

**IDAHO REAL ESTATE COMMISSION  
MEETING MINUTES  
September 16, 2009**

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at The Coeur d' Alene Resort, in Coeur d' Alene, Idaho on Wednesday, September 16, 2009 at 8:00 a.m.

**Commission Members Present:**

Kelly Fisher, Chair, Pocatello  
Pam Trees, Vice Chair, Lewiston  
Andy Enrico, Member, Boise  
Marvis Brice, Member, Burley

**Comprising a quorum of the Commission**

**Members Absent:**

**Staff Present:**

Jeanne Jackson-Heim, Executive Director  
Craig Boyack, Chief Investigator  
Tammy Anderson, Administrative Assistant  
Neal Bernklau, Licensing Supervisor  
MiChell Bird, Education Director

**Others Present:**

Kim Coster, Commission Legal Counsel  
See attached list

Meeting was called to order at 8:00 a.m. by Commission Chair, Kelly Fisher.

**Introductions:**

- a. Commissioners
- b. Staff, Commission and Counsel

**To Amend The Agenda:** A Motion was made by Marvis Brice removing Item XI Case of Staff vs. Cynthia C. Fassler "Consideration of Proposed Default Order" from agenda for the reason that the proceedings before the hearing officer have not concluded and the matter is not yet ripe for Commissioners to review. Motion carried.

**Approval of Meeting Minutes:** Motion was made by Pam Trees to approve the August 20, 2009 Commission meeting minutes. Motion carried.

**Staff Reports:**

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **August 2009 Financial Statements**
- **Salesperson Broker Licenses issued, August 2009**
- **FY09-FY10 License Base Analysis**
- **Examination Statistics**
- **Complaint Summary Report**
- **Enforcement Telephone Activity Log**
- **Online Transactions Report**

**Online Lottery Drawing:** Danny Beard, (SP19272), an inactive Salesperson, won the lottery drawing for September 2009.

**Idaho Association of REALTORS®:** John Eaton gave a legislative update and stated that the Legislative Committee will meet later in the week.

**Commission's Counsel Report:**

- **Administrative Rules Update:** Kim Coster reported that IREC has submitted four proposed rule changes and four separate legislative proposals, for Governor's approval. The Notice of Proposed Rulemaking will be published in the October 7<sup>th</sup> Administrative Bulletin. IREC will hold a public hearing on the proposed rules on October 29<sup>th</sup>, 2009, at the IREC office. All proposed law amendments have been reviewed by IAR®. Discussion followed.

**Legislation Update:** Kim went over the following bills:

- **Clean-up Bill:** 54-2011, is to eliminate the obsolete reference to "reciprocal" license; 54-2027(5)(b) pertains to the submission of course completion lists; 54-20936(2) is to delete obsolete reference to "subagents"; and 54-2036(e) reflects name change of the Association of Real Estate License Law Officials.
- **Prerequisites for Licensure:** This legislation will give the Commission the ability to review previously revoked licenses in the same manner as IREC currently reviews past criminal convictions. The legislation also clearly states that a court martial is equal to a felony charge and requires all applications submitted to the Commission with a prior felony be reviewed by Commissioners.

- **Requirements for Active Licensure:** This legislation provides the Commission the ability to inactivate a license for failure to timely respond to a Commission request for proof of required E&O insurance. It also clarifies that an active licensee who buys or sells on his own behalf must make the required disclosure concerning his licensed status by the time the purchase and sales agreement is presented, and it removes an extension-of-time provision as it applies to military persons giving them a less generous exemption than is provided by section 67-2601A, Idaho Code.
- **Revisions to Subdivided Lands Disposition Act:** Idaho's Subdivided Lands Disposition Act provides that subdivided lands, including timeshares, offered or sold in Idaho must first be registered with the Idaho Real Estate Commission. This legislation overhauls the Act by providing purchasers of subdivided lands a five-day right of rescission. It requires registrants to notify the Commission of any conviction, fraud or dishonest dealing that involved land sales. The legislation specifies bond requirements and provides for the deposit of escrow funds in lieu of a bond. It will increase the maximum aggregate fee amount but will provide a reduction to registrants who use the web-based document management system and will authorize the Commission to change the reduction. The legislation also revises the Commission's duties with regard to review of the application and grants administrative authority to enforce the provisions of the Act, to include issuance of subpoenas, cease and desist orders, to revoke registrations and assess cost and attorney fees. The legislation also specifies that an offer or sale that violates the Act is a violation of the Idaho Consumer Protection Act.

#### **Executive Director's Report:**

- **ARELLO Notice of General Assembly and Proposed Bylaw Amendment:** Jeanne Jackson-Heim presented the ARELLO notice of general assembly and proposed bylaw amendment to Commissioners. ARELLO recently approved Dubai as a member in June of 2009 and this bylaw change would add the United Arab Emirate of Ajman to ARELLO's District 6. Discussion followed. Motion was made by Marvis Brice to authorize Director Pam Trees to vote in support of bylaw amendment at the annual meeting in Miami. Motion carried.
- **Proposed Changes to Affidavit of Non-Involvement in Real Estate Activity Form:** Jeanne presented a draft of the Affidavit of Non-Involvement in Real Estate Activity to Commissioners. She explained that IREC had two different affidavits, one for late license renewal and one for license reactivation. Both forms are very similar and it was decided to combine them into one form. Neal Bernklau proposed a change for licensees who practiced during a period of inactive status of more than one year but less than two years; the

proposed fine would be for One Thousand Five Hundred Dollars (\$1500.00). A motion was made by Andy Enrico to approve proposed Affidavit as presented. Motion carried.

#### **Licensure:**

- Neal Bernklau gave an update on E&O renewals. He stated that the Commission's group E&O insurance is due to renew by September 30, 2009. RISC will not be back-dating policies and there is no grace period. He also stated that the E&O policy is a claims-based policy and lapses in coverage will result in loss of the prior retroactive date; claims arising from conduct occurring prior to the retroactive date will not be covered. If licensees want to renew online they can go to [www.risceo.com](http://www.risceo.com); there is a Five Dollar (\$5.00) fee for renewing online. The E&O policy premium is One Hundred Eighty Six Dollars (\$186.00). Designated Brokers may check their sales associates' E&O status through IREC's online services. Discussion followed.

#### **Education Council and Director's Report:**

- **CORE and Broker Prelicense Bid Update:** MiChell Bird reported that the Invitations to Bid for the CORE and Broker prelicense courses were published at the end of August by Division of Administration. Bids are due to close September 22 & 24, 2009 for these two courses. The Commission previously determined that offering/delivering these courses at free or reduced cost is beneficial to licensees and appropriately funded using civil penalty fine moneys.

#### **Enforcement:**

- **Complaint Process:** Craig Boyack gave a detailed overview of the process for reviewing and investigating a complaint that IREC receives.
- **Short sales:** Craig talked about the increased calls he receives concerning short sales and flipping properties and stated that this is a complicated problem that must be looked at on a case-by-case basis. Some practices may violate the License Law, while others may be compliant. Disclosure to the loan underwriters and property owners will usually be key. Discussion followed.

**Executive Session: Executive Session:** In accordance with Open Meetings Law, a motion was made by Andy Enrico to adjourn to executive session as provided by sections 67-2345(1)(d), and (f), Idaho Code, to review applications submitted for felony exemption and for special consideration to waive certain licensing requirements, and also to review probable cause memoranda submitted by the Executive Director pursuant to 54-2058(1), Idaho Code, which records are exempt from disclosure under Section 9-340C(9) of the Public Record Act, and to discuss with legal counsel the options and legal ramifications of the probable cause memos. Motion

carried. Members reviewed probable cause memoranda and applications for exemption and waivers. Roll was called; Pam Trees, Marvis Brice, Andy Enrico and Kelly Fisher voted in favor. Motion carried. Members reviewed records.

**Regular Session:** There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session and return to open meeting. Motion carried.

**Probable Cause Memo 08-74600, 08-74601, 08-74602:** A motion was made by Marvis Brice finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Marvis Brice further moves that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, Rule 452, IDAPA. Motion carried.

**Probable Cause Memo 08-41700, 08-41701:** A motion was made by Marvis Brice finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Marvis Brice further moves that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, Rule 452, IDAPA. Motion carried.

**Probable Cause Memo 08-41600:** A motion was made by Marvis Brice finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Marvis Brice further moves that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, Rule 452, IDAPA. Motion carried.

**Probable Cause Memo 0807-01000, 07-01001, 07-0090, 07-0091:** A motion was made by Marvis Brice finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Marvis Brice further moves that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, Rule 452, IDAPA. Motion carried.

**Special Consideration # 09-027:** Request for Exemption Review 54-2012(1(f). Following discussion and review of the documents submitted, motion was made by Pam Trees to grant the request for exemption. Motion carried.

**Special Consideration #09-028:** Special Consideration to waive/modify broker experience 54-2012(2)(a). Following discussion and review of the documents submitted, motion was made by Pam Trees to grant the request. Motion carried.

There being no further business, motion was made by Kelly Fisher to adjourn the meeting at 11:00 a.m. Motion carried.

Respectfully Submitted,



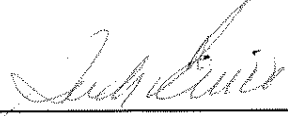
Jeanne Jackson-Heim  
Executive Director


JJH: tla

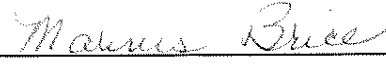
Attachments: Licenses Issued August 2009  
FY09-FY10 Analysis of Active & Inactive License Base  
Online License Reports  
Complaint Summary Report  
August 2009 Financial Reports  
Online Transactions Reports  
Final Orders

**Minutes of the Idaho Real Estate Commission meeting in Coeur D'Alene, Idaho, on September 16, 2009, are hereby approved.**

  
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Kelly Fisher, Chair

  
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Andy Enrico, Member

  
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Pam Trees, Vice Chair

  
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Marvis Brice, Member