

1 STATE OF NEW YORK
2 DEPARTMENT OF STATE
3 DIVISION OF LICENSING SERVICES
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DATE: JUNE 29, 2022
TIME: 1:00 p.m. to 1:27 p.m.
BEFORE: DUNCAN MACKENZIE, VICE CHAIR
VENUE: WEBEX VIDEOCONFERENCE

REPORTED BY DEBORAH B. GAUTHIER

1 APPEARANCES:
(All present by video or telephone)

2

BOARD MEMBERS:

3

JODI DELOLLO (Representing Robert
Rodriguez)

4

DUNCAN R. MACKENZIE, VICE CHAIR

5

EDWIN T. CLARK

6

NEIL B. GARFINKEL

7

TRISHA OCONA

8

DIANE M. RAMIREZ

9

SANDRA ERICKSON

10

DAVID DWORKIN

11

DEPARTMENT OF STATE STAFF:

12

DAVID MOSSBERG

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EMILY LUPE

14

ALISON LACY

15

SHANNON MAGUIRE

16

DENISE TIDINGS

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MARCELLA ROSE

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MICHAEL SHANNON

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LISA HELMAN

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ERNITA GANTT

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1 D. MACKENZIE: All right then.
2 Let's call this meeting to order, and there's a
3 thing that I need to read before we proceed.
4 This is a -- excuse me -- this is a remote
5 hearing as authorized by Chapter 1 of the Laws of
6 2022 and Executive Order Number 11 issued on
7 November 26th, 2021 and subsequent Executive
8 Orders extending the State Disaster Emergency
9 declared in Executive Order 11. Further, the
10 public does not have the ability to view or
11 listen to this proceeding in a matter (sic)
12 consistent -- in a manner consistent with
13 authorized authority. In addition, the meeting
14 will be recorded and later transcribed.

15 So with that, we'll move along
16 with the agenda. The first item is approval of
17 the 4/19 and 5/18 meeting summaries. I need a
18 motion to approve, as written.

19 N. GARFINKEL: Motion to approve.

20 D. RAMIREZ: I'm happy to approve.

21 D. MACKENZIE: Okay. A second?

22 E. CLARK: I'll second.

23 D. MACKENZIE: Does anyone have
24 any amendments to those minutes?

25 (NO RESPONSE)

1 D. MACKENZIE: Seeing no
2 amendments, the meeting summaries are approved.
3 We'll move into Section 2, the Department and
4 Subcommittee Reports and the Enforcement Report
5 please.

6 J. GOLDMAN: Hi. It's John
7 Goldman with Licensing Enforcement. So I'll just
8 get statistics out of the way first. We ran
9 statistics for the second quarter of the year,
10 April through yesterday. We're close to the full
11 second quarter of the year. In that time period,
12 the Department received and opened or otherwise
13 initiated on its own 90 new cases -- nine-zero.

14 In that same time period, we
15 completed 155 investigations. Of that number, 29
16 were referred for hearing, which is right about
17 19 percent. We find that about a fifth of all
18 our cases following investigation warrant
19 disciplinary review and I refer to our legal
20 folks, but that's right on line. Twenty-nine of
21 155 is roughly about 19 percent. The balance of
22 126 were closed under a number of different
23 categories following past reports. I'll kind of
24 list those for you. Of the 126, 25 were closed
25 for -- after evaluation and insufficient evidence

1 to warrant further action; 21 were otherwise
2 settled or resolved without any further action;
3 17 were abandoned or withdrawn; 15 were concluded
4 to not have any violations worthy of further
5 action or no merit; 15 were resolved with some
6 sort of instruction or warning to the licensee in
7 terms of something they did or did not do, not
8 being in line with statute or regulation; 12 were
9 deemed to be civil; eight were closed with a
10 hold. And, again, hold is a disposition we
11 utilize when the licensee's license has expired
12 or is shortly therefore going to expire and the
13 issue is minor, typically involving our inability
14 to communicate effectively with the licensees.
15 We put a hold on their ability to renew. Two
16 were deemed to be no jurisdiction; another two
17 were duplicates of another; and nine were
18 otherwise closed.

19 I was also asked to mention to you
20 two new enforcement initiatives that the State
21 has begun in the second half of the year, pretty
22 much beginning on or around the -- June 1. One
23 is what we're calling Internet -- an Internet
24 Enforcement Unit, where we have enforcement
25 personnel who are detecting marketing websites,

1 specifically with a focus on the fair housing
2 statement, the necessity for that to be posted on
3 the website, and, of course, the new addition of
4 the Standard Operating Procedures. And we're
5 detecting sites that are not in compliance with
6 that. We also, in addition to those two fair
7 housing pieces, are looking at what would amount
8 to be violations of the advertising regulations.
9 It's a focus on the necessity to use license
10 types. In marketing material, the license type
11 of a license holder is required to be identified.

12 We also have a large problem with
13 aliases, where folks just take on names that are
14 other than their license names, so we look for
15 that as well. And so that unit is identifying
16 those issues and, depending upon the severity of
17 them, communicating the concerns to the broker,
18 brokers of record, and in some instances there's
19 disciplinary action pursued.

20 The other enforcement initiative
21 revolves around the -- it's not new; it's a
22 couple years on the books now -- the necessity
23 for schools to record fair housing -- the
24 delivery of fair housing instruction. We have,
25 in essence, conducted audits relevant to that

1 requirement with mixed results. And I believe
2 the Administration is going to continue both of
3 these initiatives, especially since they're brand
4 new, but we have found some -- you know, some
5 concerns regarding failure to comply that
6 warrants, you know, the process to continue, the
7 efforts to continue, to hopefully get the word
8 out of the necessity of the recording aspect as
9 it relates to the schools. You know, the State
10 does put effort into communicating these
11 requirements and necessities as they're -- as the
12 legislation is passed. When a regulation is
13 enacted, we send out mass e-mails, so we feel
14 we're adequately communicating these changes and
15 new legal requirements, and so this is just
16 coming full circle, insuring that compliance is
17 at an acceptable level. That's the extent of my
18 report.

19 D. MACKENZIE: All right. Thank
20 you. Are there any questions from the board
21 members?

22 (NO RESPONSE)

23 D. MACKENZIE: All right. Thank
24 you. Moving on to the Processing Report please.

25 E. LUPE: Good afternoon.

1 Included in the materials you were provided is a
2 report of the number of current real estate
3 licensees for May of 2021 and May of 2022. The
4 report groups licensees into broker and branch
5 office licenses and salesperson licenses. The
6 totals are listed by county. Please note that
7 the 2021 numbers include only licensees and do
8 not include those licensees whose licenses may
9 have expired but were covered by Executive Order
10 202.11, which had allowed individuals licensed by
11 the Department to extend the expiration of their
12 license during the state of emergency. And that
13 concludes the Processing Report.

14 D. MACKENZIE: Thank you. Are
15 there any questions?

16 (NO RESPONSE)

17 D. MACKENZIE: All right. The
18 Education Report please.

19 A. LACY: Good afternoon,
20 everybody. Recent legislation has amended the
21 qualifying education for both salespersons and
22 brokers. Effective September 21st, 2022, real
23 estate broker applicants must be trained in
24 cultural competency in order to become licensed.
25 Effective December 21st, 2022, the sales

1 capacities at our exam sites will be increased back to
2 100 percent starting July 1st, 2022. Currently, the
3 average wait time statewide for an exam appointment is
4 approximately one week. Any questions?

5 D. MACKENZIE: Yeah. Those pass rates
6 seem unusually low. Is that about right for the pass
7 rates?

8 S. MAGUIRE: That's pretty consistent
9 with what they were at the -- compared to our last
10 report.

11 D. MACKENZIE: Very good. Thank you.
12 All right. Moving on to new business. Dave Mossberg,
13 the Executive Order update please.

14 D. MOSSBERG: Good afternoon, everyone.
15 So just a quick update. EO 11.7 was issued by
16 Governor Hochul on June 14th. That EO extended the
17 opportunity for public audiences, since this Board's
18 entirely virtual. If you recall, at the last board
19 meeting, we took a vote to adopt formal procedures to
20 allow for partial remote meetings where in an
21 extraordinary circumstance. At the last meeting I
22 advised that unless the EO is extended again, we'll
23 have to meet in person. However, this EO was extended
24 through July 14th, so we'll have to wait and see what
25 happens after this date and see if it gets extended

1 again. So that's the update on Executive Orders. I
2 don't know if anyone has any questions or concerns.

3 (NO RESPONSE)

4 D. MACKENZIE: Okay. Moving on to the
5 next item, discussion on regulatory changes related to
6 fair housing legislation. That's you again, David.

7 D. MOSSBERG: So as Alison had started
8 to -- or mentioned previously, and as the Board knows,
9 based on the prior board meeting, at the end of 2021,
10 early part of 2022, there were various bills that were
11 signed into law, including several chapters relating
12 to real estate brokers and salespeople. Relative to
13 the discussion now are those changes that relate to
14 the educational requirement, really going back to
15 December 22.

16 As Alison mentioned, the salesperson
17 course is increasing by two hours; the broker's course
18 is now being increased to 12. Part of the statutes or
19 the bills that were signed into law required the
20 Department to develop the curriculum that would be
21 required to satisfy these educational requirements.
22 The law also required, for example, other changes to
23 include that schools affirm basically that they're
24 instructing consistent with the statute, and that
25 specifically requires the Department to pass

1 regulations for disciplinary actions against
2 providers, if it's found that they failed to meet
3 those requirements. The first penalty, for example,
4 is suspension of a license, and thereafter, for
5 repeated offenses, the statute dictates that the
6 instructor approval be revoked. So in addressing or
7 trying to work out what the new statutes require, as
8 the Board probably is aware, there was an ad hoc
9 advisory committee that consisted of Alison Lacy,
10 Marcy Rose, Jodi DeLollo, Neil, Duncan, and others.
11 And so, you know, I first want to thank all the Board
12 members and ad hoc members for assisting in helping
13 develop the proposal which is before everybody. And
14 so I'll just go over that sort of and then answer
15 questions from the Board.

16 So the current proposal seeks to amend
17 Section -- and I apologize for running through it --
18 Section 176.3, 76.4, 76.13, 76.16, 76.20, 76.25, 77.1,
19 77.14, the repeal of 176.26, paragraph B of 172.8, the
20 addition of new 176.26, a new paragraph C to 177.8,
21 and new paragraph B of 177.15. The draft regulation
22 specifies sort of what those changes are, but, in
23 general, what it was, any place in the current
24 regulation where it said, you know, the prior 75-hour
25 coursework for sales, we changed that to 77; anywhere

1 in the statute -- or anywhere in the regulation where
2 it previously referred to a 45-hour broker report, we
3 updated it to reflect that 75. That's why there's a
4 lot of changes. A lot of it is just sort of to
5 conform with what the requirements are. Same with,
6 for example, the requirement under the statute that
7 we, for example, require the schools to submit these
8 affirmations, that they be submitted electronically to
9 the Department, in accordance with the statute.

10 The additional changes that we had
11 made, though not expressly required, but we believe
12 are required to insure that, for example, the prior
13 courses, you wouldn't have to take the whole new
14 courses over again, so what we did was we added a new
15 supplemental course. I'm sure the Board already knows
16 that previously if you had taken the old broker's
17 course, you would just take the supplemental 30-hour
18 course, so we're keeping that, but then we recognize
19 that it creates like a 32-hour supplemental course and
20 other sort of situation, depending on what
21 (indiscernible) so that they would now be able to meet
22 the minimum (indiscernible), so that's included in the
23 proposal.

24 Also included in the proposal are some
25 clean-up items. So, for example, back I believe two

1 years ago there became another grandfather exemption
2 for brokers that had been previously licensed 15 years
3 prior to this. All brokers and salespeople are now
4 required to take continuing education (indiscernible)
5 so we're cleaning up the regulation where the broker's
6 prior exemption is no longer applicable
7 (indiscernible) but the real sort of substance of the
8 coursework for the proposal is -- are the changes to
9 176.4. That is the regulation that increases the 45
10 hours to 75 hours, so we worked closely with the
11 committee once again. You know, everyone's worked on
12 it, in particular, Duncan, for helping provide
13 comments on what those new additional hours of
14 education are going to focus on, so that's reflected
15 in, as I said, the 176.4 change. Also, because we
16 needed to develop and create that 32-hour supplemental
17 course, we basically mimicked that as well. The new
18 course is 32 hours.

19 So, again, these changes are
20 necessitated by the new Fair Housing Act that was put
21 into law, and in order for them to go into effect,
22 what we are recommending to the Board is that they
23 vote to approve the proposal, authorize the Department
24 of State to file any and all necessary papers to be
25 filed and proposed in the State Register, as well as

1 any and all measures necessary to adopt, you know, at
2 the end of the comment period relevant changes
3 (indiscernible) go into effect.

4 Something that I just want to mention is the
5 time of the rule. Assuming the Board votes as I just
6 described, we anticipate that we hope to file this for
7 publication in the Register by next Tuesday. If we do
8 hit that deadline, it will be formally published in
9 the State Register, as approved, on July 20th. The
10 feedback that's necessitated will make it
11 (indiscernible) Board rules requires a public hearing.
12 So under the State Administrative Procedure Act, a
13 public hearing can't be held less than 60 days from
14 the date of publication of the State Register. So if
15 this is published in the State Register July 20th, the
16 earliest the public hearing could be held would be
17 September the 20th. So looking at the calendar, we're
18 proposing a public hearing -- the Board doesn't have
19 to attend, but it will be open to the public -- the
20 public hearing will be scheduled for September 21st.
21 The public comment period (indiscernible) five days
22 after that, so it will run through at least September
23 26th. If there are no public comments or nothing
24 substantive, depending on the Board vote, we'll be
25 able to go ahead and adopt (indiscernible) permanent.

1 If there's something substantive, we'll have to bring
2 it back to the Board, depending on how the Board votes
3 now, to then, you know, make any necessary changes to
4 file the notice of adoption. If we're able to file
5 the notice of adoption in early October, it will be in
6 effect, obviously, before (indiscernible) to allow
7 school students sufficient time (indiscernible). That
8 is sort of the timeline that needs (indiscernible)
9 rulemaking. I guess, you know, it's open for
10 discussion, so if there are any questions or concerns.

11 D. MACKENZIE: So why don't we just --
12 do we have a motion to approve the documentation that
13 was sent to you on the new -- the new regulations?

14 MR. MOSSBERG: Sure. We could do that.

15 D. MACKENZIE: And that would just open
16 up the discussion.

17 MR. MOSSBERG: Yeah. I'm not sure if
18 any of the Board has any questions prior to that.

19 D. MACKENZIE: How about a motion, a
20 second, then we'll open it up to discussion, if there
21 is any.

22 E. CLARK: Second.

23 D. MACKENZIE: All right. So is there
24 any discussion about the proposed changes?

25 (NO RESPONSE)

1 D. MACKENZIE: All right. Not hearing
2 any, all those in favor, please say "Aye".

3 BOARD MEMBERS: Aye.

4 D. MACKENZIE: Anyone opposed?

5 (NO RESPONSE)

6 D. MACKENZIE: Any abstentions?

7 (NO RESPONSE)

8 D. MACKENZIE: All right. The proposal
9 passes.

10 T. OCONA: Trisha Ocona here. I just
11 wanted to point out that (indiscernible).

12 D. MACKENZIE: Okay. Thank you. Thank
13 you, David. You and your staff -- everybody there at
14 DOS really did a great job. It was a good process
15 getting to this point, so thank you. The next item is
16 the next meeting date.

17 D. TIDINGS: The next meeting date is
18 set for Thursday, July 21st at one p.m.

19 J. DELOLLO: Denise, can I add
20 something here?

21 D. TIDINGS: Sure.

22 J. DELOLLO: While we're talking about
23 this, Dave, I don't know if -- how the Board members
24 feel. I think the July date was only on the schedule
25 prior to us scheduling this meeting, so if we don't

1 feel it's necessary to have the July 21st date, I
2 think it's a good idea to cancel it and just be ready
3 for the meeting that's necessary to approve the
4 regulation. Dave, do you see any reason the Board
5 would need to meet by July 21st? Should we keep that
6 meeting? Do you think it's necessary?

7 D. MOSSBERG: I can't think of a reason
8 why. You know, based on the Board vote
9 (indiscernible) and, if necessary, mover over to
10 notice of adoption, provided that there's no real
11 changes. I don't have -- I'm unaware of any
12 particular need for the July 21st meeting.

13 J. DELOLLO: Okay. So if you're all in
14 agreement to that, I'm okay with postponing that
15 meeting or cancelling that meeting.

16 D. TIDINGS: Yeah, we can cancel that.

17 E. CLARK: I agree. Cancel it.

18 J. DELOLLO: Will do.

19 D. MACKENZIE: All right. There being
20 no further agenda items, this meeting is adjourned,
21 and now we can move into the public hearing session.

22 D. MOSSBERG: Thank you, Duncan. So
23 pursuant to (indiscernible) paragraph six, in addition
24 to the regularly-scheduled meetings of the Board, the
25 Department and the Board is required to hold a public

1 hearing in New York City, Buffalo, or in Albany. The
2 purpose of these hearings shall be to solicit from
3 members of the public suggestions, comments, and
4 observations (indiscernible). I'm not sure if there's
5 anyone from the public that would like to participate
6 or comment. If there is, then please indicate.

7 (NO RESPONSE)

8 D. TIDINGS: I unmuted a couple numbers
9 that were not identified in case it's anyone from the
10 public that wants to make a comment.

11 (NO RESPONSE)

12 D. TIDINGS: Okay.

13 D. MOSSBERG: Thank you, Denise. There
14 being no participation from the public,
15 notwithstanding the opportunity to do so, the public
16 hearing portion of this meeting (indiscernible) is
17 closed. Thank you, everybody.

18 (The proceeding concluded at 1:27 p.m.)

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1 STATE OF NEW YORK

2 I, DEBORAH GAUTHIER, do hereby certify that the
3 foregoing was reported by me, in the cause, at
4 the time and place, as stated in the caption
5 hereto, at page one hereof; that the foregoing
6 typewritten transcription consisting of pages 1
7 through 19, is a true record of all proceedings
8 at the meeting.

9 IN WITNESS WHEREOF, I have
10 hereunto subscribed my name, this the 5th day of
11 July, 2022.

12 *Deborah B. Gauthier*

13
14 DEBORAH B. GAUTHIER, REPORTER

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