

MINUTES

South Carolina Real Estate Commission

Wednesday, September 18, 2013, 10:00am

Synergy Business Park, Kingstree Building, Conference Room 105

110 Centerview Drive, Columbia, South Carolina 29210

Meeting Called to Order:

Tony Cox, Chairman, called the regular scheduled meeting of the South Carolina Real Estate Commission to order at 10:07a.m. Board members participating in this meeting included:

Tony Cox – Chair, 7th Congressional District
Sarah Takacs – Vice-Chair, 2nd Congressional District
Candace Pratt – 1st Congressional District
Carl Edwards – 3rd Congressional District
David Crigler – 4th Congressional District
Manning Biggers – 5th Congressional District
Buccie Harley – 6th Congressional District
Johnathan Stackhouse – Public Member
G. Hamlin O’Kelley – Public Member
Wayne Poplin – At-Large Member

Staff members participating during the meeting included Rod Atkinson, Administrator; Wanda Cooke, Administrative Assistant; Georgia Lewis, Office of Advice Counsel; John Sowell, Office of Investigations and Enforcement, Lauren Kearney, Prentiss Shealey and Princess Hodges, Office of General Counsel.

Public Notice:

Chairman Cox announced that public notice of this meeting was properly posted at the S.C. Real Estate Commission Office, Synergy Business Park, Kingstree Building, 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.

Pledge of Allegiance:

The Pledge of Allegiance was led by Chairman Cox.

Excused Absences:

None

Introduction of Board Members and Staff

Approval of Agenda:

MOTION:

Mr. Stackhouse made a motion to approve the agenda. Mr. Edwards seconded the motion, which carried unanimously.

Fee Adjustment Proposal - Director Holly Pisarik

Ms. Pisarik addressed the Commission to discuss services offered and to propose fee adjustments. Topics covered included:

- Administrators and Staff Adjustments
 - The Real Estate Commission would have a dedicated Administrator and staff.
- Investigations
 - Three (3) new investigator positions will be added to the Office of Investigations and Enforcement (OIE) to assist in processing complaints within the new “cycle times” guidelines of 150 days or less.
 - All investigators will attend training, and will be required to obtain and maintain CLEAR certification.
 - Investigators will also attend industry specific training, if necessary.
 - Investigative Consultants will be used when necessary. Investigative Consultants will be asked to become more involved in the investigative review process and go on interviews with investigators, when necessary.
- Office of General Counsel
 - Three (3) new attorney positions will be added.
- Information Technology
 - The IT department will be working with Boards to add social media avenues. The Real Estate Commission will go live in the coming weeks with a Facebook page. Topics of interest that are relevant to the industry will be added to be able to better communicate with the licensees.
 - Board websites are being revised in an effort to be more user friendly. Board Members and staff will be asked to test the new website prior to going live.
 - Several new security measures have been added to protect our licensees’ personal data.
 - Online applications and complaint forms will be added in the near future.
- Proposed Fee Adjustments
 - Ms. Pisarik informed the Commission that LLR had conducted a financial analysis of all its Boards and Commissions to determine whether fees charged are sufficient, but not excessive, to cover the operating expenses of the Commission. This analysis revealed that fees currently being charged by the Real Estate Commission are in excess of the funds necessary for daily operations of the Commission. As a result of this finding, Director Pisarik suggested the Board authorize LLR to promulgate legislation to reduce biennial renewal fees as follows:
 - Active Sales from \$60 to \$40
 - Active Broker from \$80 to \$50
 - Active Broker in Charge from \$120 to \$70
 - Active Property Manager from \$80 to \$50
 - Active Property Manager in Charge from \$120 to \$70
 - Active (annual) Timeshare Salesperson Registrant from \$50 to \$30
 - Inactive renewal fees for all license types from \$150 to \$120

This new fee proposal would total a **net EXCESS of \$140,920** per year.

Question and Answer session ensued. Commission members expressed concerns regarding staffing and ensuring the Real Estate Commission maintains adequate staff to execute the daily operations of the Commission. Some Commissioners were uncomfortable with the “cushion” of only \$140,192.

MOTION:

Mr. Crigler made a motion to accept the fee adjustment proposal with the exception of further adjusting the fees to allow for an excess of at least \$250,000. Mr. O’Kelley seconded the motion. The motion was rescinded.

Ms. Pisarik will recalculate the numbers to ensure a higher net excess.

MOTION:

Mr. Edwards made a motion to table this discussion and vote until Ms. Pisarik can recalculate the numbers. Mr. Poplin seconded the motion, which carried unanimously. Ms. Pisarik left the meeting and will return at a later time with new figures for the Commission to review.

Approval of the Meeting Minutes from August 21, 2013

MOTION:

Mr. Poplin made a motion to approve the minutes of the August 21, 2013 meeting. Mr. Crigler seconded the motion, which carried with one abstention.

Chairman’s Remarks:

Tony Cox

Administrator’s Remarks:

Roderick Atkinson

1. **Licensure Update** as of September 17, 2013

• Broker	5282
• Broker In Charge	7481
• Property Manager	1262
• Property Manager In Charge	1101
• Salesman	17075
• Salesman (Provisional)	1305
TOTAL ACTIVE	33506

• Inactive Broker	1573
• Inactive Property Manager	462
• Inactive Salesman	4952
TOTAL INACTIVE	6987

**TOTAL CURRENT LICENSES
AS OF 9/17/13 40493**

2. Investigations and Enforcement

Mr. Atkinson presented the Commission with an overview of the open and closed cases from January 1, 2013 – September 13, 2013, as well as the same time period from the previous year. Discussion ensued concerning the number of timeshare cases that we have and the fact that, in most instances, the Commission has no jurisdiction.

3. **Budget** update for August 2013 was reviewed.

4. Approval of **IRC Report** - Chairman Cox requested that all Cease and Desist letters be emailed to the Commission.

MOTION:

Mr. O’Kelley made the motion to approve the IRC report for September 9, 2013. Mr. Crigler seconded the motion, which carried unanimously.

5. Current Trust Account Guidelines are outdated and will be updated in the near future. There are inconsistencies between the Statute and the current guidelines that need to be corrected. A statement will be added to the website to inform licensees of these inconsistencies.

Unfinished Business

Short Sales – Gigi Lewis, Advice Counsel

Nick Kremydas, SC Realtors Association raised the following question at a previous meeting concerning short sales:

Whether the negotiations of short sales with the lender on behalf of the client, within the real estate scope of practice?

All Real Estate licensees are required to follow the statutes and regulations regarding their practice in the State of South Carolina. The Commission’s responsibility is to interpret and enforce these statutes and regulations. If there are concerns those negotiations in short sales may be considered the unauthorized practice of law, the South Carolina Supreme Court has the exclusive jurisdiction to regulate the practice of law in South Carolina, not the Real Estate Commission.

Section 40-5-310 makes the unauthorized practice of law a felony. The South Carolina Supreme Court has never defined what constitutes the unauthorized practice of law, but actually invites declaratory judgment actions in the Supreme Court’s original jurisdiction for such determination based on the facts presented (See *In Re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar* 422 S.E 2nd 123, 309 S.C. 304 (1992).

If this is the concern of the SC Realtors Association, they can formulate their concerns with negotiating short sales in the form a declaratory judgment action to the South Carolina Supreme Court. The Supreme Court invites this and will deal with the specific facts on a case by case basis to determine if such practice and/or negotiations may be considered the unauthorized practice of law.

Investigations vs/ Inspections – Gigi Lewis, Advice Counsel

Inspections have been authorized by the Commission in accordance with Section 40-57-180 (C). Investigations are authorized in accordance with Section 40-57-150 and 40-1-80.

Fee Adjustment Proposal - Director Holly Pisarik

Director Pisarik returned to the floor to further discuss the fee adjustment proposal for the Real Estate Commission. The new fee adjustment proposal for biennial renewal fees is as follows:

- Active Sales from \$60 to \$45
- Active Broker from \$80 to \$55
- Active Broker in Charge from \$120 to \$75
- Active Property Manager from \$80 to \$55
- Active Property Manager in Charge from \$120 to \$75
- Active (annual) Timeshare Salesperson Registrant from \$50 to \$30
- Inactive renewal fees for all license types from \$150 to \$120

This new fee proposal would total a **net EXCESS of \$301,950** per year.

MOTION:

Mr. Crigler made a motion to accept Director Pisarik's proposed fee adjustment as revised, as well as matters relative to services provided to the Commission by LLR. Mr. Harley seconded the motion, which carried unanimously.

MOTION:

Mr. Harley made a motion to accept the Chairman's signature on Director Pisarik's letter, which will be included in her package to the General Assembly. This letter will acknowledge the Commissions vote to allow LLR to promulgate revised regulation to reduce fees. Mr. Biggers seconded the motion, which carried unanimously.

New Business

Application Status Hearing

John Wingfield - Mr. Wingfield is requesting that the Commission allow him to reinstate his inactive *lapsed* real estate broker's license. This request is based on the fact that he attempted to have his address changed in 2010 and this request was not processed by staff. This error resulted in Mr. Wingfield not receiving his renewal notices.

MOTION:

Mr. Edwards made a motion to allow Mr. Wingfield to reinstate his inactive broker's license without penalty, based on LLR staff error. Ms. Takacs seconded the motion, which carried unanimously.

Col. Rodney Lewis – Col. Lewis is requesting to have his *lapsed* license reinstated based on the fact that he was deployed when the renewal came due and was unable to attend to the matter. Col. Lewis provided the Commission with documentation of his deployment. Mr. Atkinson informed the Commission of a new law that passed June 7, 2013, entitled the *Military Service, Occupation, Education and Credentialing Act*. This law provided for military personnel on active deployment to forego continuing education requirements and licensing fees.

MOTION:

Mr. O’Kelley made a motion to reinstate Col. Lewis’ inactive sales license without fees or penalties. Mr. Crigler seconded the motion, which carried unanimously.

MOTION:

Ms. Takacs made a motion to allow military based application exceptions to be approved at the staff level. Ms. Pratt seconded the motion, which carried unanimously.

DISCIPLINARY HEARINGS

Jay Lloyd

The Commission held a Disciplinary Hearing regarding Mr. Jay Lloyd. Mr. Lloyd appeared before the Commission to present testimony and waived his right to counsel. Mr. O’Kelley was recused from this hearing based on acquaintance of one of the Complainants’ families. Discussion ensued.

MOTION:

Mr. Crigler made a motion to enter Executive Session. Mr. Poplin seconded the motion, which carried unanimously.

MOTION:

Mr. Biggers made a motion to enter Open Session. Mr. Poplin seconded the motion, which carried unanimously.

MOTION:

Mr. Edwards made a motion to revoke Mr. Lloyd’s South Carolina Real Estate License, issue a Public Reprimand, and invoke a \$1000 fine for each of the five (5) infractions. Mr. Stackhouse seconded the motion, which carried unanimously.

(This proceeding was recorded by a court report in order to produce a verbatim transcript if requested in accordance with the law.)

Kevin Willson

The Commission held a Disciplinary Hearing regarding Mr. Kevin Willson. Mr. Willson appeared before the Commission to present testimony and was represented by Samuel Lindsay Carrington, Esq. Mr. Crigler recused himself based on a business relationship with the Respondent. Discussion ensued.

MOTION:

Mr. Biggers made a motion to enter Executive Session. Ms. Pratt seconded the motion, which carried unanimously.

MOTION:

Mr. Stackhouse made a motion to enter Open Session. Mr. Biggers seconded the motion, which carried unanimously.

MOTION:

Ms. Pratt made a motion to dismiss all charges. Mr. Harley seconded the motion, which carried unanimously.

(This proceeding was recorded by a court report in order to produce a verbatim transcript if requested in accordance with the law.)

Adjournment

MOTION:

Mr. Stackhouse made a motion to adjourn. Mr. Harley seconded the motion, which carried unanimously. The meeting was adjourned at 11:30 p.m.

The next meeting of the Commission will be held on October 16, 2013.