

MINUTES OF MEETING
OF
LOUISIANA REAL ESTATE COMMISSION

February 21, 2013

The Louisiana Real Estate Commission held its regular meeting on Thursday, February 21, 2013, at 10:00 a.m., at 9071 Interline Ave, Baton Rouge, Louisiana, according to regular call, of which all members of the Commission were duly notified, at which meeting the following members were present:

COMMISSION

Patrick T. Caffery, Jr., Chairman
Paul Burns, Vice Chairman
Mike D. Bono – left at 10:30 a.m.
Tim Flavin
Lynda Nugent Smith
Cynthia Stafford
Frank Trapani

STAFF

Bruce Unangst, Executive Director
Arlene Edwards, Legal Counsel
Summer Mire
Mark Gremillion
Robert Maynor
Chad Mayo
Nikki Senegal
Marsha Stafford
Sara Wheeler
Malissa Wright
Jenny Yu

GUESTS

Mike Anderson – Essential Mortgage
Bill Bacque – Van Eaton & Romero
Bob Pezant – Pezant Real Estate
Rick Roberts – ReMax
Russell and Mary Wheldon

Commissioners Gosslee, Carraway, Noles, and Ory were unable to attend the meeting.

Commissioner Flavin led the Invocation; Commissioner Trapani led the Pledge of Allegiance.

Commissioner Trapani made motion, seconded by Commissioner Flavin, to approve the minutes of the meeting of January 17, 2013. Motion passed without opposition.

PERSONAL APPEARANCES:

1. Aaron Bernard– Mr. Bernard appeared before the Commission in connection with his request to obtain a real estate salesperson’s license and sit for the real estate exam.

On May 2, 2011, Mr. Bernard pled no contest to the charge of unauthorized entry of an inhabited dwelling. For this offense, the court sentenced Mr. Bernard in conjunction with Article 893, eighteen (18) months hard labor which the court suspended and deferred the sentence, and one (1) year probation. On May 31, 2012, Mr. Bernard’s probation was terminated early and was dismissed under Article 893. On May 20, 2012, Mr. Bernard received a first offender pardon.

Mr. Bernard explained that at the time of the incident he was going through a difficult time following his father's attempted suicide. He was prescribed medication for his issues. On his way home one morning, Mr. Bernard began to have an anxiety attack episode as a result of not taking his medication. He stopped at someone's home that he did not know for help. He entered the home unauthorized and the homeowner called the police. He stated that he did not have a weapon and did not have any trouble with the law before or since the incident.

After questions from the Commissioners, Commissioner Trapani made motion, seconded by Commissioner Flavin, to allow Mr. Bernard to sit for the real estate exam. After a roll call vote, motion carried without opposition.

COMMITTEE REPORTS:

1. Budget – Commissioner Stafford reviewed the budget report with the Commission. The cash balances are normal and appear to have a good cash flow. E & O insurance premiums have been paid. The recovery fund is above the \$400,000 mark at \$572,000. The Commission appears to be in good financial shape and is “in the black”. Commissioner Stafford did note that the licensee count is slightly down but expects that number may reduce slightly annually. Commissioner Stafford and Ms. Yu welcomed any questions from the Commissioners.

(Attachment A)

2. Education/Research/Publication – Commissioner Trapani reported that post licensing course update is still moving forward and hopes to have a report by next meeting.
3. Legal/Legislative/Timeshare - Commissioner Flavin reported that the Committee met prior to the business meeting. Under old business, it was decided that the topics of buyer acknowledgements of bonuses paid and broker bonuses paid from closing costs be referred to legal counsel for drafting of a combined rule change. Under new business, a motion was made to create a workgroup between Louisiana REALTORS and Commissioners regarding the issue of records retention. In lieu of ratifying that motion, Commissioner Trapani made a new motion that the Commission asks Louisiana REALTORS to bring their recommendation for records retention to the Commission and therefore not form a combined workgroup. Commissioner Flavin seconded the motion. Motion carried without opposition. Commissioner Flavin reported that no action was taken on Commissioner term limits.
4. Standardized Forms – Chairman Trapani introduced guest Mike Anderson of Essential Mortgage. Mr. Anderson was invited to speak to give an overview of the current financing situation. Mr. Anderson stated that current lending conditions are completely different from years past. The cause of this was the 2008 financial crisis where there were no regulations on mortgage lending. There was plenty of blame to go around but the end result was a large pendulum swing in tighter underwriting and overlay- guidelines on top of underwriting guidelines. The end result of this was the creation of the Dodd-Frank legislation and the creation of the CFPB (Consumer Financial Protection Bureau). They have released new and stricter lending rules. Many lenders are extremely fearful of the new underwriting requirements as well as buybacks. Buybacks are at an all time high. There are ridiculous underwriting requirements due to fear from the underwriters. There is the hope that things will get better. Mr. Anderson does not know how the issue at hand will be resolved but he feels that agents need to educate consumers and hold lenders to the fire. He encourages them to use the preapproval letter that was drafted. He states this is more of an education problem as opposed to a form change. Commissioner Trapani asked Mr. Anderson that if he were making a recommendation to the Commission, would he recommend deleting the word “commitment” from line 79. Mr. Anderson agreed and stated that the other language in the contract is fine. He recommended that agents listen to the calls to actions from Louisiana REALTORS and respond. Chairman Caffery thanked Mr. Anderson for speaking to the Commission.

Commissioner Stafford introduced Mr. Bob Pezant of Pezant Real Estate. He is a broker/owner in the real estate industry for a number of years. Mr. Pezant explained that his area is having an issue with the sewer language in the purchase agreement. He admits this may be more of a problem that needs to go before the legislature for a change. Sellers will provide permit for utilities and a sanitary company will come out for the inspection. Approval letters are also needed from the parish which can be costly. Commissioner Stafford agreed that this process can be costly and does not really protect the public. Commissioner Caffery referred the issue to

Mr. Unangst to determine cumulative criteria from Department of Health and Hospitals, as all parishes are different, and to find out what they actually require. Commissioner Flavin noted that Calcasieu Parish finds around 50% of private sewer systems do not work properly and that quality of inspection needs to be maintained.

5. Strategic Planning – Commissioner Nugent Smith stated that she is currently reviewing the last strategic plan and updates and is in the planning stage.
6. Errors & Omissions – Mr. Unangst notified the Commission of a recent licensee complaint that involved a licensee transferring her license to a new brokerage with a firm policy, not the LREC group policy. When a brokerage has a firm policy, they are required to have their insurance company fill out an Independent Verification Form stating that the coverage is equivalent to the LREC Rice group policy. The Rice policy is a claims made policy while the firm policies are not claims made. The agents are not aware of the tail coverage needed when transferring to a group policy from the Rice policy. The question becomes whether the firm policies are in compliance as they are not claims made. Mr. Unangst is looking into this issue.

DIRECTORS REPORT:

Mr. Unangst reported that Commissioner Ory's condition has not changed and asked for prayers for him and his family. Commissioner Carraway is out for a procedure to have a stent placed.

Mr. Unangst reported that Facility Planning hired engineers to survey the building and determined the same shrink/swell problem that the Commission hired engineer found. Facility Planning claims that they are going to make the responsible parties pay for repairs and we will insist that they file suit due to the prescriptive period. It is imperative that the clock not run out on the prescriptive period.

Mr. Unangst asked whether the Commission would like to have Article 893 appearances come before them for approval. Article 893's are generally first offense, usually are non-violent, and the convictions are set aside until requirements are met and then expunged as if the event never happened. There has been a question of whether these people need to actually appear before the Commission for a hearing. Ms. Edwards stated that what Mr. Unangst said was correct but the conviction remains on the record for agency and law enforcement review. The Attorney General opinion says Boards & Commissions can view this as a felony conviction. Commissioner Trapani and Commissioner Flavin feel it is the Commission's responsibility to hear these cases for determination. Chairman Caffery agrees that all Article 893's need to become before the Commission.

PUBLIC COMMENT:

Commissioner Flavin recognized Bill Bacque and Rick Roberts and thanked them for their service to the industry.

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

Financing Section of the Buy/Sell Agreement:

Chairman Caffery recapped that Mr. Anderson gave an overview of the lending industry. He stated that revisions need to be made but that information needs to be gathered and careful consideration needs to take place as it is not an overnight decision. Commissioner Trapani suggested that Louisiana REALTORS and the committee re-adjourn and make a recommendation with the understanding that whatever changes are made will take some time to fix. Commissioner Burns stressed there is a sense of urgency due to the Buy/Sell agreement being taught in the mandatory C.E. course. Chairman Caffery feels it needs to be analyzed carefully before jumped into due to possible upcoming federal changes. Commissioner Flavin noted that the Commission decided to update the standardized forms every two years and we just had changes. He sees no problem in changing something if we have made an omission that needs to be corrected in the middle of the year. Ms. Edwards said there is no problem with changing in the middle of the year as long as careful consideration is made to the changes. The reason the 2-year policy was put into place was to keep from changing and changing back items without

remembering why it was done in the first place. Commissioner Trapani stated that he does not want to make a change today that would have to be changed at the next meeting unless there is input from Louisiana REALTORS, who brought the agreement to the Commission. Mr. Bacque stated that the agent population sees this language as a problem and should not be discounted on timing. Another problem that has arisen is the deadlines section of the contract – calendar days and timing of midnight. Midnight (12:00 a.m.) is not the end of the day; technically it is the beginning of the following day if using calendar days on the contract. These are technical problems that need to be addressed. Mr. Bacque argued that the financing contingency is the same type of urgent problem that needs to be immediately addressed. He stated it is not about blaming but about correcting. Commissioner Flavin agrees and feels that the commitment letter has never meant anything. It is an oversight and needs to be corrected as it has caused problems. Mr. Roberts stated that the contract deadline times should be changed to 11:59 p.m. As far as the financing contingency, the pendulum has swung too far now. Louisiana REALTORS has crafted a revision to the financing section and was distributed to the Commission the night before the meeting after it was received by Scott Johnson. Mr. Roberts noted that the financing section tends to be a moving target in the industry as of late. Commissioner Trapani would like a committee to look at the revisions so that there is time to review and make the necessary corrections, but not in haste. Commissioner Trapani suggested that the Commission adjourn for a small recess to review the language crafted by Scott Johnson and Mr. Roberts. Chairman Caffery appreciated Commissioner Trapani's suggestion but feels it is best to not make a change yet that the Commission is not prepared for. He stressed that licensees represent both buyers and sellers and does not feel that taking out all contingencies will protect both parties. Commissioner Flavin sees it as a balanced transaction with risk on both sides for the buyer and seller. Mr. Roberts noted that the suggested revisions do not take the option from the seller to terminate. Chairman Caffery stated he understands but no one controls the lenders at this point. The lender should have some obligation at some point. Commissioner Flavin stated that the lender is not under the jurisdiction of the Commission. Commissioner Trapani would like to see a resolution and meet within the next week to approve a recommended clause. Chairman Caffery wants to review the letter from Mr. Anderson and the proposed language from Louisiana REALTORS.

Commissioner Trapani made motion, seconded by Commissioner Flavin, to schedule a Legal/Legislative Committee meeting for March 14, 2013 at 10:00 a.m. This meeting is to include Louisiana REALTORS. Motion carried without opposition.

Stipulation and Consent Orders – Commissioner Trapani made motion, seconded by Commissioner Nugent Smith, to approve the stipulation and consent orders as presented in a memorandum by the Executive Director. Motion carried without opposition.

Recovery Fund Claim – Case No. 2013-2 – Attachment B

Billie and Willie Williams are petitioning the Commission for \$2000.00 from the Recovery Fund as result of investigative case no. 2011-572 LREC vs. Tonuary Robinson. Mr. Unangst explained the petition is appropriate in this case. Ms. Robinson's license was revoked in July 2012 and the victims of this deed, the Williams', are requesting the money from the fund. If approved by the Commission, the case will be forwarded to the Attorney General for their approval and then the check can be made to the Williams. Commissioner Flavin made motion, seconded by Commissioner Trapani, to approve the Williams' petition of the recovery fund subject to approval by the Attorney General's office. Motion carried without opposition.

There being no further business, Commissioner Burns made motion, seconded by Commissioner Stafford, to adjourn. Motion passed without opposition.

PATRICK T. CAFFERY, JR., CHAIRMAN

JAMES D. GOSSLEE, SECRETARY