

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210
9:00 a.m.
February 21, 2007

MINUTES

STAFF MEMBERS PRESENT:

Derek B. Miller, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Dave Mecham, Investigator
Marv Everett, Investigator
Carlos Alamilla, Investigator
Amanda Orme, Mortgage Education Coordinator
Tiffeni Wall, Real Estate Education Coordinator

COMMISSION MEMBERS PRESENT:

H. Blaine Walker, Chairman
Bonnie Peretti, Vice Chairman
Doyle "Sam" Sampson, Jr., Commissioner
Gary Hancock, Commissioner
Kay Ashton, Commissioner

GUESTS

Curtis Bullock	John Schoppe
Jack Marinello	Michael Hepworth
Paul Naylor	Ralph Little
Kevin Swenson	Arnold Stringham
Michael Welker	Lance Miller
Chad Ahearn	

The February 21, 2007 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Walker conducting.

Approval of Minutes

The minutes for January 17, 2007 were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Derek B. Miller

Director Miller gave the Commission an update on the legislative session which will end one week from today. The Division's bill, SB199, has the support of the Commission and industry groups and is moving along well. Chairman Walker spoke in favor of the

bill at the House Committee Meeting last week. It is now up for a second reading and then there will be a full vote. The vote from the committee was unanimous.

HB415 relates specifically to this Commission and its amendments deal with the title and escrow commission. Notice would be given to the Real Estate Commission any time the Title and Escrow Commission begins a rulemaking process. This will be helpful because the industries are interrelated. The bill also relates to disclosures that need to be made when someone is licensed under the title and escrow statute and is licensed under the real estate statutes.

HB25, mortgage fraud, is a companion piece to the Division's bill, but is not sponsored by the Division. The bill is sponsored by Representative Paul Ray from Clearfield. The Division's bill deals with administrative prosecution of mortgage fraud, and HB25 deals with criminal prosecution of mortgage fraud. The Division supports that bill, but the real issue is how is it going to be funded. As the bill currently stands it would come out of the Mortgage Education Fund which is from this Division. The Division does not support the money coming out of that fund for two reasons. The first is the fund doesn't have that much money, and secondly, the fund is already used for other purposes. The Senate sponsor has agreed it should be a general fund appropriation.

Director Miller brought up the issue of education rules and said he will be turning the time over to Mr. Fagergren who will address the issue. He wanted to make a general comment that the goal of the Commission and Division is to make sure there is good quality education, and that some of the education rules needed to be written in a clear way so anyone reading them not have to be an attorney to understand them.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren started by thanking Director Miller and Ms. Wismer for all the time they have spent on the drafts for these rules. He believes these drafts meet the qualification of advancing quality education and making the rules easier to read.

Mr. Fagergren said there have been a number of inconsistencies in our rules which make them complicated to understand. Continuing education was intended to have live and passive education. Live education meant it would be live education where someone was teaching the course live. Distance education has also been allowed for live continuing education. Distance education involved interactivity where the provider is checking and monitoring the student to make sure they are participating in the course. The student has to demonstrate the mastery of learning objectives. Distance education was allowed to be considered live education.

Passive education means there is no interactivity with the student and there is no pre-license instructor present. In many cases these classes were video tapes. This constituted passive education and a person was allowed to have six passive hours and six live hours of continuing education. However, a passive course could be made into a live course if a pre-license instructor was present. This made the issue very confusing.

Pre-licensing education is live education and distance education was not allowed. However, we did allow up to 50% of the course (or 45 hours) to be video tapes where there is no interactivity and no accomplishment of learning objectives. The educators are trying to make sense of these rules and to follow all of the requirements.

Pre-licensing instructors have some confusion as to guest lecturers, adjunct instructors, and pre-license instructors. There was some confusion about how one went to one state to another state. There was some discussion in the rules about an apprentice program, co-teaching and receiving recommendations on a five-point scale plus a recommendation from the school. This was a pretty cumbersome system to become an instructor. There is a section on sub-sections on a broker course. In order to be eligible in this system a person would need to be a CRV, a member of the Utah State Bar, Certified Appraiser holding an MAI, have a degree in Finance, and have a Certified Property Management designation. The sub-section requirements actually exceed the requirements to be a full-blown licensing instructor. Mr. Fagergren said this is a complex system as it stands.

The Division's rules should foster and should encourage quality education, and Mr. Fagergren believes the Division is making a great step forward with these rules.

Mr. Fagergren highlighted the draft rules. The first draft, R162-1-2, Definitions, covers the definition of distance education. Another section covers traditional education. This is education in which instruction takes place between an instructor and students all physically present in the same classroom.

R162-9-1, Course Application for Certification, explains that if someone is submitting a course for approval, they need to make a determination as to whether the course will be traditional education or distance education. There is a list of items for each category that will be required when the application is submitted. R162-9.2.2 expands a list of course topics used for continuing education. The Division would like to see some of the course listed, which haven't been taught as of now, be used for new elective courses. R162.9.2.1 covers subjects that may be certified as "core" course topics.

R162-8.1, School Application for Certification, covers the principle of when a course is submitted it can be either traditional education or distance education. It also does away with live vs. passive education. The requirements to teach the broker sub-courses have been refined. There is also a section to say a student can't challenge a course and that attendance or active participation is required.

In R162-3-6, Renewal and Reinstatement, a couple of changes have been made. R162-3.6.1.2 changes the current rule which says if someone has a license that has expired more than 30 days, they have to take 12 additional hours of education on certain topics. This rule says the reinstatement of a license can be done within 30 days to 6 months by completing the continuing education and an additional 12 hours to

total 24 hours to reinstate. There will not be any specific courses listed as "reinstatement." They will still need the 6 hours of core topics to renew. R162-3.6.2.1.1 talks about the new agent course that has been approved by the Commission. This will be effective until the rule goes into effect and will probably have the language stating the effective date will be July 1, 2007. R162-3.6.2.1.2 discusses the change from a single core course to core course topics. This section will address the expansion of the hours from 3 to 6 hours. The remaining 6 course can be from the elective courses. R162-3.6.2.1.3 states a licensee must keep the original course completion certificates for three years following renewal and produce those certificates when audited by the Division.

Chair Walker opened the meeting for comments from the public. There was a concern about distance education component and that as soon as it is allowed for complete real estate education exam, there will be unintended circumstances. The concern was that the quality of education will be poor because there will be no competitive advantage. Another comment was that the Division look closely at approving courses for distance education to make sure it is quality education.

Chair Walker asked the public if they wanted a public hearing on the question of distance education. The majority would like a public hearing. A motion was made to move forward in the rulemaking process. The motion was seconded and passed unanimously, with concurrence from the Division.

LICENSE HEARING: **CLOSED TO PUBLIC**

- 10:10 Roberto Vidal – Application for License
- 10:45 Michael L. Shehan – Application for License Renewal
- 11:10 Jordan Maddocks – Application for License

OPEN TO PUBIC

- 11:40 Training by Attorney General on Administrative/Hearing Procedures – Blaine Ferguson, Assistant Attorney General

OTHER BUSINESS

Chair Walker announced the change in dates for the May meeting. The meeting was originally scheduled for May 16 and now has been moved up to May 9, 2007. The regular meeting date falls in the middle of the national meeting for NAR.

INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson said the continuing education audit report shows there were 8 new cases opened in January, 6 cases were closed, leaving 24 open audit investigation files.

The investigative report shows the Division received 42 written complaints, there were 30 complaints screened (no cases opened), 8 new cases opened, 4 cases closed, leaving the number of open case files at 179.

The Division hired Lesly Wastlund as a new investigator and will also hire two additional investigators, so the number of open cases should start to drop. Mr. Johnson said the number of cases has continued to grow every month.

CLOSED TO PUBLIC

Review of Stipulations:

Kary Austin
Alice Coffman
James W. Balsterholt
Karol K. Drechsel
Kathy Whimpey

A motion was made to go into an Executive Session from 2:22 p.m. to 3:50 p.m.

OPEN TO PUBLIC

RESULTS OF EXECUTIVE SESSION

Informal Hearing:

Roberto Vidal – Granted on probation for the first term of licensure.
Michael L. Shehan – Granted but immediately suspended until he completes the outstanding Stipulation.
Jordan Maddocks – Granted.

Stipulations:

Kary Austin - Approved
Alice Coffman - Denied
James W. Balsterholt - Approved
Karol K. Drechsel - Approved
Kathy Whimpey - Approved

A motion was made and accepted to adjourn the meeting at 3:55 p.m.