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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

STATE REAL ESTATE COMMISSION

REGULATORY MEETING

TIME: 9:01 A.M.

Held at

PENNSYLVANIA DEPARTMENT OF STATE

2525 North 7th Street

CoPA HUB, Eaton Conference Room

Harrisburg, Pennsylvania 17110

as well as

VIA MICROSOFT TEAMS

October 28, 2024

1 State Real Estate Commission
2 Regulatory Meeting
3 October 28, 2024
4
5

6 COMMISSION MEMBERS:
7

8 Gaetano P. Piccirilli, Esquire, Chair, Public
9 Member - Absent
10 Kyle Sampson, Vice Chair, Public Member
11 Annie Hanna Cestra, Secretary, Industry Member
12 Joseph Tarantino, Industry Member - Absent
13 Jeffrey J. Johnson, Industry Member - Absent
14 Anne M. Rubin, Industry Member
15 Guy Saxton, Cemetery Member
16 Jennifer Thomson, Esquire, Attorney General designee
17 Arion R. Claggett, Acting Commissioner, Bureau of
18 Professional and Occupational Affairs
19
20

21 COMMISSION PERSONNEL:
22

23 Dean F. Picarella, Esquire, Commission Counsel
24 Timothy A. Fritsch, Esquire, Commission Prosecution
25 Liaison
26 Tyesha C. Miley, Esquire, Commission Prosecutor
27 Deon Bowers, Commission Administrator
28 Marc Farrell, Esquire, Regulatory Counsel,
29 Office of Chief Counsel, Department of State
30 Andrew LaFratte, MPA, Deputy Policy Director,
31 Department of State
32 Carlton Smith, Deputy Chief Counsel, Prosecution
33 Division
34 Elle Thompson, Law Clerk, PA Department of State
35
36

37 ALSO PRESENT:
38

39 Michael McGee, CAE, RCE, Chief Executive Officer,
40 Pennsylvania Association of Realtors
41 Henry (Hank) Lerner, Esquire, Chief Legal Officer,
42 Pennsylvania Association of Realtors
43 Mark Cumberland, Philadelphia Real Estate Classes
44 Emme Reiser, Political Programs Manager, Pennsylvania
45 Association of Realtors
46 Lisa Ginsburg, Director of Education, Bucks County
47 Real Estate Institute
48 Lauren Sams, Exit Realty Shoals
49
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State Real Estate Commission
Regulatory Meeting
October 28, 2024

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ALSO PRESENT: (cont.)

- Anne Marie Click, Brunswick County Association of Realtors
- Connie Cirigliano, Real Estate Broker Sales Associate/Senior Lead Real Estate School Instructor at Weichert Realtors
- L.F.
- Anneliese Henley, Core Real Estate Group
- Lisa Aaron, Professional Standards & Education Manager, Pennsylvania Association of Realtors
- Lauren Gusherowski, Sargent's Court Reporting Service, Inc.

1 ***

2 State Real Estate Commission

3 Regulatory Meeting

4 October 28, 2024

5 ***

6 A State Real Estate Commission Regulatory Meeting
7 was held on Monday, October 28, 2024. Kyle Sampson,
8 Vice Chair, Public Member, officially called the
9 meeting to order at 9:01 a.m.

10 ***

11 Pledge of Allegiance

12 [The Pledge of Allegiance was recited.]

13 ***

14 Regulatory Counsel - 16A-5616 Draft Annex - General
15 Revisions

16 [Marc Farrell, Esquire, Regulatory Counsel, Office of
17 Chief Counsel, Department of State, informed
18 Commission members that the annex represents the
19 Commission's last consensus regarding the changes.
20 He noted one comment from the Pennsylvania
21 Association of Realtors (PAR) was received after
22 sharing the annex with about 140 stakeholders.

23 Mr. Farrell referred to § 35.201 regarding
24 definitions. He noted PAR supported all changes,
25 other than the comma in the advertisement definition.

1 He noted the revised definition on page 2 for
2 comparative market analysis and revisions to the
3 distance education definition.

4 Ms. Rubin referred to page 2, distance education
5 versus live online classes, where they now accept
6 live online classes, which is different than what was
7 allowed before. She asked where it is covered and
8 whether it is considered distance education or
9 classroom education. She mentioned that COVID hit
10 after they were finished with their meetings about
11 the language and wanted to ensure it is addressed
12 clearly in the language.

13 Mr. Farrell stated PAR had a hand in this, and
14 during COVID they introduced legislation that tweaked
15 the definition of distance education, where the
16 strikeout where it says separated by distance and
17 sometimes time, removing the word sometimes to read,
18 distance and time.

19 Mr. Farrell explained that synchronous distance
20 education would count as just regular continuing
21 education (CE) because the instructor is actually
22 interacting with the students on a live basis and
23 asynchronous, where the instructor is not acting live
24 with the students would be considered distance
25 education, which was a statutory change in terms of

1 the changed definition to reflect what is now in the
2 statute.

3 Ms. Cestra referred page 2, comparative market
4 analysis, a person making or performing due diligence
5 related to a potential listing offering for sale
6 option. She assumed that person means a licensee in
7 that section.

8 Ms. Rubin stated the top states who is doing the
9 preparation and 1 and 2 state who they are preparing
10 it for.

11 Mr. Farrell referred to page 3, licensure as a
12 broker, noting PAR supported all proposed changes in
13 this section.

14 Mr. Farrell referred to page 5 and asked whether
15 anybody had any questions regarding the edit on top
16 of page 5.

17 Ms. Cestra referred to page 3, noting (i) is
18 taken out of the top and have (ii), certifying the
19 applicant was actively supervised and trained by the
20 broker. She referred to page 6 under (b), certifying
21 that the broker will actively certify and train. She
22 asked why it is not the same language.

23 Mr. Picarella explained that one is for the
24 broker's licensure, but they are going to certify
25 that they are going to supervise the licensee and

1 then the licensee in that section is saying that the
2 broker is going to supervise them. He noted it is
3 the same, just reversing each other for the different
4 licensure classes.

5 Mr. Farrell referred to § 35.223 on page 6,
6 licensure as a salesperson, showing change they just
7 debated. He noted PAR supported all proposed
8 changes. He also referred to changes on page 8.

9 Mr. Farrell referred to § 35.223, licensure as a
10 cemetery broker, noting changes and deletions that
11 carryover to page 9.

12 Mr. Picarella referred to § 35.224, noting
13 subsection 3 and the subsections below are being
14 deleted.

15 Mr. Farrell noted the same sort of language
16 change on page 10 in (4)(ii).

17 Mr. Farrell referred to § 35.225, licensure as a
18 cemetery salesperson, noting PAR supported all
19 proposed changes.

20 Mr. Farrell referred to page 13 under § 35.226,
21 licensure as builder-owner, salesperson, noting no
22 additional substantive changes.

23 Ms. Cestra mentioned that they are not required
24 to be trained or supervision and suggested having
25 future discussions concerning that matter.

1 Mr. Farrell referred to § 35.227, licensure as
2 rental listing referral agent, noting PAR supported
3 all proposed changes.

4 Ms. Rubin asked how the Commission could remove
5 the license because it is obsolete.

6 Acting Commissioner Claggett explained that they
7 would have to contact their legislator to remove that
8 license because it is not something the Commission
9 could eliminate.

10 Ms. Rubin explained that it was a license issued
11 for a business that has no necessity anymore and was
12 an avenue when consumers had no way of getting a list
13 of rentals.

14 Mr. Picarella commented that the license class
15 was created by the legislature in their act, and the
16 legislature has to remove it from the act because the
17 Commission cannot remove it by regulation.

18 Ms. Rubin requested entities that work on
19 legislation attending the meeting remove the license
20 when working on a piece of real estate legislation.

21 Henry (Hank) Lerner, Esquire, Chief Legal
22 Officer, Pennsylvania Association of Realtors,
23 commented that the Pennsylvania Licensing System
24 (PALS) has one active rental listing referral
25 license. He mentioned that PAR has a task force

1 looking at what they might want to think about
2 changing and license categories is on the list,
3 noting PAR is aware that the Commission does not see
4 a whole lot of use for the license.

5 Mr. Farrell referred to page 17 under § 35.227,
6 licensure campground membership salesperson, noting a
7 change on page 18 to remove in this Commonwealth
8 twice and remove gender-specific pronoun usage, which
9 was an overall comment from PAR.

10 Mr. Farrell referred to page 20 under § 35.229,
11 licensure as time-share salesperson, noting PAR
12 supported all proposed changes.

13 Mr. Farrell referred to § 35.244, supervision and
14 operation of office, noting PAR supported all
15 proposed changes. He mentioned (c) would be edited
16 to add associate cemetery broker.

17 Mr. Farrell referred to page 23 under § 35.245
18 where they are amending the title to read,
19 maintaining of licenses in office, noting PAR
20 supported the proposed changes. He mentioned they
21 are also deleting the words in (a) "commencing with
22 the 2006-2008 renewal period the." He addressed a
23 comment from PAR, since all licensee data is easily
24 available online via PALS, has the Commission given
25 any thought as to whether it is necessary or helpful

1 to require brokers to maintain copies of printed
2 licenses as well, and Commission members agreed.

3 Mr. Lerner mentioned that PAR did not have a
4 specific proposal in the sense that they did not run
5 it through a committee and get an approval for
6 language but believed it would be as simple as
7 crossing out the section because he did not believe
8 there were any other references talking about
9 maintaining licenses in print.

10 Ms. Rubin expressed concern that if they are not
11 looking for licenses in the mail that it would be
12 very easy for them to not check the agents have
13 renewed.

14 Mr. Picarella commented that the purpose of the
15 section is when the Bureau of Enforcement and
16 Investigation (BEI) inspects the office that they
17 have something that the brokers could show as far as
18 licensees. He mentioned that BEI would be on PALS
19 for a long-time checking licensees in large offices.

20 Acting Commission Claggett commented that it is
21 easier to look someone up online as opposed to
22 looking at a license in an office.

23 Ms. Cestra mentioned that branch office licenses
24 are required but do not have to identify by the state
25 who is in what office, where people could be at three

1 and four different offices in the same company if
2 they have more offices. She noted there is no law
3 that says someone has to be designated to one office.

4 Mr. Lerner commented that someone working for XYZ
5 Realty and XYZ Realty has 10 branch offices that they
6 would not be affiliated in PALS with any of those
7 branch offices, noting there is no rule that says
8 they have to work at only one branch office or only
9 work out of one branch office.

10 Mr. Lerner mentioned that maintaining a list in
11 the one out of which they work is even amorphous
12 because they could be in the Harrisburg and Camp Hill
13 depending on which side of the river they are on and
14 somebody somewhere has to decide which one they work
15 out of, which is not registered to the Commission, so
16 there is really no right or wrong answer as to where
17 their physical license happens to sit.

18 Mr. Saxton referred to the CE registration for a
19 cemetery, noting there might be a reason to have that
20 displayed for a customer coming in so that they do
21 not have to go online to know the entity name, and
22 the cemetery is registered. He noted he was not
23 talking about individual salespeople or broker but is
24 talking about the CE license or registration, which
25 is like a sales tax certificate. He mentioned that

1 the business privilege license is supposed to be
2 available on inspection but that it is also available
3 online.

4 Ms. Thomson mentioned being a fan of the paper
5 backup because it reduces friction, which is a
6 concept they deal with a lot with in antitrust. She
7 commented that they could monitor activity in their
8 own office and have it for inspections and consumers.
9 She noted it is not difficult to print off a piece of
10 paper and keep it on file versus having to log into a
11 system and look it up every time someone needs it.

12 Ms. Cestra commented that the state has decided
13 not to issue hard copies, and she believed it would
14 be going backwards in offices as opposed to having
15 up-to-date standards using a computer system and
16 having.

17 Ms. Rubin mentioned that their main office has a
18 folder with everybody's license, and a staff person
19 was designated to compare the list of licensees to
20 the licenses received by mail and expressed concern
21 with not requiring a paper copy being maintained at
22 the office, where it would be easy for a brokerage to
23 forget about it and whether everyone renewed.

24 Acting Commissioner Claggett asked whether there
25 was a fine if the license is not displayed.

1 Mr. Picarella assumed that it could technically
2 be a violation, noting it is mandatory in other
3 professions to have certain items posted.]

4 MR. PICARELLA:

5 I believe the Commission Vice Chair
6 would accept a motion to delete § 35.245
7 of our regulations in their entirety.

8 VICE CHAIR SAMPSON:

9 Is there a motion?

10 ACTING COMMISSIONER CLAGGETT:

11 So moved.

12 VICE CHAIR SAMPSON:

13 Is there a second?

14 MS. CESTRA:

15 Second.

16 VICE CHAIR SAMPSON:

17 Madam administrator, please call the
18 roll.

19

20 Kyle Sampson, aye; Annie Hanna Cestra,
21 aye; Anne Rubin, aye; Guy Saxton, no;
22 Arion Claggett, aye.

23 [The motion carried. Guy Saxton opposed the motion.]

24

25

1 Mr. Farrell referred to § 35.253, replacement of
2 broker of record due to death, noting the addition to
3 the title, "or departure" and then within the body
4 the addition of the words "or departure" after the
5 words within 15 days following the death or departure
6 of a broker or record. He noted the words "or cause
7 to file" after the words officer shall file or cause
8 to file at the top of page 24.

9 Mr. Farrell referred to Subchapter D, licensing
10 examinations, at § 35.271, examination for broker's
11 license. He noted PAR supported the proposed
12 changes, along with being appreciative of property
13 management as a mandatory broker education
14 requirement in (b)(2). He referred to (a)(3), noting
15 they deleted at least 3 years of other experience,
16 education, or both that the Commission considers the
17 equivalent of 3 years' experience as a licensed
18 salesperson and then added educational or experience
19 qualifications which the Commission deems to be
20 equivalent.

21 Mr. Farrell to (b)(1)(i), where the word
22 bachelor's was changed to minimum of an associate
23 degree, etc., and eliminated (ii), which reads a
24 bachelor's degree from an accredited college as
25 defined in § 35.201, having completed coursework

1 equivalent to a major in real estate.

2 Ms. Cestra asked why they are lowering the
3 standards for an associate degree.

4 Ms. Rubin explained that because the requirements
5 for real estate licensing courses is such a small
6 amount of time compared to a 2-year associate degree
7 coursework that if they are majoring in real estate.

8 Ms. Cestra asked how many hours or credits are
9 needed to get an associate degree in real estate.

10 Ms. Rubin explained that one 3-credit course in a
11 semester would be equivalent to about 30 hours.

12 Ms. Cestra believed they should have looked at
13 different colleges to see what a degree requires to
14 have it be their major. She mentioned it is
15 problematic as far as what is considered a real
16 estate degree when reviewing applications.

17 Mr. Farrell explained that it is defined in
18 relation to an associate degree from an accredited
19 college, where if it is coming from an accredited
20 college that it is going to have the necessary number
21 of expected hours.

22 Ms. Rubin explained that in order to be approved
23 to sit for the broker's exam, they would accept an
24 associate degree with a major in real estate as the
25 educational part, but they still need to substantiate

1 the experience.

2 Mr. Farrell confirmed that they are not removing
3 the experience part.

4 Mr. Farrell referred to § 35.271(b)(2), where
5 they changed "Commission-developed or" to just
6 Commission, etc.

7 Ms. Rubin requested information regarding the
8 list of courses and whether the Commission could add
9 to them.

10 Mr. Picarella explained that they were put in
11 when the original regulation was drafted.

12 Ms. Cestra explained that staff identifies the
13 appropriate courses.

14 Ms. Bowers stated there is a real estate office
15 manager, which is a mandatory course.

16 Ms. Rubin suggested the Commission review the
17 courses periodically and asked whether they have the
18 ability to modify the topics for courses.

19 Mr. Picarella noted the Commission could modify
20 the courses.

21 Ms. Rubin suggested supervision as one of the
22 courses listed.

23 Mr. Picarella asked whether that would be under
24 the two that are required in a Commission-approved
25 law course. He believed supervision would be in a

1 Commission-approved law course.

2 Ms. Bowers noted the Commission has a real estate
3 brokerage and office management course, which is a
4 course outline that the Commission provides on their
5 website that they are supposed to refer to and
6 offered to share the outline. She referred to
7 paragraph 2, where it says 2 of the required 16
8 credits shall be in an approved real estate office
9 manager course, which is the first required mandatory
10 course.

11 Ms. Bowers explained that the Commission has that
12 on their website and is the outline they are supposed
13 to pull from if they are making their own course or
14 using it directly.

15 Ms. Rubin noted not seeing anything that talks
16 about supervision.

17 Mr. Lerner referred to the change from
18 Commission-developed course or approved to just
19 Commission-approved and pointed to the very top of
20 the outline that has a revision date of 2009, where
21 one of the sticking points has been that by having
22 the Commission develop the outline, sometimes it gets
23 a little bit long in the tooth, so maybe the intent
24 was that this would have some management, maybe the
25 intent in the future would be it would have more

1 management, but by saying Commission-approved course
2 instead of commission developed was the intent of
3 that change to say that the Commission might back off
4 of the specific outlines in the future and give a
5 little bit more flexibility to the providers to
6 develop it.

7 Ms. Cestra commented that the only language taken
8 out is Commission-developed course and not what the
9 course is, except where they do have the property
10 management course. She mentioned that in order to
11 add to that list they would have to get all of the
12 real estate professionals and providers go over the
13 topics because it was developed by those individuals
14 and the Commission.

15 Mr. Saxton commented that they are going from
16 Commission-developed to Commission-approved and then
17 there is a broad list of topics that an education
18 company would then develop courses and come to the
19 Commission for approval. He mentioned there would be
20 oversight and the ability to look at the syllabus and
21 add supervision, which may not be a whole course. He
22 noted not being sure they need to broaden those 10
23 items because it is up to the education companies to
24 develop courses for approval.

25 Ms. Rubin explained that she is suggesting

1 supervision is specified because violations that come
2 before the Commission often come along with the
3 broker not properly supervising the agent. She
4 mentioned that they are going to develop the
5 coursework but believed the Commission should suggest
6 that part of their coursework should be in
7 supervision.

8 Ms. Rubin noted they have residential property
9 management listed as coursework but, up at the top,
10 they talk about an approved property management
11 course, where they already mentioned property
12 management in the body of it and listed it below
13 again.

14 Ms. Cestra suggested it read, 2 of the required
15 16 shall be Commission-approved property management
16 and 2 of supervision, noting they do not supervise at
17 all and is something that should be addressed.

18 Mr. Farrell recommended adding (x) supervision at
19 the bottom of the list.

20 Mr. Lerner commented from a drafting perspective
21 that several of the listed 1 through 9 items are
22 duplicates from the mandatory and is saying that a
23 real estate law course is required but that someone
24 could take a second law course. He did not think
25 that removing anything out of that list of options

1 would be helpful because they are duplicated on
2 purpose.

3 Mr. Lerner pointed out that if the goal is to
4 make sure that supervision is included in one of the
5 mandatory courses that they could probably do that by
6 saying the approved real estate office management and
7 supervision to make it clear that there has to be an
8 element of supervision in that course and then it
9 would be up to the Commission to approve each
10 individual course as to whether it was sufficient.

11 Mr. Farrell noted deleting "Commission-developed
12 or" and added Commission-approved real estate office
13 management and insert "and supervision." Commission
14 members agreed.

15 Mr. Farrell referred to page 27 at § 35.272
16 examination for salesperson's license. He noted PAR
17 supported all proposed changes. He noted bachelor's
18 is being changed to minimum of an associate degree at
19 (e)(1)(i).

20 Mr. Picarella read a question from Mark
21 Cumberland, Philadelphia Real Estate Classes, asking
22 about the online classes with no instructor and
23 whether that is under the umbrella of what the
24 Commission was working on.

25 Mr. Cumberland reported Pennsylvania is losing a

1 lot of schools, and he averages probably 10 to 18
2 students a month. He mentioned that students are
3 trying online classes, like the CE Shop, because they
4 are cheaper and advertise 95% pass rates but then
5 find out there is no instructor and is 75 hours of
6 PowerPoints with no teacher.

7 Mr. Cumberland expressed concern with the online
8 classes advertisement not informing them of no
9 instructor. He noted the American Real Estate
10 Academy had been in the business for about 40 years
11 and just closed because they could not get students.
12 He reported people sign up for the classes and waste
13 their money and time, noting he gets students every
14 month from those online classes that did not work out
15 because they think there is going to be a teacher.
16 He noted directing them to the Real Estate Commission
17 to get their money back.

18 Mr. Cumberland reported getting the Association
19 of Real Estate License Law Officials (ARELLO)
20 approval to get the special designation distance
21 learning. He noted the Commission approved online
22 classes during COVID and now students are taking 75
23 hours of PowerPoint courses.

24 Mr. Cumberland referred to a section of the
25 proposal regarding changing the distance education

1 language and asked whether the Commission was just
2 changing the language or changing something with that
3 whole designation because their biggest competition
4 is the online sites that have no instructor. He
5 reported that advertisement is very vague as far as
6 not having an instructor.

7 Mr. Saxton stated the new definition of distance
8 education says instructor-led programs.

9 Mr. Cumberland again mentioned going through all
10 of the hoops and having to be approved by (ARELLO)
11 back in 1999 to be able to teach in Zoom. He noted
12 losing five locations due to the competition and the
13 economy.

14 Ms. Rubin noted being an instructor in real
15 estate schools and a student for years. She
16 mentioned that she does not prefer the online method
17 but it is what is happening in the world and what is
18 allowed.

19 Mr. Cumberland reported not being able to get
20 enough people for continuing education classes. He
21 also reported agents have been doing 14 hours of
22 continuing education in less than 2 hours.

23 Mr. Farrell referred to § 35.358 regarding
24 administration of curriculum in (a) (4), where courses
25 delivered by distance education, in addition to

1 meeting the content requirements in § 35.384, must
2 have the delivery method approved by the Association
3 of Real Estate Licensed Law Officials or another
4 certifying body with similar approval standards
5 approved by the Commission.

6 Mr. Farrell informed Mr. Cumberland that he could
7 file a complaint if courses are being taught that
8 have not received the appropriate approval under that
9 section.

10 Acting Commissioner Claggett thanked Mr.
11 Cumberland for his commentary.

12 Mr. Farrell referred to (3), courses shall have
13 been completed within, striking (10) and adding (5)
14 courses shall have been completed within 5 years
15 prior to the date of successful completion of the
16 licensing examination.

17 Mr. Farrell referred to § 35.273, examination for
18 cemetery broker's license. He noted PAR supported
19 all proposed changes. He stated the Commission
20 changed, instead of specifying at least 3 years of
21 etc., etc., or the equivalent of 3 years, etc., etc.,
22 they are substituting the new language, educational
23 or experience qualifications, which the Commission
24 deems to be equivalent.

25 Mr. Picarella noted it changes § 35.273(a)(2).

1 Mr. Farrell noted the change from bachelor at the
2 top of page 31 to a minimum of an associate.

3 Mr. Picarella noted (b)(1)(ii) is being deleted.

4 Mr. Farrell referred to § 35.275 on page 31,
5 examination for rental listing referral agent's
6 license, where there is an addition in (a)(2), be a
7 high school graduate or its equivalent and then a
8 renumbering of the subparagraphs that follow
9 thereafter.

10 Mr. Farrell noted page 32 has the same revision
11 from bachelor's to minimum of associate and changing
12 towards the bottom of page 30 from 10 years to 5
13 years.

14 Mr. Farrell referred to page 33, Subchapter E,
15 standards of conduct and practice, general ethical
16 responsibilities under § 35.273, retention and
17 production of records. He noted PAR supported the
18 proposed change, which is to add the words "or
19 termination."

20 Mr. Farrell referred to § 35.292, duties of
21 licensees generally. He noted the change to (a)(3),
22 where the words "in a reasonably practical period of
23 time" have been removed and inserted "within 48 hours
24 of receipt," along with the addition of "written"
25 between all and offers. He reported PAR had concerns

1 about the proposed change and believe in requiring
2 all offers to be presented within 48 hours is too
3 prescriptive. The proposed language provides no
4 exceptions or waivers for situations where this would
5 be impossible to adhere to or where it would not be
6 desired by the seller.

7 Mr. Picarella suggested adding something along
8 lines of 48 hours of receipt of all written offers
9 unless there is good cause for not communicating them
10 within that time period.

11 Ms. Rubin suggested it to read, notifying the
12 sellers of an offer instead of presenting the offer,
13 which could be done within 48 hours.
14 48 hours.

15 Mr. Lerner addressed PAR's concerns. He stated
16 many sellers have a specific plan that does not
17 involve 48 hours and requiring notification or
18 requiring communication within a certain period of
19 time does not seem impactful.

20 Mr. Lerner referred to language at the bottom of
21 the section that says unless the property is subject
22 to an existing contract and the seller/landlord has
23 agreed to a written waiver, noting that language
24 would allow someone to not present on offers at all,
25 where once it is under contract that there can be

1 something in writing that says once they signed a
2 contract, they are waiving the requirement to show
3 offers.

4 Mr. Lerner mentioned that the Commission could
5 add something that says 48 hours unless the seller
6 said in writing that they do not want to see them
7 within 48 hours, noting that it would set a rule that
8 they then have to waive as opposed to saying
9 reasonably practicable, which is not at all. He
10 expressed concern with a set time period that they
11 have to follow no matter what the number of hours or
12 days, noting it is going to be problematic for
13 somebody unless they at least have some waiver of
14 capability.

15 Ms. Rubin asked why changing it to sending a
16 notification about the written offer within 48 hours
17 would be problematic.

18 Mr. Lerner mentioned that PAR gets very antsy
19 when something specific has to be done within a
20 certain number of days, hours, or whatever because
21 somebody will not be able to do it for some good
22 reason, and there needs to be a way to acknowledge
23 the fact that it is not always going to happen,
24 whether that is a waiver or getting rid of the
25 timeline.

1 Mr. Lerner noted that the hard deadline without
2 some sort of a wiggle room is very concerning because
3 they would hate to see somebody dinged on a
4 technicality when everybody knew in advance it was
5 just never going to happen anyway.

6 Ms. Cestra commented that she does not like to
7 have a hard deadline like 48 hours without some
8 exception to it and suggested it read, present within
9 48 hours of receipt of all written offers, if
10 practical or under most circumstances.

11 Ms. Thomson commented that most of the scenarios
12 being described where an offer could not be delivered
13 in 48 hours are predictable scenarios. She suggested
14 the language could read, without prior approval by
15 both parties, it shall be within 48 hours. She
16 believed it to be necessary from a consumer
17 standpoint.

18 Ms. Thomson noted the importance of having some
19 sort of structure in place since actual issues have
20 come before the Commission. She believed there
21 should be exceptions for the scenarios, but
22 practicable needs to be a bit more specific.

23 Mr. Farrell informed Commission members that he
24 would bring the proposed regulation, along with the
25 preamble, back to the Commission to make sure the

1 changes made were correct. He noted a discussion to
2 add language to this section between now and the
3 November meeting.

4 Mr. Farrell referred to the bottom of page 33,
5 advertising and solicitation. He noted PAR supported
6 all changes under § 35.302, harassment, which includes
7 deleting the words "by personal contact, telephone,
8 mail, or advertising" at the top of page 34.]

9

10 [The Commission recessed from 10:40 a.m. until 11:30
11 a.m.]

12

13 [Mr. Farrell referred to § 35.305, business name on
14 advertisements. He noted inserting contact
15 information in place of telephone number and adding a
16 sentence, the name and contact information of the
17 employing broker must be at least equal in size to
18 any other name and contact information.

19

20 Ms. Rubin suggested defining what is acceptable
21 for contact information and asked whether the contact
22 information has to be the same for the agent and the
23 brokerage. She noted they are removing the
24 requirement for telephone number, and if it is the
25 agent's name and email address, does it need to be
the broker's name and email address or can it be the

1 broker's name and telephone number.

2 Ms. Cestra mentioned that it is somewhere in the
3 regulations that if a telephone number is advertised
4 that the broker's number needs to be advertised also.

5 Mr. Farrell mentioned that PAR agrees that the
6 term contact information is too vague and recommend
7 that it either be defined more clearly or eliminated.

8 Mr. Lerner commented that most states do not
9 require specific contact information but that
10 everybody probably requires the broker's name in some
11 way. He noted a number of states require license
12 numbers in some way to identify who they are. He
13 believed they were kind of an outlier in requiring a
14 specific item of contact information for the broker.
15 He noted PAR does not have a specific position on
16 getting rid of it versus modifying it, but all of the
17 matters that have already been said with problems
18 create the problems with identifying contact
19 information.

20 Ms. Rubin believed a telephone number or email
21 address should be acceptable contact information.

22 Ms. Cestra did not want to remove contact
23 information and did not want it to just read the name
24 of the employing broker must be at least of equal
25 size. She believed it was important to have both

1 telephone numbers because the person may think that
2 they are calling the broker when they are calling the
3 agent or agent's assistant.

4 Ms. Thomson noted the importance of being able to
5 get ahold of someone for their services or if there
6 is an issue in a widely used method by either the
7 telephone call or email. She also noted the
8 importance of having a record if there was some sort
9 of dispute, and the telephone and email would provide
10 that record. She mentioned that there could be
11 security problems and could be ephemeral with
12 Instagram, where there is no record of a conversation
13 in some of systems.

14 Mr. Picarella suggested putting telephone number
15 back in and say an advertisement by an associate
16 broker, salesperson, etc., or cemetery salesperson
17 shall at a minimum contain the business name and
18 telephone number and email address.
19 have an email address.

20 Ms. Rubin agreed that it should be telephone
21 and/or email address and not require both, because it
22 would require probably every real estate company to
23 redo every sign and be an onerous expense.
24 Commission members agreed.

25 Ms. Rubin asked whether the contact information

1 supplied for the agent needs to be the same type of
2 contact information supplied for the broker, so if
3 the agent is marketing themselves with their name and
4 email address, can they use the broker's name and
5 telephone number or do they have to use the email
6 address.

7 Ms. Cestra stated the name, telephone number, or
8 email address of the employing broker must be at
9 least equal.

10 Mr. Farrell suggested it to read, contact
11 information including at a minimum one of the
12 following telephone number, email address, so it
13 gives them the option but also defines it as well as
14 keeps the concept of contact information in there to
15 make it easier for the last line to flow.

16 Mr. Farrell referred to a comment regarding the
17 equal in size portion recommending using prominence
18 as the standard, given that there are many different
19 advertising mediums where size is not an appropriate
20 means to evaluate licensee information, such as
21 nonvisual advertising, radio, audio podcasts would
22 not allow a judgment of the size of "licensee
23 information" and many social media platforms allow
24 licensees to make it clear who their employer is, but
25 via data fields that are hard coded to make a user's

1 name larger than an employer's name.

2 Mr. Lerner stated it is basically impossible for
3 most of the online portals to have their broker's
4 name the same size. He noted PAR feels strongly that
5 the size status or the size version is not going to
6 be helpful moving forward, and some other standard
7 that becomes more enforceable would better.

8 Ms. Cestra commented that the broker always being
9 in the same place on the site could be as prominent
10 and not be the same size so that everyone would know
11 where to look for the broker's name. She suggested
12 "as prominent as" and noted that is another matter
13 that could be certainly questioned as far as what
14 prominence means.

15 Ms. Rubin mentioned that whatever they use that
16 it is a qualifier and asked how do they define that,
17 which is the reason they went to size because it was
18 something that was measurable.

19 Mr. Picarella asked whether stating it as clear
20 and conspicuous as any other name and contact solves
21 any of the problem.

22 Ms. Rubin asked Mr. Fritsch to explain what would
23 be measure to determine if someone met the criteria
24 concerning advertising complaints.

25 Mr. Fritsch agreed that any of the proposed

1 solutions are still very difficult in terms of
2 interpretation. He stated they look at the equal
3 size often, which is not the easiest to determine.
4 He mentioned that when it is something that is
5 unclear whether its equal size would give the benefit
6 of the doubt to the licensee. He explained that while
7 it is not a perfect standard that it is something
8 they have been able to work with.

9 Mr. Fritsch stated there is more gray area and
10 interpretation with prominence. He believed there
11 would be more fights if it is prominence in terms of
12 litigation on prominence. He addressed clear and
13 conspicuous. He mentioned that they are usually
14 dealing with is online advertising and it still
15 causes problems in terms of how easy something is to
16 find on a website or on social media. He noted that
17 questions are easy to answer when dealing with a
18 piece of paper but dealing with some kind of online
19 presentation that could come in any number of forms
20 becomes really difficult.

21 Ms. Rubin asked whether going with the word
22 "prominent" but said that it needed to be adjacent to
23 the agent's information would change the gray area.

24 Mr. Fritsch explained that it is another word to
25 interpret.

1 Mr. Picarella also mentioned that everybody would
2 have to change their advertisings if they have to be
3 adjacent.

4 Mr. Rubin stated their business cards are
5 adjacent and sale signs are adjacent and is a matter
6 of modifying their web presence. She noted all of
7 the agent's information could be right at the top of
8 that email or website and would have to scroll far to
9 see any information about the brokerage.

10 Mr. Picarella explained that realtor.com not
11 having them adjacent would set somebody up to be in
12 violation just because realtor.com would not change
13 their matrix.

14 Mr. Fritsch noted that size may be the lesser of
15 all evils and believed equal size is the best in a
16 traditional advertising sense, including billboards,
17 business cards, and yard signs. He explained that
18 the difficulty is with the online stuff and is where
19 he could see the equal size being an issue and is
20 still not sure if it is the best of the options.

21 Ms. Rubin referred to the information about
22 realtor.com, which an agent cannot control, and asked
23 whether they would put additional language in there
24 for whatever they decide.

25 Mr. Picarella explained that the problem is that

1 there are too many permutations for them to consider.

2 Mr. Lerner stated a number of other states have
3 taken the approach to writing a regulation
4 specifically mentioning social media, and sort of
5 online advertising to deal with those. He mentioned
6 that a number of states have created what is
7 sometimes called a one click rule that says if
8 someone is advertising in certain ways, where they
9 can click to the information as opposed to having it
10 in a Facebook or Twitter post.

11 Mr. Lerner noted other states have gotten into
12 the social media realm, because they recognize that
13 it is something that may have to be done separately
14 and is certainly something that probably does need to
15 be looked at some point.

16 Mr. Lerner commented that the Realtor Code of
17 Ethics was amended a number of years ago to say that
18 for the ethical obligation to disclose their broker's
19 name can be done in certain circumstances via a one
20 click, but Pennsylvania regulations have not been
21 updated to reflect anything similar.

22 Mr. Lerner further explained that in the Code of
23 Ethics that they would be okay to say check out this
24 great new listing and have a link that goes back to a
25 listing that has the broker's information on it, but

1 under Pennsylvania law, unless they have their
2 broker's name and phone number in their tweet, which
3 they do not, would technically be in violation of the
4 regulations.

5 Ms. Rubin believed the Commission had guidelines
6 concerning the internet related to one click.

7 Ms. Cestra suggested the Commission Rules and
8 Regulations Committee should convene and see if they
9 are still in existence, revise them, and make some
10 proposals for language to be in the rules and
11 regulations in the future.

12 Ms. Rubin believed now is the time to do this
13 since they are 7 or 8 years into the process and
14 asked whether it is appropriate for them to say under
15 business name on advertisements, break it up between
16 printed signs versus online Internet sites, etc., and
17 have separate information for each of those.

18 Mr. Farrell offered to come up with something to
19 present to the Commission.

20 Ms. Rubin commented that the equal size language
21 is good for anything in print and then to modify what
22 is acceptable for Internet advertising, including
23 online websites and social media. She noted liking
24 the one-click guidelines because she understands that
25 they cannot control social media sites but can click

1 through to information that has it at least equal in
2 size.

3 Mr. Lerner addressed a comment from PAR regarding
4 (a), where the regulation specifically says that the
5 brokerage company has to use its licensed name, but
6 the regulation does not actually say that a
7 salesperson or associate broker has to use their name
8 in the advertisement. He noted PAR suggested adding
9 that as well to ensure that they cannot just have a
10 blank ad without actually identifying who they are.

11 Mr. Lerner explained why they cannot have an
12 advertisement that just has the company information.

13 He noted that someone may create a website called
14 Forest Hills Neighborhood Information and put a
15 broker's name on the bottom, but he does not know
16 that when he is communicating with the person through
17 the website that he is talking to a licensee who
18 wants to sell him stuff because they never actually
19 admit who they are or that they are a licensee, so it
20 does look like a brokerage website but it is not.

21 Mr. Lerner further explained that he as an
22 wanting to advertise, should he have to put his
23 license name on the advertisement. He stated a lot
24 of contact information for him, since his name is not
25 there, his broker's name does not have to be

1 particularly large because it has to be at least
2 equal size to his information and his information is
3 not there. He noted people have indicated that this
4 is sort of a guru marketing technique. He explained
5 that the regulations currently do not say the words
6 "a salesperson or associate broker must include their
7 name in their advertisement."

8 Ms. Rubin believed Mr. Lerner is saying the agent
9 is the one controlling or establishing an ad or a
10 website or whatever and are the one receiving contact
11 and must have their name on the advertising.

12 Ms. Cestra commented that an ad has to contain
13 the business name, telephone number, and/or email
14 information of the employing broker.

15 Mr. Rubin noted the example Hank gave is a web
16 document and says for more information, contact here,
17 where they would click through and fill out their
18 information, and all of those contacts are going to
19 one specific agent because they are the ones that put
20 that up and are controlling it but nowhere does it
21 say it is only them and making it look like it is the
22 company.

23 Ms. Cestra stated the agent's name has to be in
24 the ad if an agent is involved.

25 Ms. Rubin noted that it sounds like it could be

1 considered an advertising violation, and it would
2 need to be reported and investigated.

3 Mr. Picarella explained that Mr. Lerner is
4 pointing out that the way the regulation is written
5 that it does not say the licensee has to have their
6 name in the advertisement and only the broker, where
7 technically, there is no violation.

8 Mr. Lerner referred to § 35.305(a), brokerage
9 companies shall advertise or hold themselves out to
10 the public only under the business name designated on
11 their license. He noted the Commission could
12 probably replicate that in (b) to say something like
13 associate brokers or salespeople shall hold
14 themselves out under the name that is on their
15 license and register any nickname with the
16 Commission.

17 Mr. Rubin believed what Mr. Lerner would like is
18 in (c), an advertisement by an associate broker,
19 salesperson, cemetery associate broker, or cemetery
20 salesperson shall contain the business name and
21 contact information of the employing broker and the
22 name of the associate broker, salesperson, etc. She
23 noted Mr. Lerner is saying that if it is the
24 associate or salesperson doing the advertising that
25 they not only need to include their brokerage

1 information but have to disclose that it them doing
2 the advertising.

3 Mr. Saxton explained that if the salesperson does
4 not put their name down, then it is a way to really
5 minimize the broker's name, so it is almost not there
6 and is a way to put an advertisement on the Internet
7 that really does not look like an advertisement for
8 real estate but might look like something else to get
9 people to contact them. He noted it to be a way of
10 preventing that from happening.

11 Acting Commissioner Claggett stated Mr. Farrell
12 would make the changes made during the meeting and
13 present the updated version at the next meeting.]

14

15 [Kyle Sampson, Vice Chair, Public Member exited the
16 meeting at 11:30 a.m.]

17

18 SECRETARY CESTRA ASSUMED THE CHAIR

19

20 [Mr. Farrell referred to page 34 at § 35.307,
21 advertisements of sales volume, market position, and
22 number offices. He noted striking the phrase "by a
23 broker" in (a) and (b) and replacing a pronoun. He
24 referred to (c) at the top of page 35, where "he" was
25 replaced with "a broker."

1 Mr. Farrell noted a comment from the public
2 asking that the term closed transaction in (a)
3 include leasing transactions.

4 Mr. Rubin suggested removing the words sales from
5 volume or production and talk about transaction
6 volume instead of sales volume.

7 Mr. Lerner commented that the definition of a
8 successful transaction for arbitration purposes
9 includes a closed sale or an executed lease and is
10 the basis of where PAR came up with this comment. He
11 noted there are leasing companies who want to
12 advertise how many leases they do and is not included
13 in the regulation.

14 Mr. Rubin asked whether removing the word sales
15 or replacing the word sales with transactions satisfy
16 that.

17 Mr. Picarella explained that the problem is with
18 the second part of the sentence, where it says a
19 closed transaction is specifically a listing sold or
20 a sale made after.

21 Ms. Cestra suggested taking out sales in the
22 second sentence and add executed lease.

23 Mr. Farrell asked how the Commission feel about
24 the word municipality in (b) at the bottom of page
25 34. He noted receiving a comment requesting

1 municipality be deleted and replaced with either
2 region or similar term that more accurately reflects
3 actual practice.

4 Mr. Picarella suggested geographic area, and
5 Commission members agreed.

6 Mr. Farrell referred to page 35, escrow
7 requirements, § 35.321, duty to deposit money
8 belonging to another into escrow account. He noted
9 they gutted the existing language in (a) and replaced
10 it with a lengthy set of sub-provisions.

11 Mr. Lerner provided a history of the changes,
12 noting the statute changed around 2010 or 2011 and
13 the statutory language was never moved over. He
14 explained that it is basically taking statutory
15 language that they updated regarding escrow.

16 Mr. Farrell noted a misspelling of the word
17 cemetery under (e) on page 36). He also noted the
18 Commission is striking "between the parties to the
19 transaction" on page 37 under § 35.322, nonwaiver
20 escrow duty.

21 Mr. Farrell referred to § 35.323, responsibility
22 for escrow in cobrokerage transactions, noting PAR
23 asked whether the deposit money notice is still
24 relevant and necessary. Commission members agreed
25 that it is not relevant or necessary anymore.

1 Mr. Farrell informed Commission members that
2 there are no remaining PAR comments and have been
3 supportive of all the remaining provisions.

4 Mr. Farrell referred to page 37, § 35.334,
5 statements of estimated costs and return, noting a
6 form on page 38 would be deleted.

7 Mr. Farrell referred to § 35.335, rental listing
8 referral agreements, on page 40, noting a typo on the
9 word satisfactory.

10 Mr. Farrell referred to Subchapter F, § 35.341,
11 approval of real estate education providers, noting
12 (1) be owned by persons who possess good moral
13 character, or if the owner is a corporation, have
14 officers and directors who meet this requirement
15 would be deleted. He also noted the deletion of the
16 words "of completed real estate education provider
17 owner application" on page 41, which carries over to
18 the top of page 42, where they said a listing of the
19 owners of the education provider instead of all the
20 detailed requirements that preceded it.

21 Mr. Farrell noted the deletion of (vi), (vii),
22 and (viii) at the bottom of page 42, which are a copy
23 of the student enrollment agreement, a copy of the
24 school transcript, and a statement of the
25 prerequisites for admission.

1 Mr. Farrell referred to page 43, administration
2 of real estate education providers, § 35.354
3 prohibited forms of advertising and solicitation,
4 noting the word, noting the word "publications" is
5 being changed to "media" in (10).

6 Ms. Thomson noted running this through their
7 consumer protection people, noting it is not a
8 consumer protection. She stated this particular sub-
9 provision struck them as overreaching. She asked
10 whether this prevents all advertising by educators
11 and for an explanation of the reason for the change.

12 Mr. Picarella explained that it is the
13 underemployment column, where they are not
14 advertising to employ people, and if someone is
15 advertising in the employment section, they are being
16 sort of deceitful because they are not really
17 advertising to hire them but trying to get them to
18 enroll in their course.

19 Ms. Rubin further explained that it is not all
20 advertising and just in the help wanted section.

21 Ms. Thomson suggested just changing it in the
22 employment columns of all media since newspapers are
23 becoming obsolete to tie it more closely to
24 employment columns.

25 Ms. Rubin suggested taking out newspapers

1 completely and just say employment columns of all
2 media.

3 Ms. Thomson referred to (11), engaging in any
4 advertising that is false, misleading, or deceptive,
5 noting the importance to them. She also referred to
6 a conversation concerning schools misrepresenting
7 something and mentioned that this would be a hook for
8 filing something with prosecution if someone is
9 engaging in false advertising to be investigated
10 properly.

11 Mr. Farrell referred to the page 43, § 35.360,
12 records. We're simply adding the words "and course
13 approval number" to (5)(iv), the course title.

14 Mr. Farrell referred to page 44 § 35.362,
15 inspection of real estate education providers, noting
16 the struck (a), routine inspections, and removed the
17 beginning of (b), special inspections and sort of
18 combined matters into one inspections subsection. He
19 noted a couple insertions of words on page 45.

20 Mr. Picarella referred to § 35.362 and asked
21 whether that would eliminate the actual routine
22 inspections, where it sounds like they can only do an
23 inspection upon a complaint or reason to believe they
24 are not in compliance.

25 Mr. Fritch explained that it might be because BEI

1 does not routinely inspect providers and was
2 inconsistent with what BEI does. He noted BEI
3 routinely inspects normal real estate offices but was
4 not positive that they do routine inspections of
5 education providers.

6 Mr. Picarella mentioned that it sounds like BEI
7 will never be able to do a routine inspection and
8 asked whether the Commission wanted to eliminate the
9 possibility of that.

10 Ms. Cestra commented that there is no reason to
11 eliminate them from being able to ever do the spot
12 inspections and suggested changing the language to
13 allow them to do the inspections.

14 Mr. Farrell referred to Subchapter H, continuing
15 education, § 35.384, qualifying courses, on page 46,
16 where they added broker price opinions as number 26
17 under the list of acceptable courses.

18 Ms. Rubin referred to (d), noting there are many
19 antiquated items in there and asked whether they want
20 to keep all all those items. She also asked whether
21 they should be stating what are unacceptable courses,
22 and if so, that they should be modifying the language
23 of what they see as unacceptable courses.

24 Mr. Picarella mentioned that they could leave it
25 at unacceptable courses include mechanical and office

1 business skills and office management related to
2 internal procedures.

3 Ms. Rubin suggested they modify the list or
4 remove the paragraph completely because they have
5 acceptable courses, and if it is not under the
6 acceptable courses, then it is in question whether it
7 is acceptable or not. She noted they need to modify
8 the unacceptable course list. She suggested removing
9 the for-example section. She also noted it should
10 read, unacceptable courses might include mechanical
11 office skills, business skills, and self-promotion.
12 She noted simplifying it by saying unacceptable
13 courses might include mechanical office skills,
14 business skills, and self-promotion devices.

15 Ms. Rubin again suggested taking away all the
16 examples and do mechanical office skills, business
17 skills, and development of self-promotion, along with
18 keeping operation procedures that do not have a
19 bearing on the public interest.

20 Ms. Rubin requested an update concerning the
21 broker price opinion (BPO) regulation and whether it
22 would be placed in this document.

23 Mr. Farrell explained that the BPO regulation is
24 moving forward on its own path separately, where the
25 regulations discussed and those regulations would

1 meet each other in the official Pennsylvania Code
2 when they are both finalized and promulgated. He
3 mentioned that the BPO regulation is on the 50-yard
4 line and this one is on the 5-yard line.

5 Ms. Rubin referred to prior discussions regarding
6 increasing the fees and asked whether that has to be
7 done by regulation.

8 Mr. Picarella explained that increasing fees is a
9 regulatory process because many studies need to be
10 done.

11 Mr. Farrell informed the Commission that they
12 would be having their annual budget presentation
13 shortly from the Bureau of Finance, where any fee
14 increases or discussion would probably arise out of
15 that presentation.]

16

17 MR. PICARELLA:

18 Based upon discussions in open session,
19 I believe the Chair would entertain a
20 motion to direct regulatory counsel to
21 draft the annex for the general
22 revisions packet of our regulations in
23 accordance with the discussions for
24 Regulation 16A-5616.

25 SECRETARY CESTRA:

1 Call for the motion?

2 MS. RUBIN:

3 So moved.

4 MR. SAXTON:

5 Second.

6 SECRETARY CESTRA:

7 Would the administrator please do the
8 roll call?

9

10 Annie Hanna Cestra, yes; Anne Rubin,
11 aye; Guy Saxton, aye; Jennifer Thomson,
12 aye; Arion Claggett, aye.

13 [The motion carried unanimously.]

14 ***

15 Adjournment

16 SECRETARY CESTRA:

17 Could we have a motion to adjourn?

18 MS. RUBIN:

19 So moved.

20 MR. SAXTON:

21 Second.

22 ***

23 [There being no further business, the State Real
24 Estate Commission Regulatory Meeting adjourned at
25 12:04 p.m.]

CERTIFICATE

I hereby certify that the foregoing summary
minutes of the State Real Estate Commission meeting,
was reduced to writing by me or under my supervision,
and that the minutes accurately summarize the
substance of the State Real Estate Commission
meeting.

Lauren Gusherowski,
Minute Clerk
Sargent's Court Reporting
Service, Inc.

STATE REAL ESTATE COMMISSION
REGULATORY MEETING
REFERENCE INDEX

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TIME	AGENDA
9:01	Official Call to Order
9:02	Roll Call/Introduction of Attendees
9:05	Pledge of Allegiance
9:06	Regulatory Counsel
12:04	Adjournment