

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Room 250
9:00 a.m.
May 20, 2020
ZOOM

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Kadee Wright, Chief Investigator
Joy Natale, Analyst
Justin Barney, Hearing Officer
Mark Fagergren, Licensing Director
Stephen Gillies, Assistant Attorney General
Maelynn Valentine, Board Secretary
Sterling Corbett, Assistant Attorney General
Mary Martinez, Education Coordinator
Laurel North, Investigator
Karen Duncan, Investigator
Shane McFarland, Investigator
Jenni Myers, Investigator
Sarah Nicholson, Investigator
Chris Martindale, Investigator

COMMISSION MEMBERS PRESENT:

Lerron Little, Chair
Lori Chapman, Commissioner
Russ Booth, Commissioner
Marie McClelland, Commissioner
Richard Southwick, Vice Chair

PUBLIC MEMBERS PRESENT:

Kreg Wagner
Dan Naylor

The May 20, 2020 meeting of the Utah Real Estate Commission began at 9:02 a.m. with Chair Little conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – A motion was made and seconded to approve the minutes of the April 14, 2020, meeting of the Commission as written. Vote: Chair Little, yes; Commissioner Booth, yes; Commissioner McClelland, yes. The motion was approved.

PUBLIC COMMENT

Dan Naylor reported on the 20-webinar courses that have been temporarily approved. Hundreds of students have participated in the webinars and have been happy with the courses available. There are few disadvantages, compared to live courses, both students and instructors have appreciated many of the advantages. Mr. Naylor voices his gratitude to the Division for granting the opportunity, by approving the webinars during the Covid-19 pandemic. He also stated that he would be in support of a permanent rule to allow live webinar class courses in the future. Commissioners Southwick and Booth along with Kreg Wagner would also like the option for webinars to be explored for future use. Director Stewart informs the Commission that he and Mr. Fagergren have been in discussion regarding the issue of allowing the continuance of webinars and is exploring options for future use with a few additional measures.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported that the Legislature received interim study items last week. One of the items that they have chosen to study is on Unreinforced Masonry Disclosures "URM", a study to consider requiring disclosure of URM in conjunction with the sale of a home if the home is built with URM because of a possible earthquake hazard. Director Stewart wants to make sure that the Commission and industry members are aware that this is a topic of study by the Legislature as it could affect their industry.

Director Stewart reported on the current state of the Division. Many parts of the state have moved from orange to yellow status with regard to the Covid-19 pandemic. Salt Lake City is still orange, so nothing has changed as far as the Heber Wells building being open to the public or allowing fingerprinting. Once Salt Lake City moves to yellow, the building can reopen to the public, with some restrictions. As far as fingerprinting goes, that is still an ongoing discussion. It is a very complicated issue to tackle as far as when and how fingerprinting will take place.

Director Stewart and Mr. Fagergren have been in discussion with the Division of Occupational Professional Licensing "DOPL" as they also perform

fingerprinting for their applicants. This would normally be their peak season as nurses are graduating college and they all need to be fingerprinted to enter the industry. DOPL is dealing with the same fingerprinting issue as the Division. State law requires that nurses be fingerprinted prior to licensure. The Division of Real Estate and DOPL are currently working with the Health Department to come up with a plan to be able to resume fingerprinting in the future. There are, on average, approximately 1000 real estate license renewals per month. The Division is unable to perform all of the fingerprinting needs at one location. The majority of fingerprinting locations around the state would need to be open in order to meet the demand. The Bureau of Criminal Identification has resumed fingerprinting as of last week and is only allowing one person every 15 minutes with a maximum of 27 per day. In the past they have used five fingerprinting machines and were performing anywhere from 100 to 200 per day. That just gives an idea of how this has affected the fingerprinting need.

The Division has envisioned giving licensees at least 45 days' notice prior to fingerprinting resuming. June renewals will not need to be fingerprinted but do still have to complete their CE and renew on time. The Division will decide by mid-June if July renewals will need to be fingerprinted. Once the building and Division reopen, a majority of staff will remain working from home and will only come into the office when needed.

Chair Little asks Director Stewart how the licensees will be notified about fingerprinting. Director Stewart explains that licensees will get the information in the newsletter that is distributed by email. Up to date information is on the Division website and updated on a weekly basis. Renewal reminders are also sent out via email to licensees regarding fingerprinting information.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported that in the month of April the Division received 12 complaints; closed seven cases; leaving 470 open cases. There are 11 cases pending with the AG's office.

Stipulations for Review Presented by Joy Natale

Enid Brown
Gerald Crawford
Zarbod Zanganeh
Benjamin Hilton

Stipulation for Review Presented by Stephen Gillies

Jason Lewis

Bryan Martineau
Clayton Rockwood

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren gives an update on the temporary agreement for virtual courses. Instructors who have been teaching live courses have been allowed to temporarily instruct virtual classes. This agreement is only good through June 30th. The virtual courses have been very successful in terms of the current pandemic where individuals have been either self-isolating or quarantining. Convenience and safety has made the virtual courses very beneficial for instructors and students. Mr. Fagergren addresses the Commission stating that going forward we need to further define the requirements for teaching a virtual class. His suggestions are:

- Increase the amount of attendees from a maximum of 30 to 100
- Require attendees to have a camera to show they are present
- Instant chat option
- Attendance verification
- Class size over 50, attendees be required to have a moderator
- Student question management

These are a few suggestions Mr. Fagergren has if the virtual classes are to proceed after June. He does believe that the virtual classes need to evolve in the coming months before anything is written in rule. Chair Little explains that this will be further discussed in the next few meetings and that it will be considered by the Commission.

Mr. Fagergren discusses the topic of broker applications. The process has been performing well over the last few months considering the current pandemic. However, a few areas continue to see issues. One issue involves new homebuilders and the new homebuilder's brokerage. Similarly, with property management companies dealing with commercial property and general commercial transactions there are issues surrounding agency contracts with documenting an agent's participation in purchase agreements and letters of intent that are not signed by the representing agent.

Mr. Fagergren and the Division staff have been working with a broker applicant who has been selling new homes. He sent a draft proposal of a sub agency agreement. Mr. Fagergren expressed his reasons why the proposal would be beneficial. He explained that the listing agreements, buyer agency agreements and REPC are negotiated between clients and agents and differ from an internal agreement of a brokerage. A brokerage typically has an understanding in their office, as to who is going to represent the builder in

selling properties in a subdivision. The brokerage does not typically name the agents who will be selling the properties in a sub agency agreement. The applicant explained that often more than one agent is assigned to sell certain lots or a subdivision in the development.

In many broker applications, an agent will turn in an application for licensure that inadequately documents their experience. The agent then may be supply additional documentation. One individual suggested to Mr. Fagergren agreements could be e-signed, showing a time stamp and that should be sufficient to document their experience. Going forward, if the broker signs the listing agreement, but then delegates to other agents to sell properties in a subdivision for a builder and they enter into the agreement that has been e-signed by the broker and the agents, that would be sufficient documentation for the Division to give them experience points.

The current rule states "Experience points are limited to those transactions for which the individual is named in any written agency agreements and or purchase or sell contracts". That limits an agent's ability to get credit because their broker signed the agreement and the agent did not. Mr. Fagergren would like to consider an addition to that rule that would say, "A sub agency agreement between the broker and their agents (that was e-signed) would also be counted towards experience points".

Chair Little worries that agents change brokerages quite often and move around. He wonders that if we allow a subsequently e-signed sub agency agreement for experience points then perhaps a broker may go back and audit the transactions on a particular project and after the fact add the name of an agent that was involved on the project. Mr. Fagergren wants to avoid "after the fact" insertion into a file. He explains this alternative would not be mandatory. It is simply an option. The advantage of the e-signature shows the moment the document was signed.

Commissioner Booth believes there has been progress made in the area of commercial agents getting agency agreements signed in advance and has seen very few that were not. He would like to have further discussion on this topic in the coming months as he thinks it is a move in the right direction. Mr. Fagergren states that mandatory CE courses will really help. He will continue to monitor the mandatory CE course and see how it progresses. Commissioner Booth would like to see the Division send to all commercial agents at the end of the year an email outlining specifics about the mandatory course. Mr. Fagergren suggests a newsletter article about the mandatory course.

Mr. Fagergren updated the Commission regarding testing. As of last month, testing had been temporarily stopped due to the pandemic. Real Estate testing has since recommenced, with four Pearson Vue testing centers. Testing centers are now open with restrictions, such as facemasks are required, desks are spread six feet apart, and the testing centers are only allowed to be at 50% capacity. In addition, the Division has authorized Pearson Vue to allow 3rd party testing centers. There are currently 18 3rd party testing centers, besides the four centers that Pearson Vue operates. As these additional centers make testing available for their universities or their companies, testing will also take place at these locations.

In April, very few testing sites were open, but the numbers are currently increasing. The majority of 3rd party centers are technical colleges, such as, Bridger-Land Tech college, Davis Applied Tech College, Mountain-Land Tech College, Ogden Weber Tech, just to name a few. There has not been any negative feedback regarding the backlog of applicants not being able to get in to test. At risk or high risk individuals are able to make an ADA request for special accommodations to test.

BOARD AND INDUSTRY RULE UPDATE – Justin Barney

Mr. Barney reported on the proposed rule amendment. There were small changes that were suggested by the Governor's Office, just a few semantics and rule construction standards and not substantial changes, but it is moving forward. After the proposed rule amendment was presented, Mr. Fagergren noticed that there was some language that was adopted previously, that could be clarified in regards the 12 hour new sale agent course. The Division is working to clarify those changes. The Commission agrees they are fine with the proposed rule amendment moving forward with the clarifications needed.

Stipulation for Review

James Carroll-Presented by Sterling Corbet

Hearing

Jeremy Larkin

A motion was made and seconded to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Little, yes; Vice Chair Southwick, yes; Commissioner Chapman, yes; Commissioner Booth, yes; Commissioner McClelland, yes. The motion was approved.

CLOSED TO PUBLIC

Executive session from 11:44 a.m. to 1:47 p.m.

OPEN TO PUBLIC

Results of Executive Session

Director Stewart stated the Commission met in executive session, The Commission considered the stipulations for Enid Brown, Gerald Crawford, Zarbod Zanganeh, Benjamin Hilton, Jason Lewis, Brian Martineau, Clayton Rockwood and James Carrol. The following stipulations were approved with the concurrence of the Division, Enid Brown, Zarbod Zanganeh, Benjamin Hilton, Jason Lewis, Brian Martineau, Clayton Rockwood and James Carrol. The Commission rejected with concurrence the stipulation for Gerald Crawford. The Commission made decisions regarding the hearings for Jeremy Larkin and Brandon Stanger. They will all be notified of these decisions by mail.

Vice Chair Southwick a mention that there was a meeting in regards to the FHA/VA addendum form and is hopeful that within the next month or two the form will be revised.

A motion was made and seconded to adjourn the meeting, Vote: Chair Little, yes; Vice Chair Southwick, yes; Commissioner Chapman, yes; Commissioner Booth, yes; Commissioner McClelland, yes. The motion was approved. The meeting adjourned at 1:53 p.m.