NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING MINUTES

JULY 19, 2016

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, July19, 2016 at 8:30 a.m. in Conference Room #B119, 121 South Fruit Street, Concord, New Hampshire 03301.

I. CALL TO ORDER - Meeting was called to order at 8:45 a.m. by Chairman Daniel Jones. Present: Commissioners Daniel Jones, John Cronin Esquire, William Barry, and Paul Lipnick. Also present: Peter Danles, Linda Capuchino, Beth Edes, and Kinsman Corthell.

II. READING AND APPROVAL OF THE MINUTES - On motion by Commissioner Cronin, seconded by Commissioner Lipnick, the Commission unanimously approved the non-public Minutes of the Commission meeting held on June 21, 2016. On motion by Commissioner Cronin, seconded by Commissioner Lipnick, the Commission approved the public Minutes of the Commission meeting held on June 21, 2016.

III. NEW BUSINESS

8:50 a.m. Show Cause Hearing – LOUIS FERULLO appeared before the Commission for a show cause hearing regarding his criminal history record submitted with his application for an original salesperson's license. After review and discussion, the Commission, on motion by Commissioner Cronin, seconded by Commissioner Lipnick decided to allow Mr. Ferullo to apply for his original salesperson's license, based on information presented at the hearing by Mr. Ferullo, along with a letter from his managing broker notifying the Commission that she is aware of Mr. Ferullo's previous criminal history and letters of recommendation submitted to the Commission. The Commission requested notification from his parole officer of any violations of his parole. Should the Commission receive notification of any violations of his parole, Mr. Ferullo will be required to appear before the Commission for a show cause hearing.

9:00 a.m. Joseph Catenese appeared before the Commission by telephone to request reinstatement of his lapsed broker's license pursuant to RSA 331-A:18, II. After review and discussion, the Commission, on motion by Commissioner Cronin, seconded by Commissioner Barry, decided to approve the reinstatement of Mr. Catenese's lapsed broker's license for good cause as required by RSA 331-a:18, II, contingent upon receipt of his renewal application, required fees and continuing education within 60 days of the date of this meeting.

RULEMAKING

The Real Estate Commission Executive Director presented the Commission with proposed changes to administrative Rea 703.01 and requested permission to enter the initial rule proposal into the formal administrative rulemaking process. After review and discussion, the Commission, on motion by Commissioner Barry, seconded by Commissioner Cronin, approved the following changes to Rea 703.01 for submission in to the rulemaking process. A public hearing will be scheduled when these proposals have reached the point in the rulemaking process when such a hearing is required.

Rea 703.01 Cooperati~~veng~~ ***Brokerage*** Agreements.

(a) A licensed New Hampshire broker may cooperate with a***n*** ~~non-New Hampshire~~***out-of-state*** broker ~~on~~ ***with respect to a specific commercial real estate transaction provided the out-of-state broker complies with the laws of this state and*** ~~properties located in this state, except as stated in 703.01(b), provided that~~ both brokers agree in writing to all of the terms expressed in a cooperati~~veng~~ ***brokerage*** agreement prior to the commencement of any brokerage activity.

~~(b) A New Hampshire broker shall not enter into a cooperating agreement with a non-New Hampshire broker to list, offer, attempt, or agree to list real estate in this state, pursuant to RSA 331-A:22-a.~~

(b) The licensed New Hampshire broker shall request a copy of the out-of-state broker's license or the license of the out-of-state salesperson working under the direct supervision of the out-of-state broker or other proof of licensure from the jurisdictions where the out-of-state broker or out-of-state salesperson maintains a license as a real estate broker or salesperson.

(c) To comply with (a), above, New Hampshire brokers shall obtain from the commission, a Cooperati~~ngve~~ ***Brokerage*** Agreement ~~with a Non-New Hampshire Broker~~ Form.

(d) The New Hampshire broker shall complete ~~the~~***a*** Cooperati~~veng~~ ***Brokerage*** Agreement Form, by supplying the following:

(1) Date the agreement was entered into by the parties;

(2) Date the agreement will expire***, provided however, a cooperating broker agreement shall not have a term that exceeds one year***;

(3) Provision for any extension or early termination of the agreement;

(4)~~(3)~~ Name, telephone numbers and address of the ***owner(s) of the commercial properties or, when the agreement involves buyer or tenant representation, the name, telephone number and address of the*** buyer(s) or tenant client(s);

(5)~~(4)~~ Location or legal description of the ***commercial*** properties, or both, when applicable;

(6)~~(5)~~ A statement which requires the parties to agree to the type of ~~business~~ ***relationship*** the agreement ***will*** covers ***with the consumer***;

(7)~~(6)~~ A statement that both the New Hampshire broker and the ~~non-New Hampshire~~ ***out-of -state*** broker agree that all negotiations, including the showing***, advertising, and listing*** of the property, shall be handled under the direct supervision of the New Hampshire broker, with the New Hampshire broker recognizing her or his responsibility under RSA 331-A;

(8) A statement that the out-of-state broker agrees not to advertise the listing in any manner unless the New Hampshire broker is included in the advertising and that such advertising shall be with full knowledge of and under the direct supervision of the New Hampshire broker, giving the name and telephone number of the New Hampshire broker equal prominence with the out-of-state broker;

(9)~~(7)~~ A statement that by signing the cooperati~~veng~~ ***brokerage*** agreement, the ~~non-New Hampshire~~***out-of-state*** broker ***and any out-of-state salespersons working under the direct supervision of the out-of-state broker*** is:

a. Agreeing to abide by New Hampshire law and the rules of the commission; and

b. Is formally granting an irrevocable consent and power providing that legal actions can be commenced against said broker in the proper court of any county of this state in which a cause of action does arise or in which the plaintiff resides by service of process or pleading

authorized by the laws of this state on a member of the commission or its executive director, the consent or power stipulating that such service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident in this state;

(10)~~(8)~~ A statement requiring the New Hampshire broker to accept the responsibility for determining that the ~~non-New Hampshire~~***out-of-state*** broker ***and any out-of-state salespersons working under the direct supervision of the out-of-state broker*** is licensed as a broker ***or salesperson*** in another state and agreeing to notify the New Hampshire real estate commission immediately if the ~~non-New Hampshire~~***out-of-state*** broker ***or out-of-state salesperson*** violates any part of the cooperati***ve***~~eng~~ ***brokerage*** agreement;

(11) A statement that if the out-of-state broker or out-of-state salesperson fails to comply with any provision of RSA 331-A:22-a shall be considered in violation of RSA 331-A:34;

(12)~~(9)~~ The commissions or other compensation, stated as a dollar amount, percentage, or other specific consideration;

(13)~~(10)~~ A statement that if any earnest monies or deposits are received, accepted, or held in accordance with ***RSA 331-A:13 and*** Rea 702.01, the same shall be placed in the escrow account of the New Hampshire broker;

(14)~~(11)~~ The name, address, and witnessed signature of the New Hampshire broker; and

(15)~~(12)~~ The name, address, and witnessed signature of the ***out-of-state***~~non-New Hampshire~~ broker.

(e) The commissions or other compensations resulting from the purchase, ***sale,*** rent, ~~or~~ lease ***or management*** of the ***commercial*** property, and which are earned during the period the agreement is in force, shall be divided between the New Hampshire broker and the ***out-of-state***~~non-New Hampshire~~ broker on a negotiable basis;

(f) The parties shall execute 2 completed original cooperating agreements. The New Hampshire broker and the ***out-of-state***~~non-New Hampshire~~ broker shall each receive one of these originals.

IV. NEXT MEETING – The Commission unanimously approved the following date for the August meeting:

August 16, 2016 at 8:30 a.m.

V. NON-PUBLIC MEETING 9:35 AM

On motion by Commissioner Barry, seconded by Commissioner Lipnick, the Commission, by roll call vote, voted unanimously to conduct a non-public session for the purpose of evaluating complaints against licensees, accredited individuals, institutions, or organizations, or persons charged with practicing unlawful brokerage activity, and noting that such a non-public session is authorized by RSA 91-A:3, II(c), RSA 91-A:5, IV, Lodge v. Knowlton, 11 N.H. 574 (1978), and the Commission's executive and deliberative privileges. Each member recorded his or her vote on the motion, which passed by the unanimous vote of all members present. On motion by Commissioner Cronin, seconded by Commissioner Barry, the Commission adjourned the non-public meeting at 10:30 a.m.

VI. PUBLIC MEETING RECONVENED

On motion by Commissioner Lipnick, seconded by Commissioner Barry, the Commission

by roll call vote reconvened the public meeting at 10:30 a.m.

VII. NON-PUBLIC MINUTES SEALED

On motion by Commissioner Lipnick, seconded by Commissioner Barry, the Commission, unanimously voted to seal the Minutes of the non-public meeting from public disclosure pursuant to RSA 91-A:3, III (c), on the grounds that public disclosure would likely affect adversely the reputation of licensees, accredited individuals, institutions, or organizations, or persons charged with practicing unlawful brokerage activity, RSA 91-A:5, IV, Lodge v. Knowlton, 11 N.H. 574 (1978), and the Commission's executive and deliberative privileges. Each member recorded his or her vote on the motion, which passed by unanimous vote of all members present.

VIII. ADJOURNMENT

On a motion by Commissioner Barry, seconded by Commissioner Lipnick, Chairman Daniel Jones adjourned the meeting at 10:37 a.m.

Respectfully submitted,

Paul A. Lipnick

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Clerk