

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 250

9:00 a.m.

July 15, 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

Mary Martinez, Education Coordinator

Laurel North, Investigator

Karen Duncan, Investigator

Shane McFarland, Investigator

Sarah Nicholson, Investigator

Chris Martindale, Investigator

Mark Schaerrer, Investigator

Jenny Myers, Investigator

Van Kagie, Investigator

COMMISSION MEMBERS PRESENT:

Richard Southwick, Chair

Lori Chapman, Vice Chair

Marie McClelland, Commissioner

Randall Smith, Commissioner

James Bringhurst, Commissioner

PUBLIC MEMBERS PRESENT:

Kreg Wagner

Dan Naylor

Rob Aubrey

Kurt Andrewsen

Robert Goodson

Debbie Love

Jason Anderson

The July 15, 2020 meeting of the Utah Real Estate Commission began at 9:02 a.m. with Chair Southwick conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Meeting Without Anchor Location-Jonathon Stewart

Approval of Minutes – A motion was made and seconded to approve the minutes of the June 17, 2020, meeting of the Commission as written. Vote: Vice Chair Southwick, yes; Commissioner McClelland, yes; Commissioner Chapman, yes. The motion was approved.

Director Stewart begins the meeting by swearing in the new Commissioners, James Bringhurst and Randal Smith. Elections are held to nominate Chair and Vice Chair. Commissioner Chapman nominates Commissioner Southwick as Chair and Commissioner Bringhurst nominates Commissioner Chapman as Vice Chair.

A motion was made and seconded to approve Commissioner Southwick as Chair and Commissioner Chapman as Vice Chair. Vote: Commissioner Southwick, yes; Commissioner Chapman, yes; Commissioner McClelland, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

PUBLIC COMMENT

Rob Aubrey a Principal Broker and Continuing Education Instructor made a comment regarding the discussion from last month about virtual live courses. His biggest concern is whether agents will be getting needed education. He believes, from his experience, that there is a higher attentive rate for participants in virtual live courses. The virtual live courses require students to answer attendance questions. If they do not answer, they do not get credit. In a live classroom setting, it is very common for students to be on their laptops, cellphones or even sleeping during class. However, there are new instructors to the virtual live environment who may not be able to handle the large classroom sizes.

Mr. Aubrey feels that he can handle a larger class size as he has run a virtual office for the last seven years. He suggests rather than governing the amount of students, an instructor may teach, that the instructor make the decision on how many they can handle. Commissioner McClelland asks Mr.

Aubrey how many students he would prefer to a class size. Mr. Aubrey suggests up to 80 but also insists there is no perfect number.

Commissioner Bringhurst gives his input on the virtual live courses and agrees with Mr. Aubrey. In his experience with a class size of close to 100 students, he felt as though he was more attentive because of the survey questions throughout the course. A "key word" must be emailed to the instructor in order to get credit for the course.

Commissioner Bringhurst asks instructors in the meeting what tools they have available for participants to ask questions. Mr. Aubrey uses Zoom for his courses and they offer a Q&A function within their webinar settings. Kurt Andrews, an online instructor uses the software Go To Webinar and they also have the Q&A feature and a chat feature. Bob Goodson, who instructs with Mr. Andrews, says that Go To Webinar tells the instructors how to engage their audience. The software tracks what students are doing on their computers. The software will inform instructors if students have turned on the webinar, if their screen is active or if they have the webinar in the background and are working on something else. Mr. Andrews and Mr. Goodson have a participation ratio of 85-89% in each of their classes. They inform their students that they are "actively following" students to make sure that they are actively participating.

Mr. Fagergren informs the Commission that there has not been any opposition of the live virtual education. The Division proposed live virtual courses in March and has continued to make it available for continuing education throughout Utah.

The only real issue is the number of students that can attend each course. Mr. Fagergren asks whether the number of students should be limited. Commissioner Smith believes it should be up the instructor to determine the class size. Chair Southwick asks Mr. Fagergren if there is currently a time frame on the rule for the number of students allowed per virtual online course. Mr. Barney advises that the proposed rule amendment is currently being drafted and has not been sent off for approval. The current draft does not give a specific number of students that may attend each class.

Chair Southwick informs the Commission that he would like to discuss, in the near future, the rule that dictates the number of branches or offices that a principal broker can supervise. There is currently a limit of three branches. Chair Southwick believes that number places some constraints on certain business models.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported on the current state of the Division. There has been no change as far as the Heber Wells building being open to the public. The decision to open the building once the city moves from Orange to Yellow will be made by Chris Parker.

The Division has not resumed fingerprinting at this time. The Division has made the decision not to require fingerprinting for August renewals as there has been a recent spike in Covid-19 cases.

Director Stewart reported that the executive appropriations held a special session regarding budget cuts. All state agencies had to propose to the legislature a 2, 5 and 10% cut. The Department of Commerce's budget was cut by \$950,000. The Division is currently working on ways to cut expenses and doing everything possible to avoid furloughs or layoffs.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported that in the month of June the Division received 13 complaints; closed 12 cases; leaving 464 open cases. There are 9 cases pending with the AG's office.

Stipulations for Review Presented by Kadee Wright

Dustin J Frandsen

Shad Selmos

Boyd Brown

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported that there was a net increase of 108 new licensees from the previous month. The Division is seeing a surge of new applicants that is keeping the licensing very staff busy. There was a reduction of 1014 inactive licensees between May and June 2020. Over the last 11 months, there has been a reduction of 1674 inactive real estate licensees that have failed to renew their license.

Mr. Fagergren informs the Commission that this afternoon he is meeting virtually with Person Vue, Division staff and subject matter experts to review the real estate sales agent and broker examination questions. State portions of those exams are being reviewed and analyzed to make sure that they are well performing questions and in compliance with current statutes and administrative rules. New questions will be drafted that are based upon changes to statutes and rules.

Mr. Fagergren reported that it has been one year since the first mandatory course outline was approved and one year that the mandatory residential course was made available. Last month the mandatory commercial course was approved. There are now three different specialties (residential, property management and commercial) that licensees can take to satisfy their mandatory course continuing education requirement.

Mr. Fagergren informs the Commission that the current mandatory courses all expire at the end of 2020. If there are going to be revisions made to any of the course outlines, those need to be implemented in the near future. The Division has committed to provide any updates on the mandatory course outlines to mandatory course providers in the October Instructor Development Workshop. It was never anticipated that the outlines would be totally revamped or overhauled. Most of the content areas would remain consistent from year to year and are not expected to change. Mr. Fagergren sent the current mandatory course outlines to the Commissioners and would like recommendations on suggested changes that they have.

Chair Southwick informs Mr. Fagergren that with the recent approval of the commercial outlines that there would not be any revisions needed for that course. Mr. Fagergren has received positive feedback that the content of the residential mandatory course was very good. Chair Southwick addresses the Commission and asks them to review the residential outline between now and next month's meeting and possibly get public comment as well. Commissioner Smith informs the Commission that as they were putting the outline together they had discussed the third hour having some leeway to deal with more current events.

Chair Southwick asks Mr. Fagergren if there is still currently a backlog of licensees waiting to test at testing centers. Mr. Fagergren informs Chair Southwick that with the expansion of third party vendors in addition to the four Pearson Vue operated centers there has not been any comments or feedback from individuals not being able to schedule their exam. There was a period of six weeks where testing was unavailable due to Covid-19. ADA issues will be accommodated. However, if an individual is uncomfortable testing in a center they will have to wait until it is safe to do so as it is mandatory to test in a center and the test cannot be offered virtually.

Mr. Fagergren reported that Xanna DeGooyer an attorney from Kirton McConkie indicated that the broker experience documentation form does not allow experience points for certain kinds of transactions on specialty properties. Ms. DeGooyer suggests, as one option, having an asterisk that

indicates special purpose properties will be dealt with on an individual basis, based on their complexity and to try and match them up with a fair assessment for experience points by the Division. Another option would be to award points based on an expanded list of specialty properties. Chair Southwick believes that if it is a real estate transaction then the broker candidates should be able to receive credit for it. Vice Chair Chapman suggests adding "specialty Property" on the broker experience document. Mr. Fagergren suggests adding a rule amendment that authorizes the Division to review on a case-by-case basis specialty properties for experience review points. Mr. Barney will draft a proposed rule amendment to be considered by the Commission and the Division.

BOARD AND INDUSTRY RULE UPDATE – Justin Barney

Mr. Barney reported on the current proposed rule amendment. It has been submitted for review by the Office of Administrative Rules, then to the Governor's Office for their comments or suggestions. Once that is complete then it will be published and submitted for public comment. A brief summary of what is included on the current rule amendment is:

1. Mandatory CE course for licensees renewing after having been inactive
2. Change involving an escrow account as an alternative name for a trust account
3. Eliminating mandatory denial for a felony plea in abeyance
4. Unclaimed funds being consistent with state laws
5. Increased broker funds allowed in a trust account from \$500 to \$1000

Mr. Barney reported that a committee has been formed and they are working on the redesign of the FHA/VA loan addendum form. The form should be ready for review and consideration at next month's meeting.

Enforcement Hearing

Bret Murie
Landon Murie

Licensing Hearing

James Bolster

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 Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes; Commissioner McClelland, yes. The motion was approved.

CLOSED TO PUBLIC

Executive session from 2:57 p.m. to 4:03 p.m.

OPEN TO PUBLIC

Results of Executive Session

Director Stewart stated the Commission met in executive session, The Commission considered the stipulations for Dustin J. Frandsen, Shad J. Selmos and Boyd Brown. All stipulations were approved with the concurrence of the Division. The Commission considered the enforcement hearings for Bret and Landon Murie and the licensing hearing for James Bolster. A decision has been made on all hearings and they will be notified by mail.

A motion was made and seconded to adjourn the meeting, Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes; Commissioner McClelland, yes. The motion was approved. The meeting adjourned at 4:07 pm.