

**Office of Professional Regulation
Real Estate Commission**

Vermont College Campus
32 College Street
Schulmaier Hall
Montpelier, VT 05602

Agenda

January 24, 2013 – 9:30 a.m.

- 1. 8:30 - Education Committee**
- 2. 9:30 - Full Commission meeting - Call to Order**
- 3. 9:35 - Approval of December 20, 2012 minutes**
- 4. 9:10 - Case Manager's Report – C. Preston**
- 5. 9:20 - Closing reports**
 - a. 2012-609 and 2012-610**
 - b. 2012-396, 2012-397 and 2012-474**
 - c. 2012-521 and 2012-522**
 - d. 2012-469 and 2012-470**
 - e. 2012-553 and 2012-554**
- 6. 9:30 - Rules update**
- 7. 10:30- New Business**
- 8. 10:35- Public Comment**
- 9. 10:45- Adjournment**

Next Scheduled Meeting – February 28, 2013

Real Estate Education Committee
Courses for review
January 24, 2013

Provider/Title	Requested # of Hours	Renewal?	Approved	Approved # of Hours	Denied	Comments
The CE Shop, Inc						
1. A Brief Introduction to Real Estate Finance	2					
2. Advocating for Short Sale Clients	3					
3. Sign Here: Contract Law on E-Signatures	3					
Vermont Association of Realtors						
4. Understanding Fire Safety – Is it a Title Issue?	2					
5. Estimate, Adjust and Defend	6					
Continuing Ed Express LLC						
6. The Short Sale Investigative Report	3					Tabled from December
OnCourse Learning Corporation DBA Career Webschool						
7. Real Estate Math	2					
8. Principles of Commercial Real Estate	2					
9. Ethics in Real Estate	4					
10. Tax Free Exchanges	4					
11. ADA and Fair Housing	4					
12. Pricing Property to Sell	4					
13. Federal Law & Commercial Real Estate	4					
14. RESPA Reform	4					
Vermont Association of Realtors						
15. Risk Management – Identify & Manage the Risk in a Real Estate Transaction	6					
16. Real Estate Law Day	4					

**Office of Professional Regulation
Real Estate Commission**

Unapproved Minutes

December 20, 2012 – 9:00 a.m.

Location: Vermont College Campus, 32 College Street, Schulmaier Hall, Montpelier, VT 05602

Commission Members and Staff Present: Maretta Hostetler, Gloria Rice, David Raphael, Michelle Gosselin, Mark Thibeault and Thomas Prindiville **Absent:** Claire Porter **Staff Present:** Terry Gray, Judith Griffen, Colin Benjamin **Public members Present:** Liz Merrill, Randy Mayhew, Robin Jacobs, Rosemary Gingue, Donna Cusson and Teresa Merelman

1. **Education Committee - Met** and reviewed the attached continuing education courses. Please see attached list for approval/denial of all courses submitted.
2. **Full Commission meeting - Called to Order** at 9:05 a.m.
3. **Approved October 25, 2012 minutes with correction**
4. **Case Manager's Report – C. Preston**
There are 85 open cases at this time. Sixteen (16) are ready for an I-Team meeting, ten (10) have been recommended for closing, five (5) are in the intake process, two (2) are waiting responses, one (1) is under appeal, thirty-one (31) are under investigation and twenty (20) have been recommended for charges.
5. **Rules Committee Final Report** – Colin Benjamin presented the final draft of the rules and outlined the process for submitting them for approval and adoption. The Commission motioned to approve the rules and to start the formal process. The Motion carried with one abstention.
6. **Paperless licensure** – C. Winters, Director, and the Commission members discussed a memo from Director Winters regarding OPR's goal of moving to paperless licensure, beginning with the next license renewal cycle. Director Winters outlined the cost savings in postage and staff time, benefits to the environment, and the ease of on-line use for licensees. The Commission made a motion to approve the paperless proposal made by Director Winters. The motion carried unanimously.
7. **New Business**
 - a. Real Estate Noise Disclosure Statement was discussed by Colin and the Commission. The Commission believes this is covered under rules address material facts and does not feel getting involved in this matter will better serve the public.
 - b. The Commission had an informal discussion with Liz Merrill and Robin Jacobs on what they are seeing in their inspector roles. Overall they are getting a good reception from the licensees. There are no glaring problems at this time from the approximately six inspections each has completed.
8. **No Public Comments**
9. **Adjourned at 10:30 a.m.**

Next Scheduled Meeting – January 24, 2013

Real Estate Education Committee
Courses for review
December 20, 2012

Provider/Title	Requested # of Hours	Renewal?	Approved	Approved # of Hours	Denied	Comments
The CE Shop, Inc						
1. Uncle Sam Has Homes for Sale: Listing & Selling HUD Homes	3	N	Y	3		
New Hampshire Association of Realtors						
2. 2-13 Professional Standards Workshop “Do it Right in Real Estate”	4	N	Y	4		
Lynne M. Labombard						
3. Certified Negotiation Expert CNE	8	N	Y	4		
Northwestern Vermont Board of Realtors						
4. It’s a Price War to the Door	7	N	Y	4		
VAR						
5. Fair Housing	6	N	Y	4		
Continuing Ed Express						
6. The Short Sale Investigative Report	3	Tabled				Tabled
Randy Mayhew School of Real Estate						
Vermont Law Study – add two instructors – Liz Merrill and Lynne LaBombard	Instructor approval only		Approved both instructors			

**STATE OF VERMONT
OFFICE OF PROFESSIONAL REGULATION
REPORT OF CLOSED INVESTIGATION**

Profession: Real Estate Brokerage Firm and Real Estate Broker
Case File No.: 2012-609 and 2012-610
Date Opened: September 25, 2012

SECTION I. NATURE OF COMPLAINT

The Complainants alleged that the Respondents failed to disclose problems with the septic system and sewer lines on a property they purchased.

SECTION II. SUMMARY OF INVESTIGATION

The Complainants advised that in August of 2010 they purchased a house listed by the Respondents. They were aware that the sewer line had been blown out prior to closing but were not aware if any other issues concerning the septic system or sewer lines. About four months later a neighbor informed them that the sewer was backing up on to his property, that they shared a connected sewer line, and that he felt they were responsible for the necessary repairs. The Complainants advised the town informed that they must correct the problem with the sewer lines to avoid having their house condemned. They advised that none of the paperwork from the Respondents, the town, or attorneys involved indicated any problems with the property. The Complainants advised that the real estate salesperson employed by the Respondents informed them that the prior owner did not sign a full disclosure form because it was an inherited property. The Complainants believe the seller who inherited the property would have known about the sewer line problems because they went on for ten or more years and that the Respondents should have disclosed them.

The Respondent Real Estate Broker confirmed that the subject property was inherited and that the seller did not live in the residence. She advised that when a property is inherited there is often no personal knowledge of disclosure issues. She advised that in that type of situation they do not complete a Seller Information Report (SPIR) but it is their policy to strongly recommend a building inspection. She advised that the buyer did have a home inspection contingency in the Purchase & Sale Contract and did sign an Acknowledgement of Satisfactory Property Inspection, with one item requested for repair. She advised that the Complainants did not share with them the discussion with the neighbor or repair person regarding blowing out the sewer pipe, thus they had no hint of a problem with the town sewer line. The Respondent noted that the Complainants contacted her listing agent (Salesperson) after the closing and was advised to contact their attorney. The Respondent expressed sorrow to the Complainants for the problems with the sewer line but could not disclose an issue about which they knew nothing. The only public information about sewer lines in that town is the receipt of a bill for services.

The Seller confirmed that she inherited the property from her deceased mother. She advised that she had never lived in the house and was not aware of any issues with the sewer system. She advised that she did not know at the time of the sale that the house had a shared sewer pipe with the neighbor. She advised that she knew her mother was about the last person in that area to connect to the municipal system.

The Real Estate Salesperson employed by the Respondents confirmed that the property was inherited and that the seller did not disclose any issues or problems with the sewer system to him or to anyone else. He advised that when listing the property he found nothing in the town records about there being a shared sewer line or other issues about the sewer lines. After the issue came up they again looked at the town records but were told that the town had no diagrams as to the layout of the sewer piping.

SECTION III. RECOMMENDATION

Based on the results of the investigation, the Investigative Team found that the Respondents met the essential standards of acceptable and prevailing practice. The Team found no attempt by the Respondents to conceal material facts that were known to them. The subject property was an inherited property and the seller had not lived in the home. It is common that a SPIR or disclosure form is not completed for inherited properties because of the unknowns. The town's records concerning the sewer lines were incomplete and ambiguous. Since the investigation failed to substantiate charges of unprofessional conduct, the Investigative Team recommends that this case be concluded without formal prosecution. Sections of the statute considered: 3 V.S.A. § 129a and 26 V.S.A. §§ 2211 and 2296.

FOR THE INVESTIGATIVE TEAM

Carla Preston, Case Manager / Date: January 16, 2013

cc: David P. Raphael, Commission Member; Karl E. Packer, Investigator; and Gabriel M. Gilman, State Prosecuting Attorney.

Reviewed for conformance to 3 V.S.A. § 131 and approved for release.

Christopher D. Winters, Esq., Director, Office of Professional Regulation/ Date

Real Estate Commission voted to close on: _____

**STATE OF VERMONT
OFFICE OF PROFESSIONAL REGULATION
REPORT OF CLOSED INVESTIGATION**

Profession: Real Estate Broker and Brokerage Firm
Case File No.: 2012-396 and 2012-397 and 2012-474
Date Opened: June 21, 2012

SECTION I. NATURE OF COMPLAINT

The Complainant alleged that the Respondents failed to present mandatory disclosure forms to Vermont customers and clients and allowed an unlicensed person to perform services that would require a Vermont license.

SECTION II. SUMMARY OF INVESTIGATION

The Complainant advised that he previously worked for the out-of-state Respondent Brokerage Firm. He indicated that he always completed the Vermont disclosure forms for customers and advised that the Respondents and others working out of that office seldom did. The Complainant also reported that a relative of the Respondent Real Estate Broker who is not licensed in Vermont showed a property to a customer in Vermont.

The Respondent Real Estate Broker described the tense situation involving the Complainant and members of her firm which led to their separation in June of 2012. She advised that they only list one or two Vermont properties at a time. She indicated that she was having difficulty locating the Vermont disclosure forms after the Complainant left. She advised that in November of 2012 while going through some files that were left in the Complainant's desk she found the missing Vermont mandatory disclosure forms.

The Respondent Real Estate Broker admitted that an unlicensed person showed one Vermont property due to a timing/circumstance issue. She explained that her son (unlicensed) drove the buyers to Vermont where they were to meet her but unfortunately she was running late. She advised that the sellers were home at the time and the buyers did not wish to wait for her to arrive. She advised that the buyers entered the home with her son before she arrived at the property. The Respondent advised that the incident occurred well over a year ago and indicated that it would never happen again.

SECTION III. RECOMMENDATION

Based on the results of the investigation, the Investigative Team found that an unlicensed relative of the Respondent Real Estate Broker showed a Vermont property to potential buyers. The relative himself would not be considered to have engaged in unlicensed practice under Vermont law, both because there was no ongoing course of conduct and because it does not appear he expected or received compensation for his services. The Investigative Team found no evidence to suggest that the Respondents failed to provide Vermont consumer disclosure forms to Vermont customers or clients.

For the foregoing reasons, the Investigative Team recommends that the Commission close these matters without formal action. The Respondent Real Estate Broker is reminded to delegate real estate functions only to licensee-members of her brokerage. Closure of this matter does not preclude re-opening or consideration of the underlying facts should a pattern of practice or administrative deficiencies become apparent from future complaints. Sections of the statute considered: 3 V.S.A. § 129a and 26 V.S.A. § 2296.

FOR THE INVESTIGATIVE TEAM

Carla Preston, Case Manager / Date: January 16, 2013

cc:

David P. Raphael, Commission Member; Karl E. Packer, Investigator; and Gabriel M. Gilman, State Prosecuting Attorney

Reviewed for conformance to 3 V.S.A. § 131 and approved for release.

Christopher D. Winters, Esq., Director, Office of Professional Regulation/ Date

Real Estate Commission voted to close on: _____

**STATE OF VERMONT
OFFICE OF PROFESSIONAL REGULATION
REPORT OF CLOSED INVESTIGATION**

Profession: Real Estate Brokerage Firm and Real Estate Broker
Case File No.: 2012-521 and 2012-522
Date Opened: August 20, 2012

SECTION I. NATURE OF COMPLAINT

The Complainants alleged that the Respondent Real Estate Broker moved the real estate sign of another brokerage that was located on their property.

SECTION II. SUMMARY OF INVESTIGATION

The Complainants advised that in November of 2011 they were selling a parcel adjacent to property owned by the Respondent and his brokerage firm. They hired another real estate agent to sell their property who placed a sign within the Right-of-Way providing access to the parcel for sale that was next to a business sign belonging to one of the Respondent's tenant's. They advised that the sign was located on their property, thus the Respondent had no right to remove or relocate it. They reported that the Respondents informed their real estate agent that it could not be placed there and relocated the sign to the other side of the business sign. They believe that according to their survey the Respondents' tenant's business sign was located about 18 feet onto their property and should be relocated. The Complainants advised that with the assistance of the police and their attorney the Respondents were advised that the location of the sign was in fact on the Complainant's property and must be removed. The Complainants believe that the Respondents had no right to relocate their real estate agent's sign.

The Respondent Real Estate Broker advised that the allegations made in the complaint do not pertain to his license as a real estate broker or to his brokerage firm. He explained that the building and land are owned by a corporation belonging to his wife and him. He advised that they have owned the commercial parcel for over twenty years. He admitted he disputed the location of the real estate sign placed by the Complainants' real estate agent. The Complainants and their attorney were advised that he would remove their business sign and flower box if it was found to not be located on their property. He advised that they did determine that the business sign and flower box had been incorrectly placed years ago and took efforts to correct the situation. A contractor was hired to remove the sign and flower box from the Right-of-Way. He advised that the Complainant's real estate broker communicated with him in September of 2012 about the misunderstanding regarding the lot line and was pleased that the situation was resolved.

SECTION III. RECOMMENDATION

Based on the circumstances described above, the Investigative Team found that the issue regarding the location of the sign arose from a boundary dispute unrelated to the practice of real estate by the Respondents. The matter is not within the regulatory jurisdiction of the Commission. The Investigative Team recommends that this case be concluded without formal prosecution. Sections of the statute considered: 3 V.S.A. § 129a and 26 V.S.A. §§ 2211 and 2296.

FOR THE INVESTIGATIVE TEAM

Carla Preston, Case Manager / Date: January 16, 2013

cc: Michelle K. Gosselin, Commission Member; Jamie Palmisano, Chief Investigator; and Gabriel M. Gilman, State Prosecuting Attorney.

Reviewed for conformance to 3 V.S.A. § 131 and approved for release.

Christopher D. Winters, Esq., Director, Office of Professional Regulation/ Date

Real Estate Commission voted to close on: _____

**VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
REPORT OF CONCLUDED INVESTIGATION**

Profession: Real Estate Broker and Brokerage Firm
Case File Nos.: 2012-469 and 2012-470
Date Opened: July 19, 2012

SECTION I. NATURE OF COMPLAINT

The Complainant alleged that the Respondent improperly withheld a deposit following the collapse of a purchase-and-sale agreement.

SECTION II. SUMMARY OF THE INVESTIGATION

The Complainant reported that the Respondent improperly withheld deposit monies. The investigation revealed that the Complainant deposited \$20,000 toward the purchase of a home. The Respondent had an exclusive-agency agreement with the seller. The Respondent served as escrow agent. The Investigator confirmed that the Respondent held the deposited funds in a Real Estate Trust Account independent of her operating accounts. The Investigator confirmed that the Respondent made reasonable efforts to provide Vermont mandatory disclosure information to the Complainant, though the Complainant refused to sign. The sale fell through, and the seller alleged default by the buyer-Complainant. The buyer-Complainant and the seller are represented by attorneys. The Investigator confirmed that a bona fide dispute exists as to the escrowed funds.

RREC 4.7(d) provides:

When the broker learns of a dispute concerning the proper party to receive a deposit held in a pooled account, the broker shall notify the parties, in writing, that the deposit will remain in the trust account until (1) the parties to the disputed deposit give written authority to the broker to disburse the funds, or (2) a court of competent jurisdiction determines the proper party entitled to the proceeds of the disputed deposit.

The Investigation revealed that the Respondent complied with RREC 4.7 in all relevant respects.

SECTION III. RECOMMENDATION

The Investigative Team concludes that this matter primarily is a contract dispute outside the jurisdiction of the Real Estate Commission. The Respondent's management of the escrowed funds has been consistent with the requirements of RREC 4.7, and particularly with RREC 4.7(d), concerning a broker's duties in the event of a disputed deposit.

There being no evidence of unprofessional conduct, the Investigative Team recommends that the Commission close this case. Sections of the statute considered: 3 V.S.A. § 129a and 26 V.S.A. § 2296.

FOR THE INVESTIGATIVE TEAM

Carla Preston, Case Manager / Date:

cc: Gloria K. Rice, Esq., Commission Member; Marie L. Beland, Investigator; and Gabriel M. Gilman, State Prosecuting Attorney

Reviewed for conformance to 3 V.S.A. § 131 and approved for release.

Christopher D. Winters, Esq., Director, Office of Professional Regulation/ Date

Real Estate Commission voted to close on: _____

**STATE OF VERMONT
OFFICE OF PROFESSIONAL REGULATION
REPORT OF CLOSED INVESTIGATION**

Profession: Real Estate Brokerage Firm and Real Estate Broker
Case File No.: 2012-553 and 2012-554
Date Opened: August 23, 2012

SECTION I. NATURE OF COMPLAINT

The Complainant alleged that the Respondents' advertising was in violation of the Real Estate Commission's Rules.

SECTION II. SUMMARY OF INVESTIGATION

The Complainant reported that the Respondents' advertising was in violation of the Commission's Rules because the brokerage firm's name was not listed in the advertisement nor was the full name of the real estate broker, only her initials. The name of the Respondent Brokerage Firm included the Respondent Broker's first, middle and last name however the Respondent's advertising listed only her initials versus her full registered name. In addition, the website listed in the Respondents' advertisement linked to the Respondent Brokerage Firm but referenced the unregistered short name, not the full name of the brokerage firm.

The Respondent Real Estate Broker agreed that her advertising was not in compliance with the Rules and took immediate steps to correct the issue. She advised that her brokerage firm, a Vermont domestic corporation, registered a trade name with just her initials. The Respondent advised that she would file the appropriate paperwork with the Commission if she chose to amend her advertising to the short name. She advised that the prominent name in her advertising would be the full name of her brokerage firm. She advised she amended her website so that the full name of the brokerage firm was prominently displayed. In addition, she confirmed that the data feed from the Multiple Listing Services displayed the name of the listing agent and brokerage firm on her website. The Respondent Real Estate Broker advised that none of the advertising violations were intended to deceive the public. She appreciated the opportunity to correct the issue and provided examples of her revised advertisements.

SECTION III. RECOMMENDATION

Based on the circumstances described above, the Investigative Team found that the Respondent Real Estate Broker and her brokerage firm were in violation with respect to statutes and rules governing advertising. The Respondent corrected the issue as soon as it was brought to her attention. Neither Respondent has been previously disciplined.

For the foregoing reasons, the Investigative Team recommends that the Commission close this matter without prosecution. The Team believes that the disciplinary process thus far will continue to be a sufficient deterrent to similar conduct in the future. Closure of this matter does not preclude re-opening and reconsideration of the underlying facts should a pattern of practice or administrative deficiencies become apparent from future professional conduct complaints. Sections of the statute considered: 3 V.S.A. § 129a and 26 V.S.A. § 2296.

FOR THE INVESTIGATIVE TEAM

Carla Preston, Case Manager / Date: January 16, 2013

cc: Michelle K. Gosselin, Commission Member; Jamie Palmisano, Chief Investigator; and Gabriel M. Gilman, State Prosecuting Attorney.

Reviewed for conformance to 3 V.S.A. § 131 and approved for release.

Christopher D. Winters, Esq., Director, Office of Professional Regulation/ Date

Real Estate Commission voted to close on: _____