

NEBRASKA REAL ESTATE COMMISSION

January 21, 2016

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on January 21, 2016, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Dover, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Duran Cell, and Deputy Director for Licensing Monica Rut. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Rothlisberger 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. 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 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 Avery and seconded by Alloway to adopt the final agenda as presented. Motion carried with Alloway, Avery, Freeman, Stange, and Gale voting aye, and with Titus and Dover not participating or voting, being absent and excused.

Minutes of November 19, 2015

The minutes of the Commission meeting held on November 19, 2015, were considered.

After review, a motion was made by Freeman and seconded by Stange to approve the minutes as presented. Commissioner Titus offered an amendment to change the motion as worded on page six of the Exhibit. The motion as stated should say "...that Felix Dwayne Mitchell receive a three year suspension, with first sixty days stayed and the remainder served on probation." The Amendment was accepted by the mover and second. The Exhibit was corrected for attachment to these minutes. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

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 Reports for November and December

Director Lemon presented the Receipts and Expenditures Reports for November and December. Copies of said reports are attached to and made a part of these minutes. Director Lemon noted that an explanation page was included in each report.

The cash fund balance as of November 30, 2015, was \$1,514,072.43, which compared to a cash fund balance of \$1,038,123.89 on November 30, 2014.

The cash fund balance as of December 31, 2015, was \$1,732,984.00, which compared to a cash fund balance of \$1,292,870.81 on December 31, 2014.

After discussion, a motion was made by Freeman and seconded by Stange to file the November and December Receipts and Expenditures Reports for audit. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

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 Rut 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 Alloway and seconded by Freeman to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Examination Reports – November and December

Deputy Director Roubal presented for ratification the November and December Examination Reports, copies of which are attached to and made a part of these minutes.

After review, a motion was made by Stange and seconded by Avery to ratify the November and December Examination Reports for the purpose of issuing licenses. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Examination Passing Rosters

Deputy Director Roubal presented the Examination Passing Rosters, copies of which are attached to and made a part of these minutes.

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Provider/Course Approval

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

Pre-License Education Instructor Approval

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

Continuing Education Activity Significant Change

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

Broker-Approved Training Recognition

Deputy Director Roubal 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 Freeman and seconded by Avery to ratify the six reports. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Continuing Education Activity Rejection

Deputy Director Roubal 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 Cell 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 2015-003 – Eugene L & Mary L Hart vs. Jeffrey Kirk LeGros

Deputy Director Cell 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 Avery and seconded by Stange that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, and Stange and Gale voting aye, with Titus voting nay, and with Dover not participating or voting, being absent and excused.

Item B Complaint 2015-005 – James Berry Murphy vs. Jane Elizabeth Voorhies

Deputy Director Cell 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 Titus and seconded by Alloway that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item C Complaint 2015-007 – Kristine M. Laverdure vs. Scott Brian Lamb

Deputy Director Cell 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 Avery and seconded by Titus that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item D Complaint 2015-012

Deputy Director Cell 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 Alloway and seconded by Titus that the complaint be set for hearing on the violations alleged in the report. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item E Complaint 2015-017 – Jack H. Gregg vs. Steven Jay Leffert

Deputy Director Cell 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 Freeman and seconded by Titus that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

There were no stipulation and consent orders to be presented at the meeting.

Disciplinary Hearings

Complaint 2015-004 – Jeri Cristine Schlickbernd vs. Jeff Rothlisberger

A Hearing was held on January 21, at 12:55 p.m., in the matter of Complaint 2015-004, Jeri Cristine Schlickbernd vs. Jeff Rothlisberger. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Rothlisberger was present.

After opening statements, Counsel Prochaska offered ten Exhibits, all of which were received by Chairperson Gale. Counsel Prochaska called Duran Cell as a witness.

Mr. Rothlisberger offered an Exhibit, which was received by Chairperson Gale. Mr. Rothlisberger called himself as a witness.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made by Freeman and seconded by Stange in Complaint 2015-004, that Jeff Rothlisberger violated Neb. Rev. Stat. § 81-885.24 (2), (12), (16) and (29). Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #P2011-002, dated February 16, 2012. Mr. Rothlisberger paid a civil fine of \$5,000.00 February 24, 2012; plus all requirements of the Commission Cease and Desist Order, CD2011-005, dated September 14, 2011 shall remain in full force and effect. [Violated Neb. Rev. Stat. § 81-885.03 Broker, associate broker, salesperson, defined. Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any form of compensation or consideration, offers, attempts, or agrees to perform or performs any single act described in subdivision (2) of section 81-885.01, whether as a part of a transaction, or as an entire transaction, shall be deemed a broker, associate broker, or salesperson within the meaning of the Nebraska Real Estate License Act. Committing a single act described in such subdivision by a person required to be licensed under the Nebraska Real Estate License Act and not so licensed shall constitute a violation of the act, Rothlisberger continued to list on five (5) separate dates Nebraska real estate for sale without having obtained a

Nebraska real estate license, Rothlisberger did knowingly violate the provisions of such Commission Cease and Desist Order by listing Nebraska real estate for sale or lease without having obtained a Nebraska real estate license.)

A motion was made by Alloway and seconded by Freeman in Complaint 2015-004, that Jeff Rothlisberger receive a 24 month suspension all stayed and served on probation, three hours of additional continuing education in the area of Agency and three hours of additional continuing education in the area of License Law, plus a one-thousand five hundred dollar fine. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

With the consent of the Respondent, Chairperson Gale directed Counsel Prochaska to prepare the Order.

Chairperson Gale 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 Respondents 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 2:15 p.m.

Informal Special Appearances

Britney Sue Boltinghouse, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Boltinghouse's special appearance; a letter of explanation from Ms. Boltinghouse; character reference letters for Ms. Boltinghouse; Ms. Boltinghouse's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Boltinghouse was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Boltinghouse explained the situations regarding her past criminal history.

After discussion, a motion was made by Stange and seconded by Avery to allow Ms. Boltinghouse to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Boltinghouse must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Ms. Boltinghouse must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years. Ms. Boltinghouse must also provide proof to the Commission of continued activity with Counselor Fritz.

An Amendment was offered by the second to allow continued therapy through Counselor Fritz or a comparable professional. The Amendment was accepted by the mover.

An Amendment was offered by Commissioner Alloway to require Ms. Boltinghouse to provide continued therapy in quarterly statements to the Commission. The Amendment was accepted by the mover and the second.

Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye and with Dover not participating or voting, being absent and excused.

Jodie L. Weaver, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Weaver's special appearance; character reference letters for Ms. Weaver; Ms. Weaver's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Weaver was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Weaver explained the situations regarding her past criminal history.

After discussion, a motion was made by Alloway and seconded by Freeman to allow Ms. Weaver to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Weaver must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Ms. Weaver must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye and with Dover not participating or voting, being absent and excused.

Carl Wuestehube, Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Wuestehube's special appearance and a letter of explanation from Mr. Wuestehube. A copy of said exhibit is attached to and made a part of these minutes. Mr. Wuestehube was present via telephone conference.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Wuestehube explained the situations regarding his past and current license history. After discussion, a motion was made by Freeman and seconded by Avery to allow Mr. Wuestehube to have a license issued after making proper application. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Review and Approval of Travel to 2016 Regularly Attended Meetings

Director Lemon presented an exhibit regarding the estimated costs of Commissioners and staff participating in regularly-attended meetings in 2016. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Avery and seconded by Freeman to approve the reimbursement of expenditures for Commissioners and staff who attend the meetings set forth in

the exhibit. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Annual Review and Approval of Procedures and Cycle for Trust Account Examinations

Director Lemon presented a reference copy of the Commission's Approved Procedures and Cycle for Trust Account Examinations. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that there were no recommended changes to the document.

After discussion, a motion was made by Alloway and seconded by Freeman to approve the exhibit as presented. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Consider Approval of Special Assistant Attorneys General New Fee Schedule

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective January 1, 2016. A copy of said exhibit is attached to and made a part of these Minutes. Mr. Chris Heinrich from the O'Neill, Heinrich, Damkroger, Bergmeyer & Schultz, P.C. L.L.O. law firm was present to present the proposed fee schedule and answer any questions the Commissioners might have.

There was discussion regarding the ability for the fee schedule to be presented every two years to coincide with the State's biennium budget cycle.

After discussion, a motion was made by Freeman and seconded by Alloway to approve the hourly rate schedule as presented effective January 1, 2016 and the reappointment of O'Neill Heinrich Damkroger Bergmeyer & Schultz, P.C. L.L.O., as Special Assistant Attorneys General for the purpose of representing the Commission. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Consideration of Release of License Numbers for RESPA/TILA Purposes – 10:30 a.m.

Director Lemon presented an exhibit of the requests received from REALTORS Association of Lincoln and Nebraska REALTORS Association to release the license numbers for purpose of complying with the RESPA/TILA requirements. A copy of said exhibit is attached to and made a part of these Minutes. Gene Brake with the Nebraska REALTORS Association, was present to discuss this matter.

Director Lemon also handed out a request from a bank for the same purpose. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 17a.

Director Lemon indicated that while previously the license number was withheld from public knowledge for security purposes, the enactment of RESPA/TILA requires the license number on the form for the licensees. He proposed that the Commission continue to sell lists which include the license number for twenty-five dollars and also display the license number for the licensee on Licensee and Applicant Information Search located on the Commissions website. He noted that, while the license number was a security issue in the past, with current technology, the password will provide enough security for the Commissions requirement.

Gene Brake explained that the license number is required to be known by continuing education providers, and to meet the TRID requirements, the license number must be on the appropriate

forms. He indicated that by making the license numbers available to be easily accessible to lenders and education providers will ultimately be helpful to the industry.

There was discussion regarding the current federal requirements and how it impacts the industry.

After discussion, a motion was made by Freeman and seconded by Alloway to allow the license number to be added to the Commission's website and to sell the license number list as proposed. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Review Impact of Title 299, Ch. 1, Sec. 004-03 and Ch. 7, Sec. 003.02, January 1, 2017, Elimination of Certification of Correspondence Courses for Education Purposes

Deputy Director Roubal presented an exhibit explaining the concerns surrounding the correspondence course offerings ending January 1, 2017. A copy of said exhibit is attached to and made a part of these Minutes. Paul R. Vojchehoske, Jr of Randall School of Real Estate, Craig Larabee with JMSK Corp, Andie Young with Larabee School of Real Estate, Mark T. Wehner with REESuits Coaching and Christie Bevington with the Nebraska REALTORS Association were present to discuss this matter.

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

Deputy Director Roubal indicated that the concern regarding the sunset date of correspondence courses for pre-license education was course availability for those in Greater Nebraska interested in taking pre-license education courses. She indicated that she recently received notification from two unrepresented providers that they intend to make online courses available by the end of this year.

There was discussion regarding the standards and requirements of providing online courses versus correspondence courses.

After discussion, a motion was made by Freeman and seconded by Titus to provide a report at the next meeting to include: the demand for pre-license education courses, options for a certification entity other than ARELLO, the burden on staff should staff be required to review correspondence courses, and the possibility that the aforementioned providers may have the pre-license education courses available online by the end of the year. Motion carried with Avery, Freeman, Stange, and Titus voting aye, with Gale voting nay, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, and with Dover not participating or voting, being absent and excused.

2014-2015 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2015-2016 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the progress made at the midyear point.

No action was necessary with regard to these matters.

Awarding of Database Contract under RFP 2015-1

Director Lemon presented an exhibit regarding the RFP 2015-1 for a new licensee database. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that three proposals were received for the new database. He indicated that there was clarification of certain terms and conditions required before entering into a final contract.

A motion was made by Titus and seconded by Freeman to authorize Director Lemon to Award the contract pursuant to RFP2015-1 to GL Solutions, subject to arriving at mutually agreeable terms on any exceptions to contract requirements that GL Solutions noted in their response to the RFP. Motion carried with Alloway, Avery, Freeman, Stange, and Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Legislative Matters

LB 678 – Define Team and Team Leader in the Real Estate License Act – Senator Craighead - Banking Committee – Director Lemon presented the bill as presented to the Legislature. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the Hearing is scheduled for January 25 in which he will testify at legislative hearing.

There was discussion regarding the drafting of rules and regulations with the joint task force to be presented at a future meeting.

No action was necessary with regard to these matters.

Information Matters

Errors and Omissions Loss Report – Fourth Quarter 2015

Director Lemon presented the Errors and Omissions Loss Report – Fourth Quarter 2015. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

ARELLO Leadership Symposium and Board of Directors Meeting –Tampa, Florida – January 6-8, 2016 - Report of Attendee

Director Lemon explained his experience at the ARELLO meeting.

No action was necessary on this report.

Future Meeting Dates

February 18-19, 2016 – Staybridge Suites, Lincoln
March 17-18 2016 - Staybridge Suites, Lincoln
April 21-22, 2016 - Staybridge Suites, Lincoln
May 19-20, 2016 - Staybridge Suites, Lincoln
June 16-17, 2016 - Staybridge Suites, Lincoln

Recesses and Adjournment

Commissioner Titus joined the meeting at 9:07 a.m.

At 10:25 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:37 a.m.

Chairperson Gale was briefly excused from the meeting at 11:50 a.m., and rejoined the meeting at 11:53 a.m.

At 12:00 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 12:55 p.m.

Chairperson Gale was briefly excused from the meeting at 2:54 p.m., and rejoined the meeting at 2:56 p.m.

At 3:30 p.m., there being no further business to come before the Commission, a motion was made by Freeman and seconded by Alloway that the meeting adjourn. Motion carried with Avery, Alloway, Freeman, Stange, Titus and Gale voting aye, with Dover 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 January 22, 2016, meeting of the Nebraska Real Estate Commission were available for inspection on January 27, 2016, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Bryan Fraser, CBSHome, Omaha
Jeff Hebb, Nebraska REALTORS® Association, Lincoln
Andie Young, Larabee School of Real Estate, Lincoln
Gene Brake, Nebraska REALTORS® Association, Lincoln
Craig Larabee, JMSK Corp, Lincoln
Christie Bevington, Nebraska REALTORS® Association, Lincoln
Paul R. Vojchehoske, Jr., Randall School of Real Estate, Omaha
Mark T. Wehner, REESults Coaching School of Real Estate, Omaha
Jean Angell, Department of Banking, Lincoln

