

New Mexico Real Estate Commission  
Regular Meeting  
November 20, 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  
Bill Davis, Member  
Lindsay Rollins, Member

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

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

1.9:00 a.m. - Call to Order and Welcome-Gretchen Koether, President

Commission President Gretchen Koether called the meeting to order at 9:00 a.m. and welcomed all in attendance.

2. Determination of Quorum

With five Commissioners present, Commissioner Koether determined that a quorum was present.

3. Pledge of Allegiance

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

#### 4. Introductions

Commissioner Koether asked Commissioners and staff to introduce themselves and welcomed Bill Davis of Roswell as the new broker member of the Commission and Lindsay Rollins of Clovis as the new public member of the Commission.

#### 5. Approval of the Agenda of the November 20, 2017 Commission Meeting

Commissioner Greg Foltz moved that the order of the agenda be amended to make Adoption of the Rules and the Executive Session the next items of business after the New Commissioner Orientation, and to reverse the order of the Distance Education Core Course Streaming Project Update and the recommendations of the Education Advisory Committee (EAC). Commissioner Johnson seconded the motion and it carried unanimously.

#### 6. Approval of the Minutes of the September 25, 2017 Regular Meeting.

Commissioner Johnson moved approval of the minutes of the September 25, 2017 regular Commission meeting. Commissioner Foltz seconded the motion and it carried on a 3-0 vote, with Commissioners Koether, Johnson, and Foltz voting in favor of the motion and new Commissioners Davis and Rollins abstaining.

#### 7. Broker and Public Forum

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

#### 8. Orientation of New Commissioners

Commission Executive Secretary Wayne W. Ciddio conducted an orientation of new Commissioners that included:

- Introduction of staff and their job duties.
- Introduction of Assistant Attorney General and Commission Counsel Lori Chavez, a description of her job duties, and how her role is different from the role of Administrative Prosecutor Rebecca Branch, an Assistant Attorney General in the Litigation Division of the Attorney General's Office.

- A review of the agenda for the November 20, 2017 meeting and how it incorporates many of the terms, procedures, and subject matter areas that Commissioners encounter at every meeting.
  - Brief presentations by Licensing Manager Roxanne Romo and Chief Investigator Lyn Carter.
  - Questions and discussion.
9. Adoption of Amendments to Commission Rules; Part1, Definition of Broker Duties; Part 3, Qualifying Broker License Application and Renewal Requirements; Part 15, Approval of Real Estate Courses, Sponsors, and Instructors; Part 16, Qualifying Broker: Affiliation and Responsibilities; and Part 19, Broker Duties and Broker Responsibilities.

After discussion, Commissioner Davis moved adoption of the amended definition of Broker Duties in Part 1 of the Commission Rules. Commissioner Johnson seconded the motion and it carried unanimously.

After discussion, Commissioner Johnson moved adoption of the amendments to Part 3, Qualifying Broker License Application and Renewal Requirements. Commissioner Foltz seconded the motion and it carried unanimously.

After discussion, Commissioner Johnson moved adoption of the amendments to Part 15, Approval of Real Estate Courses, Sponsors, and Instructors. Commissioner Davis seconded the motion and it carried unanimously.

After discussion, Commissioner Johnson moved adoption of the amendments to Part 16, Qualifying Broker: Affiliation and Responsibilities. Commissioner Foltz seconded the motion and it carried unanimously.

After discussion, Commissioner Johnson moved adoption of the amendments to Part 19, Broker Duties and Brokerage Relationships. Commissioner Foltz seconded the motion and it carried unanimously.

9. Executive Session #1

Commissioner Johnson moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to discuss the Hearing Officer Reports in NMREC Case Nos. 14-11-06-019

and 14-11-07-120, Jason Valentine; NMREC Case No. 14-01-04-060, Adam Trubow and Patrick McBride; NMREC Case No. 17-10-04-097; and NMREC Case No. 17-11-06-106. Commissioner Foltz seconded the motion.

Mr. Ciddio called the roll. Commissioners Koether, Johnson, Foltz, Davis, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

At the conclusion of Executive Session #1, 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.

10. Action on Items Discussed in Executive Session #1

NMREC Case No. 14-11-06-119, Jason Valentine

Commissioner Foltz moved that the Commission adopt the Hearing Officer Report in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

Commissioner Foltz moved that Respondent Jason Valentine be issued a letter of reprimand, be fined \$1,000, and be assessed administrative hearing costs. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 14-11-07-120, Jason Valentine

Commissioner Foltz moved that the Commission adopt the Hearing Officer Report in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

Commissioner Foltz moved that Respondent Jason Valentine's broker's licenses be suspended for six months; that he be fined \$5,000; that he be assessed administrative hearing costs; and that he be required to complete for no continuing education credit the Commission-approved 30-hour Broker Basics course. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 14-01-04-060, Adam Trubow and Patrick McBride

Commissioner Foltz moved that the Commission adopt the Hearing Officer Report in the above-referenced case. Commissioner Davis seconded the motion and it carried unanimously.

Commissioner Foltz moved that the Commission deny the Respondents' motion to dismiss the case on the grounds that the Commission was time-barred from prosecuting it. Commissioner Rollins seconded the motion and it carried unanimously.

Commissioner Foltz moved that the Commission deny the Respondents' motion to dismiss the case on the grounds that the Commission had spoliated the record. Commissioner Davis seconded the motion and it carried unanimously.

Commissioner Foltz moved that the Commission revoke the licenses of Respondents Adam Trubow and Patrick McBride; that each Respondent be fined \$5,000 and each be assessed half of the administrative hearing costs for hearings that took place on January 10, 2017 and September 8, 2017. Commissioner Davis seconded the motion and it carried unanimously.

NMREC Case No. 17-10-04-097

Commissioner Johnson moved that the Respondent in the above-referenced case be denied a broker's licensing pending a disciplinary hearing and that the matter be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-11-06-106

Commissioner Rollins moved that the Respondent in the above-referenced case be denied a broker's license pending a disciplinary hearing and that the matter be referred to the Attorney General's Office for the issuance of a Notice of Contemplated Action (NCA). Commissioner Johnson seconded the motion and it carried unanimously.

11. Commission Action on Education Advisory Committee (EAC) recommendations from October 18 and November 8, 2017 meetings.

EAC Chair David Steele lead a presentation by EAC members on 2017 committee activities, policy initiatives, and recommendations.

With respect to the new four-hour Core Course, the EAC proposed that brokers who fail to take a given year's Core Course be required to take the subsequent year's Core Course twice from two different instructors, and that brokers who take the missing Core Course requirements within 30 days of license expiration be assessed only a \$25 late fee in lieu of the standard \$540 late fee. The standard late fee would apply if the broker is missing other requirements for renewal, such as the Core Elective or Ethics courses.

EAC Chair David Steele explained that the proposed policy is not intended to be punitive, but rather to create a path for brokers to accomplish annual completion of the Core Course, and to give guidance to Commission staff.

After further discussion, Commissioner Johnson moved approval of the EAC recommendation, minus the \$25 late fee, stating that because fees the Commission are allowed to charge are specified in the Real Estate License Law and Commission Rules, such a fee would have to be vetted at a rules hearing. Commissioner Rollins seconded the motion and it carried unanimously.

In the interest of providing a professional instructional environment free from "foul language, harassment and solicitation (promotion of brokerages for recruitment purposes)", the EAC proposed an Anti-Harassment and Non-Solicitation Policy.

The proposed policy states that "harassment based upon an individual's sex, race, ethnicity, national origin, age, or religion or any other legally protected characteristics will not be tolerated. Any instructor certified by the New Mexico Real Estate Commission and instructing a qualified pre-licensing or continuing education course, including sponsors and sponsors' employees/vendors, are expected to abide by this policy."

The proposed policy further states that "any instructor certified by the Commission and instructing a course will not, directly or indirectly, approach, solicit, entice or attempt to approach, solicit or entice any of their

course attendees to leave the brokerage with whom the licensee is associated, either during the instructional period or subsequently through information gained by the instructor through the pre-licensee or licensee's registration for the course."

The proposed policy also provides a mechanism for reporting and investigation of any harassment or solicitation activity, and for corrective action, including the possible termination of instructor or sponsor status.

After discussion, Commissioner Davis moved adoption of the policy, with the exception of the corrective action provision which he said needs to be vetted at a rule hearing. Commissioner Johnson seconded the motion and it carried on a 4-0 vote.

12. Distance Education Core Course Streaming Project Update and Request for Commission Approval to Proceed to Plan to Offer the Course via Distance Education

- Kent Cravens, Executive Vice President, Greater Albuquerque Association of Realtors (GAAR)
- Nate Brooks, Professional Development Manager (GAAR)
- Richard Gallegos, Owner, AVR+CE, Distance Education Company

Mr. Gallegos summarized the results of live streaming tests of the Core Course at the GAAR offices on October 9, October 18, and November 13. He noted that while there were some technical problems, live streaming is a work in progress as existing technology is adjusted to accommodate what is designed as a highly-interactive course.

Mr. Gallegos addressed with EAC members and Commissioners concerns about student interaction in a streaming environment, the potential need for proctors at each remote location to monitor student attendance and participation, the need for specific distance education guidelines, and upgraded technology at GAAR and other Realtor association offices around the state that will facilitate live streaming as a course delivery option.

13. Chief Investigator's Report

Chief Investigator Lyn Carter reported that Commission received 12 new complaints in September, 7 in October, and 6 so far in November, for a total of 106 new complaints year-to-date in 2017.

Mr. Carter also provided the following schedule of upcoming disciplinary hearings:

- NMREC Case No. 15-05-05-033, Nancy Wils, November 22, 2017 , Hearing Officer is Commissioner Johnson, 9:00 am at Coldwell Banker Legacy 500 Unser Blvd. Suite 101 Rio Rancho.
- NMREC Case No. 15-10-03-095, John Hummer and Brenda Porter, December 13, 2017, Hearing Officer is Commissioner Koether, 11: 00 am at the Las Cruces Associations of Realtors, 150 E. Idaho St. Las Cruces.
- NMREC Case No. 15-10-06-098, Sarah Michelle Carter, December 18, 2017, Hearing Officer is Commissioner Johnson, 9:00 am at the Commission office, 5500 San Antonio Dr. NE Albuquerque.

#### 14. Executive Session #2

Commissioner Johnson moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to discuss those items listed under Agenda Item 13, Executive Session, with the exception of the Hearing Officer Reports and the Reports of Investigation discussed in Executive Session #1. Commissioner Rollins seconded the motion.

Mr. Ciddio called the roll. Commissioners Johnson, Koether, Foltz, Davis, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

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

#### 15. Action on Items Discussed in Executive Session #2

- i. Reports of Investigation

a. NMREC Case No. 16-08-07-059

Commissioner Johnson moved that the Commission close the above-referenced case with an advisory letter.

Commissioner Koether seconded the motion and it carried on a 4-0 vote with Commissioner Foltz having been excused for the remainder of the meeting.

b. NMREC Case No. 16-08-10-062

Commissioner Johnson moved that the Commission close the above-referenced case with an advisory letter.

Commissioner Koether seconded the motion and it carried on a 4-0 vote.

c. NMREC Case No. 16-09-02-064

Commissioner Johnson moved that the Commission close the above-referenced case. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

d. NMREC Case No. 17-11-05-105

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be issued to the Respondent. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

e. NMREC Case No. 17-01-01-001

Commissioner Johnson moved that the Commission close the above-referenced case. Commissioner Rollins seconded the motion and it carried on a 4-0 vote.

f. NMREC Case No. 17-04-04-026

Commissioner Johnson moved that the Commission close the above-referenced case. Commissioner Davis seconded the motion and it carried on a 4-0 vote.

g. NMREC Case No. 17-04-09-031

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be issued to Respondent A and that the complaint against Respondent B be closed. Commissioner Rollins seconded the motion and it carried on a 4-0 vote.

h. NMREC Case No. 17-06-05-043

Commissioner Johnson moved that the Commission close the above-referenced case with an advisory letter. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

i. NMREC Case No. 17-04-05-027

Commissioner Johnson moved that the Commission close the above-referenced case with an advisory letter. Commissioner Davis seconded the motion and it carried on a 4-0 vote.

j. NMREC Case No. 17-07-02-055

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be

issued to the Respondent. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

k. NMREC Case No. 17-08-12-074

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be issued to the Respondent. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

l. NMREC Case No. 17-09-01-082

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be issued to the Respondent. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

m. NMREC Case No. 17-09-02-083

Commissioner Johnson moved that the above-referenced case be referred to the Attorney General's Office with a request that a Notice of Contemplated Action (NCA) be issued to the Respondent. Commissioner Koether seconded the motion and it carried on a 4-0 vote.

ii. Default Orders

NMREC Case No. 15-09-05-087, Dennis Defoor

Commissioner Johnson moved that the Commission revoke by default the broker's license of the above-named Respondent for his failure to request a hearing within the timelines specified in the Uniform Licensing Act (ULA).

Commissioner Davis seconded the motion and it carried on a 4-0 vote.

NMREC Case Nos. 15-10-07-099; 15-10-10-102; 15-10-11-103; 15-10-12-104; 15-10-13-105; 15-11-02-109; 15-11-03-110; 15-11-06-113; 15-11-11-118; 15-12-03-122; and 16-02-07-015; Laura Melissa Threet, Marybelle Spears, Christal Newton and Brandon Newton.

Commissioner Johnson moved that the Commission revoke by default the broker's licenses of Respondents Marybelle Spears and Christal Newton for their failure to request a hearing within the timelines specified in the Uniform Licensing Act (ULA). Commissioner Davis seconded the motion and it carried on a 4-0 vote.

Commissioner Johnson moved that the Commission revoke by default the broker's licenses of Laura Melissa Threet and Brandon Newton if they fail to request a hearing by November 27, 2017. Commissioner Davis seconded the motion and it carried on a 4-0 vote.

## 16. Adjourn

There being no further business to come before the Commission, Commissioner Johnson moved that the meeting adjourn. Commissioner Rollins seconded the motion and it carried on a 4-0 vote. The meeting adjourned at 3:07 p.m.

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Gretchen Koether, President  
New Mexico Real Estate Commission