

MINUTES

COLORADO REAL ESTATE COMMISSION MEETING August 2, 2022

MINUTES - INDEX

	<u>PAGE</u>
ADJOURN	21
ATTORNEY GENERAL MATTERS:	
A. CREC v. John Ryan LaCassa	21
COMPLAINT MATTERS:	
A. Complaint #2021-1559 (BH)	5
B. Complaint #2021-1639 (PS)	6
C. Complaint #2022-495 (PG)	6
D. Complaint #2022-926 (CC)	7
E. Complaint #2021-1645 (RC)	7
F. Complaint #2021-1703 (DE)	8
G. Complaint #2022-851 (AC)	9
H. Complaint #2021-1534 (EL)	9
I. Complaint #2022-906 & 2022-936 (MVR)	10
J. Complaint #2021-1640 (JC)	12
K. Complaint #2021-1356 (TC)	13
L. Complaint #2021-1384 (JL)	13
M. Complaint #2021-1456 (RA)	14
N. Complaint #2021-2035 (NK)	15
O. Complaints #2021-2062 (TH)	15
P. Complaint #2021-2112 (AM)	16
Q. Complaint #2022-2 (BD)	17
R. Complaint #2021-1827 (TS)	17
S. Complaint #2022-816 (DC)	17
T. Complaint #2022-261 (TH)	18

EXECUTIVE SESSION	
Complaint #2022-936 & 2022-909 (MVR)	10
AG Matters	21
EXPEDITED SETTLEMENT MATTERS (ESP)	
A. Complaint #2021-838 (MF)	21
B. Audit #2022-17 (EK)	21
LICENSING MATTERS:	
A. Complaint #2022-216 (CH) - Preliminary Advisory Opinion	18
B. Complaint #2022-795 (RH) - Preliminary Advisory Opinion	19
C. Complaint #2022-729 (RR) - Preliminary Advisory Opinion	19
D. Complaint #2022-957 (JB) - License Application	19
E. Complaint #2022-997 (VL) - License Application	20
F. Complaint #2022-922 (EM) - License Application	20
MINUTES - APPROVAL	
June 7, 2022	4
June 21, 2022	4
POLICY MATTERS:	
A. CPS #1	4
B. CPS #24	4
PUBLIC COMMENT:	4

MINUTES
COLORADO REAL ESTATE COMMISSION MEETING
August 2, 2022
Colorado Division of Real Estate
Meeting Conducted Via Webinar

A Colorado Real Estate Commission public meeting was conducted via Webinar and was held on August 2, 2022. Those Commissioners in attendance were Michelle Espinoza - Chair; Graham Kaltenbach, Vice Chair; Joe Chang; Renee Lynde; and Kim Rediker. Also attending were Marcia Waters, Director; Eric Turner, Deputy Director; Natalie Lutz, 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.

Due to closures of public spaces because of the Coronavirus pandemic, the meeting was conducted via Webinar. The meeting was called to order by Commissioner Espinoza - Chair, at 9:00 a.m.

NON-RULEMAKING HEARING - Commission Approved Forms:

Brokerage Duties Disclosure to Seller and Brokerage Duties Addendum to Property Management Agreement -

It was moved by Commissioner Rediker and seconded by Commissioner Lynde to approve the Brokerage Duties Disclosure to Seller and Brokerage Duties Addendum to Property Management Agreement as submitted. In addition, the Commission delegates authority to make non-substantive, grammatical, clerical changes as well as nonconforming changes to other forms and contracts as necessary.



BDD56-8-22

Brokerage Duties Disc



BDA55-8-22

Brokerage Duties Add

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of the Non-Rulemaking Hearing meeting at 9:09 a.m. on August 2, 2022.

ORDER OF BUSINESS

Approval of Minutes - June 7, 2022

It was moved by Commissioner Rediker and seconded by Commissioner Lynde to approve the Minutes of June 7, 2022 as written.



CREC Minutes_April
5, 2022.pdf

Commissioner Kaltenbach abstains from voting. **Motion carried.**

Approval of Minutes - June 21, 2022

It was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to approve the Minutes of June 21, 2022 as written.



CREC Minutes_June
21, 2022.pdf

Commissioner Chang abstains from voting. **Motion carried.**

POLICY MATTERS:

A. Proposed Commission Position Statement #1 -

Deputy Director Eric Turner introduced the Proposed Commission Position Statement #1.

Public Comment on Proposed Commission Position Statement #1

- Damian Cox
- Keith Alba
- Scott Peterson

Commission Position State #1 - Contracts provided by Principals Selling Real Property

It was moved by Commissioner Lynde and seconded by Commissioner Chang to adopt the original version of Commission Position Statement #1 as presented.



Commission Position
1 - Contracts provided

Motion unanimously carried.

Commission Position Statement #24 - Apartment Building or Complex Management -

It was moved by Commissioner Kaltenbach and seconded by Commissioner Lynde to adopt Commission Position Statement #24 as presented.



Motion unanimously carried.

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 #2021-1559 (BH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1559 (BH) 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 complaint alleges that the respondent "R" rented the complainant's ("C") property without his authority. The "R" managed the "C's" property from 2012 - approx. 05/2020 when the last tenant vacated the property. The "C" never signed a management agreement with the "R". Afterwards, the "R" assisted the "C" w/renovating the property to prepare for sale w/the hope of gaining the listing. During the reno., the "R" presented the "C" w/several rental offers including a ST-rental offer from one of the reno. contractors. Per the "R" & tenant "T", the "C" verbally authorized the "T" to rent the property on a M2M basis beg. in 12/2020. The "R" states she told the "C" she wanted a referral fee b/c she wouldn't manage the property, obtain lease, or SD on his behalf. In 01/2021, the "C" states he became aware of the unauthorized rental when another broker visited the property to prepare it for listing. The "C" insists he never authorized the "R" to allow the "T" to rent his property. The "C" states that the "R" collected 12/2020 rent & didn't initially inform him or transfer the funds until 01/05/21 & that the "R" tried to withhold a "management fee", not referral fee from the rental proceeds. By 1/21/21, the "R" informed the "C" she was no longer involved w/the property & he had to deal directly w/the "T". The "C" couldn't obtain a lease & SD from the tenant; so he evicted the tenant & later sold the property. Three emails from the "R" to the "C" appear to contradict the "R's" statements to DRE staff and show that she continued to request permission from the "C" to rent his property to the "T" after the tenant had allegedly already moved in; 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;
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - c. Commission Rule 6.14(C) - listing must be in writing; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will 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 Brokerage Relationships and in Contracts.

Motion unanimously carried.

B. Complaint #2021-1639 (PS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1639 (PS) 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. On 10/06/2021, Complaint No. 2021-1639 was filed against the respondent ("R") stating that the "R" managed the complainant's ("C") rental property and upon terminating services, the "R" charged the "C" unauthorized fees. The Lease is between the "C" as Landlord and the Tenant. A clause in Lease states if the Tenant terminates the lease early, they are charged a "Improper Termination Fee" payable to Landlord. The "R" states the Management Agreement discloses to the owner that fees charged and collected for the benefit of the broker do not need to be accounted to the owner. The "C" disagrees that the fee charged to the Tenant was retained by the "R" and not given to the owner/landlord per the Lease. After the complaint and during the investigation, the "R" refunded the "C" the \$2,525.00 "Improper Termination Fee" that was charged and collected by the "R" from the tenant. Lastly, the "R" failed to sign the Management Agreement with the "C" which was only executed by the "C"; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(h), C.R.S. - failure to remit funds belonging to others;
 - 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 5.9 - diversion, conversion prohibited; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$1,500; and
- E. The respondent will be required to successfully complete real estate education in Contracts, Property Management and in Ethics.

Motion unanimously carried.

C. Complaint #2022-495 (PG) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-495 (PG) 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 March 1, 2022 the respondent pled guilty to Indecent Exposure-Masturbation, a Class 1 Misdemeanor. He was sentenced to a 2-year supervised deferred sentence, sex offender registration, sex offender evaluation and treatment, no contact with children under the age of 18, and \$3,466.50 in court costs and fines. A no contact order and mandatory restraining order is in place for the victim. A 2-year extension is offered by the court if needed to complete the treatment program. The balance remaining as of the date of the investigative report was \$3,466.50. The respondent has not notified the Division of the conviction and as of the date of this report, he has not provided a

response to the notification letters. Since the date of the investigative report, the respondent has not made any payments, but the court waived \$1,150 in fees; 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. Commission Rule 6.25 - must submit written response to complaint; 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 suspended until he submits a response to the investigation. If/when a response is received, the case will be further reviewed by the Commission for possible further disciplinary action;
- E. He will be required to pay a fine to the Commission in the amount of \$500; and
- F. The respondent's real estate broker's license shall be on probation concurrent with the criminal sentence.

Motion unanimously carried.

D. Complaint #2022-926 (CC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-926 (CC) 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 25, 2022 the respondent notified the Division of a criminal conviction. On February 10, 2022 the respondent was convicted of Vehicular Assault - Reckless, a Class 5 Felony. The respondent was sentenced to 45 days in jail (currently being served on work release), 2 years of supervised probation, and to pay \$1,628.50 in fines and costs. Probation is ongoing and there is a balance of \$1,628.50 remaining; 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. He 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 concurrent with the criminal sentence.

Motion unanimously carried.

E. Complaint #2021-1645 (RC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1645 (RC) 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 complaint was filed by an employing broker against the respondent alleging that the respondent had a signed Exclusive Right-to-Buy Listing Contract with a buyer at the complainant's brokerage firm and after the respondent left her brokerage firm, he continued to work with the buyer. The respondent had signed an agreement with the complainant's brokerage firm that specified that all leads generated while at the complainant's firm were to remain the property of her firm if the respondent left her firm. After the respondent left her firm and joined his new brokerage firm, his buyer went under contract and closed on a property under a second listing contract with the respondent. The investigation found that the respondent had a second signed Exclusive Right-to-Buy Listing Contract with the same buyer at his new brokerage firm. The second Exclusive Right-to-Buy Listing Contract was signed after the purchase agreement was executed; 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. Commission Rule 6.15 - sign crossing; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. He will be required to pay a fine to the Commission in the amount of \$500; and
- E. He will be required to successfully complete real estate education in Ethics and in Brokerage Relationships.

Motion unanimously carried.

F. Complaint #2021-1703 (DE) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1703 (DE) 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 advertised a new construction home that she owned for sale. The potential buyers for the property filed a complaint alleging that the respondent did not properly disclose that she was an agent/ owner and did not properly disclose brokerage relationships to them. Additionally, the complainants believed they were under contract to purchase the property, however the respondent sold it to a different buyer for more money; 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. Commission Rule 6.5 - brokerage relationship disclosures in writing;
 - d. Commission Rule 6.17 - duty to disclose conflict of interest and license status; 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 \$2,500; and

- E. She will be required to successfully complete real estate education in Brokerage Relationships and in Ethics.

Motion unanimously carried.

G. Complaint #2022-851 (AC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-851 (AC) 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 5/2/22, the respondent plead guilty to Assault 3 - Know/Reckless Cause Injury, a class 1 misdemeanor. The respondent was ordered to complete two years of supervised probation and pay \$1,503.50 in court costs. There is a remaining balance of \$1,503.50. On 5/3/2022, the respondent plead guilty to Violation of P/O - Civil, a misdemeanor 2. The respondent was ordered to pay court costs of \$1,492.50, two years of probation, and 45 days of jail stayed. There is a remaining balance of \$1,492.50. On 5/3/2022, the respondent plead guilty to Assault 3 - Know/Reckless Cause Injury, a class 2 misdemeanor. The respondent was ordered to pay \$1,467.50 in court costs, two years of probation, and 45 days of jail stayed. There is a remaining balance of \$1,467.50; 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. He shall pay a fine to the Commission in the amount of \$500;
- E. The respondent's real estate broker's license shall be on probationary status to run concurrent with the criminal sentence.

Motion unanimously carried.

H. Complaint #2021-1534 (EL) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1534 (EL) 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 believed that the respondent had been acting as his Seller's Agent over the course of several months, though an Exclusive Right to Sell Listing Contract had not been executed. During that time, the respondent informed him of a buyer who wanted to make an offer on his property and that she would draft the Contract to Buy and Sell. The complainant alleges that the respondent did not follow up with him, informing him that the Contract to Buy and Sell was ready for his review. Believing there was no offer, he told the respondent he was not going to sell his property. The respondent did not inform the complainant of the offer she had written; instead she

informed the buyer that the complainant was no longer selling his property. Additionally, the respondent did not provide the buyer with an Exclusive Right to Buy Listing Contract nor a Brokerage Disclosure to Buyer; 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. § 12-10-408, C.R.S. - broker disclosures;
 - d. Commission Rule - 6.5 - brokerage relationship disclosures in writing;
 - e. Commission Rule 6.14 (C) - listing must be in writing; and
- C. The respondent's settlement offer includes a Stipulation for Diversion;
- D. She will be required to successfully complete real estate education in Brokerage Relationships, Contracts and in Ethics.

Motion unanimously carried.

EXECUTIVE SESSION:

At 10:08 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) for the purpose of receiving legal advice regarding violations of license law:

- Complaint I - #2022-936 and #2022-906 (MVR)

Motion unanimously carried.

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 10:24 a.m. and resumes meeting via Zoom webinar that is open to the public.

I. Complaints #2022-936 and #2022-906 (MVR) -

The investigative reports concerning complaints filed against the respondent in Complaint #2022-936 (MVR) and #2022-906 (MVR) were 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.

Complaint #2022-936 -

- A. CREC received two complaints and various inquiries regarding the business model of this real estate Brokerage. The investigations revealed that as of October 2020, the Brokerage has entered into at least 614 "Homeowner Benefit Agreements" with Colorado Homeowners. The Agreement outlines that Homeowners are given money up front in exchange for agreeing to list their property with the Brokerage if they decide to sell. The term of the Agreement is 40 years and it runs with the property and any future owners of the property. The Agreement allows the Brokerage to record a document against the Homeowner's property to secure a payment from the

Homeowner to the Brokerage should the Homeowner list their property with a different brokerage. The Homeowner ultimately owes the Brokerage 3% of varying amounts determined by the Brokerage either at the time of the Agreement, at a later date, based on a value determined by the Brokerage, or market value. Potential violations noted: engaged in dishonest dealing by misleading Homeowners into signing legal documents which affect their title, attempting to circumvent license law, negotiated listings for a period of longer than one year, filed liens against Homeowner's property to obtain compensation, failed to disclose license status in contract documents, failed to establish their brokerage relationship (or lack thereof) in writing, failed to advise Homeowners to seek legal advice, and failed to provide Homeowners with copies of signed documents; and

- B. This is a possible violation of:
 - a. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - c. Commission Rule 6.14 (A)(2) - broker must deliver duplicates to consumer;
 - d. Commission Rule 6.14 (F) - must recommend title exam and legal counsel;
 - e. Commission Rule 6.17 - disclose conflict of interest and license status;
 - f. Commission Rule 6.22 (B) - prohibited remedy for compensation; and
- E. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- F. The license shall be publicly censured;
- G. The respondent shall pay a fine to the Commission in the amount of \$12,500;
- H. The respondent's license shall be revoked.

Motion unanimously carried.

Complaint #2022-906 -

- A. CREC received two complaints and various inquiries regarding the business model of this real estate Brokerage. The investigations revealed that as of October 2020, the Brokerage has entered into at least 614 "Homeowner Benefit Agreements" with Colorado Homeowners. The Agreement outlines that Homeowners are given money up front in exchange for agreeing to list their property with the Brokerage if they decide to sell. The term of the Agreement is 40 years and it runs with the property and any future owners of the property. The Agreement allows the Brokerage to record a document against the Homeowner's property to secure a payment from the Homeowner to the Brokerage should the Homeowner list their property with a different brokerage. The Homeowner ultimately owes the Brokerage 3% of varying amounts determined by the Brokerage either at the time of the Agreement, at a later date, based on a value determined by the Brokerage, or market value. Potential violations noted: engaged in dishonest dealing by misleading Homeowners into signing legal documents which affect their title, attempting to circumvent license law, negotiated listings for a period of longer than one year, filed liens against Homeowner's property to obtain compensation, failed to disclose license status in contract documents, failed to establish their brokerage relationship (or lack thereof) in writing, failed to advise Homeowners to seek legal advice, and failed to provide Homeowners with copies of signed documents; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - b. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;

- c. Commission Rule 6.14 (A)(2) - broker must deliver duplicates to consumer;
- d. Commission Rule 6.14 (F) - must recommend title exam and legal counsel;
- e. Commission Rule 6.17 - disclose conflict of interest and license status;
- f. 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 license shall be publicly censured;
- E. The respondent shall pay a fine to the Commission in the amount of \$12,500;
- F. The respondent's license shall be revoked.

Motion unanimously carried.

J. Complaint #2021-1640 (JC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1640 (JC) 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 two complaints and various inquiries regarding the business model of the real estate Brokerage for which the respondent is the employing broker. The investigations revealed that as of October 2020, the Brokerage has entered into at least 614 "Home Buyer Agreements" with Colorado Homeowners. The Agreement outlines that Homeowners are given money up front in exchange for agreeing to list their property with the Brokerage if they decide to sell. The term of the Agreement is 40 years and it runs with the property and any future owners of the property. The Agreement allows the Brokerage to record a document against the Homeowner's property to secure a payment from the Homeowner to the Brokerage should the Homeowner list their property with a different brokerage. The Homeowner ultimately owes the Brokerage 3% of varying amounts determined by the Brokerage either at the time of the Agreement, at a later date based on a value determined by the Brokerage, or market value. Potential violations noted: engaged in dishonest dealing by misleading Homeowners into signing legal documents which affect their title, is attempting to circumvent license law, negotiated listings for a period of longer than one year, filed liens against Homeowner's property to obtain compensation, failed to disclose license status in contract documents, failed to establish their brokerage relationship (or lack thereof) in writing, failed to advise Homeowners to seek legal advice, and failed to provide Homeowners with copies of signed documents; 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)(r), C.R.S. - failure to supervise associates per Rule E-31;
 - c. § 12-10-217(1)(w), C.R.S. - dishonest dealing;
 - d. Commission Rule 6.3 - supervision;
 - e. Commission Rule 6.14 (A)(2) - broker must deliver duplicates to consumer;
 - f. Commission Rule 6.14 (F) - must recommend title exam and legal counsel;
 - g. Commission Rule 6.17 - disclose conflict of interest and license status;
 - h. Commission Rule 6.22 (B) - prohibited remedy for compensation; and
- G. The respondent's settlement offer includes a Stipulation and Final Agency Order;

- H. The real estate broker's license shall be publicly censured;
- I. The respondent shall pay a fine to the Commission in the amount of \$17,500;
- J. Her real estate broker's license shall be revoked.

Motion unanimously carried.

K. Complaint #2021-1356 (TC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1356 (TC) 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 was the listing broker of the property purchased by the complainant's buyer. The complainant alleges that the respondent did not show the prerequisite competence to professionally perform a real estate transaction, providing less than competent broker representation to the seller. Additionally, that the respondent did not disclose an agreement between the respondent's brokerage firm and the seller wherein a lien clouding title was recorded against the property. Further, upon the complainant discovering the lien, the respondent did not provide the complainant the requested document terminating the lien for review before closing. Allegations also include that the respondent missed multiple deadlines and did not properly complete or sign documents; 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. § 12-10-407(2), C.R.S. - transaction broker;
 - d. Commission Rule 6.2 - competency - must possess experience, training and knowledge;
 - e. Commission Rule 6.11 - square footage disclosure;
 - f. Commission Rule 6.22 - prohibited remedies for compensation; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. She shall pay a fine to the Commission in the amount of \$3,000;
- E. She will be required to successfully complete real estate education including 48 hours Real Estate Law and Real Estate Practice (QE class); and 48 hours of Contracts (QE class); and
- F. The respondent will be required to submit to a high level of supervision for 5 years.

Motion unanimously carried.

L. Complaint #2021-1384 (JL) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1384 (JL) 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 Colorado Real Estate Commission (CREC) opened a complaint against the respondent on its own motion in connection with Complaint No. 2021-1356. The respondent was the employing broker of the associate broker respondent in that complaint. As alleged by the complainant in Complaint No. 2021-1356, it appears that the respondent did not provide the associate broker with adequate supervision. The complainant further alleged that the respondent's associate broker did not disclose an agreement between her brokerage firm and the seller wherein a lien clouding title was placed on the property; 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. § 12-10-217(1)(r), C.R.S. - failure to exercise reasonable supervision;
 - d. Commission Rule 6.3 - employing broker's responsibilities and supervision;
 - e. Commission Rule 6.22 - prohibited remedies for compensation; and
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. She shall pay a fine to the Commission in the amount of \$3,000;
- E. She will be required to successfully complete real estate education including 48 hours Real Estate Law and Real Estate Practice (QE class); and 48 hours of Contracts (QE class); and
- F. The respondent real estate broker's license shall be downgraded; she may not supervise associates for 5 years; and she must requalify for licensure as an employing broker.

Motion unanimously carried.

M. Complaint #2021-1456 (RA) -

the investigative reports concerning a complaint filed against the respondent in Complaint #2021-1456 (RA) 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. Respondent filed a written complaint against himself with the Division of Real Estate. Respondent stated that he created and signed a Seller's Property Disclosure form (SPD) on behalf of his sellers without their permission. Respondent explained that he had recently had surgery and was taking pain killers when his managing broker told him he had to move out of his office for renovations. Respondent stated that he enlisted co-workers to help him move his office during which time the originally executed SPD was packed away and unable to be timely accessed in order to keep his sellers under contract. Respondent stated that he knows it was wrong to create and electronically execute a new SPD; 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. § 12-10-404(1)(b), C.R.S. - failure to exercise reasonable skill and care; 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; and
- E. He will be required to successfully complete real estate education in Ethics and in Contracts.

Motion unanimously carried.

N. Complaint #2021-235 (NK) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-235 (NK) 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 was the employing broker for the respondent. The complainant reported to the Division of Real Estate that it had been brought to her attention that the respondent had committed two felony crimes. Based on the complaint, the Division of Real Estate investigated further and found that the respondent had criminal convictions in 3 separate court cases all of which would have required the respondent to report these convictions to the Division of Real Estate which he did not. The respondent has not responded to the Division of Real Estates request for further explanation and documentation surrounding these convictions. It is believed based on court documents that the respondent is currently incarcerated with the Colorado Department of Corrections. The convictions are as follows; A 2018 conviction for Reckless Endangerment a Class 3 Misdemeanor resulting from a 2017 Domestic Dispute. A 2021 conviction of Criminal Possession of Financial Device a Class 1 Misdemeanor resulting from 2021 incident where he was found to have 3 credit cards not belonging to him in his possession. A 2021 conviction for Aggravated Motor Vehicle Theft a Class 6 Felony resulting from a 2021 incident in which he stole a car out of the Poudre Valley Hospital parking lot after he was released as a patient; 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;
 - d. Commission Rule 6.23 - immediate notification of conviction, plea or violation required;
 - e. Commission Rule 6.25 - must submit written response to complaint;
- C. The respondent's settlement offer includes a Stipulation and Final Agency Order;
- D. His 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 pay a fine to the Commission in the amount of \$5,000.

Motion unanimously carried.

O. Complaint #2021-2062 (TH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-2062 (TH) 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 01/19/2022, the respondent plead guilty to Stalking- a Class 6 Felony-stemming from an incident on 04/01/2021 in which it was reported that the respondent repeatedly called and texted the victim with threatening and harassing messages. The victim in this criminal case was also the victim in the respondent's previous disciplinary case with the Division; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - 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. His real estate broker's license shall be on probation concurrent with the criminal sentence; and
- E. He will be required to pay a fine to the Commission in the amount of \$1,000.

Motion unanimously carried.

P. Complaint #2021-2112 (AM) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-2112 (AM) 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 06/11/2021 the respondent plead guilty to Assault, a class 1 misdemeanor, and was sentenced to 2 years of probation. On 09/03/2021 while on probation, the respondent plead guilty to Violating a Protection Order, a class 1 misdemeanor. Neither conviction was reported to the Division of Real Estate; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule;
 - 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. His real estate broker's license shall be on probation concurrent with the criminal sentence; and
- E. He will be required to pay a fine to the Commission in the amount of \$1,000.

Motion unanimously carried.

Q. Complaint #2022-2 (BD) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-2 (BD) 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 pleaded guilty to Felony Menacing-real/simulated weapon and Assault 3 (misdemeanor) on 12/10/2021. The respondent notified the Division of the conviction within 30 days; 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 pay a fine to the Commission in the amount of \$250.00.

Motion unanimously carried.

R. Complaint #2021-1827 (TS) -

The investigative report concerning a complaint filed against the respondent in Complaint #2021-1827 (TS) 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 used the respondent as a transaction broker to negotiate the purchase of a manufactured home and a lot lease. The respondent did not provide the complainants with the Seller's Property Disclosure until after the Inspection Objection had been signed, although it was available from the beginning of the transaction. The brokerage disclosure to buyer was not provided until shortly before closing, and does not specify that the respondent was a transaction broker; and
- B. This is a possible violation of:
 - a. § 12-10-217(1)(q), C.R.S. - unworthy, incompetent practice;
 - b. § 12-10-407(2)(b), C.R.S. - reasonable skill and care - transaction broker;
 - c. § 12-10-217(1)(m), C.R.S. - violation of any Commission rule or part 4;
 - d. § 12-10-408(2)(a), C.R.S. - disclosure in writing prior to engaging in activities; and
- C. The respondent's settlement offer includes a Stipulation for Diversion; and
- D. She shall pay a fine to the Commission in the amount of \$500; and
- E. She will be required to successfully complete real estate education in Brokerage Relationships and in Contracts.

Motion unanimously carried.

S. Complaint #2022-816 (DC) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-816 (DC) 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 05/05/2022, the respondent self-reported that on 04/11/2022 he plead guilty to Sexual Exploitation of a Child, a Class 4 Felony. The respondent was sentenced on 06/09/2022 to 1 year in jail and 5 years of probation; 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 and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. His real estate broker's license shall be revoked; and
- F. The respondent shall pay a fine to the Commission in the amount of \$2,500.00.

Motion unanimously carried.

T. Complaint #2022-261 (TH) -

The investigative report concerning a complaint filed against the respondent in Complaint #2022-261 (TH) 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 failed to notify the Division of Real Estate of his criminal convictions. The respondent has had 3 criminal cases over the last 2 years involving the same victim. The criminal convictions are Stalking a Class 4 Felony, Assault 3 a Class 1 Misdemeanor, and Attempted Burglary a Class 4 Felony. The respondent is currently serving 4 years in the Department of Corrections; 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 and Final Agency Order;
- D. The respondent's real estate broker's license shall be publicly censured;
- E. His real estate broker's license shall be revoked; and
- F. The respondent shall pay a fine to the Commission in the amount of \$2,500.00.

Motion unanimously carried.

LICENSING MATTERS:

Licensing Matter A - Complaint #2022-216 (CH) - 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.

The applicant has a 2003 conviction for Kidnapping (3rd Degree Felony), a 2003 conviction for Battery (1st Degree Misdemeanor), and a 2004 conviction for Conspiracy to Distribute & Possess Ecstasy (Felony). The applicant has completed the terms of all three sentences.

It was moved by Commissioner Rediker and seconded by Commissioner Chang to issue a positive opinion.

Motion unanimously carried.

Licensing Matter B - Complaint #2022-795 (RH) - 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.

The applicant, a former attorney, was disbarred in Texas on April 21, 2006. On January 10, 2007, the applicant was found in contempt of the original judgment. According to information provided by the State Bar of Texas there is no record of the applicant paying that debt, though the restitution and attorneys' fees originally ordered have been paid.

It was moved by Commissioner Chang and seconded by Commissioner Kaltenbach to issue a negative opinion.

Motion unanimously carried.

Licensing Matter C - Complaint #2022-729 (RR) - 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 June 30, 2009, the applicant was convicted of Controlled Substance-Distribute Schedule III, a Class 4 Felony. The applicant was sentenced to 6 years of probation and a fine of \$4,946.50. The applicant has completed probation and paid the fine in full. The case is closed.

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

Motion unanimously carried.

Licensing Matter D - Complaint #2022-957 (JB) - 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 September 25, 2019, the applicant was convicted of Assault 2-cause SBI-Heat of Passion a Class 6 Felony, and Reckless Endangerment a Class 3 Misdemeanor. The applicant was sentenced to 15 days in jail with 1-day credit for time served, 2 years of probation, and a fine of \$498.50. The applicant has completed all jail terms and probation, and the fine has been paid in full. The case is closed.

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

Motion unanimously carried.

Licensing Matter E - Complaint #2022-997 (VL) - 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 25, 2015, the applicant was convicted of a Controlled Substance-Poss Schedule 3/4 Class 1 Drug Misdemeanor. The applicant was sentenced to 18 months of probation, probation was revoked, and she was re-sentenced to 18 months of probation, 30 days in jail, and fines. The applicant has completed all terms of probation, jail, drug treatment, and paid the fine in full. The case is closed.

On February 18, 2020 the applicant was convicted of Controlled Substance-Poss Schedule 3/4/5, a class 2 drug misdemeanor. The applicant was sentenced to 1 year of probation and a fine. The applicant has completed the terms of probation and has paid the fine in full. The case is closed.

It was moved by Commissioner Chang and seconded by Commissioner Rediker to approve the license application.

Motion unanimously carried.

Licensing Matter F - Complaint #2022-922 (EM) - 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 1989, the applicant was convicted of a Class 5 felony for Attempted Theft. The applicant was sentenced to one year of probation, 60 days in jail, a fine of \$710.00, and ordered to pay restitution in the amount of \$7,484.28. The applicant has completed all terms for jail and probation and has a balance of \$7,203.72.

On February 24, 1992, the applicant was convicted of a Class 3 Misdemeanor-Converted Description Issuance of Bad Checks. The applicant was sentenced to 6 months of unsupervised probation, a fine of \$98.00, and ordered to pay restitution in the amount of \$715.00. The case is closed.

On August 13, 1993, the applicant was convicted of Violation of Restraining Order, an Unclassified Misdemeanor. The applicant was sentenced to a fine of \$168.00. The fine has been paid in full. The case is closed.

On November 14, 1997, the applicant was convicted of Harassment, a Class 3 Misdemeanor. The applicant was sentenced to 24 months of probation and a fine of \$193.00. The applicant has completed probation successfully and paid the fine in full. The case is closed.

It was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach to defer this case to the next meeting scheduled on October 4, 2022.

Motion unanimously carried.

ESP MATTERS:

ESP Matter A, Complaint #2021-838 (MF) - Stipulation Violation -

The Commission was presented with a Stipulation Violation report by Penny Elder regarding ESP Matter A, Complaint #2021-838 (MF). After discussion, it was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach 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.

Motion unanimously carried.

ESP Matter B, Complaint #2022-17 (EK) - Counteroffer -

This matter was pulled from the Commission's consideration.

EXECUTIVE SESSION:

At 11:47 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 following purpose:

- A. To confer with counsel to receive legal advice regarding AG Matter A., Colorado Real Estate Commission v. John Ryan LaCassa, Applicant (Case #RC 2022-0008), and receive updates from counsel about the case with a discussion of the legal implications.

Motion unanimously carried.

Executive Session is conducted via Google Hangout Meeting.

The Commission adjourned out of Executive Session at 12:01 p.m. and resumes meeting via Zoom webinar that is open to the public.

ATTORNEY GENERAL MATTERS:

A. Colorado Real Estate Commission v. John Ryan LaCassa, Applicant (Case #RC 2022-0008) -

Following discussion in Executive Session, it was moved by Commissioner Rediker and seconded by Commissioner Kaltenbach to approve the license application.

Motion unanimously carried.

ADJOURN:

The Real Estate Commission adjourned out of their regular meeting at 12:09 p.m. on August 2, 2022.

Michelle Espinoza, Chair

Graham Kaltenbach, Vice Chair

Joe Chang, Commissioner

Renee Lynde, Commissioner

Kim Rediker, Commissioner

Marcia Waters, Director
Colorado Division of Real Estate