

UTAH REAL ESTATE COMMISSION

Heber M. Wells Building

Room 210

9:00 a.m.

Telephonic Meeting

June 18, 2014

MINUTES

DIVISION STAFF PRESENT

Jonathan Stewart, Division Director
Mark Fagergren, Education/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
Van Kagie, Investigator
John Bickmore, Investigator
Kadee Wright, Investigator
Mark Schaerrer, Investigator
Jill Kelsch, Division Staff

COMMISSION MEMBERS PRESENT

Kay R. Ashton, Chair
Russell K. Booth, Vice Chair
Gary R. Hancock, Commissioner
Lerron E. Little, Commissioner
Lori Chapman, Commissioner

GUESTS

Shane Norris	Susan Aguilar
Peter Christensen	Amber Ciet
Kevin Swenson	Dan Naylor
Cressie Larson	Marie Morgan

The meeting on June 18, 2014 of the Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – A motion to approve the minutes from the May 21, 2014 meeting was made, seconded, and voted on. Vote: Chair Ashton, yes; Vice Chair Booth, yes; Commissioner Hancock, yes; Commissioner Little, yes; Commissioner Chapman, yes. The motion passed and the minutes were approved.

DIVISION REPORTS

Director's Report – Jonathan Stewart

Director Stewart reported on the two bills that were brought up in the last legislative session regarding expungements. There is a judiciary interim committee meeting this morning to discuss the expungements of administrative actions. These two bills previously had been tabled for interim discussion. Members of the Department of Commerce are attending to testify. Director Stewart will keep the Commission updated when he hears how the meeting went today.

Currently, there is no expungement for administrative actions. In the research the Department has done there is only one state, Kentucky, that has an administrative action expungement process. The two bills that were up in the legislative session were very different. One said if there are parallel proceedings (criminal action and administrative action on the same conduct) and the criminal action is expunged, this would automatically expunge any administrative action that was based on the same conduct. The second bill said if a licensee had an administrative action and it was over three years old; in good standing with the Division; met all of the requirements of the action taken against them; the licensee could apply for an expungement with the Division.

Last month Director Stewart brought up the review of state approved forms to see if they needed to be updated. Director Stewart said the Division would like to try and review one form per year, and asked the Commission for their input on which form should be the first.

The process to update a state approved form is to have the Division revise the form, take it to the Commission for their input, as well as the UAR and other industry members. It might be best to form a committee to review the final recommendations. The public would be involved in reviewing these forms by holding a public comment session to get their input. The final approval is with the Attorney General.

After discussion, it was decided to start the revisions/updates with the Uniform Real Estate Contract form. The form has not been updated since 1987. Director Stewart will meet with the Division to set up a forms committee.

Chair Ashton brought up the topic of new commissioners being approved, and asked Director Stewart if he had heard anything on when this might happen. Director Stewart said the Division has submitted names to the Governor's Office, and he has not heard anything back as of today.

Enforcement Report – Jeffery Nielsen

Mr. Nielsen reported in the month of May the Division received 39 complaints; opened 5 cases; closed 3 cases on the Attorney General's list; closed 7 cases; leaving the total of 265 real estate cases.

Stipulations for Review:

Adam Weston
Robert Cusick

Both of these individuals were given the opportunity to address the Commission but have chosen not to appear.

Licensing and Education Report – Mark Fagergren

Mr. Fagergren said the Division met with our testing provider, Pearson Vue, to review and update the exam. One of the educators on the committee, Ryan Kirkham, could not attend but sent Mr. Fagergren a letter with his concerns. Mr. Kirkham teaches many new agents after they have joined a Board of Realtors. Mr. Kirkham expressed concerns about new agents not being prepared for many of the basics of real estate. The biggest concern he would like addressed is that schools provide classes to students primarily to help them pass the test. In the 120 hours required to complete the course, schools should be teaching how to understand fundamentals when new agents enter the industry.

Mr. Fagergren said that Peter Christensen wrote some legal questions that deal with the interplay between offers and counteroffers, and the status of transactions in that process. There are questions on the REPC and settlement statements, which set Utah apart from many of the states Pearson Vue deals with. We are actually testing the materials that people will be using. A few questions were pulled because of statutory or rule changes that have made them obsolete, but 40+ questions were added to the bank. These changes will be coming out at the end of August or in early September. Additional topics were added to the outline.

Mr. Fagergren and Ms. Travis will be attending the Real Estate Educators Association (“REEA”) conference this weekend in Arizona. Their main objective is to listen to some of the best presenters and to come back with potential new presenters for the Instructor Development Workshop scheduled for October.

Mr. Fagergren made a final comment on administrative action expungements that Director Stewart reported earlier in the meeting. He mentioned the Division still has some records for blind ad fines of \$50.00 for violations that may have happened 20 years ago. There may be fair reason to question if it is appropriate for the public see that a licensee was sanctioned for a blind ad 20 years ago. Mr. Fagergren said he can also see that for other disciplinary actions taken by the Division, perhaps one-half of one percent of all licensees fall into this category, expungement is not appropriate. These individuals have done something significant and serious to violate the statute or rules. In these cases, the public deserves the right to know what happened.

Discussion: National Association of Exclusive Buyer Agents (“NAEBA”) – Kay Ashton
Chair Ashton, and several of the other Commissioners, received a letter from NAEBA, and the Division has reviewed it for discussion. Mr. Fagergren said the Division authorizes buyer agency, and we do not distinguish between those who exclusively restrict their work to only doing buyer agency. Our rules allow a person today to work

with buyers, and tomorrow to work with sellers. This letter seems to say that unless you are exclusively a buyer agency you shouldn't go by that term. The group would like to have industry training to help clarify this issue. Chair Ashton said in reviewing this letter it seems that the NAEBA would like the state to enforce one of the rules of this group. After discussion from other Commissioners, it was decided that this is not something the Division or Commission needs to be part of; it is a trade association issue not a regulatory issue. The decision is there is no need to respond.

COMMISSION AND INDUSTRY ISSUES

Updates on Rules – Justin Barney

Mr. Barney said there are no rule updates to review this month.

Stipulations for Review:

Amber K. Ciet

Ralph Bradley Lewis

Ms. Ciet appeared today to answer any questions the Commission might have, and Mr. Lewis was given the opportunity to address the Commission but chose not to appear.

Mr. Fagergren made a comment about the exam. The schools are not taking the initiative to review the material on the Division's new rules. This should be included in the new agent pre-license instruction, specifically the Utah Law component. He emphasized the Division's newsletter articles showing what new rules have happened in the last year.

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; Vice Chair Booth, yes; Commissioner Hancock, yes; Commissioner Chapman, yes; Commissioner Little, yes. The motion carries. An Executive Session was held from 9:55 a.m. to 10:08 a.m.

CLOSED TO PUBLIC

Results of Stipulations

Adam Weston – Approved with concurrence of the Director

Robert J. Cusick – Approved with concurrence of the Director

Amber K. Ciet – Approved with concurrence of the Director

Ralph Bradley Lewis – Approved with concurrence of the Director

Commissioner Booth has asked to be excused from the July meeting.

A made a motion to adjourn the meeting. The motion was seconded. The meeting adjourned at 10:10 a.m.