

**REAL ESTATE BOARD
MINUTES
APRIL 30, 2009**

PRESENT: Stephen Beers, Dennis Pierce, Peter Sveum, Robert Dueholm, Kenneth Lee, and Ryan Schroeder

EXCUSED: Lisabeth Weirich

STAFF PRESENT: Yolanda McGowan, Bureau Director; Peggy Wichmann, Legal Counsel; Kimberly Wood, Bureau Assistant; and other DRL staff

GUESTS: Kevin King, Wisconsin Realtors Association (WRA); Anne Blood, MATC - Madison

CALL TO ORDER

Peter Sveum, Chair, called the meeting to order at 10:04 a.m. A quorum of six (6) members was present.

ADOPTION OF AGENDA

MOTION: Stephen Beers moved, seconded by Ryan Schroeder, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES (FEBRUARY 19, 2009)

MOTION: Robert Dueholm moved, seconded by Stephen Beers, to approve the minutes of February 19, 2009 as written. Motion carried unanimously.

**ADMINISTRATIVE REPORT
YOLANDA MCGOWAN, BUREAU DIRECTOR**

Introduction of Hector Colon, Executive Assistant

Hector Colon, DRL Executive Assistant, came before the Board to introduce himself. Hector Colon informed the Board of efforts being taken by the Department to conduct outreach as it relates to the Real Estate profession.

Department Updates

Yolanda McGowan advised the Board of a number of organizational changes in the Department including the merger of the Office of Legal Counsel with the Division of Board Services and the purposes of this reorganization. Also mentioned was the implementation of a wireless internet connection policy. The Board was then informed of the following staff changes:

- Nicole Goodman has transferred from the Division of Board Services to the Office of Education and Examination.
- Gail Sumi has been appointed as the Division Administrator of Board Services and appeared before the Board to introduce herself.

MOTION TO DESIGNATE HEARINGS AND APPEALS ATTORNEY AS ALJ

Yolanda McGowan informed the Board that the Department has succeeded in its efforts to move the ALJ function to the Division of Hearings and Appeals. The move of this function will allow more time for legal counsel to handle other assignments and will help to eliminate concerns about the possibility of conflicts of interest.

MOTION: Robert Dueholm moved, seconded by Stephen Beers, to designate an attorney who is employed by the Division of Hearings and Appeals, Wisconsin Department of Administration, to serve as an Administrative Law Judge to preside over Class 1 license denial hearings and Class 2 disciplinary proceedings, pursuant to Wis. Admin. Code § RL 1.08 and § RL 2.10. This designation is in addition to the designation already provided for in Wis. Admin. Code § RL 1.08 and § RL 2.10. Motion carried unanimously.

Summary Reports on Pending Court Cases, Disciplinary Cases and Administrative Rules and Press Releases

Noted.

PRESENTATION OF PROPOSED STIPULATIONS BY THE DIVISION OF ENFORCEMENT OR ANY SUBMITTED AFTER PRINTING OF THE AGENDA

Mark Herman came before the Board to answer questions regarding the Proposed Stipulation for Sally A. Waltz 07 REB 138. There were no presentations given on the remaining Proposed Stipulations, listed below.

1. Frederick J. Schilling 05 REB 139
2. Lisa M. Carlsen 06 REB 142
3. Pamela M. Beck and Schyrita L. Wagner, and Home Team Realty, LLC 06 REB 156

4. Tina M. Wendt 06 REB 193
5. Michael P. Clover 06 REB 250
6. Jeffrey M. Mau, JoAnn B. Mau, John R. Mau, Mau Realty Incorporated D/B/A Mau Builders 06 REB 273
7. Gideon Fomunyoh and Nationwide Business Brokers LLC 07 REB 167

LEGISLATIVE/ADMINISTRATIVE RULES

Review and Discussion of Rule Draft RL 24 Relating to Conduct and Ethical Practices for Real Estate Licensees

Peggy Wichmann provided a report to the Board regarding a meeting she had with Kevin King and Debbie Conrad, Wisconsin Realtors Association (WRA) regarding the RL 24 rule draft. The Board discussed the status of this draft. During Board discussion concerns relating to the varying interpretation of RL 24.05 were identified. It was requested that Yolanda McGowan include a copy of the scope statement pertaining to this proposed rule change at the Board's next meeting. That request was fulfilled prior to the conclusion of this meeting.

Update on SB-9, Legislation Reversing the Supreme Court Decision in *Below v. Norton* Related to Misrepresentation by Sellers in Home Sales

Peggy Wichmann updated the Board regarding the status of SB-9 which has been approved and is now 2009 Wisconsin Act 4.

EXAMINATION, EDUCATION AND EXPERIENCE ISSUES

Update on Board Approved Changes to Licensure Educational and Experience Requirements

Peter Sveum updated the Board regarding changes to educational and experience requirements. The Board discussed the creation of a Broker Experience Subcommittee to better define documentable experience.

Discussion Regarding Continuing Education Test Out Examination

Susan Bird, Exam Specialist, and Nicole Goodman, Continuing Education Processor, appeared before the Board to discuss whether to continue offering the continuing education test-out examination and if so, to discuss the potential of withdrawing from the contracted test vendor, thus allowing Department facilitation of this examination. Board discussion of the need to conduct the test-out examination and what steps would be required to discontinue this exam ensued.

MOTION: Robert Dueholm moved, seconded by Stephen Beers, to request the Department to have legislation drafted to repeal the continuing education test-out option. Motion carried unanimously.

Discussion Relating to 9 hour Broker Course

Susan Bird gave the Board background on the question which spurred this item and then informed the Board that Office of Education and Examination staff have resolved this issue by conducting a review of Real Estate Board meeting minutes from February 2007 to present.

PRACTICE ISSUES

Update on Reciprocal Agreements

Peter Sveum provided an update regarding the Board's existing and proposed reciprocal agreements. The Board discussed the factors to be considered when considering a request for reciprocity. The Board did not identify substantial reason to enter into reciprocal agreements with states that are not in the general vicinity of Wisconsin and took the following action:

MOTION: Stephen Beers moved, seconded by Ryan Schroeder, to send letters to Oklahoma and New York, respectfully declining their requests to enter into reciprocal agreement with those states. Motion carried unanimously.

Letter from New York State Department of State, Division of Licensing Services, Relating to Reciprocal Agreement

This item was addressed during the discussion on "Update on Reciprocal Agreements".

Licensee Use of Addenda Contrary to RL 16.06(4) (a)

Peter Sveum informed the Board that no discussion was required on this item at this time.

DRL Position on Electronic Retention of Records

Yolanda McGowan informed the Board that Secretary Jackson is ill and will not be attending the meeting and asked that the agenda item relating to retention of records be tabled until the next meeting. The Board briefly discussed the topic of electronic record retention with comments provided by Board Chair, Peter Sveum and Kevin King, WRA, but refrained from in-depth conversation until the Secretary had the opportunity to join the Board. Yolanda McGowan reiterated her prior suggestion that the WRA explore the concerns previously outlined by the Division of Enforcement and bring suggestions on how to address them to the next meeting. This topic will be handled at the June meeting.

MISCELLANEOUS CORRESPONDENCE/INFORMATION

Report Relating to Number of Licensed Real Estate Salespersons and Real Estate Brokers

The Board reviewed a report containing statistical data regarding the number of licensed Real Estate Salespersons and Brokers.

Real Estate Forms Update

The Board was updated on the progress of the Real Estate Contractual Forms Committee.

PRACTICE ISSUES

None.

CONVENE TO CLOSED SESSION

MOTION: Ryan Schroeder moved, seconded by Dennis Pierce, to convene to Closed Session to deliberate on cases involving hearings (s. 19.85 (11) (a), Stats.); to consider licensure or discipline (s. 19.85(1) (b), Stats. to consider individual histories or disciplinary data (s. 19.85(1) (f), Stats.); and to confer with legal counsel (s. 19.85(1) (g), Stats.). Roll Call Vote: Dennis Pierce-yes; Stephen Beers-yes; Peter Sveum-yes; Robert Dueholm-yes; Kenneth Lee-yes; and Ryan Schroeder-yes. Motion carried unanimously.

Open session recessed at 12:21 p.m.

RECONVENE TO OPEN SESSION

MOTION: Kenneth Lee moved, seconded by Robert Dueholm, to reconvene into Open Session at 2:03 p.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MONITORING REPORTS OR ANY RECEIVED AFTER MAILING OF THE AGENDA

**ANDREW HAYHOE
REQUESTING REINSTATEMENT**

MOTION: Dennis Pierce moved, seconded by Ryan Schroeder, to deny Andrew Hayhoe's request for reinstatement of licensure, indicating that he cannot reapply until October 1, 2009, to require three (3) months of clean drug screens at a frequency of 56 times per year and to require receipt of a recent drug and alcohol assessment. **Reason for Denial:** Failure to comply with underling Order and lack of evidence to showing rehabilitation. Motion carried unanimously.

**ROBERT HARRIS
REQUESTING MODIFICATION**

MOTION: Ryan Schroeder moved, seconded by Dennis Pierce, to grant Robert Harris a reduction in drug screens to thirteen (13) per year with the inclusion of one (1) hair strand test per year, effective as of July 9, 2009. Motion carried unanimously.

CASE CLOSINGS

MOTION: Robert Dueholm moved, seconded by Stephen Beers, to close the following cases as recommended by the Division of Enforcement. Motion carried unanimously.

1. **04 REB 102** – prosecutorial discretion (P3)
2. **06 REB 136** – no violation
3. **06 REB 137** – prosecutorial discretion (P1)
4. **06 REB 142** – insufficient evidence
5. **06 REB 198** – insufficient evidence
6. **06 REB 212** – no violation
7. **06 REB 220** – insufficient evidence
8. **06 REB 264** – insufficient evidence
9. **07 REB 023** – prosecutorial discretion (P1)
10. **07 REB 099** – prosecutorial discretion (P1)
11. **07 REB 132** – no violation
12. **08 REB 067** – insufficient evidence
13. **08 REB 091** – no violation
14. **08 REB 138** – insufficient evidence
15. **08 REB 200** – prosecutorial discretion (P2)

STIPULATIONS

FREDERICK J. SCHILLING - 05 REB 139; LISA M. CARLSEN - 06 REB 142; PAMELA M. BECK, SCHYRITA L. WAGNER, AND HOME TEAM REALTY, LLC - 06 REB 156; TINA M. WENDT - 06 REB 193; MICHAEL P. CLOVER - 06 REB 250; SALLY A. WALTZ - 07 REB 138; GIDEON FOMUNYOH AND NATIONWIDE BUSINESS BROKERS, LLC - 07 REB 167

MOTION: Kenneth Lee moved, seconded by Robert Dueholm, to adopt the Stipulation, Findings of Fact, Conclusion of Law and Order in the matter of **Frederick J. Schilling 05 REB 139; Lisa M. Carlsen 06 REB 142; Pamela M. Beck, Schyrita L. Wagner and Home Team Realty, LLC 06 REB 156; Tina M. Wendt 06 REB 193; Michael P. Clover 06 REB 250; Sally A. Waltz 07 REB 138; Gideon Fomunyoh and Nationwide Business Brokers, LLC 07 REB 167.** Motion carried unanimously.

**JEFFREY M. MAU, JOANN B. MAU, JOHN R. MAU, AND MAU REALTY INCORPORATED D/B/A MAU BUILDERS
06 REB 273**

MOTION: Ryan Schroeder moved, seconded by Robert Dueholm, not to accept the Stipulation, Findings of Fact, Conclusion of Law and Order in the matter of **Jeffrey M. Mau, JoAnn B. Mau, John R. Mau, and Mau Realty Incorporated D/B/A Mau Builders,** and to authorize Peter Sveum to review and approve an amended Final Decision and Order to include a reprimand. Motion carried unanimously.

DELIBERATION OF PROPOSED ADMINISTRATIVE WARNINGS OR ANY RECEIVED AFTER PRINTING OF THE AGENDA

MOTION: Stephen Beers moved, seconded by Dennis Pierce, to issue administrative warnings for case numbers: **06 REB 166, B.B.; 06 REB 166, S.K.; 08 REB 091; 08 REB 151; and 08 REB 181.** Motion carried unanimously.

DELIBERATION ON PROPOSED DECISIONS OR ANY RECEIVED AFTER MAILING OF THE AGENDA

None.

ORDER FIXING COSTS

**GREGORY A SLAYTON AND CAMYA L. GUST
LS0806191REB**

MOTION: Kenneth Lee moved, seconded by Robert Dueholm, to approve the order affixing costs for **Gregory A. Slayton and Camya L. Gust LS0806191REB**. Motion carried unanimously.

**DELIBERATION ON DISCIPLINARY PROCEEDINGS OR ANY THAT MAY BE
RECEIVED AFTER MAILING OF AGENDA**

None.

**DELIBERATION ON PETITIONS FOR REHEARING OR ANY THAT MAY BE
RECEIVED AFTER THE MAILING OF AGENDA**

None.

**REQUESTS FOR REINSTATEMENT OF LICENSES OR ANY THAT MAY BE
RECEIVED AFTER MAILING OF AGENDA**

None.

EXAMINATION ISSUES

None.

CONSULTING WITH LEGAL COUNSEL

The Board consulted with legal counsel throughout the meeting as the need was identified.

SUCH OTHER ITEMS AS AUTHORIZED BY LAW

None.

DOE – Signatures for Proposed Stipulations, Orders, and Administrative Warnings

Signatures were collected for all required documents.

OTHER BOARD BUSINESS

Yolanda McGowan and Peggy Wichmann took this opportunity to request that the Board identify its priority issues. The Board had a succinct discussion of which issues they could identify as priorities.

ADJOURNMENT

MOTION: Dennis Pierce moved, seconded by Ryan Schroeder, to adjourn the meeting at 2:23 p.m. Motion carried unanimously.