

NEBRASKA REAL ESTATE COMMISSION

October 18, 2012

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on October 18, 2012, 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. 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.

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, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

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

Director Lemon noted that no agenda items had been added since the tentative agenda was mailed to the Commissioners.

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

Minutes of September 27, 2012

The minutes of the Commission meeting held on September 27, 2012, were considered. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. There was an incomplete sentence in the first paragraph located on page 3 which ended with the word "these", when in fact, it should have said "these minutes.")

After review, a motion was made by Stange and seconded by Rouch to approve the minutes as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for September

Director Lemon presented the Receipts and Expenditures Report for September. 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 September 30, 2012, was \$713,281.59, which compared to a cash fund balance of \$249,566.32 on September 30, 2011.

After discussion, a motion was made by Dover and seconded by Ptak to file the September Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Specialized Registrations

Campground Registration – Amendment for Thousand Trails

Director Lemon presented a specialized registrations report which included the registration of amendment to campground registration for Thousand Trails. A copy of said report is attached to and made a part of these minutes

A motion was made by Dover and seconded by Rouch to approve the amendment to the registration as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

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 Dover and seconded by Stange to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale.

Examination Report - September

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

After review, a motion was made by Dover and seconded by Ptak to ratify the September Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Review Requirements for Passing Salesperson's Examination – 10:30 a.m. – Joe Gehrki, Nebraska Realtors Association

Director Lemon presented for discussion a letter from Joe Gehrki, 2012 President of the Nebraska Realtors Association, regarding the salesperson examination requirements, a copy of which is attached to and made a part of these minutes. Joe Gehrki, Fred Hoppe, Darlene Fletcher and Kristen Anderson were present for the discussion.

Mr. Gehrki indicated that this proposed change to the requirement for passing the salesperson's examination is not an attempt to make the examination easier, but to make the examination more fair and equitable. He indicated that there had been support throughout the state to change the requirements so that applicants could retain credit for passing either the state or national portion of the examination and not have to retake both portions every time. He also indicated that Nebraska's bordering states and other licensed professions retain credit for portions of the examination passed. He noted that while the Nebraska Realtors Association discussed imposing a time frame to pass the entire examination of six months, he respected the Commissioners' judgment.

It was clarified that this change would not require legislative action.

There was discussion regarding the accommodation of this request, instituting retention time frames and the potential effect on passing percentages.

A motion was made by Dover and seconded by Stange to allow candidates to retain credit for passing the state or national portion of the examination for no more than six months or three administrations of the exam, whichever comes first. If not passed within the required number of retakes and timeframe the entire examination would again be administered.

There was discussion regarding requiring a score higher than the passing score in order to retain credit for a part of the examination. There were also suggestions that a subcommittee be formed to review the possible changes as well as discuss such changes with the examination company.

After further discussion, a motion was made by Rouch and seconded by Ptak to amend the pending motion to include the passing percentage be raised from 70% to 75%. Motion failed with Avery, Dover, Freeman, Stange and Gale voting nay and with Ptak and Rouch voting aye.

After further discussion, the pending motion passed with Avery, Dover, Freeman, Rouch, Stange and Gale voting aye and with Ptak voting nay.

It was discussed that specific language enacting this change would be brought back to the Commission and that implementation would require some reasonable amount of time to work with the examination company.

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.

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.

Broker-Approved Training Recognition

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Dover and seconded by Ptak to ratify the four reports. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

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.

Presentation of Stipulation and Consent Orders

Complaint SC2012-003, Commission vs. Monte L. Froehlich

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint SC2012-003, Commission vs. Monte L. Froehlich. A copy of said Order is attached to and made a part of these minutes.

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

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

Disciplinary Hearings

Complaint SC2012-002 – Show-Cause Hearing - Commission vs. Courtney Sells DBA/The Firm, LLC

The Hearing regarding Complaint SC2012-002, Commission vs. Courtney Sells DBA/The Firm, LLC was continued.

Informal Special Appearances

Jason Adam Levy – Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Levy's special appearance; a letter of explanation from Mr. Levy; a letter requesting a special appearance from Mr. Levy; Mr. Levy's resume; character reference letters for Mr. Levy; an email notification from the Nebraska State Patrol regarding Mr. Levy; trial court cases from the State of Nebraska on Mr. Levy's cases; Mr. Levy's criminal history report; and his broker application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Levy was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Levy distributed a letter of explanation and a letter from his probation officer indicating that he had completed the court ordered conditions of his probation. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

Mr. Levy explained the situations regarding his criminal history.

After discussion, a motion was made by Ptak and seconded by Avery that upon the Commission's receipt of satisfactory evidence of completion of all aspects of Mr. Levy's current sentence, Mr. Levy would not be required to retake the examination, and be allowed to have his broker's license issued. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Consideration of 2013 Legislation – 10:45 a.m.

Consider Legislation for Four Year Commissioner Terms

Director Lemon presented an exhibit of the Commissioner terms in other jurisdictions. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained that one of the Commissioners had been in favor of changing the length of Commissioners' terms from six years to four years. Commissioner Dover felt that four years was a sufficient amount of service. He felt it would provide more individuals with the opportunity to serve on the Commission. Chairperson Gale suggested Director Lemon work with the Nebraska Realtors Association to determine the terms.

Commissioner Stange said that he had noted the variety of terms and reappointment options when he was participating in ARELLO functions and asked Deputy Director Hoffman if she had a resource for that information. She indicated that ARELLO hadn't surveyed for that information but the staff could to determine the jurisdictions which allow for reappointments.

Commissioner Dover indicated that this would be a wonderful opportunity for licensees to learn about what the Commission does as well as bring new ideas.

After further discussion, it was suggested that the studies be conducted and be place on the next meeting agenda to be reviewed.

Consider Any Other Proposals

Agency Disclosure/First Substantial Contact

Director Lemon presented an exhibit of the proposed legislation presented by the Nebraska Realtors Association regarding Agency Disclosure and First Substantial Contact. A copy of said exhibit is attached to and made a part of these Minutes. Joe Gehrki, Fred Hoppe, Darlene Fletcher, and Kristen Anderson representing the Nebraska Realtors Association were present for the discussion of this agenda item.

Mr. Gehrki indicated that the Nebraska Realtors Association had reviewed the laws regarding Agency Disclosure and provided the proposed draft which their law committee had reviewed and approved. He indicated that the reason for the proposed revision was to clarify the wording in the law relating to the "first substantial contact", which he felt was confusing to the licensees as well as the Commission for enforcement purposes.

There was discussion regarding the proposed changes and how changing the language could have possible implications and consequences not yet discussed. It was suggested that the Commission form a subcommittee to review the proposed changes and how such changes could be implemented.

Commissioner Freeman indicated that since there was no clear standard of practice, he felt that perhaps adopting a Commission Policy rather than changing the law would be more effective.

Commissioner Ptak noted that when a law is changed, it may affect more laws than just this one, and the proposed changes may cause undesired changes. He was interested on being involved in the subcommittee to review the proposed changes.

Commissioner Dover felt that licensees need clear guidelines to tell them their responsibilities which should be defined in statute, therefore, such changes to the laws were necessary.

Chairperson Gale indicated that when details get outlined by statutes, you lose the flexibility in interpretation, which is why he believes a subcommittee should be formed and such review to be discussed at the next meeting.

After further discussion, Commissioners Dover, Freeman and Ptak were assigned to the subcommittee.

Fred Hoppe indicated that no other statutes or provisions would need to be changed. Joe Gehrki indicated that the Nebraska Realtors Association was supporting these changes. He indicated that the Association appreciated the discussion with the Commission regarding these changes and was interested in getting the changes done correctly. He also noted that the Association was aware that if the proposed changes were not supported by the Commission, the changes may not get through this legislative session. Fred Hoppe indicated that he could get the bill drafted and sent to the subcommittee for review.

There was discussion that the subcommittee would work with the Nebraska Realtors Association to review the proposed changes and look at all the options which would address the concerns of the Commission as well as the Nebraska Realtors Association.

Interest Bearing Trust Account

Joe Gehrki representing the Nebraska Realtors Association indicated that they would be submitting proposed legislation to remove the sunset date provision associated with interest bearing trust accounts, which if not amended by the proposed legislation, would remove the authorization for their use.

A motion was made by Dover and seconded by Rouch to eliminate the sunset provision for trust accounts with no opposition. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Post Dating Listing Contracts

Joe Gehrki with the Nebraska Realtors Association indicated that they would be introducing legislation to allow the licensees to enter into postdated listing contract using the same language previously discussed with the Commission.

Chairperson Gale indicated that when the Commission had discussed the proposed changes regarding postdated listing contracts that they were divided and felt that the Commission should review such changes again prior to further discussion.

It was the consensus of the Commission to place the proposed changes to allow for postdated listing contract on the agenda for the next meeting.

After discussion, the Commission determined by consensus, that this issue should be discussed at the November Commission meeting.

2012-2013 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2012-2013 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the objectives and discussed the progress as stated on the exhibit.

There was discussion regarding the enhancements to the website and ways to promote consumer information and materials.

No action was necessary on this report.

Discussion Item Conflicts of Interest and Commission Recusals

Director Lemon presented an statement from the Accountability and Disclosure Commission and the statute as well as a Order of Appeal issued by the District Court of Lancaster County against the Commission filed by Larry Zitek. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that he provided the exhibits as background information on the law regarding conflicts of interest and recusals. He noted that Commissioners did not need to recuse themselves when matters discussed involved policies which generally affect the real

estate industry. He also noted that if a decision would have a specific effect on the Commissioner's individual business then they should recuse themselves.

There was discussion regarding a written statement of recusal and it was decided that the minutes were adequate for such written statement. There was also discussion regarding how the third party may perceive the action if not recused.

No action was necessary with regard to this matter.

Information Matters

Errors and Omissions Loss Report – Third Quarter 2012

Director Lemon presented the Errors and Omissions Loss Report – Third Quarter 2012. A copy of said exhibit is attached to and made a part of these minutes.

There was discussion that it would be beneficial to obtain the financial balance for payout and the number of claims which had been made to RISC versus how many complaints had been filed with the Commission.

No action was necessary with regard to this matter.

Future Meeting Dates

November 15-16, 2012 - Staybridge Suites, Lincoln
January 17-18, 2013- Staybridge Suites, Lincoln
February 21-22, 2013- Staybridge Suites, Lincoln
March 21-22, 2013- Staybridge Suites, Lincoln
April 18, 2013- Staybridge Suites, Lincoln
May 16-17, 2013- Staybridge Suites, Lincoln
June 20-21, 2013- Staybridge Suites, Lincoln

Recesses and Adjournment

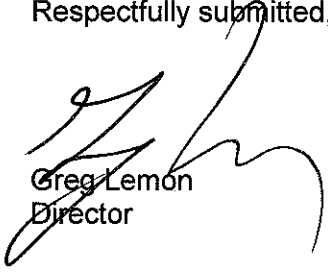
At 10:15 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

At 12:20 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:30 p.m.

At 1:00 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Rouch that the meeting adjourn. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the October 18, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on October 25, 2012, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

- Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln
- Grace Willnerd, Secretary of State's Office, Lincoln
- Joseph D. Gehrki, Nebraska REALTORS® Association, Omaha
- Doug Steinkruger, NP Dodge, Omaha
- Kristen Anderson, Nebraska REALTORS® Association, Lincoln
- Rita Griess, Lincoln
- Fred Hoppe, Hoppe Law Firm/ Nebraska REALTORS® Association, Lincoln
- Darlene Fletcher, Nebraska REALTORS® Association, Lincoln