

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 250

9:00 a.m.

September 16, 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

Sarah Nicholson, Investigator

Chris Martindale, Investigator

Mark Schaerrer, Investigator

Van Kagie-Investigator

Kendell Christiansen-Education Coordinator

Jenni Myers-Investigator

Karen Duncan-Investigator

Laurel North-Investigator

### **COMMISSION MEMBERS PRESENT:**

Richard Southwick, Chair

Lori Chapman, Vice Chair

Randall Smith, Commissioner

James Bringhurst, Commissioner

### **PUBLIC MEMBERS PRESENT:**

Dan Naylor

Kreg Wagner

The September 16, 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-Chair Southwick**

Approval of Minutes – A motion was made and seconded to approve the minutes of the August 19, 2020, meeting of the Commission as written. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

### **Public Comment**

Dan Naylor addresses the Commission and states that last month the Commission spoke about the mandatory course and the updates for next year. He wants to emphasize the great opportunity that educators have with the mandatory course. Last year, when the course was created, real statistics were taken and they figured how many new issues they were being introduced. Next year there will have been a full cycle of the mandatory course and will be a great time to run the statistics again and see how effective the mandatory course has been.

## **DIVISION REPORTS**

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

Director Stewart reported on the current state of the Division. The Governor has moved Salt Lake from Orange to yellow in regards to the COVID-19 pandemic. He also mentioned that Governor Herbert said, in moving from Orange to Yellow that it only means that individuals need to be more vigilant in practicing social distancing, wearing masks and etc. The Heber Wells building is still closed to the public. All services are available online and by phone.

Director Stewart gave an update on the trust account rules committee. Last month there was a discussion about the need for three sections of the trust account rules to be reviewed. The Commission agreed and a committee has been formed. The committee consists of ten members including Chair Southwick, Commissioner Bringhurst, Kreg Wagner, Joel Hair, Paul Smith, Brad Randall, Justin Barney, Kadee Wright, Sarah Nicholson and Liz Harris. The first committee meeting will be held on September 17<sup>th</sup>, 2020. Once recommendations have been made, they will be brought to the Commission to be voted on.

Director Stewart reported that he spoke to Representative Musselman and he has offered the Division one of his priority bills. Currently there is only one legislative item that is being considered that affects the real estate

industry. Director Stewart will give an update next month with details regarding the bill.

Chair Southwick stated that he has had a few individuals contact him over the month regarding the ongoing unregulated nature of the home inspection industry and is wondering if they are able to look into for potential regulation. Director Stewart stated the Legislature has looked into it two years ago and the bill that addressed this issue did not move forward. It went to a committee hearing and did not pass. This is something the Legislature would have to consider. The Legislature has been hesitant to add more license types and in the past has looked to eliminate license. Director Stewart suggested that the individual contact their Representative or Senator and see if there is a possibility to run a bill.

#### **ENFORCEMENT REPORT – Kadee Wright**

Ms. Wright reported that in the month of August the Division received 28 complaints; closed 27 cases; leaving 476 open cases. There are three cases pending with the AG's office.

Stipulation for Review Presented by Stephen Gillies  
Franchise Real Estate

Stipulations for Review Presented by Joy Natale  
Candice Kunz  
Erin Wathen

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

Mr. Fagregren reported that there was a net increase of approximately 300 real estate licensees for the month. Mr. Fagregren informs the Commission that the Division is shifting to paperless as far as applications and forms. New applicants will be processed more efficiently and timely if they go to the Division website and do the online application there. If Applicants have gone through the checklist provided on the website and provide all required documents this will save up to a week in terms of turnaround times for obtaining a license.

Mr. Fagregren reported on the mandatory course and explained that the course includes current problems in the real estate sales industry. The course also includes information on the subject of agency that licensees may not have reviewed since they were in pre-license education. Both subjects are very important to the success to the licensee. Dan Naylor's comment made perfect sense to Mr. Fagregren who is a great proponent of the

mandatory courses and their benefits to participants.

Mr. Fagergren reported on some positional changes within the Division. Mary Martinez, the Real Estate Education Coordinator has left the Division and has been replaced by Kendelle Christiansen. Jenny Knudsen is a new licensing specialist.

Mr. Fagergren reported on the conditional licenses that were granted from March 15<sup>th</sup> to the end of August 2020. Because fingerprinting was stopped due to Covid-19 the Division granted individuals a conditional license without being fingerprinted. This came with the understanding that new and renewing licensees are required to be fingerprinted by the end of this month. Final notices will be sent today to those individuals indicating that if they fail to get fingerprinted, their license will be denied.

Mr. Fagergren informs the Commission that the Division is preparing for IDW (Instructor Development Workshop). Unfortunately, the trainer for this course is unavailable to teach. Fortunately, the trainer that was scheduled for next year's IDW was able to step in and be the real estate instructor for IDW this year. The dates for the workshop are Monday October 19 and Tuesday October 20, 2020. The workshop is being held live-virtual to ensure the safety of participants due to Covid-19.

Mr. Fagergren stated that the mandatory courses will be identified in the rules and the Division's recommendations regarding virtual live education will be discussed during Mr. Barney's portion of the meeting.

### **BOARD AND INDUSTRY RULE UPDATE – Justin Barney**

Mr. Barney reported on the current proposed rule amendment. There are corrections that need to be addressed per the Governor's office. In addition, the Division has proposed in section 2f-201 that the required denial of an applicant with certain criminal history be eliminated and instead that the qualification of an applicant with criminal history be at the discretion of the Division and the Commission. In the proposed rule amendment, there are changes to allow virtual live continuing education. It begins with the definition section for virtual live education. The proposed amendment also addresses the process of certifying a continuing education course for virtual live education and how that is done. The section on minimal standards addresses the number of students that may be taught in these courses. The Division is recommending that there be some limitation on the number of students. The minimum number may be modified later if needed. There is a proposed exception for conventions. The Division would consider for

approval all aspects of continuing education courses taught at a convention, including course size limitation, if any.

Director Stewart addressed the Commission regarding the criminal history changes to the amendment and explained that the term "moral turpitude" has been removed from statute as a basis for the mandatory denial of an application for licensure. In conversations with Legislators and a lobbyist during the legislative session, they spoke about qualification standards and were not in favor of mandatory denials. Director Stewart agreed with the Legislator and offered to look at the rules to consider making adjustments. As a result, the mandatory denial requirement for criminal history is proposed to be removed. However, the Commission and the Division will have discretion to deny an application based on criminal history if it is determined to be appropriate for the protection of the public.

Mr. Fagergren explains the specifics on the proposed rule amendment regarding the third type of education, which is virtual live continuing education. The Division feels that this proposal is efficient and affective in terms of getting students the best quality education. Other than the exception for conventions, these rules specify that an instructor would need to have a least one monitor for a class size of 1-50 and a second monitor for a class size from 50-100. The rule also states that the Division will not approve virtual live courses for more than 100 students. As Director of Education, Mr. Fagergren suggests that it is in the best interest of the student if there is a limitation to the total number of students in a virtual live continuing education course. Students will be required to have a functioning camera and microphone if attending a virtual live course. In regards to conventions, the expectation of monitoring and support staff would be the same as a virtual live course, but a convention virtual live course is authorized to have over 100 attendees. Mr. Barney explains that the Division has come out with this proposal in response to the Covid-19 limitations on live classes. This option gives students and instructors the opportunity to get and give quality education during the global pandemic. And these changes for virtual live courses will extend indefinitely even after the pandemic is no longer an issue.

A motion was made and seconded to approve the changes to the proposed rule amendment. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

Mr. Barney reported on the committee that has been working on the redesign of the FHA/VA loan addendum form. A proposed form has been

submitted. Mr. Barney thanked Kreg Wagner and other committee members for their time and efforts to update the form. The proposed form is ready for the Commission's consideration. Paragraph 3 has been modified in order to avoid a situation where a mortgage underwriter might require a different form. If the Commission and Division Director approve this proposed form it will move forward to the Attorney General's office and become a state approved form.

Kreg Wagner addresses the Commission and explains the changes that were made. He states that the updated FHA/VA addendum includes language that says the seller agrees to cooperate and sign any lender required documentation that alters the terms of the contract. There is also clarification on the FHA/VA addendum with the term "loan costs".

Investigator Laurel North with the Division asks if the renegotiation of the purchase price is going to cause an issue with the mortgage loan. Chair Southwick agrees and states that if it is done after the closing disclosures have been issued then it may indeed cause a problem. Karen Duncan an Investigator with the Division adds that her concern with the change in last sentence in paragraph 6 which reads "Any unused portion of Seller's contribution may, at Buyer's option, be used to reduce the Purchase Price." This may result in a delay in a time sensitive transaction. Kreg Wagner explains that this language is already being used in the industry and it is up to the seller to either lower the purchase price or potentially face being in breach of contract.

Chair Southwick asks Kreg Wagner about adding an additional sentence stating that any reduction must be initiated prior to the closing disclosure being issued. Kreg Wagner adds that he has not seen an issue where there would be reduction in purchase price and if the reduction isn't done by a certain percentage then the lender will not be required to re-issue closing disclosures. Kadee Wright clarifies that if the seller wanted to, they could add an addendum to the REPC stating that any unused funds be returned to the seller.

A motion was made and seconded to approve the changes to the FHA/VA addendum as modified. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

### **Informal Hearings**

Brandon Armstrong  
Laurie Krichelle Hymas

Mathew Barrett

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. The motion was approved.

**CLOSED TO PUBLIC**

Executive session from 2:32 p.m. to 3:41 p.m.

**OPEN TO PUBLIC**

A motion was made and seconded to approve the stipulations for Franchise Real Estate and Erin Wathen. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved with concurrence from the Division. A motion was made and seconded to reject the stipulation for Candice Kunz. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was rejected with concurrence from the Division.

A motion was made and seconded to support the Division's decision to place Brandon Armstrong on probation for the renewal period of his license. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

A motion was made and seconded to approve the license for Laurie Krichelle Hymas with exception that she be put on probation through two licensing periods. Vote: Chair Southwick, yes; Vice Chair Chapman, no; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

A motion was made and seconded to approve the license on probation for Mathew Barrett. Vote: Chair Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved.

A motion was made and seconded to adjourn the meeting, Vote: Chair

Southwick, yes; Vice Chair Chapman, yes; Commissioner Smith, yes; Commissioner Bringhurst, yes. The motion was approved. The meeting adjourned at 3:48 p.m.