

NEBRASKA REAL ESTATE COMMISSION

June 24, 2010

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Acting Chairperson Grady convened a meeting of the Nebraska Real Estate Commission at 9:01 a.m. on June 24, 2010, 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 Chairperson Gale, who was absent and excused. 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 Schaefer Show-Cause Hearing.

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.

Acting Chairperson Grady reported that all Commissioners had been sent notification of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Acting Chairperson Grady 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. Acting Chairperson Grady asked that guests sign the guest list.

Director Lemon noted that agenda items 11c and 21c had been added since the tentative agenda was mailed to the Commissioners.

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

Minutes of May 20, 2010

The minutes of the Commission meeting held on May 20, 2010, were considered.

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

Public Comment

Acting Chairperson Grady 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 May

Director Lemon presented the Receipts and Expenditures Report for May. 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.

The cash fund balance as of May 31, 2010, was \$637,968.73, which compared to a cash fund balance of \$634,972.27 on May 31, 2009.

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

Specialized Registrations

Time-Share Registrations - Disney's Beach Club Villas; Disney's Boardwalk Villas; Disney's Saratoga Springs Resort; Disney's Vero Beach Resort; Disney's Hilton Head Island Resort; The Villas at Disney's Wilderness Lodge; Ko Olina, Disney Vacation Club Resort; Disney's Old Key West Resort and Marriott Vacation Club Destinations

Director Lemon presented a specialized registrations report which included the time-share registrations for Disney's Beach Club Villas; Disney's Boardwalk Villas; Disney's Saratoga Springs Resort; Disney's Vero Beach Resort; Disney's Hilton Head Island Resort; The Villas at Disney's Wilderness Lodge; Ko Olina, Disney Vacation Club Resort; Disney's Old Key West Resort and Marriott Vacation Club Destinations. A copy of said report is attached to and made a part of these minutes.

Time-Share Registrations - Amendment for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site)

Director Lemon presented a specialized registrations report which included the registration of amendment to the time-share registration for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site). A copy of said report is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Griess to approve the amendment and registrations as presented. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

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

Examination Report - May

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

Continuing Education Instructor Approval

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

After review, a motion was made by Ptak and seconded by Leisey to ratify the two reports. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

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.

Deputy Director Mayrose explained that a proposed Stipulation and Consent Order had been received on a pending complaint. The Stipulation and Consent Order failed to include an admission of guilt but provided for an action against the license. The Commission discussed acceptable parameters pertaining to Stipulation and Consent Orders. It was the consensus of the Commission to postpone further discussion to another meeting.

No action was necessary on this report.

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

Item A Complaint 2009-038

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

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 Ptak that the complaint be set for hearing.

The pending motion was withdrawn by the mover and second.

After further discussion, a motion was made by Dover and seconded by Rouch that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion carried with Dover, Leisey, Ptak, Rouch and Grady voting aye, with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Gale not participating or voting, being absent and excused.

Item B Complaint 2009-040

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 Leisey and seconded by Griess that the complaint be dismissed without prejudice. Motion failed with Griess, Leisey and Rouch voting aye, with Dover, Ptak and Grady voting nay, and with Gale not participating or voting, being absent and excused.

A motion was made by Ptak and seconded by Dover that further investigation be conducted. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Leisey voting nay, and with Gale not participating or voting, being absent and excused.

Item C Complaint 2009-042

Deputy Director Mayrose indicated that at the previous commission meeting dated May 20, 2010, a motion passed to set this complaint for hearing against Respondent 1 and Respondent 2, and to file a new complaint against Respondent 3. He indicated that he was seeking a motion to reconsider the Commission's decision against Respondent 3.

A motion was made by Leisey that the complaint be dismissed without prejudice. The motion died for lack of a second.

After discussion, a motion was made by Dover to request additional information regarding the Complaint. The motion died for lack of a second.

It was the consensus of the Commission that further investigation be conducted.

Item D Complaint 2009-043

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

A motion was made by Leisey and seconded by Dover that the Commission file a complaint on its own motion on the violation of §81-885.24(29).

A friendly amendment was made by the mover to also include the violation of Title 299 Chapter 5 Section 003.04. It was accepted by the second.

Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, and with Gale not participating or voting, being absent and excused.

Item E Complaint 2009-044 – Commission vs. Nan Mull

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 Ptak and seconded by Dover that the complaint be set for hearing on the alleged violations. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, and with Gale not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

**Complaint 2010-010,
Commission vs. Shannon Kole Yates**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-010, Commission vs. Shannon Kole Yates. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Ptak and seconded by Dover to enter into the Order as presented. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

**Complaint 2010-011,
Commission vs. Laura A. Nunez**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-011, Commission vs. Laura A. Nunez. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Leisey to enter into the Order as presented. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

**Complaint 2009-052,
Commission vs. William Daniel O'Brien**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-052, Commission vs. William Daniel O'Brien. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Leisey and seconded by Dover to decline the proposed Stipulation and Consent Order and propose that the Order also include a one-thousand dollar fine. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Hearings

June 24, 9:30 a.m. - Show-Cause Hearing on SC2010-002, Commission vs. Scott Allen Schaefer

A Hearing was held on June 24 at 9:30 a.m., in the matter of SC2010-002. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Scott Allen Schaefer was present without Counsel.

After opening statements, Counsel Barton offered eleven Exhibits, all of which were received by Presiding Commissioner Ptak. Counsel Barton called Greg Lemon, Terry Mayrose and Scott Allen Schaefer as witnesses.

At 10:56 a.m., Presiding Commissioner Ptak declared a brief recess, and reconvened the Hearing at 11:11 a.m.

Mr. Schaefer offered six Exhibits, all of which were received by Presiding Commissioner Ptak. Mr. Schaefer called himself as a witness.

After closing arguments had been presented, Presiding Commissioner Ptak 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 Griess that Scott Allen Schaefer be found guilty of the alleged violations. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Presiding Commissioner Ptak opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #2009-005, dated August 13, 2009, suspending Mr. Schaefer's license for a period of two years, with the first sixty days served and the remainder stayed and served on probation, plus an additional 6 hours of continuing education, including 3 hours in the area of disclosures and 3 hours in the area of ethics.

The Commissioners then discussed the penalty to be assessed.

Commissioner Rouch agreed that Mr. Schaefer violated the Order but felt that the Commission should be lenient and show compassion when deciding the penalty to be assessed.

Commissioner Dover indicated that Mr. Schaefer did not obey the law. He felt Mr. Schaefer put blame on others rather than himself and that the hearing was being held as a result of his own actions.

Commissioner Leisey explained that Mr. Schaefer had not reported as ordered two times. He felt compassion but felt that Mr. Schaefer had clearly violated the Order.

Commissioner Griess indicated that the Order stated that Mr. Schaefer was to submit a report on a monthly basis by the fifth of the following month. She noted that it could have been done earlier instead of waiting until the fifth of the month. She felt that the first time Mr. Schaefer did not report he was given leeway. However, since he did not report twice he may have continued this practice.

Commissioner Grady felt that there was no reason Mr. Schaefer could not have resolved his issues by finding other means of submittal. He noted that the second occurrence of the violation happened within thirty days of the first occurrence. He felt the Commission had the obligation to require Mr. Schaefer to comply with the Order and felt that a suitable punishment would be extending the length of the Order.

Commissioner Leisey felt that an extension of the current Order for one year would be a suitable punishment. Commissioner Grady felt that a one year or two year extension would be suitable as long as it extends beyond the court ordered reporting period. Commissioner Dover noted that Mr. Schaefer still had fourteen months before the completion of the current Order.

A motion was made by Grady and seconded by Leisey to extend the terms and conditions of the current Stipulation and Consent Order relating to Case No 2009-005 for one year.

Commissioner Ptak pointed out that not only did Mr. Schaefer have a reporting issue, he also had not attended the meetings once a week as ordered, in one instance he had not attended for twelve days. He felt it was important that Mr. Schaefer attend on a weekly basis and that the reports be submitted on time to the Commission.

Commissioner Grady requested Deputy Director Mayrose conduct random verification of Mr. Schaefer's attendance.

Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

With the consent of the Respondent, Presiding Commissioner Ptak directed Counsel Barton to prepare the Order.

Presiding Commissioner Ptak notified the Respondent 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.

Presiding Commissioner Ptak announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 11:54 p.m.

Informal Special Appearances

There were no informal special appearances to be presented at the meeting.

Update on 2009-2010 Objectives

Director Lemon presented the Updated Objectives Report regarding the 2009-2010 objectives. A copy of said report is attached to and made a part of these minutes.

Director Lemon explained that the updated report listed the current objectives and the status of each of the objectives.

No action was necessary on this report.

First Draft 2010-2011 Objectives

Director Lemon presented an exhibit regarding the proposed first draft of the 2010-2011 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the 2010-2011 Objectives were provided in draft format and would be considered for approval or amendment at the next regular Commission meeting. He indicated that if the Commissioners had suggestions they could be submitted to him and added later if necessary.

No action was necessary on this report.

Consideration of Changes to the Seller Property Condition Disclosure Statement

Director Lemon presented an explanation sheet of the suggested changes to be incorporated into the Seller Property Condition Disclosure Statement along with the current and proposed Seller Property Condition Disclosure Statement. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that he had been asked by the Commission to develop and work with revisions to the Seller Property Condition Disclosure Statement. He indicated that input had been solicited and was incorporated into a draft form. Director Lemon noted the changes as outlined in the draft.

Ward F. Hoppe, with Hoppe Law Firm, felt the form needed editing and would like the form to reflect factual statements and actual knowledge of the current seller. He felt that if these editing issues were addressed, it may reduce the unknown answers provided by a seller on the form and allow potential buyers to conduct further investigation relating to the problems identified on the form.

Commissioner Leisey indicated that the form would be improved if reworded to include language such as "since you have lived there" or "to the best of their knowledge".

Commissioner Dover suggested Mr. Hoppe compose a list of proposed changes and provide those suggestions to Director Lemon.

Shannon Harner, with CBSHome, agreed with the changes as discussed but was concerned with the legal defense of this form for both real estate licensees and owners. She felt that in general the form should provide meaningful fact specific questions. She also felt that the questions provided on this form were broad and passive and the answers on this form completed by the seller were in their opinion. She explained that what concerned one person may not concern another person and this form allows for such variance.

Acting Chairperson Grady indicated that it was the intention of the Commission to move forward with the form revision, to merge ideas and work harmoniously with the suggestions received. He explained that the revisions drafted by Director Lemon were complied by suggested changes from many different interested parties.

Commissioner Leisey indicated that any suggested changes could be forwarded to Director Lemon and that further review would be done by the Commission. It was the consensus of the Commission to have a list of changes or concerns put in writing and forwarded to Director Lemon.

Commission Policy Matters

Guidelines for Compensation of Salespersons and Associate Brokers Doing Business as a Professional Corporation or a Professional LLC

Director Lemon presented a proposed policy which would allow designated brokers to pay compensation to an individual, a professional corporation or a professional limited liability company. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that he had many discussions regarding how compensation was being paid to a salesperson or associate broker by a designated broker. He further explained that the current acceptable method of compensation is to an individual or a professional corporation. During his review, he indicated that a professional limited liability company may also be structured to accommodate compensation much like a professional corporation. He felt it important to convert the current internally approved policy to an official written policy of the Commission and allow for the compensation to a professional limited liability company as well. He noted that adopting this policy should eliminate confusion on the subject.

Commissioner Leisey noted that there are many misunderstandings regarding compensation and felt the Commission should move forward to establish a written policy.

Commissioner Ptak indicated that licensees are still responsible for negligence if organized as either a professional corporation or a professional LLC.

Ward F. Hoppe, with Hoppe Law Firm, felt the policy should be revised to include the option for a designated broker to compensate multiple licensees rather than just individuals or husband and wife licensees.

Commissioner Ptak noted that he understood the proposed policy and explained that unlicensed individuals should not be allowed to be included in a professional limited liability company or a professional corporation.

Mr. Hoppe indicated that as long as the professional limited liability company has a real estate license conducting professional services then that can be verified to the Secretary of State's office.

Shannon Harner, with CBSHome, explained the general concept of licensees having teams and felt the compensation from the designated broker to the team rather than each licensee would be more convenient. She also noted there were functional differences between professional corporations and professional limited liability companies.

Herb Freeman, with the Nebraska REALTORS® Association, felt compensation to business corporations in addition to professional limited liability companies or a professional corporations should be allowed and also asked if the Commission would allow for a grace period to provide licensees the opportunity to change those entities if the policy was adopted.

Ms. Harner explained that in 2006, Woods Bros Realty and Home Real Estate went through this type of conversion to ensure compliance with commission policies on compensation, and while this process took some extra work, all affiliated licensees, other than those being compensated as individuals, were required to change their entities with the Secretary of State's office to become professional corporations.

Mr. Freeman explained that an individual cannot conduct real estate activities unless they are a professional. He also noted that licensees are being set up with entities which are noncompliant

and felt they were receiving bad advice from their attorneys.

Paul Vojchegoske, with Deeb Realty, explained that in the past he had been told that the Commission did not enforce how designated brokers compensated the licensees and now there are many noncompliant licensees.

Director Lemon noted that he was unaware of the tax consequences of the various entities but a licensee should currently be receiving compensation as an individual unless they have a professional corporation.

Ms. Harner explained that the tax consequences would be the withholding for social security taxes.

Commissioner Leisey felt the policy should be adopted but revised to allow teams to be compensated as a professional limited liability company or professional corporation. He felt that the Commission should recognize the confusion and give a grace period to licensees to make the appropriate changes.

Director Lemon did not feel a grace period was necessary since the Commission staff had not brought forward any of these situations in the form of a disciplinary action. He also noted that neither the law nor the acceptable method of compensation had been changed in recent memory. He felt there had been confusion regarding acceptable compensation methods even after the Commission had tried to explain the process in a 2006 Commission Comment newsletter article.

Acting Chairperson Grady felt that these issues were a matter for legal counsel to decide.

Mr. Vojchegoske explained that a request had recently been made for an attorney general opinion regarding compensation. Director Lemon indicated that he had not yet received the opinion from the Attorney General's office.

Commissioner Leisey felt that guidance should be given to licensees to clarify the uncertainty of compensation.

Commissioner Dover did not feel a grace period was necessary since disciplinary action regarding compensation would not be brought to the Commission. He also felt that such policy would be a move in the right direction since there was confusion.

Ms. Harner felt that before the Commission adopted the policy, the Attorney General's opinion should be considered.

Commissioner Leisey again asked that clarification be made for the broker's means of payment.

Mr. Hoppe felt that the professional corporation statute and professional limited liability company statute would allow multiple licensees or teams in either entity.

Director Lemon explained that it was obvious a written policy needed to be adopted but did not think it would be resolved at this meeting. He felt very comfortable with the interpretation reflected in the proposed policy regarding the allowance of compensation to professional limited liability companies and professional corporations. He felt that the discussion of payments being made to multiple parties or teams was an entirely separate issue, and one possible concern was that the Commission does not license or otherwise recognize real estate teams.

After further discussion, Director Lemon indicated that he would contact the Attorney General's office and request an attorney general's opinion if one had not already been requested.

It was the consensus of the Commission to postpone discussion until the Attorney General's opinion had been received.

Guidelines for Review of Lawsuit Information

Director Lemon presented proposed guidelines to be used in reviewing lawsuit information received by the Commission during the initial license or renewal processes. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that this policy would provide guidelines to Commission staff for the review of lawsuit information received on license renewal and on original applications. A motion was made by Dover and seconded by Rouch to adopt the policy as presented. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Enforceability of Oral Real Estate Contracts

Director Lemon presented an explanation of enforceability of oral provisions or modifications to real estate contracts. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the Commission had asked for research regarding the enforceability of oral real estate contracts. The research indicated that the while courts have ruled that oral modification may be binding under certain circumstances, it would nevertheless be a best practice to clearly state any and all terms of contract modification in signed written document, rather than leaving contract interpretation and status as a question of fact for the courts to determine.

No action was necessary on this report.

Discussion of Commission's Sample Residential Purchase Agreement

Director Lemon presented options regarding the display and availability of the Sample Residential Purchase Agreement on the Commission's website. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that three options had been provided for the Commission's review to determine the appropriate display and availability of the Sample Residential Purchase Agreement, including displaying the form on the website as is, displaying the form on the website with clear disclaimer and "draft for informational purposes" watermarks on each page, or pulling the form from the website completely.

After discussion, a motion was made by Dover and seconded by Leisey to remove the sample residential purchase agreement from the website until the site can accommodate such access be made only by designated brokers.

Commissioner Dover explained that the sample residential purchase agreement should not be available for public because individuals using the form without seeking appropriate advice might not be aware of the legal ramifications and obligations potentially created by this form.

Commissioner Ptak did not feel the Commission was protecting the public if they were providing a tool which could potentially harm them. He felt that real estate is a profession and while it is nice to have forms available to the public, some forms should only be used by licensed individuals who know how to use them.

Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Consideration of Continuing Education and Training Requirement – June 24 – 3:00 p.m.

Deputy Director Hoffman presented a real estate continuing education concept paper which was approved by the Education Committee on May 29, 2010. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman explained that the education committee reviewed various recommendations and concerns. She indicated that besides herself the committee members are Committee Chair Commissioner Griess, and Commissioners Ptak and Dover. She distributed a letter of concern received from Susan Geschwender, Administrator of Randall School of Real Estate, Inc. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 19a.

Commissioner Griess indicated that the committee's recommendations are to maintain the current continuing education requirement of 12 hours every two years but to add an additional three hours in designated subject matter (also known as an "R" or "Required" course) requiring six hours rather than three of the twelve hours to be in such subject matter, to change the clock hour from sixty to fifty minutes and to accept the concept of broker approved training.

Deputy Director Hoffman explained that the number of hours currently required by the Commission is low compared to other jurisdictions. She explained the subcommittee recommendation also included a 50 minute clock hour rather than the current 60 minutes and that a fifty minute clock hour is standard in the education industry and would allow for a ten minute break every hour. She explained that the proposed recommendations would require changing statute and/or rules and regulations.

Deputy Director Hoffman then explained the recommendation to create an additional requirement of twelve hours in designated broker approved training be completed every two years. She indicated that the committee felt that good training was important and it was logical to encourage training the broker felt necessary. The training concept would allow designated brokers to identify the content they felt their affiliated licensees would benefit from and to approve the training for credit. She noted that a very rough draft of the training provider/broker approval form was enclosed to give the Commission an illustration of the process brokers would be involved in and the extent of the Commission's review. She explained that this documentation would be required prior to the training for several reasons, not the least of which was because the training would have to be recognized by the database in order for individuals' records to be properly updated. She noted that it is hoped that eventually providers will be able to upload the education hours directly into our database which will assist the Commission staff with input. She explained that the training would be approved in three hour increments just as the current continuing education requirement. She noted that the training could be presented in one hour installments but only submitted as a single three hour course.

Commissioner Griess indicated that the committee also provided an alternative for licensees who may not have access to broker approved training, they could utilize the continuing education

courses to meet training hours. She also explained that some topics would only be considered for continuing education such as license law or agency law courses since the Commission would need to review these closely to insure they are being accurately taught.

Commissioner Leisey asked how the committee came up with the additional number of hours. Commissioner Leisey asked why the committee doubled the hours but didn't expand the subject matter for continuing education.

Commissioner Dover indicated that adding additional hours of "R" course to continuing education and requiring twelve training hours would be easily attainable for licensees and would increase licensee comprehension.

Commissioner Ptak noted that some subject matter could be appropriate as either continuing education or training. The idea was that training topics would be more specific to broker identified need. He explained that continuing education was not being changed except for the three hour "R" course. He anticipated that both training programs and more continuing education courses could be developed.

Commissioner Griess agreed noting that education classes which were not approved under the normal continuing education requirements could be approved under the training category which would expand content. She explained that by adding the additional three hour "R" course as a requirement the core classes a licensee takes would be increased.

Commissioner Dover indicated that a broker can approve classes in areas that are not normally approved which would result in the licensees being more educated.

Commissioner Rouch asked if the reason for the increase of hours was due to an increased number of complaints received by the Commission.

Commissioner Griess noted that the increase of hours had been discussed for some time. She explained that additional hours may raise the level of professionalism but not necessarily affect the amount of complaints received. She further explained that the continuing education requirement is up nationwide and a survey of other states requirements reflected Nebraska's low requirement. She felt that the proposed concept requiring broker involvement would provide opportunities for brokers or schools to train in topics needed in the industry but not approved under the current guidelines.

Commissioner Leisey felt that if this training became required it shouldn't be an overly complicated process in order to comply. Deputy Director Hoffman indicated that what the committee needed was acceptance of the concept to change the statutes. She noted that how the statute then would play out would be decided through rules and regulations. She noted that the training would necessarily require certain documentation such as certificates, verification lists or computer uploads and an annual report, but that the paperwork and compliance process could be kept as simple as possible.

Acting Chairperson Grady wanted clarification on what the Commission was being asked to do regarding this issue. Deputy Director Hoffman explained that the committee needed the approval of the recommendation to develop language for statute and rule and regulation changes. She noted that some individuals in the audience may wish to speak to the Commission regarding this issue.

Herb Freeman, representing The Nebraska REALTORS® Association (NRA), indicated that a higher continuing education requirement had been an objective on the Association's strategic plan. He indicated that the NRA's License Law Task Force had conducted studies of the fifty states which included course materials, course subject matter and required number of hours. He indicated that the current education requirement places Nebraska in a ten way tie for 36th position for the lowest requirement, while the current recommendation would place Nebraska in the 5th position and a six way tie for 6th of the highest requirement. He indicated that the Association supported an increase from twelve to eighteen hours subject to an increase in the course matter being offered which varies from the committee's recommendation. He handed out and reviewed the NRA's recommendation for revision letter. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 19b.

After review, Acting Chairperson Grady asked if Mr. Freeman would be in favor of one hour training sessions being combined, packaged and submitted as three hours.

Mr. Freeman indicated that while he had not spoken to the other NRA License Law Task Force members, he thought it may work.

Acting Chairperson Grady agreed that the courses be bundled in a three hour block for tracking purposes.

Commissioner Leisey indicated that it was unreasonable for the Commission to think the same licensees would show up to three different one hour courses and felt this may be difficult and unrealistic for the brokers.

Acting Chairperson Grady explained that a broker could put on five training courses and the licensee must pick three of the five to attend and once completed the broker can submit the training to the Commission.

Mr. Freeman indicated that brokers who may not conduct training would either outsource it or the licensees would have to take all approved continuing education hours which may be difficult.

Craig Larabee, administrator of Larabee School of Real Estate, indicated that the committee appeared to be concerned more with numbers than content. He agreed that the required number of hours should be increased but not with expanded content. He thought that if the committee was concerned about education then the training concept should not be considered.

Commissioner Griess indicated that she was not concerned with the survey results of other state's requirements but would rather use that information as a measurement. She indicated that many courses would benefit the licensees such as technical courses or salesmanship, which would not meet the current requirements. She felt the proposed changes would combine the core classes with other licensee responsibilities and allow for brokers and educators to determine the content allowing creativity and openness.

Mr. Larabee indicated that the western part of the state may not have as many trainers available and those licensees would have to take a tremendous number of regular continuing education hours. The licensees would also be required to pay more money for training which would put a burden on them. He noted that if licensees had to take all of the hours in regular continuing education rather than the training, he would suggest removing the prohibition on duplication.

Deputy Director Hoffman indicated there had been agreement in the committee allowing licensees to duplicate training hours. She also felt that continuing education courses applied to

training would be exempt from the prohibition on duplication.

Mr. Larabee suggested that it would be appropriate to have an educator on the task force and offered his services if needed.

Acting Chairperson Grady referred to a letter received from Susan Geschwender and asked if she chose to speak to the Commission regarding her concerns with the current proposal.

Ms. Geschwender indicated that her letter explained her concerns but added that the Commission could not mandate an individual's pride in his/her job and did not feel that increasing the hours required would solve the issue of professionalism.

Mr. Vojchegoske suggested that the Commission require licensees take an agency course since that was voiced as a concern. He indicated that many licensees had never taken an agency course and the knowledge gained from the course could protect the consumer, the licensee and the designated broker.

A motion was made by Dover and seconded by Leisey that the committee meet again to discuss the proposed changes. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Awarding of Errors and Omissions Insurance Contract for 2011

Director Lemon presented an exhibit regarding the errors and omissions insurance request for proposals (RFP). A copy of said exhibit is attached to and made a part of these minutes.

Acting Chairperson Grady indicated, prior to the closed session beginning, the reason for the closed session was to discuss the proprietary financial information submitted on proposals received.

At 3:12 p.m., a motion was made by Rouch and seconded by Dover to go into closed session for discussion of proposals received. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

Acting Chairperson Grady reconvened the meeting in open session at the consensus of the Commission at 3:41 p.m.

Director Lemon noted that the RFP was sent out as the Commission had instructed. The Commission received two proposals, from Rice Insurance Services Company LLC (RISC) and Williams Underwriting Group Inc./Maverick (WUGI). The evaluation subcommittee, consisted of Commissioners Grady, Ptak, and Rouch and Deputy Director Hoffman. Director Lemon reviewed the evaluation made by the committee as set forth in the exhibit. He indicated that all calculations were verified by the accounting staff member for the Commission.

Acting Chairperson Grady complimented the licensees and carriers for the reduction in premium since it is based on claims experience. He also noted that the awarding of the contract was needed for the renewal of licenses and would be beneficial if the Commission could follow the timeline set forth by Director Lemon.

A motion was made by Rouch and seconded by Dover not to go forward with a decision and instead reevaluate the proposals.

Commissioner Ptak noted the time table and indicated that the Commission may be in jeopardy if no decision was made.

Director Lemon indicated that the Commission may need to have a meeting in July if the contract was not awarded. He then asked for clarification of the motion, was it the intent of the Commission to allow more time for further review or to reject all bids and start over with the RFP process.

Commissioner Dover asked if the Commission decided to start the RFP process over if the deadlines would be met. Director Lemon indicated that it could be studied and be reviewed by the next meeting. Commissioner Leisey noted that if the proposals were further studied and still not accepted, the Commission would be further behind.

A friendly amendment was made by the mover to reject the current contract recommendation and reject all bids received. It was accepted by the second.

Acting Chairperson Grady asked if starting over was necessary or if additional information could be obtained from the vendors. He asked for clarification of the legal requirements to fulfill the contract or RFP and felt it was late in the game to reject the bids.

Director Lemon indicated that he would need to speak with the State Department of Purchasing regarding the processes, but that generally pre-set procedures had to be followed for communication and gathering information in the RFP process.

Commissioner Dover asked if the current contract could be extended. Director Lemon indicated that the current contract expired at the end of 2010, but that the current contractor could likely holdover if a new contract was not awarded in a timely manner. Commissioner Ptak did not feel that the Commission should extend the current contract in this type of manner and did not want to jeopardize the 2011 coverage for real estate licensees.

Motion carried with Dover, Griess, Leisey, Rouch voting aye, with Ptak and Grady voting nay, and with Gale not participating or voting, being absent and excused.

Information Matters

ARELLO Annual Conference - Anchorage, Alaska – September 16-18, 2010

Director Lemon presented a regulator registration form, accommodation information and the schedule for the ARELLO Annual Conference to be held September 16-18, 2010. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the registration forms needed to be sent into the Commission office by August 19.

Director Lemon asked which Commissioners were planning to attend the Annual Conference. Commissioners Dover, Griess and Rouch indicated they planned on attending.

No action was necessary on this report.

**ARELLO District Meeting – Des Moines, Iowa -
July 17-19, 2010**

Director Lemon reminded the Commissioners that the ARELLO District Meeting would be held July 17-19, 2010. He also indicated that the registration forms needed to be sent into the Commission office by June 25.

No action was necessary on this report.

Fiduciary Duty Regarding Escrow Funds

Director Lemon presented an explanation of broker's accounting duties relating to escrow funds. A copy of said report is attached to and made a part of these minutes.

Director Lemon explained that during a recent trust account examination it was noted that the buyer's down payment was not accounted for in the closing statement, Mr. Lemon said he brought the matter before the Commission to discuss whether a licensee's fiduciary duty to account for all client funds extended through the closing if the escrow funds were transferred to a title company or other closing agent by mutual agreement of all parties. Commissioner Griess indicated that when real estate licenses conducted the closings, all of the steps were followed on the closing statement. She indicated that currently licensees do not conducting the closings, instead unregulated title companies which may be located in other states and not familiar with Nebraska laws are conducting the closings. She felt the title companies should be regulated and audited since they currently have no accountability. She suggested that people look at the closing statements and verify that it reflects the contract.

Acting Chairperson Grady indicated that when the money transfers from the escrow account to the title company, the licensee was still responsible for those funds and felt the closing statement should be up to date and reviewed prior to closing.

Shannon Harner, with CBSHome, agreed that a licensee should review the closing statement but noted that documentation may not be received until the time of closing. She felt that if the licensee requested documentation prior to the time of closing, the title company may not accommodate the request, therefore, burden should be placed on the licensee.

Acting Chairperson Grady indicated that when the money was transferred to the closing company, a copy of the closing statement should be sent to the license. Commissioner Ptak indicated that such request may be difficult to enforce.

Ms. Harner agreed that the request of the closing statement prior to closing would be difficult to enforce. She believed that the Nebraska Department of Insurance reviews the underwriters once a year.

Acting Chairperson Grady suggested an article be put in the Commission Comment newsletter to request licensees receive a copy of the closing statement prior to closing, if possible.

Commissioner Griess suggested that the Commission should communicate with the Nebraska Department of Insurance regarding these concerns.

Commissioner Leisey felt the Nebraska Department of Insurance should monitor the closing agent and be stricter on their accuracy instead of putting the burden on the licensees.

Kristen Anderson, with the Nebraska REALTORS® Association, suggested a meeting be held between the Nebraska Department of Insurance, State Senators, the Real Estate Commission, and the Nebraska REALTORS® Association to try to work out a plan to better regulate the closings.

Acting Chairperson Grady suggested Commission staff to follow up with this issue. Director Lemon indicated that he would add the matter to the Commission's 2010-2011 objectives.

No action was necessary on this report.

Future Meeting Dates

July 22, 2010 – Video Conference, Norfolk, North Platte, Lincoln and Omaha

August 19-20, 2010 - Staybridge Suites, Lincoln

September 30-October 1, 2010 – Country Inn & Suites, Lincoln

October 28-29, 2010 – Hampton Inn & Suites, Lincoln

December 2-3, 2010 - Country Inn & Suites, Lincoln

Recesses and Adjournment

At 9:25 a.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 10:56 a.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 11:11 a.m.

At 11:55 a.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 12:00 p.m.

Commissioner Leisey was briefly excused from the meeting at 12:57 p.m., and rejoined the meeting at 12:58 p.m.

At 12:58 p.m., Acting Chairperson Grady declared a recess for lunch, and reconvened the meeting at 2:06 p.m.

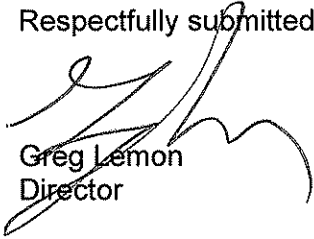
Commissioner Leisey was briefly excused from the meeting at 4:52 p.m., and rejoined the meeting at 4:53 p.m.

At 4:54 p.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 5:00 p.m.

At 5:30 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Griess that the meeting adjourn. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Grady voting aye, with Gale not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the June 24, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on July 9, 2010, 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
Joseph D. Gehrki, CBSHOME Real Estate, Omaha
Susan Geschwender, Randall School, Omaha
Scott Schaefer, Omaha
Jarrod P. Crouse, Rice Insurance Co., Lincoln
Arla Meyer, Woods Bros, Lincoln
Craig Larabee, Larabee School, Lincoln
Paul Vojchegoske, Deeb Realty, Omaha
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln
Herb Freeman, Nebraska REALTORS® Association, Omaha
Harold Johnson, NP Dodge Co, Omaha
Shannon Harner, CBSHome, Lincoln
WF Hoppe, Hoppe Law Firm, Lincoln