

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## AMENDED COMMISSION MEETING

**JULY 26, 2007**

A meeting of the New Hampshire Real Estate Commission was held on Thursday, July 26, 2007 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 8:35 a.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Pauline Ikawa, Barbara Heath, Executive Director Beth Edes, and Investigator Ann Flanagan.

### I. APPOINTMENTS

Equivalency Appointments – None

8:35 a.m. PAULA CLEMENTE appeared before the Commission to show good cause why she was unable to renew her real estate salesperson's license prior to her lapse date, pursuant to RSA 331-A:18, II. Ms. Clemente explained to the Commission that her license lapsed because she was unaware that she needed to complete a Commission accredited 3 hour "core" course to renew her license in inactive status. Ms. Clemente asked the Commission to consider her extensive education relating to real estate to meet the criteria under RSA 331-A:20, II. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Heath denied Ms. Clemente's request to reinstate her lapsed license because she failed to show good cause why she was unable to renew her license prior to her lapse date, pursuant to RSA 331-A:18, II.

COMMISSIONER STEPHEN arrived at 8:55 a.m. and did not take part in the discussion and decision of Paula Clemente's request for license reinstatement.

9:05 a.m. MARY T. RIZER appeared before the Commission to show good cause why she was unable to renew her real estate salesperson's license prior to her lapse date, pursuant to RSA 331-A:18, II. Ms. Rizer explained that she attempted to renew her license on or about the date of her license lapse date, but failed to supply a Commission accredited 3 hour "core" course. Ms. Rizer felt that she was informed that she would only need a 3 hour elective course to renew her license in inactive status. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Ikawa denied the reinstatement of her lapsed license because she failed to show good cause why she was unable to renew her license prior to her lapse date, pursuant to RSA 331-A:18, II.

9:20 a.m. KERRIE M. LANDRY appeared before the Commission to discuss a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Heath decided to allow Ms. Landry to apply for her original salesperson's license, contingent upon receipt of a letter from her broker notifying the Commission that he/she is aware of Ms. Landry's previous legal incident.

9:30 a.m. DAVID J. WORNICA appeared before the Commission to discuss a previous legal incident prior to apply for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Heath decided to allow Mr. Wornica to apply for his original salesperson's license.

II. On motion by Commissioner Stephen, seconded by Commissioner Ikawa, the Commission unanimously approved the Minutes of the Commission meeting held on June 19, 2007.

III. **DISCUSSION**

FILE NO. 2006-015 – the Complainant of File No. 2006-015 submitted a Request for Withdrawal of the complaint due to the parties' resolution of the matter. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Ikawa decided to approve the withdrawal of Complaint File No. 2006-015. The parties to be so notified.

ATTORNEY EATON W. TARBELL, III submitted a request for a Commission interpretation of Rea 404.04(e) regarding net listings and whether the following proposed agreement would be considered a net listing under Rea 404.04(e):

The Sellers shall receive the first \$80,000.00 of the purchase price of the property. The Developer (who is also a NH real estate licensee) shall be paid 80% of the purchase price for any amount over \$80,000.00 and Sellers shall be paid 20% of said amount.

After review and discussion, the Commission unanimously determined that the proposed agreement would fall under the definition of net listing and would be prohibited under Rea 404.04(e).

ATTORNEY JOHN ARTHUR submitted a request for Commission interpretation of RSA 331-A:2, IX regarding licensing requirements involving the following description of a timeshare program:

Our program is a right-to-use timeshare plan. Purchasers have the right to use any apartment that is in the program on a reservation basis. A purchaser does not acquire a real property interest or title to any apartment. Instead, title to each apartment is held in a trust for a term of years or in perpetuity.

The timeshare program itself functions through a unique system whereby purchasers are offered the right to buy "points" of occupancy for use during a specific term of years or in perpetuity. The program manager has established point values for each night of apartment occupancy, depending on the resort in which the apartment is located, the size of the apartment used, and the season of occupancy. A purchaser may purchase any number of points (but not fewer than 70), and the price is established by the point. After review and discussion, the Commission tabled its decision and directed the Commission Investigator to arrange a conference call between Attorney Arthur to the Commission during the August meeting to obtain clarification on the point system.

ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS (ARELLO) submitted a request to the Commission for a decision to require, recognize or endorse the ARELLO Education Content Review Program. After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Heath, decided to endorse the ARELLO Education Content Review Program. This endorsement supports the initiative of the program which promotes quality education and encourages providers to meet quality standards, but does not require accredited education programs to be ARELLO certified.

DAVE HENNESSEY submitted a request for clarification of whether a broker who is licensed in Massachusetts can list a property located in New Hampshire in the Massachusetts MLS without a New Hampshire license based on the fact that the broker is not receiving any commission or other compensation as defined under RSA 331-A:2, III. The Commission tabled its decision on the request at its June meeting and directed the Commission Investigator to obtain additional information regarding the issue. The Investigator was unable to obtain the information in order for the Commission to make a determination and the Commission directed the Investigator to present the information requested at the August meeting.

BILL ARNOTT submitted a request for Commission clarification on the following questions at the June 2007 Commission meeting. At the June meeting, the Commission tabled its decision on questions #2 and #3 and requested additional information from Mr. Arnott.

Given the situation a Broker wishes to use an RV for a mobile office (less costs per month than office rents) using it for meeting with buyers and sellers (Broker has no stationary office):

1. What would the Broker use as a place of business address (See 331-A:17)?
2. Where would the Broker hang the license for the public to note?
3. Is there any rule or law prohibiting the Brokerage from having Associate Brokers or Salespersons working under them?

Upon request for additional information, Mr. Arnott explained that all associate brokers and salespersons will be working out of their homes, but if they need a place to meet with clients they would do so within the RV. The RV will be registered at his physical resident address in Keene, NH.

After review and discussion, the Commission determined that the broker would be required to supply a physical address for the business, pursuant to Rea 301.01 (c)(2) and that his physical resident address in Keene, NH would be in compliance with Rea 301.01; Mr. Arnott would be required to prominently display the principal broker's license, along with all associate broker and salesperson licenses within the RV, pursuant to Rea 305.04; and all associate brokers and salespersons would be required to be supervised on site by Mr. Arnott, pursuant to RSA 331-A:16, II. Mr. Arnott to be so notified.

CERTIFIED RESIDENTIAL SPECIALIST (CRS) DESIGNATION – After review and discussion of the content of the CRS Course, the Commission decided that the course should only count for a total of 20 hours towards approved broker education under Rea 301.03 and directed the Commission's Executive Director to draft an amendment to Rea 301.03 to enter into the rulemaking process to reflect this decision.

FRAN WEST, the Commission's Education Program Assistant submitted the following questions for Commission consideration:

1. Can a broker candidate take a 40 hour pre-licensing course and also take the 10 hour review session from the same instructor at another time and use both the 40 hours of credit and the 10 hours of credit to help fulfill the 60 hour education requirement? The 10 hour review session would be identical to the 10 hour review session which was included in the 40 hour course.
2. If the broker candidate took the 40 course hours from one provider and the 10 hour review from a different provider, would that person be able to use the credit from both of those courses to help fulfill the 60 hour education requirement?
3. A pre-licensing course provider has an accredited 40 hour pre-licensing course but the course consists of 50 hours of class time. Pre-licensing material is taught for 41 hours of the course and the last 9 hours is review. It is recommended by the instructor, but not mandated, that students attend the 9 hour review. May a broker candidate be given 50 hours of credit for attending the 40 hour accredited course which actually has 50 hours of class time?
4. Can a broker candidate ever be given partial hours for attending a portion of a pre-licensing course, except as stated above for the review portion of the course? For example: A broker candidate attends 3 or 6 or 20 or 30 hours of a pre-licensing course. Can that person receive 3 or 6 or 20 or 30 hours of pre-licensing education credit?

After review and discussion, the Commission decided that if a broker candidate completes a 40 hour pre-licensing course, that candidate may not in addition to this course, attend a broker review course of pre-licensing material where the course material is the same material which is taught in the 40 hour pre-licensing course. This would apply to a pre-licensing broker review course taught by the same instructor or by another instructor. The Commission decided that the 50 hour course presented by an accredited instructor may be accredited as a 50 hour broker course, based on the condition that the course is a pre-licensing course consisting of at least 40 hours of pre-licensing material and no more than 10 hours of review material, and that a broker candidate must complete the entire course. The Commission stated that a broker candidate can not receive credit hours for attending portions of an accredited pre-licensing course with the exception of accredited broker pre-licensing review portions of pre-licensing courses, or of the 6 hour state law portions of pre-licensing courses which have been accredited for out-of-state licensees who have completed a minimum of 34 hours of approved national pre-licensing material in another state.

FRAN WEST, the Commission's Education Program Assistant, requested clarification on the commission's definition of classroom hours as used in their April 2004 decision which allows a minimum of 30 pre-licensing classroom hours and up to 10 out of classroom hours of pre-licensing education to provide the opportunity for make-up of missed classroom hours. After review and discussion, the Commission decided that classroom hours would be limited to a person's attendance at a class with an instructor teaching that class, and further decided that classroom hours could not be fulfilled by a person's presence in a classroom while listening to an audio tape of a class, while an instructor taught other students in the same classroom different subject matter.

IV. **OTHER BUSINESS**

1. The Commission unanimously approved the following date for the August meeting:

August 21, 2007 at 1:30 p.m.

2. CASE EVALUATIONS

FILE NO. 2006-024

Evaluator: Commissioner LeRoy

Determination: Should be heard, hearing to be scheduled.

FILE NO. 2006-037

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

FILE NO. 2007-005

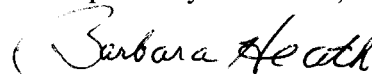
Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

V. **ADJOURNMENT**

Motion by Commissioner Stephen, seconded by Commissioner Ikawa, to adjourn the meeting. Commissioner LeRoy adjourned the meeting at 11:30 a.m.

Respectfully submitted,



Barbara Heath

Clerk