

MINUTES

**COLORADO REAL ESTATE COMMISSION MEETING
September 1, 2009**

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
September 1, 2009
COLORADO DIVISION OF REAL ESTATE
1560 BROADWAY, SUITE 925
DENVER, CO 80202

A Colorado Real Estate Commission public meeting was held on September 1, 2009. Those Commissioners in attendance were Vice-Chair Charles “Buzz” Moore, Douglas Ring, Jill Ozarski and Gina Piccoli. Also attending were Marcia Waters, Director of Investigations and Enforcement; 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. Chairwoman Kristin Bronson, and Director Erin Toll 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.

Permanent Rulemaking

The Real Estate Commission opened the rulemaking hearing to consider Rule F-1, Permitted and Prohibited Form Modifications with introduction and overview by Kent Levine from the Forms Committee.

Following discussion, it was moved by Commissioner Ring and seconded by Commissioner Piccoli to adopt Rule F-1, Permitted and Prohibited Form Modifications.



PR F1 Permitted
Prohibited Form Modif

Motion unanimously carried.

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 This emergency rule will expire after 90 days, unless repealed or a permanent rule is enacted.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.

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



ER F7 090109.pdf

Motion unanimously carried.

Permanent Rulemaking

The Real Estate Commission considered Rule F-7 and Commission-approved forms and following discussion, it was moved by Commissioner Piccoli and seconded by Commissioner Ring to adopt Rule F-7, Commission Approved Forms.



PR F7 Commission
Approved Forms 090

Motion unanimously carried.

ORDER OF BUSINESS

Approval of Minutes

It was moved by Commissioner Ring and seconded by Commissioner Ozarski to approve the Minutes of August 4, 2009.

Motion unanimously carried.

POLICY MATTERS:

Certificate of Appreciation for Kent Levine-

Kent Levine from the Forms Committee was presented with a certificate of appreciation and etched crystal cube for his many years of service to the Commission and Division of Real Estate. Kent Levine has served as a member of the Forms Committee since 1978 and the Commission and Staff thank him for his tireless endeavors. We are grateful for the donation of his time and recognize that he regularly works round the clock. Thank you Kent Levine!

CPS-20 Commission Position Statement on Personal Assistants -

CPS-20, the Commission Position Statement on Personal Assistants was discussed by the Commission. It will be brought back to the October Commission meeting with further edits for the Commission's review and approval.

CPS-35 Commission Position Statement on Brokers as Principals -

CPS-35, the Commission Position Statement on Brokers as Principals was discussed by the Commission. It will be brought back to the October Commission meeting with further edits for the Commission's review and approval.

Department of Justice Letter-

The Commission approves sending a letter to the Department of Justice concerning the Commission's position on rebates.



DOJ Letter.pdf

Introduction of New Staff-

Marcia Waters introduced two new staff members to the Commission. Aaron Acker is the new expedited settlement staff member and Jordan Beezley is the Division's new conservation easement investigator.

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.

Acting Chair Charles "Buzz" Moore recuses himself at 9:25 and leaves the room. The gavel is passed to Commissioner Piccoli.

Steve Fleming-

The investigative report concerning a complaint filed by James Ensley and the Commission on its own motion against **Steve J. Fleming**, License #ER 640525 was presented to the Commission with accompanying documentation and information supplied by Mr. Fleming. 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. Fleming.

- a. Complaint alleges that Colorado real estate broker **Steve J. Fleming** failed to ensure that contract documents accurately reflected the terms of the transaction; failed to draft amend/extends to reflect the changes to the terms of the transaction; and failed to exercise reasonable skill and care; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); and 12-61-807(2)(b); and
- c. Mr. Fleming'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 \$7,500; and
- e. Mr. Fleming shall successfully complete real estate education courses in Contracts and Brokerage Relationships.

Motion unanimously carried.

Carl Borgstrom-

The investigative report concerning a complaint filed by James Ensley and the Commission on its own motion against **Carl A. Borgstrom**, License #EA 243381 was presented to the Commission with accompanying documentation and information supplied by Mr. Borgstrom. 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. Borgstrom.

- a. Complaint alleges that Colorado real estate broker **Carl A. Borgstrom** failed to ensure the contract documents accurately reflected the terms of the transaction; failed to ensure his license status was disclosed; and failed to ensure the settlement statements accurately reflected the terms of the transaction; and
- b. These acts may constitute a violation of: 12-61-113(1)(t); 12-61-113(1)(k); and Commission Rule E-25; and
- c. Mr. Borgstrom's real estate broker's license shall be publicly censured; and
- d. He shall pay a fine to the Commission in the amount of \$5,000; and
- e. Mr. Borgstrom shall successful complete a real estate education class in Ethics.

Motion unanimously carried.

Byron Warnes-

The investigative report concerning a complaint filed by James Ensley and the Commission on its own motion against **Byron T. Warnes**, License #EI 1313038 was presented to the Commission with accompanying documentation and information supplied by Mr. Warnes. 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. Warnes.

- a. Complaint alleges that Colorado real estate broker **Byron T. Warnes** failed to disclose his license status in the contract documents; failed to disclose his interest in the purchase of the property; failed to draft amend/extends to reflect the changing terms of the transaction; failed to disclose that purchaser's financing was contingent upon a simultaneous closing of the same property with another purchaser; and settlement documents did not accurately reflect the terms of the transaction; and
- b. These acts may 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 Rules E-5, and E-25; and
- c. Mr. Warnes real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$12,500.

Motion unanimously carried.

Dennis Krueger-

The investigative report concerning a complaint filed by James Ensley and the Commission on its own motion against **Dennis W. Krueger**, License #EI 1309021 was presented to the Commission with accompanying documentation and information supplied by Mr. Krueger. 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. Krueger.

- a. Complaint alleges that Colorado real estate broker **Dennis W. Krueger** failed to disclose his license status in the contract documents; and that settlement documents did not accurately reflect the terms of the transaction; and
- b. These acts may constitute a violation of: 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); and Commission Rule E-5; and
- c. Mr. Krueger's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$7,500.

Commissioner Piccoli is opposed. Motion Fails.

It was then moved by Commissioner Piccoli and seconded by Commissioner Ring to incorporate these specific terms into the Commission approved ESP stipulation to be sent to Mr. Krueger.

- a. Mr. Krueger's real estate broker's license shall be suspended for a period of 60 days; and
- b. He shall pay a fine to the Commission in the amount of \$7,500; and
- c. Mr. Krueger shall successfully complete real estate education courses in Ethics and Contracts.

Motion carried. None are opposed.

Commissioner Moore returns to the room at 9:37 a.m. and the gavel is passed back to him as Acting Chair.

Michelann Cordero-

The investigative report concerning a complaint filed by Linda Koch, Timothy Trollinger and the Commission on its own motion against **Michelann Cordero**, License #ER 40021602 was presented to the Commission with accompanying documentation and information supplied by Ms. Cordero. 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. Cordero.

- a. Complainant alleges Colorado real estate broker **Michelann Cordero** failed to maintain transaction files as required; failed to disclose her license status in six transactions; failed to establish brokerage relationships as required; acted as a transaction broker for herself in four transactions; misrepresented owner

- occupancy; and failed to fully cooperate and respond in full to this investigation;
and
- b. These acts may constitute a violation of: 12-61-113(1)(c); 12-61-113(1)(i); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); 12-61-807(2); and Commission Rules E-4, E-21, and E-25; and
 - c. Ms. Cordero's real estate broker's license shall be revoked; and
 - d. She shall pay a fine to the Commission up to \$50,000.

Motion unanimously carried.

James Colson-

The investigative report concerning a complaint filed by Todd Sullivan and the Commission on its own motion against **James C. Colson**, License #EA 40011112 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. Colson.

- a. Complainant alleges that Colorado real estate broker **James C. Colson** failed to properly account for money belonging to others as required; commingled funds; and failed to respond to the Commission's request for information as required; and
- b. These acts may constitute a violation of: 12-61-113(1)(b); 12-61-113(1)(c); 12-61-113(1)(g); 12-61-113(1)(g.5); 12-61-113(1)(i); 12-61-113(1)(t); 12-61-113(1)(k); and Commission Rules E-1, E-4, and E-21; and
- c. Mr. Colson's real estate broker's license shall be revoked; and
- d. He shall pay a fine to the Commission up to \$22,500.

Motion unanimously carried.

Annick Malotaux-

The investigative report concerning a complaint filed by the Colorado Division of Insurance and the Commission on its own motion against **Annick Malotaux**, License #FA 100014016 was presented to the Commission with accompanying documentation and information supplied by Ms. Malotaux. 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. Malotaux.

- a. The Complainant alleges that Colorado real estate broker **Annick C. Malotaux** provided misleading, incomplete, or materially untrue information while applying for licensure with the Division of Insurance. As a result, one license was denied and Malotaux voluntarily surrendered her existing license with the Division of Insurance; and

- b. These acts may constitute a violation of: 12-61-113(1)(v); and 12-61-113(1)(t); and
- c. Ms. Malotaux's real estate broker's license shall be publicly censured; and
- d. She shall pay a fine to the Commission in the amount of \$500.

Motion unanimously carried.

Ray Morrison-

The investigative report concerning a complaint filed by Janet Lightfoot, Christopher Sickels, Mark Beder and the Commission on its own motion against **Ray D. Morrison**, License #EA 40014164 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. Morrison.

- a. Complaint alleges Colorado real estate broker **Ray D. Morrison** failed to respond to the Commission's request for information regarding this investigation as required. Morrison is currently inactive due to non-compliance with E&O insurance; and
- b. These acts may constitute a violation of: 12-61-113(1)(k); and Commission Rule E-21;
- c. Mr. Morrison's real estate broker's license shall be suspended for a period of 90 days and continuing indefinitely until he provides a complete response to the Division's request for information and documentation; and
- d. Mr. Morrison shall pay a fine to the Commission in the amount of \$250.

Motion unanimously carried.

Joe Geanetta-

The investigative report concerning a complaint filed by Linda L. Simpleman and the Commission on its own motion against **Joe Geanetta**, License #EI 40032597 was presented to the Commission with accompanying documentation and information supplied by Mr. Geanetta. 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. Geanetta.

- a. Complainant alleges Colorado real estate broker **Joe Geanetta** failed to maintain trust accounts as required; failed to remit, within a reasonable time, money belonging to others; and converted or diverted money belonging to others without proper authorization; and
- b. These acts may constitute a violation of: 12-61-113(1)(g); 12-61-113(1)(g.5); 12-61-113(1)(n); 12-61-113(1)(t); 12-61-113(1)(k); and Commission Rule E-1; and
- c. Mr. Geanetta's real estate broker's license shall be revoked; and

- d. He shall pay a fine to the Commission up to \$5,000.

Motion unanimously carried.

Kristi Terrazas-

The investigative report concerning a complaint filed by the Commission on its own motion against **Kristi D. Terrazas**, License #FA 40034770 was presented to the Commission with accompanying documentation and information supplied by Ms. Terrazas. 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. Terrazas.

- a. Complainant states that Colorado real estate broker **Kristi D. Terrazas** pled guilty to Unlawful Controlled Substance Possession, a Class 4 Felony on May 21, 2009; and Terrazas failed to report said guilty plea as required; and
- b. These acts may constitute a violation of: 12-61-113(1)(m); 12-61-113(1)(m.6); 12-61-113(1)(k); and Commission Rule E-49; and
- c. Ms. Terrazas' real estate broker's license shall be publicly censured; and
- d. She shall pay a fine in the amount of \$500 to the Commission; and
- e. Ms. Terrazas' real estate broker's license shall be restricted for a period of three years.

Motion unanimously carried.

LICENSING MATTERS:

Eric Ross

The Commission considered the application of Eric Ross for a real estate broker's license together with additional documentation and information supplied by Mr. Ross. It was moved and seconded by the Commission to issue the license.

The motion was then amended to issue Mr. Ross a restricted real estate broker's license and the restriction is for a period of three years.

Motion unanimously carried.

Paul Coll-

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

Motion unanimously carried.

HEARING MATTERS:

Peggy Dare-

The Commission voted to concur with the Initial Decision, Findings of Fact and Conclusions of Law in Case Number RC 2008-0027, in the matter of the Colorado Real Estate Commission vs. Peggy M. Dare. Ms. Dare's real estate broker's license is revoked.

Motion unanimously carried.

The Real Estate Commission meeting adjourned at 10:02 a.m. on September 1, 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**