

**IDAHO REAL ESTATE COMMISSION
MEETING MINUTES
October 15, 2009**

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at The Idaho Real Estate Commission, 633 North Fourth Street, Boise, Idaho, on Thursday, October 15, 2009 at 8:30 a.m.

Commission Members Present:

Kelly Fisher, Chair, Pocatello
Pam Trees, Vice Chair, Lewiston
Andy Enrico, Member, Boise
Marvis Brice, Member, Burley

Comprising a quorum of the Commission

Members Absent:

Staff Present:

Jeanne Jackson-Heim, Executive Director
Craig Boyack, Chief Investigator
Gayle Nelson, Inspector
Tammy Anderson, Administrative Assistant
Neal Bernklau, Licensing Supervisor
MiChell Bird, Education Director

Others Present:

Kim Coster, Commission Legal Counsel
See attached list

Meeting was called to order at 8:30 a.m. by Commission Chair, Kelly Fisher.

Introductions:

- a. Commissioners
- b. Staff, Commission and Counsel

Approval of Meeting Minutes: Motion was made by Andy Enrico to approve the September 16, 2009 Commission meeting minutes. Motion carried.

Staff Reports:

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **September 2009 Financial Statements**
- **Salesperson Broker Licenses issued, September 2009**
- **FY09-FY10 License Base Analysis**
- **Examination Statistics**
- **Civil Penalty Fine Money Report FY10**
- **Complaint Summary Report**
- **Audit Report**
- **Enforcement Telephone Activity Log**
- **Online Transactions Report**

Online Lottery Drawing: Joseph H. Rountree, (SP19797), Coldwell Banker Tomlinson group, Boise, won the lottery drawing for October 2009.

Idaho Association of REALTORS®: Jill Randall reported that IAR'S® conference in Coeur d'Alene went well and they are gearing up for next year's conference that will be held in Boise. IAR® has sent out their annual dues notices.

Executive Director's Report:

- **IREC's Budget Request for FY11:** Jeanne Jackson-Heim presented IREC's budget request for FY11 to Commissioners. Discussion followed.
- **Draft Broker Bulletin:** Jeanne presented to Commissioners a draft of the broker bulletin prepared by Don Morse. It will be sent out with the new Guideline 18 on Dealer in Options.
- **Consideration of ARELLO Proposed Bylaws Change:** Jeanne presented ARELLO's proposed bylaws change, regarding representation for each district. Discussion followed. Motion was made by Marvis Brice to authorize Pam Trees to vote in favor of ARELLO's proposed bylaw change. Motion carried.
- **Update on Meeting with Department of Finance and other Regulatory Agencies on issues with Loan Fraud:** Jeanne Jackson-Heim, Kim Coster and Craig Boyack met with representatives from the Department of Finance, Department of Insurance, Occupational Licensure and the Office of the Attorney General's Office. They discussed issues on loan fraud, consumer fraud and generally what is going on in the real estate industry with sales of distressed properties. Representatives discussed how their respective agencies might cooperate to clean up these problems. IREC's counsel Kim Coster will be

drafting a Memorandum of Understanding between the agencies and bring it back to the next Commission meeting.

Education Council and Director's Report:

Fine Money Bids for CORE and Broker Prelicense Classes: MiChell Bird presented Commissioners a report on Civil Penalty Fine Money bids for CORE and Broker prelicense classes. In August the Division of Purchasing posted an invitation to bid on course offerings for CORE and Broker prelicense classes. Jeanne explained to Commissioners the purchasing law and rules and that a contract must be awarded to the lowest responsible bidder unless IREC has good reason to reject the bids. Discussion followed. A motion was made by Andy Enrico to approve the low bid responses submitted for each district for each CORE and Broker prelicense classes. Motion carried.

Licensure:

Neal Bernklau reported that IREC mailed out 7,196 E&O insurance renewal notices to licensees; 5,765 licensees renewed on time and 702 inactivated their license; 162 licensees have no insurance; 36 are companies and 126 are individuals. IREC sent out 452 non-compliance letters; 28 licensees have provided proof and 424 active licensees are still not in compliance. As of October 15, 2009, 277 licensees have renewed late.

Enforcement:

Case of Staff vs. Sandra J. Koch (Mitigation Hearing): Hearing convened at 9:40 a.m. Craig Boyack appeared on behalf of Staff and was represented by Kirt Naylor. Sandra J. Koch appeared in person and without counsel. The hearing was tape recorded. Ms. Koch was sworn as a witness and testified on her own behalf and answered questions from Mr. Naylor. Mr. Naylor called Jeanne Jackson-Heim, who was sworn and testified on behalf of Staff and answered questions from Ms. Koch. Mr. Naylor offered Exhibits and received no objections; exhibits were admitted and made part of the administrative record in the case. Following closing statements the Chair adjourned the hearing.

Case of Staff vs. Neal F. McClellan (Mitigation Hearing): Hearing convened at 10:46 a.m. Craig Boyack appeared on behalf of Staff and was represented by Kirt Naylor. Neal F. McClellan appeared in person and without counsel. The hearing was tape recorded. Mr. McClellan was sworn as a witness and testified on his own behalf and answered questions from Mr. Naylor. Mr. Naylor called Mandy Wood, who was sworn and testified on behalf of Staff and answered questions from Mr. McClellan.

Mr. Naylor offered Exhibits and received no objections; exhibits were admitted and made part of the administrative record in the case. Following closing statements the Chair adjourned the hearing.

Case of Staff vs. Cynthia C. Fassler (Consideration of Proposed Default Order): Craig Boyack stated they held a formal hearing and provided to commissioners an information packet. A motion was made by Andy Enrico to issue a Notice of Proposed Default Order, a copy of which is attached hereto as part of these minutes. If, after seven (7) days, Ms. Fassler fails to file a timely petition requesting that proposed Final Order not be entered, and stating the grounds therefor, the Commission will enter the Final Order. Commissioner Andy Enrico is authorized to sign Final Order on behalf of the Commission. Motion carried.

Voluntary License Surrenders: Were reviewed.

Gayle Nelson reported that she and Craig have worked hard to integrate necessary paperwork for audits to a computerized system; so far the new paperless audit system is working well.

Craig Boyack reported that he has been invited to the Sawtooth Board next Tuesday to talk about short sale issues. This meeting is a direct result of the Commission meeting held in Coeur d'Alene where a person observed Craig speaking on this issue. Craig suggested to Commissioners possibly holding more Commission meetings outside of Boise in the surrounding local areas where staff could travel to and from in the same day.

Executive Session: Executive Session: In accordance with Open Meetings Law, a motion was made by Pam Trees to adjourn to executive session as provided by sections 67-2345(1)(d), and (f), Idaho Code, to review applications submitted for felony exemption and for special consideration to waive certain licensing requirements, and to review probable cause memoranda submitted by the Executive Director pursuant to 54-2058(1), Idaho Code, which records are exempt from disclosure under Section 9-340C(9) of the Public Record Act, and to discuss with legal counsel the options and legal ramifications of the probable cause memos and Mitigation Hearings. Motion carried. Members reviewed probable cause memoranda, discussed Mitigation Hearings, and reviewed applications for exemption and waivers. Roll was called; Pam Trees, Marvis Brice, Andy Enrico and Kelly Fisher voted in favor. Motion carried. Members reviewed records.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session and return to open meeting. Motion carried.

Case of Staff vs. Sandra J. Koch (Following Mitigation Hearing): In consideration of the facts and evidence presented, a motion was made by Pam Trees to issue a Final Order approving the parties' Stipulation and imposing discipline as follows:

- 1.) This Final Order shall constitute a formal reprimand of Sandra J. Koch for her conduct as set forth in the Stipulation.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Neal F. McClellan (Following Mitigation Hearing): In consideration of the facts and evidence presented, a motion was made by Pam Trees to issue a Final Order approving the parties' Stipulation and imposing discipline as follows:

- 1.) This Final Order shall constitute a formal reprimand of Neal F. McClellan for his conduct as set forth in the Stipulation.
- 2.) Neal F. McClellan shall pay a civil fine in the amount of Five Hundred Dollars (\$500.00), which shall be due by December 18, 2009.
- 3.) Neal F. McClellan shall pay the costs and attorney's fees incurred in this matter in the amount determined by the Commission after review of the Staff's Memorandum of Costs and Fees and any written objections thereto filed by Mr. McClellan. Payment shall be due and payable by December 18, 2009.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Special Consideration # 09-029: Request for Exemption Review 54-2012(1)(f). Following discussion and review of the documents submitted, motion was made by Pam Trees to grant the request for exemption. Motion carried.

Special Consideration #09-030: Special Consideration to waive/modify broker experience 54-2012(2)(a). Following discussion and review of the documents submitted, motion was made by Pam Trees to grant the request subject to licensee taking all 4 broker courses, passing the National and State broker tests, and finger printing. Motion carried.

Probable Cause Memo 09-33300, 09-33301: A motion was made by Marvis Brice finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Marvis Brice further moves that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, Rule 452, IDAPA. Motion carried.

Discussion of Continuing Education and Licensing Requirements:

In the aftermath of the mitigation hearings on continuing education violations, the Commissioners asked Staff to look at the statute to see if changes are needed to ensure the law accomplishes the Commission's education goals, and report back to the Commission next month.

There being no further business, motion was made by Andy Enrico to adjourn the meeting at 2:51 p.m. Motion carried.

Respectfully Submitted,



Jeanne Jackson-Heim
Executive Director

JJH: tla

Attachments: Licenses Issued September 2009
FY09-FY10 Analysis of Active & Inactive License Base
Online License Reports
Complaint Summary Report
September 2009 Financial Reports
Online Transactions Reports
Final Orders

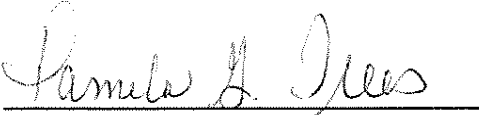
Minutes of the Idaho Real Estate Commission meeting in Boise, Idaho, on October 15, 2009, are hereby approved.



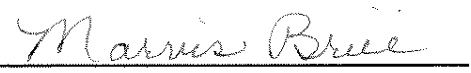
Kelly Fisher, Chair



Andy Enrico, Member



Pam Trees, Vice Chair



Marvis Brice, Member