

MINUTES OF MEETING
OF
LOUISIANA REAL ESTATE COMMISSION

June 16, 2016

The Louisiana Real Estate Commission held its regular meeting on Thursday, June 16, 2016, at 9:00 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

Lynda Nugent Smith, Chairman
Steven Hebert, Secretary
Lacy Baaheth
Jeff Donnes
Kelly Ducote
Eloise Gauthier
Deanna Norman
Richman Reinauer
Patrick Roberts, Jr.

STAFF

Bruce Unangst, Executive Director
Arlene Edwards, Legal Counsel
Summer Mire
Debbie Debrates
Mark Gremillion
Robert Maynor
Chad Mayo
Stacy Sharpe
Jenny Yu
Henk VanDuyvendijk

GUESTS

Burk and Lisa Baker – Burk Baker School of Real Estate & Appraisal
Brei Delahoussaye – Louisiana REALTORS
Aaron Goldsby
Norman Morris – Louisiana REALTORS
Dr. Roy Ponthier – ProEducate

Vice Chairman Wolford and Commissioner Gosslee were unable to attend the meeting.

Commissioner Baaheth led the Invocation; Commissioner Roberts led the Pledge of Allegiance.

MINUTES

Commissioner Donnes made motion, seconded by Commissioner Gauthier, to approve the minutes of the meetings of May 18 and 19, 2016. Motion passed without opposition.

COMMITTEE REPORTS:

1. Budget – Commissioner Reinauer reviewed the budget report with Commissioners. There is a continued increase in professional services due to the licensing database upgrades. Overall, the budget is in good shape. Retirement costs have decreased slightly for the 2016-17 fiscal year.
(Attachment A)
2. Education/Research/Publication – Commissioner Ducote stated that there were two documents for the Commission to review – the 2017 mandatory course outline and the 2017 mandatory broker responsibility course outline. Mr. Unangst asked the commissioners to review the outline for the 2017 regular mandatory course. He explained that the modules presented are just a topical outline and that anything can be added or deleted. Chairman Nugent Smith would like to see a section on “how to read a flood map” further developed. It is imperative that licensees know how to find the maps and how to read them for their clients. The licensee should have the right information to tell their client and to tell them who to contact for more in depth questions (insurance broker, etc.). Commissioner Ducote stated that the licensee should encourage the buyer to get further information from their insurance agent to determine appropriate flood zones and if coverage would be required. Mr. Unangst stated that flood insurance prices could make or break a customer when buying a home. Licensees need to be able to give their client enough information to be able to know what questions to ask their insurance broker. Commissioner Baaheth would like to see a section included that discusses those customers that are paying for a home in cash and may not know to obtain insurance. Mr. Unangst stated that now the commission is ok with the modules in the outline, staff will further develop the outline and have it available for approval at the July meeting. Chairman Nugent Smith would like to move Module IV to Module III and have the updates be in the last module. Commissioner Norman would reiterated that she would like to see a section spent on focusing on the time restraints of the contract.

Mr. Unangst asked the Commission to review the proposed broker mandatory course outline. This course can be offered as an online learning course or as a live learning course. Commissioner Hebert would like to add a section on the discussion of how to handle escrow disputes because he feels that many brokers do not know how to handle them. He would like this added as a line item section. Chairman Nugent Smith would like to see a section regarding Fair Housing. Commissioner Hebert added that he would like to see a section on the discussion of advocating a use of an independent contractor agreement between brokers and licensees. Commissioner Donnes agreed and would like to see sample agreements given in the course. Mr. Unangst noted that in the current Broker 203 course, there is information on record retention. The commission may want to add a section discussing what needs to be kept and for

how long. Chairman Nugent Smith would also like to see a section on teams and the responsibility of the broker regarding teams. This could be added in the Licensee section. Commissioner Reinauer noted that he does not see anything missing in the outline from a commercial perspective. Mr. Unangst stated that the original thought was to require brokers to take this course along with their regular mandatory 4-hour course. Chairman Nugent Smith agreed that this was still the thought and the commission will determine if it is a necessity each year. Commissioner Hebert stated that he did not think that the brokers would be required to take this course along with the regular mandatory 4-hour course. Ms. Mire confirmed that a successful motion and vote were made in months prior requiring the brokers to take both courses as a mandatory course for 2017. Mr. Morris feels the commission will need to do a good job of informing brokers of the requirement for the course.

3. Legal/Legislative/Timeshare – Commissioner Roberts reported in Commissioner Wolford’s absence. He stated that he and Commissioner Wolford spoke prior to the meeting regarding the suggested advertising rule language. They reached out to Louisiana REALTORS but didn’t receive an overwhelming response. Commissioner Roberts isn’t sure that the commission should fix something that isn’t really broken. Commissioner Ducote disagreed and feels the broker/owner information should be clearly displayed. She would like to discuss the issue with the staff investigators. Commissioner Reinauer stated that sometimes it isn’t worth the time to submit the photos to staff when it isn’t causing problems in the market place. Although, the advertising is still wrong and misleading. Ms. Edwards stated that there are many problems with regulating advertising when it comes to prominence, font size, etc. Who is the problem prominent to? The complaints never come to the commission from consumers. They are always competitive complaints from licensees. Commissioners Ducote and Norman feel that the public isn’t going to complain because they do not know what to complain about. Commissioner Ducote stated that the consumer does not realize there is a broker. Ms. Edwards stated that the broker is responsible for advertising. The broker should be brought in for each hearing to be charged. Chairman Nugent Smith noted that correct telephone numbers seem to be an issue. The number may be registered to the broker but it rings directly to the agent. Mr. Aaron Goldsby spoke for public comment. He stated that he agrees with Chairman Nugent Smith on getting the correct information to the public but does not feel that the brokers name should be larger than his. He pays for his signage and is paying to brand himself, not his broker. The information for the broker should be clear and legible but not necessarily larger. His signs are in compliance with the current rules. The cost to replace his signage to enlarge the brokers name would be expensive. Commissioner Hebert stated that he agrees with Commissioners Donnes and Ducote in that the consumer needs to be protected. Everything is more agent centric now. He feels that changing signs is not the way to address the root of the problem which is lack of broker control and responsibility. Ms. Edwards noted that it was determined that it was a constitutional violation to mandate anything other than false and misleading advertising.

Commissioner Donnes made a motion, seconded by Commissioner Ducote, to not allow a licensee’s name or telephone number to be larger than that of the broker’s. Commissioner Roberts doesn’t believe that the motion is the proper route. There is no public outcry, only brokers trying to compete against one another. Commissioner Hebert wants to agree with the motion but he doesn’t think that it is a consumer issue. It is a broker issue. Commissioner Ducote stated that the consumer isn’t complaining because they do not know the rules.

Commissioner Donnes asked Mr. Maynor is the motion would make his job harder or easier. Mr. Maynor stated that it would make his job easier. He stated that brokers do not look at every sign for approval so the past commission decided not to go after the broker in advertising. His staff does not receive complaints from consumers regarding legibility, etc. on signage. Commissioner Norman feels that the licensees that are complaining have valid complaints. Mr. Morris feels that the commission has every right to charge a broker for not supervising advertising of their licensees. There is the ability to fine them, censure them, etc. As Commissioner Hebert stated, the industry is changing. He feels the commission should take time to review this issue and take a look at broker responsibility. Commissioner Roberts noted that other states have further information that go more into the weeds on the issue. Commissioner Reinauer asked if brokers should really be brought in for a \$25 fine instead of clarifying the rule. Commissioner Hebert asked the commission if discernible should be defined. Ms. Edwards stated that the Supreme Court says that advertising cannot be regulated unless it is false and misleading. Education is the key. The pendulum swings back and forth on business models. She and staff will do whatever the commission wants but they need to be careful not to make laws and rules that can be thrown out for legal issues. Commissioner Baaheth stated that she is not in agreement to make the rule specific to size. After the discussion, the motion carried 5-3 with Commissioners Roberts, Hebert and Baaheth voting in opposition. Mr. Unangst asked Ms. Edwards to draft appropriate language to be reviewed at the next meeting for rule submission. It will need final approval before it is sent for promulgation. Chairman Nugent Smith asked the commission to think about the financial impact on licensees that will have to change their signs after already being in current compliance. Mr. Norman stated the commission needs to think about the motion as it may end up in oversight committee legislative meetings.

4. Standardized Forms – Ms. Shaw stated that she sent the forms out to commissioners for their final review. She is currently working on making the forms fillable and they will be posted online once they are complete. Licensees will be notified accordingly.
5. Strategic Planning – No report.
6. Errors & Omissions – No report.
7. Technology – Commissioner Donnes reported that Mr. Endicott has ordered new machines for staff as reported last month. A mobile app is also in the works for licensees to hopefully begin using by the end of the year.

DIRECTORS REPORT:

Mr. Unangst stated that the annual continuing education audit letters will be going out soon. Commissioners may hear complaints from licensees. Licensees should send in their certificates if they feel there is an error in reporting. There should be an almost 97% compliance rate this year.

Mr. Unangst called attention to the increase in applicants from the previous year. This number has increased to almost 250 per month from about 125 per month in the previous year.

Mr. Unangst stated that the revised and projected budgets will need to be approved at the July meeting. Merit increases for employees are being budgeted for meeting performance expectations. Merit increases are being proposed for suspension by the Governor and the decision should be made in the coming days. If they are suspended, the budget will be revised to reflect the changes.

Mr. Unangst stated that administration has been discussing the use of public service announcements in conjunction with the communications plan. He would like the commission to think about topics and for those that have interest in recording a PSA to let him know.

Chairman Nugent Smith inquired if Rice Insurance has provided a response yet in regards to cyber security policies. Mr. Unangst stated that their underwriter, CNA, is looking at providing this as a rider or a separate policy but there is no final answer yet.

PUBLIC COMMENT:

None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Stipulation and Consent Orders: Case No. 2015-1289 – Kimberly J. Brasher & Briley Brasher Cotton
Commissioner Hebert made motion, seconded by Commissioner Donnes, to approve the stipulation and consent orders as presented. Motion carried without opposition.

Commissioner Ducote stated that she received information regarding a federal trial in her area. The licensee was indicted two years ago for violations involving real estate transactions and mortgage fraud. Ms. Edwards stated that if the trial involves an indictment for that particular transaction, they have to notify the commission within 10 days. The broker has no responsibility to notify the commission. It is the responsibility of the licensee.

Chairman Nugent Smith asked that any examples of signage that is in violation be emailed to her.

EXECUTIVE SESSION

None

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

LYNDA NUGENT SMITH, CHAIRMAN

STEVEN HEBERT, SECRETARY