

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

December 21, 2011

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Dee Johnson, Assistant Chief Investigator
Mark Fagergren, Licensing/Education Director
Jennie Jonsson, Hearing Officer
Xanna Hardman, Assistant Attorney General
Judith Jensen, Assistant Attorney General
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Van Kagie, Investigator
Charles Smalley, Investigator
Dave Mecham, Investigator
Kurtis Hughes, Investigator

COMMISSION MEMBERS PRESENT:

Stefanie Tugaw-Madsen, Chair
H. Thayne Houston, Vice Chair
Kay Ashton, Commissioner
Gary Hancock, Commissioner
H. Blaine Walker, Commissioner

GUESTS:

Paul Naylor	Kevin Swenson
Tammy Lund	Jennifer Buehring
Benson Miller	Steve Norris

The December 21, 2011 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Tugaw-Madsen conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes

The minutes from November 16, 2011 needed a correction. The reference to California NAR® needed to be changed to CAR®. With this correction, a motion was made to approve the minutes as amended. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Ashton, yes. Motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart and Ms. Jonsson met with Representative Gage Froerer last month, and he has agreed to sponsor the Division's bill.

The Division started a "Live Chat" feature on their website. In the month of November there were 118 people who accessed this new function. Comments that we received were very positive.

Director Stewart opened the meeting up for discussion on the proposed draft of the Utah Timeshare and Camp Resort Act. The draft was prepared by the American Resort Development Association ("ARDA").

Commissioner Walker sent a copy of the proposed draft to Hawaii, because they do a lot of timeshares. He will send along any comments he receives from them.

Director Stewart, Ms. Jonsson, and Mr. Smalley have met to review the proposed draft. They have several concerns and Director Stewart brought them before the Commission for discussion.

- In 2011 the Division's timeshare bill, that did not pass, had language that prohibited the use of a sales contract that committed a purchaser to maintain interest into perpetuity. The current draft omits this.
- A copy of this proposed bill will be sent to Chris Kyler, UAR®, for review.
- Right to rescind a contract. In 2011 the Division proposed the developer or sales person be required to disclose the right to rescind at the beginning of the presentation.
- Exemption from regulation on all offerings to people who have previously purchased from the developer. The Division is concerned this would provide ample room for abuses.
- Exemption for associations, exchange programs, multi-site projects and transactions with prior purchasers.
- Removal of requirements for developers and sales persons to disclose and report findings of civil proceedings. The Division believes that if there are civil proceedings related to violations of laws designed to protect consumers, the public has a right to know about it.
- New language is introduced regarding finder's fees. The Division would like to understand the language better, and understand what ARDA is trying to accomplish.

- Currently, the statute says the Division must take action on an application within 30 days of receipt, or it is deemed granted. Last year, the Division suggested removing the language “deemed granted.” This year the ARDA draft keeps the language in, and adds language stating that the property report in place at the end of this 30-day period would be considered final and approved.
- ARDA proposes that no part of an investigation becomes part of the public record, other than the final disposition. The Division believes that this is bad public policy and contrary to GRAMA.
- ARDA proposes a two-year statute of limitations with regards to suits being brought on misconduct. Director Stewart mentioned as examples, the statute of limitations for communications fraud is four years; statute of limitations on securities fraud is five years.

Director Stewart said the next step is to have a meeting with Chris Stewart, a representative of ARDA, Representative Froerer, and the Division to discuss these concerns.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said that Mr. Nelson is in another meeting today and has asked Mr. Johnson to sit in for him.

Mr. Johnson reported in November the Division received 31 complaints; opened 33 cases; closed 36 cases; leaving the number of cases at 238. Mr. Johnson said the number of complaints seems to be dropping off as compared to the numbers from last year.

Enforcement Stipulations for Review

Jennifer and/or Ryan Buehring
Jared L. Payne
Jenny Ladean Sims
Paul Coon

All of the respondents were offered the opportunity to appear today, and Jennifer Buehring appeared with her counsel, Benson Miller. The others have declined to appear.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said statistics showed a drop in 75 agents last month. In reviewing the statistics for the previous eleven months, there is an overall drop in the numbers of licensees by 7%.

The Division’s newsletter will be published tomorrow.

The rule that was mentioned last month regarding extending the window in which a broker may accumulate experience in specific circumstances has passed, and the applicant that appeared before the Commission has been licensed.

Education/Licensing Stipulations for Review

Selamawit Dickerson
Richard Burnell Turnbow

All of the respondents were offered the opportunity to appear today, but each has declined.

COMMISSION AND INDUSTRY ISSUES

Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said the rule Mr. Fagergren mentioned on his report became effective on November 21, 2011.

There are no new rules to be reviewed.

Chair Tugaw-Madsen said that she will have an update on the lead-based paint form next month.

Two announcements were made regarding the agenda for the meeting today: Commissioner Ashton will be excused from the first hearing because he has a phone meeting he needs to be part of, and the last hearing for Ms. Mortensen has been rescheduled for January's meeting.

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Ashton, yes; Commissioner Hancock, yes. Motion carries. An Executive Session was held from 10:08 a.m. to 10:30 a.m.

OPEN TO PUBLIC

INFORMAL HEARINGS:

10:30 Mandy Greenwood – Application for License
Witness: Mark Fagergren

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes. Executive Session was held from 10:58 a.m. to 11:15 a.m.

11:30 Michael Troy Fuit – Application for License

An additional licensing stipulation was presented for the Commission's review:

Janet Morgan.

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes. Executive Session was held from 12:38 p.m. to 1:30 p.m.

1:30 Lisa Cole – Application for License
Ms. Cole has requested a telephone hearing.
Darin Cole, husband

2:30 Erik Anderson – Appeal of Order
Mr. Anderson did not appear, or call. The decision was to proceed with the hearing without him.

3:30 Kristen Mortensen – Application for Renewal
Ms. Mortensen has requested rescheduling her hearing until January.

CLOSED TO PUBLIC

A motion was made to enter Executive Session for the sole purpose of discussing the character, professional competence, or physical and mental health of an individual. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Ashton, yes. Executive Session was held from 2:38 p.m. to 2:55 p.m.

OPEN TO PUBLIC

Results of All Stipulations

Jennifer and/or Ryan Buehring - Approved
Selamawit Dickerson - Approved
Jared L. Payne - Approved
Jenny Ladean Sims - Approved
Paul Coon - Approved
Richard Burnell Turnbow - Approved
Janet Morgan - Approved

A motion was made to adjourn the meeting. Vote: Chair Tugaw-Madsen, yes; Vice Chair Houston, yes; Commissioner Walker, yes; Commissioner Hancock, yes; Commissioner Ashton, yes. The meeting was adjourned at 2:56 p.m.