

NEW HAMPSHIRE REAL ESTATE COMMISSION
PUBLIC MEETING MINUTES
May 17, 2022

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, May 17, 2022, 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., Susan Doyle, Matthew Cabana and Paul Lipnick.

Not Present: Commissioner Ralph Valentine

Also present from OPLC office: Administrators Bobbie Mayo, Dawn Couture and Marla Pike.

Michael Haley from the Department of Justice was also present.

I. CALL TO ORDER –

The meeting was called to order at 8:32 a.m. by Chairman Hyde.

II. READING AND APPROVAL OF MINUTES –

Commissioner Cabana moved to approve the April 19, 2022, minutes as written, seconded by Commissioner Doyle. The motion passed 3-0. Commissioner Lipnick did not vote as he was not present for the April meeting.

III. NEW BUSINESS -

Appointments:

- a. David McCarthy – Mr. McCarthy appeared via Zoom to request the ability to act as the principal broker for three unrelated entities in Massachusetts. Mr. McCarthy states that all three entities are Keller Williams offices. Commissioner Hyde made note on the record that he had no affiliation with Mr. McCarthy or his offices. Chairman Hyde made a motion to approve Mr. McCarthy's request. The motion was seconded by Commissioner Lipnick. The motion passed 3-0, Commissioner Doyle was recused.
- b. Dan Twombly – Mr. Twombly appeared via Zoom to request the ability to act as the principal broker for a third unrelated entity. Green Rock Management is the name of the company, but Mr. Twombly will register his business as PMI Greenrock. Commissioner Cabana made a motion to approve Mr. Twombly's request. The motion was seconded by Commissioner Doyle. The motion passed unanimously.
- c. Melissa Hernandez – Melissa Hernandez was not present. Chairman Hyde made a motion to dismiss her request for equivalency due to non-appearance noting that

- the applicant could reapply. The motion was seconded by Commissioner Doyle. The motion passed unanimously.
- d. Colleen Duran – Attorney Duran appeared via Zoom to request equivalency. Attorney Duran was licensed by Attorney waiver in Massachusetts; however, she was licensed as a salesperson by examination and education prior to obtaining her broker license by attorney waiver. Chairman Hyde noted on record that Ms. Duran graduated from the MA School of Law where Chairman Hyde attended law school and is currently on the Board of Trustees, and an adjunct professor. Attorney Duran has her own law office and works as a broker, she plans to expand her practice into New Hampshire. Commissioner Lipnick made a motion to approve Attorney Duran’s request. The motion was seconded by Commissioner Doyle. The motion passed unanimously.
- e. Robert Barry – Attorney Barry appeared in person to request equivalency to sit for the Broker’s exam. Mr. Barry indicated that he “did not have the six transactions under his belt,” indicating that he had been a title attorney at Summit Title where he performed closings and prepared title abstracts and answered questions. Chairman Hyde verified with the applicant that he was licensed and practicing law in New Hampshire and Massachusetts. Chairman Hyde noted that Mr. Barry indicated that he did not include the six transactions as required by the equivalency application and Qualifications for Licensure statute (RSA 331-A:10, II, (g)). Chairman Hyde identified the two separate equivalency statutes related to real estate practice and the separate equivalency related to the six transactions. Chairman Hyde indicated that the testimony provided appeared to establish the active practice of real estate law within the past five years, so that the first equivalency prong appeared to be met and then turned his attention to the second equivalency regarding the six transaction and requested the applicant to provide testimony regarding his activities that would equate to equivalent experience to that of being involved in six separate transactions. Mr. Barry then asked the Commission what activities they thought title companies performed and remarked about “current use” and “trusts and estates” and “probate that affects the property.” Mr. Barry indicated that he had worked with attorney Bruce Ramsey in MA and prepared purchase and sale agreements there and worked with Mindlin Law an affiliate of Summit Title. Mr. Barry indicated that he worked with the NH purchase and sale agreement indicating that it “is essentially a form so I wouldn’t really look at that too much.” Commissioner Cabana asked about Mr. Barry’s actual preparation of purchase and sale agreements. Commissioner Doyle stated that the work that Attorney Barry was describing appeared to be a small portion of the work performed by a licensee in New Hampshire, as would be evidenced by the submission of six transactions. Mr. Barry indicated in response to Commissioner Doyle’s remarks, “but they’re nervous people, and they ask for help, all around, and not that I gave advice, but like I could hear what their questions were . . .” “salespeople are nervous, they’re young, they’re naïve . . .” and replied further to Commissioner Doyle’s retort that not all licensees

are nervous or young, by saying, “oh please come on, please don’t take me the wrong way . . . they’re young, they get their license, they’re gonna make it rich . . .” Commissioner Doyle redirected the appointment to the experience that the applicant has had with a real estate transaction prior to the involvement of title companies and attorneys. Mr. Barry indicated that it was a valid concern. Chairman Hyde revisited the standard related to the finding of equivalent experience related to the six transactions in lieu of a complete application containing the six transactions required by statute and expressed concern for the manner in which Mr. Barry was addressing the Commission. Chairman Hyde indicated that the application and the testimony failed to show experience equivalent to the experience that would be evidenced by the six transactions. Mr. Barry indicated that he came before the Commission “not necessarily” with the experience required but with other experience he believe “I know how to talk to people and figure out if there’s an issue, where an issue is, and how to address it,” among other title-related and legal-related experience. Mr. Barry indicated that he could come back with six transactions if that was, “some sort of like prerequisite that’s really necessary . . .” and added that he was somebody that “understands like what goes on in real estate, to some extents not all extents, but not enough to get anyone in trouble, cause I don’t want to do that. But, so be it.” Chairman Hyde asked if Mr. Barry had anything further to add and Mr. Barry indicated he did not. Chairman Hyde asked if there were any further questions from the Commission and hearing none asked for a motion. Hearing none, Chairman Hyde made a motion to deny attorney Barry’s request for equivalency for not proving to the Commission a complete application and failing to show that his experience is equivalent in accordance with RSA 331-A:10, II, (g). The motion was seconded by Commissioner Cabana. The motion passed unanimously.

- f. Cindy Silva – Ms. Silva appeared via Zoom to request reinstatement of her salesperson license. Ms. Silva informed the Commission that in 2020 due to giving birth and the pandemic she decided to leave the Real Estate business but has since decided to come back. Ms. Silva’s New Hampshire license expired June 12, 2021, and lapsed December 12, 2021. Ms. Silva denied conducting any transactions while her license was expired. Chairman Hyde explained that to reinstate someone’s license that they must show good cause as to why their license was not renewed on time and the request to reinstate must be made within a reasonable amount of time from the date of Lapse, pursuant to statute. Chairman Hyde verified that the applicant’s testimony was that she did not renew her NH license in 2021 as a result of getting out of the business of real estate in 2020. Ms. Silva indicated that was correct and that she was unsure if she’d be returning to the business of real estate. Chairman Hyde asked if there were any further questions from the Commission and Commissioner Doyle added that as licensees there is a process for stepping back from active practice and indicated that she was struggling with both the amount of time and cause presented by the applicant. Chairman Hyde hearing no other questions or comments asked for a motion. Hearing none, Chairman Hyde made a

motion to deny Ms. Silva's request to reinstate indicating that 3.5 months might be a reasonable amount of time depending on the cause for the delay, but that the reason given that there was a decision to leave the practice of real estate and therefore allow an expiration and lapse were not good cause. Commissioner Doyle seconded the motion. The motion passed unanimously.

- g. Dana Partis – Mr. Partis appeared before the Commission in person. He stated that he has had an inactive license for 18 years. He said he did not receive his renewal notice by postcard, and he did not recall receiving an email but he was expecting the postcard because he was not notified that the office of OPLC had changed the way renewal notices were sent. Administrator Mayo notified the Commission that the OPLC sent postcards and emails for over two years to prepare licensees for the transition. The statute states that licensees be notified it does not mandate that the licensee be notified by postal mail. Mr. Partis did not recall how long he was lapsed. He indicated that his mind was “not set on these extra things [he’s] doing on the side.” Mr. Partis asked if the Commission would waive any fees that might be imposed and also indicated that he was “turned off” by the Commission’s handling of the request of the prior applicant, indicating that he was “very upset” about it. Commissioner Doyle, though talked-over by Mr. Partis a number of times, interjected that there are statutes that licensees must follow and that “thousands of us are parents” who “continue on and follow the deadlines and such things . . .” related to renewal of licensure. Mr. Partis indicated that “doing the right thing” should take precedence over statutes and rules and laws. Commissioner Doyle retorted that the Commission cannot not follow the law. . Mr. Partis indicated in relation to the prior applicant that it was hard to be a mom. Mr. Partis informed the Commissioners that his ex-wife had also passed, and that it appeared that someone “almost have someone pass away to have something passed in something so small like this . . .” Mr. Partis reiterated that he was busy with his full-time employment, traveling in relation to work and that his mind was not set on missing the renewal. Mr. Partis again asked that all the fees be waived and that if not, that his “check” be refunded and that he was going to “as [his] wife to step down . . .” so that the Commission would lose two inactive agents rather than one. Mr. Partis indicated as well that his cousin had almost passed from COVID-19. Chairman Hyde asked Mr. Partis about his statement regarding his current employment creating a conflict of interest with that of being a licensee, and Mr. Partis resolved the matter indicating that he could be an inactive licensee and remain employed. Chairman Hyde asked Mr. Partis if he had anything else to add and Mr. Partis indicated that the Commission had “heard enough.” Chairman Hyde advised that this was Mr. Partis’ opportunity to provide the information he had relative to the request made for reinstatement and explained the two-pronged statute the Commission has to follow in making these decisions. Mr. Partis again referred to the fact that he had not received that “white card.” Chairman Hyde inquired as to whether Mr. Partis received the e-Mails and he replied that he wasn’t sure as he gets a lot of e-Mails. Chairman Hyde inquired as to whether Mr. Partis’ wife, also a licensee, received the

e-Mails and Mr. Partis indicated that his wife “is the opposite of [him], and she does things differently than [him],” indicating that she “nailed it” and did not need to get the white card in his opinion as she was organized differently than he is and is “really good about that.” Chairman Hyde verified through Administrator Mayo that the e-Mails had been sent to Mr. Partis’ e-Mail address on 05/12/2021, (a 60-day notice to renew), and on 06/25/2021 second notice to renew, and then again on July 12, 2021 the day after expiration a notice of expiration. Chairman Hyde verified with Administrator Mayo that the white cards and e-Mails were sent for a period of time prior to the notices being via e-Mail alone, and that e-mails alone had been sent since January of 2021. Mr. Partis inquired of Administrator Mayo as to whether the white cards sent during the period of time that white cards and e-mails were being sent duplicatively, as to whether the white cards indicated that they would at some point no longer be sent. Administrator Mayo indicated that OPLC was sent the cards and e-Mails simultaneously but was not required to continue to sent the white cards. Mr. Partis continued his inquiry of Administrator Mayo by stating, “. . . so you made a change and the only way I’d know about the change is through e-Mails I wasn’t paying attention to . . .” Chairman Hyde asked about Mr. Partis’ role in his cousin’s care while convalescing from COVID-19. Mr. Partis stated that he took no part in his cousin’s care in Florida, but it was “feelings” that impacted his ability to renew. Chairman Hyde reviewed the information relative to the request made indicating that it came 4 months after lapse and 10 months after expiration and reasoning was that the applicant was busy with work, his ex-wife passed, his cousin had COVID in Florida that he was not involved in provide care to, and that he was involved in the Cub Scouts. Commissioner Cabana made a motion to deny Mr. Partis’ request for reinstatement due to lack of good cause shown. Commissioner Doyle seconded the motion. The motion passed unanimously. Mr. Partis admonished the Commission and advised that the Commission needed to think about what it had done. He reiterated that his issue was a “minor thing.”

- h. Melissa Hernandez – Melissa Hernandez appeared via Zoom, she apologized for missing her appointment. She stated that she was currently located in Colorado and mistakenly thought that New Hampshire was two hours, not three hours ahead. Chairman Hyde made a motion to undismis Ms. Hernandez’s dismissed equivalency request due to the time zone error. The motion was seconded by Commissioner Doyle. The motion passed unanimously. Ms. Hernandez informed the Commissioners that she was licensed in numerous states and oversaw agents in the states where she held a license. She informed the Commission that she has completed approximately 200 transactions within the past five years. She provided proof that she had completed the 60-hour broker course with Ann Flanagan. Chairman Hyde made note on record that Ms. Hernandez had provided the Commission with a complete application which included the six required transaction. Chairman Hyde made a motion to approve Ms. Hernandez request for equivalency. The motion was seconded by Commissioner Cabana. The motion passed unanimously.

The Commission took a break from 9:40 a.m. – 9:50 a.m.

V. OTHER BUSINESS

Kara Leigh Baumann - Ms. Baumann wrote to the Commission to ask for reconsideration for her reinstatement denial. Commissioner Hyde was recused when Ms. Baumann appeared in April and Commissioner Lipnick was not present at the April meeting. Chairman Hyde stated that the matter would be continued until the June meeting so that Commissioner Valentine could be present because he was the acting chair when Ms. Baumann first appeared.

IV. HEARING

10:00 Courtney Hall – Attorney Nikolas Fry was the hearing’s office in the matter. The hearing started at 10:03 a.m. Ms. Hall was present in person and did not have representation. Ms. Hall presented two letters of recommendation and a letter that she wrote on her own behalf. The Commissioners asked Ms. Hall follow up questions and the hearing adjourned at 10:34 a.m.

V. OTHER BUSINESS, CONTINUED

- Standing Order – Application approvals for those with criminal histories – Chairman Hyde presented the standing order as was discussed at the March 2022 meeting. He asked the Commissioners for any comments. The standing order was signed and will be posted to the Commission website.
- Standing Order – Complaint Process – A brief discussion was held wherein Chairman Hyde voiced his concern that principal brokers were not immediately informed upon the receipt of a complaint against a licensee. Administrator Mayo stated that at a previous meeting this issue was discussed with the Commission’s attorney, and it was decided that a principal broker could be contacted in the process of the investigation but should only be notified in the case of a disciplinary hearing or after a settlement was reached. Attorney Hayley stated that he will investigate this matter and report back to the Commission. The signing of the standing order was tabled until the matter can be investigated further.
- HB1354 – Instructor Ann Flanagan provided suggestions for requirements for the rules regarding licensure recognition. The Commission opted to table discussions until the June meeting to have a full Commission present.
- Initial Proposal Rea 208 – Administrator Mayo stated that all the Boards/Commissions were getting this section added to the rules to clarify the ability to waive rules. Chairman Hyde stated that he had some concerns with the

language presented but the Commission would discuss this with the rulemaking for licensure recognition.

- Final Approval for Rulemaking - The Commission entertained and Chairman Hyde read into the record an e-Mail received from NHAR CEO Bob Quinn, requesting that the ongoing rulemaking process be halted so as to permit the legislature to address further whether the issue of fee setting would be further studied by the legislature. OPLC Executive Director Lindsey Courtney appeared before the Commission to discuss the matter and presented a historical perspective of the fee setting issue and discussed the present state of authority to set fees pursuant to the various applicable New Hampshire statutes. Executive Director Courtney informed the Commission that fee setting authority had been transferred to the OPLC, however that as a result of OPLC not having yet made rules regarding fee setting, it fell upon the various Boards and Commission served by OPLC to continue to set their own fees until the OPLC rulemaking relative to fee setting was completed. Commissioner Hyde made note that the fee setting authority transferred to OPLC by a change in RSA 310-A, specifically RSA 310-A:1-e, and highlighted the distinction between that statute and the section cited by the NHAR e-Mail. Chairman Hyde indicated that the latest amendment to RSA 310-A:1-e had occurred in 2021, and while he was not certain as to the exact language of the amendment, it appears to superseded the provisions of RSA 331-A:7, last amended in 2015. Chairman Hyde also inquired as to the present state of the revenue generated by REC fees in relation to the amount and costs of services received by the REC from OPLC, and Administrator Mayo and Executive Director Courtney advised that at present, the REC fees, which include collection of the testing fee, cover about 98% of the services provided to it by OPLC staff. Further discussion was had related to maintaining the REC fees as they presently are rather than adopting the new fees suggested by OPLC, and the issue of loss of REC revenue as a result of the ongoing process of shifting the examination fee collection process to the testing provider. That discussion revealed that after the transfer of testing fee collection to the test provider, if the Commission maintains its present fee structure, its revenue would cover approximately 65% of the cost associated with the services provided to it by OPLC. The Commission examined the foregoing in a discussion and the Commissioners agreed that the appropriate course of action would be to proceed with the rules change, including the change to fees proposed by OPLC to as to generate revenue in a manner that would most closely result in the revenue generated by REC fees covering the costs of services provided to it by OPLC.
 - Chairman Hyde made a motion to approve Rea 300 various as amended. Commissioner Doyle seconded the motion. The motion passed unanimously.

- Chairman Hyde made a motion to approve Rea 400 various as amended. The motion was seconded by Commissioner Doyle. The motion passed unanimously.
- Commissioner Cabana made a motion to approve the forms as amended. The motion was seconded by Commissioner Doyle. The motion passed unanimously.
- Questions and Comments –
 - Instructor Kathy Roosa addressed the Commission and stated her concerns that Rea 302.01 (d)(1) now mandates that an instructor hold an active license for three years prior to receiving accreditation as a pre-licensing instructor. She stated that she felt that removing the “or equivalent” language would unfairly exclude some of the current accredited instructors.

VI. NON-PUBLIC MEETING –

At 1:05 p.m. following an appropriate motion by Chairman Hyde 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 April 19, 2022 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.

VII. PUBLIC MEETING RECONVENED –

At 3:18 p.m. an appropriate motion was made by Chairman Hyde and seconded by Commissioner Doyle, and the Commission unanimously voted by roll call, to reconvene the public meeting.

VIII. NON-PUBLIC MINUTES SEALED –

On an appropriate motion by Commissioner Cabana and seconded by Commissioner Doyle, 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.

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IX. **NEXT MEETING** – June 21, 2022, at 8:30 a.m.

X. **ADJOURNMENT**

At 3:19 p.m. an appropriate motion was made by Commissioner Lipnick, and seconded by Commissioner Cabana, to adjourn the meeting. The motion was unanimously approved.