

MINUTES

**COLORADO REAL ESTATE COMMISSION MEETING
October 5, 2010**

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
October 5, 2010
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 1250-C
DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on October 5, 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; 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 9:00 a.m.

ORDER OF BUSINESS

Approval of Minutes – August 3, 2010

It was moved by Commissioner Ring and seconded by Commissioner Moore to approve the Minutes of August 3, 2010, as presented.

Motion unanimously carried.

POLICY MATTERS:

2011 CREC Calendar

It was moved by Commissioner Bronson and seconded by Commissioner Ring to set 2011 Colorado Real Estate Commission meeting dates as follows:

2011 CREC Meeting Dates

February 1, 2011
April 5, 2011
June 7, 2011
August 2, 2011
October 4, 2011
December 6, 2011

Motion unanimously carried.

Delegation of Authority-Cleanup of Commission Position Statements

It was moved by Commissioner Ring and seconded by Commissioner Moore to authorize staff to clean up any typographical errors contained within the Commission Position Statements and also to delete any outdated statutes referenced within the Position Statements.

Motion unanimously carried.

Good News Corner-

Marcia Waters congratulated Commissioner Doug Ring for winning seven ribbons for his submissions at the Colorado State Fair this summer.

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.

Phillip Foster-

The investigative report concerning a complaint filed by Stephen Weddel against **Phillip B. Foster**, License #ER 124001 was presented to the Commission with accompanying documentation and information supplied by Mr. Foster. 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. Foster.

- a. The complainant in this case alleges that in 2005 and 2006 **Phillip Foster** was managing two investment group LLC's involved in property development ventures. After selling the assets of the LLC's, Foster lent the proceeds of the sale to another investment group he was also managing at the time. This "loan" was done without the knowledge or approval of the other LLC members. The complainant alleges that he has not been repaid the \$75,000.00 that was taken without his knowledge; and
- b. These acts may constitute a violation of 12-61-113 (1) (n); 12-61-113 (1) (t); 12-61-113 (1) (g); and 12-61-113 (1) (g.5); and
- c. Mr. Foster's real estate broker's license shall be publicly censured; and
- d. His real estate broker's license shall be revoked; and
- e. Mr. Foster shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

Hender Adams-

The investigative report concerning a complaint filed by Donald and Susan Speight against **Hender Adams**, License #FA 40036376 was presented to the Commission with accompanying documentation and information supplied by Ms. Adams. 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. Adams.

- a. The complainants in this case allege that Ms. Adams was the listing broker in a transaction they were involved in as buyers. In August, 2007, they allege that they believed they were purchasing their home from a private seller in a short sale, and learned at the closing that the seller was actually an investor who had purchased the home from the seller using the complainants funds, then sold it to the complainants on the same day in a double closing with an increased price to them of \$47,000.00. The complainants allege that Ms. Adams was aware of these circumstances of the transaction, and did not disclose the details to them, and also did not disclose the true identity of the sellers of the property; and
- b. These acts may constitute a violation of 12-61-113 (1) (c); 12-61-113 (1) (j); 12-61-113 (1) (k); 12-61-113 (1) (n); 12-61-113 (1) (t); 12-61-804 (1) (b); and Commission Rule E-5; and
- c. Ms. Hender's real estate broker's license shall be publicly censured; and
- d. Ms. Hender's real estate broker's license shall be revoked; and
- e. She shall pay a fine to the Commission up to \$15,000.

Commissioner Bronson is opposed. **Motion carried.**

Cheryl Kayfes and Michelle Kayfes-

Based on the allegations in the above case, staff opened a complaint against the buyer's brokers, **Cheryl and Michelle Kayfes**. Staff alleged that the respondents were aware that the buyers received funds at the closing that was not reflected on the HUD.

It was moved by Commissioner Ring and seconded by Commissioner Moore to dismiss the complaint against both Cheryl Kayfes and Michelle Kayfes as recommended by staff.

Motion unanimously carried.

Cindie Dexter-

The investigative report concerning a complaint filed by Florine J. Orona against **Cindie J. Dexter**, License #FA 100027403 was presented to the Commission with accompanying documentation and information supplied by Ms. Dexter. 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. Dexter.

- a. The complainant in this case alleges that **Ms. Dexter** executed two Exclusive Right-to-Sell contracts as a transaction broker after her license had gone inactive; and
- b. These acts may constitute a violation of 12-61-113 (1) (k), and 12-61-102; and
- c. Ms. Dexter's real estate broker's license shall be publicly censured; and
- d. Her license shall be suspended for up to 90 days upon reactivation of the license; and
- e. Ms. Dexter shall pay a fine to the Commission up to \$1,000.

Motion unanimously carried.

Brian Wilson-

The investigative report concerning a complaint filed by the Commission on its own motion against **Brian T. Wilson**, License #FA 100003036 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. Wilson.

- a. On May 26, 2010 **Brian T. Wilson** was found guilty in Grand County Colorado of five counts of Attempted Murder, six counts of Felony Menacing, and 13 additional criminal and traffic violations. Mr. Wilson was sentenced to 32 years in the Department of Corrections, and is currently serving that sentence. Mr. Wilson did not report these convictions to the Commission as required; and
- b. These acts may constitute violations of 12-61-113 (1) (k); 12-61-113 (1) (m), and 12-61-113 (1) (m.6); and
- c. Mr. Wilson's real estate broker's license shall be publicly censured; and
- d. Mr. Wilson's real estate broker's license shall be revoked; and
- e. He shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Gregg Ault-

The investigative report concerning a complaint filed by the Commission on its own motion against **Gregg A. Ault**, License #FA 40042928 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. Ault.

- a. On July 16, 2010 **Gregg Ault** pled guilty in Larimer County to one count of Felony Menacing, and Driving under the Influence of Alcohol. He was sentenced to five years supervised probation, community service and to submit to mental health, substance abuse and alcohol abuse evaluations; and
- b. These acts may constitute violations of 12-61-113 (1) (m); and 12-61-113 (1) (m.6); and

- c. Mr. Ault's real estate broker's license shall be publicly censured; and
- d. Mr. Ault's real estate broker's license shall be probationary to run concurrent with the terms of his criminal probation; and
- e. Mr. Ault shall pay a fine to the Commission up to \$5,000.

Motion unanimously carried.

John Norgord-

The investigative report concerning a complaint filed by the Commission on its own motion against **John Norgord**, License #ER 40046961, was presented to the Commission with accompanying documentation and information supplied by Mr. Norgord. 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. Norgord.

- a. Colorado Real Estate Commission Staff opened a complaint against **John Norgord** alleging that he has not reconciled his trust accounts as required, and that there are shortages in those accounts. An audit was conducted of Mr. Norgord's property management company, Dowda Realty Inc. in Colorado Springs on July 12, 2010. The trust accounts were found to have not been reconciled and also to be short by approximately \$176,468.29;
- b. These acts may constitute violations of 12-61-113 (1) (g); 12-61-113 (1) (g.5); 12-61-113 (1) (k) and Commission rule E-1; and
- c. A stipulated agreement will allow Mr. Norgord to continue to service existing clients for a period of 30 days, during which time a merger between his company and a new managing firm will take place; and
- d. Mr. Norgord's real estate broker's license shall be publicly censured; and
- e. Mr. Norgord's real estate broker's license shall be revoked; and
- f. He shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

Scott Waldron-

The investigative report concerning a complaint filed by the Commission on its own motion against **Scott A. Waldron**, License #IA 40014332, was presented to the Commission with accompanying documentation and information supplied by Mr. Waldron. 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. Waldron.

- a. On July 27, 2010 **Scott Waldron** pled guilty in Grand County Court to one count of offering a False Instrument for Recording, a class one misdemeanor. The false instrument which Mr. Waldron recorded was a Release of Deed of Trust on a

- property the respondent owned in an attempt to clear the loan he had on that property; and
- b. These acts may constitute violations of 12-61-113 (1) (m); 12-61-113 (1) (n) and, 12-61-113 (1) (t); and
 - c. Mr. Waldron's real estate broker's license shall be publicly censured; and
 - d. Mr. Waldron's real estate broker's license shall be revoked; and
 - e. He shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Terrence Coffey-

The investigative report concerning a complaint filed by the Commission on its own motion against **Terrence V. Coffey**, License #EI 150171, 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. Coffey.

- a. On October 21, 2009 **Terrence Coffey** was found guilty of Shoplifting in Denver Municipal Court. On November 5, 2009 Mr. Coffey received a deferred judgment on a misdemeanor theft charge in Lone Tree Colorado. Mr. Coffey previously entered into a stipulated agreement with the Commission on October 4, 2007 after being found guilty of misdemeanor theft. Mr. Coffey received a Public Censure, and a fine of \$500.00. Although Mr. Coffey's license has expired, he is eligible for reinstatement through October 2012; and
- b. These acts may constitute violations of 12-61-113 (1) (m); and
- c. Mr. Coffey's real estate broker's license shall be publicly censured; and
- d. Mr. Coffey's real estate broker's license shall be revoked; and
- e. He shall pay a fine to the Commission up to \$2,500.

Motion unanimously carried.

Lisa Jefferson-

The investigative report concerning a complaint filed by Jim Sena and the Commission on its own motion against **Lisa R. Jefferson**, License #EI 40020530, was presented to the Commission with accompanying documentation and information supplied by Ms. Jefferson. 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. Jefferson.

- a. The Complainant in this case alleges that **Lisa Jefferson** approached him about investing in a restaurant she planned to open in Mexico. When the complainant said he did not have the money to invest, Ms. Jefferson suggested that he sell his house, and use the proceeds to invest. Ms. Jefferson ended up purchasing the complainants home, and using his proceeds to invest in her restaurant. Ms.

Jefferson told the complainant that he would be able to buy his house back within a year, during which time he could continue to live in the home, and pay rent to Ms. Jefferson. Ms. Jefferson never opened the restaurant in Mexico, the complainant's house went into foreclosure, and Ms. Jefferson used the complainant's funds for personal expenses.

- b. These acts may constitute violations of 12-61-113 (1) (b), (k), (n), (q) and (t), and Commission rules E-5 and E-25; and
- c. Ms. Jefferson's real estate broker's license shall be publicly censured; and
- d. Ms. Jefferson's real estate broker's license shall be revoked; and
- e. She shall pay a fine to the Commission up to \$12,500.

Motion unanimously carried.

Francia Arce-

The investigative report concerning a complaint filed by Jim Sena and the Commission on its own motion against **Francia E. Arce**, License #FA 40036628, was presented to the Commission with accompanying documentation and information supplied by Ms. Arce. 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. Arce.

- a. Staff opened a complaint against **Francia Arce** alleging that she signed the transaction documents prepared by Ms. Jefferson without actually being a part of the transaction in any way for a fee of \$500.00. Ms. Arce admitted that she did meet the buyer or seller, and that she did not fill out the documents she signed for Ms. Jefferson; and This is a possible violation of :
- b. These acts may constitute violations of 12-61-113 (1) (n) and (t); and
- c. Ms. Arce's real estate broker's license shall be publicly censured; and
- d. Ms. Arce's real estate broker's license shall be revoked; and
- e. She shall pay a fine to the Commission up to \$5,000.

Commissioner Bronson is opposed. **Motion carried.**

Tamla Whitaker-

Staff opened a complaint against **Tamla P. Whitaker** alleging that she signed the transaction documents for the complaint filed against Ms. Jefferson as a transaction broker for the sale of the property from the Jefferson to another buyer. Ms. Whitaker denied that she had any involvement with this transaction, has no knowledge of the transaction or of the buyer. She denied that her signature appears on the documents.

It was moved by Commissioner Moore and seconded by Commissioner Ring to dismiss the complaint against Tamla Whitaker as recommended by staff.

Motion unanimously carried.

Eleanor Dagg-

The investigative report concerning a complaint filed by the Commission on its own motion against **Eleanor Dagg**, License #IA 1103715, was presented to the Commission with accompanying documentation and information supplied by Ms. Dagg. 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. Dagg.

- a. After completing the investigation of Complaints 2010010010, 2010040358 and 2010040359, staff opened a complaint against **Eleanor Dagg** for her involvement in the transaction. Staff alleges that Ms. Dagg signed the transaction documents as a transaction broker in the sale of the complainant's home to Ms. Jefferson, without having been involved in the transaction. Ms. Dagg admitted that she did not fill out the contracts, but that Ms. Jefferson did, she said she had one phone conversation with the complainant, and met him for the first time at the closing. Ms. Dagg said she received a referral fee for this transaction. Staff also alleges that Ms. Dagg knew that the complainant was to remain in the home, and that Ms. Jefferson was not planning on living in the house, even though she was receiving a loan which required owner occupancy.
- b. These acts may constitute violations of 12-61-113 (1) (k), and (n); 12-61-807 (2) (b) and, Commission Rule E-5; and
- c. Ms. Dagg's real estate broker's license shall be publicly censured; and
- d. Ms. Dagg's real estate broker's license shall be revoked; and
- e. She shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

LICENSING MATTERS:

Chad Broder-

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

Motion unanimously carried.

Lori Schooley-

The Commission considered the Preliminary Advisory Application of Lori Schooley for a real estate broker's license together with accompanying documentation and information supplied by Ms. Schooley. It was moved and seconded by the Commission to issue a positive opinion, conditional upon her paying a \$4,000 fine to the State of Alaska.

Motion unanimously carried.

Lawrence LiCausi-

The Commission voted to defer consideration of a Preliminary Advisory Application from Lawrence LiCausi until the next meeting scheduled for December 7, 2010.

Motion unanimously carried.

Jeffrey Shaw

The Commission voted to defer consideration of the License Application of Jeffrey Shaw for a real estate broker's license until investigations have been completed and concluded by the Grievance Board of the Supreme Court Attorney Regulation Board.

Motion unanimously carried.

HEARING MATTERS:

Daniel C. Chilcote – Initial Decision

It was moved and seconded by the Commission to concur with the findings in the Initial Decision Upon Default in Case Number RC 2010-0001, and uphold the decision of the Administrative Law Judge in the matter of the Colorado Real Estate Commission vs. Daniel C. Chilcote, License #FA 1324237. Mr. Chilcote's real estate broker's license is revoked.

Motion unanimously carried.

Ernest K. Jones – Initial Decision

It was moved and seconded by the Commission to concur with the findings in the Initial Decision Upon Default in Case Number RC 2009-0024, and uphold the decision of the Administrative Law Judge in the matter of the Colorado Real Estate Commission vs. Ernest K. Jones, License #FA 40040900. Mr. Jones' real estate broker's license is revoked.

Motion unanimously carried.

Kimberly P. Preston – Initial Decision

It was moved and seconded by the Commission to concur with the findings in the Initial Decision Upon Default in Case Number RC 2010-0002, and uphold the decision of the Administrative Law Judge in the matter of the Colorado Real Estate Commission vs. Kimberly P. Preston, License #EA 1322895. Ms. Preston's real estate broker's license is revoked.

Motion unanimously carried.

Michael Rivera-

The Commission was presented with a counteroffer from Michael Rivera. After discussion, it was moved and seconded by the Commission to reject the counteroffer. Mr. Rivera's real estate broker's license shall be publicly censured, his license will be

restricted and require supervision for a period of five years, and he shall pay a fine to the Commission in the amount of \$5,000. Further, he will be required to comply with licensing laws and successfully complete real estate education courses in Trust Accounts, Ethics and Property Management.

Motion unanimously carried.

Zack Medina-

The Commission was presented with a counteroffer from Zach Medina. After discussion, it was moved and seconded by the Commission to reject the counteroffer.

Motion unanimously carried.

Kevin R. Ryan

The Commission voted to defer reconsideration of the counteroffer from Kevin R. Ryan until the next meeting scheduled for December 7, 2010 to determine whether Mr. Ryan has fully completed with the terms of his Stipulation and Final Agency Order dated November 24, 2009.

Motion unanimously carried.

Rocky Ruffner-

The Commission was presented with a counteroffer from Rocky Ruffner. After discussion, it was moved and seconded by the Commission to partially accept the counteroffer. Mr. Ruffner's real estate broker's license shall be publicly censured, his license shall be suspended for a period of 30-days and he shall pay a fine in the amount of \$3,500 to the Commission. Mr. Ruffner's license will be restricted and he will require supervision by a non-family member. Finally, he must successfully complete real estate education courses in Ethics, Insurance in Real Estate and Law I-GRI.

Commissioners Moore, Bronson, Ozarski and Piccoli are opposed. **Motion fails.**

It was then moved and seconded by the Commission to reject the counteroffer submitted by Mr. Ruffner and uphold the original settlement offer.

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 legal counsel concerning a Preliminary Advisory Opinion of Donald Siegel and a counteroffer from James Elterman.

Motion unanimously carried.

It was moved by Commissioner Bronson and seconded by Commissioner Moore to adjourn out of Executive Session.

Donald Siegel – Preliminary Advisory Opinion

It was moved and seconded by the Commission to defer consideration of a Preliminary Advisory Opinion from Donald Siegel until the next Commission meeting scheduled for December 7, 2010 in order to give staff sufficient time to obtain court documents.

Motion unanimously carried.

James H. Elterman-

The Commission was presented with a counteroffer from James H. Elterman. After discussion, it was moved and seconded by the Commission to reject the counteroffer and uphold the original settlement offer.

Motion unanimously carried.

The Real Estate Commission meeting adjourned at 11:05 on October 5, 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 October 5, 2010. The Commission publicly announced the subject matter of the Executive Session, which was to confer with the Commission's legal counsel concerning a Preliminary Advisory Opinion of Donald Siegel and a counteroffer from James Elterman.

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 5, 2010, 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 5, 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