

NEBRASKA REAL ESTATE COMMISSION

February 19, 2009

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:06 a.m. on February 19, 2009, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Bohrer, who was absent and excused. Also present were Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present for personnel matters.

Notice of Meeting (Adopt Agenda)

Deputy Director Hoffman presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, in writing, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting were available to the public on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Deputy Director Hoffman noted that agenda items 4a – Approve Additional Deficit Budget Request; 6a – License Recognition Agreements Update and 16 - Special Resolution had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Grady and seconded by Leisey to adopt the final agenda as presented. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Minutes of January 22, 2009

The minutes of the Commission meeting held on January 22, 2009, were considered.

After review, a motion was made by Grady and seconded by Griess to approve the minutes as presented. Motion carried with Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused and with Dover not voting having not been in attendance at the January Meeting.

Receipts and Expenditures Report for January

Deputy Director Hoffman presented the Receipts and Expenditures Report for January. A copy of said report is attached to and made a part of these minutes. Deputy Director Hoffman noted that

an explanation page was included on the report.

The cash fund balance as of January 31, 2009, was \$837,094.70, which compared to a cash fund balance of \$782,022.80 on January 31, 2008.

After discussion, a motion was made by Grady and seconded by Leisey to file the January Receipts and Expenditures Report for audit. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Approve Additional Deficit Budget Request

Deputy Director Hoffman presented the Additional Deficit Budget Request. A copy of said report is attached to and made a part of these minutes.

Deputy Director Hoffman explained the proposed request.

After discussion, a motion was made by Dover and seconded by Leisey to approve the Additional Deficit Budget Request as presented.

A friendly amendment was offered by Chairperson Gale to authorize Deputy Director Hoffman to represent the Commission before the Legislative Appropriations Committee. The friendly amendment was accepted by the mover and second.

The amended motion carried as amended with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Hoffman presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Leisey and seconded by Dover to ratify issuance of the licenses as set forth in the report. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

License Recognition Agreements Update

Deputy Director Hoffman presented an update on the renegotiation of the license recognition agreements with other jurisdictions due to the implementation of the pre-license, three-hour class required of license recognition applicants. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman reviewed the exhibit and explained that there are administrative procedures in place for all but three of the jurisdictions that have rescinded their agreements with Nebraska. She also indicated that Kansas was the only jurisdiction still reviewing their position. She also indicated that the Commission had given the Director authorization to enter into these

license recognition agreements, therefore the new Director or designee would be able to sign the license recognition agreement upon such request from Kansas.

No action was necessary on this report.

Examination Report - January

Deputy Director Hoffman presented for ratification the January Examination Report, a copy of which is attached to and made a part of these minutes.

Commissioner Dover requested that Deputy Director Hoffman ask the examination company, Applied Measurement Professionals, to update their website to include generic sample simulation exercises. Deputy Director Hoffman indicated she would make that request.

After review, a motion was made by Leisey and seconded by Griess to ratify the January Examination Report for the purpose of issuing licenses. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused

Real Estate Education Matters

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Grady and seconded by Leisey to ratify the report. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Instructor Development Workshop

Deputy Director Hoffman presented an exhibit regarding the proposed Instructor Development Workshop, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman noted that the Commission had traditionally offered an Instructor Development Workshop every two years to both pre-license and continuing education instructors and those seeking to qualify as such. She indicated that the Workshop would be held in May and be a one-day program.

Deputy Director Hoffman indicated that due to the implementation of the broker simulation examination, she had been searching for a presenter who had experience in teaching methodologies effective in preparation for simulation exercises. She found an instructor from Atlanta, Georgia, Pat Johnson, who worked in a school noted as one of Georgia's finest. She also indicated that Pat Johnson had studied the simulation examinations and as a result had developed interactive training. She also noted that this topic would be useful to both pre-license and continuing education providers and not focused solely on examination preparation.

A motion was made by Grady and seconded by Bohrer to approve the expenditures for the Instructor Development Workshop and to provide the Workshop free of charge. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Pending Sworn Complaints and Investigative Matters

Deputy Director Hoffman presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

Item A Complaint 2008-017 – Gerald and Viola Bodfield vs. JoElla Faye Manolidis

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, and Rouch voting aye, with Gale voting nay.

Item B Complaint 2008-020 - Joseph Beltran vs. Brian Keith Birkel and Melissa Linnae Birkel

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Presentation of Stipulation and Consent Orders

Complaint 2009-007, Commission vs. Daniel Patrick Kelley

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-007, Commission vs. Daniel Patrick Kelley. A copy of said Order is attached to and made a part of these minutes.

Prior to discussion of this matter, Commissioner Leisey recused himself, thereby nullifying any potential conflict of interest.

After discussion, a motion was made by Grady and seconded by Bohrer to enter into the Order as presented. Motion carried with Bohrer, Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Complaint 2009-008, Commission vs. Diane K. Plum

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-008, Commission vs. Diane K. Plum. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Grady and seconded by Leisey to enter into the Order as presented. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Hearings

There were no hearings scheduled to be held at the meeting.

Informal Special Appearances

Nikita M. Sampson, Salesperson Applicant

Deputy Director Hoffman presented exhibits which included: correspondence regarding Mr. Sampson's special appearance; a summary of Mr. Sampson's situation; a letter of explanation from Mr. Sampson; a letter regarding additional information required to complete Mr. Sampson's application; a letter of explanation from Mr. Sampson of his situation; a report from the Nebraska Judicial Branch regarding Mr. Sampson's court cases; a copy of Mr. Sampson's motor vehicle record; letters of reference for Mr. Sampson; Mr. Sampson's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Sampson was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Sampson distributed a letter of reference. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 12a1.

After discussion, a motion was made by Dover and seconded by Leisey to allow Mr. Sampson to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Justin R. Hogan, Potential Applicant

Deputy Director Hoffman presented exhibits which included: correspondence regarding Mr. Hogan's special appearance; a summary of Mr. Hogan's situation; Mr. Hogan's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Hogan was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Hogan distributed a letter from his probation officer and a letter from a potential employer in the real estate industry. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 12b1.

A motion was made by Leisey and seconded by Dover that Mr. Hogan not be allowed to sit for the salesperson examination at this time. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Legislative Matters

LB 11 - Deputy Director Hoffman reported that the "Up-To" Fee Limit bill had been approved by the Governor on February 12.

LB 29 - Deputy Director Hoffman reported that the Branch Office Manager Changes bill had been approved by the Governor on February 12.

LB 30 – Deputy Director Hoffman reported that the Fining Authority bill had been approved by the Governor on February 12.

LB 226 – Deputy Director Hoffman reported that this bill to change the age of majority would continue to be monitored.

LB 311 – Deputy Director Hoffman reported that the hearing would be held on February 24, 2009, for the Deficit Appropriation bill.

LB 315 – Deputy Director Hoffman reported that the hearing would be held on February 24, 2009, for the Biennium Budget bill.

LB 403 – Deputy Director Hoffman reported that this bill was relating to illegal aliens and would require verification of lawful presence in the United States as prescribed as part of the process of issuing a license. Further, it would require annual reporting. The hearing was held on February 18, 2009. She indicated that she understood that an individual would have to sign an affidavit concerning citizenship. Non-citizens would be checked against a homeland security database, but could get a license issued while waiting for the required documentation. She noted that the Commission normally performs all checks prior to issuing a license. She also noted that there had been a lot of controversy regarding this bill and did not foresee this bill getting out of committee this session. She also explained that LB 34 had also been addressed during the hearing which would require employers to check through the E-verify system citizenship status before hiring a new employee. She did not know if that would apply to state subcontractors etc. She indicated that she still had several questions which were unanswered at the hearing due to the chaos. She will continue to monitor the bill.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report - Fourth Quarter 2008

Deputy Director Hoffman presented the Trust Account Examination Evaluation Report - Fourth Quarter 2008. A copy of said report is attached to and made a part of these minutes.

Deputy Director Hoffman reviewed some of the comments received. The Commission asked to have the examiners commended for their performance.

No action was necessary on this report.

ARELLO Mid-Year Meeting – April 27-29, 2009 - Asheville, North Carolina

Deputy Director Hoffman asked that Commissioners planning to attend this meeting complete the registration form and send it to the Commission office by March 15, 2009, with a check or credit card information for the guest registration, if applicable. Deputy Director Hoffman reported that the deadline for hotel reservations was March 25, 2009.

No action was necessary on this report.

Personnel Matters - Closed Session

At 11:26 a.m., a motion was made by Leisey and seconded by Grady to go into closed session for discussion of personnel matters and receiving legal advice regarding personnel matters. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Chairperson Gale again indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters. Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present to discuss personnel matters and offer legal advice in this matter.

At 1:34 p.m., a motion was made by Leisey and seconded by Grady to reconvene in open session. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

After reconvening in open, public session, Chairperson Gale indicated that much time had been spent discussing with counsel the law which pertains to the Commission's options. Chairperson Gale also indicated that this was a unique situation and felt various options had been discussed.

A motion was made by Bohrer and seconded by Leisey that an ad hoc committee be formed for the purpose of assisting the Commission in its search for a successor Director. The Committee shall have the authority and the duty to: investigate the viability of using an external search firm and develop a search process; and develop a list of qualified candidates for Director for consideration by the Commission. The Committee shall not have the authority to hold hearings or take formal action on behalf of the Commission. The Committee shall have the authority to consult with the Commission's legal counsel. Commissioner Bohrer further moved and nominated Commissioners Dover, Griess and Grady to the search Committee.

Commissioner Bohrer indicated that the subcommittee would help identify Director candidates for fairness and transparency reasons, and was not meant to diminish the capabilities of Deputy Director Mayrose or Deputy Director Hoffman, but intended to be fair and transparent. He also indicated that while those with inside experience would be serious candidates in the process, they felt that they had the obligation to the public to proceed in this manner.

Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

A motion was made by Grady and seconded by Leisey that the Commission make a deficit appropriation request in the amount of \$50,000 to assist with the costs related to hiring a successor Director. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

A motion was made by Griess and seconded by Dover to authorize the Deputy Director to sign documents and take action as Director of the Commission until such time as a permanent Director is employed by the Commission. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Deputy Director Hoffman indicated that there would be some computer-generated documents where the signature indicated that of the Director and asked for guidance in these situations. Counsel Heinrich indicated that all documents could be signed as Deputy Director rather than Director and a resolution would be drafted for the Deputy Director to sign on behalf of the Commission. He further explained that he could discuss specific situations on a case-by-case basis with Deputy Director Hoffman, but where Director appeared and could not be changed that the signature could read Deputy Teresa Hoffman.

Chairperson Gale asked what the Commission would have to do for the Additional Deficit Budget Request for the Director's search process. Deputy Director Hoffman indicated that while the Additional Deficit Budget request to pay Director Tyrrell's leave balance would be made verbally, she would need to seek advice from the Legislative Fiscal Analyst, Mike Lovelace, regarding this type of expenditure. Deputy Director Hoffman indicated that Mr. Lovelace had indicated during previous conversations that undetermined future expenditures had not typically been approved by the Appropriation's Committee but she would seek advice on this specific request. Counsel Heinrich indicated that he would provide Deputy Director Hoffman with a breakdown of expenditures leading to the \$50,000 deficit appropriation request by the Commission. Chairperson Gale explained that budgets are unknown future expenditures and felt there was a lot of estimating in the budget process. Deputy Director Hoffman indicated that she will proceed with the request.

Counsel Heinrich suggested that the Commission have a plaque made for Les Tyrrell such as those given to Commissioners at the end of their term or an Admiralship of the Nebraska Navy. Deputy Director Hoffman noted that Mr. Tyrrell had previously received the Admiralship. Chairperson Gale suggested that the Commission consider a plaque and would like to honor Mr. Tyrrell at a luncheon or in a suitable manner. Deputy Director Hoffman indicated that she would look into those options.

A motion was made by Grady and seconded by Leisey to give authority to Deputy Director Hoffman to look into having a plaque made for Les Tyrrell. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Special Resolution

Deputy Director Hoffman presented a resolution commemorating service to the Commission by Les Tyrrell. A copy of said resolution is attached to and made a part of these Minutes.

Chairperson Gale asked that Deputy Director Hoffman have a plaque made for Mr. Tyrrell as quickly as possible. Chairperson Gale also asked Deputy Director Hoffman to see if Mr. Tyrrell would be willing to come to the Commission Office to allow for the presentation of the plaque or if he would allow a delegate to deliver the plaque to him. Deputy Director Hoffman indicated that she would proceed with the requests and be in touch with the Commissioners once she spoke with Mr. Tyrrell.

A motion was made by Grady and seconded by Dover that the resolution for Les Tyrrell be adopted and signed. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Future Meeting Dates

March 19-20, 2009 - Staybridge Suites, Lincoln
May 21-22, 2009 - Staybridge Suites, Lincoln
July 9-10, 2009 - Hampton Inn-Airport, Lincoln
August 13-14, 2009 - Staybridge Suites, Lincoln
September 10-11, 2009 - Staybridge Suites, Lincoln
October 15-16, 2009 - Hampton Inn-Airport, Lincoln

Recesses and Adjournment

Commissioner Bohrer joined the meeting at 9:50 a.m.

At 10:06 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:15 a.m.

At 10:21 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:25 a.m.

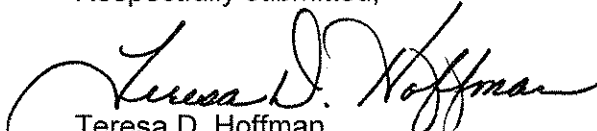
At 11:17 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:25 a.m.

At 2:02 p.m., Chairperson Gale was excused from the meeting.

At 2:10 p.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Dover that the meeting adjourn. Motion carried with Bohrer, Dover, Griess, Leisey, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

I, Teresa Hoffman, Deputy Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the February 19, 2009, meeting of the Nebraska Real Estate Commission were available for inspection on February 26, 2009, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Teresa D. Hoffman
Deputy Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Alan Strong, Premier One, Omaha