

NEW YORK STATE REAL ESTATE BOARD
MEETING SUMMARY
February 17, 2022

The meeting was held by the Department of State, Division of Licensing Services, via WebEx conferencing. A virtual meeting was held to comply with COVID-19 social distancing directives. Due to the fact the meeting of the NYS Real Estate Board was held remotely, the public hearing section was held in abeyance.

I. CALL TO ORDER, INTRODUCTIONS and OFFICIAL ATTENDANCE

The meeting was called to order at 1:03 p.m. D. MacKenzie welcomed members and performed roll call; a quorum was declared. The official attendance was as follows:

BOARD MEMBERS

Duncan MacKenzie, Vice Chair
Neil Garfinkel, Secretary
Edwin Clark
Sandra Erickson
Sandhya Espitia
Trisha Ocona
Diane Ramirez
Gregory Weston

Excused:

Dherminder Bhasin
Dale Burnett
David Dworkin

VISITORS

Mike Kelly

*Other online public members

DEPARTMENT OF STATE STAFF

Jodi DeLollo
David Mossberg
Ernita Gantt
John Goldman
Ernest Delaney
Emily Lupe
Shannon Maguire
Marcella Rose
Alison Lacy
Denise Tidings
Paula O'Brien
Erin McCarthy
Hayley Alaxanian
Michael Shannon

- A. Welcome New Member – D. MacKenzie welcomed new member, Sandhya Espitia, and asked her to provide the Board with some background information on herself. S. Espitia announced that she is currently the Chief Operating Officer at REBNY in New York City and formerly worked as the Global Vice President at ICSC in New York City. She mentioned that she was happy to be a part of this Board and truly looks forward to serving the people of New York and the licensees.
- B. Approval of 11-18-21 Meeting Summary – D. MacKenzie announced that all members received the November meeting summary and asked if there were any corrections. He stated that since no one voiced any need for corrections, the meeting summary was approved as delivered.

II. ACTION ITEMS

- A. Enforcement Report – J. Goldman stated that his report contained two components, the first being the statistics on complaints received since the last meeting and the second being information regarding the progression of the Newsday cases. He mentioned that the statistics cover the period from November 19, 2021, to present.

J. Goldman reported that 80 enforcement cases have been opened, comprising of both complaint-based investigations as well as state-initiated investigations. He added that in the same period, Enforcement has completed 111 investigations. Disposition of the completed investigations include: 12 have been referred to administrative hearing for significant degrees of potential malpractice warranting a hearing (money being misappropriated, fair housing violations, criminal charges, convictions, etc.). J. Goldman reported that 99 cases were closed and provided a breakdown: 24 were issued a warning/instruction; 8 holds were issued (no resolution from licensees since contact was unable to be made and their licenses were expired; a hold was placed on their licensing record, and they will not be able to renew their license until the issue is resolved); 5 were declared a civil matter (more appropriate for the matter to be resolved in civil court); 34 were marked no violation/no merit/no jurisdiction,/insufficient evidence (felt that the complaint did not warrant any action and was, therefore, closed); 13 were withdrawn (the complainant did not want the matter to be pursued after they had filed the complaint); 10 were abandoned (the complainant was not cooperative and did not supply information needed); 2 were identified as duplicates (repeated complaints); and 3 were marked as ‘other’ (variety of different dispositions that are unusual).

J. Goldman reported that they have had in excess of a dozen dispositions on the individuals named in Newsday with several license suspensions and several revocations. He discussed a case the Department had successfully appealed which resulted in a suspension. He mentioned that details on the Newsday cases, as well as any administrative hearing, could be obtained by utilizing Licensing’s online search engine (he suggested searching ‘Newsday’ to access these cases).

- B. Processing Report – E. Lupe provided the Processing Report. She mentioned that included in the meeting materials were reports providing the number of current real estate licensees for January 2021 and January 2022. She stated that the report groups licensees into broker and branch office licenses and salesperson licenses and that the totals are listed by county. She added that the 2021 numbers include only licensees and do not include those licensees whose licenses may have expired but were covered by Executive Order 202.11, which allowed individuals licensed by the Department of State to extend the expiration of their license during the State of Emergency.
- C. Education/Examination Report - M. Rose announced that in consideration of the COVID-19 pandemic, a new regulation went into effect on December 7, 2021. She stated that Section 159.1 allows schools approved by the Department of State to offer qualifying and

continuing education courses virtually via live remote programs, subject to reasonable restrictions. She added that this is significant for schools approved to offer the real estate qualifying courses via live education, as it allows for the schools to now apply for live distance education delivery method.

- D. Examination Report - S. Maguire provided the examination pass rates for the period covering January 2021 through December 2021, reporting that 52 percent passed the real estate salespersons exam and 58 percent passed the broker exam. She reported that 25,575 individuals took the real estate salespersons exam and 1,984 individuals took the broker exam.

III. NEW BUSINESS

- A. Legislative Updates – D. Mossberg stated that in December, the Governor signed nine new fair housing bills into law that had implemented various changes, including requirements for implicit bias training, increasing fees and fines, and things for standardizing operating procedures for brokers. He mentioned that all except one of these bills were signed with an approval memo that contains a chapter amendment, explaining that the bill that was signed by the Governor is not the final bill. He reported on 8 of these bills (ones dealing directly with DOS) as follows:

- 1) **S538-B** - requires licensees to receive implicit bias training. It was originally set to take effect on the 180th day after the Bill was signed in December. That Bill was approved with a chapter that would extend that effective date to nine months, as opposed to 180 days, and it also provided a definition of the term implicit bias to be used in the statute. The chapter for that bill is **Chapter 7769**. According to the Senate's website, it passed both houses, but it has not yet been delivered to the Governor so, therefore, it hasn't been signed.
- 2) **S945-B** - would increase the statutory fine with a provision that 50% of those funds go to a special allocated fund to basically administer fair housing programs and to come back for discrimination issues. The original law was supposed to take effect 60 days thereafter. The chapter was going to accelerate that by dropping the 60 day to 30 day; that chapter in the current session is **Chapter 7728**. That bill has passed both houses, but it has not yet been delivered to the Governor so, therefore, it hasn't been signed.
- 3) **2157-A** – bill from the last chapter that changed the statutory definition of office managers to require that the managers have 2 years of experience prior to becoming the designated office manager. It also specifies clearly that the office manager, though, really for all practical purposes, is not the salesperson for provision requirements for issues involved in that office. This bill was actually the only bill that **didn't come with a chapter**; therefore, it became effective immediately once it was signed by the Governor in December. The current statutory provision, which is New

York Real Property Law, Section 440, provides the definition of office manager from that bill and is now in effect. It's been in effect since December 21, 2021, when the Governor first signed that bill.

- 4) **797-A** - required additional education, different than implicit bias. This one requires specific training on cultural competency. There was a chapter proposed to bring the effective date for that one from 9 months. The chapter also defined cultural competency to be used in the statute as understanding cultural norms, preferences, and challenges within the community. As of today, that bill has passed both houses, but it's not yet been delivered to the Governor for signature. The chapter is *current Bill S770, but that's not yet in effect.*
- 5) **2132-B** - from the last session; required special fair housing training on the initial application for salespeople and brokers. Basically, increased the training for brokers to 152 hours and increased the education for salespersons to 77 hours with 6 hours in fair housing training. It also included faculty for the schools to create affirmation, confirming that the appropriate education is taught. That bill was again subject to a chapter amendment. The chapter is somewhat technical in what it changed; the chapter for that bill has passed both houses but hasn't yet been delivered to the Governor and it is *currently under Bill 7730.*
- 6) **2133-A** – from the last session; added and increased the licensing fees to become a broker and salesperson by \$30 for the broker and \$10 for the salesperson. This bill was originally supposed to go into effect upon signing, which would have been back in December 2021. The proposed chapter (Bill 7731) for that bill only changed the effective date to a date that has actually already passed. The effective date for the chapter has passed and according to the website, did pass both houses but has not yet been delivered to the Governor for signature. In order to sort of give meaning to either the original or the chapter, we (because the original bill is still technically law) waited until the chapter was supposed to go into effect before increasing the statutory surcharge--the statutory increase. There's a notice on our website that those fees have increased.
- 7) **S2131A** - relates to standard operating procedures for real estate brokers. That bill required, in part, that real estate brokers adopt certain standardized operating procedures and file them with the Department of State. Those specific procedural requirements will possibly be subject to amendment by regulation of the Department of State for public hearing.
- 8) That bill is subject to a chapter (Bill S7729). According to the website, it indicates it has only passed the Senate so it hasn't yet been provided for signature. The key parts of that provision would be that, unlike the original bill--a bill that required the broker essentially file those standard operating procedures with the Secretary of State's office, it implemented differently by requiring the brokers to basically affirm on

renewals that they have these standard operating procedures and make those standard operating procedures publicly available for members of the public by posting the same on their website. So, it will no longer be required that they have to be filed with the Department; it still allows for amendment but it would require, unlike some of the other regulatory provisions that we do at the Department, that in order to do it, it requires a public hearing first, to hear basically public comment before the proposal, and then even go through the normal regulatory process.

D. Mossberg elaborated on S7729 stating that the interesting thing with that bill, to some degree, is that it is currently law that the brokers are required to develop standardized procedures with respect to specific enumerated provisions that the original bill outlined but it just, under the chapter, doesn't require that it be filed with the Department of State. D. Mossberg stated that it is his understanding that some in the industry have already went through and created these standardized procedures because the existing law, but they can't file it with the Department because there's no filing system yet, and, under the chapter, that's not designed to be part of a final proposal. He added that he cannot really speak to timing or effective dates.

N. Garfinkel inquired as to whether the Department would provide any further guidance with respect to the cultural competency bill and the addition of a definition. He explained that when teaching fair housing, the idea that everyone should be treated equally regardless of any protected characteristic is reinforced. He expressed his concern that it could be problematic and go against what is currently being taught about fair housing if a class focuses on cultural competence and, potentially, the differences amongst various groups. He stated that it is his hope that clarity is provided as to what is trying to be accomplished with respect to that bill and class. D. Mossberg stated that where the legislature has provided a clear statutory definition, we are bound by that definition but that he agrees that the Department has a role in providing clarity where there is ambiguity. D. Mossberg stated that he believes we can accomplish that through course curriculum and approval of the course materials provided but at this point, it would be premature to speculate addressing this since all chapters are still pending.

B. License Application Fee Increases – J. DeLollo reported on legislation that went into effect on January 21, 2022, that increases the licensing fees for brokers and salespersons. She mentioned that the new salesperson licensing fee was increased by \$10, raising the salesperson fee to \$65, and that the broker and branch office applications increased by \$30, increasing the previous fee of \$155 to \$185. She added that these fee increases apply to both initial and renewal applications.

D. MacKenzie inquired as to whether this new fee is a fee increase or a surcharge as D. Mossberg mentioned. J. DeLollo stated that while it is considered a fee increase to us, it is technically a surcharge for that money. She explained that the additional money collected will be deposited into an anti-discrimination in housing fund used for testing. D. Mossberg clarified that the statute added additional money to be diverted by the Department to this new statutorily-created fund; he added that he referred to it as a surcharge rather than as a fee because it is allocated by statute for something else.

- C. Standard Operating Procedures (Subcommittee) – J. DeLollo reported that part of the legislation leaves the Department the option to file additional regulations. She added that the Department would like to form a subcommittee, from the board members, to discuss this legislation and make relevant recommendations for any regulations that the Department should consider. She mentioned that board members interested in serving on this subcommittee should email D. Tidings (Board Coordinator) to express their interest and asked D. Tidings to send out an email to members to assess interest.
- D. 2022 Meeting Dates – D. Tidings announced that the next meeting date will be on Thursday, July 21, 2022, at 1 p.m. She asked members to let her know as soon as possible if they have any conflicts. She also mentioned that they should email her if they have any topics they would like to be considered for discussion at future meetings.

N. Garfinkel inquired as to whether exams were back to full attendance or if there were still limitations on the number of exams offered and the locations given. S. Maguire stated that all locations are open and have been since August 2020 and that the Department is in the process of exploring increasing our capacity to accommodate more examinees. She mentioned that the Department continues to offer additional exam dates at the existing exam locations. N. Garfinkel also inquired as to how the number of exams administered compare with previous periods. S. Maguire explained that exams are given five days a week in New York City and that every opportunity is being used to increase capacity and reduce backlogs; she mentioned that backlogs were not being experienced in upstate regions, only New York City and Long Island. J. DeLollo added that the exams used to be held in New York City 2-3 days per week and that we have increased that to five days a week to increase the number being tested since we have had to decrease capacity during Covid; she added that the capacity is being gradually increased and that we should soon be back to 100 percent capacity. She also mentioned that another contributing factor towards backlogs is individuals that schedule an examination and do not show up. S. Espitia offered her assistance in finding space in New York City.

IV. ADJOURNMENT - D. MacKenzie asked for any other business to come before the Board. Since there was no further business, D. MacKenzie called the meeting adjourned at 1:43 p.m.

V. PUBLIC HEARING SESSION – D. Mossberg stated that pursuant to New York Real Property Law, Section 442, paragraph 6, in addition to the regularly scheduled meetings of the Real Estate Board, the Department is required to hold three separate public hearings a year—one in New York, one in Buffalo, and one in Albany. He added that the purpose of these hearings is listening to the members of the public suggestions, comments, and observations about real estate practices. D. Mossberg asked if there were any visitors present that would like to speak and provide public comments on observations about real estate. No members were present or came forward and D. Mossberg, therefore, announced that the public hearing pursuant to New York Real Property Law, Section 442, paragraph 6, has ended.