

**REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

February 18, 2015

**MINUTES**

**DIVISION STAFF PRESENT:**

Jonathan Stewart, Division Director  
Mark Fagergren, Education and Licensing Director  
Jeffery Nielsen, Chief Investigator  
Justin Barney, Hearing Officer  
Che Arguello, Assistant Attorney General  
Elizabeth Harris, Assistant Attorney General  
Judith Jensen, Assistant Attorney General  
Jennie Jonsson, Administrative Law Judge  
Renda Christensen, Board Secretary  
Van Kagie, Investigator  
Mark Schaerrer, Investigator  
Kadee Wright, Investigator  
John Bickmore, Investigator

**COMMISSION MEMBERS PRESENT:**

Russell K. Booth, Chair  
Lerron Little, Vice Chair  
Lori Chapman, Commissioner  
Calvin Musselman, Commissioner

**GUESTS:**

|                   |                   |
|-------------------|-------------------|
| Kristopher Farrow | Peter Christensen |
| Shane Norris      | Paxton Guyman     |
| Kevin Swenson     | Rebecca Jensen    |
| Susan Aguilar     | Dan Naylor        |
| Stephen Roney     | Adam Martin       |
| Tammy Greening    | Cressie Larson    |
| Seaton Prince     | Dave Johnson      |
| Mike Herbert      | Joseph Szurgyi    |
| Jay Deher         |                   |

Commissioner Perry has been excused from the meeting this month.

The January 21, 2015 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Booth conducting.

## **PLANNING AND ADMINISTRATIVE MATTERS**

### Approval of Minutes

There were two meetings conducted in January. A motion was made and seconded to approve the minutes from the January 21, 2015 and January 29, 2015 meetings as written. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Musselman, yes. The motion was approved.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Jonathan Stewart**

Director Stewart said the Division's bill, HB227, passed the House on Friday and will go on to the Senate. There were a few changes to language being rearranged in the Mortgage section of the bill, but nothing in the Real Estate section. The Division's sponsor in the Senate is Senator Weiler.

### **ENFORCEMENT REPORT - Jeffery Nielsen**

There are no enforcement statistics this month. The enforcement secretary, Allyn Stutsman, had an accident and is recovering. Hopefully, next month she will be back and have the numbers for both January and February for your review.

### Stipulation for Review

Trent W. Leavitt

Mr. Leavitt was given the opportunity to appear before the Commission today and has chosen not to.

### **EDUCATION AND LICENSING REPORT - Mark Fagergren**

Mr. Fagergren reported the schedule for the Division's Caravan is being finalized. The next Division newsletter out in March will have a registration form and the schedule of all event locations.

Mr. Fagergren said the Division is seeing more complicated and challenging broker applications for experience involving property management. Historically, this has not been an issue. In R162-2f-501, Appendices, Table 2 Appendix 2, it lists Property Management Experience Table for both Residential and Commercial. A person may choose from either table or a combination of both for points. An applicant must have 60 experience points to apply.

The Division reviews and requests copies of an applicant's Agency Agreements and Purchase Contracts to see if they are the individual who should be awarded the experience points. The greater challenge the Division is seeing within the last six months are individuals who are applying under the Property Management component. The Division will ask for the Master Agreement between the property owner and the real estate agent or company to see if they have authority to manage the property. We also look at individual leases with tenants to see if they have negotiated and secured these leases, and they have appropriate disclosures in

them.

Mr. Fagergren said lately the Division has been seeing individuals who have years of experience but there is nothing they can document. Personally owned properties are exempt under the statute, and we have seen those applications coming through requesting experience points be issued in these cases.

It appears there is an avenue for people who want to be a broker by using the property management points because they believe the points are easier to get. Mr. Fagergren is asking the Commission for their opinions on this issue, and if they feel a need to modify or change the existing table for points so there are measured events that can be tracked.

After some discussion, it was agreed to place this topic on the Agenda for the April meeting so it can have more time for discussion.

The Division received an application for a sales person who does not have either a high school diploma or GED. Mr. Fagergren briefly went over the letter of explanation in the application, and the Commission will review the specifics in their Executive Session.

## **COMMISSION AND INDUSTRY ISSUES**

### **Discussion of Proposed Rules – Justin Barney**

Mr. Barney presented a Stipulation to the Commission for review.

#### **Stipulation for Review**

Steven Salazar

Mr. Salazar was given the opportunity to appear before the Commission today and has chosen not to.

### **Discussion: R162-2f -401- Paxton Guyman**

Mr. Guyman said after the meeting last month he had received some immediate feedback showing concern that the way the proposed rule was written could prohibit brokers and agents from preparing BPOs and CMAs. Mr. Guyman met with the Division to work on the suggested changes in the language to R162-2f-401. The wording as it exists under the confidentiality section of the rule states, "licensees are prohibited from selling without permission of both parties of the transaction, the final sale price or derivative works unless included as part of a licensed activity; or from otherwise releasing the final sale price or derivative works unless allowed for by contract."

This is really a privacy rule, where we are trying to protect the privacy of sold data. There has been a lot of time and effort to any improvements that can be made, and Mr. Guyman and his clients believe that this is the best language for the rule. He

suggests the Division go forward with filing the rule and going through the process of receiving public comments. After the comments have been received, then the Division can decide what, if anything, they want to do.

A motion was made and seconded to accept the draft language as proposed. The motion is now open for discussion.

Mr. Dave Johnson commented that his brokerage has not vetted this wording, and they were not aware of the proposed change. They don't want a rule change that would end up with unintended consequences that haven't been thought through. He is requesting more time for discussion.

Other comments: The proposed rule may restrict data from usage at a consumer level. Consumers are increasingly relying on data when making decisions in either buying or selling their homes. Potentially restricting the use of that data is not consumer friendly.

Utah is one of nine states that are not non-disclosure states. There has been no movement in changing that status. This language further clarifies what it means to be a non-disclosure state, particularly when not disclosing sales information where people (buyers and sellers) have not given their permission.

A motion was made and seconded to begin the rule making process on the changes to R152-2f-401. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Musselman, yes. The motion carries. The Division will notify those interested when the public comment period begins.

**Discussion: Disclosure Required for a TIC Offering - H. Blaine Walker**

Mr. Walker was not available to attend the meeting today for this discussion. Director Stewart discussed the topic of R162-2f-307, Undivided Fractionalized Long-Term Estate. Director Stewart met with Representative Greene on his HB96, Real Estate Transaction Amendments. Representative Greene has given back to the Commission its rule making authority, and Director Stewart told him that he would work with Commission and industry members to go over the current disclosures and try to come up with adequate disclosures that are not unreasonable.

Representative Greene said he would invite two people from the industry to come to the Commission meeting to discuss this bill. No one has shown up. The only item that we will be discussing is what will be required to be disclosed by a sponsor or seller. Director Stewart handed out a copy of the rule and what is currently required to be disclosed.

Just to clarify, the bill HB96, as it's written now would move out of Title 61 into Title 57 which would now be a requirement of any offering or selling a TIC, not just a licensee. These disclosures will now apply to anybody, whether they are licensed or unlicensed. If they are a sponsor or seller of a TIC, we need to decide what is to be

disclosed by those people. The Division of Real Estate will still regulate it.

Director Stewart asked the Commission to review the rule as it currently is written, and we can start to have a discussion as to what should or should not be included. This issue will be on the agenda for next month for discussion.

10:30 Training by Assistant Attorney General Che Arguello and Administrative Law Judge Jennie Jonsson on Administrative and Hearing Procedures

**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 Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Musselman, yes. The motion carries. An Executive Session was held from 11:55 a.m. to 12:25 p.m.

**Results of Executive Session**

**Results of Stipulations:**

Trent W. Leavitt – Approved with concurrence from the Director

Steven Salazar – Approved with concurrence from the Director

Application without high school diploma/GED: Will be notified by mail as to the outcome of the decision.

A motion was made and seconded to adjourn the meeting. Vote: Chair Booth, yes; Vice Chair Little, yes; Commissioner Chapman, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion passes. The meeting adjourned at 12:35 p.m.