

SOUTH DAKOTA REAL ESTATE COMMISSION
AUGUST 12 & 13, 2009
AMERICINN
312 ISLAND DR
FORT PIERRE, SOUTH DAKOTA

The South Dakota Real Estate Commission convened at 1:00 p.m. on August 12, 2009 in the Walden Room of the AmericInn, Fort Pierre, South Dakota. Present for the meeting were Chairman Dennis Eisnach and commission members Eileen Fischer, Brian Jackson, Charles Larkin and Paula Lewis. Also present were legal counsel Lindsey Riter-Rapp and Robert Riter, executive director Dee Jones Noordermeer and licensing program administrator Norma Schilling.

Chairman Eisnach informed the commission of changes to the agenda to include that the informal consultation and experience waiver will be held telephonically. Commission member Lewis informed the Commission that she will be recusing herself from the formal hearing to be held on August 13, 2009. The agenda will stand as amended.

Motion made and seconded to approve the minutes of the June 15 & 16, 2009 meeting. Motion carried.

Motion made and seconded to accept the financial report for June 2009. Motion carried.

The Commission reviewed the FY 2009 Annual Report for informational purposes.

The informal consultation on complaint #2009-021 was convened at 1:50 p.m. Present for the consultation in addition to the members of the commission were legal counsel Robert Riter and Lindsey Riter-Rapp, executive director Dee Jones Noordermeer and licensing program administrator Norma Schilling. Respondent Cleo Penfield and complainant Phillip McLaughlin appeared telephonically. The consultation concluded at 2:37 p.m.

Motion made and seconded to move to a formal hearing.

Substitute motion made and seconded to offer to enter into a Stipulation and Assurance of Voluntary Compliance with Cleo Penfield for the reimbursement of costs to the commission, education and audit compliance. Proof of failure to comply with the assurance of voluntary compliance is prim facie evidence of a violation of this chapter. Motion carried.

Chairman Dennis Eisnach at 3:15 p.m. convened the hearing on the application appeal of Godofredo Contreras. Those present for the hearing in addition to the members of the commission were legal counsel Lindsey Riter-Rapp and Robert Riter, executive director Dee Jones Noordermeer, licensing program administrator Norma Schilling, applicant Godofredo Contreras, broker John Egan and Brett Songstad. The hearing closed at 3:45 p.m.

Motion made and seconded to enter into executive session at 3:45 p.m. Motion carried.

Motion made and seconded to come out of executive session at 3:50 p.m. Motion carried.

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Motion made and seconded to approve the application and grant the license of Godofredo Contreras. Motion carried.

Legal counsel and commission discussed meeting and hearing protocol. Legal counsel will research further into meeting and hearing protocol and report to the Commission.

Legal counsel Lindsey Riter-Rapp left the meeting at 4:30 p.m.

Tim Benning appeared telephonically on a request for an experience waiver. Following the telephone conference and Commission discussion, motion made and seconded to deny the request of Tim Benning for an experience waiver to obtain a responsible broker license as he has not been refused association according to his presentation. Motion carried.

Legal counsel Robert Riter left the meeting at 5:10 p.m.

The executive director informed the Commission that AMP will be making the updates to the exam score reports Oct 1-14, 2009 and candidates will not be able to test during that period of time. New score reports will be generated starting on October 15, 2009.

The executive director requested approval from the Commission to provide a further grant to pay for reproduction costs of the videos produced by MAPP/SD on Meth disclosure. Motion made and seconded to approve the grant to MAPP/SD for the reproduction costs of the videos on Meth disclosure to be distributed to real estate offices.

The executive director informed the Commission that she is working to establish an auctioneer's task force to work on rewriting auction rules, forms and to define "absolute auction". Commission member Larkin agreed to be on the task force.

The executive director informed the Commission of the ARELLO Timeshare Registry. Following discussion, motion made and seconded for the Commission staff to take advantage of the ARELLO Timeshare Registry. Motion carried.

Motion made and seconded to dismiss complaints #2009-025 and #2009-026. Motion carried.

Motion made and seconded to move to formal hearings on complaints #2009-019 and #2009-022. Motion carried.

The executive director informed the Commission that everything is in place regarding the new legislation and rules that went into effect July 1, 2009.

Discussion was held on issues arising from the Builder's Energy Efficiency Disclosure and what agency should be hearing these concerns.

The meeting recessed at 5:30 p.m. and reconvened at 8:30 a.m. on August 13, 2009.

Motion made and seconded to amend the Stipulation and Assurance of Voluntary Compliance with Cleo Penfield for the education to consist of 6 hours in contracts and 6 hours in agency to be completed in a South Dakota classroom within 6 months of the signed agreement and that he reimburse the Commission on costs within 30 days of the signed agreement. Motion carried.

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Motion made and seconded to enter into executive session at 8:40 a.m. Motion carried.

Motion made and seconded to come out of executive session at 8:50 a.m. Motion carried.

Legal counsel Robert Riter left the meeting at 9:15 a.m.

Hearing Examiner Hillary Brady at 9:15 a.m. convened the formal hearing on complaint #2008-014, SDREC vs. Garry Neiderworder and Robert Leonard. Present for the hearing in addition to the members of the commission were legal counsel Lindsey Riter-Rapp, executive director Dee Jones Noordermeer, licensing program administrator Norma Schilling, court reporter Carla Bachand, defendants Garry Neiderworder and Robert Leonard and witness Daniel Wolklen. Commission member Paula Lewis recused herself the hearing. The hearing closed at 12:10 p.m.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision on Jeffrey Iverson. Following discussion, motion made and seconded to adopt the proposed decision of Hearing Examiner Hillary Brady to the revocation of the license of Jeffrey Iverson and to include the reimbursement of costs to be paid within 30 days of the order and a fine of \$2,500 to be paid within 1 year of the order. Motion carried.

The executive director informed the Commission of the upcoming ARELLO Annual Conference to be held in Miami, FL October 22-24, 2009. Motion made and seconded to request the attendance of 5 commission members, 2 staff and 2 legal counsel to attend the ARELLO Annual Conference. Motion carried.

Updates were given by Commission members Charles Larkin and Paula Lewis and the executive director of the ARELLO District 2 & 3 Conference that they attended in Louisville, KY.

The executive director informed the Commission that compliance officers Michelle Metzinger and Angela Hagena along with herself will be attending the ARELLO Investigator Workshop in Little Rock, AR September 1-4, 2009.

Discussion was held as to why home inspectors are not required to carry errors and omissions insurance. The executive director handed out information she obtained from the current errors and omissions insurance provider stating that they do not provide errors and omissions insurance for home inspectors as their risks are different from real estate agents.

Motion made and seconded to enter into executive session at 1:10 p.m. for personnel issues. Motion carried.

Commission member Paula Lewis and the executive director left the meeting at 1:40 p.m.

Motion made and seconded to come out of executive session at 1:55 p.m. Motion carried.

The next meeting of the Commission will be held October 6 & 7, 2009 in Sioux Falls.

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There being no further business, motion made and seconded to adjourn at 2:00 p.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 August 12 & 13, 2009.

Dee Jones Noordermeer, Executive Director