

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

OCTOBER 16, 2007

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 16, 2007 at 1:30 p.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting was called to order at 1:33 p.m. by Chairman Nancy LeRoy

Present: Commissioners Nancy LeRoy, Robert Stephen, Pauline Ikawa, Barbara Heath, Daniel Jones, Executive Director Beth Edes, Investigator Ann Flanagan, and Education Program Assistant Fran West.

I. APPOINTMENTS

1:33 PM Equivalency Appointments

CANDIDATE

The following candidate was interviewed by Commissioners Nancy LeRoy, Pauline Ikawa, Barbara Heath and Daniel Jones:

GUSTAVO M. REYES

On motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission approved Mr. Reyes' experience as equivalent experience required for a broker's license. Commissioner Heath was opposed to the decision.

COMMISSIONER STEPHEN ARRIVED AT THE MEETING AT 1:37 PM

The following candidate was interviewed by Commissioners Nancy LeRoy, Robert Stephen, Pauline Ikawa, Barbara Heath and Daniel Jones:

ADAM ABBAS

On motion by Commissioner Jones, seconded by Commissioner Stephen, the Commission denied Mr. Abbas' experience as equivalent experience required for a broker's license.

2:35 p.m. JASEN STOCK, the Executive Director of the NH Timberland Owners Association appeared before the Commission to request a clarification to the following questions:

1. What obligation does the licensee or seller have in disclosing the presence of a rare, threatened or endangered species to a prospective buyer?
2. What obligation does the licensee have to check the Department of Resources and Economic Development's rare, threatened or endangered species database before listing or offering a property for sale?

After review and discussion, the Commission explained that pursuant to Rea 701.02, a license is not required to disclose to a prospective buyer/tenant any material physical, regulatory, mechanical or on-site environmental condition affecting the subject property unless the licensee has actual knowledge of the condition and that the licensee does not have an affirmative obligation to

investigate material defects. The Commission explained to Mr. Stock that the determination of whether disclosure is required for the presence of a rare, threatened or endangered species would be on a case-by-case basis.

3:15 p.m. LAURIE DUNLOP appeared before the Commission to discuss an incident prior to the issuance of a broker's license. After review and discussion, the Commission, on motion by Commissioner Stephen, seconded by Commissioner Heath decided to approve the issuance of a broker's license to Ms. Dunlop and directed the Commission's Investigator to perform 4 on-site visits a year to audit the records at Ms. Dunlop's real estate office.

II. DISCUSSION

DESIGNATED AGENCY – Bonnie Guevin, the President of the New Hampshire Association of Realtors submitted to the Commission a draft of proposed legislation that would add the definition of Designated Agency and Facilitator to RSA 331-A, and add a section to the statute which would define the duties of a designated agent. Ms. Guevin appeared before the Commission to answer questions, along with the following affiliates of the NHAR: Paul Griffin, Jim Lyons, Kathy Roosa, Chris Nicholopoulos, Charline Mason, Kathy Corey-Fox, John Doran, and Jeff Keeler. Ms. Guevin explained that the proposed draft legislation was provided to the Commission so that the members of NHAR could answer any questions the Commission may have, receive any feedback, and to get an endorsement from the Commission on the proposed language on Designated Agency. The Commission also reviewed comments received by Carolyn McGee, the President of the NH Association of Exclusive Buyer Agents (NHEBA) regarding the proposed legislation. Kathy Roosa, the Chair of the Designated Agency Task Force gave an overview of the NHEBA's comments and concerns. Ms. Roosa explained that the NHEBA was not opposed to the proposed legislation, but would like to add the following language to the section titled "Duty of a Designated Agent" – XII. Dual agency does not occur in firms that represent buyers only who have appointed designated buyers' agents, or firms that represent sellers only who have appointed designated sellers' agents within the firm. The NHEBA is looking for clarification that a single agency company would not create a dual agency under designated agency. The NHEBA would like to know whether this additional language would be sufficient to allow the Commission to add Single Agency on the Agency/Non-Agency Disclosure form and Consumer Brochure or will single agency need to be defined in RSA 331-A. Joan Whitebook appeared to speak on behalf of the NHEBA on the comments and concerns submitted. Ms. Whitebook explained that the NHEBA is in support of the proposed legislation, but would like to have the language noted above added, and that the definition of single agency be included in the Agency/Non-Agency Disclosure Form and the Consumer Brochure. After review and discussion, the Commission, on motion by Commissioner Jones, seconded by Commissioner Stephen, decided to endorse the proposed legislation by the NHAR, including the proposed language submitted by the NHEBA, as long as the Commission is notified of any future changes to the drafted legislation.

ANN FLANAGAN, the Commission's Investigator requested a clarification as to whether it is permissible for URLs not licensed as real estate firms standing alone to solicit brokerage activity. After review and discussion, the Commission decided that it is permissible when the URL is a reasonable derivative of the real estate firm name.

LYNN MORIN of Mary Dragon Real Estate submitted a request for clarification from the Commission as to whether she would be in compliance with RSA 331-A:16 if she used the following name in her advertisements, "Lynn Morin-Lorrey." After review and discussion, the Commission, on motion by Commissioner Ikawa, seconded by Commissioner Jones, decided that this would be a reasonable derivative of her legal name as required by RSA 331-A:16. Ms. Morin to be so notified.

LAURIE DESROCHERS of ERA The Masiello Group submitted a request for clarification as to whether a licensee is required to disclose to a prospective buyer/tenant the presence of ghosts under Rea 701.02. After review and discussion, the Commission decided that it would be determined on a case-by case basis. Ms. DeRochers to be so notified.

SHERRIE MCNULTY submitted a request for a clarification as to whether she is able to be a part-time principal broker for her part-time agents or is she required to be exclusively a full time broker? The Commission stated that it is fine for Ms. McNulty to be a part-time principal broker as long as she is present when her part-time agents are working. Ms. McNulty to be so notified.

III. On motion by Commissioner Jones, seconded by Commissioner Ikawa, the Commission unanimously approved the Minutes of the Commission meeting held on September 26, 2007.

IV. **OTHER BUSINESS**

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

December 18, 2007 at 1:30 p.m.

2. CASE EVALUATIONS

FILE NO. 2007-002

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

FILE NO. 2007-004

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

FILE NO. 2007-012

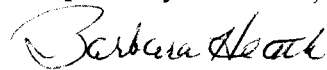
Evaluator: Commissioner LeRoy

Determination: Should be heard upon the completion of a parallel complaint by the Commission's Investigator.

V. **ADJOURNMENT**

Motion by Commissioner Stephen, seconded by Commissioner Jones, to adjourn the meeting. Commissioner LeRoy adjourned the meeting at 4:05 p.m.

Respectfully submitted,



Barbara Heath
Clerk