

MINUTES

**COLORADO REAL ESTATE COMMISSION MEETING
October 13, 2009**

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
October 13, 2009
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 925
DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on October 13, 2009. Those Commissioners in attendance were Chair Kristin Bronson, Vice-Chair Charles “Buzz” Moore, Douglas Ring, and Gina Piccoli. Also attending were Marcia Waters, Director of Investigations and Enforcement; Penny Elder, ESP Program Manager; Mary Kanaly, Real Estate Program Manager; Terry Hugar, Attorney General’s Office and several members of the Commission’s Staff. Commissioner Jill Ozarski, and Director Erin Toll were absent.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

The meeting was called to order Commissioner Bronson at 9:02 a.m.

ORDER OF BUSINESS

Approval of Minutes

It was moved by Commissioner Ring and seconded by Commissioner Moore to approve the Minutes of September 1, 2009, as amended.

Motion unanimously carried.

Retreat Minutes

It was moved by Commissioner Moore and seconded by Commissioner Piccoli to approve the Minutes from the Commission’s Retreat on September 1, 2009.

Motion unanimously carried.

POLICY MATTERS:

CPS-20 Commission Position Statement on Personal Assistants -

It was moved by Commissioner Piccoli and seconded by Commissioner Ring to adopt CPS-20, the Commission Position Statement on Personal Assistants as presented by staff.



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Motion unanimously carried.

CPS-35 Commission Position Statement on Brokers as Principals -

It was moved by Commissioner Piccoli and seconded by Commissioner Moore to adopt CPS-35, the Commission Position Statement on Brokers as Principals as amended.



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Motion unanimously carried.

Errors and Omissions Insurance Contract-

Marcia Waters advised the Commission that there are no price changes for Errors and Omissions Insurance coverage this year and that the Division is renewing with Rice Insurance.

2010 Real Estate Commission Calendar

It was moved by Commissioner Moore and seconded by Commissioner Ring to approve the following Commission meeting dates in 2010:

February 2, 2010
April 13, 2010
June 1, 2010
August 3, 2010
October 5, 2010
December 7, 2010

Motion unanimously carried.

COMPLAINT MATTERS:

NOTICE: The following complaint matters contain summaries of investigative findings and proposed offers of settlement. Ultimate settlement terms, imposition of discipline or findings of license law violations may differ from those originally considered by the Commission. The investigative report, exhibits and all other Commission records relating to each proceeding may be public records as defined by the Colorado Open Records Act, § 24-72-203, C.R.S. and any other applicable laws.

Steven Swanson-

The investigative report concerning a complaint filed by the Commission on its own motion against **Steven H. Swanson**, License #FA 649495 was presented to the Commission with accompanying documentation and information supplied by Mr. Swanson. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Mr. Swanson.

- a. Complaint alleges that Colorado real estate broker **Steven H. Swanson** pled guilty on May 4, 2009 in Jefferson County District Court to Theft, a Class 4 Felony, and failed to report this plea to the Commission as required. Mr. Swanson's license is currently on inactive status; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); 12-61-113(1)(m.6); and Commission Rule E-49; and
- c. Mr. Swanson's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$2,500.

Motion unanimously carried.

Terry Hugar, Attorney for the Commission requests that discussions involving the cases of Valerie Van Lerberghe and Carolyn Nelson be deferred to Executive Session.

David Hillard-

The investigative report concerning a complaint filed by the Commission on its own motion against **David M. Hillard**, License #II 100016499 was presented to the Commission with accompanying documentation and information supplied by Mr. Hillard. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Mr. Hillard.

- a. Complaint alleges Colorado real estate broker **David M. Hillard** pled guilty in Adams County District Court on September 1, 2009 to Second Degree Assault, a Class 4 Felony, and was sentenced to eight years in the Department of Corrections; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); and
- c. Mr. Hillard's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$2,500.

Motion unanimously carried.

Susan Sanders-

The investigative report concerning a complaint filed by the Commission on its own motion against **Susan K. Sanders**, License #FA 764375 was presented to the Commission with accompanying documentation and information supplied by Ms.

Sanders. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Ms. Sanders.

- a. Complaint alleges Colorado real estate broker **Susan K. Sanders** pled guilty in Pueblo, Colorado on June 11, 2009 to Marijuana Possession, a misdemeanor, Attempted Theft, a Class 5 Felony and Check Fraud, a Class 6 Felony. Sanders was sentenced to four years of supervised probation; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); 12-61-113(1)(m.6); 12-61-113(1)(k) and Commission Rule E-49; and
- c. Ms. Sander's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$2,500.

Motion unanimously carried.

Scott Fling-

The investigative report concerning a complaint filed by the Commission on its own motion against **Scott F. Fling**, License #EA 1327298 was presented to the Commission with accompanying documentation and information supplied by Mr. Fling. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Mr. Fling.

- a. Complaint alleges Colorado real estate broker **Scott F. Fling** pled guilty to Theft, a Class 2 misdemeanor in Broomfield, Colorado; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); and
- c. Mr. Fling's real estate broker's license shall be placed on probation requiring supervision by an employing broker for a period of one year of active licensure; and
- d. Mr. Fling may not return to unrestricted licensure until such time as his restitution is paid in full; and
- e. He shall pay a fine to the Commission up to \$1,000.

Motion unanimously carried.

LICENSING MATTERS:

Adrian Weatherby

The Commission considered the application of Adrian Weatherby for a real estate broker's license together with additional documentation and information supplied by Mr. Weatherby. It was moved and seconded by the Commission to issue a three-year restricted license.

Motion unanimously carried.

Frederick Culp-

The Commission considered the Preliminary Advisory Application of Frederick Culp for a real estate broker's license together with accompanying documentation and information supplied by Mr. Culp. It was moved and seconded by the Commission to issue a negative opinion.

Motion unanimously carried.

HEARING MATTERS:

Robin Blair-

The Commission voted to concur with the Initial Decision, Findings of Fact and Conclusions of Law in Case Number RC 2009-0017, in the matter of the Colorado Real Estate Commission vs. Robin J. Blair. Ms. Blair's real estate broker's license is revoked.

Motion unanimously carried.

Cedric D. Lipsey-

The Commission voted to defer action on the Initial Decision in Case Number RC 2009-0021, in the matter of the Colorado Real Estate Commission vs. Cedric D. Lipsey until the next meeting scheduled in December.

Motion unanimously carried.

Executive Session

It was moved and seconded by more than two-thirds vote by the Commission that pursuant to §24-6-402(3)(a)(II), C.R.S., to convene the Colorado Real Estate Commission into Executive Session for the purpose of conferring with the Commission's attorney regarding cases involving Valerie Van Lerberghe, Carolyn Nelson, a counter-offer from Kevin Ryan, a counter-offer from Michael Desmarais, and a counter-offer from Mary Jane Ogle.

Motion unanimously carried.

It was moved by Commissioner Moore and seconded by Commissioner Ring to adjourn out of Executive Session at 10:19 a.m.

Motion unanimously carried.

Valerie Van Lerberghe-

The investigative report concerning a complaint filed by Paul Fontana, Edmond Haag, Scot Swainson and the Commission on its own motion against **Valerie J. Van Lerberghe**, License #ER 40027984 was presented to the Commission with accompanying documentation and information supplied by Ms. Van Lerberghe. It was moved by Commissioner Moore and seconded by Commissioner Ring to direct that an

ESP stipulation be sent to Ms. Van Lerberghe calling for the revocation of her real estate broker's license and payment of a fine to the Commission up to \$4,000.

The Motion and second are withdrawn.

It was then moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Ms. Van Lerberghe.

- a. Complaint alleges in part that Colorado real estate broker **Valerie Van Lerberghe** failed to return a security deposit, failed to discuss brokerage relationships, failed to place money in proper trust accounts, did not do proper reconciliations and co-mingled funds, and that she also used a name other than her licensed name; and
- b. These acts may constitute a violation of: 12-61-113(1)(g.5); 12-61-113(1)(k); 12-61-114(1)(n); 12-61-808; and Commission Rules E-1; E-1(f); E-1(p)(3) and E-1(q); and
- c. Ms. Van Lerberghe's real estate broker's license shall be suspended for a period of up to six months; and
- d. She shall pay a fine to the Commission up to \$4,000; and
- e. Ms. Van Lerberghe shall successful complete real estate education courses in Contracts, Trust Accounts and Brokerage Relationships.

Motion unanimously carried.

Carolyn Nelson-

The investigative report concerning a complaint filed by Graceann Anderson against **Carolyn R. Nelson**, License #EI 134181 was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Ms. Nelson.

- a. Complaint alleges Colorado real estate broker **Carolyn R. Nelson** failed to pay property taxes as required while acting as a property manager. She also has failed to respond to the Investigator's inquiry regarding the complaint; and
- b. These acts may constitute a violation of: 12-61-113(1)(g); 12-61-113(1)(k); and Commission Rule E-21; and
- c. Ms. Nelson's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$5,000.

Motion unanimously carried.

Kevin Ryan-

The Commission considered a counter-offer proposal from Kevin Ryan. After discussion, the Commission voted to accept Mr. Ryan's counter-offer. Mr. Ryan's real estate broker's license shall be suspended for a period of 3 months; he shall pay restitution in the amount of \$7,396; he shall pay a fine to the Commission in the amount of \$2,500 and he shall successfully complete real estate education courses in Current Legal Issues and in Contracts.

Motion unanimously carried.

Michael Desmarais-

The Commission considered a counter-offer proposal from Michael Desmarais. After discussion, the Commission voted to accept Mr. Desmarais' counter-offer. Mr. Desmarais' real estate broker's license shall be suspended for a period of up to 6 months; his license will be supervised for a period of 2 years; he shall pay a fine to the Commission up to \$12,500 and he shall successfully complete real estate education courses as ordered.

Motion unanimously carried.

Mary Jane Ogle-

The Commission considered a counter-offer proposal from Mary Jane Ogle. After discussion, the Commission voted to reject Ms. Ogle's counter-offer. Instead, Ms. Ogle shall be offered a stipulation calling for a public censure; a \$750 fine and successful completion of real estate education courses in Contracts and in Current Legal Issues.

Motion unanimously carried.

The Real Estate Commission meeting adjourned at 10:37 a.m. on October 13, 2009.

Kristin Bronson, Chairwoman

Charles "Buzz" Moore, Vice Chair

Jill Ozarski, Commissioner

Gina Piccoli, Commissioner

Douglas Ring, Commissioner

Erin Toll, Director
Colorado Division of Real Estate

EXECUTIVE SESSION MINUTES

After a two-thirds majority vote and pursuant to §24-6-402(3)(a)(II), C.R.S., the Colorado Real Estate Commission held an Executive Session during its regular public meeting held on October 13, 2009. The Commission publicly announced the subject matter of the Executive Session, which was to confer with the Commission's attorney regarding cases involving Valerie Van Lerberghe, Carolyn Nelson, a counter-offer from Kevin Ryan, a counter-offer from Michael Desmarais, and a counter-offer from Mary Jane Ogle.

ATTESTATIONS

Pursuant to §24-6-402(2)(d.5)(I)(B), C.R.S., as counsel for the Commission, I attest that it is my opinion that all matters discussed during the executive session of the Colorado Real Estate Commission meeting held on October 13, 2009, constituted privileged attorney-client communications and, therefore, the contents of such discussions are not reflected within these minutes.

Terry Hugar, #20420
Senior Assistant Attorney General
Attorney for the Colorado Real
Estate Commission

Pursuant to §24-6-402(2)(d.5)(I)(B), C.R.S., as Commission Chair, I attest that the executive session of the Colorado Real Estate Commission meeting held on October 13, 2009, was confined to the topics authorized for discussion pursuant to §24-6-402(3)(a)(II), C.R.S.

Kristin Bronson, Chairwoman
Colorado Real Estate Commission