

MINUTES
COLORADO REAL ESTATE COMMISSION MEETING

APRIL 7, 2009

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**MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
APRIL 7, 2009
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 925
DENVER, CO 80202**

A Colorado Real Estate Commission public meeting was held on April 7, 2009. Those Commissioners in attendance were Chairman Paul Goldenbogen, Vice Chair Kristen Bronson, Martin Pocs, Pres Montoya and Charles "Buzz" Moore. Also attending were Marcia Waters, Investigations and Compliance Director; Penny Elder, Real Estate Program Manager; Mary Kanaly, ESP Program Manager; Terry Hugar, Attorney General's Office and several members of the Commission's staff. Erin Toll, Director, was 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 by Chairman Paul Goldenbogen at 9:03a.m.

ORDER OF BUSINESS

Approval of Minutes

It was moved by Commissioner Moore and seconded by Commissioner Bronson to approve the Minutes of March 3, 2009 as amended.

Public Presentation

Gary Wolff

Gary Wolff is a consumer, taxpayer and operates a title insurance consulting company. Mr. Wolff would like for the Commission to provide more consumer awareness for education and communication of responsibility regarding settlement services between the Division of Real Estate and with the Division of Insurance regarding title insurance. Mr. Wolff would also like for the Commission to change the language on the forms so that consumers understand what is required of them. Mr. Wolff has provided a packet to the Commissioners pertaining to his concerns.

Ed Fronheiser

Mr. Fronheiser is the Vice President and School Director for Home Real Estate Academy. Mr. Fronheiser is recommending that we change the current requirements for out of state brokers and salespeople desiring to obtain a Colorado real estate broker's license. Mr. Fronheiser has provided a letter with his concerns and recommendations for the commission to consider.

POLICY MATTERS

Legislative Updates

Marcia Waters addresses the Commissioners regarding the House Bill 09-1091 Carbon Monoxide Alarms has been passed and signed by the governor on March 24, 2009. This now requires the installation of carbon monoxide alarms in all houses.

Commissioner Term Recognition

Marcia Waters thanks and awards Martin Pocs and Paul Goldenbogen for serving as our commissioners.

Appointment of Officers

It was moved by Commissioner Moore and seconded by Commissioner Montoya to appoint Commissioner Bronson as Chair for the Commission.

Motion unanimously carried.

It was moved by Commissioner Bronson and seconded by Commissioner Montoya to appoint Commissioner Moore as Vice Chair.

Motion unanimously carried.

Mediations

It was moved by Commissioner Moore and seconded by Commissioner Pocs to re-appoint Commissioner Bronson to participate in the Gerald Minney mediation on April 13, 2009 at 1:30p.m. and the May Tran mediation on May 6, 2009 at 1:30p.m.

Chairman and Vice Chairman Appointees

It was moved by Commissioner Moore and seconded by Commissioner Pocs to appoint Commissioner Goldenbogen to participate in the Notie Daniels mediation on May 1, 2009 at 9:00a.m.

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.

Kevin Ryan

The investigative report concerning a complaint filed by Donald and Deborah Metz against **Kevin Ryan**, License #**IA10003605** 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 Mr. Ryan.

- c. Complainant alleges that respondent Provide an official bank check in the amount of \$8,496.97 for a buyer's down payment without disclosing the source of the funds.
- b. Contract documents did not reflect the agreed upon terms of the transaction.
- c. Settlement statements did not accurately reflect the terms of the transaction.
- d. These acts may constitute a violation of 12-61-133(1)(a); 12-61-113(1)(n); 12-61-113(1)(t); and 12-61-113(1)(k).
- e. Mr. Ryan's real estate license shall be publicly censured.
- f. He shall pay a fine in the amount of \$7,500.00.
- g. Mr. Ryan's real estate license shall be revoked.

Motion unanimously carried.

Silvia Acevedo

The investigative report concerning a complaint filed by Chandra Sharma and the Commission against **Silvia Acevedo**, License#**EA40001921** 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. Acevedo.

- a. Complaint alleges that respondent knowingly misrepresented the source of the buyer's down payment in one transaction.
- b. Knowingly participated in a transaction which allowed undisclosed payments to be made to the buyer in two separate transactions.
- c. Failed to ensure the transaction documents accurately reflected the terms of the contract.
- d. Failed to ensure settlement statements accurately reflected the terms of the transaction.
- e. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and commission Rule E-5(b).
- f. Ms. Acevedo's real estate license shall be publicly censured.
- g. She shall pay a fine in the amount up to \$20,000.00.
- h. Ms. Acevedo's real estate license shall be revoked.

Motion unanimously carried.

Cynthia Kizzee

The investigative report concerning a complaint filed by Chandra Sharma and the Commission against **Cynthia Kizzee**, License#**FA1317958** 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. Kizzee.

- a. Complainant alleges that respondent acknowledged with initials false and misleading information provided to the lender regarding the use of funds to be paid to a third party at closing.
- b. Knowingly misrepresented the source of funds for her down payment.
- c. Was complicit in failing to ensure accurate settlement statements.
- d. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and Commission Rule E-5(b).
- e. Ms. Kizzee's real estate license shall be publicly censured.
- f. She shall pay a fine in the amount up to \$10,000.00.
- g. Ms. Kizzee's real estate license shall be revoked.

Motion unanimously carried.

Gerald R. Davis

The investigative report concerning a complaint filed by Chandra Sharma and the Commission against **Gerald R. Davis**, License#**ER40043382** 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 Mr. Davis.

- a. Complainant alleges that respondent drafted a false and misleading invoice to a lender and clearly indicated payment was for work completed when he had full knowledge the funds were to benefit the buyer after closing.
- b. Was complicit in misrepresenting the source of funds for the buyer's down payment.
- c. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and Commission Rule E-5(b).
- d. Mr. Davis's real estate license shall be publicly censured.
- e. He shall pay a fine in the amount up to \$10,000.00.
- f. Mr. Davis's license shall be revoked.

Motion unanimously carried.

Leta Diane Koonce

The investigative report concerning a complaint filed by the Commission on its own motion against **Leta Diane Koonce**, License#**ER40043382** 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. Koonce.

- a. Complainant alleges that respondent elevated the purchase price in two transactions to accommodate third party payments.
- b. Failed to accurately reflect concessions in MLS advertisement.
- c. The settlement statements in one transaction did not reflect the terms in the contract.
- d. Settlement statements did not reflect the terms of the transaction.
- e. These acts may constitute a violation of: 12-61-113(1)(b); 12-61-113(1)(n); 12-61-113(1)(k) and Commission Rules E-5(b).
- f. Ms. Koonce's real estate license shall be publicly censured.
- g. She shall pay a fine in the amount up to \$15,000.00.
- h. Ms. Koonce's real estate license shall be revoked.

Motion unanimously carried.

L. Brian Terry

The investigative report concerning a complaint filed by the Commission on its own motion against **L. Brian Terry**, License#**EI1320501** 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 Mr. Terry.

- a. Complainant alleges that respondent elevated the purchase price in three transactions to accommodate third party payments in excess of \$654,000.00.
- b. Settlement statements did not accurately reflect the terms of the transaction.
- c. These acts may constitute a violation of: 12-61-12-61-113(1)(a); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and Commission Rules E-5(b).
- d. Mr. Terry's real estate license shall be publicly censured.
- e. He shall pay a fine in the amount up to \$25,000.00.
- f. Mr. Terry's real estate license shall be revoked.

Motion unanimously carried.

Gerald S. Barton

The investigative report concerning a complaint filed by the Commission of its own motion against **Gerald S. Barton**, License#**FA100013937** was presented to the Commission with accompanying documentation and information. It was moved by Commissioner Montoya and seconded by Commissioner Pocs that this case be deferred.

Motion unanimously carried.

Michael A. Rubridge

The investigative report concerning a complaint filed by the Commission on its own motion against **Michael A. Rubridge**, License#**EI290611** 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 Mr. Rubridge.

- a. Complainant alleges that respondent raised the list price to accommodate a third party payment in excess of \$161,000.
- b. Failed to ensure contract documents accurately reflected the terms of the transaction.
- c. Failed to ensure the settlement statements accurately reflected the disbursements made for the transaction.
- d. Allowed a false and misleading invoice to be submitted indicating the seller concession was for work already completed with full knowledge that was incorrect.
- e. Failed to exercise reasonable skill and care.
- f. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); 12-61-807(2)(b) and Commission Rule E-5.
- g. Mr. Rubridge's real estate license shall be publicly censured.
- h. He shall pay a fine in the amount up to \$5,000.00
- i. Mr. Rubridge's real estate license shall be suspended for three months.

Motion unanimously carried.

Kenneth R. Pulciani

The investigative report concerning a complaint filed by the Commission on its own motion against **Kenneth R. Pulciani**, License#**FA10224625** 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 Mr. Pulciani.

- a. Complainant alleges that respondent failed to ensure contract documents accurately reflected the terms of the transaction.

- b. Failed to ensure the settlement statements accurately reflected the disbursements made for the transaction.
- c. Allowed a false and misleading invoice to be submitted indicating the seller concession was for work already completed with full knowledge that was incorrect.
- d. Failed to exercise reasonable skill and care.
- e. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); 12-61-807(2)(b) and Commission Rule E-5.
- f. Mr. Pulciani's real estate license shall be publicly censured.
- g. He shall pay a fine in the amount up to \$10,000.00.
- h. Mr. Pulciani's real estate license shall be revoked.

Motion unanimously carried.

Note: Break at 10:15a.m. to 10:20a.m.

Heather J. Moore

The investigative report concerning a complaint filed by the Commission on its own motion against **Heather J. Moore**, License#**FA40039407** 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. Moore.

- a. Complainant alleges that respondent failed to respond to the Commission request for information as required.
- b. Was in receipt of the seller concession that was paid for a false and misleading invoice.
- c. The money received into Moore's account was ultimately deposited into the buyer's account.
- d. These acts may constitute a violation of: 12-61-113(1)(t); 12-61-113(1)(n); 12-61-113(1)(k) and Commission Rule E-21.
- e. Ms. Moore's real estate license shall be publicly censured.
- f. She shall pay a fine in the amount up to \$7,500.00.
- g. Ms. Moore's real estate license shall be revoked.

Motion unanimously carried.

Note: Commissioner Goldenbogen recuses himself from the meeting at 10:21a.m.

Paul S. Sutherland

The investigative report concerning a complaint filed by Theodore J. Bahora against **Paul S. Sutherland**, License#**FA40003644** 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 Mr. Sutherland.

- a. Complaint states that respondent failed to disclose the appropriate building permits were not obtained for the property he was residing in and was having work performed on behalf of his father in-law's trust.
- b. Performed brokerage services under a name other than the firm which he was licensed.
- c. Failed to establish brokerage relationships in writing.
- d. Worked as a transaction broker for both buyer and seller, while being related to the seller and having monetary interest in the property.
- e. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); 12-61-807(2)(b) and Commission Rules E-25 and E-35.
- f. Mr. Sutherland's real estate license shall be publicly censured.
- g. Mr. Sutherland's real estate license shall be suspended for thirty (30) days.
- h. He shall pay a fine in the amount of \$5,000.00.
- i. Mr. Sutherland shall successfully complete real estate coursework in brokerage relationships.

Motion unanimously carried.

Note: Commissioner Goldenbogen returns to the meeting at 10:23a.m.

Alvin R. Smith

The investigative report concerning a complaint filed by the Commission on its own motion against **Alvin R. Smith**, License#**IA1314046** 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 Mr. Smith.

- a. Complainant states that respondent pled guilty on March 14, 2003 to Sex Assault on Child by One in Position of Trust, a Class 3 Felony, and Unlawful Sexual Contact, a Class 1 Misdemeanor.
- b. Smith failed to report the guilty pleas as required.
- c. These acts constitute a violation of: 12-61-113(1)(m) and 12-61-113(1)(m.6).
- d. Mr. Smith's real estate license shall be publicly censured.
- e. He shall pay a fine in the amount up to \$5,000.00.
- f. Mr. Smith's real estate license shall be revoked.

Motion unanimously carried.

Maria R. Gallucci

The investigative report concerning a complaint filed by the Commission on its own motion against **Maria R. Gallucci**, License#**FA100002515** 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. Gallucci.

- a. Complainant states that respondent pled guilty on March 2, 2009, to Forgery, a Class 5 Felony and failed to report the guilty plea as required.
- b. These acts 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.
- c. Ms. Gallucci's real estate license shall be publicly censured.
- d. She shall pay a fine in the amount up to \$7,500.00.
- e. Ms. Gallucci's real estate license shall be revoked.

Motion unanimously carried.

Brian A. Furer

The investigative report concerning a complaint filed by the Commission on its own motion against **Brian A. Furer**, License#**EA40047921** 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 Mr. Furer.

- a. Complainant states that respondent pled guilty to a count of Controlled Substance Possession, a Class 4 felony, and the court accepted the plea on March 20, 2009.
- b. These acts constitute a violation of: 12-61-113(1)(m).
- c. Mr. Furer's real estate license shall be publicly censured.
- d. He shall pay a fine in the amount of \$250.00
- e. Mr. Furer's probationary license shall run concurrent with criminal judgment.

Motion unanimously carried.

Note: Commissioner Montoya recuses himself from the meeting at 10:26a.m.

Cindy L. Knespel

The investigative report concerning a complaint filed by the Commission on its own motion against **Cindy L. Knespel**, License#**FA40005920** 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. Knespel.

- a. Complainant alleges that respondent raised the purchase price to accommodate a third party payment identified as a consulting fee.
- b. Failed to ensure the settlement statements accurately reflected the transaction.
- c. Made a false and misleading advertisement in the MLS by not accurately reflecting the listing price and the seller concessions.
- d. These acts constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n); 12-61-113(1)(k) and Commission Rule E-5.
- e. Ms. Knespel's real estate license shall be publicly censured.
- f. She shall pay a fine in the amount of \$7,500.00.
- g. Ms. Knespel's real estate license shall be suspended for ninety (90) days.

Motion unanimously carried.

Note: Commissioner Montoya returns to the meeting at 10:27a.m.

Brian Wilcox

Marcia Waters addresses the Commissioners regarding the error of issuance of a real estate license to Mr. Wilcox. It was recommended by the Commissions counsel, Terry Hugar, to reserve this case for executive session.

LICENSING MATTERS

Michael Ford

The Commission received the preliminary advisory opinion application of Michael Ford for a real estate broker's license together with accompanying documentation and information supplied by Mr. Ford. It was recommended that this case be deferred into executive session.

Motion unanimously carried.

Tami Butkovich

The Commission received the preliminary advisory opinion application of Tami Butkovich for a real estate broker's license together with accompanying documentation and information supplied by Ms. Butkovich. It was moved by Commissioner Montoya and seconded by Commissioner Pocs to issue a negative opinion.

Motion unanimously carried.

Astrid Ziedins

The Commission received the application of Astrid Ziedins for a real estate broker's license together with accompanying documentation and information supplied by Ms.

Ziedins. It was moved by Commissioner Bronson and seconded by Commissioner Pocs to approve application.

Motion unanimously carried.

Alan Miczo

The Commission received the preliminary advisory opinion application of Alan Miczo for a real estate broker's license together with accompanying documentation and information supplied by Mr. Miczo. It was moved by Commissioner Bronson and seconded by Commissioner Pocs to deny application.

Motion unanimously carried.

HEARING MATTERS

INITIAL DECISION

Linda P. Edwards

It was moved and seconded by the Commission to concur with the findings in the Initial Decision rendered by the Administrative Law Judge in Case No. RC 2008-0026, concerning the Colorado Real Estate Commission vs. Linda P. Edwards, license number EA336211 to revoke her license.

COUNTER OFFERS

Ki Tribbett

The counter offer that was submitted by Ki Tribbett was rejected.

Charles Denver Parks

It was moved by Commissioner Bronson and seconded by Commissioner Pocs that the counter offer that was submitted by Charles Denver Parks be accepted with the amendment of coursework that the Commission deems appropriate.

Motion unanimously carried.

EXECUTIVE SESSION

It was moved and seconded and approved 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 the following cases.

Attorney General Terry Hugar advised the Commission on the licensing matters of Sean Zweifel and Michael Ford and on the motion of Brian Wilcox. Mr. Hugar also advised on the counter offer of Denise Price.

It was moved by Commissioner Moore and seconded by Commissioner Pocs to adjourn out of Executive Session at 11:12a.m.

LICENSING MATTERS

Brian Wilcox

It was moved by Commissioner Bronson and seconded by Commissioner Pocs to accept the recommendation for motion to offer Mr. Wilcox 90 days to pass the real estate Broker's exam. If the exam is not completed within the 90 days, his license may be revoked.

Motion unanimously carried.

Michael Ford

It was moved by Commissioner Bronson and seconded by Commissioner Moore to deny the application of Mr. Ford.

Motion unanimously carried.

Denise Price

It was moved by Commissioner Moore and seconded by Commissioner Pocs to accept the counter offer that was submitted by Denise Price.

Motion unanimously carried.

The Colorado Real Estate Commission meeting adjourned at 11:15 a.m. on April 7, 2009.

Paul Goldenbogen, Chairman

Kristin Bronson, Vice Chairman

Charles "Buzz" Moore, Commissioner

Martin Pocs, Commissioner

Pres Montoya, Commissioner

**Erin Toll, Director
Division of Real Estate**