

SOUTH DAKOTA REAL ESTATE COMMISSION
OCTOBER 7 & 8, 2009
HILTON GARDEN INN SIOUX FALLS
5300 SOUTH GRAND CIRCLE
SIOUX FALLS, SOUTH DAKOTA

The South Dakota Real Estate Commission convened at 8:45 a.m. on October 7, 2009 in Salon D of the Hilton Garden Inn, Sioux Falls, SD. Present for the meeting were Chairman Dennis Einsnach and commission members Eileen Fischer, Brian Jackson and Charles Larkin. Commission member Paula Lewis was not present for the meeting. Also present were legal counsel Lindsey Riter-Rapp, executive director Dee Jones Noordermeer and licensing program administrator Norma Schilling.

Motion made and seconded to approve the minutes of the August 12 & 13, 2009 minutes. Motion carried.

Motion made and seconded to accept the financial reports for July & August 2009. Motion carried.

The Commission reviewed a counter stipulation and assurance of voluntary of compliance submitted by Attorney Shane Penfield on behalf of his client Cleo Penfield. Motion made and seconded to offer Mr. Penfield a stipulation and assurance of voluntary compliance to the following: (1) the license of Cleo Penfield be surrendered upon execution of the stipulation and assurance of voluntary compliance and agree not to renew his license; (2) within the next 6 months cooperate with the completion of a South Dakota Real Estate Commission office audit, which audit will reflect compliance with all appropriate statutes and rules; (3) reimburse the Commission all costs of the proceeding within 30 days of execution of the stipulation and assurance of voluntary compliance and (4) Mr. Penfield acknowledges that while this stipulation and assurance of voluntary compliance is not an admission of a violation if the undersigned fails to timely comply herewith, proof of that failure to comply will be prima facie evidence of a violation of the South Dakota Real Estate Commission's Rules of Practice. Motion carried.

A schedule of future meeting dates was given to the Commission. The dates for future meetings are December 9 and 10, 2009, February 3 & 4, 2010, March 24 & 25, 2010, May 12 & 13, 2010 and June 23 & 24, 2010.

The formal hearings scheduled for 9:00 a.m. and 11:00 a.m. were rescheduled to the December meeting.

Motion made and seconded to enter into executive session at 9:45 a.m. to review complaints. Motion carried.

Motion made and seconded to come out of executive session at 11:15 a.m. Motion carried.

Motion made and seconded to dismiss complaint #2009-020 and have the executive director write a letter of admonishment to the licensee. Motion carried.

Motion made and seconded to move to a formal hearing on complaint #2009-024 against James Lee and dismiss the complaint against his former broker. Motion carried.

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Motion made and seconded to dismiss complaint #2009-027. Motion carried.

Motion made and seconded to file a formal complaint against Kay Swanhorst. Motion carried.

The Commission reviewed the Findings of Fact, Conclusions of Law and Proposed Decision on Gary Neiderworder and Robert Leonard. Following discussion, motion made and seconded to adopt the proposed order to dismiss the complaint against Gary Neiderworder and to amend the proposed order of Robert Leonard to his successful completion of 6 hours of education in agency and 3 hours of education in real estate ethics, pay a fine of \$1,000, reimburse the Commission for costs of the proceedings and no violations of SDCL 36-21A or Administrative Rules and if he does not comply within one year, his license will be suspended for 2 months. Motion carried.

The Commission recessed for lunch at 11:55 a.m. and reconvened at 2:00 p.m.

Discussion was held on a menu of services which would allow real estate licensees to have a list of the services they offer and the fee for each service. It was also discussed which services could be paid for in advance. The executive director will check with other states on licensees receiving advance payments and report back to the Commission at the December meeting.

The executive director informed the Commission of the ARELLO Leadership Meeting to be held in Newport Beach, CA January 5-7, 2010. Motion made and seconded to submit a request for commission member Paula Lewis and the executive director to attend the ARELLO Leadership Meeting. Motion carried.

Discussion was held on the advertising on the multiple listing fact sheets.

The Commission was asked for an interpretation on SDCL 36-21A-71(35). Following discussion, the Commission felt that associating with an individual who is an employee of a seller and whose license has been suspended or revoked could jeopardize the license of a licensee if that employee hosts open houses listed by the licensee.

The executive director informed the Commission that license renewals and E & O insurance renewals have been sent out and that the E & O insurance premium has increased to a premium of \$165 a year.

Scott Terveen failed to appear on his application for condition approval. Motion made and seconded to deny the application for conditional approval for his failure to appear after being scheduled twice to appear before the Commission. Motion carried.

Discussion was held on security of the DCI and FBI fingerprint cards. The executive director will check with other states to see how they handle the security of the fingerprint cards.

The meeting recessed at 4:20 p.m. and reconvened at 8:30 a.m. on October 8, 2009.

Legal counsel Lindsey Riter-Rapp was not present for the meeting on October 8, 2009.

Discussion was held on wholesaling of real estate.

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The next meeting of the Commission will be held December 9 & 10, 2009 in Pierre.

There being no further business, motion made and seconded to adjourn at 9:05 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 October 7 & 8, 2009.

Dee Jones Noordermeer, Executive Director