



COLORADO

**Department of
Regulatory Agencies**

Division of Real Estate

1560 Broadway, Suite 925
Denver, CO 80202-5111

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING

October 1, 2024

MINUTES - INDEX

	<u>PAGE</u>
ADJOURN	19
CE CREDIT - RULE 4.5H	3
COMPLAINT MATTERS:	
A. Complaint #x2024-24 (GB)	4
B. Complaint #2024-861 (EB)	5
C. Complaint #2024-1085 (SB)	6
D. Complaint #2024-1287 (CD)	6
E. Complaint #2024-851 (SC)	6
F. Complaint #2024-1373 (WB)	7
G. Complaint #2023-2167 (AJ)	8
H. Complaint #2023-1960 (DK)	8
I. Complaint #2023-2320 (BW)	9
J. Complaint #2023-2378 (MW)	9
K. Complaint #2024-840 (EF)	10
L. Complaint #2023-1649 (JP)	10
M. Complaint #2024-1213 (JW)	13
N. Complaint #2023-1268 (GH)	11
O. Complaint #2023-569 (GH)	12
EXECUTIVE SESSION	18
EXPEDITED SETTLEMENT MATTERS (ESP)	
A. Complaint #2023-1312 (AS)	17
B. Complaint #2024-995 (JM)	17
C. Complaint #x2023-101 (JC)	17
D. Complaint #2023-114 (CT)	17
E. Complaint #2023-1370 (IS)	18

F. Complaint #2024-260 (MF)	18
LICENSING MATTERS:	
A. Complaint #2024-996 (KM) - PAO	14
B. Complaint #2024-998 (RM) - License Application	14
C. Complaint #2024-1296 (KD) - License Application	15
D. Complaint #2024-1119 (AM) - License Application	15
E. Complaint #2024-1187 (CR) - License Application	16
F. Complaint #2024-1273 (ZS) - PAO	16
MINUTES APPROVAL	
August 6, 2024	3
POLICY MATTERS:	
Proposed CP-30 - Data Protection	18
2025 CREC Meeting Calendar	4

MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
October 1, 2024
Colorado Division of Real Estate
Meeting Conducted Via Webinar

A Colorado Real Estate Commission public meeting was conducted via Webinar and was held on October 1, 2024. Those Commissioners in attendance were Michelle Espinoza - Chair; Renee Lynde - Vice Chair; Erika Doyle; and Autymn Rubal. Also attending were Marcia Waters, Director; David Donnelly, Education, Communication and Policy Manager; Melissa Phipps, Senior Advisor; Penny Elder, ESP Program Manager; Sarah Halloran, Investigations Team Lead; Eddie Rose, Investigations Team Lead; Nicole Tribelhorn, Investigations Team Lead; and other members of the Commission's Staff. Gina Simonson and Irina Grohne attended from the Office of the Attorney General.

Notice of the meeting was timely published and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

The meeting was conducted via Webinar. The meeting was called to order by Commissioner Espinoza - Chair, at 9:01 a.m.

ORDER OF BUSINESS

Approval of Minutes - August 6, 2024

It was moved by Commissioner Lynde and seconded by Commissioner Doyle to approve the Minutes of August 6, 2024 as written.



CREC

Minutes_August 6, 20

Motion unanimously carried.

CE Credit for Attending -

David Donnelly, Communication and Policy Manager, conducted a poll so that those attendees wishing to receive CE credit for attending the meeting could submit their request. Per Commission Rule 4.5H, CE credit will be granted for qualifying attendance at a Real Estate Commission meeting that lasts a minimum of two (2) hours.

POLICY MATTERS:

Proposed Commission Position Statement on Data Protection (CP-30) -

- Julia Reyburn - Comments in support of proposed position statement
- Melissa Phipps, Senior Advisor - Outlines the Draft Position Statement on Data Protection
- Traci Dowd, Colorado Bureau of Investigations

This item was tabled until the Commission can discuss in Executive Session.

2025 CREC Meeting Calendar -

2025 CREC Meetings
February 4, 2025
April 1, 2025
June 3, 2025
August 5, 2025
October 7, 2025
December 2, 2025

COMPLAINT MATTERS:

NOTICE: The following complaint matters contain summaries of investigative findings and disciplinary recommendations of Division staff. Ultimate settlement terms, imposition of discipline or findings of license law violations may differ from those originally considered by the Commission.

A. Complaint #x2024-24 (GB) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2024-24 (GB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. A routine audit was opened on the respondent after an anonymous complaint was filed, and then withdrawn. The complaint alleged that there were undisclosed markups. During the audit, it was discovered that the brokerage has an "in house" Eviction Protection Program" (EPP) for which owners can opt in/out of a monthly fee and have some costs associated with evictions covered. There was initially no disclosure of potential profits. The respondent manages 1,850 doors and in 2023 - 843 owners opted in to the EPP plan. The respondent claims the program is a loss, however, he included standard brokerage costs to the cost of evictions when, in reality the costs would have been incurred with or without evictions. In addition, the markups noted in the lease and property management agreements are vague and a review of various submitted invoices indicated the mark up amounts are not consistent with the information in the contract documents or website. Tenants are also charged mark ups. Neither the lease or property management agreement list the markup, but reference the website that notes that markups and prices are subject to change.

Additionally, invoices were submitted that appear to have charged the property owners more than they agreed upon price; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-217(1)(t), C.R.S. - undisclosed compensation;
 - d. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - e. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - f. Commission Rule 5.17 - mark-ups, must obtain prior written approval;
 - g. Commission Rule 5.9 - diversion, conversion prohibited; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. He will be required to pay a fine to the Commission in the amount of \$2,500;
- E. The broker's real estate license shall be on probation for a period of two years;
- F. He will be required to successfully complete real estate education in Ethics (6 or more hours; and in Legal Issues (3 or more hours); and
- G. The respondent will be required to submit to four follow up audits over the next two years.

Motion unanimously carried.

B. Complaint #2024-861 (EB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-861 (EB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On April 22, 2024, the respondent pled guilty to one count Class 6 Felony - Theft - \$2,000 - \$5,000. The Court agreed to a one-year Unsupervised Deferred Judgment and Sentence that includes 50 hours CMSV, a Discovering Better Choices Class, and Court costs/fees in the amount of \$4,888.50 that has been paid in full; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
 - c. § 12-10-217(1)(p), C.R.S. - failure to immediately notify CREC;
 - d. Commission Rule 6.23 - immediate notification of conviction, plea or violation required; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. She will be required to pay a fine to the Commission in the amount of \$500; and
- E. The respondent's real estate broker's license shall be on probation to run concurrent with the criminal deferred sentence.

Motion unanimously carried.

NOTE: Commissioner Doyle recuses herself from consideration of Complaint #2024-1085 (SB) and leaves the webinar at 9:43 a.m.

C. Complaint #2024-1085 (SB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-1085 (SB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, who was the seller's agent, alleged that the respondent provided her buyer client with the lockbox code to gain unauthorized entry into the property. The investigation noted that the respondent did provide the lockbox code to her client who entered the property without her being present at the property; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 6.16 - access information - broker prohibited from sharing without prior authorization; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. She will be required to pay a fine to the Commission in the amount of \$500.

Motion carried.

NOTE: Commissioner Doyle returns to the webinar at 9:45 a.m.

D. Complaint #2024-1287 (CD) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-1287 (CD) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant alleges that the respondent provided the property lockbox code to individuals without authorization; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 6.16 - access information - broker prohibited from sharing without prior authorization; and
- E. The respondent's settlement offer includes a Stipulation for Diversion; and
- F. The respondent will be required to pay a fine to the Commission in the amount of \$500.

Motion unanimously carried.

E. Complaint #2024-851 (SC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-851 (SC) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to

refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The investigation noted that the respondent did not properly list the property in the MLS according to the ERTS listing agreement and did not execute termination documents which may have put the buyer and seller at financial risk. Although the respondent had a signed listing agreement with the buyer, the respondent treated the buyer as a customer; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-404, C.R.S. - single agent engaged by seller;
 - d. Commission Rule 6.9 - change of status disclosure in writing;
 - e. Commission Rule 6.14(D) - listings must have termination date; and
- G. The respondent's settlement offer includes a Stipulation for Diversion;
- H. The respondent will be required to pay a fine to the Commission in the amount of \$1,000 and
- I. She will be required to successfully complete real estate education in Brokerage Relationships and in Contacts.

Motion unanimously carried.

F. Complaint #2024-1373 (WB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-1373 (WB) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On 07/29/2024, the respondent pled guilty by way of a plea of no contest to one count Felony 5 - Telecommunications Fraud and one count Misdemeanor 2 - Offense of Attempted Tampering with Records. He was sentenced to 5 years of supervised probation and to pay for the State of Ohio investigation cost of \$56,000.00. This is ordered to be paid monthly in a yet undetermined amount; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes; and
- J. The respondent's settlement offer includes a Stipulation for Diversion;
- K. The respondent will be required to pay a fine to the Commission in the amount of \$500; and
- L. His real estate broker's license shall be on probation concurrently with the criminal sentence.

Motion unanimously carried.

G. Complaint #2023-2167 (AJ) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2167 (AJ) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant alleges that the respondent failed to provide her with a Counterproposal in a timely manner. Furthermore, the respondent failed to inform the complainant of the Counterproposal Acceptance Deadline thereby causing the complainant's Contract to Buy and Sell to be rejected as it was not submitted per the terms of the Counterproposal. Additionally, the complainant alleges that the respondent negotiated her commission with the Listing Brokers of the subject property without the complainant's permission; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-405 C.R.S. - single agent engaged by buyer;
 - d. Commission Rule 6.14 (D) - listings must have termination date;
 - e. Commission Rule 7.4 (B) - prohibited provisions; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. She will be required to pay a fine in the amount of \$3,000 to the Commission; and
- E. She will be required to successfully complete real estate education in Contracts.

Motion unanimously carried.

H. Complaint #2023-1960 (DK) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1960 (DK) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On May 18, 2023, after a two-day trial, a jury verdict found the respondent guilty of a Class 1 Misdemeanor, Invasion of Privacy - Sex Gratification. A Sentencing Hearing was thereafter held on August 15, 2023. The respondent was sentenced to 24 months of supervised probation. A stay of the sentence was filed. The order granting the stay of the sentence was signed on August 17, 2023 and an Appeal was then filed on September 8, 2023 and remains open at this time; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. § 12-10-217(1)(p), C.R.S. - failure to immediately notify CREC;
 - c. Commission Rule 6.23 - immediate notification of conviction, plea or violation required; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. He will be required to pay a fine in the amount of \$500 to the Commission.

Motion unanimously carried.

I. Complaint #2023-2320 (BW) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2320 (BW) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The seller/complainant filed a complaint against her listing broker, the respondent who represented her as a seller's agent in the sale of her home. The complainant alleged that the respondent did not protect her best interests as she told the respondent that she wanted the rugs excluded from the contract, but the respondent did not notify the buyer accordingly. The investigation found that there were errors in preparing and managing contract documents; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-404(1), C.R.S. - broker engaged by a seller as a seller's agent;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - e. Commission Rule 6.11 - square footage disclosure; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine in the amount of \$4,000 to the Commission; and
- E. He will be required to successfully complete real estate education in Brokerage Relationships, Contracts and in Legal Issues.

Motion unanimously carried.

J. Complaint #2023-2378 (MW) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2378 (MW) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainants were interested in hiring the respondent to list two of their properties for sale. The respondent collected an upfront fee in the amount of \$495.00 from the complainants. The complainants alleged that the respondent does not have the right to keep their money because they never signed a listing contract or any type of contract with the respondent; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.20 - money collected by brokerage firm; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;

- D. She will be required to pay a fine to the Commission in the amount of \$1,000;
- E. She will be required to successfully complete real estate education in Brokerage Relationships and in Contracts; and
- F. The respondent will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

K. Complaint #2024-840 (EF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-840 (EF) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complaint alleged that the respondent acted incompetently as the listing broker of a vacant property. The respondent failed to notice that the person alleging to be the owner of a property sometimes reversed the owner's first and last names and sometimes misspelled the name entirely. The respondent failed to request an Ownership and Encumbrance report from the title company to notice that unlike the "seller's" representation, the owner actually lived in Denver, not out-of-state. The complaint alleged that the respondent's failure to properly confirm the seller's identity resulted in the complainant falling victim to land fraud, losing \$8,00-\$10,000 in out-of-pocket expenses, and unnecessarily selling his primary residence. It appears that the respondent may have failed to provide the complainant with an Affiliated Business Arrangement Disclosure. The respondent recommended a title company affiliated with the respondent's brokerage. It was a title company which, according to the complainant's allegations, also failed to take proper precautions to confirm the seller's identity and allowed the transaction to close despite red flags of the fraud; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 5.21 - production of documents and records; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. He will be required to pay a fine in the amount of \$5,000 to the Commission; and
- E. He will be required to successfully complete real estate education in Brokerage Relationships and in Contracts.

Motion unanimously carried.

L. Complaint #2023-1649 (JP) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1649 (JP) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to

incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. While under contract to purchase the subject property, and without the consent of the seller or the seller's agent, the respondent provided unauthorized access to the property to another brokerage firm's agent in order to show the property to a prospective subsequent investor. The respondent's previous employing broker was disciplined by the Division for similar conduct; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. Commission Rule 6.16 - access information - broker prohibited from sharing without prior authorization; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. He will be required to pay a fine in the amount of \$2,500 to the Commission; and
- E. He will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

NOTE: Complaints M, N and O were taken out of Agenda Order.

N. Complaint #2023-1268 (GH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1268 (GH) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On 06/30/23, Complaint 2023-1268 was filed against the respondent stating the respondent took over the complainant's lease when the respondent acquired the book of business from the former property management company. The complainant stated he wasn't allowed to renew his lease because the owner decided to sell the unit. The complainant stated his entire security deposit was retained along with additional tenant charges of over \$800.00 upon move-out. The complainant stated he returned the unit in the same condition he received it in. The complainant stated he wasn't told he was responsible for re-caulking the bathroom or cleaning the mold and mildew in the unit. The respondent currently manages approximately 1,450 doors. A sample of 35 security deposit settlements were reviewed. The sample shows that 33 of 34 settlements performed by the respondent didn't have invoices for charges taken against security deposit funds. The respondent provides the tenant with a document labeled "Tenant Charges", that states "Estimate Prepared By", that the respondent states is the actual bill used to charge the tenant. The respondent then transfers the security deposit to the owner's ledger and assesses the tenant charges against the owner's ledger. The sample showed that no tenant received a refund of their entire security deposit and that 10 of 35 settlements received less than 40% of their original security deposit and the respondent retained approximately 50% of all partially refunded security deposits. The respondent sent 9 of 35 settlements to collections

despite owners being allowed to use their own vendors creating scenarios where tenants are assessed charges for work that hasn't been completed as well as transferring security deposits to owners without proper tenant disclosure/consent and subsequently sending the accounts to collections in the process. In this case, the respondent transferred the owner the complainant's full \$1,440.00 security deposit without actual invoices or receipts to document work completed and the owner didn't use the respondent to complete the repairs. The complainant was sent to collections and owes over \$1,000.00. There is no photo documentation of the unit at move-in but there is photo documentation of the unit at move-out. Sampled settlements appear to show that the respondent is charging tenants for items that may be considered "normal wear and tear" and items that are not listed in the respective leases; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(i), C.R.S. - converting, diverting, commingling funds;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. § 12-10-217(1)(t), C.R.S. - undisclosed compensation;
 - e. Commission Rule 5.8 - transfer of security deposits; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent shall be required to pay a fine to the Commission in the amount of \$2,500; and
- E. He will be required to submit to a follow-up audit within 3 months (to coincide with Complaint #2023-569).

Motion unanimously carried.

O. Complaint #2023-569 (GH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-569 (GH) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. On 03/27/23, Complaint 2023-569 was filed against the respondent respondent stating the respondent began managing several of the complainant's units after the respondent acquired the book of business from the complainant's former property management company. The complainant stated in 3-months only, the respondent overcharged and double-billed for services, and provided inaccurate owner statements. The complainant stated the respondent is improperly charging tenants against their security deposits security deposits. The respondent charged the complainant a \$143 fee called "General Punchlist" to coordinate repairs without authority. The respondent currently manages 1,450 doors. A sample of 35 security deposit settlements were reviewed. The sample shows that 33 of 34 settlements performed by the respondent didn't have invoices for charges taken against security deposit funds. The respondent provides the tenant with a document labeled "Tenant Charges", that states "Estimate Prepared By", that the respondent states is the actual bill used to charge the tenant. The respondent then transfers the security deposit to the owner's ledger and assesses the tenant charges against the owner's ledger. The

sample showed that no tenant received a refund of their entire security deposit. The sample showed that 10 of 35 settlements received less than 40% of their original security deposit and the respondent retained approximately 50% of all partially refunded security deposits. The respondent sent 9 of 35 settlements to collections despite owners being allowed to use their own vendors creating scenarios where tenants are assessed charges for work that hasn't been completed as well as transferring security deposits to owners without proper tenant disclosure/consent and subsequently sending the accounts to collections in the process. It appears the respondent is charging tenants for items that may be considered "normal wear and tear" and items that are not listed in the leases. Furthermore, the respondent failed to credit this respective tenant \$580.00 after the owner successfully disputed one of the tenant charges and the 3-way reconciliations provided by the broker were missing journals, ledgers, and both accounts showed a large volume of unreconciled items dating back years; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to account for funds received;
 - b. § 12-10-217(1)(i) C.R.S. - converting, diverting, commingling funds;
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - c. § 12-10-217(1)(t), C.R.S. - undisclosed compensation;
 - d. Commission Rule 5.8 - transfer of security deposits;
 - e. Commission Rule 5.14 - recordkeeping requirements;
 - f. Commission Rule 5.17 - mark-ups, must obtain prior written;
 - g. Commission Rule 6.2 - competency - must possess experience, training, and knowledge; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He shall be required to pay a fine to the Commission in the amount of \$5,000;
- E. The respondent shall be required to successfully complete real estate education in Brokerage Administration, Property Management, Security Deposits; and in Tenant/Landlord Laws; and
- F. He will be required to submit to a follow-up audit within 3 months (to coincide with Complaint #2023-1268).

Motion unanimously carried.

M. Complaint #2024-1213 (JW) -

The investigative report concerning a complaint filed against the respondent in Complaint #2024-1213 (JW) was presented to the Commission with accompanying documentation and information. It was moved and seconded by the Commission that reasonable grounds exist to refer the respondent to hearing for violations of the real estate license law and to send this matter through the expedited settlement process (ESP). The staff was also directed to incorporate these specific terms into the Commission approved ESP stipulation to be sent to the respondent.

- A. The complainant, who was the buyer of the property, alleged that the respondent, who represented the buyer as an agent, promised a payment of \$250.00 for missing items at closing and has not made payment; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(c), C.R.S. - deliberate misrepresentation/false promise;

- b. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
- c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
- d. § 12-10-405, C.R.S. - single agent engaged by buyer; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. The respondent shall be required to pay a fine to the Commission in the amount of \$1,000; and
- E. He will be required to successfully complete real estate education in Ethics.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2024-996 (KM) - Preliminary Advisory Opinion -

The Commission considered this application for a preliminary advisory opinion for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On October 24, 2019 the Colorado Board of Nursing summarily suspended the applicant's nursing license. On April 12, 2021, the applicant was issued a Stipulation and Final Agency Order in which her nursing license was suspended indefinitely. On August 27, 2021 the applicant pled guilty to Obtaining a Controlled Substance by Deception, a Felony and was sentenced to 3 years of supervised probation (terminated) and court costs/fees in the amount of \$100.00. Then on April 4, 2022, the applicant received a Letter of Admonition for non-compliance with the terms of her discipline related to the suspended license.

It was moved by Commissioner Rubal and seconded by Commissioner Doyle to issue a positive opinion with a 4-year restriction requiring a higher level of supervision by an employing broker who agrees in writing.

Commissioner Lynde is opposed. **Motion carried.**

Licensing Matter B - Complaint #2024-998 (RM) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On July 10, 2008, the applicant's Colorado real estate broker license was revoked due to her failure to disclose an arrest and conviction for Possession of a Controlled Substance, a class four felony.

On August 5, 2002, the applicant was found guilty of Marijuana Cultivation, a class four felony. The applicant was ordered to pay \$2,662.00 in court costs and restitution, serve 90 days jail time, complete 48 hours of public service and complete substance abuse evaluation. The terms of the sentence were completed, and probation was terminated.

On September 18, 2008, the applicant pled guilty to Possession Of Controlled Substance (Sched 2) - Over 1 Gram, a class four felony. The applicant was ordered to pay \$3,104.00 in court costs and fees, complete 18 months of probation and 48 hours of community service. The terms of the sentence have been completed and probation was terminated.

On September 18, 2008, the applicant pled guilty to Harassment - Insults/Taunts/Challenges, a class three misdemeanor. The applicant was ordered to pay \$248.00 in court costs and fees and complete six months of unsupervised probation. All costs and fees were paid and probation was terminated.

It was moved by Commissioner Doyle and seconded by Commissioner Rubal to approve the license application.

Motion unanimously carried.

Licensing Matter C - Complaint #2024-1296 (KD) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On May 17, 2002, the applicant was convicted of Theft, a Class 4 Felony. The applicant was sentenced to a 2-year deferred sentence, the deferment was revoked and re-sentenced to 2 years of probation. Probation is concurrent with case #2002CR619. Probation was terminated unsuccessfully. A fine of \$1,184.75 was paid in full. The case is closed.

On November 03, 2003, the applicant was convicted of a Class 5 Felony Theft. The applicant was sentenced to 2 years of probation, 14 days in jail, and a fine of \$1,541.00. The applicant has completed probation and has paid the fine in full.

On December 11, 2003, the applicant was convicted of Child Abuse-Knowing/Reckless-Bodily Injury a Class 1 Misdemeanor. The applicant was sentenced to a 6-months jail (suspended), 18 months of probation, and a fine of \$274.00. The applicant completed probation and has a \$0 balance. The case is closed.

On August 07, 2014, the applicant was convicted of a Pimping Attempt, a Class 4 Felony. The applicant was sentenced to 30 days in jail, 30 days credit for time served, 3 years of probation, and a fine of \$2,563.50. The applicant has completed probation and has paid the fine in full.

It was moved by Commissioner Lynde and seconded by Commissioner Doyle to approve the license application.

Motion unanimously carried.

Licensing Matter D - Complaint #2024-1119 (AM) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On April 27, 2012, the applicant was convicted of Felony Possession of Marijuana & Felony Possession w/intent to Deliver. The applicant was sentenced to a 2-year deferment. The deferment was revoked, and he was re-sentenced to 5 years and 6 months in jail with a fine of \$785.00. The case is closed.

On March 22, 2013, the applicant was convicted of Possession of Marijuana, a Serious Misdemeanor. The applicant was sentenced to 7 days in jail and a fine of \$315.00. The case is closed.

On February 14, 2014, the applicant was convicted of Felony 2nd Degree Burglary & Felony Assault -Causing Serious Injury. The applicant was sentenced to 10 years in jail and 4 years Parole with a fine of \$473.80. The applicant was released from parole in 2019. The case is closed.

It was moved by Commissioner Lynde and seconded by Commissioner Doyle to approve the license application with a two year restriction at the associate broker level.

Motion unanimously carried.

Licensing Matter E - Complaint #2024-1187 (CR) - License Application -

The Commission considered this application for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On October 31, 1991, the applicant was convicted of a Felony Grand Theft of a Vehicle. The applicant was sentenced to 120 days jail and 24 months of Probation.

On September 05, 2003, the applicant was convicted of a Felony Grand Theft/Labor/Property. The applicant was sentenced to 3 years of probation, restitution in the amount \$200 and 200 hours of Community Service.

It was moved by Commissioner Lynde and seconded by Commissioner Doyle to approve the license application.

Motion unanimously carried.

Licensing Matter F - Complaint #2024-1273 (ZS) - Preliminary Advisory Opinion -

The Commission considered this application for a preliminary advisory opinion for a real estate broker's license together with accompanying documentation and information supplied by the applicant.

On July 18, 2014, the applicant was convicted of a Class 1 Misdemeanor Assault 3- Negligent Deadly Weapon. The applicant was sentenced to 17 days in jail and credit for time served; two years of probation and a fine of \$278.50. The applicant has completed all terms of probation and has a \$0 balance.

Also on July 18, 2014, in a separate case, the applicant was convicted of Burglary 2-of Building CSP, a Class 5 Felony. The applicant was sentenced to 20 days in jail with 20 days credit for time served: three years of probation with a fine of \$1,959.50. The applicant has completed all terms. The case is closed.

On December 12, 2018, the applicant was convicted of Trespass 2-Motor Vehicle a Class 3 Misdemeanor. The applicant was sentenced to 6 months unsupervised probation and a fine of

\$334.17. The applicant has completed probation and has paid the fine in full. The case is closed.

It was moved by Commissioner Lynde and seconded by Commissioner Doyle to issue a positive opinion.

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2023-1312 (AS) - License Reconsideration -

The Commission was presented with a request for license reconsideration from an applicant by Penny Elder, ESP Program Manager, regarding ESP Matter A, Complaint #2023-1312 (AS). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Rubal to approve a license as requested with a one-year license restriction. If the applicant's California license is placed on probationary status, the applicant's Colorado license shall be restricted concurrently.

Motion unanimously carried.

ESP Matter B, Complaint #2024-995 (JM) - License Reconsideration -

The Commission was presented with a request for license reconsideration from an applicant by Penny Elder, ESP Program Manager, regarding ESP Matter B, Complaint #2024-995 (JM). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Doyle to approve the license application.

Motion unanimously carried.

ESP Matter C, Complaint #x2023-101 (JC) - Counteroffer -

The Commission was presented with a counteroffer report by Penny Elder, ESP Program Manager, regarding ESP Matter C, Complaint #x2023-101 (JC). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Rubal to approve the counteroffer. The respondent shall receive a Letter of Admonition.

Motion unanimously carried.

ESP Matter D, Complaint #2023-114 (CT) - Clarification -

The Commission was presented with information by Penny Elder, ESP Program Manager, regarding ESP Matter D, Complaint #2023-114 (CT). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Doyle to not proceed with a stipulation violation at this time against the respondent in this complaint. The respondent will be granted 90 additional days to find 4 or more hours in appropriate course content, specifically in supervision. Penny Elder is authorized to approve the course work on behalf of the Commission.

Motion unanimously carried.

ESP Matter E, Complaint #2023-1370 (IS) - Stipulation Violation -

The Commission was presented with a stipulation violation report by Penny Elder, ESP Program Manager, regarding ESP Matter E, Complaint #2023-1370 (IS). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Doyle to proceed with a violation of § 12-10-217(1)(m), C.R.S. to include a Final Agency Order, public censure; a fine in the amount of \$2,500 (plus mandatory 15% surcharge); and revocation of the real estate broker's license.

Motion unanimously carried.

ESP Matter F, Complaint #2024-260 (MF) - Stipulation Violation -

The Commission was presented with a stipulation violation report by Penny Elder, ESP Program Manager, regarding ESP Matter F, Complaint #2024-260 (MF). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Doyle to proceed with a violation of § 12-10-217(1)(m), C.R.S. to include a Final Agency Order; public censure; and a fine in the amount of \$2,500 (plus mandatory 15% surcharge). Penny Elder is authorized to accept relinquishment of the real estate broker's license with coursework from the original Stipulation for Diversion to include 6 hours in Contracts, 6 hours in Current Legal Issues, and 5 hours of Electives be due upon reapplication.

Motion unanimously carried.

EXECUTIVE SESSION:

At 11:55 a.m. it was moved, seconded and approved by more than two-thirds vote by the Commission that pursuant to §24-6-402(3)(a)(II), C.R.S., to convene the Colorado Real Estate Commission into Executive Session for the purpose of receiving legal advice pursuant to C.R.S. §24-6-402(3)(a)(II) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice regarding Proposed CP-30, A Commission Position on Data Security and Privacy

Motion unanimously carried.

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 12:10 p.m. and resumes meeting via webinar that is open to the public.

Proposed Commission Position Statement on Data Protection -

Following discussion in Executive Session, it was moved by Commissioner Doyle and seconded by Commissioner Rubal to approve Commission Position #30 - Commission Position on Data Security and Privacy as amended.



2024-10-01 FINAL
Data Protection Positi

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 12:27 p.m. on October 1, 2024.

Michelle Espinoza, Chair

Renee Lynde, Vice Chair

Erika Doyle, Commissioner

Autymn Rubal, Commissioner

Vacancy

**Marcia Waters, Director
Colorado Division of Real Estate**