

MINUTES

**COLORADO REAL ESTATE COMMISSION MEETING
June 2, 2009**

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
June 2, 2009
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 925
DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on June 2, 2009. Those Commissioners in attendance were Chairwoman Kristin Bronson, Vice Chair Charles “Buzz” Moore, Douglas Ring, Gina Piccoli, and Jill Ozarski. 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 of the Division of Real Estate 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.

Emergency Rulemaking

An emergency rule making hearing was conducted pursuant to the process as set forth in the Administrative Procedure Act. This emergency rule will expire after 90 days, unless repealed or a permanent rule is enacted. Immediate adoption of these rules is imperatively necessary for preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

The Emergency Rulemaking Hearing closed at 9:12 a.m.

Following discussion, it was moved by Commissioner Piccoli and seconded by Commissioner Ring to adopt Rule F-7, Commission Approved Forms.



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Motion unanimously carried.

Permanent Rulemaking

The Real Estate Commission opened the rulemaking hearing to consider Rule F-7 and Commission-approved forms with introduction and overview by Kent Levine from the Forms Committee.

The rulemaking hearing closes at 9:16 a.m.

Following discussion, it was moved by Commissioner Ring and seconded by Commissioner Moore to adopt Rule F-7, Commission Approved Forms.



PRF7060109.pdf

Motion unanimously carried.

The meeting was called to order by Chairwoman Bronson at 9:17 a.m.

ORDER OF BUSINESS

Approval of Minutes

It was moved by Commissioner Moore and seconded by Commissioner Piccoli to approve the Minutes of May 12, 2009.

Motion unanimously carried.

POLICY MATTERS:

Commission Discussion/Recommendations-

Commissioner Moore raised the issue of the new legislation concerning carbon monoxide detectors and what effect that would have on Commission-approved forms. Commissioner Piccoli questioned staff about reciprocity rules and licensing requirements. Chairwoman Bronson again requested that staff take a look at developing a Commission Position Statement regarding the Commission's authority in disciplinary cases. Staff will work with the Attorney General's Office in developing a draft for the Commission's review.

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.

Ben Dumiye-

The investigative report concerning a complaint filed by Thomas Dotson and the Commission on its own motion against **Ben A. Dumiye**, License #IA 40027223 was presented to the Commission with accompanying documentation and information supplied by Mr. Dumiye. 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. Dumiye.

- a. Complainant alleges that Colorado real estate broker **Ben A. Dumiye** altered loan approval documents; engaged in activities that require a broker's license while his license was inactive, and failed to maintain current E & O insurance as required; and
- b. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); and Commission Rules D-14 and E-44; and
- c. Mr. Dumiye's real estate broker's license shall be revoked and;
- d. He shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

Sharon McCall-

The investigative report concerning a complaint filed by the Commission on its own motion against **Sharon D. McCall**, License #FA 40030630 was presented to the Commission with accompanying documentation and information supplied by Ms. McCall. 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. McCall.

- a. Complainant alleges Colorado real estate broker **Sharon D. McCall** raised the purchase price to accommodate a third party payment; failed to ensure the transaction documents accurately reflected the terms of the transaction; failed to ensure settlement statements accurately reflected the terms of the transaction; and allowed a broker bonus on the settlement statements when she had knowledge the money was intended for the buyer; and
- b. These acts may constitute a violation of: 12-61-113 (1)(c); 12-61-113 (1)(n); 12-61-113 (1)(t); 12-61-113 (1)(k); 12-61-807(2)(b); and Commission Rule E-5; and
- c. Ms. McCall's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$12,500.

Motion unanimously carried.

Harry Elder-

The investigative report concerning a complaint filed by Dr. Robert M. Gold against **Harry C. Elder**, License #IA 40023358 was presented to the Commission with accompanying documentation and information supplied by Mr. Elder. 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. Elder.

- a. Complainant alleges that Colorado real estate broker **Harry C. Elder** unnecessarily encumbered a property he had interest in buying by filing an

inaccurate lis pendens on an adjacent property. Elder failed to correct the error when it was brought to his attention and he attempted to negotiate directly with the seller when he had knowledge of an existing listing contract; and

- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(k); and Commission Rule E-13; and
- c. Mr. Elder's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission in the amount of up to \$5,000.

Motion unanimously carried.

Renald Frederics-

The investigative report concerning a complaint filed by the Commission on its own motion against **Renald R. Frederics**, License #ER 281321 was presented to the Commission with accompanying documentation and information supplied by Mr. Frederics. 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. Frederics.

- a. The Complainant alleges that Colorado real estate broker **Renald R. Frederics** failed to maintain current E & O insurance coverage as required for an active license and for his brokerage company. Frederics altered his insurance certificates and submitted the falsified documents to the Commission and he made false and misleading statements regarding a non-existent office assistant; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(p); 12-61-113(1)(t); 12-61-113(1)(k); and Commission rule D-14; and
- c. Mr. Frederic's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$10,000.

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

A. Paul Smola-

The investigative report concerning a complaint filed by Marti Larson against **A. Paul Smola**, License #ER 1317723 was presented to the Commission with accompanying documentation and information submitted by Mr. Smola. 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. Smola.

- a. Complaint alleges Colorado real estate broker **A. Paul Smola** failed to deposit earnest money according to the terms of the contracts; and knowingly made inaccurate disclosure in paragraph 10.f. of the CBS that the seller did not need to close on another property to fulfill the terms of the contract when in fact she did; and

- b. These acts may constitute a violation of: 12-61-113(1)(n) and 12-61-113(1)(t); and
- c. Mr. Smola'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 \$1,000.

Motion unanimously carried.

A. Paul Smola-

The investigative report concerning a complaint filed by the Commission on its own motion against **A. Paul Smola**, License #ER 1317723 was presented to the Commission with accompanying documentation and information submitted by Mr. Smola. 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. Smola.

- a. Complainant alleges Colorado real estate broker **A. Paul Smola** failed to ensure the settlement statements accurately reflected the terms of the transaction in two cases. In one transaction, Smola failed to identify the true beneficiary of the third party payment and in another transaction he failed to identify the third party payment on the HUD1. Smola was the recipient of proceeds without the knowledge of the buyer, and in both cases, purchase prices were elevated to accommodate payments; and
- b. These acts may constitute a violation of: 12-61-113 (1)(a); 12-61-113 (1)(t); 12-61-113 (1)(n); 12-61-113 (1)(k); and Commission Rule E-5; and
- c. Mr. Smola's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$20,000.

Motion unanimously carried.

A. Paul Smola-

The investigative report concerning a complaint filed by Barbara Harden against **A. Paul Smola**, License #IR 1317723 was presented to the Commission with accompanying documentation and information supplied by Mr. Smola. 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. Smola.

- a. Complaint alleges that Colorado Real Estate Broker **A. Paul Smola** failed to ensure the transaction documents accurately reflected the terms of the transaction; and failed to accurately reflect the owner occupancy status on the contract. Smola was the recipient of the third party payment which was for the building of a garage that was never completed; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(k); and Commission Rules E-5; and

- c. Mr. Smola's real estate broker's license shall be suspended for a period of 90 days; and
- d. He shall pay a fine to the Commission in the amount of \$5,000.

Motion unanimously carried.

Angela Osborn-

The investigative report concerning a complaint filed by the Commission on its own motion against **Angela M. Osborn**, License #FA 40018598 was presented to the Commission with accompanying documentation and information supplied by Ms. Osborn. 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. Osborn.

- a. Complainant alleges that Colorado real estate broker **Angela M. Osborn** failed to ensure the contracts and settlement statements accurately reflected the true terms of the transaction. Osborn was in receipt of \$467,000 of the seller's proceeds which was not reflected on the settlement statements; and
- b. These acts constitute a violation of: 12-61-113 (1)(c); 12-61-113 (1)(n); 12-61-113 (1)(t); 12-61-113 (1)(k); and Commission Rule E-5; and
- c. Ms. Osborn's real estate broker's license shall be revoked; and
- d. She shall pay a fine to the Commission up to \$10,000.

Motion unanimously carried.

Reynolds Cannon-

The investigative report concerning a complaint filed by the Commission on its own motion against **Reynolds Cannon**, License #EI 206341 was presented to the Commission with accompanying documentation and information supplied by Mr. Cannon. It was moved and seconded by the Commission to dismiss the case against Mr. Cannon.

Motion unanimously carried.

NOTE: Prior to beginning deliberations on the cases involving William D. Werner and Julia Perez, Commissioner Ring recuses himself and leaves the room.

William Werner-

The investigative report concerning a complaint filed by Stephanie Pena and the Commission on its own motion against **William D. Werner**, License #ER 40007334 was presented to the Commission with accompanying documentation and information supplied by Mr. Werner. 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 Colorado real estate broker **William D. Werner** failed to properly account for money belonging to others; failed to perform record keeping and reconciliations as required; failed to disclose an affiliated business arrangement; failed to maintain transaction files as required; failed to exercise reasonable supervision over unlicensed personnel; failed to delegate supervisory authority in writing; failed to maintain current office policies; and failed to use commission approved forms when available; and
- b. These acts constitute a violation of: 12-61-113 (1)(g); 12-61-113 (1)(g.5); 12-61-113 (1)(i); 12-61-113 (1)(n); 12-61-113 (1)(o); 12-61-113.2; 12-61-113 (1)(k); and Commission Rules C-2, E-1, E-4, E-29, E-31, E-39, and F-7; and
- c. Mr. Werner's real estate broker's license shall be suspended for a period of 30 days and continuing indefinitely until such time as he submits documentation that all security deposits, property management and rental income accounts have been properly reconciled in accordance with Commission Rule E-1(p) and documentation that all shortages have been replaced; and
- d. He shall cease all property management activities until completion of 96 additional hours of real estate education in property management; and
- e. He shall pay a fine to the Commission in the amount of \$5,000.

Motion unanimously carried.

Julia Perez-

The investigative report concerning a complaint filed by Stephanie Pena and the Commission on its own motion against **Julia Perez**, License #FA 40045968 was presented to the Commission with accompanying documentation and information supplied by Ms. Perez. 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. Perez.

- a. Complainant alleges that Colorado real estate broker **Julia Perez** failed to properly account for money belonging to others; withdrew management fees in a manner other than stipulated in the management agreement; and accepted a commission or fee from individuals other than her employing broker; and
- b. These acts constitute a violation of: 12-61-113 (1)(g); 12-61-113 (1)(n); 12-61-113 (1)(q); 12-61-113 (1)(k); 12-61-117; and Commission Rules E-1, and E-2;
- c. Ms. Perez's real estate broker's license shall be publicly censured; and
- d. She shall cease all property management activities until completion of 32 additional hours of real estate education in property management, including trust accounts and the coursework must be conducted under the supervision of an employing broker; and
- e. Ms. Perez shall pay a fine to the Commission in the amount of \$1,000.

Motion unanimously carried.

Commissioner Ring returns to the room at 10:54 a.m.

Adoption of Forms

Kent Levine provided an overview of legislation dictating forms changes for the Commission. Most bills have a July 1 effective date and that is the mandatory date for using the new forms as well. There are some typographical and clerical-type issues remaining on the forms, and those are being fixed.

It was moved by Commissioner Ring and seconded by Commissioner Ozarski to adopt the forms and grant authority to the Division to fix forms for any typographical or clerical errors or to change the forms as necessary if the Special District bill becomes law.



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9Clean051909.pdf

Motion unanimously carried.

LICENSING MATTERS:

Forrest Garrison-

The Commission considered the application of Forrest Garrison for a real estate broker's license together with accompanying documentation and information supplied by Mr. Garrison. It was moved and seconded by the Commission to authorize the issuance of a restricted broker's license for up to five years during which time Mr. Garrison's restricted broker's license will be contingent on repaying his \$10,000 fine on his used motor vehicle license disciplinary action, or setting up a payment plan to repay the fine and providing proof of such payments to the Commission. Once payment of the fine is complete, Garrison can be issued an independent proprietorship broker level of authority. Accordingly, the Commission authorized the staff to issue the appropriate proposed stipulation and correspondence utilizing the expedited settlement process stipulation terms previously authorized by the Commission.

Motion unanimously carried.

HEARING MATTERS:

Steve Mascarenas-

It was moved and seconded by the Commission to concur with the findings in the Initial Decision Upon Default in Case Number RC 2008-0029, in the matter of the Colorado Real Estate Commission vs. Steve J. Mascarenas, License # EA 40007687. Mr. Mascarena's real estate broker's license is revoked.

Motion unanimously carried.

Randolph G. Jensen-

The Commission voted to defer action on the Initial Decision in Case Number RC 2008-0023, in the matter of the Colorado Real Estate Commission vs. Randolph G. Jensen until the next meeting scheduled in July.

Motion unanimously carried.

The Colorado Real Estate Commission meeting adjourned at 10:13 a.m. on June 2, 2009.

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