Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at 575 E. Parkcenter Blvd., Suite 180, Boise, Idaho on Wednesday, July 22, 2020 at 1:00 p.m.

**Commission Members Present:**
- Jill Stone, Chair, Twin Falls
- Mike Gamblin, Vice-Chair, Boise
- Kim Cooper, Member, Coeur d’Alene (via Zoom)
- Michael James Johnston, Member, Idaho Falls (via Zoom)
- Martin Espil, Public Member, Boise (via Zoom)

**Members Absent:**

**Staff Present:**
- MiChell Bird, Executive Director
- Melissa Ferguson, Education & Licensing Director (via Zoom)
- Craig Boyack, Chief Investigator (via Zoom)
- Jessica Valerio, Administrative Assistant 2

**Others Present:**
- David Wynkoop, Commission’s Legal Counsel (via Zoom)
- David Hensley, Idaho REALTORS®

See attached list

**Introductions:**
- a. Commissioners
- b. Staff
- c. Guests

Meeting was called to order at 8:30 a.m. MT by Commission Chair Jill Stone.

**Approval of Meeting Agenda:** Motion was made by Commissioner Mike Gamblin to approve the July 22, 2020 adjusted meeting agenda. Motion carried.

**Approval of Meeting Minutes:** Motion was made by Commissioner Michael J. Johnston to approve the May 21, 2020 and June 30, 2020 Commission meeting minutes with amendments. Motion carried.

**Reorganization of FY20-FY21:** Motion was made by Commissioner Kim Cooper to nominate Mike Gamblin for Chair and Michael J. Johnston for Vice-Chair.
A motion was made by Commissioner Mike Gamblin to appoint Commissioner Michael J. Johnston as representative to the Education Council. Motion carried.

**Employee Recognition:** Ron Bassett and Michell Bird were presented with a recognition for their help and work with the Fiscal Year 2019 Comprehensive Annual Financial Report.

**Staff Reports:**

The following reports were presented for members’ review; copies of which are on file at the Commission office:

- License Base Analysis
- Examination Statistics
- Complaint Summary Report
- Enforcement Telephone Activity Log(s) May, June 2020
- Audit Report(s) May, June 2020
- Waiver by State Report
- Education & Licensing Telephone Log May, June 2020
- New Brokers & Company Report

**Idaho REALTORS®:** CEO David Hensley reported their total numbers are 11,198. David Hensley also gave a brief update on earnest money, suggesting IR would be working on forms. He also reported that Director Bird and Commissioner Gamblin would be speaking at the July, Wednesday webinar.

**Executive Director’s Report:**

**Legislative Service Office Audit update** – Director Bird presented the final LSO Management report. Director Bird states the Commission had no findings. The audit can be found on LSO website.

**Idaho Division of Occupational Professional Licenses Update** – Executive Order 2020-10 consolidated several licensing agencies into an umbrella agency under 3 sections. Real Estate is in the Construction, Building, and Real Estate Section. Director Bird was names Section Chief.

**2021 Legislation Update** – Director Bird gave an overview of legislative ideas that have been submitted for Governor approval. Discussion ensued. Motion was made by Commissioner Kim Cooper have IREC staff to proceed with drafting legislation for submission. Motion carried.
Discussion on Handling Earnest Money – Director Bird and Commissioner Michael J. Johnston led discussion on the handling of earnest money. Discussion ensued.

Agency Disclosure Brochure Review – Director Bird led discussion on the updates of brochure.
Motion was made by Commissioner Martin Espil to accept the changes to the Agency Disclosure Brochure. Motion carried.

Enforcement

Probable Cause Memo #20-0128 and 20-0129: A motion was made by Commissioner Jill Stone finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Jill Stone further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #20-0119 and 20-0120: A motion was made by Commissioner Jill Stone finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Jill Stone further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #20-0081: A motion was made by Commissioner Jill Stone finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Jill Stone further moved that upon the initiation of any formal
proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Notice of Default
IREC Staff vs. Xena Benedetto:
In the matter of Xena Benedetto on the record showing that the Administrative Complaint was filed and personally served on the Respondent more than 21 days ago, and the Respondent has failed to file any answer or other motion; a motion was made by Commissioner Jill Stone that a Notice of Proposed Default Order be issued in this case, advising the Respondent he has 7 days to file a petition showing why the proposed order should not be entered and, further, that Mike Gamblin, as the local member of the Commission, be appointed as presiding officer who, upon the expiration of the 7-day period, will either sign the Final Order or issue an order setting aside the proposed default order. Motion carried.

Executive Session: In accordance with provisions of Idaho Core (74-206(1)(b), a motion was made by Commissioner Jill Stone to adjourn to executive session. Roll was called, Michael J. Johnston, Mike Gamblin, Jill Stone, Kim Cooper, and Martin Espil voted in favor. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Commissioner Kim Cooper to adjourn the executive session and return to open meeting. Motion carried.

Exemption Review #20-005: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(e); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to revise the final order. Commissioner Michael J. Johnston recused himself.

Exemption Review #20-010: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Exemption Review #20-012: Request seeking an exemption from felony disqualification
pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Education Council Position Applications:
Motion was made by Commissioner Michael J. Johnston to appoint Heidi Casdorph to the Southwest district Education Council as the Southwest District member effective immediately. Motion Carried.

There being no further business, Chair Gamblin adjourned the meeting at 12:20 p.m. MT.

Respectfully submitted,

[Signature]

MiChell Bird
Executive Director

MB:jv

License Base Analysis
Examination Statistics
Education & Licensing Telephone Log(s) May, June 2020
Complaint Summary Report
Enforcement Telephone Activity Log(s) May, June 2020
Audit Report(s) May, June 2020
Waiver by State Report
New Brokers & Company Report
Final Orders

Minutes of the Idaho Real Estate Commission meeting on July 22, 2020 are hereby approved.

[Signature]
Jill Stone, Chair

[Signature]
Mike Gamblin, Vice Chair

IREC Minutes 5 July 22, 2020
BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

XENA GABRIELA BENEDETTO;
and CLYDESDALE COMMERCIAL
LLC,

Respondent.

Case No. 19-0249
19-0251

FINAL ORDER

1. A Complaint in the above-entitled matter was filed with the Commission April 22, 2020. On May 2, 2020, the Complaint was personally served upon Respondent.

2. No Answer or other responsive pleading or motion has been filed within the time prescribed by law, and after being served with Notice of Proposed Default Order, the Respondent has failed to timely file a Petition preventing entry of the proposed default Final Order.

3. Based upon this record, and as provided Idaho Code Section 67-5242(4), Staff of the Idaho Real Estate Commission is entitled to entry of this default order, which Complaint seeks costs and attorney’s fees bases upon the verified allegations that Respondents violated the following statutes:

FINAL ORDER – X. Benedetto and Clydesdale Commercial LLC- EXHIBIT A Page 1 of 5
A. Idaho Code 54-2002 as defined by 54-2004 (2) (39) (a) (c) (d): No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefor.

1. Benedetto practiced real estate in Idaho without a license.

B. Idaho Code 54-2002 as defined by 54-2004 (2) (39) (a) (c) (d): No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson in this state without an active Idaho real estate license therefor.

1. Clydesdale Commercial LLC practiced real estate in Idaho without a license.

NOW, THEREFORE, IT IS HEREBY ORDERED, as follows:

1. Respondents shall cease and desist from further unlicensed practice in the state of Idaho and in engaging in any of the conduct or violations set forth in the complaint or any other violating the Idaho Real Estate License Law and Rules.

2. Respondent Benedetto is ordered to pay a civil penalty of One Thousand Five Hundred Dollars ($1,500) by no later than August 24, 2020.

3. Respondent Clydesdale Commercial LLC is ordered to pay a civil penalty of One Thousand Five Hundred Dollars ($1,500) by no later than August 24, 2020.

4. Respondent Benedetto is ordered to pay reasonable attorney’s fees and costs actually incurred by Staff in the investigation and enforcement of this action,
which amount is **One Thousand Two Hundred Dollars ($1,200)** as of the date the Complaint was filed, and which amount is deemed reasonable in the case of default; such fees shall be due by no later than **August 24, 2020**.

5. Respondent Clydesdale Commercial LLC is ordered to pay reasonable attorney’s fees and costs actually incurred by Staff in the investigation and enforcement of this action, which amount is **One Thousand Two Hundred Dollars ($1,200)** as of the date the Complaint was filed, and which amount is deemed reasonable in the case of default; such fees shall be due by no later than **August 24, 2020**.

6. All fines and attorney’s fees are due and payable pursuant to the terms of this Final Order, and in any event, all monies paid by Respondent will be applied towards the costs and attorney’s fees first, before application to the civil penalty. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. **MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

7. This is a Final Order of the Agency. Any aggrieved party may file a Motion for Reconsideration of this Final Order within fourteen (14) days of the date of service of this Final Order. The Commission will dispose of the Petition [Motion] for Reconsideration within twenty-one (21) days of its receipt, or else the Petition will be deemed denied by the operation of law. See section 67-5246(4), Idaho Code.
8. Judicial Review – Place of filing. Pursuant to section 67-5272, Idaho Code, any party aggrieved by this Final Order or Orders previously issued in this case may seek judicial review of this Final Order and all previously issued Orders in this case to district court by filing a Petition for Review in the district court of the county in which:

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


A. within twenty-eight (28) days of the date of service of this Final Order; or, if a Petition for reconsideration is filed,
B. within twenty-eight (28) days of the date of the Commission’s decision on that Petition, or of the Commission’s failure within twenty-one (21) days to issue a decision on the petition, whichever is later.

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

The filing of a Petition for Review in the District Court does not itself stay the effectiveness or enforcement of the Order being appealed. See Idaho Code 57-5274.

10. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent at Respondent’s last known address on file at the Commission office.
ISSUED this 22 day of JULY, 2020.

FOR THE COMMISSIONERS:

[Signature]

Mike Gamblin, Chair
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Xena Gabriela Benedetto
314 S. Main Street
Kalispell, Montana 59901

____ U.S. Mail
____ Email: ___________________________
____ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

____ U.S. Mail
____ Email: eric@naylorhales.com
____ Facsimile Transmission

MiChell M. Bird, Executive Director
Idaho Real Estate Commission