

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

May 18, 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
Dave Mecham, Chief Investigator
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Van Kagie, Investigator
Travis Campbell, Investigator
Kathy Archuleta, Division Staff
Jill Childs, 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:

Tammy Lund	Curtis Bullock	Sonia Zisumbo
Fred Jacobson	Irene Kennedy	Linda Vaughn
Kevin Swenson	Ron Duyker	Lurae Stanger
Steven Bogden	Mike Balliff	Melinda West
Mark Bouchard	Todd Jensen	Carter Crithelow

The May 18, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Ashton conducting.

Representative Gage Froerer had other obligations and could not attend today.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes from April 20, 2011 were found to have one spelling error on page 7. A motion was made to approve the minutes with this correction. Vote: Chair Ashton, yes; Commissioner Walker, yes; Commissioner Hancock, yes;

Commissioner Houston, yes. Motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey wanted to call the Commission's attention to an article she read recently called "Housing Wire", dated yesterday, May 17th. It gave interesting statistics produced by the National Association of Realtors and reported that the median income of realtors has dropped almost 35% over the last eight years. Since 2009, realtor income has declined 4.5% and this echoes what we saw while on Caravan. People said they were taking on two and three jobs in addition to being a real estate agent to try and make ends meet for their families. The article also stated a number of real estate agents complained that at least one of their customers in the last six months had experienced some level of difficulty in qualifying for a mortgage loan.

The Dodd-Frank Act contains a provision that applies to mortgage loan originators requiring them to show that the borrower has the ability to repay that loan. The "ability to pay standard" can be achieved by the loan originator's keeping the supporting documents together in the loan file. There is also a safe harbor that the loan originator can take advantage of to show that the ability to repay requirement has been satisfied.

On April 19, 2011, the Federal Reserve proposed a rule for defining what "mortgage" means. It is more restrictive than most people like, and the NAR and other trade organizations have commented about the problems this rule would create in the real estate industry. The proposed rule narrowly defines residential mortgages and it requires an 80% loan-to-value, which necessitates a 20% down payment. The rule also limits mortgage payments to 28% of gross income. The comment period on this proposed rule is in effect right now and will run until July 22, 2011.

On a positive note, the University of Utah has a Master of Real Estate Development program. This is a great program for students to receive a master's degree in real estate development. This program has just recently been accredited by the CCIM Institute, which is a huge benefit for the masters program. What this means is that when a student goes through the masters program they would receive 75% of the credit needed for qualifying for CCIM status.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in April the Division received 68 complaints; screened 23 complaints; opened 9 cases; closed 9 cases; leaving the total number of real estate cases at 157. All of the investigators in every profession have been working hard to try and stay on top of the load.

Stipulations for review:

John A. Salazar

Eric R. Rieper
Jason G. Dalton
Jared Zimmer

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

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said we have recently learned through the Appraisal Subcommittee that university programs can have their curriculum evaluated at no cost to the university. They will also do a similar evaluation to determine what portion an appraiser's pre-license education can be waived. An example would be a certified general appraiser, who instead of starting over with zero and having to take all of their education, if they have a master's in real estate development, they might have a certain percentage of the 300 hours waived. Not only could the person become a CCIM but could be a certified general appraiser and have 75% of the hours waived. Mr. Fagergren will be speaking to the University of Utah to see if they have an interest in that.

Director Sabey had asked Mr. Fagergren to fill out a survey from another state regarding pre-license on-line education. Another state is considering doing this. Some years ago, the Commission discussed ARELLO certification for CE and pre-license courses. The Division looked at that, and decided to divert from it. Initially, the Division had an ARELLO certification requirement for on-line education. We looked at it and felt like it was just too expensive and thought that we could do it ourselves. Mr. Fagergren now wonders how the makeup of the on-line pre-license education has changed. When we looked at it before, there were many educators who were not very thrilled about on-line pre-license education. It has clearly changed our market. Mr. Fagergren commented in the survey that he believes that if it were not for on-line pre-license education, some providers might not be in existence right now. The market is so poor that you can't afford to pay a teacher to stand there and teach three students in a classroom. He said that approximately 85% of the pre-license education is now on-line.

The statistical report shows there is more decline in numbers. 67 active agents are gone, and 130 inactive agents failed to renew and are now expired. Mr. Fagergren complimented and appreciates Ms. Christensen's efforts to reconfigure the statistical chart so you can tell at a glance there are 19,668 agents, of which 14,234 are active.

The Division just finished their annual Caravan. Some interesting feedback is that we had within two people of the same number that attended the various Caravans last year. There is a dramatic shift in profession attendance, because last year there were changes going on in the mortgage industry, and they could receive CE last year. This year mortgage licensees could not get the CE, so we saw a lot more real estate and appraiser licensees, while seeing fewer mortgage licensees. With

the new Caravan reservation system that is in place we found that the no-shows were reduced by two-thirds. There were 49 people who walked in who didn't have a reservation that were still able to attend.

In the Caravan presentations, Mr. Fagergren reported that the Commission approved a rule nearly two years ago that people complete their CE by the 15th of the month in which they renew their license. He explained in some detail to our licensees why we had to build in for the lag in CE banking, and said there are systems that will allow for instantaneous banking from the moment the educator puts CE credits into the system, but there is a cost to it. He asked for a raise of hands, and out of the 1,005 that attended, three people wanted to change our system and go to a system that would charge CE banking fees and live or "instantaneous" banking.

Chair Ashton said he had the opportunity to attend one of the Caravan meetings, and thought the information was very timely and there was good audience participation. He appreciated the Division was passing out Mars candy bars when they were talking about the MARS rule. He also appreciated the information given on the mortgage licensees even though their numbers were few.

Vice Chair Tugaw-Madsen had some feedback from other attendees that it would be nice to have part of the presentation available on-line, because they felt they couldn't write and listen. Mr. Fagergren said that, hopefully by tomorrow, the presentation information will be made available on our website. Another comment was to have a handout. Mr. Fagergren said that if we were to print out every one of those slides, our trunk in the Suburban wouldn't hold all necessary handouts. We also find that most of the time handouts will not leave the room and end up on the desk or floor.

Commissioner Hancock asked how the recent change in the five-day work week was going to affect the Division. Director Sabey said it will affect the Division and that it will take place in September. We will be open five days a week, from 8:00 a.m. until 5:00 p.m. There will not be any more four tens for any employees.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said last month the Division did some work on the rule draft that we had out for public comment, and some responses did come in. The first thing she was asked to do was to separate the rules into separate filings. There are four different sections of the rule that we would propose to amend.

R162-2f-102 in the Definitions section would add a definition for the term "residential property." The proposed definition is "Residential property means real property consisting of, or improved by, a one- to four-unit dwelling." After some discussion, it was decided to use the same language that HUD uses, "single-family one- to four-unit dwelling."

R162-2f-205 deals with company and brokerage names approved by the Division. There was no change to this section, other than to make it separate from the others in filing.

R162-2f-401a, Affirmative duties required of all licensed individuals, includes the square footage rule. The primary change asked for was to clarify that the duty to disclose the source on which the licensee relies for any square foot data that would be used in the marketing of a property applies only in offering a residential property for sale.

R162-2f-403, Trust accounts, added reference to the rule in section (6) that says the parties who have an interest in trust funds may agree to their disposition other than what this rule specifies.

A motion was made to approve the changes made with the amended language on R162-2f-102 to use the definition used by HUD, and send the rules out for public comment. Vote: Chair Ashton, yes; Vice Chair Tugaw-Madsen, yes; Commissioner Hancock, yes; Commissioner Walker, yes; Commissioner Houston, yes. The motion was concurred by Director Sabey. 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 9:44 a.m. to 10:00 a.m.

OPEN TO PUBLIC

INFORMAL HEARING:

10:37 Sonia Zisumbo – Disciplinary Hearing
 R. Todd Jensen, Attorney for Respondent

Chair Ashton said that he knows Mr. Jensen; there were no objections to him participating in the hearing. Commissioner Hancock knows Ms. Zisumbo; there were no objections to him participating.

Division Witnesses:

Kurtis Hughes
Marino Toulatos
Thomas E. West
Fred Jacobson
Melissa Jean Thurgood
Robin Moran

Respondent Witnesses:

Lurae Stanger, Principal Broker
Linda Bond
Robin Moran
Marino Toulatos

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 12:30 p.m. to 12:45 p.m.

The Commission took a lunch break from 12:45 p.m. to 1:30 p.m.

The hearing continued at 1:30 p.m.

A brief recess was taken from 2:40 p.m. to 2:54 p.m.

A brief recess was taken from 4:39 p.m. to 4:45 p.m.

OPEN TO PUBLIC

The Commission and the Director have approved the following Stipulations:

John A. Salazar - Approved
Eric R. Rieper - Approved
Jason G. Dalton - Approved
Jared Zimmer - Approved

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 6:23 p.m.