

**INDIANA REAL ESTATE COMMISSION  
WEDNESDAY, MARCH 3, 2021  
8:00 a.m.**

**\*TO BE HELD THROUGH WEBEX\***

**TO JOIN, CALL: (240) 454-0887**

**MEETING CODE: 610915440 OR**

<https://IndianaEnhanced.Webex.com/join/PLAWebex>

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**I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**

Chairperson, Sahara Williams called the virtual meeting to order at 8:03 a.m. and declared a quorum in accordance with Ind. Code § 25-34.1-2-3(b).

**Commission Members Present: Roll Call**

Paul Boyter  
Charles (Charlie) W. Shook  
Doug Rose  
Sahara Williams, Chairperson  
John De Souza  
Donna Spears  
James Litten, Vice Chair  
Molly Kitchell  
John Briscoe  
Pam Lumley

**Commission Members Absent:**

None

**State Officials Present:**

Amy Hall, Director, Indiana Professional Licensing Agency  
Chris Shea-Russell, Indiana Professional Licensing Agency  
Erin Sutton, Compliance Officer, Indiana Professional Licensing Agency  
James Harry, Commission Advisory Counsel, Office of the Attorney General

**Court Reporter:**

Lindy Meyer, Accurate Reporting of Indiana

**II. ADOPTION OF THE AGENDA**

**Donna Spears made a motion and was seconded by Paul Boyter to the motion to adopt the agenda.**

**Spears/Boyter  
10/0/0**

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**III. APPROVAL OF THE MINUTES OF THE JANUARY 13, 2020 MEETING**

**A motion was made by Pam Lumley and was seconded by John Briscoe to approve the minutes for the January 13, 2020 meeting.**

Pam Lumley/John Briscoe  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

Leif Johnson appeared and let the Commission know he was no longer going to be presenting cases before the Commission because he is moving to the advisory section of the Office of the Attorney General.

**IV. PERSONAL APPEARANCES**

1. Jerrold E. Nierzwicki Jr. – Application – Positive Response

Jerrold E. Nierzwicki appeared viturally before the Commission pertaining to his positive response on his application. He was charged with a crime of intimidation but there is no determination of guilt, due to the courts running behind due to Covid. Nierzwicki stated that this was a first time occurrence.

**A motion was made by Charlie Shook and was seconded by John Briscoe to approve his application and issue Jerrold Nierzwicki an active license. After criminal proceedings he will need to contact the Commission if he has been charged criminally.**

Charlie Shook/John Briscoe  
10/0

<b>Roll Call Vote - The following Commission Members Voted</b>	<b>“Aye”</b>	<b>“Nay”</b>
Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
Doug Rose	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

2. Bryce Evans – Application – Positive Response

Bryce Evans appeared virtually before the Commission due to his positive response on his application. He is currently in a diversion program.

**A motion was made by John Briscoe and was seconded by Pam Lumley to approve the application of Bryce Evans on probation to run concurrent with his diversion program and criminal proceedings. He may petition for withdraw of probation at the end of the criminal proceedings.**

John Briscoe/Pam Lumley  
10/0

<b>Roll Call Vote - The following Commission Members Voted</b>	<b>“Aye”</b>	<b>“Nay”</b>
Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
Doug Rose	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

3. Evan Brodereck- Application- Positive Response

Evan Brodereck appeared virtually before the Commission due to his positive response on his application. He is on criminal probation through December 2021. Jim Bittner is his mentor. His law license has been suspended for one year due to his criminal charges.

**A motion was made by Pam Lumley and was seconded by Charlie Shook to approve Evan Brodereck’s license on probationary status to run concurrent with his criminal proceedings without the right to petition for withdrawal from probation until his criminal proceedings have concluded.**

Pam Lumley/Charlie Shook  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

4. Ashley McClure- Application- Positive Response

Ashley McClue appeared virtually before the Commission due to his positive response on her application. She has had two OWI’s within the past 4 years. The 2019 probation ends May of 2022.

**A motion was made by Charlie Shook and was seconded by John Briscoe to approve the license on a probationary status to run concurrent with her criminal proceedings. She may petition for withdraw of probation at the end of the crminal proceedings.**

Charlie Shook/John Briscoe  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓

John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

5. Derek Jackson- Application- Positive Response

Derek Jackson appeared virtually before the Commission due to his positive response on his application. He is in a pretrial diversion program which is completed in September 2021.

**A motion was made by John Briscoe and was seconded by Donna Spears to approve the license on a probationary status to run concurrent with his criminal proceeding. He may petition to withdraw from probation after those proceedings have concluded.**

John Briscoe/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted “Aye”“Nay”**

Paul Boyter	✓
Charles (Charlie) W. Shook	nay
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

6. Kevin Hileman- Application- Positive Response

Kevin Hileman appeared virtually before the Commission due to his positive response on his application. In 2017 he was charged with battery and criminal recklessness for shooting someone over a gaming console and completed his two years of probation in 2019. Jerry Hurst is his mentor and is retired from law enforcement. Jerry Hurst appeared and spoke on Hileman’s behalf.

**A motion was made by Pam Lumley and was seconded by John Briscoe to approve his application and to issue the license.  
Doug Rose is not in favor of issuing him a license.  
Charlie Shook is inclined to not support issuing a license  
Sahara Williams was concerned about Hileman’s statement at the Commission Meeting explaining why he shot the victim by saying that the victim had an outstanding warrant and Donna Spears and Molly Kitchell spoke as well.**

Pam Lumley/ John Briscoe  
6/4

<b>Roll Call Vote - The following Commission Members Voted</b>	<b>“Aye”</b>	<b>“Nay”</b>
Paul Boyter	✓	
Charles (Charlie) W. Shook		✓
Doug Rose		✓
John Briscoe	✓	
John De Souza	✓	
Donna Spears		✓
Sahara Williams		✓
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

## V. ADMINISTRATIVE HEARINGS

### 1. **Jacob Sebesky – Cause No: 2020 IREC 0055 Motion to Dismiss**

Jacob Sebesky did not appear before the Commission

Kelsey McKnight and Derek Peterson appeared on behalf of the state on the Motion to Dismiss. The respondent does not meet the definition of practitioner hence the Motion to Dismiss.

**Molly Kitchell made a motion to John DeSouza seconded the Motion to Dismiss**

Molly Kitchell/John DeSouza  
10/0

<b>Roll Call Vote - The following Commission Members Voted</b>	<b>“Aye”</b>	<b>“Nay”</b>
Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
Doug Rose	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

**2. Robert Attinger and Robert Attinger Real Estate LLC – Cause No: 2020 IREC 0010**

**Default Hearing**

**Commissioner Doug Rose recused himself from the hearing and left the meeting.**

At the outset of the hearing, the State announced a settlement between the State and Robert Attinger. Robert Attinger appeared before the Commission via electronic means. He did request to voluntarily surrender his license. The State has no objection to this request, though the State requests that the respondent pays all restitution deemed appropriate as a condition of a new application. He would have to submit proof of payment of all restitution in the amount of 68,530.75 in addition to all licensing fees if he were to reapply as a real estate broker.

**Motion made by Paul Boyter and seconded by Jim Litten to accept Mr. Robert Attinger’s voluntary license surrender. He must provide proof of consumer restitution, with a break down of the payments provided by the state, and to pay all fees required for reapplication if he were to reapply.**

Paul Boyter/Jim Litten  
9/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

**3. Barton Gauker- Cause No: 2020 IREC 0024 Request to Withdraw from Probation**

The State did not appear in this hearing. Barton Gauker appeared before the Commission electronically. He stated he has completed his criminal probation so he petitioned the Commission to be removed from probation.

**Motion made by Jim Litten and seconded by Paul Boyter to approve his petition request to withdraw probation.**

Jim Litten/Paul Boyter  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

## **VII. ALJ DELIBERATIONS & SETTLEMENT AGREEMENTS**

### **1. Kaufmann Property Management- Motion for Voluntary Dismissal**

**A motion was made by Paul Boyter and seconded by Jim Litten to approve the Voluntary Dismissal**

Paul Boyter/Jim Litten  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

### **2. Kerry Kaufmann- Settlement Agreement**

**A motion was made by Charlie Shook and seconded by Paul Boyter to approve the proposed settlement.**

Charlie Shook/Paul Boyter  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

### **3. Paul Eisaman Jr.- Settlement Agreement**

**A motion was made by Paul Boyter and seconded by John Briscoe to approve the proposed settlement.**

Paul Boyter/John Briscoe  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

### **4. MGM Property Management LLC- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Charlie Shook to approve the proposed settlement.**

Paul Boyter/Charlie Shook  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓

Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**5. Kevin Morse- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Charlie Shook to approve the proposed settlement.**

Paul Boyter/Charlie Shook  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**6. Cynthia Alexander-Ogele- Administrative Law Judge Panel Recommended Order**

**A motion was made by Paul Boyter and seconded by Jim Litten to approve the Recommended Order ALJ Panel**

Paul Boyter/Jim Litten  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓

Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**7. Garry Hopple- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the proposed settlement.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**8. Triple “S” Enterprises- Motion for Dismiss Pending Matter**

**A motion was made by Paul Boyter and seconded by Jim Litten to approve the proposed settlement.**

Paul Boyter/Jim Litten  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**9. Indy Metro Northeast LLC & Ann Ruble & Kristie Smith- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the proposed settlement.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
Doug Rose	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

**10. Stephanie Scott- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the proposed settlement.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓	
Charles (Charlie) W. Shook	✓	
Doug Rose	✓	
John Briscoe	✓	
John De Souza	✓	
Donna Spears	✓	
Sahara Williams	✓	
Pam Lumley	✓	
James Litten	✓	
Molly Kitchell	✓	

**11. Honest Property Management- Motion to Dismiss Pending Matter**

**A motion was made by Paul Boyter and seconded by John Briscoe to approve the proposed settlement.**

Paul Boyter/Johon Briscoe  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**12. Sweet Owen Realty and Linda Morris - Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the proposed settlement.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**13. Kerry Wiggerly- Proposed Settlement Agreement**

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the proposed settlement.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote - The following Commission Members Voted**      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**VI. CE WAIVERS**

NONE

**VII. OLD / NEW BUSINESS**

**1. Report From The Office Of The Attorney General**

Derek Peterson provided a report from the Office of Attorney General. He introduced some of his staff to the Commission. There are currently 69 open litigation files, 13 Cease and Desist, Four Summary Suspensions and 351 open consumer complaints under investigation. There have been 38 consumer complaints closed. The average age of a consumer complaint is 11.9 months. The open litigation files are over 16.8 months old, but that number should decrease with the ALJ panels.

**2. Real Estate Education Advisory Council Report**

Cathy Harbaugh reported to the Commission the REAC Report and provided information about the classes that were approved, denied or tabled.

Cathy Harbaugh also mentioned some PSI proctored test issues. There is no way to contact anyone if issues arise. Internet Connectivity seems to be an issue and plays a major role in the problem.

John Briscoe asked about the passing rate of the exam rate on the first time. The average passing is 50% to 65%.

**A motion was made by Paul Boyter and seconded by Donna Spears to approve the recommendations from The Real Estate Education Advisory Council.**

Paul Boyter/Donna Spears  
10/0

**Roll Call Vote** - The following Commission Members Voted “Aye” “Nay”

Paul Boyter	✓
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Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

### 3. Seller's Disclosure

Anne Johnson, IAR, appeared before the Commission about updating the Seller's Disclosure Form. The Commissioners asked questions about some of the suggestions and proposed revisions. This is a proposed residential updated Seller's Disclosure form. The Commission will review and table this and determine the correct changes. This would require a rule change to update the Seller's Disclosure form.

Jim Litten made recommendation to table this and for the association to do more research this deeper and to receive feedback from the IAR membership and their legal department.

A three person Committee was created to report back to the Commission as they work to update this form. John Briscoe will work with IAR, Pam Lumley and Donna Spears are Directors on IAR, so their involvement will be valuable. John Briscoe, Pam Lumley and Donna Spears will work on this.

### 4. ARELLO

Pam Lumley spoke about the benefits of someone representing Indiana and creating relationships with other jurisdictions. Sahara Williams urged the Commissioners to attend or if they deemed it necessary, the Commission could attend or send a staff member. Pam Lumley recommended that Amy Hall attend so she should become more familiar with the profession. Donna Spears indicated she was available to attend on behalf of the Commission. There may be money for two people to attend and represent Indiana. Amy Hall will check on the funding available.

## VIII. SUBCOMMITTEE REPORTS

**1. Kentucky Reciprocity Agreement**

**Pam Lumley & John Briscoe**

Pam Lumley presented the Kentucky Reciprocity Agreement and the proposed changes in this proposed agreement. There was discussion about how long they would need to be licensed in their jurisdiction. Two years of licensure is what is recommended and the common standard. There were other modifications discussed. James Harry requested feedback from the Commission.

**Paul Boyter made a motion and was seconded by Charlie Shook to approve the Kentucky Reciprocity Agreements with the recommended modifications and to send a draft of the agreement Kentucky for review.**

Paul Boyter/Charlie Shook  
10/0

**Roll Call Vote** - The following Commission Members Voted      “Aye”      “Nay”

Paul Boyter	✓
Charles (Charlie) W. Shook	✓
Doug Rose	✓
John Briscoe	✓
John De Souza	✓
Donna Spears	✓
Sahara Williams	✓
Pam Lumley	✓
James Litten	✓
Molly Kitchell	✓

**2. Property Management Licensing – Jim Litten**

**Molly Kitchell, Doug Rose and Jim Litten**

Anne Johnson fro IAR has suggested to reach out to their membership to educate them about property management.

There is a growing problem of unlicensed property management.

The Office of the Attorney General’s Advisory Opinion Division has not been asked for an opinion on this matter and will likely decline to give one if asked. This is not an issue of a gray area in the law but rather an issue of lack of information and understanding by licenses. The Commission will take up IAR’s offer to help educate its members on the issue.

3. **Illinois reached out to Indiana about reciprocity.** Paul Boyter will join with James Harry and Amy Hall in a conversation with Illinois.

4. **Other Issues**

There may be a few more hearings at the full IREC meetings in the future so that the Commission is not using staff and PLA resources for 3 meetings a month.

Discussion about Sharepoint and the problems the Commissioners experienced accessing it. A few of the Commissioners didn't feel Sharepoint was user friendly and most utilized the Zip file. Though there was a request to let the Commission know when the full packet was ready to view on Sharepointe.

**IX. ADJOURNMENT 1:37 p.m.**