

NEW YORK STATE REAL ESTATE BOARD
MEETING SUMMARY
April 19, 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 1:02 p.m. D. MacKenzie welcomed members and performed roll call; he initially announced that there was not a quorum; a quorum was later declared. The official attendance was as follows:

BOARD MEMBERS

Duncan MacKenzie, Vice Chair
Neil Garfinkel, Secretary
Edwin Clark
David Dworkin
Sandhya Espitia
Trisha Ocona
Diane Ramirez

Excused:

Dherminder Bhasin
Dale Burnett
Sandra Erickson
Gregory Weston

DEPARTMENT OF STATE STAFF

Jodi DeLollo
David Mossberg
John Goldman
Ernest Delaney
Emily Lupe
Shannon Maguire
Alison Lacy
Denise Tidings
Erin McCarthy
Michael Shannon
Lisa Helmar

VISITORS

Edward Bedinotti, Sarah Henkind,
Anthony Gatto, Linda Fields, Jennifer
Vucetic, Doreen Spagnuolo, L. Goyette,
Carole McCann, Michael Malone,
Amelia Addor, Ali Mann, Emily
Timblin, Christine Battaglia, MaryAnn
Monteleone, Bernard Caprera

*Other online public members

- A. Approval of 2-17-22 Meeting Summary – D. MacKenzie asked for a motion to approve the 2-17-22 meeting summary. D. Ramirez made a motion to accept the summary; the motion was seconded by N. Garfinkel. All were in favor and the 2-17-22 meeting summary was approved as presented.

II. ACTION ITEMS

A. Enforcement Report – J. Goldman reported that since the last meeting, 95 real estate complaints were received from consumers and/or cases that were initiated by the State's own action. He stated that during this period, 71 investigations were completed. He explained the disposition of the 71 completed investigations as follows: 14 were referred to legal for hearing consideration and the remaining 57 were closed within Enforcement. He provided a breakdown of the 57 closed cases: 20 closed with no jurisdiction, no merit, no violation and/or insufficient evidence; 21 closed with instruct, warning, settled, and/or otherwise resolved; 2 were deemed to be civil in nature; 3 were closed with a hold (for example, unable to contact licensee so a hold is put on their record); and 5 were deemed abandoned or withdrawn (one was a duplicate and four were otherwise closed).

J. Goldman mentioned that Enforcement has been briefed on the new Standard Operating Procedure and are prepared to implement this into their normal enforcement procedure.

T. Ocona inquired as to whether consumers are directed to another agency when it doesn't fall under DOS jurisdiction. She also asked that if with the new surcharge, testing is being implemented. J. Goldman stated that consumers are referred to the appropriate agency when complaints are filed against someone who is licensed in another agency or another regulatory body not within the Department's jurisdiction. D. Mossberg addressed the surcharge inquiry, explaining that as part of the Fair Housing bill, 50 percent of fines imposed, as well as an additional surcharge on new license renewals, is being diverted to a special fund enacted under these laws. He explained that other agencies are responsible for getting access to those funds and to administer it for testing. He added that the Department does not have access directly to use any of those funds and that it is transferred over, pursuant to the State Finance Law.

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 March 2021 and February 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 Report – A. Lacy reported that new legislation revising the Real Estate Property Law, regarding the continuing education requirements for real estate salespersons and brokers, was recently adopted. She stated that the law adds on two hours of cultural competency and two hours of implicit bias for the required topics for renewal, effective September 21, 2022, as part of the 22.5 hours of continuing education.

She clarified that these four hours are included in the required 22.5 hours of continuing education and not in addition to the requirement. She explained that both real estate salespersons and brokers will be required to complete at least two hours of instruction pertaining to implicit bias awareness and at least two hours of cultural competency training. She defined these topics as follows:

Implicit Bias – The attitudes or stereotypes that affect an individual’s understanding, actions, and decisions in an unconscious manner.

Cultural Competency – Understanding cultural norms, preferences, and challenges within our diverse communities.

A.Lacy added that the requirements are based on license expiration date rather than the date the renewal application is submitted for processing. She mentioned that schools have already begun submitting applications for processing.

- D. Examination Report - S. Maguire provided the examination pass rates for the first quarter of 2022, reporting that 52 percent passed the real estate salespersons exam and 53 percent passed the broker exam. She reported that 6,316 individuals took the real estate salespersons exam and 569 individuals took the broker exam. She mentioned that Licensing began increasing the capacities at exam sites with the goal of being back to 100 percent capacity by July 2022. She stated that the average current wait time statewide for an exam appointment is now approximately 2 ½ weeks and that it is expected that this situation will improve as we increase capacity.

III. NEW BUSINESS

- A. Communications to Real Estate Licensees – J. DeLollo reported that effective April 20, 2022, real estate brokers will be required to institute standard operating procedures. She stated that weekly email blasts were sent to licensees (on March 18, April 5, April 12, and April 19) informing real estate licensees of the new requirement and providing highlights of the new law. She mentioned that the hearing that will take place at the conclusion of this meeting will focus on the curriculum that will be effective in December. She added that as we get closer to this date and more concrete information on requirements becomes available, information will be sent to licensees as well as posted on our website.

J. DeLollo reported that effective September 21, 2022, there will be a new continuing education requirement. She stated that an email blast was sent out on March 22 informing real estate licensees of the new requirement. She mentioned that (as reported earlier by A. Lacy) some of the real estate schools have already received approval for continuing education courses to meet the new criteria.

- B. Education Subcommittee (Curriculum Review) – J. DeLollo reported that an email was sent to Board members to assess interest in serving on the Education Subcommittee to discuss the new curriculum. She stated that three members expressed an interest and mentioned that if other members are interested, they should email D. Tidings (Board Coordinator). She added that a meeting will be scheduled for discussion on this topic and that comments from the public hearing, that will take place at the conclusion of this meeting, will be taken into consideration.

D. Mossberg asked the Board if he could provide information on the Governor's Executive Order that was signed on April 15 that relates to Open Meeting Laws and will help the Board in scheduling their next meeting. D. MacKenzie provided permission to proceed. D. Mossberg explained that since the start of the pandemic, the Board has been operating under various executive orders which allowed this Board, and other bodies subject to open meeting laws, to meet virtually. He mentioned that there had been a change in the Open Meeting Laws to effectively allow virtual meetings so long as there was an executive order signed by the Governor. He added that this executive order was scheduled to expire before this meeting but was being extended for another 30 days. He reported that on April 9, 2022, the Governor approved Chapter 56 of the Laws of 2022, which is sort of a permanent law to address "extraordinary circumstances" which will allow public bodies to have some virtual component going forward. He added that we are still waiting on guidance from the Committee on Open Government on how the law is going to be applied. He stated that the Boards are going to be allowed to create policies and written procedures that will allow specific board members to appear virtually under established "extraordinary circumstances". He mentioned that the statute lists illness and some other "extraordinary circumstances" that would exempt a particular board member from having to appear in person, but the rest of the board would still have to appear at a public location and the majority of the quorum would have to be available at that public location. D. Mossberg added that this law goes into effect on June 8 so the Board would need to meet before that date at a virtual public meeting to institute a procedure through a formal vote and resolution. He explained that the Board will need to institute a policy or procedure to define "extraordinary circumstances" and the written procedures will need to be posted on the public body's website.

D. MacKenzie turned the meeting over to N. Garfinkel, Board Secretary. N. Garfinkel reported that there is a new ANSI standard for measuring, for appraisal purposes, now in effect for Fannie Mae mortgages. He mentioned that there has been some concerns voiced from the field about the impact of this new measurement standard under these new ANSI standards, pointing out that properties assessed under the previous measuring paradigm could now be a much less or larger amount—generally a much lesser amount. He stated that he wanted to bring these concerns to the Department's attention as he believes it will impact real estate businesses.

T. Ocona inquired as to whether there would be any type of enforcement to ensure brokers are posting standards and procedures on their websites. J. Goldman stated that it

would become part of the investigative process. He mentioned that anytime Enforcement is investigating a complaint, they will also be looking to see if the Standard Operating Procedures are available and posted on their website. He added that the Department is discussing the possibility of assigning Enforcement staff to randomly look at these websites to determine compliance and if not in compliance, to potentially institute some sort of disciplinary action to ensure that the issue is remedied.

T. Ocona requested clarification on the office manager requirements. D. Mossberg explained that the statute was changed and requires at least two years (two of the prior four years) of first serving as an acting office manager. He added that brokers are exempt from this requirement as they are the broker of record and responsible for the entire operation.

- C. Next Meeting Date – D. MacKenzie reported that the next meeting of the NYS Real Estate Board is scheduled for Thursday, July 21, at 1 p.m.

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 1:37 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 to solicit, from members of the public, suggestions, comments, and observations about real estate practice in New York. He explained that additional notice was provided by the Department, in relation to the public hearing, that we would be soliciting from members of the public, comments, feedback and input, with respect to a provision that was recently enacted under Chapter 697 of the Laws of 2021, also known as Senate Bill 2132B. He stated that this legislation states, in relevant part, that the Secretary of State shall, upon notice in a public hearing, promulgate rules establishing the content of an instruction pertaining to fair housing and/or discrimination in the sale or rental of real property, or an interest in real property as required by paragraph A of subdivision three of Section 441. He added that this statute goes on to state, “Such instructions shall include, but not be limited to, courses on: 1) the legacy of segregation, unequal treatment and historic lack of access to opportunity in housing, 2) unequal access to amenities and resources on the basis of race, disability and other protected characteristics, 3) federal, state, and local fair housing laws, and 4) anti-bias training.

D. Mossberg explained that notice went out requesting that public members that wish to speak, preregister. He invited Board members to speak or provide comments first and then requested that public members raise their hand if they wish to speak or provide comment on the educational requirements he had just described.

Public members provided comments as follows:

- Sarah Henkind (REBNY) – In favor of enhancing Fair Housing training and would welcome the opportunity to work with the State Board and NYSAR to develop a curriculum that leads to the objectives for the cultural competency and implicit bias courses (*contact information provided*).
- Anthony Gatto (NYSAR) – Provided comments regarding the six hours of Fair Housing training for the salesperson qualification course. NYSAR had a meeting with members, many who are instructors, regarding what should be contained in those six hours. They felt that new requirements for CE, including cultural competency and implicit bias training, should be included in those first six hours of training in the qualifying course, as this course is the foundation of the education these individuals will receive before going out and interacting with consumers. The suggested consideration of the six hours to be distributed as follows for the four items contained within the statute:
 - Item #1 - 1 hour on legacy of segregation or unequal treatment and the lack of access to housing.
 - Items #2 & Item #3 (combine) - 3 hours on unequal access to amenities and resources on the basis of race, disability, and other protected characteristics as well as federal, state, and local fair housing laws (feel those topics would work well together and it is extremely important for licensees to understand the fair housing laws).
 - Item #4 – 1 hour of anti-bias training (interpreted that to mean implicit bias) plus 1 hour for cultural competency.

A.Gatto pointed out that a lot of the topics are intertwined and overlap so the allotted hours are just suggestions.

- Trisha Ocona (Board Member) – Stated that she is an instructor and has taken many fair housing courses. She mentioned that while there is a standard, every time she has taken fair housing courses, they are taught differently. She stated the need to have more of a standard because the syllabus alone does not provide the needed consistency. She feels that consistency is especially needed for this type of course to ensure that it is being taught the same way statewide.
- Linda “Lin” Fields (Instructor for NYSAR) – Expressed support of the changes and stated that as someone who teaches fair housing, it is difficult to fit all the information into just three hours. L. Fields believes that it is necessary for individuals coming into the industry to receive more instruction on fair housing, anti-bias, cultural competency, and that this change will be a benefit. L. Fields agreed that there needs to be more consistency or some sort of continuity with the way these classes are being taught.

D.Mossberg inquired as to whether any other public members wanted to comment on the educational requirement. He stated that the Department will work on the coursework and that the Department is required to develop regulations pursuant to the new statute. He added that when the regulations are published, there will be another opportunity for public members to submit comments to the Department that will be considered, as part of the rulemaking process under the State Administrative Procedure Act.

- Ed Bedinotti (Chair of NYSAR Appraisal Committee) – Provided comment on the new ANSI standard that went into effect on April 1, 2022, for all loans to be delivered to Fannie Mae. E. Bedinotti stated that most agents and brokers, as well as a lot of appraisers, are unaware that there is such a thing that is called the ANSI measuring standard. E. Bedinotti explained that the ANSI measuring standards are a way of calculating square footage for a single-family residential property and that it differs vastly from the way square footage is typically measured and calculated within New York State, adding that there is no uniform measuring standard nationwide. E. Bedinotti mentioned that agents and brokers typically go by the reported assessor records and if an appraiser is called in, they will typically, from experience, measure a house in ways that they know other houses have been measured in the past. With this new ANSI standard, E. Bedinotti feels that in dictating the way a house is calculated and reported, it is dictating the market which goes against the definition of market value; furthermore, the appraiser is put in a situation where they can be violating USPAP because they are not following what is common and typical in the market. E. Bedinotti pointed out that USPAP clearly states that the market dictates value and takes precedence over any lender requirement; however, Fannie Mae is now dictating a lender requirement that goes against the market perspective in New York State. E. Bedinotti asked that the Department of State, as the agency that is tasked with interpreting and enforcing USPAP, revisit USPAP, especially advisory opinion number 22. E. Bedinotti added that rule 1-2 of USPAP also dictates that the appraiser determines the relevant characteristics of the property. He cautioned that requiring appraisers to measure this way may create a disparate impact with regards to fair housing. E. Bedinotti expressed that this is a grave concern that needs to be addressed and urged the Department to look into this, as the new standard is clearly not following the definition of market value that both the buyer and seller are well aware.
- Jennifer Vucetic (President of NYSAR) – Stated that NYSAR is making efforts to educate their membership on the new ANSI standard that went into effect on April 1, 2022. J. Vucetic explained that NYSAR is being met with numerous questions and a lot of realtors are unaware that this was put into effect, adding that there is a lot of confusion out there and that the new standard will directly affect affordable housing, especially older homes that have been resold many times over as well as the lower end of the market. L. Vucetic urged that we work proactively to address this, and not reactively.

D.Mossberg asked if any other public members wished to speak. No other speakers came forward. D. Mossberg thanked everyone for their comments and concluded the public hearing at 2:05 p.m.