

NEW HAMPSHIRE REAL ESTATE COMMISSION
PUBLIC MEETING MINUTES
April 18, 2023

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, April 18, 2023, at 8:30 a.m. The meeting was conducted at the Office of Professional Licensure and Certification, 7 Eagle Square, Concord, New Hampshire. Public could attend in person or via teleconference.

Present Commissioners: Steven Hyde, Esq., Matthew Cabana, Ralph Valentine, Susan Doyle, and Paul Lipnick.

Also present from OPLC office: Administrators Dawn Couture and Chris Senko; Board Counsel Attorney Rahkiya Medley; Division Director Bethany Cottrell and Executive Director Lindsey Courtney.

Present from the Department of Justice was Attorney Sheri Phillips.

I. Call To Order –

The meeting was called to order at 8:37 a.m. by Chairman Hyde.

II. Review Public Minutes

A. March 21, 2023 – Commissioner Doyle made a few suggestive corrections.

- Under New Business, item B; fifth line down change “discuss” to “discussion.”
- Under Questions & Comments, first bulletin; change “miss” to “missed.”

Chairman Hyde noted that the last few items of the public minutes looks to be the same language as the February 21, 2023 public minutes in regards to the number of votes on the second time the sealing of the minutes took place as well as adjournment of the meeting. Chairman Hyde indicated that he was not present during this time as he left the meeting early and if Commissioner Lipnick was not present either, as the minutes reflected, then the passing vote could not be 4-0. Chairman Hyde asked OPLC staff to recheck their notes and make the necessary corrections.

Commissioner Valentine made a few suggestive corrections.

- Under Public Appearances, item f on top of page 4; correct the reason as to why he was in opposition of this vote; “he opposed because he did not feel that the applicant had sufficient experience to practice as a broker.”
- Under Administrative Rules & Legislative Topics, item a; remove “HB331 was gone; therefore” because HB331 had nothing to do with this bill and replace it with “the bill was being amended so that...”
- Under Questions & Comments, second bulletin; remove “made a suggestion on” and replace it with “asked.”

- B. March 27, 2023 – Chairman Hyde noted the PDF version that was uploaded onto OnBoard was not in an OCR format. Having the documents in an OCR format makes it easier for text to be highlighted. Chairman Hyde would like to renewed his request, for the third time, that when documents are uploaded to OnBoard that they are in an OCR format. Administrator Senko stated that she will look into it by reaching out to OnBoard’s contact person.

III. Public Appearances –

- a. Mike Porter and Brendon White from Enforcement – Attorney Porter introduced Mr. Brendon White as the primary investigator for the Real Estate Commission. Attorney Porter stated that he will be working closely with investigator White for a little while to help him get familiar with the Commission’s laws and rules. Investigator White will also be attending the public meetings.

Attorney Porter also provided the Commission with a brief update regarding Daniel Twombly. Both Attorney Porter and Investigator White will be at Court on Thursday April 20, 2023.

- b. Karen M. Couillard, Associate Broker Equivalency application – Ms. Couillard was not present. Chairman Hyde asked if she had received a notice to appear for today’s meeting. Administrator Couture mentioned that she had not send out a notice. Attorney Phillips indicated that the current notices to appear are not sufficient notifications. Chairman Hyde made a motion to table this matter to the May meeting. Chairman Hyde wants a notice to appear letter emailed to him, to be reviewed and sent out by this Friday. The motion was seconded by Commissioner Doyle. The motion passed unanimously.

Chairman Hyde noticed that no equivalency packet was included with the application.

- c. Stephen Forcillo, Associate Broker Equivalency application – Chairman Hyde noticed that an equivalency packet was not included as well as no notice to appear. Chairman Hyde indicated that there is no action to take on.

Commissioner Doyle asked who is responsible for sending out these notices? Administrator Senko stated that responsibility is within Board Administration group. Administrator Senko said that she will need to check with the Administrator’s on the notices and see if they went out.

- d. Brent C. Clemens, Associate Broker Inactive Equivalency application – Chairman Hyde noticed that an equivalency packet was not included. Chairman Hyde has requested that all documents be included in the packets being uploaded; not just email threads. Chairman Hyde made a motion to table this matter to the May meeting and that the applicant be sent a notice to appear. Chairman Hyde wants a notice to appear letter email to him, to be reviewed and sent out by this Friday. The motion was seconded by Commissioner Doyle. The motion passed unanimously.

- e. Amanda Turner, Licensure Renewal – Chairman Hyde made a motion to remove this matter off the non-public agenda and onto the public agenda. The motion was seconded by Commissioner Valentine. The motion passed unanimously. Chairman Hyde noticed that there was no memo included with the documents and without a memo the Commission does not know when the license expired or lapsed; and there was no notice to appear. Chairman Hyde made a motion to table this matter to the May meeting and that the applicant be sent a notice to appear. Chairman Hyde wants a notice to appear letter email to him, to be reviewed and sent out by this Friday. The period of time will not be counted against her. The motion was seconded by Commissioner Doyle.

Chairman Hyde made an amendment to the motion, that the time of lapse be stopped on March 31st. Chairman Hyde asked if there are other documents the licensee should be submitting when requesting a reinstatement. Division Director Cottrell said they need to submit the renewal form with a letter of explanation. Chairman Hyde noted that there was no letter just an email request to reinstate her lapsed license.

Chairman Hyde made another amendment to the motion, he wants a notice to appear letter email to him, to be reviewed and sent out by this Friday and that the time of lapse be stopped on February 17, 2023. The motion was seconded by Commissioner Valentine. The motion passed unanimously.

- f. Discussion of process and development of standing order – Chairman stated that there has been some back and forth regarding courses and the new approval process. By the request of OPLC due to the statute, that the licensed commissioner's were assigned and reviewed courses. There were checklists created by previous OPLC staff or designated OPLC staff member; however, there is an issue with courses not being approved timely. Chairman Hyde acknowledged Executive Director Courtney has worked hard on reviewing these courses and expresses his thanks to her for taken the time in going over the courses and statutes. Chairman Hyde read the proposed standing order that he had prepared.

Chairman Hyde made a motion to approve the standing order regarding any courses received prior to today and retroactive to the date the course was assigned to a commissioner. The motion was seconded by Commissioner Valentine. The motion passed unanimously.

Commissioner Valentine and Commissioner Cabana mentioned that they did not receive all course documents OnBoard. Administrator Senko stated that the courses were uploaded onto OnBoard, in the Resources folder, under each Commission Members folder on March 27th. Chairman Hyde indicated that Commissioner Cabana did not have access to the public agenda or documents OnBoard prior to this morning. Chairman Hyde noted that this was not an issue prior to OnBoard.

Commissioner Doyle indicated that the Commissioners did not receive a notification from OnBoard that documents had been uploaded.

Commissioner Valentine asked about courses that were previously approved but were now past the expiration date, can those be retroactive? Executive Director Courtney mentioned that if the course was submitted prior to having been expired, then it would be retroactive to the date of expiration.

Chairman Hyde made a motion for the 30 day window to start when she retakes the exam. The motion was seconded by Commissioner Valentine. The motion passed unanimously.

IV. QUESTIONS AND COMMENTS

- Jennifer Vaughn mentioned that none of the previous minutes for 2023 were on the Commission's website. Executive Director Courtney stated that will be corrected. Ms. Vaughn also mentioned that licensees were not being notified of any major changes within OPLC. Can notices be sent out to licensees? Division Director Cottrell mentioned she realizes that notices should be sent out more often. With OPLC's previous system for sending out notices, PHP, when notices were being sent out to a large number of licensees the whole system would shut down. OPLC is in the process of moving to a new system called "Constant Contact" to send out notices.

Ms. Vaughn also asked for clarification regarding license status. Ms. Vaughn mentioned an associate broker's license was still showing as active on the licensee lookup even though that associate broker was not affiliated with a principal broker. She asked if license status's could go back to showing as an inactive status when that person's license is sent back to the state? Executive Director Courtney stated that the state cannot remove someone's license status without proper notice of hearing. If someone has record of a licensee not being affiliated with a brokerage and knows that the licensee is still practicing should file a complaint. She also mentioned that we are in the process of transferring to a new system where we can hopefully provide more information.

- Jennifer Frost stated she understood that if a license is returned the license went inactive. She asked what's the difference between someone not being affiliated and still having an active license based on a licensee going inactive? It was explained that the government cannot just remove a licensee without them having the opportunity to be heard; it is the same as with changing the status to inactive, it cannot be done without the opportunity to be heard.
- John Doran mentioned that the Real Estate Commission has due process to remove a licensee who is not affiliated with a brokerage under consumer protection.
- Joe Haas asked where he could get a copy of the number of complaints. What is the time length of when a complaint is received to when it is investigated.

Division Director Cottrell indicated that it varies depending on the complexity of the complaint. Mr. Haas stated that he had filed a complaint a while ago but has not heard from anyone about it. Mr. Haas was told that he needed to speak with the enforcement department.

- Kristen Vaughn spoke of constitutional right. Right to the profession is fundamental not right to the licensee. She asked if a license status is active practicing but not affiliated, can they still practice? Chairman Hyde stated that they should know they do not have a right to practice. Ms. Vaughn suggested revising the definition of active license affiliated vs active not affiliated. Chairman Hyde said maybe something that can be looked at in rule making. Division Director Cottrell mentioned maybe be something that will be in the new system. Ms. Vaughn asked if there is a timeline of when it will happen so that it can be helpful to those verifying a licensee? Chairman Hyde said that communication between a broker and licensee needs to happen. Ms. Vaughn replied that brokers use the OPLC lookup to verify if a licensee is active or not. Can this person legally help or not. Executive Director replied that if the status is active, the license is active. Looking to understand the affiliation status is different then the license status.

V. NON-PUBLIC MEETING –

At 10:30 a.m. following an appropriate motion by Commissioner Lipnick and seconded by Commissioner Doyle to go in to a non-public session the Commission, by roll call, voted to conduct a non-public session for the purpose of the reading and approval of the non-public minutes of the March 21, 2023 meeting, and evaluating complaints against licensees, accredited individuals, institutions, or organization, 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*, 118 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 vote of all members present.

VIII. PUBLIC MEETING RECONVENED –

At 12:14 p.m. following an appropriate motion made by Commissioner Valentine and seconded by Chairman Hyde, the Commission unanimously voted by roll call to reconvene the public meeting. The motion passed unanimously.

IX. NON-PUBLIC MINUTES SEALED –

On an appropriate motion by Chairman Hyde and seconded by Commissioner Cabana, by roll call voted to seal the minutes of the non-public session 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*, 118 N.H. 574 (1978), and the Commission's executive and deliberative privileges. The motion passed with each member recording his or her vote on the motion.

- X. **ADJOURNMENT** – At 12:16 p.m. Commissioner Doyle made a motion to adjourn. The motion was seconded by Commissioner Cabana. The motion passed unanimously.