

**New Mexico Real Estate Commission
Regular Meeting
March 20, 2017
Real Estate Commission Offices
5500 San Antonio Drive NE
Albuquerque, New Mexico 87109**

DRAFT MINUTES

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

Commissioner Absent: Kirk Clifton, Member

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. 9:00 a.m. Call to Order and Welcome- Greg Foltz, President

Commission President Greg Foltz called the meeting to order and welcomed those in attendance.

2. Determination of Quorum

With Commissioners Foltz, Gretchen Koether, Kurstin Johnson, and Clifford Stroud in attendance, a quorum was present.

3. Pledge of Allegiance

Commissioner Foltz led the Commission and all those present at the meeting in the Pledge of Allegiance.

4. Introductions

Commissioner Foltz asked Commissioners and Commission staff to introduce themselves.

5. Approval of the Agenda of the March 20, 2017 Regular Meeting

Commissioner Stroud moved approval of the agenda of the March 20, 2017 Regular Meeting. Commissioner Johnson seconded the motion.

Commissioner Stroud moved to amend the motion to conduct the election of 2017 Commission officers to just before the Commission goes into Executive Session. Commissioner Johnson seconded the amended motion.

The agenda for the March 20, 2017 meeting, as amended, was adopted unanimously.

6. Old Business

a. Approval of the Minutes of the January 23, 2017 Regular Meeting

Commissioner Stroud moved approval of the minutes of the January 23, 2017 Regular Meeting. Commissioner Koether seconded the motion.

Commissioner Johnson moved to amend the motion so that the minutes reflect that she abstained on the motion to adopt the Hearing Officer Report in NMREC Case No. 14-07-04-060, the case in which she is the Hearing Officer. Commissioner Koether seconded the amended motion.

The minutes of the January 23, 2017 meeting, as amended, were adopted unanimously.

b. Approval of the Minutes of the February 3, 2017 Special Meeting

Commissioner Stroud moved approval of the minutes of the February 3, 2017 Special meeting. Commissioner Johnson seconded the motion and it carried unanimously.

7. Broker and Public Forum

Broker Richard Randals of Tucumcari addressed the proposed point system for being eligible to become a qualifying broker as it would impact ranch brokers. He said most ranch brokers will sell only one ranch per year, therefore making it difficult for an associate broker to accumulate enough points to become a qualifying broker. He suggested requiring \$3 million in sales over a four-year period as an alternative qualification for associate brokers specializing in ranch brokerage to become qualifying brokers. He suggested that an accredited land consultant be required to have \$5 million in sales over five years.

8. New Business

a. Swearing in of Core Course Instructors

Commissioner Foltz congratulated and swore in Rich Cederberg, Valerie Martinez, Cathy Anderson, Charlotte Knutson, Dave Hill, Baro Shalizi, Karie Taylor, Todd Clarke, Joe Farr, and Daniel Armstrong as new Core Course Instructors.

b. Core Course Update

Todd Clark reviewed the history of the development of the Core Course beginning with a broker survey that revealed the need for revamping the content and delivery method of the Real Estate Commission Mandatory Course, through the development and piloting of course content and delivery method, through the offering of two Instructor Boot Camps that have resulted in 17 new Core Course instructors.

Mr. Clark indicated he will be resigning from his role as a trainer of Core Course instructors no later than June 1, 2017 because he believes the program is now on solid footing. He thanked the Commission for

the opportunity to reshape real estate broker education and the future of the industry.

c. Adoption of 2017 Open Meetings Resolution

Commissioner Johnson moved adoption of the Commission's 2017 Open Meetings Resolution. Commissioner Koether seconded the motion and it carried unanimously.

d. Report on Outcome of 2017 legislation of interest to the Commission

i. Senate Bill 125, Real Estate Auctioneer Licensing Exemption

The bill, which would have added auctioneers auctioning real estate to the list of individuals and entities exempt from the requirement to be licensed as real estate brokers, did not pass.

ii. House Bill 362, Home Inspector Licensing Act

The bill, which would have established a Home Inspector Licensing Board administratively attached to the Regulation and Licensing Department, did not pass.

iii. Senate Bill 387, Real Estate Broker Licensure Requirements

The bill, which would increase from two to four the number of years an associate broker would have to be active to become a qualifying broker supervising other brokers, passed with an effective date of January 1, 2018. The bill is awaiting action from the Governor.

e. Final Action on Proposed Amendments to Real Estate Commission Rules

Testimony from brokers present, as well as written comments submitted in advance of the meeting, are in a separate transcript available for inspection at the Commission offices.

i. Part 1, General Provisions

After discussion, Commissioner Johnson moved approval of the change to the definition of Broker Duties at Part 16.61.1.7 K to read, “Certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligations to other brokers as set forth in Part 16.61.19.8”. Commissioner Stroud seconded the motion and it carried unanimously.

ii. Part 16.61.3.9

After discussion, Commissioner Stroud moved approval of the change to the title of Part 16.61.3.9 from “Examination and Licensing Requirements” to “Associate Broker Examination and Licensing Requirements.” Commissioner Johnson seconded the motion and it carried unanimously.

iii. Part 16.61.3.10 Qualifying Broker Licensing Requirements

After discussion, Commissioner Stroud moved approval of the following changes to the new part:

- A. To be eligible to apply for a New Mexico qualifying broker’s license, an applicant must furnish the commission satisfactory evidence of completing the following:
 - 1. Passage of the broker’s examination.
 - 2. At least four years active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.
 - 3. In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.
 - 4. Qualifying brokers who have qualified for qualifying broker status under the exception provided in paragraph 3, must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.

5. If licensed in another state, not less than four years' experience as the equivalent of an associate broker during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant's qualifying broker(s) or the state's applicable equivalent to a qualifying broker.
6. Documented qualifying transactional experience totaling 100 points, with at least 20 points earned during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant's qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:
 - a. Each sale or lease transaction is deemed to have two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.
 - b. In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.
 - c. Real estate and property management transactions; total points available per transaction side;
 - (1) Residential sales transactions, five points
 - (2) Residential lot sale transactions, three points
 - (3) Residential lease transactions, four points
 - (4) Commercial improved property sales transactions, eight points
 - (5) Commercial unimproved lot sale transactions, six points
 - (6) Commercial lease transactions, six points
7. Property management points are awarded for each location for which a broker has direct responsibility. Direct responsibility means acting as an agent of the

owner and not just collecting rent. A maximum of 25 points may be used from the residential property management category with the rest of the broker's points resulting from other transaction activity (reconsider?)

Property management points are accumulated as follows:

- a. Residential property management, each unit, one-half point per month.
- b. Commercial property management, each address, one point per month.

8. Farm and Ranch/Vacant Land- Needs further study

9. The Commission shall provide for a hardship waiver of points requirements in the case of farm and ranch/vacant land sales and areas where low market activity makes accumulation of the required points difficult or impossible.

iv. Part 16.61.3.11, New Qualifying Broker Applicant Education Requirements

After discussion, Commissioner Stroud moved approval of the changes to Part 16.61.3.11 to include changing the name of the part from “Qualifying Broker Education Requirements” to “Qualifying Broker Education Requirements for Application” and the following. Commissioner Johnson seconded the motion and it carried unanimously.

- A. Completion of the brokerage office administration course, a four day course with an in-course instructor created exam administered by the instructor at the end of the course.
- B. Completion of the eight-hour Understanding and Using RANM Forms course, or another Commission-approved eight (8) hour contract course.
- C. Completion of a minimum of eight hours of elective courses in the professional track of the applicant; defined as residential transactions, commercial transactions, property management transactions, ranch and/or vacant land transactions.
- D. Attendance at one New Mexico real estate commission meeting, public hearing, or disciplinary hearing.

v. Part 16.61.3.12, Qualifying Broker Application Requirements

After discussion, Commissioner Stroud moved approval of the changes to Part 61.61.3.12 as follows. Commissioner Johnson seconded the motion and it carried unanimously.

A. A notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker, if any. Supervision shall be defined in the affidavit as follows:

(1) supervision of all real estate related activities performed on behalf of others; including supervision of associate brokers, qualifying brokers, and unlicensed staff affiliated with the Qualifying Broker, if any, including, but not restricted to:

(2) maintenance of full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

(3) provision or promotion of appropriate training of all brokers and staff affiliated with the Qualifying Broker, if any, to ensure compliance with the real estate license law and commission rules,

(4) supervision of advertising of real estate or real estate services conducted on behalf of others by anyone associated with the Qualifying Broker, including website and creative agencies; and

(5) execution and maintenance of current written employment or independent contractor agreements with all persons affiliated with the Qualifying Broker, including brokers and brokerage owners whether or not the brokerage owners are licensed real estate brokers.

(6) supervision of trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

C. A supervisory plan which will outline the qualifying broker's schedule of training and education provided or or promoted and policies for supervision of brokers. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

D. Applicants with current licenses who can document that they were New Mexico qualifying brokers on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

E. Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the broker's examination prior to being issued a qualifying broker's license.

F. An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

G. Military service members

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

vi. Part 16.61.3.13, Qualifying Broker License Renewal Requirements

After discussion, Commissioner Johnson moved approval of the changes to Part 16.61.3.13, as follows. Commissioner Stroud seconded the motion and it carried unanimously.

A qualifying broker applying for renewal of their license shall furnish the commission satisfactory evidence of successful completion of:

A. The qualifying broker refresher course.

B. A minimum of eight hours of courses from the qualifying broker's professional track, including:

(1) Commission approved courses in residential transactions, or

(2) Commission approved courses in commercial transactions, including courses offered by CARNM and professional designation courses offered by CCIM, SIOR, and CBI, or

(3) Commission approved courses in property management, including courses offered by IREM, or

(4) Commission approved courses in vacant land and/or ranch sales

C. Attendance at one commission meeting, rule hearing, or disciplinary hearing.

D. An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker, if any. Supervision shall be defined in the affidavit as follows:

(1) supervision of all real estate related activities performed on behalf of others; including supervision of associate brokers, qualifying brokers, and unlicensed staff affiliated with the Qualifying Broker, including, but not restricted to:

(2) maintenance of full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

(3) provision or promotion of appropriate training of all brokers and staff affiliated with the Qualifying Broker to ensure compliance with the real estate license law and commission rules,

(4) supervision of advertising of real estate or real estate services conducted on behalf of others by anyone associated with the Qualifying Broker, including website and creative agencies; and

(5) execution and maintenance of current written employment or independent contractor agreements with all persons affiliated with the Qualifying Broker, if any, including brokers and brokerage owners whether or not the brokerage owners are licensed real estate brokers.

(6) supervision of trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

E. A qualifying broker applying for license renewal who will be supervised by another qualifying broker will be not be required to submit this affidavit.

F. An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated

brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan.

vii. Part 16.61.15.8, Education Advisory Committee

After discussion, Commissioner Stroud moved approval of the changes to Part 16.61.15.8 as follows. Commissioner Koether seconded the motion and it carried unanimously.

B.The committee shall consist of up to nine voting members and not fewer than three non-voting instructor/advisory members. The committee chair and vice chair shall be elected by the committee from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms and half to three-year terms. Thereafter, all members shall be appointed to three-year terms.

C.Members shall serve a maximum of two consecutive terms, but may reapply for membership one year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

viii. Part 16.61.19.8 Broker Duties, Disclosure

After discussion, Commissioner Johnson moved approval of the changes to Part 16.61.19.8 as follows. Commissioner Koether seconded the motion and it carried unanimously.

16.61.19.8 BROKER DUTIES; DISCLOSURE: Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth in this Part 16.61.19.8. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth in this Part 16.61.19.8 prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

- A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:
1. honesty and reasonable care and ethical and professional conduct;
 2. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;
 3. performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
 4. written disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:
 - (a) any written brokerage relationship the broker has with any other parties to the transaction or;
 - (b) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
 5. written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.
- B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers owe the following Broker Duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; Brokers working as Property Managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:
1. assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

- (a) timely presentation of and response to all offers or counter-offers;
and
- (b) active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;

2. acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.
4. prompt accounting for all money or property received by the broker;
5. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. written disclosure of brokerage relationship options available in New Mexico;
7. unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:
 - (a) that the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
 - (b) that the seller/owner will agree to financing terms other than those offered;
 - (c) the seller/owner's motivations for selling/leasing; or

- (d) any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
8. unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:
- (a) that the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
 - (b) the buyer/tenant's motivation for buying/leasing; or
 - (c) any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.
9. In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:

1. prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;
2. if a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

NEW SECTION – BROKER OBLIGATIONS TO OTHER BROKERS

Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

- A. honesty, reasonable care, and ethical and professional conduct;
- B. timely presentation of offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

- C. active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
- D. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;
- E. written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;
- F. written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;
- G. non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

f. Commission votes on Education Advisory Committee (EAC) minutes and recommendations from meetings of February 15, 2017 and March 15, 2017.

After discussion, Commissioner Johnson moved approval of the recommendations for course, instructor, and sponsor approval contained in the minutes of the EAC meetings of February 15, 2017 and March 15, 2017. Commissioner Koether seconded the motion and it carried unanimously.

Commissioner Stroud directed that future Commission meeting agendas refrain from using the terminology “Commission votes on EAC minutes” and be substituted with “Commission votes on EAC recommendations”, as the Commission cannot vote on minutes of meetings they did not attend.

g. Appointment of non-voting EAC member to fill vacancy and reopening of process for filling vacant voting position.

After reviewing and discussing the resumes of Bob Arguelles and Richard Gallegos, both of whom submitted letters of interest in serving on the EAC, Commissioner Johnson moved the appointment of Mr. Arguelles to fill the vacant non-voting position.

Commissioner Koether seconded the motion and the motion passed by a 3-1 vote with Commissioners Foltz, Johnson, and Koether voting in favor of the motion and Commissioner Stroud voting in opposition.

Commission staff was directed to explore the possibilities of contracting with Mr. Gallegos to develop an online version of the Core Course in view of his expertise in online education.

Commission staff was directed to advertise the vacant voting position on the EAC through the Commission web site, email, and other avenues and bring names for the Commission's consideration to the May 15, 2017 meeting.

h. Chief Investigator's Report

Chief Investigator Lyn Carter reported the Commission has received 18 new complaints so far during 2017, with eight received in January, seven in February, and three in March. He also reported that five continued cases need to be rescheduled.

i. Election of 2017 Commission Officers

Commissioner Stroud nominated Commissioner Koether to serve as Commission President for 2017. Commissioner Johnson seconded the motion and it carried unanimously.

Commissioner Koether nominated Commissioner Johnson to serve as Commission Vice President for 2017. Commissioner Stroud seconded the motion and it carried unanimously.

Commissioner Koether nominated Commissioner Stroud to serve as Commission Secretary for 2017. Commissioner Johnson seconded the motion and it carried unanimously.

9. 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 9, Executive Session, on today's agenda.

Commissioner Stroud seconded the motion. Mr. Ciddio called the roll. Commissioners Foltz, Koether, Johnson, and Stroud voted in favor of the motion. No Commissioners voted in opposition to the motion.

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

10. Action on Items Discussed in Executive Session

i. Reports of investigation

NMREC Case No. 15-11-04-111; NMREC Case No. 16-02-02-010; NMREC Case No. 16-02-05-013; NMREC Case No. 16-06-21-043; NMREC Case No. 16-06-24-045; NMREC Case No. 16-08-09-061

Commissioner Stroud moved that the Commission dismiss the above-referenced cases. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-04-02-023

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer the respondent in the above-referenced case a letter of reprimand, a \$3,500 fine, and

a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer, 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 a Notice of Contemplated Action (NCA). Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-04-06-027; NMREC Case No. 16-06-07-039; NMREC Case No. 16-06-27-046

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer the respondent in the above-referenced cases voluntary surrender of his broker's license with the condition that if the broker wishes to reinstate his license in the future, he would have to pay a \$1,000 fine and complete all of the pre-licensing education courses and pass the broker's exam in order to reinstate his license. Commissioner Johnson seconded the motion and it carried unanimously.

NMREC Case No. 16-05-11-033

Commissioner Stroud moved that the Commission request that the Attorney General's Office issue an expedited NCA to Respondent A in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

Commissioner Stroud moved that the Commission dismiss the case against Respondent B in the above-referenced case. Commissioner Foltz seconded the motion and it carried unanimously.

NMREC Case No. 16-07-05-052

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer to both the Respondent qualifying broker and associate broker in the above-referenced case a \$1,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer, with the understanding that if the offer is not accepted within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Johnson seconded the motion and it carried unanimously.

NMREC Case No. 16-08-01-053

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer the respondent in the above-referenced case a \$2,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer, with the understanding that if the offer is not accepted within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Johnson seconded the motion and it carried unanimously.

NMREC Case No. 16-08-08-060

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer the Respondent in the above-referenced case a \$2,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer, with the understanding that if the offer is not accepted within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Johnson seconded the motion and it carried unanimously.

NMREC Case No. 16-09-01-063

Commissioner Stroud moved that the Commission authorize the Commission Executive Secretary to offer the Respondent in the above-referenced case a \$1,500 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer, with the understanding that if the offer is not accepted within 30 days the case will be referred to the Attorney General's Office for the issuance of an NCA. Commissioner Johnson seconded the motion and it carried unanimously.

ii. Request for reconsideration of pre-NCA offer, NMREC Case No. 16-03-06-021

After discussion of the Respondent's request that the Commission reconsider its pre-NCA offer in the above-referenced case, Commissioner Stroud moved that the Commission withdraw its pre-NCA offer and request that the Attorney General's Office issue an NCA to the Respondent. Commissioner Johnson seconded the motion and it carried unanimously.

iii. Order to show cause why Brian Ortiz, the respondent in NMREC Case No. 14-04-03031, has failed to comply with the terms of a license suspension order.

After discussion, Commissioner Stroud moved that the Commission conduct a show cause hearing on the above-referenced matter at the May 15, 2017 Commission meeting. Commissioner Foltz seconded the motion and it carried unanimously.

iv. Settlement Agreements

NMREC Case No. 14-12-05-133

Commissioner Stroud moved that the Commission reject the proposed settlement agreement in the above-referenced case and set the matter for hearing. Commissioner Johnson seconded the motion and it carried unanimously. The settlement would have provided that the respondent be fined \$250 and issued a letter of reprimand.

NMREC Case No. 14-08-05-074; NMREC 14-08-06-075; NMREC Case No. 14-09-01-077; NMREC Case No. 14-09-22-098; NMREC Case No. 14-12-09-137; NMREC Case No. 14-12-11-139; NMREC Case No. 15-01-07-007; NMREC Case No.15-02-18-026; and NMREC Case No. 15-10-01-093.

Commissioner Stroud moved that the Commission accept the settlement agreement in the above-referenced cases. Commissioner Johnson seconded the motion and it carried unanimously.

The agreement provides that Respondent Edwin S. Summons

- Broker's license be revoked for a period of one year, after which he may eligible to reapply for licensure;
- Be assessed a \$6,000 fine within 30 days, to be paid as follows: \$1,500 within 30 days of his receipt of the order signed by the Commission, three monthly installments of \$500, with the remaining \$3,000 to be paid only if and when he applies for license reinstatement. If the broker does not apply for reinstatement, he will not pay the remaining \$3,000;
- If and when he applies for reinstatement of his license, he shall complete two of the following courses for no credit; Business Ethics in Real Estate; the National

Association of Realtors (NAR) Code of Ethics; Policies and Procedures for Today's Qualifying Broker;

- A letter of reprimand.

v. Hearing Officer Report

NMREC Case No. 14-11-09-121

After discussion, Commissioner Stroud moved that the Commission adopt the Findings of Fact in the above-referenced case. Commissioner Johnson seconded the motion and it carried on a 3-1 vote with Commissioners Stroud, Johnson and Koether voting in favor and Commissioner Foltz, as hearing officer, abstaining.

After further discussion, Commissioner Stroud moved that the Respondents in the above-referenced case be issued a letter of reprimand. Commissioner Johnson seconded the motion and it carried with Commissioners Stroud, Johnson and Koether voting in favor of the motion and Commissioner Foltz, as hearing officer, abstaining.

vi. Case the administrative prosecutor has declined to prosecute

NMREC Case No. 14-09-30-106

The Commission reviewed a letter from Administrative Prosecutor Rebecca Branch stating that based on insufficient evidence she was declining to prosecute the above-referenced case.

vii. Default Orders

NMREC Case No. 14-04-04-032; NMREC Case No. 14-06-08-052; NMREC Case No. 14-10-07-113; NMREC Case No. 15-02-07-015

Commissioner Stroud moved that the brokers' licenses of the respondents in the above-referenced cases be revoked by default for their failure to request hearings within the timelines specified in the Uniform Licensing Act upon receipt of an NCA. Commissioner Johnson seconded the motion and it carried unanimously.

11.Adjourn

There being no further business, Commissioner Foltz moved that the meeting adjourn. Commissioner Johnson seconded the motion and it carried unanimously. The meeting adjourned at 4:58 p.m.

Greg Foltz, President

New Mexico Real Estate Commission