



COLORADO

Department of
Regulatory Agencies

Division of Real Estate

1560 Broadway, Suite 925
Denver, CO 80202-5111

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING February 6, 2024

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RULEMAKING HEARING

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MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
February 6, 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 February 6, 2024. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach - Vice Chair; Josh Brodbeck; Joe Chang; and Renee Lynde. Also attending were Marcia Waters, Director; Eric Turner, Deputy 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. Angela Little 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 9:00 a.m.

RULEMAKING HEARING - Chapters 1, 2, 4, 5, 6, 7 and 9:

Chapter 1 - Definitions -

It was moved by Commissioner Kaltenbach and seconded by Commissioner Brodbeck to approve Chapter 1 - Definitions, as presented.

Motion unanimously carried.

Chapter 2 - Licensure Requirements -

It was moved by Commissioner Kaltenbach and seconded by Commissioner Chang to approve Chapter 2 - Licensure Requirements, as presented.

Motion unanimously carried.

Chapter 4 - Continuing Education Requirements -

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve Chapter 4 - Continuing Education Requirements, as presented.

Motion unanimously carried.

Chapter 5 - Separate Accounts and Accounting -

Public Comment - Chapter 5

- Damian Cox - Attorney - Forms Committee
- Scott Peterson - General Counsel representing CAR®
- Erika Doyle
- Jordan May

- Karen Frisone

It was moved by Commissioner Kaltenbach and seconded by Commissioner Brodbeck to approve Chapter 5 - Separate Accounts and Accounting, as amended.

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

Chapter 6 - Practice Standards -

Public Comment - Chapter 6

- Scott Peterson - General Counsel representing CAR®
- Kandra Wong - Licensed Realtor
- Damian Cox - Attorney - Forms Committee
- Kate Kiker - Employing Broker, Keller Williams, DTC
- Kelly Johnson - Counsel for Large Brokerage Firm
- Ken Levinson

It was moved by Commissioner Lynde and seconded by Commissioner Kaltenbach to approve Chapter 6 - Practice Standards, as amended.

Motion unanimously carried.

Chapter 7 - Use of Standard Forms -

It was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to approve Chapter 7 - Use of Standard Forms, as presented.

Motion unanimously carried.

Chapter 9 - Commission Review of Initial Decisions and Exceptions -

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve Chapter 9 - Commission Review of Initial Decisions and Exceptions, as presented.

Motion unanimously carried.

CREC Rules as Adopted - 2.6.2024



4 CCR 725-1
Adopted 2-6-24 Clear



4 CCR 725-1
Adopted 2-6-24 Redli

The Rulemaking Hearing closes at 12:32 p.m.

ORDER OF BUSINESS

Approval of Minutes - December 5, 2023

It was moved by Commissioner Brodbeck and seconded by Commissioner Lynde to approve the Minutes of December 5, 2023 as written.



CREC

Minutes_October 3, 2023

Commissioner Kaltenbach abstains. **Motion carried.**

PUBLIC PRESENTATION: None

POLICY MATTERS:

Items for Next Agenda: Sharing of Confidential Information

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. Complaints A. #2023-1892 (KB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1892 (KB) 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.

- A. The respondent pled guilty to a misdemeanor assault charge on 04/15/2023 and entered into a 12-month deferred judgment and sentence that terminated early on 11/21/2023. The respondent did not report her plea to the Division and did not provide the requested documents or a written response to the complaint; 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 5.21 - production of documents and records;
 - d. Commission Rule 6.23 - immediate notification of conviction, plea or violation required;
 - e. Commission Rule 6.25 - must submit written response to complaint; and
- C. The respondent's settlement offer includes a Stipulation or Diversion; and
- D. She will be required to pay a fine to the Commission in the amount of \$1,000.

Commissioner Brodbeck is opposed. **Motion carried.**

B. Complaint #2023-1891 (BC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1891 (BC) 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.

- A. The respondent pled guilty to a misdemeanor assault charge on 06/05/2023. The respondent did not report her plea to the Division because the respondent felt it was a

private matter between spouses and she was unaware there is a duty to report the conviction; 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; and
- D. She will be required to pay a fine to the Commission in the amount of \$500.

Motion unanimously carried.

C. Complaints #x2023-62 (SB) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-62 (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 Division was notified by a concerned broker that the respondent has been violating license laws through misrepresentation of her brokerage relationships with consumers, particularly by double-ending deals. An audit was initiated and a total of 10% of the respondent's completed sales transactions from the past 12-months were sampled in the audit. Change of Status Disclosures on three transactions were discovered to be dated and signed after the Contract to Buy & Sell Agreements; 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. Commission Rule 6.7 -brokers or teams working with consumers on both sides of the same transaction;
 - c. Commission Rule 6.9 - change of status disclosure in writing; 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 \$1,500;
- E. She will be required to successfully complete real estate education in Brokerage Relationships; and
- F. The respondent will be required to submit to a follow-up audit within six months.

Motion unanimously carried.

D. Complaint #x2023-88 (SL) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-88 (SL) 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. This was a routine audit opened on 9/25/23. During the course of the audit, numerous items were corrected which included:
- The Broker's Disclosure to Tenant now being provided in accordance to Rule 6.17;
 - A request for the attorney to update the standard forms moving forward;
 - The Rent Trust labeling was corrected and the account was changed to a true Fiduciary Account;
 - Though reconciliations had not been completed per Rule 5.14, the respondent is now able to pull all required reports from his software;
 - The security deposit trust account reconciliation is now in full compliance;
 - The respondent is no longer holding rent proceeds for his broker owned property in the primary rent trust account;

Outstanding items include:

1. Negative ledger balances on the rent ledger appear to indicate conversion and/or accrual accounting;
2. The rent trust account does not reconcile and may indicate missing funds;
3. The respondent is earning a mark-up on application fees without obtaining consent, 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;
- 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. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
- f. Commission Rule 5.9 - diversion, conversion prohibited;
- g. Commission Rule 5.10 - commingling prohibited;
- h. Commission Rule 5.17 - mark-ups, must obtain prior written consent;
- i. Commission Rule 5.14 - recordkeeping requirements;
- j. Commission Rule 6.5 - brokerage relationship disclosures in writing.

It was moved by Commissioner Brodbeck and seconded by Commissioner Lynde to include these settlement offer terms:

- A. The respondent's settlement offer includes a Stipulation for Diversion;
- B. He will be required to pay a fine to the Commission in the amount of \$2,500;
- C. He will be required to successfully complete real estate education in Trust Accounts;
and
- D. He will be required to submit to a follow up audit within 3 months.

Commissioners Chang, Kaltenbach and Espinoza are opposed. **Motion Fails.**

It was then moved by Commissioner Change and seconded by Commissioner Brodbeck to include these settlement offer terms:

- A. The respondent's settlement offer includes a Stipulation for Diversion;
- B. He will be required to pay a fine to the Commission in the amount of \$1,500;
- C. He will be required to successfully complete real estate education in Trust Accounts;
and
- D. He will be required to submit to a follow up audit within 3 months.

Commissioners Lynde and Kaltenbach are opposed. Motion carried.

E. Complaint #x2023-106 (RT) -

The investigative report concerning a complaint filed against the respondent in Complaint #x2023-106 (RT) was presented to the Commission with accompanying documentation and information against the same respondent. 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. This audit was a stipulation audit, which resulted from two prior audits. Though the respondent has made movement towards compliance, the journals reflect postings that appear to exclude the elements listed in Rule 5.14A and indicate that there may be transfers to/from an account that is not a fiduciary account. Additionally, the broker's ledger indicates that bank fees are coming out of the account when funds are not available to cover the fees, which indicate tenant funds are covering the fees; 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;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. Commission Rule 5.14 - recordkeeping requirements;
 - e. Commission Rule 5.9 - diversion, conversion prohibited; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. He will be required to pay a fine to the Commission in the amount of \$5,000; and
- F. He will be required to provide proof to the Commission within 6 months of the Stipulated Agreement that the following has been corrected:
 - 1. Compliant three-way reconciliations (per rules 5.14 and 5.16);
 - 2. Journals that comply with Rule 5.14A;
 - 3. No negative ledger balances; and
 - 4. Trust accounts must be fiduciary escrow accounts.

Motion unanimously carried.

F. Complaint #2023-1510 (MF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1510 (MF) 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 purchased from the respondent, alleged that it was not disclosed that the property had previous basement flooding, corroded pipe to the septic system, mold, and windows leaking throughout the house. The investigation noted that the respondent has potential license law violations

regarding the non-disclosure of personal acknowledgment of previous moisture issues within the property; 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; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be suspended for a period of three months;
- F. The respondent will be required to pay a fine to the Commission in the amount of \$5,000; and
- G. He will be required to successfully complete real estate education in Ethics.

Commissioner Kaltenbach is opposed. **Motion carried.**

G. Complaint #2023-532 (JF) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-532 (JF) 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, filed a complaint against the respondent, who was the listing agent. The complainant alleged that the respondent tried to bully her into signing two Amend/Extends to the listing contract that would have increased her commission above what was agreed to in the ERTS. The complainant also alleged that the respondent told her that if she did not leave the property for the final walk-through, the buyer would lower the purchase price by \$50,000.00. Other possible violations include: The respondent telling the complainant that she would void the contract if she did not leave the property for the inspection; the complainant found a reimbursement fee of \$500.00 on the settlement statement that was not authorized; the sales commission was not filled out correctly in the ERTS; and not all documents were provided to have a complete transaction file.
- 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)(a), C.R.S. - false advertising;
 - d. Commission Rule 6.20 - closing responsibility; and
- H. The respondent's settlement offer includes a Stipulation for Diversion;
- I. The respondent will be required to pay a fine to the Commission in the amount of \$2,000;
- J. She will be required to successfully real estate education in Brokerage Relationships; in Contracts and in Ethics; and
- K. She will be required to be supervised at a higher level by an employing broker who agrees in writing for a period of two years.

Commissioner Brodbeck is opposed. **Motion carried.**

NOTE: Complaint H - #2023-391 & #2023-1505 (CS) was removed from the Agenda and the Commission's consideration.

I. Complaint #2023-2423 (JB) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2423 (JB) 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 7/18/2023, the respondent pled guilty to Assault 3-Know/Reckless Cause Injury, a Class 1 Misdemeanor, and Violation Protection Order-Criminal, a Class 1 Misdemeanor. The respondent was ordered to pay \$1,234.50 in court costs and fees, which has been paid. The respondent was also ordered to complete 18 months of supervised probation, which is ongoing; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
 - b. § 12-10-217(1)(p), C.R.S. - failure to immediately notify CREC;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
 - 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. The respondent shall 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 concurrent with the terms of the criminal sentence.

Motion unanimously carried.

J. Complaint #2023-2198 (TV) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2198 (TV) 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 respondent pled guilty to one count Felony 4 - Assault 2 - Cause Serious Bodily Injury and one county Misdemeanor 1 - Assault 3 - Know/Reckless Cause Injury. On 09/25/2023, he received a deferred sentence of three (3) years for the Felony charge and two (2) years of supervised probation for the Misdemeanor charge, along with Court Costs and Fees in the amount of \$2,233.50. The respondent is making monthly payments in the amount of \$100.00; 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. The respondent shall 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 concurrent with the terms of the criminal sentence.

Motion unanimously carried.

NOTE: Complaint K - #2023-1889 (SE) was removed from the Agenda and the Commission's consideration.

L. Complaint #2023-100 (JR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-100 (JR) 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 Commission received a complaint that the respondent entered into an agreement to lease a townhome in Vail, with the intent to purchase it, and represented that he would occupy the property with his uncle and a specified friend. Instead, the respondent sublet the property, contrary to the lease terms, and misrepresented that he owned and managed the property to the two tenants. A review of additional transactions conducted on the respondent's files revealed that he failed to maintain transaction documents as required and he failed to disclose a conflict of interest. The investigation found that the respondent may have represented himself incompetently as a buyer in several transactions. The respondent failed to retain many of his documents for those transactions; 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)(k), C.R.S. - failure to maintain files for 4 years;
 - d. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - e. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - f. § 12-10-405(3)(a), C.R.S. - adverse material facts actually known by the broker;
 - g. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
 - h. Commission Rule 6.20 - transaction file requirements; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. He will be required to pay a fine to the Commission in the amount of \$17,500.

Motion unanimously carried.

M. Complaint #2023-2150 (PV) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2150 (PV) 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 09/01/2023, the respondent pled guilty to a Class 4 Felony - Vehicular Assault - DUI. On 10/20/2023. The respondent's sentence and judgment were deferred until 10/17/2025. However, the respondent has been placed on supervised probation for two years, with court fines and fees in the amount of \$3,980.50 and ten (10) days incarceration; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
 - c. § 12-10-217(1)(p), C.R.S. - failure to immediately notify CREC;
 - d. Commission Rule 6.25 - must submit written response to complaint;
 - e. 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. The respondent shall be required to pay a fine to the Commission in the amount of \$1,500.

Commissioner Kaltenbach is opposed. **Motion carried.**

N. Complaint #2023-2199 (CH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2199 (CH) 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 October 30, 2023, the respondent entered a plea of guilty to Theft \$20,000 - \$100,000, a class four felony. The respondent was ordered to complete a two-year deferred sentence and judgment and pay a total of \$61,843.65 in fees, restitution and penalties. The remaining balance is \$61,743.15 and is to be paid by the end of the deferred sentence; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(w), C.R.S. dishonest dealing;
 - b. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. He shall be required to pay a fine to the Commission in the amount of \$5,000.

Motion unanimously carried.

O. Complaint #2023-2148 (NV) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2148 (NV) 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 respondent pled guilty to Controlled Substance- obtained by fraud/deceit, a Drug Felony class 4. The respondent failed to notify the Colorado Real Estate Commission following a Guilty Plea to the charges on June 8, 2023; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4
 - 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. The respondent shall 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 concurrent with the terms of the criminal sentence.

Motion unanimously carried.

P. Complaint #2023-868 (BT) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-868 (BT) 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 Division received a complaint which alleged that the respondent acted incompetently as the listing broker for a property when she failed to ensure the utilities were turned on for a home inspection. The complaint further alleged that the respondent did not have the requisite knowledge to assist with an assumable VA loan. There was insufficient evidence available to determine the veracity of the allegations. The respondent was notified on May 18, 2023, June 15, 2023, June 22, 2023, November 11, 2023, and December 12, 2023 that a response to the complaint notification, and a copy of the transaction file were required according to Colorado Real Estate Commission Rule 6.25. Transaction documents provided by the respondent's Employing Broker documented discrepancies between the Listing Agreement and the way the property was advertised on the MLS. The transaction file did not contain amendments with the seller which would have documented his approval of three price reductions; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(k), C.R.S. failure to produce documents upon reasonable request;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - d. Commission Rule 6.25 - must submit written response; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and
- F. She shall be required to pay a fine to the Commission in the amount of \$7,500.

Motion unanimously carried.

NOTE: Commissioner Brodbeck recuses himself from consideration of Complaint Q - #2023-1024 (MVR) and leaves the webinar at 1:31 p.m.

Q. Complaint #2023-1024 (MVR) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1024 (MVR) 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. In September 2022 the complainant stated that he entered into a Homeowners Benefit Agreement (HBA) with the respondent. He stated that the terms of the agreement were not made clear to him. The complainant stated that within 24 hours of signing he contacted the respondent to cancel the agreement and was told cancellation was possible. He found out in 2023 that since he did not have written proof of the cancellation, the respondent intended to hold the complainant to the terms of the HBA. The complainant listed his home for sale with the respondent. When the sale closed, the respondent collected a list side sales commission that was higher than the terms outlined in the additional provisions of the Exclusive Right-to-Sell Listing Contract; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - b. § 12-10-404(1)(a), C.R.S. - perform terms of the written agreement;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. Commission Rule 6.22 - prohibited remedies for compensation; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked;
- F. The respondent shall be required to pay a fine to the Commission in the amount of \$7,500; and
- G. The respondent will be directly referred to the Attorney General's Office.

Motion carried.

NOTE: Commissioner Brodbeck returns to the webinar at 1:33 p.m.

R. Complaint #2023-2264 (MM) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-2264 (MM) 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 October 4, 2023, the respondent pled guilty to Assault 2 (strangulation), a class 4 felony. The respondent was sentenced to 24 months of probation with a deferred sentence and judgment on the assault charge. These charges and resulting conviction are a result of a 2022 domestic dispute between the respondent and his girlfriend. The respondent self-reported the conviction to the Division of Real Estate within the mandatory 30 days after conviction; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(n), C.R.S. - conviction/plea to specified crimes; 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 \$250; and
- E. The respondent's real estate broker's license shall be on probation concurrent with the terms of the criminal sentence.

Motion unanimously carried.

S. Complaint #2022-1874 (HO) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-1874 (HO) 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. CREC received an anonymous complaint regarding the business model of this real estate Brokerage. The complainant alleged that after entering into a referral agreement with the Brokerage, they discovered that the Brokerage had placed a cloud on title by recording a memorandum against the property. The memorandum required that the Brokerage be paid a large fee which was equivalent to 6% commission in the event of a breach by the owner. They refused to release the memorandum until they received their fee. The investigation revealed the potential violations that the Brokerage engaged in dishonest dealing by misleading Colorado consumers by paying them a nominal amount to enter into a contractual agreement which allowed the Brokerage to record the agreement against the consumer's property guaranteeing payment of at least a 6% commission upon the sale of the property during a 40- or 20-year period depending on the agreement, filed liens for the purpose of obtaining compensation, and failed to establish their brokerage relationship, or lack thereof, in writing; 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)(w), C.R.S. - dishonest dealing;
 - c. § 12-10-217(1)(a), C.R.S. - false advertising;
 - d. § 12-10-408(2)(b), C.R.S. - brokerage relationship in writing;
 - e. § 12-10-409(1)(b), C.R.S. - duration of relationship;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - g. Commission Rule 6.14(D) - listings must have termination date;
 - h. Commission Rule 6.22(B) - prohibited remedy for compensation; and
- C. The brokerage's settlement offer includes a Stipulation and Final Agency Order;
- D. The brokerage's license shall be publicly censured;
- E. The brokerage's license shall be revoked; and
- F. The brokerage shall be required to pay a fine to the Commission in the amount of \$17,500.

Motion unanimously carried.

T. Complaint #2023-1847 (SP) -

The investigative report concerning a complaint filed against the respondent in Complaint #2023-1847 (SP) 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. As a result of an ongoing investigation, CREC opened an investigation against the respondent regarding the business model of this real estate Brokerage. The investigation revealed the potential violations that the respondent, through his Brokerage, engaged in dishonest dealing by misleading Colorado consumers by paying them a nominal amount to enter into a contractual agreement which allowed the Brokerage to record the agreement against the consumer's property guaranteeing a payment of at least 6% commission upon the sale of the property during a 40- or 20-year period depending on the agreement, filed liens for the purpose of obtaining compensation, and failed to establish their brokerage relationship, or lack thereof, in writing; 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)(w), C.R.S. - dishonest dealing;
 - c. § 12-10-217(1)(a), C.R.S. - false advertising;
 - d. § 12-10-408(2)(b), C.R.S. - brokerage relationship in writing;
 - e. § 12-10-409(1)(b), C.R.S. - duration of relationship;
 - f. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - g. Commission Rule 6.14(D) - listings must have termination date;
 - h. Commission Rule 6.22(B) - prohibited remedy for compensation; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. The respondent's real estate broker's license shall be revoked; and

- F. The respondent shall be required to pay a fine to the Commission in the amount of \$17,500.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2023-1312 (AS) - License Application -

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

In 04/2022 the applicant entered into a Stipulation with the CA Department of Real Estate regarding an unlicensed entity that the applicant was operating as. The applicant agreed to a 60-day license suspension with 60 days stayed subject to a \$1,500 monetary fine, continuing education in trust accounts, submission and passing of a licensing exam, a follow-up audit, and a \$12,597.75 audit fee.

It was moved by Commissioner Chang and seconded by Commissioner Brodbeck to approve the license application at the associate broker level for a period of two years with a higher level of supervision.

Motion unanimously carried.

Licensing Matter B - Complaint #2023-1720 (FDO) - 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 10, 2002, the applicant pled guilty to Controlled Substance - Maintain Property/Distribute, a class one misdemeanor. The applicant was ordered to complete a two-year deferred sentence and pay \$1,430.00 in court fees and costs. All terms of the deferred sentence have been met and all fines have been paid.

On October 30, 2006, the applicant was convicted of Forgery, a class 5 felony. The applicant was ordered to pay \$4,800.00 in restitution, \$1,122.00 in court costs and complete 120 hours of community service. The fines have been paid and the sentence completed.

On June 18, 2007, the applicant's Colorado real estate broker license was revoked by the Commission in connection with a 2006 criminal conviction. The applicant was ordered to pay a fine of \$5,000.00 and his license was publicly censured. All terms of the discipline have been completed.

It was moved by Commissioner Kaltenbach and seconded by Commissioner Brodbeck to issue a positive opinion.

Motion unanimously carried.

Licensing Matter C - Complaint #2023-1957 (SO) - 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 December 10, 2019, the applicant was issued a Citation by the Utah Division of Real Estate. The applicant was ordered to pay a \$1,000.00 fine. The fine has been paid.

On March 21, 2022, the applicant entered into a Stipulation with the Utah Division of Real Estate. The applicant was ordered to pay a \$1,500.00 fine and complete three hours of continuing education. All terms of the Stipulation have been met.

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve the license application.

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

Licensing Matter D - Complaint #2023-2500 (AA) - 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 June 29, 2023, the applicant signed a stipulated agreement in which she admitted to the facts in the complaint filed by her previous employer and the investigative report, dated April 21, 2023. The applicant's Colorado Mortgage Loan Originator license was revoked.

It was moved by Commissioner Brodbeck and seconded by Commissioner Chang to deny the license application.

Motion unanimously carried.

Licensing Matter E - Complaint #2023-1901 (ZS) - 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 November 19, 2021, the applicant was convicted of Assault 3-Know/Reckless Cause Injury, a Class 1 Misdemeanor and Assault 2-Cause Serious Bodily Injury, a class 4 Felony. The applicant was sentenced to a 2-year Deferment and 2 years of probation. The applicant was ordered to pay a fine of \$3,491.50 and has a \$0 balance. The felony charge was dismissed after deferment on 1/8/2024.

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to approve the license application.

Motion unanimously carried.

Licensing Matter F - Complaint #2023-2347 (BS) - 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 August 05, 2005, the applicant was convicted of a Misdemeanor DWAI. On April 03, 2008, the applicant was convicted of a DWAI 2nd Offense. On March 31, 2010, the applicant was convicted of a DUI Misdemeanor. On February 27, 2017, the applicant was convicted of a Felony DUI w/3+priors. The applicant was sentenced to 30 days & 30 days of electronic surveillance, and 3 years of probation. Probation was revoked, and the applicant was re-sentenced to 3 years of probation and a fine of \$3,027.50. The applicant has completed all sentencing terms and has paid the fine in full. The case is closed.

The applicant's California Insurance restricted license was revoked following the felony conviction in 2017.

It was moved by Commissioner Brodbeck and seconded by Commissioner Kaltenbach to issue a positive opinion.

Motion unanimously carried.

Licensing Matter G - Complaint #2023-2534 (KR) - 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 29, 2021, the applicant was convicted of a Misdemeanor Theft by Unlawful Taking. The applicant was sentenced to 6 months of probation, a fine of \$971.25, and ordered to pay restitution in amount of \$1,200.00. The applicant has completed probation successfully and has paid the fine and restitution in full. The case is closed.

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

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2023-175 (CK) - Stipulation Violation -

The Commission was presented with stipulation violation information from Penny Elder regarding ESP Matter A, Complaint #2023-175 (CK). Following discussion, it was moved by Commissioner Brodbeck and seconded by Commissioner Lynde to proceed with a violation of §12-10-217(1)(m) and seek a Final Agency Order, public censure and a fine in the amount of \$2,500 (+15% mandatory surcharge).

Motion unanimously carried.

ESP Matter B, Complaint #2021-1756 (AV) - Stipulation Violation -

The Commission was presented with stipulation violation information from Penny Elder regarding ESP Matter A, Complaint #2021-1756 (AV). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Brodbeck to proceed with a violation of §12-10-217(1)(m) and seek a Final Agency Order, revocation of the real estate broker's license; public censure and a fine in the amount of \$2,500 (+15% mandatory surcharge).

Motion unanimously carried.

ESP Matter C, Complaint #2023-777 (BK) - Stipulation Violation -

The Commission was presented with stipulation violation information from Penny Elder regarding ESP Matter A, Complaint #2023-777 (BK). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Brodbeck to proceed with a violation of §12-10-217(1)(m) and seek a Final Agency Order, public censure and a fine in the amount of \$2,500 (+15% mandatory surcharge).

Motion unanimously carried.

ESP Matter D, Complaint #2023-964 (MB) - Stipulation Violation -

The Commission was presented with stipulation violation information from Penny Elder regarding ESP Matter A, Complaint #2023-964 (MB). Following discussion, it was moved by Commissioner Lynde and seconded by Commissioner Brodbeck to proceed with a violation of §12-10-217(1)(m) and seek a Final Agency Order, revocation of the real estate broker's license, public censure and a fine in the amount of \$2,500 (+15% mandatory surcharge).

Motion unanimously carried.

NOTE: ESP Matter E, Complaint #2023-1965 (BB) was removed from the Agenda and the Commission's consideration.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 2:22 p.m. on February 6, 2024.

Michelle Espinoza, Chair

Graham Kaltenbach, Vice Chair

Josh Brodbeck, Commissioner

Joe Chang, Commissioner

Renee Lynde, Commissioner

Marcia Waters, Director
Colorado Division of Real Estate