

**New Mexico Real Estate Commission  
Regular Meeting  
July 31, 2017  
Real Estate Commission Offices  
5500 San Antonio Drive NE  
Albuquerque, New Mexico**

**DRAFT MINUTES**

Commissioners Present: Gretchen Koether, President  
Kurstin Johnson, Vice President  
Greg Foltz, Member

Commissioner Absent: Kirk Clifton, Member

Commissioner Resignation: Clifford Stroud, effective July 17, 2017

Staff Present: Wayne W. Ciddio, Executive Secretary  
Lyn Carter, Chief Investigator  
Perry Bryant, Investigator  
Gillian Hubka, Investigator  
Tom Baca, Education Administrator  
Germelyn Vivar, Administrative Secretary

Others Present: Lori Chavez, Assistant Attorney General and  
Commission Counsel

1. 9 a.m.- Call to Order and Welcome- Gretchen Koether, President

Commission President Gretchen Koether called the meeting to order at 9 a.m.

2. Determination of Quorum

With three Commissioners present, Commission Koether declared that a quorum was present.

3. Pledge of Allegiance

Commissioner Koether led the Commission and others in attendance in the Pledge of Allegiance.

4. Introductions

Commissioners and Commission staff introduced themselves.

5. Approval of the Agenda of the July 31, 2017 Regular Meeting

Commissioner Greg Foltz moved approval of the agenda of the July 31, 2017 regular Commission meeting. Commissioner Kurstin Johnson seconded the motion and it carried unanimously.

6. Approval of the Minutes of the June 19, 2017 Regular Meeting

Commissioner Foltz moved approval of the minutes of the June 19, 2017 regular Commission meeting. Commissioner Johnson seconded the motion and it carried unanimously.

7. Broker and Public Forum

No brokers or members of the public addressed the Commission during this portion of the meeting.

8. Status report on discussion with Richard Gallegos regarding the development of an on-line Core Course

Mr. Gallegos said he was invited by Commission staff to share his thoughts on the logistics of developing an on-line alternative to the new four-hour Core Course for brokers who are not able to take the classroom course for reasons of distance and other factors, or because the demand for the annual course may exceed the availability of instructors and classroom offerings.

Mr. Gallegos said he believes the best option for developing and maintaining an on-line Core Course is through a Commission-hosted course maintained by a part-time or fulltime Commission employee. He said while it might be acceptable for a third-party contractor to initially develop the course,

allowing other providers to update the course will result in a loss of consistency of content and delivery.

In response to concerns from Core Course instructors present at the meeting that an online course would diminish the interactivity between brokers that the course emphasizes, Mr. Gallegos said there are online platforms that provide for interaction between instructors and students and between students.

A discussion ensued about various platforms for providing an on-line course, ranging from streaming to Go to Meeting. Commissioner Johnson suggested that streaming be tried on limited basis to identify strengths and challenges. She also asked that the Commission continue the discussion of options for on-line delivery of the Core Course.

Realtors Association of New Mexico (RANM) Executive Vice President Steve Anaya said RANM is willing to help in any way it can.

#### 9. Report from the Property Management Task Force-Bill Hallett

Task Force Co-Chair Bill Hallett reported that the task force met on July 5, 2017. Some of the initial topics discussed were:

- Specialized education courses to be required of all those engaging in property management, including qualifying brokers of same;
- Sufficient availability of continuing education classes;
- Limitations on activities of unlicensed individuals;
- Bonding;
- Enforcement.

Mr. Hallett said the task force intends to reach out to various organizations and brokers in an attempt to understand what causes the high number of property management-related complaints and litigation and how these trends can be reversed.

Commission Executive Secretary Wayne Ciddio pointed out that three or four property management companies with significant numbers of clients have folded in the past couple of years, leaving property owners and tenants in very difficult circumstances, including financial losses. Mr. Ciddio

asked the task force to attempt to address this issue. Commission Chief Investigator Lyn Carter suggested the task force look at the possibility of ombudsman services to resolve some property management issues. Investigator Perry Bryant suggested exploring bonding as a way to protect property owners when brokers walk away from their businesses.

#### 10. Discussion of the Commission's perspective on unlicensed third party facilitation of real estate transactions

Commissioner Johnson said she asked that this item be on the Commission agenda for discussion because brokers are seeing more and more instances of unlicensed third-party facilitators advertising property in New Mexico and engaging in other activities that would normally require a broker's license.

She said Zillow and other comparable companies purport to be matching up buyers and sellers by encouraging sellers to list their properties with Zillow as For Sale by Owner (FSBO), thereby removing licensed brokers from the transaction. She said she has been approached by sellers who say they have found their own buyers and are looking for a real estate broker to help them complete the transaction paperwork.

The consensus of the discussion was that because it is probably impossible to police real estate transactions between private individuals, the Commission should focus on getting out the message that it is illegal to advertise property located in New Mexico and illegal to draw up purchase agreements and other transactions without a broker's license, and pursue individuals and entities that engage in such unlicensed activity.

#### 11. Effect of House Bill 58 on filing of new Commission rules

Mr. Ciddio said House Bill 58 passed by the 2017 legislature and signed into law by the Governor puts new requirements on state agencies advertising rule hearings and adopting new rules, including a requirement that new rules be filed with the State Records Center and Archives (SRCA) no later than 15 days after they are adopted by the agency.

Because House Bill 58 became effective on July 1, 2017 after the Commission adopted new rules regarding broker duties and qualifying broker licensing and license renewal requirements, the Commission will

have to readopt those rules at their November 21, 2017 meeting, and file them with the SRCA by December 5, 2017 with a January 1, 2018 effective date in order to be in compliance with the new law.

12. Commission action on Education Advisory Committee (EAC) recommendations from May 17, June 21, and July 19 2017 meetings.

Commissioner Foltz moved approval of the EAC recommendations from the May 17, June 21, and July 19, 2017 meetings, including one recommending that the Commission direct staff to include in future license renewal packets a brightly colored cover page in a large, bold type font stating that:

- Continuing education requirements for renewal have changed;
- Licensees will need at least 36 hours of continuing education to renew their licenses;
- A description of the Core Course requirement for the year;
- A description of the Core Elective requirement;
- A description of the Ethics course requirement.

Commissioner Johnson seconded the motion and it carried unanimously.

13. Chief Investigator's Report

Chief Investigator Lyn Carter presented the following report:

New Complaints Received

May -6

June- 15

July- 9

Total for 2017- 62

Cases in Settlement Discussions

NMREC Case No. 14-11-11-124- Murphy

NMREC Case No. 14-11-13-126- Murphy

NMREC Case No. 14-12-01-129- Murphy

NMREC Case No. 14-12-03-131- Murphy

## Disciplinary Hearings Scheduled

NMREC Case No. 15-06-04-055- David Vazquez, August 3, 2017 at 9:00 am, Commission Office, Hearing Officer is Kurstin Johnson

NMREC Case No. 14-09-23-099-Stoes and Crawford, August 30, 2017 at 10:00am, Las Cruces Association of Realtors, Hearing Officer is Gretchen Koether

NMREC Case No. 14-11-06-119- and 14-11-07-120 Valentine, September 15, 2017 at 10:00 am and 1:00 pm, Public Defenders Office, Gallup, New Mexico, Hearing Officer is Commissioner Kurstin Johnson

### 14.Executive Session

Commissioner Johnson moved that pursuant to Section 10-15-1 H (1) of the Open Meetings Act, the Commission go into Executive Session to discuss those items listed under Item 14, Executive Session. Commissioner Foltz seconded the motion. Mr. Ciddio called the roll. Commissioners Koether, Johnson, and Foltz voted in favor of the motion. No Commissioners voted in opposition to the motion.

At the conclusion of the Executive Session, Commissioner Koether declared that the Commission was back in Open Session and attested that the only matters discussed in Executive Session were those matters specified in the motion to go into Executive Session.

### 15.Action on Items Discussed in Executive Session

#### a. Reports of investigation

NMREC Case Nos. 16-03-03-018; 16-04-04-025; 16-04-05-026; 16-05-01-032; 17-06-06-044; Question of Jurisdiction, no case number assigned; 16-12-02-084.

Commissioner Johnson moved that the above-referenced cases be dismissed. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-01-02-002

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent in the above-referenced case a \$1,000 fine, a letter of reprimand, and a continuing education course for no credit acceptable to the Commission upon acceptance of the offer in lieu of the issuance of a Notice of Contemplated Action (NCA) with the understanding that if the respondent does not accept the offer within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-06-17-041

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent in the above-referenced case a \$2,000 fine, a letter of reprimand, a continuing education course for no credit acceptable to the Commission upon acceptance of the offer in lieu of the issuance of a Notice of Contemplated Action (NCA) with the understanding that if the respondent does not accept the offer within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-08-02-054

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent in the above-referenced case a \$2,000 fine, a letter of reprimand, a continuing education course for no credit acceptable to the Commission upon acceptance of the offer in lieu of the issuance of a Notice of Contemplated Action (NCA) with the understanding that if the respondent does not accept the offer within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-09-03-065

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer Respondent A in the above-referenced case a \$2,000 fine, a letter of reprimand, and a continuing education course for no credit acceptable to the Commission upon acceptance of the offer; and Respondent B a \$1,000 fine, a letter of reprimand, and a continuing education course for no credit acceptable to the Commission upon acceptance of the offer, in lieu of the issuance of a Notice of Contemplated Action (NCA) with the understanding that if the respondents do not accept the offers within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-10-01-070

Commissioner Johnson moved that the Attorney General's Office be asked to issue an NCA against the respondent in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-10-04-073

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent a \$20,000 fine in lieu of the issuance of an NCA with the understanding that if the respondent does not accept the offer with 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. The offer will be accompanied by a letter advising the respondent that unlicensed activity is a fourth-degree felony punishable by fines and imprisonment. The offer will also be provided to the real estate commission of the State of New York. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-10-06-075

Commissioner Johnson moved that the above-referenced case be dismissed but that the respondent be issued an advisory letter. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 17-02-06-014

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent a letter of reprimand and a \$6,000 fine as a condition of reinstating their license. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-11-01-077

Commissioner Johnson moved that the Commission authorize the Executive Secretary to offer the respondent in the above-referenced case a \$5,000 fine, a letter of reprimand, and two continuing education courses for no credit acceptable to the Commission upon acceptance of the offer in lieu of the issuance of a Notice of Contemplated Action (NCA) with the understanding that if the respondent does not accept the offer within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 17-01-03-003

Commissioner Johnson moved that the Commission refer the above-referenced case to the Bernalillo County District Attorney's office for criminal prosecution and that the broker be asked to surrender their license voluntarily. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 17-02-01-009

Commissioner Johnson moved that the Commission request that the Attorney General's Office issue NCA's to the respondent qualifying broker and the respondent associate broker in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

b. Hearing Officer Reports

NMREC Case No. 14-12-08-136, Dan Cash

Commissioner Johnson moved that the Commission adopt the hearing officer report in the above referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

Commissioner Johnson moved that Mr. Cash be fined \$2,000, plus court reporting costs totaling \$1, 320.95, receive a letter of reprimand, and complete for no continuing education credit a Commission-approved course in square footage measurement. Commissioner Foltz seconded the motion and it carried unanimously.

Recovery Fund Petition, Alexandru Gyorgy

Commissioner Johnson moved that the Commission adopt the hearing officer report in the above referenced Real Estate Recovery Fund case. Commissioner Foltz seconded the motion and it carried unanimously.

Commissioner Johnson moved that the Commission authorize a payment of \$10,000 to Mr. Gyorgy or the Melendres Law Firm that represented him in his Recovery Fund Petition from the Real Estate Recovery Fund. Commissioner Foltz seconded the motion and it carried unanimously.

c. Settlement Agreements

NMREC Case No. 14-09-06-082, Greg Gray

Commissioner Johnson moved that the Commission approve the settlement agreement in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

The agreement provides that Mr. Gray be fined \$3,000, with \$1,000 payable within 30 days of the Commission's approval of the agreement, and the balance paid in five monthly installments of \$400 each; receive a letter of reprimand; and complete for no continuing education credit of two, four-hour property management courses. The agreement further provides that Mr. Gray will be eligible to reinstate his license upon payment of the initial \$1,000.

NMREC Case No. 14-12-05-133, Emese Fisher

Commissioner Johnson moved that the Commission approve the settlement agreement in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

The agreement provides that Ms. Fisher be fined \$3,000 payable within 30 days of the Commission's approval of the agreement; receive a letter of reprimand; and complete for no continuing education credit a four-hour ethics course.

d. Decline to prosecute

NMREC Case No. 15-07-03-071, Tyra Van Belle

Based on the decision of Administrative Prosecutor Rebecca Branch to decline to prosecute the above-referenced case because the complainant has executed an affidavit indicating that she was incorrect about the actions of the respondent, Commissioner Johnson moved that the Commission dismiss the case. Commissioner Foltz seconded the motion and it carried unanimously.

e. Reconsideration of pre-NCA Offer, NMREC Case No. 15-12-04-123

In response to the respondent's request that the Commission reconsider its pre-NCA offer in the above-referenced case, Commissioner Johnson moved that the Commission withdraw its offer and refer the case to the Attorney General's Office for the issuance of an NCA. Commissioner Foltz seconded the motion and it carried unanimously.

## 16. Adjourn

There being no further business, Commissioner Johnson moved that the meeting adjourn. Commissioner Foltz seconded the motion and it carried unanimously. The meeting adjourned at 2:27 p.m.

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Gretchen Koether, President  
New Mexico Real Estate Commission