



# Vermont Real Estate Commission

## Newsletter

### Governor

The Honorable James Douglas

### Secretary of State

Deborah L. Markowitz

### Office of Professional Regulation

Christopher D. Winters, Esq., Director

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### Members of the Commission

Maretta Hostetler, Broker, Chair  
 Tara Dowden, Public Member, Vice Chair  
 Gloria Rice, Attorney Member, Secretary  
 Herb Beggs, Non-Realtor Broker  
 Claire Porter, Public Member  
 Elizabeth Wilkel, Broker  
 Michelle Gosselin, Salesperson

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### Commission Staff

Rita Knapp, Administrator  
 Judith Griffen, Administrative Assistant  
 Kevin Leahy, Legal Counsel

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### Message from the Chair

It has been a wonderful experience working with Sam Matthews as our chairperson these past 4 years. Sam has been truly dedicated to making the Real Estate Commission a better functioning commission with more transparency to the licensees and better response to the consumer. As they say in show business, "a tough act to follow".

Through my many years of licensure first as a salesperson and then broker, I have had the opportunity to meet and work with many of you either in a transaction or through realtor activities. I am always impressed by the caliber of licensees in Vermont. You are the best of the best. Having attended many real estate meetings all over the country where every state is represented, Vermont licensees stand out. I have noted that you are better educated and better at practicing the real estate profession than most practitioners. Since licensed in 1972, I have seen the profession go from "the horse and buggy era" and into the "space age". When I started, a computer was something that was stored in a big room at IBM. Now electronics are our way of life, what would we do without our Blackberry?

Lest we get too proud, I think that there is an area that needs some work. That area is buyer brokering. Many of you know that has been my "soap box" during the four years, I have served as your REC Education Committee Chair. Our committee has been seeking ways to educate every licensee to have a better understanding of buyer brokerage. We have a long way to go.

The REC's charge is to protect the consumer and we have to be constantly vigilant in that pursuit. For us, the consumer comes in two parts "Seller" & "Buyer". Most of us have gotten the "Seller" part and know what our role as a seller's agent. It's when we come to the "Buyer" part and our role as a buyer's agent that we falter or fail. Many times we fail in "big" way. We have seen complaints before us at the REC to prove that.

If you pride yourself on not "buyer brokering" because you tried it once and it got to be too big of a problem, I am talking to you. Whether you want to practice it or not here are the reasons to better understand buyer brokering. First, you need to understand it to make sure that you are protecting your buyer consumer by letting them know their rights. Secondly, because at some point you will be working with a buyer broker and you need to know how a buyer broker should perform for the benefit of your seller client. Throwing your hands up and walking away from bad brokering is not the solution.

If you prefer to work with the buyer as a customer, that is your right, but that buyer needs to know their options for representation. If those options are not presented or presented in a way that it isn't clearly defined, you are in violation of the law.

In addition, as a seller's agent you are not protecting the interests of your client if you discourage buyer brokers from working with you and your seller. A seller's agent must cooperate with a buyer's agent unless directed otherwise by the seller client. It is in the seller's best interest to have "all" offers presented and it is the law.

With the practice of agency whether it is seller or buyer agency, there are some inherent problems. Because, the client's contract is with the Firm, the *entire* Firm is committed to the Seller Client or the *entire* Firm of the Buyer is committed to the Buyer Client. Conflicts arise when more than *one customer or one client* is being served by the *same agent or another agent of the same Firm at the same time* on the *same property*. Limited Agency was created as

a necessity to help clarify those types of situations. However, misunderstandings have arisen out of the use, misuse or non-use of Limited Agency. It is easily understood where confusion lies - just reading the above is confusing to the licensee or the consumer, let alone understanding how to handle it. Licensees need to get a better grasp on this part of our real estate practice.

In the coming months, the REC is going to attempt to unravel and create a logical and legal way to better handle those types of conflicts. We are encouraging all licensees to state in writing to the REC, a particular conflict experience you may have had in either seller or buyer agency and how it was resolved (or not resolved). Then with careful and thoughtful study, with much input from legal counsel, we are going to try and issue suggested procedures for the various conflicts.

Since these conflict situations have been with us for a long time, we will take our time in response. We ask for your patience and would like your suggestions, in writing only please. You may e-mail us at: [jgriffen@sec.state.vt.us](mailto:jgriffen@sec.state.vt.us)

Maretta Hostetler, Chair

### **A Letter of Appreciation for Retired Commission Member Sam Matthews**

On behalf of the Vermont Association of REALTORS®, I am writing to express sincere appreciation and admiration for the excellent leadership which Sam Matthews has provided as Commission Chair over the past two years. During her tenure, the Commission has completed an extensive update of the Licensing Regulations for the first time in over ten years. Her thoughtful oversight of this challenging process demonstrated a deep commitment to the professional standards of the industry as well as a sensitive caring for consumer protection.

Under Sam's guidance, the Commission's meetings have encouraged significant attendance and participation of licensees, which has fostered a greater understanding of the

regulatory process and a broader acceptance and exercise of regulatory policy in the field. A very high standard of credibility and transparency will be the ongoing legacy of her stewardship.

For the ten years of service on the Real Estate Commission and outstanding leadership Sam Matthews has given the industry and the State of Vermont, we are deeply grateful and commend her for the impact that service will continue to inspire.

Sincerely,  
Carol Ellison, Chair  
VAR REC Liaison Committee

### The Commission Welcomes New Member

Michelle K. Gosselin, Salesperson, has been appointed by the Governor to serve as the newest member of the Commission. Michelle is a Barre resident and has been practicing Real Estate since 1988.

### Rule 4.12 relating to Print and Web Advertising

Rule 4.12 defines the requirements for all types of advertising. For the most part the printed ads (newspapers, brochures, etc) are in compliance with those rules. However, it is very apparent that many brokerage firms using web based advertising either don't think the rule applies to internet ads, or are unclear as to the Commission's expectations as it relates to web advertising. The rules do not differentiate between printed advertising and web advertising the same rules apply to all advertising. To assist licensees in acceptable web advertising the Commission issues the following interpretations.

**Rule 4.12(a) states: *Every real estate advertisement shall prominently indicate the brokerage firm's registered name.***

**Printed Ads:** The Commission interprets this to mean that the name of the brokerage firm must appear on the same page of the agency's ad. The firm name must be in a readily visible print

and the typeface may not be smaller than any of the other type face used on that page.

**Web Pages:** The Commission interprets this to mean that the name of the brokerage firm must appear on the first displayed page of the agency's web site. The user should not have to scroll down in order to see the firm name. The firm name must be in a readily visible print and the typeface may not be smaller than any of the other type face used on that page.

**Rule 4.12(d) states: *Advertisements which show properties listed by an agent other than the brokerage firm must also indicate that agents name, and firm.***

**Printed Ads:** The Commission interprets this to mean that the name of the brokerage firm and listing agent must appear on the page on which the listing is displayed. The names must be in a readily visible print and the typeface may not be smaller than any of the other typeface used in the printed ad.

**Web Pages:** The Commission interprets this to mean that the name of the brokerage firm and listing agent must appear on the first page on which any listing data is displayed. For web pages the user should not have to scroll down in order to see the listing agent's name, or firm name. The names must be in a readily visible print and the typeface may not be smaller than any of the typeface used in the display of the listing data.

If a complaint comes before the Commission they will use these interpretations to guide them in determining if the advertisement (web page) is in violation of the rules, and therefore subject to disciplinary action.

### A Message from Chris Winters, Director Office of Professional Regulation

I am pleased to give you an update on a major project all of us at OPR have been involved with over the last year. For well over a decade, we have struggled with our two existing electronic databases for tracking licensing and discipline. As our business has grown, it has become

increasingly apparent that these databases are inadequate for our changing needs. We continue to see rising numbers of licensees and disciplinary complaints, with very little in the way of increased staffing. We need to leverage new technology to help us do our jobs in a more efficient manner as we serve and protect the public. Because of this, we have long been planning a replacement of our existing computer systems with a new one called "eLicense."

eLicense is a highly customizable product that allows the client to configure its functions to reflect its business practices. So before we started configuring, we went through a lengthy self-analysis of our business processes, including a step-by-step review of each and every license we offer, cross-checking it with the laws for that profession and the forms we currently use. We did this for nearly 400 license types! We've also reviewed all of the correspondence that leaves this office to build certain standard letters into the system with merge tags so that they can be automatically generated. We've produced about 50 letters so far, with many more to go. We have configured "actions" into our enforcement system (each one being an electronic footprint of a step in disciplinary case) so that the electronic record will be detailed and complete and any one of our staff can know the status of a case at a glance.

The new system will incorporate our two existing databases into one, allowing for more complete information in one place about each licensee. Electronic checklists will reduce paper files and encourage consistency. In eLicense, applicants are entered into the system as soon as they file an application, rather than when they are finally licensed. Any OPR employee from any desk can pull up a file on their computer desktop to answer questions about the applicant or licensee.

All of this will lead to more reliable and accessible information and better accounting practices. Standard letters can be automatically generated from the system and attached to the electronic licensee file. More advanced reporting functions will allow managers to glean detailed information about workloads, timelines,

and the status of applications and cases. These reporting functions also translate into additional information available to the public through our website.

Other eLicense features will include the ability for applicants to look up the status of their pending applications online. The general public will be able to search for licensees by a variety search criteria. Online license renewals are another feature of eLicense planned for this Spring.

As you might imagine this ambitious undertaking, on top of our regular everyday workloads, has been a real challenge. Although it has been a long and eventful journey to get to this point, it has been well worth it. Along the way, we have discovered many ways to improve our business processes. It has been a great team-building exercise and has helped us to think critically and innovate around our long-standing ways of doing things here at OPR.

We went "Live" with the new system on Monday, February 9<sup>th</sup>, and are well under way after a relatively smooth transition. We have experienced minor delays in processing as we adjust to all of the new entries and modified business practices. I certainly appreciate your patience with us here at OPR as we focus on this critically important improvement to the way we do business. Some of you may have noticed some slow down in service and processing over the last several months as I pulled many OPR members away from their regular duties to focus on eLicense. Nearly everyone in OPR played a part in building this new system. To the extent you didn't notice any difference in service; they deserve a lot of credit!

#### Q & A:

Question: Is a data sheet describing property listed for sale on the MLS and downloaded by a licensee from an MLS server for distribution to buyer/consumers an "advertisement" as defined by the rules and thus subject to the special requirements of Rule 4.12, including the requirement that a licensee identify the

listing agency and listing agent for properties listed by other brokerage firms?

**Answer:** Yes. A licensee who is distributing data sheets describing listings of other member firms, whether from an MLS download or otherwise, is "advertising" and must ensure that the data sheet properly identifies the listing agent and listing firm. Rule 1.8(1) defines "advertising" to include "print ads of any type" and, among other items, "print depictions or notices of real estate offered for sale." This definition squarely covers the typical property data sheet downloaded from an MLS for distribution by a licensee to buyer/consumers in the course of marketing the property. Often the data sheets describe properties listed by other member firms for which the downloading licensee's firm serves as cooperating agent. Rule 4.12(d) provides: "Advertisements which show properties listed by an agent other than the brokerage firm must also indicate that agents name, and firm." The rule does not provide exceptions.

**Question:** When providing a MLS data sheet to licensees, or non-licensees, can I include a description of whether and how cooperating and/or buyer broker agents will be compensated?

**Answer:** Yes, the information must be the same as found in your Seller/Buyer Service Agreement. See Rules 4.9(a)(9) & 4.10(a)(8).

### Continuing Education for New Licensees

An individual licensed for less than one year (from the original issue date to the current license renewal date) must only complete the four hour mandatory course required during that renewal period. Individuals licensed for more than one year must complete all 16 hours, including the four hour mandatory course.

### Earn Continuing Education for Attending Commission Meetings

The Commission awards continuing education credit to any licensee for attendance at a Real

Estate Commission meeting within the following parameters.

\*two hours credit for attendance at a meeting, (must attend for a minimum of 3 hours per meeting)

\*limited to a maximum of four hours of credit per renewal period,

\*may not to be applied toward the Mandatory Course requirement.

Due to space limitations licensees must pre-register with the Office. To register contact Judith Griffen at: [jgriffen@sec.state.vt.us](mailto:jgriffen@sec.state.vt.us).

### Licensees as of April 2009

Type of License	Total
Broker	1,199
Salesperson	1,218
Main Office	405
Branch Office	78
Sole Proprietor	89

### Unprofessional Conduct Activity October 2008 thru March 2009

New cases opened	29
Cases investigated	31
Cases concluded without action	4
Formal charges filed	4
Disciplinary Actions Taken	3

### Disciplinary Actions - Since October 2008

Linda Boudreau Jewell  
REC12-1106

Ms. Jewell, on two occasions, was found to have indicated on the P&S Contract that she was the "buyer's agent representing Purchaser" when in fact she did not have a Buyer Broker Agreement for the transaction. The Commission

Suspended her license for 30 days, and further Conditioned her license for one year.

David Plante  
REC39-0607

Mr. Plante was convicted of a felony involving mail theft, charges were filed by the Prosecuting Attorney and a hearing scheduled. Mr. Plante did not appear for the hearing and his answer to the Charges indicated he no longer intended to practice the profession. The Commission Revoked his privileges to renew his license to sell real estate.

Anthony Shaw  
REC12-0907

Mr. Shaw was found to have taken personal property from a house which he was engaged in

selling. The Commission Suspended his license for six months, assessed an Administrative Penalty of \$ 1,500, and following the suspension his license will be conditioned for an additional six months.

### Commission Meetings

The Commission usually meets once a month on the fourth Thursday, beginning at 10:00 a.m. Meetings are posted on the Office web page found at:

[www.vtprofessionals.org/meetings/meetingslist.htm](http://www.vtprofessionals.org/meetings/meetingslist.htm)

We encourage anyone who has an interest to attend. Meetings are open to the public. We also post the upcoming meeting Agenda, and Minutes on the Commission's web page.

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