

Arizona Real Estate Advisory Board Meeting Minutes

Wednesday
August 2, 2023
10:00 a.m. - Noon
Arizona Department of Real Estate
Telephonically- Google Meet and In
Person
100 North 15th Avenue Suite 201
Phoenix, Arizona 85007

I. Call to Order – Kim Clifton, Chair

Chair Clifton called the meeting to order at 10:00 am.

II. Introductions & Welcome

Kim Clifton, Chair

Charlie Bowles, Vice Chair - Telephonically

Carla Bowen

Bill Gray

Judy Jackson

Luis Ramirez Thomas - Telephonically

Matias Rosales - Telephonically

Absent:

Christine Shipley

ADRE Representatives present:

Susan Nicolson, Commissioner

Mandy Neat, Deputy Commissioner (DC)

Abby Hansen, Chief of Staff (COS)

Marlee McCormick, Assistant Commissioner Licensing (AC)

Maya Hindenes, Intern

Members of the Public present:

Nikki Salgat

Rick Mack

Keri Means

Tonya Deskins
Jennifer Vargas
Courtney LeVinus
Angelika Johnson
Cheryl Terpening
Judy Lowe

III. Approval of May 10, 2023 Meeting Minutes.

Chair Clifton asked for a Motion to approve the May 10, 2023 Meeting Minutes.

Upon a motion by Member Bowles, seconded by Member Bowen, the Minutes of May 10, 2023 meeting were unanimously approved.

IV. Advisory Board Member Respective Expertise and Facilitator Reports

Member Gray received an inquiry regarding a Commercial Broker commission. Member Gray indicated to the individual that it would not be a complaint with the Department but is a civil matter.

Member Bowen received a call from an attorney involving an earnest money dispute.

Member Rosales received an inquiry from a consumer and directed them to the Departments website. Member Rosales noted that he has had brokers reach out to him regarding the need to update policies for Auditing. Commissioner Nicolson asked for clarification. Member Rosales stated the requesting documents are vague and outdated.

Member Ramirez Thomas noted that there are major projects kicking off at both the San Luis and Douglas Ports of Entry. He further stated that there is a lack of housing, hotels and extended stay facilities at both locations as well as Nogales. Vice Chair Bowles agreed and mentioned that they were transporting workers from Buckeye.

Chair Clifton stated she had received calls regarding land and deed fraud.

Chair Clifton reminded all members that the Board is not to speak on behalf of the Department nor is the Board the boss of the Department.

V. Arizona Department of Real Estate Reports

Commissioner Nicolson provided a breakdown of staff by divisions. Commissioner Nicolson noted that the Department has hired a new Audit and Investigations Manager and replied to Member Rosales' concern about audit policies that new forms should be implemented in September. Commissioner Nicolson shared that Jackie Gunderson from

the Education division has been promoted to Outreach working directly with DC Neat to meet with brokerages/designated brokers to explain processes and procedures specifically regarding audits.

Commissioner Nicolson indicated that the 5 year rule review will begin next year.

Commissioner Nicolson stated there are two funding issues that she is working on for the FY25 budget. The Department authorized to staff up to 37 full time employees, the Department currently has 25 and current budget does not support salaries for 37 individuals, she noted that other agencies are fully staffed and she will be asking for funding to hire 10 more staff.

Commissioner Nicolson noted another issue is the aged custom built software that is used by the Department for all divisions, she will be making a large request for funding of a new commercial software and stated if not approved the Department could revert to paper processing. Commissioner Nicolson described the procurement process and the need to submit bids through the State Procurement Office. Commissioner Nicolson will also be asking for funding of a business analyst to prepare the Department for embarking on the implementation of a new software.

Commissioner Nicolson informed all that the Governor's office has asked for a 2% decrease in the budget for possible cuts if required.

Commissioner Nicolson stated that another option to fund the acquisition of software is to create an Information Technology (IT) fund paid into by adding a temporary increase to licensee's renewal fees. Commissioner Nicolson reiterated that without funding and our IT Manager, it comes down to going back to processing in paper.

Member Bowen asked if the Department were to change the fees – how would that be accomplished would that require the Governor's approval? Commissioner Nicolson stated "yes" it would be through the Governor's office.

Commissioner Nicolson shared that she is providing spot incentives and cross training to staff.

DC Neat stated that there have been some amazing and radical changes within the Investigations division. Investigators are picking up the phone and resolving matters rather than issuing a Letter of Concern (LOC) and they are following the Commissioner's six strike rule.

DC Neat indicated that investigators are now looking for proof and consent within transactions.

DC Neat thanked the Industry for answering the phone and thanked Member Rosales for contacting her directly with a licensee issue.

Commissioner Nicolson informed the Board that there was a recent incident with a licensee arrested for human smuggling and the need for the Department to have access to Multiple Listing Service (MLS) records to understand who the licensee had access to. Commissioner Nicolson further stated that the Department wants to cooperatively work with all area MLS for the concern and safety of the public and hoped that the various MLS would be receptive to a phone call in an urgent need and the subpoena would follow just as quickly.

Commissioner Nicolson noted that there are times that the Department has identified that a Property Manager has gone bad and is using their license to steal money by transferring trust funds to their personal accounts. Commissioner Nicolson stated that currently there is no way for the Department to take receivership of the bank account and would like to pursue the matter through legislation, she is not sure if the legislature has an appetite to put something in place but this appears to be the greatest harm to the public.

Chair Clifton noted that these type of property management issues are residential and not commercial.

DC Neat stated that the Audit and Investigation division will be training on building blocks to Title 32, Chapter 20 and bringing in experts to train the Department.

Chief of Staff Hansen mentioned that onsite audits have been discontinued. With that ending the Commissioner decided to turn in the three cars that ADRE owned, possibly saving the Department about \$10,000 a year, those savings may be offset if personal vehicles were used or onsite audits/investigations were needed.

Commissioner Nicolson noted that one of Governor Hobbs's initiatives is to have a more equitable government and there is no way for the Department to be equitable when onsite audits could only be completed in Tucson and Phoenix.

Assistant Commissioner McCormick stated that they have added a new licensing specialist. The Education division has rolled out new Education forms and licensing staff are working on updating all forms.

Commissioner Nicolson noted that the application for a broker's license requires any previous broker's signature within the required timeframe, but the Department will no longer require those signatures the new requirement will be a resume.

Chair Clifton inquired if there will be a fillable form for the resume/work history.

Commissioner Nicolson stated "no".

VI. Commissioner Nicolson gave an overview of the issues with joint ventures stating the Consumer Financial Protection Bureau (CFPB) has the federal law but the state has the fiduciary duties and noted there are a lot of joint ventures going on between lenders, title companies and licensees and this falls under Governor Hobbs's request to improve affordable housing.

Member Bowen asked how the Department would identify and enforce this.

Commissioner Nicolson stated "by a routine audit or a complaint". Commissioner Nicolson then read §20-1585 Commissions; other considerations prohibited, under the Department of Insurance and Financial Institutions (DIFI). Commissioner Nicolson noted that she has reached out to the Governor's office as well as the Department's Assistant Attorney General's (AAG) for guidance. Commissioner Nicolson stated that many of the joint venture agreements that she has reviewed appear to be sham companies and it seems to happen more often with teams and encourages any licensees involved in joint ventures to seek legal guidance.

Chair Clifton stated that she has received calls regarding this topic and inquired if it is escrow verses title. Commissioner Nicolson stated "both" and indicated that title insurance would fall under pricing and escrow needs to be a disinterested third party. DC Neat stated that the industry has an issue understanding title verses escrow and there is a need for more education.

Member of the Public, Rick Mack stated that both escrow and underwriters are required to submit file rates to DIFI and the Commissioner may wish to review those in her review. Mr. Mack noted that if done properly, joint ventures provide a benefit to the public. Mr. Mack asked Commissioner Nicolson two questions regarding information that he has seen from the Commissioner; 1) is the Department targeting team or broker joint ventures, 2) if a licensee has a joint venture that the broker has no knowledge of, does that migrate up to the broker under reasonable supervision?

Commissioner Nicolson responded "yes" and the Department is not targeting anyone and stated that the Department would be equitable and fair and hopes that the Department finds that the disclosures are there. Commissioner Nicolson indicated that if after the AAG's have reviewed and provided their interpretation to the Department if the AAG's have determined that something found in an audit warrants turning it over to DIFI for further investigation, it will be. Commissioner Nicolson noted that she will be reviewing the published DIFI file rates.

Member Bowen asked if MLS listings that refer to specific title and escrow companies will be reviewed. Commissioner Nicolson stated "yes", she just issued a subpoena regarding an investigation and the MLS listing.

VII. Commissioner Nicolson stated that current statutes fall short on protecting the public when it comes to deed fraud and she will be meeting with the Governor's office to bring this matter to her attention. Commissioner Nicolson indicated that in speaking to the Attorney General's office, they have stated that they consider it organized crime. Commissioner Nicolson sees the need for licensee's to take specific steps to identify that the seller is actually the owner.

Member Bowen stated that this is so prevalent in the White Mountains, she has licensee's check the tax roll and call to verify ownership.

Member Gray suggested that a two factor verification with the county recorder/assessor should be required and that would not put the burden on the licensee.

Member Bowen noted that some licensees are just hungry for a sale and are not completing the basic proper verification.

Chair Clifton indicated that she missed having a title expert on the Board and appreciates the Department's effort because it is a huge issue.

VIII. Commissioner Nicolson stated that water is Governor Hobbs' priority and with that there is a need for licensees to understand the source and quality of the water to a property. Commissioner Nicolson noted that licensees will memorize the terms to pass the exam but are not able to actually apply them in a transaction.

Commissioner Nicolson announced that she has dissolved the Education Advisory Committee (EAC) after attending a few she sees the need to do more writing and listening rather than the Department doing all the talking. Commissioner Nicolson plans on having educational workgroups with subject matter experts to address the priorities of Governor Hobbs, wildcat subdivisions, water supplies and more, once the workgroup has completed their task it will be followed by a town hall that all may attend and will be held in person as well as virtual.

Member Bowen stated that in her area, they have seven water companies and it is a very unique area, and inquired if subject matter experts from all areas of the state would be included. Commissioner Nicolson stated "yes".

DC Neat state the Department is reviewing the options to allow the exam to be offered In Spanish.

IX. Call to the Public

Member of the Public Cheryl Terpening stated there was a lot of good information provided and asked if DC Neat's reference to the five or six steps of discipline could be shared. DC Neat responded that she has not established them in writing as it

depends on the severity.

Chair Clifton stated once published it will need to be made available to all.

Member of the Public Courtney LeVinus stated that zoning in Rio Rico has been cancelled due to serious backlash and was stopped at the beginning stages. She further noted that if drastic steps are not taken now, we will not be able to stop the housing crises. She stated that there are now requirements for more disclosure on initial fees charged at the time an application is filed for multi housing rentals and that they have been very focused on this issue for a long time.

X. Next Scheduled Meeting – October 18,2023

Chair Clifton asked if acceptable to all she would prefer all attendees be either virtual or all in person but if necessary will continue a hybrid meeting.

XI. Adjournment at 12:00

Respectfully submitted this 18th day of October, 2023
Real Estate Advisory Board

Kim Clifton, Chair