

MINUTES

**COLORADO REAL ESTATE COMMISSION MEETING
June 1, 2010**

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
June 1, 2010
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 1250-C
DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on June 1, 2010. Those Commissioners in attendance were Chair Gina Piccoli, Vice-Chair Douglas Ring, Kristin Bronson, Charles “Buzz” Moore and Jill Ozarski. Also attending were Marcia Waters, Acting Director, Mary Kanaly, Real Estate Program Manager; Penny Elder, ESP Program Manager; Aaron Acker, ESP Settlement Coordinator; Terry Hugar, Attorney General’s Office; Phil Davis, Attorney General’s Office; Joan Smith, Conflicts Counsel – Attorney General’s Office, and several members of the Commission’s Staff.

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 Commissioner Piccoli at 9:04 a.m.

ORDER OF BUSINESS

Approval of Minutes – April 13, 2010

It was moved by Commissioner Ring and seconded by Commissioner Moore to approve the Minutes of April 13, 2010, as presented.

Motion unanimously carried.

Approval of Minutes – May 13, 2010

It was moved by Commissioner Ring and seconded by Commissioner Ozarski to approve the Minutes from the Emergency Meeting on May 13, 2010, as presented.

Motion unanimously carried.

PUBLIC PRESENTATION:

Gary Wolf requested that the Commission consider adopting a position statement or making modifications to real estate forms concerning title insurance and the closing process in order to education consumers about protecting themselves from an industry that does not require errors and omissions insurance, a surety bond or a fidelity bond.

POLICY MATTERS:

Forms Committee Update-

Kent Levine provided an update to the Commission about changes to forms that are on the horizon due to new legislation. There will be a rulemaking hearing at the August 3, 2010 Real Estate Commission meeting to make the necessary revisions to 34 forms and contracts as a result of the implementation of HB-1133, the Colorado Foreclosure Protection Act, that will go into effect January 1, 2011.

B-Rules

Sean Rhyne advised the Commission about revisions and updates to the “B” Rules concerning education. The “B” Rules will also be considered at the rulemaking hearing on August 3, 2010.

Rule E-48

Mary Kanaly advised the Commission about revisions and updates to Rule E-48 in order to be compliant with the Broker Lien Law. Rule E-48 will be considered in an emergency rulemaking hearing on August 3, 2010.

Mediation Representative-

It was moved by Commissioner Bronson and seconded by Commissioner Ring to approve Commissioner Moore as the Commission’s representative for a mediation hearing scheduled for August 19, 2010.

Motion unanimously carried.

Legislative Update-

- | | |
|---------|---|
| HB-1141 | The Governor has signed this bill, which will include moving the Mortgage Broker program from a Director-based model to a Board model and changes the Division of Real Estate from a Type I agency to a Type II agency. |
| HB-1278 | This bill is awaiting the Governor’s signature and creates a Homeowner’s Association Information and Resource Center within the Division of Real Estate. The bill includes provisions for two FTE and there will be no investigations or enforcement, merely the collection and maintenance of information. |
| HB-1191 | The Governor has signed this bill concerning the Conservation Easement Program. Up to \$26 million per year for years 2011, 2012 and 2013 will be eligible for conservation easement credits. |

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.

Rocky Ruffner-

The investigative report concerning a complaint filed by the Commission on its own motion against **Rocky R. Ruffner**, License #ER 100002578 was presented to the Commission with accompanying documentation and information supplied by Mr. Ruffner. 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. Ruffner.

- a. **Rocky Ruffner** was licensed as a Real Estate Broker from January 1, 2010 through March 2, 2010. Mr. Ruffner was actively licensed, but did not have individual Errors and Omissions insurance, or E&O insurance coverage for his company, Rocky's Real Estate. Mr. Ruffner's license was inactivated by the Division during a routine audit in March. Mr. Ruffner attempted to reactivate his Broker's license, and his company license by submitting falsified documentation of active E&O insurance on March 12 and March 16, 2010; and
- b. These acts may constitute a violation of 12-61-113 (1) (k), (n), (t), and (p); 12-61-103.6, and Commission Rule D-14; and
- c. Mr. Ruffner's real estate broker's license shall be publicly censured; and
- d. His real estate broker's license shall be revoked; and
- e. Mr. Ruffner shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

Dorothea "Dee" Mellor-

The investigative report concerning a complaint filed by the Commission on its own motion against **Dorothea "Dee" Mellor**, License #FA 1323195 was presented to the Commission with accompanying documentation and information supplied by Ms. Mellor. 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. Mellor.

- a. The Division opened a complaint against **Ms. Dorothea "Dee" Mellor** based on a complaint received from her against another broker. The Division alleges that Ms. Mellor received an \$1,800.00 payment from the seller of a property, which she gave to the buyer for repairs needed on the property in order for it to meet FHA financing regulations. This payment was not placed in a trust account, and was not listed on the HUD one settlement sheet. The payment was also not reflected on the contract to buy and sell; and

- b. These acts may constitute a violation of 12-61-113 (1) (f), (g), (g.5), (k), and (n); 12-61-805 (1) (b), and Commission Rule E-5; and
- c. Ms. Mellor's real estate broker's license shall be publicly censured; and
- d. She shall pay a fine to the Commission up to \$12,500.

Motion unanimously carried.

Jennifer Reins-

The investigative report concerning a complaint filed by Erich Priester for Kevin Boxer against **Jennifer Reins**, License #EA 40046358 was presented to the Commission with accompanying documentation and information supplied by Ms. Reins. 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. Reins.

- a. **Jennifer Reins** operated a short term property management company, Colorado Convention Connections. The company was involved in leasing out private homes and condos to attendees of the Democratic National Convention in the summer of 2008. Ms. Reins took fees from the homeowners for the purpose of marketing the properties, negotiated leases with renters, and collected deposits, and rental fees from them. Ms. Reins failed to deposit these funds into trust accounts, and in many cases also failed to forward the lease payments to the property owners as she had contracted to; and
- b. These acts may constitute a violation of 12-61-113 (1) (a), (c), (e), (f), (g), (g.5), (i), (k), (n), (t); 12-61-807 (b) and (1) (c); 12-61-103 (10); and Commission rules E-1, E-2, E-8, and E-35; and
- c. Ms. Reins' real estate broker's license shall be publicly censured; and
- d. Her license shall be revoked; and
- e. Ms. Reins shall pay a fine to the Commission up to \$25,000.

Motion unanimously carried.

Benny Espinoza-

The investigative report concerning a complaint filed by Desiree D. Graniel against **Benny C. Espinoza**, License #EI 186431 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. Espinoza.

- a. In May 2009, **Benny Espinoza** contracted with a homeowner to be the selling broker for their property. The property did not sell, and went into foreclosure. Mr. Espinoza told the homeowners they had to vacate the property, which was incorrect. He then removed personal property from the home without the homeowner's consent. A police report was filed and Mr. Espinoza pled guilty to property damage. He received a deferred judgment in the case. Mr. Espinoza has

- previously been disciplined by the Commission, and refused to provide documents requested in this investigation; and
- b. These acts may constitute a violation of 12-61-113 (1) (k), (n), and (t) and, Commission Rule E-21; and
 - c. Mr. Espinoza's real estate broker's license shall be publicly censured; and
 - d. His license shall be revoked; and
 - e. Mr. Espinoza shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Robert Vialpando-

The investigative report concerning a complaint filed by Suzanne L. Hough and the Commission on its own motion against **Robert Vialpando**, License #FA 40030469, 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. Vialpando.

- a. On April 13, 2010 **Robert Vialpando** pled guilty to second degree forgery in a case that involved a real estate transaction; and
- b. These acts may constitute a violation of 12-61-113 (1)(m), (1)(n) and (1)(t); and
- c. Mr. Vialpando's real estate broker's license shall be publicly censured; and
- d. His license shall be revoked; and
- e. Mr. Vialpando shall pay a fine to the Commission up to \$5,000.

Motion unanimously carried.

Michael Jacoby-

The investigative report concerning a complaint filed by Fred Myers against Michael Jacoby, License #FA 40029764, was presented to the Commission with accompanying documentation and information supplied by Mr. Jacoby. 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. Jacoby.

- a. **Michael Jacoby** acted as the transaction broker on a property, and provided the buyer with the funds needed for the down payment, without disclosing the loan on the HUD 1. He also failed to note on the HUD 1 that a \$41,000.00 payment listed as a donation to a non-profit grant company was actually being paid back to the buyer so the loan of the down payment could be re-paid; and
- b. These acts may constitute a violation of 12-61-113 (1) (k), (n), (t), (q); 12-61-805 (1) (b), and Commission rule E-5; and
- c. Mr. Jacoby's real estate broker's license shall be publicly censured; and
- d. His license shall be revoked; and
- e. Mr. Jacoby shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

LICENSING MATTERS:

Kent Martin-

The Commission considered the License Application of Kent Martin for a real estate broker's license together with accompanying documentation and information supplied by Mr. Martin. It was moved and seconded by the Commission to authorize the issuance of a restricted broker's license for a period of ten years.

Motion unanimously carried.

HEARING MATTERS:

Mansoor Shawn Shah-

The Commission reconsidered discipline in the case of Mansoor Shawn Shah in light of the information that Mr. Shah has refused the settlement offer presented by the Commission and is noncompliant with the restitution payments. It was moved by Commissioner Ring and seconded by Commissioner Ozarski to revoke Mr. Shah's real estate broker's license.

Motion unanimously carried.

Steven Fraire-

The Commission was presented with a counter-offer from Steven J. Fraire. After discussion, it was moved and seconded by the Commission to reject the counteroffer.

Motion unanimously carried.

Commissioner Moore has recused himself and leaves the room.

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 conflicts counsel concerning Respondent's Motion to Stay Final Agency Order in the case of Alfred Bartlett, Case Number RC 2009-0004.

Commissioner Moore has recused himself and is not present in the room. **Motion carried.**

It was moved by Commissioner Ring and seconded by Commissioner Ozarski to adjourn out of Executive Session.

Commissioner Moore has recused himself and is not present in the room. **Motion carried.**

Alfred Bartlett – Motion to Stay

It was moved by Commissioner Bronson and seconded by Commissioner Ring to grant a limited Stay of Revocation that will terminate upon 1) failure to appeal; 2) failure to file a continued stay at the time of appeal; or 3) on Appellate Court ruling on Motion for Continued Stay.

Commissioner Moore is recused and is not present in the room. **Motion carried.**

Commissioner Moore returns to the meeting.

Adjourn-

It was moved by Commissioner Moore and seconded by Commissioner Ozarski to adjourn.

Motion unanimously carried.

The Real Estate Commission meeting adjourned at 10:32 p.m. on June 1, 2010.

Gina Piccoli, Chairwoman

Douglas Ring, Vice Chair

Jill Ozarski, Commissioner

Kristin Bronson, Commissioner

Charles “Buzz” Moore, Commissioner

**Marcia Waters, Acting 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 June 1, 2010. The Commission publicly announced the subject matter of the Executive Session, which was to confer with the Commission's conflicts counsel concerning Respondent's Motion to Stay Final Agency Order in the case of Alfred Bartlett, Case Number RC 2009-0004.

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 June 1, 2010, constituted privileged attorney-client communications and, therefore, the contents of such discussions are not reflected within these minutes.

Joan Smith, #
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 June 1, 2010, was confined to the topics authorized for discussion pursuant to §24-6-402(3)(a)(II), C.R.S.

Gina Piccoli, Chairwoman
Colorado Real Estate Commission