

**MINUTES**

**COLORADO REAL ESTATE COMMISSION MEETING**

**FEBRUARY 3, 2009**

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**MINUTES**  
**COLORADO REAL ESTATE COMMISSION MEETING**  
**FEBRUARY 3, 2009**  
**COLORADO DIVISION OF REAL ESTATE**  
**1560 BROADWAY, SUITE 925**  
**DENVER, CO 80202**

A Colorado Real Estate Commission public meeting was held on February 3, 2009. Those Commissioners in attendance were Chairman Paul Goldenbogen, Vice Chair Kristin 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.

**PERMANENT RULE MAKING HEARING**

The permanent rule making hearing is called to order by Chairman Goldenbogen to hear oral testimony and to accept written submission related to the proposed rule referenced in the Colorado Code of Regulations known as 4CCR 725-1 and more commonly known as permanent rule, rule F-7 Commission Approved Forms Dual Status Disclosure and permanent rule, rule F-7 Commission Approved Forms 2004 Forms.

This is a permanent rule making hearing pursuant to the process set forth in the administrative procedure act. Pursuant to the act, Commission may hear testimony in regard to the permanent rule. The public record will consist of all oral testimony as well as any written information submitted within the allowable time frame. Therefore, in addition to all public testimony and comments today, the Division will review all written materials in order to make a final decision on the content of the regulations. Public record for the regulation will close at the end of this hearing.

Chair Goldenbogen introduces Marcia Waters.

### **Permanent Rule F-7 Rule- Commission Approved Forms Dual Status Disclosures**

On December 3, 2008, a rulemaking hearing was conducted by the Director of the Division of Real Estate for the Mortgage Broker Program regarding the adoption of a dual status disclosure form to be used by licensees acting in the dual capacity of a mortgage broker and a real estate broker. The Director adopted the rule on January 6, 2009. The purpose of the permanent rulemaking hearing is to ensure that licensees acting in a dual capacity comply with the laws of the real estate practice act and Commission rules, specifically that they make disclosures as proscribed by the Commission and utilize a Commission approved form.

Chair Goldenbogen seeks a motion to adopt Permanent Rule F-7 Commission Approved Rule-Dual Status Disclosure.

It was moved by Commissioner Moore and seconded by Commission Montoya to adopt Permanent Rule F-7 Commission Approved Rule-Dual Status Disclosures. There were no comments by the public or staff.

**Motion unanimously carried.**

### **Permanent Rule F-7 Rule-Commission Approved Forms 2004 Forms**

The purpose of this rulemaking is to ensure that the 2004 forms are properly adopted. The Commission's counsel notified staff that the 2004 forms are absent from the Secretary of State's website and the Colorado Code of Regulations, although the Commission voted to adopt the forms on May 5, 2004. The forms presented for adoption today are:

- 1) Agreement to Amend/Extend Contract with Broker
- 2) Common Interest Community Checklist for Brokerage Firm
- 3) Earnest Money Promissory Note
- 4) Earnest Money Release
- 5) Exchange Addendum to Contract to Buy and Sell Real Estate
- 6) Lead-Based Paint Disclosure (Sales)
- 7) Lead-Based Paint Disclosure (Rentals)
- 8) Lead-Based Paint Obligations of Seller
- 9) Lead-Based Paint Obligations of Landlord
- 10) Square Footage Disclosure

Chair Goldenbogen seeks a motion to adopt Permanent Rule, Rule F-7 Commission Approved Forms 2004 Forms.

It was moved by Commissioner Moore and seconded by Commission Pocs to adopt Permanent Rule F-7 Commission Approved Forms 2004 Forms. There were no comments by the public or staff.

This concludes the permanent rule making hearings.

**Motion unanimously carried.**

**ORDER OF BUSINESS**

**Approval of Minutes**

It was moved by Commissioner Pocs and seconded by Commissioner Moore to approve the Minutes of January 6, 2009 with the recommended changes of a misspelled word.

**Public Presentation**

There were no public comments presented regarding items not presented on today's agenda.

**POLICY MATTERS**

**Commissioners Discussions and Recommendations**

Vice Chair Bronson is seeking as to whether staff is tracking the number of property management complaints. There were no figures presented today per Penny Elder. There was also information presented to staff by Commissioner Montoya regarding education for property management. The information presented will be addressed with the Education Task Force.

Chair Goldenbogen asks for the status on Rule E-43. Ms. Elder states that the amended rule has been registered with the Secretary of State for a future rule making hearing.

**Legislative Updates**

Marcia Waters informs the Commissioners that there are several bills being tracked. House Bill 09-1014 pertains to the Conservation Easement Oversight Commission. In the original legislation, there was a fee cap placed for the appraisal submission fee and the certification fee. The Commission had anticipated that there would be more conservation certifications. However, there aren't as many easement holders as originally anticipated and the program is currently under funded. The legislation is seeking removal of the appraisal submission and the certification fee caps so that the Commission can properly adjust the fees.

A list of all bills that are being tracked by the Commission was available for review to the Commissioners.

## **Short Sales and Solutions**

Marcia Waters informs the Commissioners that staff has held two meetings with the Short Sales Think Tank. Based on those meetings, staff has identified three possible remedies for the situation that is occurring. First, investors may be forming trusts as a means of avoiding the requirements for licensure as a real estate broker. Some licensed brokers are advertising in a misleading manner that would cause consumers to believe that the broker is somehow endorsed by a government agency. Staff intends to draft rules to identify a sham trust, prohibit misleading advertising, and require additional disclosures in transactions with concurrent purchase agreements.

## **COMPLAINT MATTERS**

### **Neal A. Werner**

The investigative report concerning a complaint filed by Diane L. Baird against **Neal A. Werner, License #FA400423749** 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. Werner.

- a. Complainant alleges that the respondent failed to respond to the Commission request for specific documentation.
- b. Performed property management without the consent of his employing broker and under an unlicensed entity.
- c. Failed to properly disclose broker relationships as required.
- d. Failed to deliver duplicate copies of transactions documents to all parties as required.
- e. Failed to maintain property management records and accounts as required.
- f. Failed to make timely deposits of money belonging to others.
- g. Used money belonging to others for his own benefit.
- h. These acts constitute a violation of: 12-61-113(1)(g); 12-61-113(1)(g.5), 12-61-113(1)(j), 12-61-113(1)(n); 12-61-113(1)(k) and Commission Rule E-1, E-4, E-16, E-35 and E-21 .
- i. Mr. Werner's real estate broker's license shall be publicly censured; and
- j. He shall pay a fine no less than \$2,250.00 and not to exceed \$6,700.00; and
- k. Mr. Werner shall successfully complete real estate education courses in Contracts and Trust Accounts.

## **Motion unanimously carried**

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February 3, 2009

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## **David W. Lester**

The investigative report concerning a complaint filed by the Commission on its own motion against **David W. Lester**, License #**ER40006149** 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. Lester.

- a. Complainant alleges that the respondent failed to maintain Errors and Omissions insurance for his company as required.
- b. Made a false attestation regarding his Errors and Omissions coverage on his application for his renewal.
- c. These acts constitute a violation of: 12-61-113(1)(p), 12-61-113(1)(n) and 12-61-113(1)(k).
- d. Mr. Lester's real estate license shall be publicly censured; and
- e. He shall pay a fine no less than \$1,500.00 and not to exceed \$2,250.00.

### **Motion unanimously carried**

## **Juan Serrano**

The investigative report concerning a complaint filed by the Commission on its own motion against **Juan Serrano**, License #**EA40022112** 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. Serrano.

- a. Complainant alleges that the respondent knowingly misrepresented occupancy with two separate buyers on two transactions with each buyer.
- b. Failed to respond to Commission's request for information as required.
- c. These acts constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n) and 12-61-113(1)(k).
- d. Mr. Serrano's real estate license shall be publicly censured; and
- e. He shall pay a fine in the amount up to \$12,500.00; and
- f. Mr. Serrano's real estate license shall be revoked.

### **NOTE:**

Chair Goldenbogen recuses himself from the meeting at 9:39 a.m.

### **Motion unanimously carried.**

## **Sandy Lovedahl**

The investigative report concerning a complaint filed by David McClafin against **Sandy Lovedahl, License #II201955** 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. Lovedahl.

- a. Complainant alleges that the respondent failed to maintain a valid business address as required.
- b. Failed to remit within a reasonable time money belonging to others.
- c. Failed to respond in full to the Commission request for information.
- d. These acts constitute a violation of: 12-61-113(1)(g); 12-61-113(1)(n); 12-61-113(1)(k) and Commission Rule C-2 and E-21.
- e. Ms. Lovedahl's real estate license shall be publicly censured; and
- f. She shall pay a fine no less than \$1,500.00 and not to exceed \$3,000.00; and
- g. Ms. Lovedahl shall successfully complete real estate education courses in Contracts and Trust Accounts.

### **Motion unanimously carried.**

## **Sandy Lovedahl**

The investigative report concerning a complaint filed by Leana Deaton against **Sandy Lovedahl, License #II201955** 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. Lovedahl.

- a. Complainant alleges that the respondent participated in a real estate transaction where she made an undisclosed loan to the buyer.
- b. Failed to fully respond to the Commission's request for information.
- c. These acts constitute a violation of: 12-61-113(1)(n), 12-61-113(1)(k) and Commission Rule E-21.
- d. Ms. Lovedahl's real estate license shall be publicly censured; and
- e. She shall pay a fine in the amount of \$250.00; and
- f. Ms. Lovedahl's license shall be suspended up to 90 days and continue indefinitely.

### **Motion unanimously carried.**

**Dona Jo Goss**

The investigative report concerning a complaint filed by Deborah and David Kinateder against **Dona Jo Goss, License #EA334341** was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that this case be dismissed.

**Motion unanimously carried.**

**Gerald R. Lain**

The investigative report concerning a complaint filed by Deborah and David Kinateder against **Gerald R. Lain, License #ER334011** 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. Lain.

- a. Complainant alleges that the respondent failed to fully disclose a material fact regarding the non-compliance status of the water treatment facility in the subject subdivision.
- b. Failed to exercise reasonable supervision over hi broker associate.
- c. These acts constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(o); 12-61-113(1)(k); 12-61-807(2)(b)(VI) and Commission Rule E-31.
- d. Mr. Lain's real estate license shall be publicly censured; and
- e. He shall pay a fine no less than \$1,000.00 and not to exceed \$3,000.00.

**Motion unanimously carried.**

**NOTE:**

Chair Goldenbogen returns to the meeting at 9:44 a.m.

**Daniel B. Zale**

The investigative report concerning a complaint filed by the Commission on its own motion against **Daniel B. Zale, License #FA40039111** 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. Zale.

- a. Complainant alleges that the respondent failed to ensure settlement documents accurately reflect the verbally agreed upon terms of the transaction.
- b. As a listing broker on one of the transactions the purchase price was raised to accommodate an excessive third party payment.
- c. Zale accepted a fee for conducting brokerage duties and failed to disclose payment to his employing broker.
- d. Failed to disclose an active investigation o his recent application for licensure as a registered appraiser.
- e. Failed to exercise reasonable skill and care.
- f. These acts constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(q); 12-61-113(1)(t); 12-61-113(1)(k); 12-61-807(2)(b) and Commission Rule E-1(p)(8) and E-5.
- g. Mr. Zale's real estate license shall be publicly censured; and
- h. He shall pay a fine in the amount up to \$22,500.00; and
- i. His real estate license shall be revoked.

**Motion unanimously carried.**

**Kristen Slaughter**

The investigative report concerning a complaint filed by the Commission on its own motion against **Kristen Slaughter**, License #FA40040843 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. Slaughter.

- a. Complainant alleges that the respondent failed to ensure settlement documents accurately reflect the verbally agreed upon terms of the transaction.
- b. Failed to accurately disclose the true recipient of the seller concessions.
- c. As a listing broker on one of the transactions the purchase price was raised to accommodate an excessive third party payment.
- d. Failed to exercise reasonable skill and care.
- e. These acts 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. Ms. Slaughter's real estate license shall be publicly censured; and
- g. She shall pay a fine no less than \$3,750.00 and not to exceed 6,250.00; and
- h. Ms. Slaughter's real estate license shall be suspended up to 90-days; and

- i. Ms. Slaughter shall successfully complete real estate education course in Contracts.

**Motion unanimously carried.**

**Leonard W. Aldaz**

The investigative report concerning a complaint filed by the Commission on its own motion against **Leonard W. Aldaz**, License #FA100018161 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. Aldaz.

- a. Complainant alleges that the respondent failed to make a disclosure of his criminal charges on his 2007 application as a result he was issued a restricted license through a stipulate agreement.
- b. Failed to comply with the terms of his agreement by not reporting his July 29, 2008 arrest.
- c. Aldaz was charged with Theft (At-Risk Victim) as a class 3-Felony. Aldaz agreed to a deferred prosecution and paid full restitution to the victim.
- d. These acts constitute a violation of: 12-61-113(1)(p); 12-61-113(1)(n) and 12-61-113(1)(k).
- e. Mr. Aldaz's real estate license shall be publicly censured; and
- f. He shall pay a fine in the amount up to \$7,500.00; and
- g. Mr. Aldaz's real estate license shall be revoked.

**Motion unanimously carried.**

**Ki R. Tribbett**

The investigative report concerning a complaint filed by the Commission on its own motion against **Ki R. Tribbett**, License #FA1321881 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. Tribbett.

- a. Complainant states that respondent plead guilty on November 21, 2008, to Theft (\$1,000.00-\$20,000.00) a Class 4 Felony and failed to report the guilty plea as required.
- b. Tribbett was caught on video surveillance taking another women's purse and initially denied the allegation.

- c. These acts constitute a violation of: 12-61-113(1)(m) and 12-61-113(1)(m.6).
- d. Ms. Tribbett's real estate license shall be publicly censured; and
- e. She shall pay a fine in the amount up to \$5,000.00;and
- f. Ms. Tribbett's real estate license shall be revoked.

**Motion unanimously carried.**

**Edward A. Wofford**

The investigative report concerning a complaint filed by Linda Gann against **Edward A. Wofford, License #EA150431** was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that this case be dismissed.

**Motion unanimously carried.**

**Charles Denver Parks**

The investigative report concerning a complaint filed by the Commission on its own motion against **Charles Denver Parks, License #ER40025138** 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. Parks.

- a. Complainant alleges that the respondent knowingly made false and misleading statements through advertising.
- b. Failed to ensure the settlement documents accurately reflected the terms of the contract.
- c. Knowingly made false and misleading statements through advertising.
- d. These acts constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and Commission Rule E-5.
- e. Mr. Park's real estate license shall be publicly censured; and
- f. He shall pay a fine in the amount up to \$10,000.00; and
- g. Mr. Park's real estate license shall be revoked.

**Motion unanimously carried.**

**Thomas Carr**

The investigative report concerning a complaint filed by the Commission on its own motion against **Thomas Carr, License #ER40030221** 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. Carr.

- a. Complainant alleges that the respondent knowingly made false and misleading statements through advertising.
- b. Increased that sale price to accommodate \$85,000.00 concession to the buyer and \$65,000.00 fee for marketing services.
- c. Conducted business under more than one licensed brokerage.
- 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 C-19.
- e. Mr. Carr's real estate license shall be publicly censured; and
- f. He shall pay a fine no less than \$3,750.00 and not to exceed 7,500.00; and
- g. Mr. Carr's real estate license shall be suspended up to 30 -90-days.

**Motion unanimously carried.**

**James D. Faughn**

The investigative report concerning a complaint filed by Richard C. Wihera, Rodney D. Gustafson and by the Commission against **James D. Faughn, License #ER40027749** 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. Faughn.

- a. Complainant alleges that the respondent negotiated and executed two separate sales contract for the same property.
- b. Failed to disclose a conflict of interest resulting from ownership.
- c. Failed to sign settlement documents.
- d. Failed to fully comply with the Commission's request for documentation.
- e. These acts constitute a violation of: 12-61-113(1)(b); 12-61-113(1)(d); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k) and Commission Rule E-5, E-21 and E-25.
- f. Mr. Faughn's real estate license shall be publicly censured;
- g. He shall pay a fine no less than \$3,500.00 and not to exceed 5,250.00; and
- h. Mr. Faughn's real estate license shall be suspended up to 3-30 days; and
- i. Mr. Faughn shall successfully complete real estate courses in Contracts and Ethics.

**Motion unanimously carried.**

## HEARING MATTERS

### Matthew Geniesse

It was moved and seconded by the Commission to concur with the findings in the Initial Decision to consider the Administrative Law Judge in Case No. RC 2008-0022, concerning the Colorado Real Estate Commission vs. Matthew Geniesse, license number FA40045175.

### Motion unanimously carried.

### Thomas Mason

## INITIAL DECISION

Initial Decision to consider the ALJ Opinion in the case of Thomas Mason has been deferred.

### Motion unanimously carried.

## ADJOURNMENT

The Colorado Real Estate Commission meeting adjourned at 10:14 a.m. on February 3 2009.

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Paul Goldenbogen, Chair

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Kristin Bronson, Vice Chair

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Martin Pocs, Commissioner

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Pres Montoya

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Charles P. "Buzz" Moore, Commissioner

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Absent  
Erin Toll, Director  
Colorado Division of Real Estate