

MINUTES OF MEETING
OF
LOUISIANA REAL ESTATE COMMISSION

September 15, 2016

The Louisiana Real Estate Commission held its regular meeting on Thursday, September 15, 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, Chair
Evelyn Wolford, Vice Chair
Steven Hebert, Secretary – Arrived at 9:19 a.m.
Lacy Baaheth – Arrived at 9:09 a.m.
Jeff Donnes
Kelly Ducote
Eloise Gauthier
James Gosslee
Deanna Norman
Richman Reinauer
Patrick Roberts, Jr.

STAFF

Bruce Unangst, Executive Director
Arlene Edwards, Legal Counsel
Summer Mire
Ryan Shaw
Mark Gremillion
Robert Maynor
Chad Mayo
Debbie Debrates
Dusty Evans
Henk VanDuyvendijk

GUESTS

Brent Lancaster – Bob Brooks School
Norman Morris – Louisiana REALTORS
Amy Fennell – Louisiana REALTORS
Lisa Baker – Burk Baker School of Real Estate and Appraisal

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

MINUTES

Commissioner Wolford made motion, seconded by Commissioner Reinauer, to approve the minutes of the meeting of July 21, 2016. Motion passed without opposition.

COMMITTEE REPORTS:

1. Budget – Commissioner Reinauer reviewed the budget report with Commissioners. He brought the Commissioners attention to the monthly report. He stated that the July Actual shows a deficit for the month but that the projected numbers show an overage. The audit has been completed and we were given an “unqualified with no exceptions report,” which means there were no issues with the report. Mr. Unangst pointed out that the difference in operating costs was due to there being three pay periods instead of the usual two in July. Mrs. Mire made the Commission aware that the Louisiana Compliance Questionnaire for the State Legislative Auditor needed to be reviewed and approved.

Commissioner Wolford made motion, seconded by Commissioner Gosslee, to approve the questionnaire. Motion passed without opposition.

(Attachments A & B)

Education/Research/Publication – Commissioner Ducote brought the Commissioners attention to a potential rule change regarding continuing education credit. Mr. Unangst explained that the rule change being introduced would allow for initial licensees to receive eight hours of continuing education credit for the education that they obtained during their pre-licensing course. There have been requests from local REALTOR boards and vendors that the Commission grant eight hours of CE credit for this course in the year they are licensed. They would still be required to take the 4-hour mandatory course. This item was open for discussion and will be discussed at a future meeting.

(Attachment C)

2.

Mr. Unangst also stated that the issue discussed in July regarding teaching the Broker Mandatory in 2017 in only a live classroom setting was brought back up. Mr. Unangst summarized a report stating that there are 137 out-of-state brokers who would be required to take the course. He declined to make a formal staff recommendation, but stated that there would need to be a unanimous vote to open the agenda up for discussion and any subsequent vote.

Commissioner Ducote made motion, seconded by Commissioner Gosslee, to add discussion of the broker mandatory course to the agenda. Motion passed without opposition.

Commissioner Gauthier made motion, seconded by Commissioner Ducote, to require that the 2017 Broker Mandatory course be taught in live classrooms only.

Commissioner Ducote stated that teaching the course in a live setting was always the Commission’s intention and that brokers would get more out of the class in a live setting. Commissioner Wolford asked how many courses would be offered. Mr. Unangst stated that

there has not been a decision made on the number, but that there has been discussion that the instructors be required to hold a broker's license. Mr. Morris stated that Louisiana REALTORS is planning to teach 10 courses around the state, more if the demand exists. He also stated that Louisiana REALTORS believes that instructors should be required to hold a broker's license because they will have more real-world knowledge to bring to the course. Mr. Unangst asked Mr. Morris if there were limitations to who could take the course. Mr. Morris stated that the course would be open to everyone, including those that are non-REALTOR members.

Commissioner Wolford stated that she was in favor of making the course live only, but only if it was practical to do so. She stated that course availability as well as the ability for enough instructors to attend the Instructor Development Workshop may be issues. Mr. Unangst stated that she made good points and that two of the three IDW workshops have already passed and that the Commission may need to approve alternative methods of qualifying instructors other than the IDW.

Commissioner Nugent Smith stated that the Commission should be made aware of the IDW in the future. Commissioner Gauthier stated that she attended the IDW in Baton Rouge and that there were attendants from across the state. Commissioner Nugent Smith stated that there are too many people that did not know about the IDW and that it needs to be addressed in the future. Commissioner Wolford stated that it should be included in the agency newsletter.

Commissioner Hebert asked if there were any other courses that were required to be taken live. Mr. Unangst stated that there were not, but that other states and territories do. Commissioner Hebert stated that he believes that it would be too cumbersome to require that the course be live only. Mr. Lancaster stated that the geography of the state makes it difficult to require that a course be taken live. He stated that the more rural areas of the state will be underserved and that brokers in those areas would have a more difficult time getting to the courses.

Commissioner Gosslee asked if we knew what other states do in this respect. Mr. Unangst stated that Texas' requirements are more cumbersome than ours, but that he was not sure if they had live requirements. Mr. Lancaster stated that Texas does not have a live requirement. Commissioner Ducote clarified that the live classroom requirement would only apply to the first year (2017) and stated that lawyers are required to take a portion of their education live. Ms. Edwards stated that only four hours can be taken online for lawyers, the rest must be live.

Commissioner Norman stated that if the decision is made to make the course live only we need to be diligent about making sure that we get the word out that the course is mandatory and must be taken live. Mr. Unangst stated that we can send out a later letter to those who have not taken the courses later in the year. Ms. Fennel stated that the Commission needs to look at the vendors who are approved to offer the course to make sure that they are able to teach the course in a way that stays true to the intention of the course.

Commissioner Ducote stated that the outline of the Broker Mandatory course comes from existing courses, so there should be plenty of qualified instructors. Mr. Morris asked what will happen to agents whose broker failed to complete their mandatory course. Mr. Unangst stated that in the past the Commission has decided to allow agents to renew even if their education has not been completed. He stated that he assumes that the brokers would be handled the same way, they would have to pay a fine and make up the education. Mr. Maynor stated that

the only issue was that if the course is live only, there may be an issue with the course being available for make up in the event that they are in violation. Mr. Unangst stated that the Commission should not make decisions based on the presumption that there will be violations.

After the discussion, the motion carried 7-3 with Commissioners Wolford, Hebert, and Gosslee voting in opposition.

Commissioner Gauthier made motion, seconded by Commissioner Ducote, to require that instructors of the 2017 broker mandatory course hold an active broker's license.

Commissioner Hebert asked if the vendors would have any issues with the requirement that instructors be brokers. Mr. Unangst stated that if there is an issue after the first of the year, the Commission can react quickly and change rules if necessary.

After discussion, motion passed without opposition.

3. Legal/Legislative/Timeshare – Commissioner Wolford stated that the advertising task force was unable to meet due to flooding. She stated that the taskforce meeting would be held at Louisiana REALTORS' office on October 10 at 10 a.m. and that Commissioners who could not attend could call in to participate.

Commissioner Gauthier made motion to amend her motion from the July meeting stating that the taskforce would report back to the full Commission at the September meeting to state that the discussion would be held in October after the newly scheduled meeting. Motion carried without opposition.

Commissioner Wolford brought the Commission's attention to a recommendation from GBRAR that Chapter 25 of the rule be amended to require that listing agreements be required. Commissioner Ducote stated that this was addressing coming soon listings. Commissioner Nugent Smith stated that there are always agents who find creative ways around the rules. Commissioner Wolford stated that she is in agreement that agents should not be advertising listings that are not on the market yet and can see why a listing agreement should be required. Mr. Unangst asked Commissioner Reinauer if this practice was more common in the commercial sales side. He stated that this only happens in situations where something is advertised as coming soon. He stated that there is no agreement yet, but that owners begin looking for tenants. Commissioner Hebert stated that this change would require an addition of the definition of the term "listing agreement."

Commissioner Reinauer asked for background on this issue. Mr. Unangst stated that the issue was a growing concern over "coming soon" listings. He stated that there is a school of thought that states that licensees may sit on a listing before putting it in the MLS in order to try to collect the full commission from the sale. He stated that this is a disservice to the public because people are not aware of the property's availability. Mr. Morris stated that he does not see an issue, but stated that he would see if Mr. Herb Gomez can attend the October meeting to explain GBRAR's recommendation in more detail.

Commissioner Roberts made motion, seconded by Commissioner Gauthier, to table the discussion to next month's meeting. Motion carried without opposition.

Commissioner Wolford stated that there was an item not on the agenda that needed to be discussed. She stated that there was proposed rule change language regarding escrow check deposits. She stated that the problem is that agents do not understand dispute procedures and are defaulting to using the title company to hold deposits. She stated that title companies hold deposits when transactions fall through and if there is a dispute they end up in court where there is no quick or satisfactory solution. Commissioner Wolford read proposed language.

(Attachment D)

Commissioner Hebert asked for clarification that this rule would require that a broker be the only option for who can hold the deposit. Commissioner Wolford stated that that was what the language states. Commissioner Norman stated that she had previously suggested that the deposit portion of the contract be removed because all it causes is problems. Commissioner Wolford stated that the deposit is the only thing tying the buyer to the sale at that point.

Commissioner Nugent Smith stated that this is the first that the Commission has heard of this issue and that Commissioners need to discuss the issue with agents and brokers in their markets before making any decisions.

4. Standardized Forms – Commissioner Wolford stated that there has been confusion over the line in the 2017 contract regarding “Broker Name and License Number.” Commissioner Hebert stated that the reason that it was added was a convenience for title companies and he wants to be sure that no licensees get in trouble for using the wrong information on the form. Mr. Unangst stated that there would be no penalties regarding this.

Commissioner Hebert made motion, seconded by Commissioner Gauthier, to change the form language to read “Brokerage Firm or Broker Name & License Number.” Motion carried without opposition.

5. Strategic Planning – No report.
6. Errors & Omissions – Commissioner Norman stated that there have been changes with the Department of Insurance in Louisiana regarding a form that we required. Mr. Unangst stated that we cannot require an insurance company to prove to us that they offer more or equal coverage to RISC. Mr. Unangst stated that because of this change, there is now a form that licensees not using RISC insurance must complete and submit showing what their insurance covers. The updated form will be available on the website.

Commissioner Norman stated that RISC is now offering insurance the Appraiser Trainee for \$200, which is new.

7. Technology – No report.

DIRECTORS REPORT:

Due to the lengthy agenda of personal appearances, Mr. Unangst did not give a report.

PUBLIC COMMENT:

Mr. Lancaster stated that he would like to speak in favor of Jordan Parsons, a felony applicant who will appear before the Commission later in the meeting.

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Commissioner Nugent Smith stated that there are stipulations and consent orders that need to be voted on by the Commission.

Commissioner Roberts asked if past violations were taken into consideration when imposing penalties.

Ms. Edwards stated that the Commissioners are supposed to only address the violation that the individual is currently being charged with when making her decision on penalties.

Commissioner Roberts made motion, seconded by Commissioner Nugent Smith, to deny Stipulation & Consent Order: Case No. 2015-1387: LREC vs. Wayne Turner.

Commissioner Gauthier asked what happens if someone does not comply with their penalties. Ms. Edwards stated that they would then have to come before the Commission for failure to comply.

After the discussion, the motion carried 7-3 with Commissioners Baaheth, Gauthier, and Gosslee voting in opposition.

Commissioner Hebert made motion, seconded by Commissioner Ducote, to approve the Continuing Education Audit Cases Stipulation and Consent Orders. Motion carried without opposition.

(Attachment E)

Mr. Unangst brought the Commission's attention to a resolution for Mrs. Stephanie Boudreaux. He stated that Mrs. Boudreaux served the Commission for 29 years and recently retired. He stated that Mrs. Boudreaux was a huge help to him when he first came to the Commission by guiding him through the rule promulgation procedure as well as aiding in the development of the post-licensing course by writing two courses.

Commissioner Roberts made motion, seconded by Commissioner Wolford, to approve the resolution commending Mrs. Boudreaux. Motion carried without opposition.

(Attachment F)

EXECUTIVE SESSION

None

Chairman Nugent Smith called for a ten minute recess and re-adjourned at 11:00 a.m.

PERSONAL APPEARANCES (See full transcript for complete discussion)

1. 2015-1375 – Praveen Kailas – Mr. Kailas appeared before the commission to request authorization to obtain a real estate broker's license. Mr. Kailas pled guilty on December 12, 2013 to theft of government funds. For this offense, he was sentenced to thirty months in prison. Upon release, he was to remain under supervised probation for three years. He was also ordered to pay an assessment of \$200, a fine of \$75,000, and restitution to the U.S. Department of Housing and Urban Development in the amount of \$67,524. Senator Danny Martiny appeared as legal counsel on behalf of Mr. Kailas. After questions and discussion, Commissioner Hebert made motion, seconded by Commissioner Reinauer, to allow for reinstatement of his broker's license after meeting the requirements of the rules and regulations. Motion carried without opposition.
2. 2016-442 – Todd Bernard – Mr. Bernard appeared before the commission to request authorization to obtain a real estate salesperson's license. Mr. Bernard pled guilty to operating a vehicle while intoxicated, 3rd offense. For this offense, he was sentenced to a five year prison term which was suspended. He was placed on supervised probation for a period of five years. He was also ordered to serve 60 days in the Lafourche Parish Detention Center with credit for time served and to also serve one year of home incarceration. Mr. Bernard is currently on probation until December 28, 2020. He is participating in the Lafourche Parish Drug Court Program and is in compliance. After questions and discussion, Commissioner Roberts made motion, seconded by Commissioner Reinauer, to allow Mr. Bernard the opportunity to obtain his real estate license. Motion carried 6-1 with Commissioner Norman voting in opposition and Commissioner Donnes recusing himself.
3. 2015-167 – Brian Causey – Mr. Causey appeared before the commission to request authorization to obtain a real estate salesperson's license. Mr. Causey self-reported pleading guilty to the following felony: November 13, 2003, Count 1 Wire Fraud, Count 3 Willfully making and subscribing a false tax return. For this offense, he was sentenced to a prison term of three years on Count 1 and one year on Count 3, to be served concurrently. Upon release from imprisonment, he was to remain on supervised release for three years. He was also ordered to pay an assessment of \$200, individual restitution of \$54,142 and joint restitution of \$1,309,440. Mr. Causey was released from probation effective December 15, 2008. After questions and discussion, Commissioner Baaheth made motion, seconded by Commissioner Reinauer, to allow Mr. Causey the opportunity to obtain his salesperson's license with the exception that he must appear again before testing for a broker's license. Motion carried 6-2 with Commissioners Gauthier and Gosslee voting in opposition.
4. 2016-1235 – Anastasia Gordon – Ms. Gordon appeared before the commission to request authorization to obtain a real estate salesperson's license. Ms. Gordon pled guilty to the following felony: September 2, 2011, cruelty to juveniles. For this offense, she was sentenced to a five year prison sentence with credit for time served. The sentence was suspended and she

was placed on active probation for five years. She was also ordered to pay court costs of \$191.50 and complete parenting classes. Ms. Gordon was released from probation effective June 19, 2013. After discussion and questions, Commissioner Gauthier made motion, seconded by Commissioner Hebert, to allow Ms. Gordon the opportunity to obtain her real estate salesperson's license. Motion carried without opposition.

5. 2016-285 – Tony D. Smith, Jr. – Mr. Smith is appearing before the commission to request authorization to obtain a real estate salesperson's license. Mr. Smith self-reported to the following felonies: November 19, 2008, simple burglary, theft of \$500 or more, unauthorized entry of an inhabited dwelling. For each count, he was sentenced to a six year prison term to run concurrently which was suspended and he was placed on five years active probation with the condition he serve five months in parish prison with credit for time served. In addition, he was ordered to pay restitution in the amount of \$20,000. Mr. Smith was released from probation and received a first offender pardon effective May 7, 2015. (His supervised probation was extended to allow additional time to complete the restitution payment.) After questions and discussion, Commissioner Reinauer made motion, seconded by Commissioner Donnes, to allow Mr. Smith the opportunity to obtain his real estate license. Motion carried 7-2 with Commissioners Ducote and Norman voting in opposition. Commissioner Wolford had to leave early at this time and was not present for voting.
6. 2015-1239 – Yacsheka Jackson – Ms. Jackson is appearing before the commission to request authorization to obtain a real estate salesperson's license. Ms. Jackson pled guilty to the following felony: January 26, 2011, violation of the federal gun control act. For this offense, she was sentenced to a prison term of 30 months. Upon release, she was to remain on supervised release for two years. She was also ordered to pay an assessment of \$100. Ms. Jackson was released from probation effective June 6, 2015. After questions and discussion, Commissioner Reinauer made motion, seconded by Commissioner Ducote, to allow Ms. Jackson the opportunity to obtain a real estate salesperson's license. Motion carried 6-3 with Commissioners Baaheth, Gauthier and Norman voting in opposition.
7. 2016-472 – Jordon Parsons – Mr. Parsons is appearing before the commission to request authorization to obtain a real estate salesperson's license. Mr. Parsons pled guilty to the following felony: April 26, 2000, aggravated second degree battery. For this offense, he was sentenced to a prison sentence of three years. The sentence was suspended and he was placed on supervised probation for three years. He was also ordered to pay a fine of \$500, court costs, \$1,194.18 in restitution, and \$300 to the 19th Judicial District Court Expense Fund. Mr. Parsons was released from probation effective May 26, 2003 and received a First Offender Pardon. After questions and discussion, Commissioner Ducote made motion, seconded by Commissioner Gauthier, to allow Mr. Parsons the opportunity to obtain a salesperson's license. Motion carried without opposition.
8. 2016-462 – Ashinda Scott – Ms. Scott is appearing before the commission to request authorization to obtain a real estate salesperson's license. Ms. Scott pled guilty to the following felony: April 13, 2010, possession of a controlled dangerous substance. For this offense, her sentencing was deferred. She was placed on probation for a term of five years; two years active followed by three years inactive. She was also ordered to pay \$980.50 in fines and court costs. Ms. Scott was released from probation effective April 13, 2015 and received a First Offender Pardon. After questions and discussion, Commissioner Reinauer made motion, seconded by

Commissioner Baaheth, to allow Ms. Scott the opportunity to obtain a real estate license. Motion carried 5-4 with Commissioners Donnes, Ducote, Gauthier and Gosslee voting in opposition.

9. 2016-495 – Clinton Swan – Mr. Swan is appearing before the commission to request authorization to obtain a real estate salesperson’s license. Mr. Swan self-reported pleading guilty to the following felony: February 17, 1987, burglary. For this offense, he was sentenced to 18 months in the Florida State Prison with credit for time served. He was also ordered to pay a \$220 fine. According to Mr. Swan, he was released from prison after serving less than 4 months. After questions and discussion, Commissioner Roberts made motion, seconded by Commissioner Gauthier, to allow Mr. Swan the opportunity to obtain his real estate salesperson’s license. Motion carried without opposition.

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

LYNDA NUGENT SMITH, CHAIRMAN

STEVEN HEBERT, SECRETARY