

IDAHO REAL ESTATE COMMISSION
Meeting Minutes
February 4, 2016

Pursuant to notice given, a special meeting of the Idaho Real Estate Commission (Commission) was held at 575 E. Parkcenter Blvd., Suite 180, Boise, Idaho on Thursday, February 4, 2016 at 2:00 p.m.

Commission Members Present:

Marvis Brice, Chair, Burley (by phone)
Mike Gamblin, Vice Chair, Boise
Kathy Weber, Member, Moscow (by phone)
Michael James Johnston, Member, Idaho Falls (by phone)
Comprising a quorum of the Commission

Members Absent:

Staff Present:

Jeanne Jackson-Heim, Executive Director
Craig Boyack, Chief Investigator
MiChell Bird, Education & Licensing Director

Others Present:

Maurie Ellsworth, Commission's Legal Counsel

Meeting was called to order at 2:00 p.m. MT by Chair Marvis Brice; Marvis asked Vice Chair Mike Gamblin to preside over the meeting.

Consideration of Staff of the Idaho Real Estate Commission vs. Timothy J. Williams:

Executive Session: Mike Gamblin moved that the Commission adjourn to executive session pursuant to Idaho Code 74-206(1)(f) to communicate with legal counsel to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. A roll call vote was taken: Brice – yes; Johnston – yes; Weber – yes; Gamblin – yes. Motion carried. Commissioners convened in executive session and discussed with counsel the legal options for the matter of Staff of the Idaho Real Estate Commission vs. Timothy J. Williams.

Regular Session: There being no further purpose for an executive session, a motion was made by Kathy Weber to adjourn the executive session and return to open meeting at 2:20 p.m. Motion carried.

Having considered the stipulation of the parties and the complete record in the case, and following discussion by the Commission, Kathy Weber moved to accept the parties' stipulation and enter a final order as follows:

- Imposing a civil fine in the amount of \$5,000, together with costs and attorney's fees incurred by Commission staff in an amount to be determined by the Commission. Staff shall, within fourteen (14) days from the date of the Final Order, serve upon Respondent its Memorandum

of Costs and Attorney's Fees incurred to investigate and prosecute the violations found in this matter.

- Payment of the civil fine is due no later than March 1, 2016, and costs and attorney's fees shall be due and payable no later than 30 days after service of the Commission's Order unless otherwise ordered by the Commission.
- The salesperson license of Timothy J. Williams shall be suspended for one year, beginning March 1, 2016.

The vote was taken and showed all in favor (Marvis Brice abstained). Motion carried.

There being no further business, Mike Johnston moved to adjourn the meeting at 2:44 p.m.

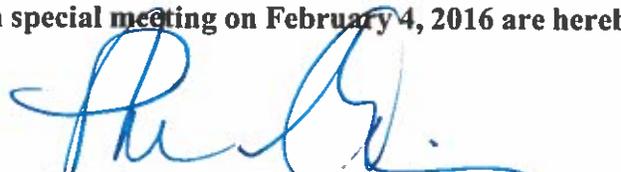
Respectfully submitted,


Jeanne Jackson-Heim
Executive Director

jjh

Minutes of the Idaho Real Estate Commission special meeting on February 4, 2016 are hereby approved.


Marvis Brice, Chair


Mike Gamblin, Vice Chair


Kathy Weber, Member


Michael J. Johnston, Member

Common

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Maurice O. Ellsworth [ISB #1842]
General Counsel
Idaho Bureau of Occupational Licenses
700 W. State Street
Boise, ID 83720-0063
Telephone: (208) 334-3233
Facsimile: (208) 334-3945

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

vs.

TIMOTHY P. WILLIAMS,

Respondent.

Case No. 15-0007

FINAL ORDER

THIS MATTER came before the Idaho Real Estate Commission on January 21, 2016, for hearing on the parties' Stipulation and Notice of Disciplinary Hearing. The Petitioner, Staff of the Idaho Real Estate Commission ("Staff"), was represented by Eric F. Nelson, of Naylor & Hales, P.C. The Respondent, Timothy P. Williams was personally present and represented by Kimbell D. Gourley, of Jones Gledhill Fuhrman Gourley, P.A.

The parties presented their written Stipulation, wherein Mr. Williams admitted that his conduct was grounds for disciplinary action and, pursuant to the terms of the Stipulation, presented evidence and argument bearing on the issue of any discipline to be imposed by the Commission.

Having considered the parties' Stipulation and the evidence and argument presented at the hearing, and all other matters of record in this case, the Commission enters its Order.

IT IS HEREBY ORDERED:

1. The Idaho Real Estate Licensure Law ("Act") is codified at title 54, chapter 20, Idaho Code. Idaho Code § 54-2007 empowers the Idaho Real Estate Commission ("Commission") to administer the Act. Respondent's license as a real estate salesperson was issued pursuant to the Act. Pursuant its authority and duty to protect the public the Commission may discipline the license of a licensee for violations of the Act. *See* Idaho Code §§ 54-2058, 54-2059 and 54-2062. The Commission hereby **approves** the parties' Stipulation. Based upon the facts and violations admitted therein, **the Commission finds and concludes that Mr. Williams' conduct is grounds for disciplinary action** pursuant to Idaho Code § 54-2062 (1)(b) – Revocation of a professional license for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings.

2. Based upon the Stipulation, argument, and all matters of record, and pursuant to its authority under Idaho Code §§ 54-2058, 54-2059 and 54-2062, the Commission **imposes the following discipline:**

a. This Final Order shall constitute a Formal Reprimand of the Respondent for the actions as set forth in the Stipulation and Notice of Disciplinary Hearing.

b. Respondent's license is suspended for one (1) year, effective March 1, 2016.

c. Respondent shall pay a Civil Fine in the amount of Five Thousand Dollars (\$5,000.00). This fine shall be due and payable in full on or before March 1, 2016.

d. The Commission further orders that Respondent pay costs and attorney's fees incurred by the Staff in this matter, as provided in paragraph 3 herein.

3. Respondent shall pay the fees and costs incurred by the Staff to investigate and prosecute this matter. The amount of the fees and costs that Respondents must pay shall be determined as follows:

a. Within fourteen (14) days from the date of this Final Order, the Staff of the Commission shall serve upon Respondent its Memorandum of Costs and Attorney's Fees incurred to investigate and prosecute the violations found in this matter.

b. If Respondent objects to the fees and/or costs claimed, then Respondent shall, within fourteen (14) days after the service date of Staff's Memorandum, submit to the Commission and serve upon the Staff any objection to the costs, fees and attorney fees claimed to have been incurred by the Staff. Staff shall then have fourteen (14) days to file its response to any objections.

c. If Respondent files a timely objection to the Staff's claimed fees and/or costs, then the Commission will consider Respondent's objection in determining the amount of costs and fees that Respondent must pay and enter an order identifying the amount to be paid and the date by which payment shall be made.

d. If Respondent fails to file a timely objection to the fees and/or costs claimed by the Staff, then the Respondent will have waived Respondent's ability to object and the Commission will enter its Final Order on Costs and Attorney Fees.

e. Respondent must pay the total fee and cost amount ordered by the Commission within thirty (30) days from the service date of the Commission's Final Order on Costs and Attorney Fees.

4. All payments ordered herein shall be made by cash, check, money order or credit card, and may be mailed or hand delivered to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706.

Notice of Statutory Rights

5. This is a Final Order of the Agency. Pursuant to the Stipulation, paragraphs 11 through 17, Respondent's rights to seek reconsideration or judicial

review in this proceeding are waived as to Respondent's violations of the Act. Accordingly rights to request reconsideration or seek judicial review of this Final Order shall only apply to the discipline imposed herein and shall be as set forth in paragraphs 6 through 10 herein.

6. Any aggrieved party may file a Petition for Reconsideration of discipline imposed by this Final Order within fourteen (14) days from the date of service of this Final Order. The Commission will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or else the Petition will be deemed denied by the operation of law. See section 67-5246(4), Idaho Code.

7. Judicial Review – Place of filing. Pursuant to section 67-5272, Idaho Code, any party aggrieved by this Final Order may seek judicial review of discipline imposed by this Final Order by filing a Petition for Review in the district court of the county in which:

- a. A hearing was held;
- b. The final agency action was taken;
- c. The party seeking review of the Order resides in Idaho or operates its principal place of business in Idaho.

8. Judicial Review – Time for Filing. Pursuant to section 67-5273, Idaho Code, Petition for Judicial Review must be filed:

- a. Within twenty-eight (28) days from the date of service of this Final Order; or, if a Petition for Reconsideration is filed,
- b. Within twenty-eight (28) days of the date of the Commission's decision on that Petition, or of the Commission's failure within twenty-one (21) days to issue a decision on the Petition, whichever is later.

9. A Cross-Petition for Judicial Review may be filed within fourteen (14) days after a party is served with a copy of the notice of the Petition for Judicial Review.

10. The filing of a Petition for Review in the District Court does not itself stay the effectiveness or enforcement of the Order being appealed.

See Idaho Code § 67-5274.

11. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

Issued this 12th day of February, 2016.

IDAHO REAL ESTATE COMMISSION

A handwritten signature in black ink, appearing to read "Michael Gamblin", written over a horizontal line.

By: Michael Gamblin, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February 2016, I caused to be served, by the methods indicated, a true and correct copy of the Final Order and Guideline #7, Guidelines for "Suspended" Licensees, upon:

Mr. Timothy P. Williams
Keller Williams Realty Boise
1065 S. Allante Pl.
Boise, ID 83709

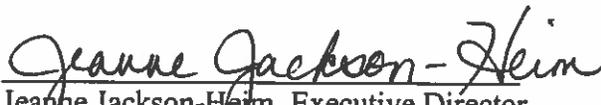
 X U.S. Mail
 Email
 Facsimile Transmission

Mr. Kimbell D. Gourley
Jones Gledhill Fuhrman Gourley, P.A.
PO Box 1097
Boise, ID 83701
(Attorney for Timothy P. Williams, Respondent)

 X U.S. Mail
 Email
 Facsimile Transmission

Mr. Eric F. Nelson
Naylor & Hales P.C.
950 W. Bannock St. Ste. 610
Boise, ID 83702
efn@naylorhales.com

 U.S. Mail
 X Email
 Facsimile Transmission


Jeanne Jackson-Helm, Executive Director
Idaho Real Estate Commission

GUIDELINES FOR “SUSPENDED” LICENSEES

Idaho’s license laws impose certain duties and consequences upon the salesperson or broker whose license is “suspended” as part of a disciplinary action taken pursuant to the Commission’s “Disciplinary Powers” or “suspended” under the statute’s “Automatic Suspension” provisions. This Guideline is intended to outline those duties and consequences. (This Guideline is not intended to address a situation in which the license has “expired” after the license period has elapsed and the license is not renewed.)

1. A person whose license is suspended is in the same position as an unlicensed person. Such person may not engage in any real estate activity that requires a real estate license, e.g., he or she may not list, sell, buy, or negotiate, or offer to list, sell or buy or negotiate the purchase, sale, option or exchange of real estate.
2. The person whose license is suspended may receive compensation during the suspended period only for acts performed during the period in which the person was properly licensed. For example, if the person negotiated a sale during the licensed period, the person may receive payment for performance of those acts even though the sale closes during the suspended period.
3. If the suspended person is a designated broker, any transaction that is closed during the period of suspension must be finalized by either another broker, an attorney, a title company, or a financial institution.
4. All advertising naming the suspended licensee, including but not limited to signs on office buildings and on “for sale” properties, must be removed. All evidence of the person’s licensure must be removed from public view.
5. If the suspended person is the designated broker, and if no other broker is designated to act for the brokerage company, the office must be closed during the period of suspension, and the licenses of all associated licensees will be made inactive by the Commission. Telephone service should be canceled, or the telephone must be answered by indicating to all callers that the office is closed due to the suspension of the broker’s real estate license.
6. If the suspended person is the designated broker for a licensed business entity, the law grants the entity ten (10) business days to designate a new broker. If no new broker is designated within the statutory period, the license of the entity is terminated, and the licenses of all associated licensees are inactivated by the Commission.

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The pertinent sections of the Idaho Real Estate License Law and Rules are the following:

1. 54-2002. Licensure Required.
 2. 54-2004. Definitions
“Real Estate Broker” and “Real Estate Salesperson”
 3. 54-2039. Broker and Branch Office Manager Absences and Changes.
 4. 54-2054. Compensation, Commissions and Fees - Prohibited Conduct.
 5. 54-2059. Disciplinary Powers.
 6. 54-2060. Grounds for Disciplinary Action.
 7. 54-2061. Additional Grounds - Court Actions.
 8. 54-2062. Additional Grounds - Other Administrative Actions.
 9. 54-2074. Automatic Suspension.
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IDAHO REAL ESTATE LICENSE LAW

54-2002. LICENSURE REQUIRED. No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefore. Unless exempted from this chapter, any single act described within the definitions of “real estate broker” or “real estate salesperson” shall be sufficient to constitute “engaging in the business” within the meaning of this chapter. Any person who engages in the business or acts in the capacity of real estate broker or salesperson in this state, with or without an Idaho real estate license, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the Idaho Real Estate Commission, and shall be subject to all penalties and remedies available under Idaho law for any violation of this chapter.

54-2004. DEFINITIONS. As used in this chapter:

“Real estate broker” means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others.

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the

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above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth.

(e) A dealer in options as defined in this section.

“Real estate salesperson” or “salesperson” means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of act described in this section.

54-2039. Broker and Branch Office Manager Absences and Changes.

Each real estate brokerage company must have a legally qualified individual acting as designated broker at all times. Each branch office licensed under section 54-2016, Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker’s license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the Commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity’s license is terminated, and the licenses of all associated licensees are made inactive.

54-2054. Compensation, Commission and Fees – Prohibited Conduct.

Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to legal business entity, all of whose shareholders, members or other persons having a similar ownership interest are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate

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transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

54-2059. Disciplinary Powers -- Revocation, Suspension or Other Disciplinary Action.

The Commission may temporarily suspend or permanently revoke licenses issued under the provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000), and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any licensee who is found to have violated any section of the Idaho Code, the Commission's administrative rules or any order of the Commission. The executive director may issue informal letters of reprimand to licensees without civil penalty or cost assessment.

54-2060. Grounds for Disciplinary Action.

A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the Commission. The following acts shall constitute misconduct within the meaning of this section:

- (1) Making fraudulent misrepresentations;
- (2) Engaging in a continued or flagrant course of misrepresentation or making of false promises, whether done personally or through agents or salespersons;
- (3) Failure to account for or remit any property, real or personal, or moneys coming into the person's possession which belong to another;
- (4) Failure to keep adequate records of all property transactions in which the person acts in the capacity of real estate broker or salesperson;
- (5) Failure or refusal, upon lawful demand, to disclose any information within the person's knowledge, or to produce any documents, books or records in the person's possession for inspection by the Commission or its authorized representative;
- (6) Acting as a real estate broker or salesperson under an assumed name;
- (7) Employment of fraud, deception, misrepresentation, misstatement or any unlawful means in applying for or securing a license to act as a real estate broker or salesperson in the state of Idaho;
- (8) Using, proposing to use, or agreeing to use a "double contract" as prohibited in section 54-2054, Idaho Code;
- (9) Seeking or receiving a "kickback" or rebate prohibited in section 54-2054, Idaho Code;
- (10) Violation of any provision of sections 54-2001 through 54-2097, Idaho Code, or any administrative rule made or promulgated by the Commission or any final order of the Commission;
- (11) Any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings;

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(12) Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

54-2061. Additional Grounds for Disciplinary Action – Court Actions.

The Commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee:

(a) Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee's lack of trustworthiness to engage in the real estate business;

(b) Has been declared to lack capacity or to be incompetent or under an infirmity, for the duration of such declaration only;

(c) Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate-related transaction.

The court's record of conviction, order determining legal competency, or the order entering judgment in a civil case, or certified copies thereof, shall be prima facie evidence of a conviction, or the court's action.

54-2062. Additional Grounds for Disciplinary Action – Other Administrative Actions.

The Commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

(a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or

(b) Has a real estate or other professional, suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

54-2074. Automatic Suspension of Broker's, Associate Broker's or Salesperson's License on Payment by Commission -- Condition For License Reinstatement. If, pursuant to court order, the Commission pays from the recovery fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensed broker, associate broker or salesperson, the license of such broker, associate broker or salesperson shall be automatically suspended without further order of the Commission upon the effective date of any order by the court as set forth herein authorizing payment

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from the recovery fund. No such broker, associate broker or salesperson shall be granted reinstatement until he has repaid in full, the amount so paid from the recovery fund plus interest at the legal rate of interest allowable by law for judgments.