

South Carolina Real Estate Commission
Minutes Regular Meeting/Hearings
January 18, 2006
10:00 A.M.

Members attending Jay Keenan, Chairman; Manning Biggers, Vice Chairman; Tony Cox; Buccie Harley; Scott Moseley; and Steve Sloop
Absent: Robert Heos (Excused); Evelyn Young (Excused)

Staff attending: Jay Pitts, Administrator; Ann Parris, Administrative Assistant; Beau Tiller, Manager, Education; Joe Harmon, Office of General Counsel; and Shirley Robinson; LLR Advice Counsel; and Robert Selman, ADD

Other: Melissa S. Browne, Real Estate School of South Carolina; Jim Peters, South Carolina Association of Realtors (SCAR)

Chairman Keenan called the meeting to order at 10:10 a.m. All members of the Commission introduced themselves. Chairman Keenan stated for the record the following Freedom of Information statement. Public notice of this meeting was properly posted at the Real Estate Commission office, Synergy Business Park, Kingstree Building, Columbia, South Carolina, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act. A quorum was present at all times.

Minutes – November 16, 2005

Minutes of the November 16, 2005, meeting were unanimously approved as written on motion of Mr. Biggers and second of Mr. Cox.

Vote to Excuse Absences of Board Members

Mr. Harley moved to excuse Robert Heos and Evelyn Young from today's meeting. Motion was seconded by Mr. Sloop and unanimously passed.

Melissa S. Browne, Real Estate School of South Carolina

Ms. Browne presented a proposal requesting that the current policy of requiring the post-licensing curriculum to be taught only in the classroom setting be modified to allow for the same curriculum to be taught via distance education.

At the conclusion of Ms. Browne's presentation, the Board discussed various aspects of distance education, such as assuring identity, higher passing percentages than classroom percentages, convenience of online courses, 45 states that allow continuing education courses via distance learning, and 31 that states allow real estate pre-licensing to be taken as a distance education course (online is the primary delivery method).

Ms. Browne stated that South Carolina already honors the Association of Real Estate License Law Officials (ARELLO) approval process for distance education and allows for the eight hours of mandatory continuing education every two years to be accomplished through distance learning.

Chairman Keenan thanked Ms. Browne for bringing this information to the Board and stated her presentation would be taken under advisement.

Management Update – Jay Pitts, Administrator

Staffing –Reorganizing the staff and creating a team where everyone will be housed in the same area. It continues to be a work in progress. There is a vacancy in the education section at this time due to the resignation of Terry Johns.

Beau Tiller, Manager, education, has been handling some of the Appraisers Board duties that originally had been done by Ed Coleman before the formation of the Office of Investigations and Enforcement. Mr. Coleman has moved back to the second floor with the Appraisers Board and will handle the programmatic matters which will allow Mr. Tiller to have more time to take care of the education matters for both boards.

Ken Kitts will continue to head up Time Share, and Robbie Boland is in charge of the licensing section. Mr. Boland reports that the number of licensees has grown from 28,000 to 41,000 in the last two years.

Mr. Biggers asked if the distance learning education that was previously discussed would be a help to staff? Mr. Tiller stated that the Task Force that was appointed to study distance learning education spent an enormous amount of time studying post licensing and concluded that it was essential that skill demonstration components be imbedded in each course. He said also they felt that instructors reinforce topics taught through student activities and interactions which demonstrate their ability to perform the skills taught. He stated it is essential that these newly-licensed agents have interaction with the instructor and other students by breaking off into groups to accomplish skill building activities such as case studies, solving group problems, and reinforcing the skills taught in specific modules. Mr. Tiller stated the current system the Commission has enacted for post licensing has been a success and a good program for new licensees. He said the Commission has received positive comments from licensees concerning the post-licensing program in South Carolina, and that other states have asked for information on forming a structured program as South Carolina has created.

It was decided that a small committee made up of Board members and staff from the Real Estate Commission would get together next week, January 25, 2006, and discuss this matter. The plan is to have a report for the Board by the March meeting. Committee would include Laura Stroman, SCAR, Beau Tiller, Jay Pitts, Mr. Biggers, Mr. Sloop, and any other Commission members who would like to attend.

Newsletter – In response to a question from Mr. Cox regarding newsletters, Mr. Pitts stated there were numerous reasons that the Commission replaced the paper newsletter with electronic communication. He said the Commission is looking at the best way to capture email addresses so licensees can receive information personally. One option at this time is to have a place for it on the renewal notices. Plans are to continue to keep the Commission web page current as this would be the vehicle for disseminating information to the licensees; however, any time it is deemed there is a need for a priority mailing, this would be done.

Mr. Peters stated SCAR sends out an electronic newsletter weekly and that approximately only 20% of newsletters are actually opened and read. Mr. Peters stated the main reason being that spam blockers block emails. Mr. Biggers suggested that it be sent to Brokers-in-Charge and let them send it to their licensees.

Wall Certificates - Mr. Pitts stated the Commission has not issued wall certificates for a very long time and there is no longer a requirement for displaying a wall certificate.

Disciplinary Actions – All Board members will receive by mail a copy of all disciplinary orders. The disciplinary orders are on the Commission web site as well.

Electronic Notification of Meetings – Staff will be sending notice of meeting and documentation for meetings electronically from now on. Paper copies will still be in notebooks on meeting days.

Old Business - Engine Bill

Mr. Selman reported on the status of the LLR Engine Bill. He commented that members of the LLR staff have spent a great deal of time negotiating with various constituents and lobbyist regarding the Engine Bill. He said there were so many amendments that it was decided to let the current Bill die and reintroduce the same Bill with the amendments. That Bill (4420) with amendments was introduced this week.

Mr. Peters expressed the concern that the South Carolina Association of REALTORS has with Section 40-1-60 (A). He said it would limit those people who could serve to only those who are not serving on a constituent association, and this could keep the best and the brightest from participating as a member of the Commission.

Mr. Selman stated this was a miscommunication because the Bill does not say that you cannot be a member of a constituent association and serve on this board. He said the Bill says a person cannot serve as an officer on the board and the constituent association concurrently; therefore, a SCAR officer could serve as a member of the Commission but

could not be an officer of the Commission. He said the rationale is that the objective and goals of the Commission are different from the objective and goals of the Association. Mr. Peters stated directors of SCAR are not considered officers and suggested that there be a clarifying definition added to the language in this section of the Engine Bill. Mr. Wilson suggested that the bylaws of The Association of Realtors could be amended to say that directors are not considered officers if it is not addressed in their bylaws.

Mr. Peters thanked the Board for allowing him to express the Association's concerns on this matter and appreciated the cooperation between the Commission and SCAR.

(This section states "Board members are appointed by the Governor and serve at the pleasure of the Governor. A board member may not serve concurrently as an officer of the board and a statewide association whose members are regulated by the board on which the member serves.")

Others areas of the Engine Bill that were discussed included:

distinction between revoked and permanent revocation in the definition section

Section 40-1-45 number of public members *(A) Effective July 1, 2006, all board administered by the department as listed in Section 40-1-40 (A) must include two or more public members.*

Section 40-1-50 (C) reimbursement of Board members *(C) Board members and other persons authorized and approved by a board and the department to engage in business for a board must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred and in connection with and as a result of their work on behalf of a board. The director, within the limits set by the Comptroller General, shall establish reimbursement standards for travel and other expenses incurred by a board member or other person in the performance of a board member or other person's official duties.*

Section 40-1-70 - New section added *(B) When evaluating examinations for a practice authorization, a board must give preference to available nationally recognized examinations which facilitate cross-border practice. If no nationally recognized examination is available, a board shall consider procedures for development of the examination, validity of examination and examination security*

Mr. Selman stated that the Real Estate Practice Act says if someone is properly licensed in another jurisdiction and is in good standing in that jurisdiction and would like a SC real estate license, all he/she has to do is submit a certification of licensure and pass the state portion of the SC exam. SC has reciprocity with four states and true reciprocity means that an applicant does not have to do anything except apply for the license.

Section 40 – 1-90 (E) In disciplinary actions, the department bears the burden of proving by the preponderance of the evidence that a violation of this chapter, the practice act, or a regulation promulgated pursuant to this chapter or the practice act has occurred.

Mr. Wilson explained the preponderance of the evidence and the burden of proof.

Section 40-1-170 (A) In an order issued in resolution of a disciplinary proceeding before a board, the person authorized to practice found in violation of the applicable practice act may be directed to pay a sum not to exceed the reasonable costs of any inspection, investigation, and prosecution of the case.

Mr. Selman stated that the staff would need to furnish the financial information to the Board to include in their hearing procedures.

Both Mr. Selman and Mr. Wilson stated that the Engine Bill is a supplemental bill and does not trump individual practice acts. If there is a conflict, the practice act controls and if the practice act is silent or if there is not a conflict, the Engine Bill is effective. Mr. Wilson stated LLR tried to clarify that with the addition of a new section clarifying primacy of practice acts.

No further discussion on the Engine Bill. Mr. Cox moved that the Commission go on record in support of the Engine Bill. Seconded by Mr. Biggers and unanimously carried.

No new business

Recess at 11:30 am reconvened at 11:35 am

License Application Appeals

Rick H. Nazario

11:35 am

Mr. Nazario appeared before the Board to request that he be allowed to sit for the real estate sales examination. He was not represented by counsel Mr. Nazario presented his case to the Board.

Executive Session

12:10 pm

Chairman Keenan stated that the Board would take Mr. Nazario's case under advisement. He called for a motion to go into executive session.

Motion: Mr. Sloop moved and Mr. Biggers seconded the motion to go into executive session. Motion carried.

Return to Public Session

12:20 pm

Motion: Mr. Biggers moved and Mr. Harley seconded to come out of executive session. Motion carried.

Application Withdrawn- Mr. Nazario withdrew his application to sit for the sales examination.

Andrew F. Tyler

12:25 pm

Mr. Tyler appeared before the Board requesting that he be allowed to sit for the sales examination. He was not represented by counsel. He had one witness, his mother, Joanne T. Harwell, 746 Dragoon Drive, Mt. Pleasant, SC 29464. Mr. Tyler presented his case and his witness testified.

Executive Session

12:38 pm

Chairman Keenan stated that Mr. Tyler's case was submitted to the Board and that they would take it under advisement. He called for a motion to go into executive session.

Motion: Mr. Biggers moved to go into executive session for deliberation. Motion was seconded by Mr. Cox and carried.

Return to Public Session

12:42 pm

Chairman Keenan called for a motion to return to public session. He stated that while the Board was in executive session no decisions were made and no votes taken.

Motion: Mr. Sloop moved to come out of executive session and Mr. Moseley seconded. Motion carried.

Motion: Mr. Sloop moved to allow Mr. Tyler to sit for the sales examination once he has met all licensure requirements. Mr. Sloop commended Mr. Tyler on his presentation and stated the documentation that he offered make the Board's job a lot easier. Motion was seconded by Mr. Biggers and unanimously carried.

Jenny L. Mitchell Cockrell

12:45 pm

Ms. Cockrell appeared before the Board November 16, 2005, to request that she be allowed to sit for the property manager's exam in order to have her license reinstated. She withdrew her application at that time. She resubmitted her application and asked to appear before the Board today. Ms. Cockrell was not represented by counsel and had one witness, Michael C. Cockrell, husband, 106 Seafarer Lane, Columbia, SC 29212. Joe Harmon, LLR Office of Investigation and Enforcement, was in attendance to testify for the Commission.

Ms. Cockrell presented her case to the Board. Mr. Harmon testified for the Commission. At the conclusion of the testimony, Chairman Keenan stated that Ms. Cockrell's case was submitted to the Board and that they would take it under advisement. He called for a motion to go into executive session.

Executive Session

1:10 pm

Motion: Mr. Moseley moved that the Board go into executive session for deliberation. Motion was seconded by Mr. Sloop and carried.

Chairman Keenan called for a motion to return to public session. He stated that while the Board was in executive session no decisions were made and no votes taken.

Motion: Mr. Cox moved to come out of executive session and Mr. Sloop seconded. Motion carried.

Motion: Mr. Biggers moved Jenny Mitchell Cockrell be approved to sit for the property management exam. Motion was seconded by Mr. Harley.

Mr. Sloop asked if the motion needed to be amended because he thought she was interested in getting the property manager-in-charge license. Chairman Keenan stated the motion said property manager.

Chairman Keenan asked Ms. Cockrell if her education was up-to-date and she replied yes. He explained that he was not referring to what she had taken to be licensed originally but subsequent to that. Ms. Cockrell stated she was not aware that she had to take the education again but that she would. Chairman Keenan stated that is part of the application and that this was a fresh start.

Chairman Keenan called for further discussion and remarked to Mr. Biggers that the education requirements should be part of the motion. Mr. Biggers stated that is part of the motion and of course it is understood that Ms. Cockrell has to meet all requirements of LLR so she may sit for that exam.

Chairman Keenan called for the vote. Motion carried.

There being no further business, the meeting adjourned at 1:15 pm on motion of Mr. Cox and second of Mr. Sloop.