

## DRAFT SUMMARY

### NYS REAL ESTATE BOARD MEETING

August 14, 2013

The meeting was held at the Department of State, Division of Licensing Services, 99 Washington Avenue, Albany; 123 William Street, NYC; and, 65 Court Street, Buffalo and included an open public hearing session on general real estate issues following the Board meeting.

#### **List of attendees:**

##### Board Members:

Daniel Burstein, representing Benjamin Lawsky, Superintendent, Dept. of Financial Services

David Dworkin

Sandra Erickson

Trisha Ocona Francis

Duncan MacKenzie

Diane Ramirez

Eileen Spinola

##### Excused:

Joseph Berko

Dale Burnett

David Leno

John O'Hara

David Rumsey

Gregory Weston

##### Department of State Staff:

Marcos Vigil, Deputy Secretary of State

Kathleen McCoy, Director of Licensing Services

Michael Elmendorf, Assistant Director

Aqil Qureshi

Whitney Clark

Linda Cleary

MaryJo Moore

Amy Penzabene

Marc Mastrobuono

Donna Zoller

Carol Fansler

##### Visitors:

Priscilla Toth, NYS Association of Realtors (NYSAR)

Anthony Gallo, NYSAR

Blaise DeBernardo Hover, NYSAR

## **CALL TO ORDER, INTRODUCTIONS and OFFICIAL ATTENDANCE**

The meeting was called to order at 10:40am. Deputy Secretary of State Marcos Vigil made opening remarks, roll call was taken and it was announced there was not a quorum.

## **SUBCOMMITTEE AND DEPARTMENT REPORTS**

M. Moore shared real estate license statistics. Currently there are 111,700 real estate licensees (a 3% increase from last year); 52,868 brokers and 58,834 salespeople. When comparing the first two quarters of this year to last year, it shows a 22% increase in original licenses issued and an 11% decrease in renewal licenses issued. Comparing July of this year and last year, it shows a 10% increase in salesperson licensees and an 11% decrease in broker licensees. E. Spinola asked if it was possible to inquire when a licensee renews their license information about whether or not they are currently practicing and what their primary area of practice is. A. Penzabene said she would reach out to board members for input when the system is scheduled to be updated.

M. Mastrobuono shared that the Department has increased the number of real estate continuing education (ce) audits, which verifies ce was taken within a specified term and included the required three hours of fair housing. The Department has also taken steps to ensure that the process includes a representative sample of all counties. He will share statistics at the next Board meeting.

M. Elmendorf updated board members on an issue discussed at a previous board meeting about a referral sent to the Department from the NYC Human Resources Administration (HRA), who provides a variety of public assistance to residents of NYC including assistance with finding and renting an apartment (public assistance clients are no longer responsible for any broker fees in excess of the amount issued by HRA, and HRA currently pays 50% of one month's rent as the broker commission). The referral involved four brokerage agencies from various counties in NYC who collected brokerage fees from HRA and also collected an additional fee from the client (after signing an agreement with HRA that they would not collect additional fees from the client). Mr. Elmendorf shared that the investigation resulted in surrender of their licenses, agreement to suspension of their licenses, and in some cases payment of a fine. S. Erickson added that the owner of a building is permitted to pay the other half of a broker commission, which the HRA finds acceptable, as long as the tenant is not being required to pay.

D. MacKenzie spoke for the trends committee, and shared that the committee had drafted legislation based on a letter received from the Attorney General's office regarding confusion in the marketplace about allowing broker rebates. The proposed legislation would clarify the statute allowing broker rebates when not involved with a license activity, and members are hopeful it will be introduced during the next legislative session.

The trends committee also discussed the NYS Association of Home Inspectors (NYSAHI) desire to require homebuyers to sign off on a document that describes the importance of a home inspection, and also clarifies the difference between a home inspection and an appraisal. The committee feels this is unnecessary additional paperwork in the home buying process, and that the

property condition disclosure statement states that the disclosure statement is not a substitute for an independent professional inspection.

The trends committee also discussed creating an “inactive” status for licensees, which would avoid a licensee having to start over when they return to work. W. Clark stated that this would require a legislative change and that approved changes could be made to the Department’s system when the real estate discipline is added as part of the Governor’s Statewide Initiative to update all license databases. She will consult with the Department’s Information Technology (IT) office to see what changes can be made to the current system in the meantime, and hopes to have more information for the next board meeting.

Another issue discussed by the trends committee was a trend by certain municipalities to create local laws or internal policies that appear to require brokers to overstep their scope of practice (i.e. unauthorized practice of law or conducting an unlicensed home inspection) or violate current statute and regulations (i.e. law of agency). W. Clark shared that a particular municipality has issued a bulletin to brokers containing some provisions that appear to be problematic. She plans to contact the municipality and possibly ask them to attend a board meeting to further explain their bulletin.

S. Erickson spoke for the education committee, and stated that the committee is continuing work on reviewing the broker curriculum for proposed changes. This is a lengthy process as they review each subject line by line, and they hope to have a draft ready by the end of the year.

## **NEW BUSINESS**

D. Ramirez spoke about the Department’s opinion letter about the use of corporate-sounding titles. She believes there is a need of acknowledging an agent who has done a tremendous amount of production, and asked if a designation such as “certified consultant” or “global real estate advisor” would be acceptable. W. Clark stated that the Department will be issuing another opinion letter in the near future which will address, among other things, the use of corporate-sounding titles.

T. Oona Francis suggested that the system be updated to require schools to enter the names of students who graduated from their classes, as she believes that currently applicants can just “check the box” that they completed the required education when they had not. M. Vigil explained that the Department is currently working on automating the appearance enhancement license system, to require that schools verify an applicant’s education, and the same can be done when the real estate system is updated. A. Penzabene added that currently the applicant selects the school they attended, and that is compared by the Department to the lists received from the schools of people who have completed the course. If someone is not on the school list, the applicant is then audited and required to prove their education.

## **PUBLIC COMMENT PERIOD**

There was no public comment.

## **ADJOURNMENT**

M. Vigil asked for a motion to adjourn the meeting.

**A motion was made to adjourn the real estate board meeting. The motion was seconded and passed unanimously. The meeting was adjourned at 11:25am.**

### **PUBLIC HEARING SESSION**

The public hearing was opened at 11:25am.

There was no public comment.

The public hearing was closed at 11:25am.