

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING

JULY 7, 2009

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

A Colorado Real Estate Commission public meeting was held on July 7, 2009. Those Commissioners in attendance were Vice Chair Charles “Buzz” Moore, Commissioner Jill Orzarski, Commissioner Douglas Ring and Commissioner Gina Piccoli. Also attending were Marcia Waters, Investigations and Compliance Director; Penny Elder, Real Estate Program Manager; Yvette Gabardi, Rulemaking Coordinator, Mary Kanaly, ESP Program Manager; Terry Hugar, Attorney General’s Office and several members of the Commission’s staff. Erin Toll, Director, and Chairwoman Kristin Bronson were absent.

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

The meeting was called to order by Vice Chairman Charles “Buzz” Moore at 9:00 a.m.

PERMANENT RULE MAKING HEARING

The permanent rule making hearing is called to order by Vice Chairman Moore 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-1 Permitted and Prohibited Form Modifications.

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.

Vice Chairman Moore introduces Mr. Levine.

The purpose of this rule is to amend rule F-1 regarding permitted and prohibited form modification of standard and approved forms.

Vice Chair Moore seeks a motion to adopt Permanent Rule F-1 Permitted and Prohibited Form Modifications.

It was moved by Commissioner Ring and seconded by Commission Picolli to adopt Permanent Rule F-1 Permitted and Prohibited Form Modifications. There were no comments by the public or staff.



Posted

PRF1PermittedProhibi

Motion unanimously carried.

The permanent rulemaking hearing closes at 9:04a.m.

The meeting was called to order by Vice Chairman Moore at 9:05a.m.

ORDER OF BUSINESS

Approval of Minutes

It was moved by Commissioner Piccoli and seconded by Commissioner Ring to approve the Minutes of June 2, 2009.

Motion unanimously carried.

Public Presentation

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

POLICY MATTERS

Commissioner Discussion/Recommendations

Commissioner Piccoli asked Assistant Attorney General Terry Hugar for his opinion as to whether new listing contracts on land and commercial are needed since these two types of properties were not affected by the policy changes. Mr. Hugar indicated that he would need to look into this further before he could provide an answer.

Foreclosure Protection Act

Marcia Waters addresses the Commissioners stating that several inquires have been received from legal counsel, the courts and licensees regarding their role is in these transactions. Previous legislation expanded the definition of the foreclosure act to improve these properties that are 30 days in default. Ms. Waters has requested an answer from the Office of the Attorney General regarding when the 30 days begin; whether it

begins on the first, when the payment is due or on the fifteenth, when the payment is considered late. Ms. Waters has not received a response. Ms Waters offers suggestions to the forms committee as to what options that can be taken. These options are: take no action, allow the brokers to prepare the contract drafted from legal counsel that incorporate those contract documents or direct the forms committee to create a document that complies with the statute.

Kent Levine addresses the Commissioners stating that the forms committee recommends repealing the prior foreclosure contract CBS-F1 without a replacement. The committee also feels that it is best for the buyer to be counseled by an attorney and have counsel prepare a compliant contract if the Colorado Foreclosure Protection Act would apply to the transaction.

Rachel Nance, Oliver Frasca, Brad Katz, Christopher Mygatt and Damian Cox provided testimony regarding contract forms.

Vice Chairman Moore has indicated that currently there will be no position taken on this matter but if any individuals would like to obtain counsel they may do so. Vice Chairman Moore has also directed the forms committee to immediately revise what is needed to address the problem and move forward.

Real Estate Broker Disciplinary Matrix

Penny Elder distributed a packet of information to Commissioners.

Appointment of Commissioner for Mediation

Marcia Waters requests commissioners to participate in mediation of cases. Commissioner Ring will be attending the mediation via phone conference on July 9, 2009 at 1:30 p.m. regarding Chinweuba Nwanwko.

Commissioner Ozarski will be attending the mediation via phone conference on August 27, 2009 at 9:00 a.m. regarding Kurt Sears.

Marcia Waters also request that the Commissioners authorize delegation to staff regarding case mediation.

It was moved by Commission Piccoli and seconded by Commissioner Ring that the above commissioners would represent the Commission with settlement authority.

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.

Jermaine Spencer-

The investigative report concerning a complaint filed by the Commission on its own motion against **Jermaine D. Spencer**, License #FA 40039676 was presented to the Commission with accompanying documentation and information supplied by Mr. Spencer. 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. Spencer.

- a. Complainant states that Colorado real estate broker **Jermaine D. Spencer** provided false and misleading information to the Department of Housing and Urban Development to qualify for the Officer Next Door program. Spencer misrepresented his intent to occupy the property and the fact that he owned other properties. On April 27, 2009, Spencer entered a guilty plea in his criminal case; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); 12-61-113(1)(n); and 12-61-113(1)(t), and
- c. Mr. Spencer's real estate broker's license shall be revoked and;
- d. He shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Jason Park-

The investigative report concerning a complaint filed by Jinjoo Lee and the Commission on its own motion against **Jason H. Park**, License #ER 1180215 was presented to the Commission with accompanying documentation and information supplied by Mr. Park. 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. Park.

- a. Complainant alleges that Colorado real estate broker **Jason H. Park** failed to use Commission approved forms when available; failed to establish brokerage relationships in writing; failed to provide a high level of supervision as required; utilized contracts with outdated language and utilized a form that appeared to be Commission approved language when in fact it was not; and
- b. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(o); 12-61-113(1)(k); 12-61-807(2)(b), and Commission Rules E-31, E-32, E-35 and F-7; and
- c. Mr. Park's real estate broker's license shall be suspended for a period of 60 days and;
- d. He shall pay a fine to the Commission in the amount of \$4,000.

Motion unanimously carried.

Wonho Choe-

The investigative report concerning a complaint filed by Jinjoo Lee and the Commission on its own motion against **Wonho Choe**, License #FA 40043650 was presented to the Commission with accompanying documentation and information supplied by Mr. Choe. 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. Choe.

- a. Complainant alleges that Colorado real estate broker **Wonho Choe** failed to use Commission approved forms when available; failed to establish brokerage relationships in writing; utilized contracts with outdated language and utilized a form that appeared to be Commission approved language when in fact it was not; and
- b. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(k); 12-61-807(2)(b), and Commission Rules E-35 and F-7; and
- c. Mr. Choe's real estate broker's license shall be suspended for a period of 30 days and;
- d. He shall pay a fine to the Commission in the amount of \$1,500.

Motion unanimously carried.

Jason Park-

The investigative report concerning a complaint filed by Kwon C. Kwon and Woo Kwon against **Jason H. Park**, License #ER 1180215 was presented to the Commission with accompanying documentation and information supplied by Mr. Park. 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. Park.

- a. Complainant alleges that Colorado real estate broker **Jason H. Park** knowingly misrepresented the seller's financials related to the business for sale; and
- b. These acts may 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 12-61-807(2); and
- c. Mr. Park's real estate broker's license shall be suspended for a period of 60 days and;
- d. He shall pay a fine to the Commission in the amount of \$4,000.

Motion unanimously carried.

Ken Coblentz-

The investigative report concerning a complaint filed by the Commission on its own motion against **Ken Coblentz**, License #FA 100005935 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. Coblentz.

- a. Complainant alleges that Colorado real estate broker **Ken Coblentz** failed to respond to the Commission's request for information related to this investigation as required; and
- b. These acts may constitute a violation of: 12-61-113(1)(k); and Commission Rule E-21; and
- c. Mr. Coblentz's real estate broker's license shall be suspended for a period of 90 days and shall continue indefinitely until a complete response is received; and
- d. He shall pay a fine to the Commission in the amount of \$250.

Motion unanimously carried.

Sandra Rech-

The investigative report concerning a complaint filed by Christian A. Hess against **Sandra L. Rech**, License #IA 1114425 was presented to the Commission with accompanying documentation and information supplied by Ms. Rech. 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).

It was moved by Commissioner Piccoli to suspend Ms. Rech's real estate broker's license for a period of 6 months.

Motion dies for lack of a second.

It was then moved by Commissioner Ring and seconded by Commissioner Ozarski to direct the staff to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Ms. Rech.

- a. Complainant alleges that Colorado real estate broker **Sandra L. Rech** misrepresented intentions by ordering unsolicited goods in the name of the complainant; and
- b. These acts may constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n); and 12-61-113(1)(t); and
- c. Ms. Rech's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$7,500.

Commissioner Piccoli is opposed. **Motion carried.**

David Kahn-

The investigative report concerning a complaint filed by Paul Raiders, David Johansson and the Commission on its own motion against **David L. Kahn**, License #ER 1322432 was presented to the Commission with accompanying documentation and information supplied by Mr. Kahn. 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. Kahn.

- a. Complainant alleges that Colorado real estate broker **David L. Kahn** failed to conduct business solely under the name he is licensed under; failed to properly account for money belonging to others as required; failed to properly maintain trust accounts as required; failed to use Commission approved forms as required; and failed to adequately supervise unlicensed personnel; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(t); 12-61-113(1)(k); 12-61-102 and Commission Rules C-18, C-19, E-1 and F-7; and
- c. Mr. Kahn's real estate broker's license shall be suspended for a period of 60 days; and
- d. Mr. Kahn will be required to be supervised by an employing broker for a period of 3 years; and
- e. He shall pay a fine to the Commission in the amount of \$3,000; and
- f. Mr. Kahn shall successfully complete real estate education courses in Trust Accounts, Contracts, and Current Legal Issues

Motion unanimously carried.

Thomas Shervanick-

The investigative report concerning a complaint filed by the Commission on its own motion against **Thomas M. Shervanick**, License #EA 1080235 was presented to the Commission with accompanying documentation and information supplied by Mr. Shervanick. 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. Shervanick.

- a. Complaint states that Colorado real estate broker **Thomas Shervanick** was found guilty on May 14, 2009 of two counts of Sexual Exploitation of Children, a Class 4 Felony; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); and
- c. Mr. Shervanick's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$2,500.

Motion unanimously carried.

Henry Ewudzi-Acquah-

The investigative report concerning a complaint filed by Sharon Holdbrook, Amos Holdbrook and the Commission on its own motion against **Henry Ewudzi-Acquah**, License #FA 100007123 was presented to the Commission with accompanying documentation and information supplied by Mr. Ewudzi-Acquah. 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. Ewudzi-Acquah.

- a. Complainant alleges that Colorado real estate broker **Henry Ewudzi-Acquah** failed to establish brokerage relationships in writing; failed to accurately reflect the buyer's intent not to occupy the property; failed to ensure the settlement statements accurately reflected the terms of the transaction; received \$17,399 in undisclosed compensation; and paid \$10,000 outside of closing to the buyers; and
- b. These acts may constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n); 12-61-113(1)(q); 12-61-113(1)(k); 12-61-805(3)(b); and Commission Rules E-4, E-5 and E-35; and
- c. Mr. Ewudzi-Acquah's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$17,500.

Motion unanimously carried.

Belinda Lovins-

The investigative report concerning a complaint filed by Paul and Lynn Deaton against **Belinda Lovins**, License #AI 1314838 was presented to the Commission with accompanying documentation and information supplied by Ms. Lovins. 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. Lovins.

- a. Complainant alleges that Colorado real estate broker **Belinda Lovins** made a promise of a rebate which she did not outline in the contract nor did she indicate an alternative resolution in the event the lender would not approve the rebate and made an attempt to pay the rebate outside of closing with knowledge that the lender did not approve such a rebate; and
- b. These acts may constitute a violation of: 12-61-113(1)(b); 12-61-113(1)(n); 12-61-(1)(k); and Commission Rule E-5; and
- c. Ms. Lovins' real estate broker's license shall be suspended for a period of 60 days; and
- d. She shall pay a fine to the Commission in the amount of \$3,000.

Motion unanimously carried.

Nancy Luby-

The investigative report concerning a complaint filed by the Commission on its own motion against **Nancy K. Luby**, License #FA 100025665 was presented to the Commission with accompanying documentation and information supplied by Ms. Luby. 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. Luby.

- a. Complaint states that Colorado real estate broker **Nancy K. Luby** pled guilty on March 13, 2009 to Theft, a Class 3 Felony and Luby failed to report her conviction as required; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); 12-61-113(1)(m.6); 12-61-(1)(k); and Commission Rule E-49; and
- c. Ms. Luby's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Gretchen Horst-

The investigative report concerning a complaint filed by the Commission on its own motion against **Gretchen Horst**, License #FA 100001958 was presented to the Commission with accompanying documentation and information supplied by Ms. Horst. 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. Horst.

- a. Complainant alleges that Colorado real estate broker **Gretchen Horst** created a false and misleading Contract to Buy and Sell reflecting a higher purchase price than agreed upon; provided false and misleading information to the appraiser regarding the true purchase price and knowingly misrepresented that the property would be owner-occupied; and
- b. These acts may constitute a violation of: 12-61-113(1)(a); 12-61-113(1)(n); and 12-61-(1)(t); and
- c. Ms. Horst's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$7,500.

Motion unanimously carried.

Laura Knode-

The investigative report concerning a complaint filed by Keith W. Irwin against **Laura J. Knode**, License #FA 40018802 was presented to the Commission with accompanying documentation and information supplied by Ms. Knode. 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. Knode.

- a. Complainant alleges that Colorado real estate broker **Laura J. Knode** failed to disclose a material fact regarding sewer issues and previous water damage to the property; and failed to provide a change of status disclosure to the parties of the contract; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(k); 12-61-807(2) and Commission Rule E-35; and
- c. Ms. Knode's real estate broker's license shall be suspended for a period of 60 days; and
- d. She shall pay a fine to the Commission in the amount of \$6,000.

Motion unanimously carried.

Elisa Ann Voxland-

It was moved by Commissioner Piccoli and seconded by Commissioner Ozarski to dismiss the case against Elisa Ann Voxland.

Motion unanimously carried.

HEARING MATTERS

INITIAL DECISIONS

The Commission considered the Initial Decision rendered by the ALJ in the case of Randolph G. Jensen. It was moved by Commissioner Ring and seconded by Commissioner Piccoli to uphold the decision to revoke Mr. Jensen's license by default.

Motion unanimously carried.

Note: Break from 10:30 a.m. to 10:35 a.m.

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 settlement offer of Alfred E. Bartlett, the counter offer of Brian Murray and to offer advice on the merits on the case of Notie Daniels.

It was moved by Commissioner Piccoli and seconded by Commissioner Ring to adjourn out of Executive Session at 10:55 a.m.

COUNTER OFFERS

Brian Murray

The counter offer that was submitted by Brian Murray has been rejected.

Motion unanimously carried.

The Colorado Real Estate Commission meeting adjourned at 10:56 a.m. on July 7, 2009.

ABSENT

Kristin Bronson, Chairwoman

Charles “Buzz” Moore, Vice Chair

Jill Ozarski, Commissioner

Gina Piccoli, Commissioner

Douglas Ring, Commissioner

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

EXECUTIVE SESSION MINUTES

After a two-thirds majority vote and pursuant to §24-6-402 (3)(a)(II), C.R.S., the Colorado Real Estate Commission held an Executive Session during its regular public meeting held on July 7, 2009. The Commission publicly announced the subject matter of the Executive Session, which was to confer with the Commission's attorney regarding rulemaking issues and cases involving Alfred Edwin (Ed) Bartlett, Brian Murray and Notie Daniels.

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 July 7, 2009, constituted privileged attorney-client communications and, therefore, the contents of such discussions are not reflected within these minutes.

Terry Hugar, #20420
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 Vice Chair I attest that the executive session of the Colorado Real Estate Commission held on July 7, 2009 was confined to the topic authorized for discussion pursuant to §24-6-402(3)(a)(II), C.R.S.

Charles "Buzz" Moore, Vice Chairman
Colorado Real Estate Commission