property with a person who does not hold an active Idaho license."

Mr. Fagergren said that not only does Idaho aggressively look at the out-of-state person, but also disciplines the Idaho licensee for doing that. They state what an out-of-state broker can do, which is essentially to observe. The out-of-state broker can't do anything that requires a license in any respect. However, Idaho's statutory prohibition against fee-splitting does not apply to arrangements between Idaho licensed brokers and brokerages licensed in other states.

The article continues on about Idaho's penalties:

"A misdemeanor crime in Idaho punishable by imprisonment and a fine of \$1,000 for individuals, and \$10,000 for business entities;

The Idaho Commission is authorized to take administrative action against anyone engaged in unlicensed brokerage activity and to assess a civil penalty of up to \$5,000 plus costs and attorney's fees."

Mr. Fagergren said we have a close border with Idaho, and Idaho's laws might affect our licensees. Commissioner Walker said he has had a discussion with Idaho's Director, and they are going against a lot of the trends and the recommendations of ARELLO. The Idaho Director is very adamant that the National Association of Realtors will be involved in this, and suggests that the various states take it back to their states. Commissioner Walker said the issue is you can either allow the federal government to come in, as it has done in the mortgage and appraiser industries, or you can cooperate voluntarily on a national level. Federal oversight has already been pushed by one of the large national companies, which supports national licensing with real estate.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said she has submitted four rule amendments to the Division of Administrative Rules, and they will be published for comment on July 1, 2011. These are specifically amendments to R162-2f-102, R162-2f-205, R162-2f-401(a), and R162-2f-403. The comment period will run through August 1, 2011 with a first possible effective date of August 8, 2011.

The Division has become aware of an inconsistency in their Administrative Rules governing administrative procedures. The rule (R162-2f-407(e)) requires that the Division provide an applicant or a respondent with at least ten days' notice before a hearing. However, that same person has 30 days to file an answer if he or she

chooses to do so. The way this is written, it could happen that we would hold a hearing within ten days, and the person would have an additional 20 days after the hearing to file an answer. The Division would propose to make the notice requirement match the time frame that is allowed for the answer. Ms. Jonsson asked the Commission for any comments, and if they had none, a motion to make this change. A motion was made to approve the amendment. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Hancock, yes; Commissioner Walker, yes; Commissioner Houston, yes. Motion carries.

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 10:09 a.m. to 10:37 a.m.

OPEN TO PUBLIC

INFORMAL HEARING:

The Acting Director for this hearing will be Thad Levar, Deputy Director of the Department of Commerce. Director Sabey has recused herself.

10:42 Jordan Maddocks – Disciplinary Hearing
 Justin Elswick, Attorney

Division Witnesses:

Gary Wavra

Brent Simpson

Dave Mecham

Respondent Witnesses:

Gil Miller

A lunch break was taken from 12:06 p.m. to 1:04 p.m.

A brief recess was taken from 3:30 p.m. to 3:40 p.m.

CLOSED TO PUBLIC

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 5:35 p.m. to 6:15 p.m.

OPEN TO PUBLIC

The Commission with concurrence from the Director have approved the following Stipulations:

Bruce R. Tucker

Tara L. Jones
Babette De Lay

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 6:15 p.m.