

SOUTH DAKOTA REAL ESTATE COMMISSION
MARCH 24 & 25, 2010
GOVERNOR'S INN
700 WEST SIOUX AVENUE
PIERRE, SOUTH DAKOTA

The South Dakota Real Estate Commission convened at 1:00 p.m. on March 24, 2010 in the Kneip Room of the Governor's Inn, Pierre, SD. Present for the meeting were Chairman Dennis Eismann and commission members Eileen Fischer, Brian Jackson, Charles Larkin and Paula Lewis. Also present were legal counsel Lindsey Riter-Rapp, executive director Dee Jones Noordermeer and licensing program administrator Norma Schilling.

The minutes of the February 3 & 4, 2010 meeting stood approved as written.

The financial reports for January and February 2010 were approved as submitted.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision for Tobin Karn. Motion made and seconded to accept the Findings of Fact, Conclusions of Law and Proposed Decision of Hearing Examiner Hillary Brady to the revocation of the license of Tobin Karn. Motion made and seconded to amend the Findings of Fact, Conclusions of Law and Proposed Decision of Hearing Examiner Hillary Brady for Tobin Karn to include a \$2,500 fine and a reimbursement of costs within one year along with the revocation of his license. Motion carried.

Michelle Kleven, executive vice president for the SD Association of REALTORS joined the meeting at 1:20 p.m.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision for Merlyn Grave. Motion made and seconded to revoke the license of Merlyn Grave. Motion made and seconded to amend the motion to suspend the license of Merlyn Grave for one year and require him to complete his previous stipulation within 60 days of the order. If he fails to satisfy his previous stipulation within 60 days of the order, his license will be revoked. Licensee is also ordered to reimburse the commission of all additional costs incurred by the formal proceedings. Motion carried.

The Commission reviewed the proposed declaratory ruling regarding SDCL 36-21A-28 and 36-21A-29(10). Following discussion, motion made and seconded to adopt the proposed declaratory ruling after adding "or bonded" to subparagraph 3 in the decision. Motion carried.

Michelle Kleven left the meeting at 1:55 p.m.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision for Kristol O'Connor. Motion made and seconded to adopt the Findings of Fact, Conclusions of Law and Proposed Decision of Hearing Examiner Hillary Brady to dismiss complaint #2009-022 on Kristol O'Connor. Motion carried.

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The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision for Kristol O'Connor. Motion made and seconded to adopt the Findings of Fact, Conclusions of Law and Proposed Decision of Hearing Examiner Hillary Brady to dismiss complaint #2009-019 on Kristol O'Connor with a letter to the licensee regarding her actions in the transaction. Motion carried.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision of Hearing Examiner Hillary Brady for Barbara Kimmel. Motion made and seconded to dismiss the complaint with a letter to the licensee regarding her actions in the transaction. Motion carried.

Legal counsel updated the commission on the status of the cases that are on appeal.

Fred Daniel appeared before the commission at 2:33 p.m. on his application for conditional approval. Following discussion, motion made and seconded to approve the conditional application subject to a criminal background check. Motion carried. Mr. Daniel left the meeting at 2:47 p.m.

Motion made and seconded to enter into executive session at 2:48 p.m. to review complaints. Motion carried.

Commission member Paula Lewis left the meeting at 2:53 p.m. and returned at 2:55 p.m.

Motion made and seconded to come out of executive session at 3:12 p.m. Motion carried.

Complaint #2010-008, motion made and seconded to dismiss the complaint with a letter to the licensee regarding his actions in the transaction. Motion carried.

Complaint #2010-009, motion made and seconded to dismiss the complaint. Motion carried with Commission member Lewis recusing herself from the complaint.

Complaint #2010-011, motion made and seconded to move to a formal hearing. Motion carried.

Complaint #2010-016, motion made and seconded to dismiss the complaint with a letter to the licensee and responsible broker regarding her engaging in the practice of real estate with an expired license. Motion carried.

Jeri Prestjohn appeared before the commission at 3:54 p.m. on her application for conditional approval. Ms. Prestjohn left the meeting at 3:54 p.m.

Motion made and seconded to enter into executive session at 3:55 p.m. on the application for conditional approval. Motion carried.

Motion made and seconded to come out of executive session at 4:10 p.m. Motion carried.

Motion made and seconded to approve the conditional application of Jeri Prestjohn. Motion carried.

Motion made and seconded to enter into executive session at 4:15 p.m. to discuss issues regarding licensees.

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Motion made and seconded to come out of executive session at 5:02 p.m. Motion carried.

Motion made and seconded to hold an informal consultation on a responsible broker for failing to supervise. Motion seconded.

The meeting recessed at 5:07 p.m. and reconvened at 8:40 a.m. on March 25, 2010.

Motion made and seconded to enter into executive session at 8:41 a.m. to discuss a licensee's proposed business plan. Motion carried.

Motion made and seconded to come out of executive session at 9:23 a.m. Motion carried.

Motion made and seconded to table any decision on the proposed business plan until clarification is made on SDCL 36-21A-84. Motion failed.

Motion made and seconded to clarify SDCL 36-21A-84 that if an informed consumer agrees in writing to allow a broker to receive compensation for any agreed upon service, before closing the sale or lease of an interest in real property, this compensation for service is allowed and may be received from the client or customer and placed in trust until performance of services has been consummated or terminated. Motion carried.

Discussion was held on a request from Wesley Buckmaster, attorney for James Peterson, to offer to enter into a Stipulation and Assurance of Voluntary Compliance with James Peterson. Following discussion, motion made and seconded to offer to enter into a Stipulation and Assurance of Voluntary Compliance with James Peterson to the following as amended: (1) that he reimburse the Commission for his costs of the complaint within 30 days of receiving an invoice, (2) that he pay a penalty of \$1,000 within 30 days of the signed stipulation, (3) that he complete 6 hours of continuing education in contracts and 6 hours of continuing education in real estate license law in a classroom setting in South Dakota within one year and this is in addition to the required 24 hours of continuing education, (4) that he have no real estate license law violations within one year of the signed stipulation, (5) if he is found to have violated any of the terms and conditions contained in 1 through 4 above, that at such time this Stipulation can be presented as his written admission of his violation of the Complaint filed herein, and under the auspices of the statutes and rules under which the South Dakota Real Estate Commission is governed and (6) that he agree that the Commission's publicity policy will apply in this matter and that the result will be carried in the Commission newsletter. Motion carried.

Discussion was held on electronic fingerprinting. Office staff was instructed to check on availability of electronic fingerprinting in Rapid City and Sioux Falls.

The executive director informed the Commission that SB 104 regarding disclosure of public information and public meetings had passed but had not yet been signed by the Governor.

The executive director informed the Commission that the office would like Commission approval to contract with a credit report provider for documentation of unpaid judgments that would cause the denial of a license. Motion made and seconded to proceed with the process necessary to conduct credit checks on real estate applicants. Motion carried.

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The executive director informed the Commission that she would like to have their support to run for alternate on the Board of Directors for ARELLO. Motion made and seconded to support the executive director to run for alternate. Motion carried.

The executive director and Commission member Larkin updated the Commission on the auctioneer task force meeting that was held on March 22 & 23, 2010.

Legal counsel left the meeting at 10:20 a.m.

Discussion was held on the licensing of firms. Office staff was instructed to research with other states to see if they license real estate firms.

The executive director informed the commission on the REEA Conference to be held June 14-16, 2010 in San Antonio, TX. Motion made and seconded to submit travel requests for the education director and licensing program administrator to attend the REEA Conference. Motion carried.

The next meeting of the Commission will be held May 12 & 13, 2010 in Rapid City.

There being no further business, motion made and seconded to adjourn at 11:00 a.m. Motion carried.

Dennis Eisnach, Chairman

Dee Jones Noordermeer, Executive Director

I, Dee Jones Noordermeer, hereby certify that the above is a true and correct copy of the minutes of the South Dakota Real Estate Commission meeting held on March 24 & 25, 2010.

Dee Jones Noordermeer, Executive Director