

NEBRASKA REAL ESTATE COMMISSION

November 19-20, 2009

Hampton Inn & Suites

Husker Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:06 a.m. on November 19-20, 2009, in the Husker Room of the Hampton Inn & Suites, located at 7343 Husker Circle in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Theresa Marie Garthright vs. Matthew Barret O'Shea and Kimberly Anne Topp Hearing.

Swearing-In Ceremony - Commissioner David H. Ptak

Chairperson Gale conducted a swearing-in ceremony for recently appointed Commissioner David H. Ptak, presented him with his Commission pin, and welcomed him to the Commission.

Notice of Meeting (Adopt Agenda)

Director Lemon 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 southeast corner of the meeting room by the east entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Director Lemon noted that agenda item 20c had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Leisey and seconded by Grady to adopt the final agenda as presented. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Minutes of October 15, 2009

The minutes of the Commission meeting held on October 15, 2009, were considered.

After review, a motion was made by Griess and seconded by Rouch to approve the minutes as presented. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Ptak and Leisey not voting having not been in attendance at the October Meeting.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on any of the agenda items. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for October

Director Lemon presented the Receipts and Expenditures Report for October. A copy of said report is attached to and made a part of these minutes. Director Lemon noted that an explanation page was included on the report. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. The date on the third page for the cash fund balance was set forth as "September 30, 2009" when, in fact, the date should have been "October 31, 2009". The Exhibit was corrected for attachment to these minutes.)

The cash fund balance as of October 31, 2009, was \$497,619.42, which compared to a cash fund balance of \$450,284.87 on October 31, 2008.

After discussion, a motion was made by Grady and seconded by Leisey to file the October Receipts and Expenditures Report for audit. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Renewal Report

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

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, Ptak, Rouch and Gale voting aye.

Examination Report – October

Deputy Director Hoffman presented for ratification the October Examination 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 the October Examination Report for the purpose of issuing licenses. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Real Estate Education Matters

Pre-License Education Instructor Approval

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

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 Dover to ratify the two reports. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Continuing Education Activity Rejection

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

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose 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 2009-011

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 Grady and seconded by Dover that the complaint be set for hearing. After further discussion, the motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item B Complaint 2009-014 – Julie Lynn Carper vs. Matthew William Meister

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 Grady and seconded by Leisey that the complaint be dismissed without prejudice.

An amendment was offered by the mover to dismiss the complaint with prejudice. It was accepted by the second.

After discussion, the amended motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item C Complaint 2009-017 – Bradley Pribyl vs. Timothy Duane Francis

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 Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item D Complaint 2009-023

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 Grady that this complaint be set for hearing against the Respondents per the Staff recommendation.

An amendment was offered by the mover to include the violation of Neb. Rev. Stat. §81-885.24 (12). It was accepted by the second.

An amendment was offered by the mover to allow staff to further investigate the ownership Respondent 2 had in the matters involved in this complaint. After further discussion the mover withdrew this amendment.

The amended motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item E Complaint 2009-039 – Jerome C Rohde vs. Jennie R. P. Agbo

Deputy Director Mayrose indicated that he was unable to give an investigative report to the Commission on this complaint due to the lack of information received by the complainant. He returned the complaint for more details and had not received the information back from the complainant.

After discussion, a motion was made by Leisey and seconded by Rouch that the complaint be dismissed with prejudice.

An amendment was offered by the mover to dismiss the complaint without prejudice. It was accepted by the second.

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

Item F Complaint 2008-035 – Jerry E. Horn and Mary B. Allberry-Horn vs. Bruce William Scheopner

Deputy Director Mayrose requested Complaint 2008-035 be dismissed. Deputy Director Mayrose explained that Complaint 2008-035 was presented to the Commission as an

investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2008-035 in abeyance until the new complaint had been adjudicated. Complaint 2009-041 was the new complaint. A Stipulation and Consent Order had been accepted on Complaint 2009-041 at this meeting.

A motion was made by Grady and seconded by Leisey to dismiss Complaint 2008-035, since the Commission had accepted a Stipulation and Consent Order for Complaint 2009-041 at this meeting. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Consideration and Presentation of Investigative Reports

Director Lemon explained that he had received numerous suggestions regarding the investigative process and the presentation of the complaints and investigative matters known as the "green sheets". He had not been dismissing the suggestions he had received but rather reviewing the procedures since this process is significant to what the Commission does. He was seeking guidance from the Commission whether to form a subcommittee, or to internally receive and analyze the suggestions for the Commission's review.

Commissioner Grady indicated that some of the suggestions made at this meeting and at previous meetings were good ideas and although unsure what changes could be made to the presentation of the investigative reports, it would be good to have the suggestions presented in order to act on and move ahead.

Commissioner Dover felt that the presentation of investigative reports could be handled differently but felt that a task force could be formed to review the suggested changes. He indicated that research into how the investigative reports are presented by other agencies or jurisdictions would be useful.

Director Lemon indicated that he could obtain the information provided in the presentation of the investigative matters from other jurisdictions provided that information could be released.

Commissioner Leisey preferred that input be made to the staff regarding the investigative reports rather than forming a task force.

Commissioner Dover felt that suggested changes to the investigative reports could be submitted to the staff and a list of those suggestions be collected and brought to the Commission for discussion.

Commissioner Grady felt that those suggestions should be made in a timely manner and perhaps a deadline be given for the suggested changes to be received by the staff.

Chairperson Gale indicated that the suggestions needed to be put into context, such as examining why we are we looking for the change and the reason for the change. He felt that there may be reasons for the way the investigative matters are currently being presented. He also indicated that there were pros and cons to being supplied with minimum or maximum information on investigative matters. He explained that if the green sheets were not provided to the Commissioners there could be more hearings. He indicated that there could be other ways of handling the investigative matters such as having pre-hearing officers conduct the hearing and make recommendations to the Commission, which the Commission currently does not have the authority to do.

Commissioner Ptak indicated that he appreciated the work completed by staff to prepare the green sheets, but felt that the process could be improved if Director Lemon and Deputy Director Mayrose reviewed the green sheets prior to presentation so the parties reflected were less confusing. He also indicated that the prehearing process could be improved as well.

Chairperson Gale felt that frustration was common in a hearing and that there were other choices for proceedings and felt that a task force could be formed or research of other jurisdictions procedures could be conducted.

Commissioner Dover felt that the presentation of investigative matters worked well and felt that by receiving suggestions and giving the process a tweak would be healthy and should be brought to the Commission for a group discussion.

Chairperson Gale felt that email suggestions regarding changes to the presentation of investigative matters should be sent to Director Lemon prior to the next scheduled Commission Meeting and be placed on the agenda for discussion.

Director Lemon indicated that suggested changes to the green sheets would be summarized and brought back to the Commission for review at the January meeting.

Chairperson Gale indicated that there had been discussion regarding possible updates to the License Act Rules and Regulations due to the changes in technology.

Commissioner Grady felt that ARELLO could provide assistance regarding statute changes required to technology related issues. Commissioner Griess indicated that ARELLO has guidelines available for review. Deputy Director Hoffman indicated that she would review the ARELLO guidelines and keep the PowerPoint presentation in mind.

Commissioner Leisey felt that social networking had the most effect on business practices. Commissioner Dover felt that the Commission could benefit from a speaker appearing regarding the Virtual Office Website (VOW) issues, as well as other technology related subjects.

Commissioner Dover expressed his interest in learning more about the VOW's and Internet Data Exchange (IDX). Chairperson Gale asked if staff would be able to educate the Commissioners regarding the concerns expressed on VOWs and IDX. Director Lemon indicated that effort would be made to provide a speaker at the January meeting who had experience with these issues. Deputy Director Hoffman suggested representatives from local REALTOR Boards who have developed rules regarding VOW's might be invited to discuss issues with technology impacting transactions. Commissioner Leisey indicated that in Nebraska only the Realtors Association of Lincoln had developed rules regarding VOW's, the Omaha Area Board of Realtors had addressed IDX and was not addressing VOW's at this time. He felt that a broader address of VOWs rather than only the Realtor Association of Lincoln's would be preferred.

Deputy Director Hoffman indicated that the National Association of REALTORS may have presentation materials available in order to educate on this topic.

Chairperson Gale suggested that staff review available training options relating to various technology subjects and report the findings at the January meeting.

No action was necessary on this report.

Presentation of Stipulation and Consent Orders

Complaint 2009-041, Commission vs. Bruce William Scheopner

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-041, Commission vs. Bruce William Scheopner. A copy of said Order is attached to and made a part of these minutes.

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

Hearings

Complaint 2008-037 – Theresa Marie Garthright vs. Matthew Barret O'Shea and Kimberly Anne Topp

A Hearing was held on November 19, at 9:30 a.m., in the matter of Complaint 2008-037, Theresa Marie Garthright vs. Matthew Barret O'Shea and Kimberly Anne Topp. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondents Matthew Barret O'Shea and Kimberly Anne Topp were present as was Counsel Stephen D. Mossman of Lincoln representing Ms. Topp.

Commissioners Leisey and Griess recused themselves from participating in this matter, thereby nullifying any potential conflict of interest.

After Opening Statements, Counsel Barton offered eight Exhibits, six of which were received by Chairperson Gale. Counsel Barton called Teresa Garthright, Nada Resnik-McNenny, Matthew Barrett O'Shea, and Kimberly Topp as witnesses.

At 11:10 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:24 a.m.

At 1:15 p.m., Chairperson Gale declared a recess of the Hearing to break for lunch and in order to allow the scheduled Informal Special Appearances to take place. The Hearing reconvened at 2:55 p.m.

Counsel Mossman offered thirteen Exhibits, all of which were received by Chairperson Gale. Counsel Mossman called Nada Resnik-McNenny, Matthew Barrett O'Shea, Judi Anding, Gudrun (Betty) Simms, Ron David (withdrawn) and Vincent W. Leisey.

At 4:35 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 4:50 p.m.

Mr. O'Shea, who was not represented by counsel, testified on his own behalf.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

Prior to any motion the following occurred:

A motion was made by Dover and seconded by Grady in Complaint 2008-037, that Mr. O'Shea violated Neb. Rev. Stat. § 81-885.24 (14), (24), and (29).

There was discussion whether to consider the violations and penalties of the Respondents separately or together. The Commission decided to consider the Respondents separately.

Commissioner Grady felt there should be no question regarding the validity of the contract. He indicated that the signatures and initials were on the forms and the contract had been completed. He felt it was a signed contract and the earnest money should have been deposited. Chairperson Gale concurred.

Commissioner Rouch did not think that Mr. O'Shea should have returned the earnest deposit to the prospective buyer. Commissioner Dover indicated that the earnest deposit should have been turned into the broker's office.

Commissioner Ptak agreed with the discussions and felt that Mr. O'Shea had made the admission that he violated the License Act by failing to deposit the money and there had been cumulative evidence on that issue.

Chairperson Gale expressed concern that Mr. O'Shea had tried to cover up his mistakes. He indicated that Mr. O'Shea had not told anyone about his actions. He indicated that an addendum to the contract had been prepared by Mr. O'Shea requesting the earnest deposit be refunded when he knew the money was no longer in his possession. He was also concerned that Mr. O'Shea prepared false forms in order to protect himself.

Commissioner Dover agreed that Mr. O'Shea displayed incompetency and negligence in his actions and felt that Mr. O'Shea had been instructed to contact Ms. Topp when he had a problem or needed her assistance, which he had not done.

Commissioner Ptak explained that there was evidence that Mr. O'Shea had received a stern talking to by Ms. Topp regarding this transaction and waited approximately a week before preparing the addendum to the contract regarding the refund of the earnest deposit. He did not feel Mr. O'Shea's actions were condoned by the designated broker or by the company. He felt that Mr. O'Shea displayed unworthiness by attempting to cover up his actions.

Motion carried with Dover, Grady, Ptak, Rouch and Gale voting aye, and with Leisey and Griess not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

Chairperson Gale opened the past disciplinary action envelope for Mr. O'Shea. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed to Mr. O'Shea.

Commissioner Grady felt that Mr. O'Shea should receive a twelve month suspension with the first one hundred and eighty days served and the remaining served on probation, nine additional continuing education courses and be required to pay for the hearing charges incurred.

Commissioner Dover agreed with Commissioner Grady but felt that since Mr. O'Shea was a new licensee that he should only serve thirty days of suspension with the remaining time served on probation.

Commissioner Grady did not feel that thirty days of suspension was adequate, he felt Mr. O'Shea should serve at least ninety days on suspension.

Commissioner Dover indicated that the additional continuing education requirement should be the subject matters of license law, ethics and trust accounts. Chairperson Gale indicated that he should not be required to take a course in trust accounts since he is not the broker. Commissioner Grady suggested a course in agency rather than trust accounts.

Chairperson Gale felt that Mr. O'Shea's violations were significant since he had completed the pre-license education courses and training and should have known what actions were violations of law. Therefore, he felt that Mr. O'Shea should serve a longer suspension period and be required to take additional continuing education course in license law, ethics and agency. He also noted that the Respondent, if found guilty, would be required under Nebraska Revised Statutes Section 84-914(1) and Title 305 Nebraska Administrative Code, Chapter 4-007.05, to pay the appropriate fees.

A motion was made by Dover and seconded by Grady in Complaint 2008-037, that Mr. O'Shea should receive a twelve month suspension, with the first ninety days served on suspension, and the remainder of the twelve month period stayed and served on probation, plus nine hours of additional continuing education with three hours in the area of license law, three hours in the area of ethics and three hours in the area of agency. Motion carried with Dover, Grady, Ptak, Rouch and Gale voting aye, and with Leisey and Griess not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

There was discussion regarding violations and penalties for Respondent Topp.

Commissioner Dover felt that it was difficult as a broker to supervise Mr. O'Shea's behavior. He felt that Ms. Topp tried to deal with the situation once she had been made aware of the circumstances.

Chairperson Gale was concerned that Ms. Topp did not intervene when she had been initially notified of possible concerns regarding this transaction, she had not looked at the transaction file to set things straight when this transaction was clearly in trouble. He indicated that the earnest deposit had not been questioned until after a call was received from another broker.

Commissioner Dover felt that Ms. Topp trusted Mr. O'Shea more than she should have. Chairperson Gale felt Ms. Topp should have been inquired as to where the original contract was located. Commissioner Rouch felt that Ms. Topp did not know where the original contract was and thought that the contract was still being countered.

Commissioner Ptak felt that Mr. O'Shea had violated the law prior to Ms. Topp having the knowledge or opportunity to correct his actions. He felt Ms. Topp made a reasonable attempt to contact all parties involved but there was not much she could have done after the fact. He felt that Mr. O'Shea had conducted rogue acts and did not elect to follow the training received from Ms. Topp.

Commissioner Grady felt that Ms. Topp failed to supervise Mr. O'Shea during this transaction and when she was notified of possible problems she should have reviewed the files.

Commissioner Dover felt that Mr. O'Shea had not communicated with Ms. Topp during the entire transaction, he had not done what he was instructed and felt Mr. O'Shea was hoping that if he kept his actions quiet then he may not get into trouble. He felt that Mr. O'Shea put Ms. Topp at risk and she was left to deal with the situations after the damage had already been done.

Commissioner Gale did not feel that Ms. Topp's actions rose to a level of a severe violation, but when a broker is made aware of a troubled situation, a broker should dig into the problem and review the circumstances. He felt that by the earnest money being returned was another issue that should have been reviewed by Ms. Topp.

Commissioner Dover felt that Ms. Topp contacted everyone involved to try to solve the issues. Commissioner Grady felt that when Ms. Topp was made aware of possible problems with this transaction, she should have spoke with Mr. O'Shea immediately instead of postponing the conversation until the following week, therefore, she displayed failure to supervise in a timely manner.

A motion was made by Grady and seconded by Gale in Complaint 2008-037, that Kimberly Anne Topp violated Neb. Rev. Stat. § 81-885.24(29). Motion failed with Grady, Rouch and Gale voting aye, with Dover and Ptak voting nay, with Griess and Leisey not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

A motion was made by Dover and seconded by Ptak in Complaint 2008-037, that the complaint be dismissed against Kimberly Anne Topp.

Commissioner Ptak indicated that since no one knew where the contract was, he was unsure what Ms. Topp would have found even if she had reviewed the transaction file.

Commissioner Grady indicated that the seller felt the property had been sold, the seller was unaware that there had been no earnest money deposited prior to closing. He did not feel justice had been done to this seller.

Commissioner Dover felt that Mr. O'Shea had failed to follow the office policy and had not contacted his broker regarding any issues. Commissioner Grady indicated that brokers need to thoroughly investigate troubled transactions.

Chairperson Gale reviewed the alleged violations and the pending motion.

Motion failed with Dover and Ptak voting aye, with Grady, Rouch and Gale voting nay, with Griess and Leisey not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

A motion was made by Gale and seconded by Grady to find in Complaint 2008-037, that Kimberly Anne Topp violated Title 299, Chapter 5, 003.22. Motion failed with Grady, Rouch and Gale voting aye, with Dover and Ptak voting nay, with Griess and Leisey not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

After further discussion, Chairperson Gale ruled that due to a deadlock the Commission could not find a disposition, therefore, Complaint 2008-037 be dismissed without resolution against Kimberly Anne Topp.

With the consent of the Respondents, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified Respondent O'Shea that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 6:45 p.m.

Informal Special Appearances

Jennifer Diane Robertson, Nonresident Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Robertson's special appearance; an explanation letter from Ms. Robertson ; character reference letters for Ms. Robertson; a Cease and Desist Order issued to Ms. Robertson by the Real Estate Commission; the ARELLO Disciplinary Action Data Bank results for Ms. Robertson; disciplinary actions taken by the Kentucky Real Estate Commission against Ms. Robertson; correspondence and disciplinary actions taken by the Idaho Real Estate Commission against Ms. Robertson; Ms. Robertson's license history from the Florida Department of Business Professional Regulation; Ms. Robertson's certification of licensure from the Georgia Real Estate Commission; Acknowledgment of Personal Jurisdiction from Ms. Robertson; Affidavit for a nonresident license for Ms. Robertson; corporation paperwork filed with the Florida Department of State, Division of Corporations for The Realty Dot, Inc.; a Corporation Subordination Resolution form from Ms. Robertson ; a list of officers and shareholders for The Realty Dot, Inc.; a note indicating that Ms. Robertson will need to make up the delinquent continuing education from being previously licensed; Ms. Robertson's criminal history report; and her broker application form. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that Ms. Robertson chose not to appear before the Commission in person but had requested to appear by exhibit and would be available to speak with the Commission via telephone. Director Lemon reviewed the documentation provided as part of the exhibit in preparation for her return phone call. Ms. Robertson explained the circumstances regarding her license violations with the Kentucky and Idaho Real Estate Commission.

Chairperson Gale reviewed the matters leading to Ms. Robertson's cease and desist order including the listing of Nebraska property while Ms. Robertson was not licensed. Director Lemon informed Ms. Robertson that she had the right to a formal hearing with counsel if she wished to appeal the Commission's decision.

A motion was made by Dover and seconded by Griess that Ms. Robertson not be allowed to receive a real estate license at this time. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Ryan L. Bird, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Bird's special appearance; character reference letters for Mr. Bird; Mr. Bird'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. Bird was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Bird distributed an additional letter of reference. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

Mr. Bird explained the situations regarding his past criminal history.

After discussion, a motion was made by Dover and seconded by Leisey to allow Mr. Bird 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, Ptak, Rouch and Gale voting aye.

Discussion Regarding Expired Offers

Director Lemon presented a memo to the Commissioners for the purpose of discussion regarding expired offers. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that there was no specific statute relating to expired offers in the License Act, but that the negotiation and presentation of offers was part of a licensee's duties under the Act.

Commissioner Grady commended Director Lemon on his work but felt that if this document could be further summarized and an article could be put in the Commission Comment newsletter and used as an educational tool.

Commissioner Griess also felt that expired listing agreements, since these are reviewed during trust account examinations, could be reviewed in the same manner. Director Lemon indicated that staff would work on this issue.

No action was necessary on this report.

Report on Use of Advisory Opinions

Director Lemon presented a memo to the Commissioners regarding use of advisory opinions. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that at the last Commission meeting, it was suggested that he review the process of providing advisory opinions by the Accountability and Disclosure Commission. He indicated that if an advisory opinion is given by the Director then the opinion becomes binding on the Commission. He indicated that a statutory revision may need to be made in order to provide advisory opinions. He felt there may be concern on what criteria and a screening process would be used, and the prior to providing an advisory opinion.

Commissioner Grady felt that the Commission should not interfere with a system which is currently working.

Chairperson Gale indicated that his suggestion to review the use of advisory opinions had not been specific to any pending issues, he was just interested in the approach. He felt that advisory opinions should not conflict with the current ways things are done. Commissioner Dover felt that advisory opinions could be useful and could be changed to clarify any discrepancy. Chairperson Gale felt this may be a useful tool which would have to be authorized by the Legislature and would likely not reach this legislative session, but may be review long term.

Commissioner Ptak indicated that advisory opinions raises a minutia of questions and the timeliness of these opinions could be a concern. He felt that this may require extra work for Director Lemon.

Chairperson Gale indicated that when the Legislative Committee meets they should see if the industry is interested and if any changes could be addressed in the 2011 legislative session.

Commissioner Dover indicated that attorneys for the Nebraska Realtors Association and larger agencies provide their own opinions and legal interpretations. Chairperson Gale indicated that the advisory opinions from the Commission would be binding. Commissioner Dover felt that if the Commission feels that there is a problem these opinions could be initiated and clarify any confusion. Director Lemon felt that legislative wording could be structured to provide the Commission's requests.

No action was necessary on this report.

Cotner Center Condominium Association – Compliance Plan Update

Director Lemon presented documentation received from the Cotner Center Condominium Association regarding their compliance plan update. A copy of said exhibit is attached to and made a part of these minutes. Andrew Willis, Counsel for Cotner Center Condominium Association was present

Mr. Willis explained that since the cease and desist was received the Association no longer receives donations from the sales of the condominium units. He indicated that since the last appearance before the Commission, he met with the Association Board and drafted the compliance plan in conjunction with the License Act, policies and discussions. He indicated that the compliance plan presented had been approved by the Board pending approval from the Commission. He indicated that there were administrative fees collected based on the Commission's guidelines for activities which can be performed by an unlicensed individual.

Commissioner Griess indicated that since the Association did not collect a fee that there appeared to be no violation of license law. She did feel that some of the rules as set out in the plan raise concerns, such as having forms available to be filled in where left blank, which should someone have a question regarding the form it would be difficult to keep from advising them which is licensed activity.

Mr. Willis noted that if the Commission had issues with the compliance plan that they would be addressed and revised. He indicated that the Association would meet and could address the concerns prior to the January Commission meeting.

Commissioner Griess indicated that many co-owners of condominiums do not get involved in the selling of real estate and inquired how other condominiums operated which either had a connection or had no connection to Cotner Center Condominiums.

Mr. Willis explained that the Cotner Center Condominium was set up this way because it is a secure unit for those fifty-five years of age and older. He indicated that the condominium administration has been directed to make a distinction and clear break from activity requiring a license and when filling in the blanks on the standard forms, they are not negotiating the agreement.

Commissioner Grady asked if the legal counsel for the Commission had reviewed the compliance plan. Director Lemon indicated that the Commission's counsel had not reviewed the documents. He indicated that he had reviewed the document and according to the License Act, he did not feel that they had been violating any law since a commission would not be collected. He expressed concerns regarding filling in standard forms and felt that while they were not violating the License Act and the plan met the requirements of the Commission, however, some practices of the Association under the plan could lead to requiring a license in practice.

Chairperson Gale felt that the Commission should have counsel familiar with contracts, review the compliance plan presented by the Cotner Center Condominium Association.

There was discussion regarding an owner providing a Power of Attorney to be kept on file with the Association. Mr. Willis indicated that the Association would suggest an owner have a family member as Power of Attorney rather than the Association.

Chairperson Gale indicated that after reviewing the scheduled fees which would recover costs of the Association, he did not understand why the Administration would be involved with the completion of documents rather than using a real estate licensee. Mr. Willis explained that anyone could download a purchase agreement. Chairperson Gale felt that the Association should recommend real estate licensees for interested parties to choose from and negotiate with. Mr. Willis noted that it would make sense to have suggestions of real estate licensees to contact.

Commissioner Ptak indicated that he was concerned with the arrangements set out by the Association and felt that real estate licensees have a license to represent public and felt the Association was tip-toeing down both alleys. He suggested the Association remove the assistance noted to protect their resident and not subject the Association to risks.

Mr. Willis noted that he appreciated the thoughts of the Commissioners and would like to address the concerns with the Association. He also noted that the Association is in the process of obtaining a real estate license for the Administrator, but has not completed that yet.

Commissioner Dover expressed concern that without a real estate license, the administrator may assist and do more than they should. Commissioner Dover reviewed the administrative fees collect and pointed out the paperwork delivery fee such as the purchase agreement which would be collected. Mr. Willis indicated that the administrative fees reflected those stated as activities which could be collected from unlicensed individuals as suggested by the Commission. Commissioner Griess indicated that those guidelines were meant for a licensee using a unlicensed individuals assistance. Mr. Willis indicated that the Association used the Commission's guidelines and put fees to the services. Commissioner Griess felt that the Association was trying to handle the sale of real estate without a license and felt this was dangerous for the Association to attempt, but again indicated that they did not appear to be violations of the License Act.

A motion was made by Ptak and seconded by Leisey to table this agenda item, get legal opinion from the Commission's counsel and have the Association re-evaluate the compliance plan.

Mr. Willis indicated that if the Association met he would not want the reviews to overlap. Commissioner Ptak indicated that Director Lemon would work with Mr. Willis before the Commission would make the final decision.

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

Review Seller Property Condition Disclosure Statement for Possible Changes

Director Lemon presented a memo regarding the proposed changes to the Seller Property Condition Disclosure Statement. A copy of said exhibit is attached to and made a part of these minutes.

A motion was made by Leisey and seconded by Dover to postpone discussion on this Agenda item until the following meeting.

Commissioner Griess offered a friendly amendment to gather additional suggested changes to the Seller Property Condition Disclosure Statement from licensees through the publication of the Commission Comment newsletter and be reviewed by the State Associations. It was accepted by the mover and the second.

Commissioner Grady added that a deadline should be placed on the receipt of suggestions.

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

Review and Approval of Travel to the ARELLO Leadership Symposium and Board of Directors Meeting – January 6-7, 2010 – Newport Beach, California

Deputy Director Hoffman presented an exhibit regarding the estimated cost of her to attend the ARELLO Leadership Symposium and Board of Directors Meeting on January 6 and 7, 2010, in Newport Beach, California.

After discussion, a motion was made by Dover and seconded by Grady to approve the reimbursement of expenditures for Deputy Director Hoffman to attend the meeting set forth in the exhibit. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Legislative Matters

Jurisdiction Over Unlicensed Activity

Director Lemon presented statutes granting Real Estate Commissions authority over unlicensed activity. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that if a individual did not have a real estate license then the Commission had no authority over the individual. He indicated that other jurisdictions could impose a penalty over individuals conducting licensed activity. He noted that the Commission now has the ability to assess fines to licensees and therefore could logically extend similar penalties to individuals which conduct activity requiring a license. He referred to the Exhibit and pointed out the laws of other jurisdictions which have the authority to discipline those without a license and are in violation of the law. He explained that the laws as shown in the Exhibit were provided as examples, but felt the Commission may be interested in a combination of the laws to meet their needs.

A motion was made by Grady and seconded by Leisey that Director Lemon present the Commission with a draft of the proposed law which would be presented this Legislative session.

An amendment was offered by the mover to include in the proposed law the extension of disciplinary authority over individuals previously licensed who no longer were licensed, which in the past the Commission had to dismiss. It was accepted by the second.

Chairperson Gale indicated that the decision of the Commission should be made on a rational basis rather than a punishment which is what criminal law is based upon. Director Lemon indicated that he could characterize the law as a way to protect the public rather than a punishment.

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

Special Session Update

Director Lemon presented a letter written to the Legislative Appropriations Committee from Chairperson Gale regarding the Governor's Special Session Budget Recommendations. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that in the past the Commission had not had to transfer their cash funds into the general fund. He indicated that the Legislature did amend the Governor's recommendation to allow for this to be repealed in June 2011. He noted that the real estate licensees were getting double taxation by contributing the funds to the general fund but understood that the Commission was required to do their part in the current budget crisis. He further explained that the appropriations being reduced by the Legislature would not be a significant impact on Commission operations.

Chairperson Gale indicated that by transferring the funds and the reducing appropriation was like a double burden and perhaps in the future Director Lemon could pursue that option of not reducing the appropriation.

No action was necessary on this report.

Information Matters

ARELLO Annual Conference – Miami, Florida – October 22-24, 2009 – Report of Attendees

Director Lemon noted that Commissioners Dover, Grady, Griess and Rouch and Deputy Director Hoffman and he attended the ARELLO Annual Conference.

Commissioner Grady indicated that the ARELLO Annual Conference was well run, provided beneficial information and had excellent speakers.

Chairperson Gale indicated that materials passed out at the meeting could be beneficial if shared with those who were not able to attend. Commissioner Griess indicated that there were few printed materials provided. Deputy Director Hoffman indicated that the materials could be obtained from the ARELLO website at arello.org, for those who were unable to attend.

Commissioner Rouch indicated that she had completed the second half of the Commissioner College and graduated from that program. She explained that the training was really good and worth attending. Commissioner Grady felt it was beneficial to attend the Commissioner College to get the different jurisdictions perspectives. Deputy Director Hoffman noted that the Commissioner College was sponsored and developed by ARELLO.

No action was necessary on this report.

Trust Account Examination Evaluation Report - Third Quarter 2009

Director Lemon presented the Trust Account Examination Evaluation Report - Third Quarter 2009. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled. Commissioner Grady applauded the staff on an outstanding job. Chairperson Gale found that the report was extraordinary. Commissioner Leisey indicated that it was helpful to address the concerns of the examination process and provide more uniformity.

No action was necessary on this report.

Progressive Buyers & Sellers, LLC v. NREC et. al.

Director Lemon presented a case recently filed in Federal District Court naming the Nebraska Real Estate Commission among many others as Defendant. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the case has been placed on the agenda merely as an informational matter to inform the Commission that it had been filed. He also explained that the Assistant Attorney General Melson was not aware of any similar lawsuits which had alleged anti-trust violations against the Real Estate Commission being filed in the past. He indicated that there would likely be a motion to dismiss on our part due to the nature of the case. He noted that the plaintiff was alleging that the Commission and her competitors had conspired to put her out of business.

No action was necessary on this report.

Future Meeting Dates

January 7-8, 2010 – Hampton Inn & Suites, Lincoln
February 18-19, 2010 – Staybridge Suites, Lincoln
March 18-19, 2010 – Staybridge Suites, Lincoln
April 22-23, 2010 – Hampton Inn & Suites, Lincoln
May 20-21, 2010 - Staybridge Suites, Lincoln
June 24-25, 2010 - Staybridge Suites, Lincoln
August 19-20, 2010 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:23 a.m. on November 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:34 a.m.

At 11:10 a.m. on November 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:24 a.m.

At 1:15 p.m. on November 19, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 2:00 p.m.

At 2:52 p.m. on November 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 2:55 p.m.

At 4:35 p.m. on November 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 4:50 p.m.

At 6:45 p.m. on November 19, Chairperson Gale recessed the meeting.

At 9:02 a.m. on November 20, Chairperson Gale reconvened the meeting.

At 10:20 a.m. on November 20, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

Commissioner Leisey was briefly excused from the meeting at 12:00 p.m., and rejoined the meeting at 12:04 p.m.

At 12:05 p.m. on November 20, Chairperson Gale declared a brief recess, and reconvened the meeting at 12:15 p.m.

At 12:46 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Dover that the meeting adjourn. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the November 19-20, 2009, meeting of the Nebraska Real Estate Commission were available for inspection on December 3, 2009, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

- Kristen Anderson, Nebraska REALTORS® Association, Lincoln
- Ron David, Prudential Ambassador, Lincoln
- Kristi Hansen, Dover Realtors, Norfolk
- Katie Becker, Prudential Ambassador, Lincoln
- Judi Anding, Prudential Ambassador, Lincoln
- Ryan Ford, Prudential Ambassador, Lincoln
- Mark O'Shea, Prudential Ambassador, Lincoln
- Cheryl Schmieding, Prudential Ambassador, Lincoln
- Betty Sims, Prudential Ambassador, Lincoln
- James Austin, Home Real Estate, Lincoln
- Raymond Hejl, Prudential Ambassador, Lincoln
- Jack Gregg, Home Real Estate, Lincoln
- Andrew Willis, Cotner Center Condominium Association, Lincoln
- Theresa Garthright, Home Real Estate, Lincoln
- Jonnie Pieper, Dover Realtors, Norfolk
- Suzi Wolfe, Coldwell Banker Dover, Norfolk
- Harold Johnson, NP Dodge Co, Omaha
- Arla Meyer, Woods Bros Realty, Lincoln