

**NEBRASKA REAL ESTATE COMMISSION**

**February 18, 2016**

**Staybridge Suites**

**Staybridge Room**

**Lincoln, NE**

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**Opening**

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

**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 Freeman to adopt the final agenda as presented. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus and Gale voting aye.

**Minutes of January 21, 2016**

The minutes of the Commission meeting held on January 21, 2016, were considered.

(Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The name of the law firm as stated for agenda item Consider Approval of Special Assistant Attorneys General New Fee Schedule located on page 8 was set forth as Harding and Schultz law firm when, in fact, the name should have been O'Neill, Heinrich, Damkroger, Bergmeyer & Schultz, P.C. LLO. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Avery and seconded by Titus to approve the minutes as amended. Motion carried with Alloway, Avery, Freeman, Stange, Titus, and Gale voting aye with Dover not voting having not been in attendance at the January Meeting.

## **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 January**

Director Lemon presented the Receipts and Expenditures Report for January. 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 January 31, 2016, was \$1,726,400.87, which compared to a cash fund balance of \$1,303,733.46 on January 31, 2015.

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

## **Specialized Registrations**

### **Time-Share Registration - Amendment for ClubWyndham Access Vacation Ownership**

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

A motion was made by Freeman and seconded by Avery to approve the amendments to the three registrations as presented Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus, and Gale voting aye.

## **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 Avery and seconded by Freeman to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus, and Gale voting aye.

## **Examination Report - January**

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

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

## **Examination Passing Roster**

Deputy Director Roubal presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

## **Real Estate Education Matters**

### **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.

### **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 three reports. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus, and Gale voting aye.

## **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.

There was discussion regarding the report heading and the appeal process.

No action was necessary on this report.

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

### **Item A** Complaint 2015-011 – Hector Sequin, III vs. Margaret Amelia Janda

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 Alloway that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus, and Gale voting aye.

## **Presentation of Stipulation and Consent Orders**

### **Complaint 2015-002, Commission vs. Sonya Kaye Paxton**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2015-002, Commission vs. Sonya Kaye Paxton. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Freeman and seconded by Avery to enter into the Order as presented. After discussion, an amendment was offered by the mover to amend the Order to require a two-thousand five hundred dollar fine. The amendment was not accepted by the second. The motion was withdrawn by the mover.

A motion was made by Freeman and seconded by Titus to decline the proposed Stipulation and Consent Order and propose that the Order be amended to change the civil fine from one-thousand dollars to two-thousand five hundred dollars. Motion carried with Alloway, Dover, Freeman, Stange, Titus, and Gale voting aye, and with Avery voting nay.

## **Disciplinary Hearings**

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

## **Informal Special Appearances**

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

## **Review Impact of Title 299, Ch. 1, Sec 004.03 and Ch. 7,003.02 January 1, 2017, Elimination of Certification of Correspondence Courses for Education Purposes**

Deputy Director Roubal presented a report as requested by the Commission at the January Meeting regarding correspondence courses. A copy of said exhibit is attached to and made a part of these minutes. Paul Vojchegoski with Randall School was also present to discuss this agenda item.

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

Deputy Director Roubal explained the sections of the exhibit as requested at the previous meeting which included the demand for pre-license education, options for a certification entity other than ARELLO, the burden on staff and availability of pre-license education courses offered over the Internet by January 1, 2017.

There was discussion regarding the individuals and viability of those who are taking the correspondence courses. There was also discussion regarding the deadline for the correspondence courses and the impact of meeting the education needs should the pre-license correspondence courses expire.

Mr. Vojchegoski indicated that due to the longevity and lack of changes to the pre-license education correspondence courses, it would be less burdensome to staff to review pre-license education courses than reviewing continuing education provided in a correspondence delivery method. Deputy Director Roubal concurred and noted that she would be comfortable reviewing

the pre-license correspondence courses with the assistance of Director Lemon. She felt that it was important that this option of delivery was available to individuals since there were many continuing to sign up for correspondence courses and having a higher examination passing rate than some other methods.

A motion was made by Stange and seconded by Dover to amend the Rules and Regulations to allow for pre-license real estate education to continue to be offered as correspondence courses.

Commissioner Freeman offered an amendment to require all tests be proctored and not self-administered. The amendment was not accepted by the mover and the second.

Motion carried with Avery, Dover, Freeman, Stange, Titus, and Gale voting aye, and with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

There was discussion regarding the process which Deputy Director Roubal will use for certifying the correspondence courses.

A motion was made by Freeman that the certification process used by Deputy Director Roubal include that pre-license correspondence education courses require a proctored testing procedure. The motion died for a lack of a second.

After further discussion, it was the consensus of the Commission that Deputy Director Roubal develop guidelines and standards for the certification of the pre-license education correspondence courses and present them to the Commission at a future meeting to review.

#### **Review Possible Changes to Seller Property Condition Disclosure Statement §76-2,120**

Director Lemon presented an explanation and examples of the proposed changes to the Seller Property Condition Disclosure Statement. A copy of said exhibit is attached to and made a part of these minutes. Brent Meyer with the Nebraska Weed Control Association (NWCA) was present to discuss this agenda item.

Director Lemon explained that with the passing of LB34 known as the Carbon Monoxide Safety Act during in the 2015 Legislative session, it is required that the Seller Property Condition Disclosure Statement be amended to comply with the Act and contain a statement about carbon monoxide alarms in residential property offered for sale. He also noted that another issue was presented for possible change and introduced Mr. Meyer to discuss the proposed changes. He indicated that proposed changes to the form would be incorporated and brought back to be reviewed at a future meeting.

Mr. Meyer provided information on noxious weeds as described in the Nebraska Noxious Weed Control Act and suggested adding language to the Seller Property Disclosure Statement to make buyers aware of the potential issues and cost associated with acquiring property containing such noxious weeds. Mr. Meyer provided sample Seller Property Disclosure Statements from other states to use as an example and reviewed the wording as shown.

It was discussed that Seller Property Disclosure Statements are not required for agriculture lands and therefore would only affect buyers for properties located in the city or agricultural land acreages sales where a residential building is included in the sale. It was also discussed that since most buyers, sellers and real estate licensees may not be familiar with noxious weeds, they could fill out the form incorrectly which would potentially cause liability for the seller and the real

estate licensee.

Commissioner Alloway suggested that the language on the Seller Property Disclosure Statement ask if a seller has ever been cited or the property has been identified for having noxious weeds. After further discussion, it was suggested that the language on the Seller Property Disclosure Statement ask if the property has been treated, identified or cited for a period of three years.

After further discussion, a motion was made by Freeman and seconded by Avery that Director Lemon prepare the Seller Property Disclosure Statement with the proposed changes for carbon monoxide detectors and noxious weeds and bring the proposed changes to a future meeting.

There was discussion regarding other proposed changes to the Seller Property Disclosure Statement relating to mold and deaths or crimes which have occurred on properties. It was the consensus of the Commission to only make the changes relating to noxious weeds and carbon monoxide detectors at this time but put the review of additional changes on next year's Objectives.

Motion carried with Alloway, Avery, Dover, Freeman, Stange, Titus, and Gale voting aye.

#### **Draft Amendment to Title 299, Ch. 7, Required Property Management Course**

Director Lemon presented an exhibit regarding the proposed 2014-2015 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the draft amendment to Title 299, Ch. 7 to require a property management course if the licensee is engaged in property management activities was based on the subcommittees recommendation.

There was discussion regarding the language as proposed and that the language must include the requirement for designated and managing brokers who would also be required to take the continuing education course.

It was the consensus of the Commission that the proposed language be revised and brought back for review at the next Commission Meeting.

#### **Legislative Matters**

**LB 28** – Director Lemon explained that this was a carryover bill from the 2015 Legislative session.

**LB 678** – Director Lemon presented an exhibit regarding a proposed amendment to LB678. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reported that after discussion with the members of the Legislature and Banking Commerce and Insurance Committee staff that there was concern that the language of the bill was too broad and vague. He explained the need for revisions and the proposed amendment which incorporates provisions as recommended by the joint teams task force which would provide more clear definition to the teams regulation provided by the bill.

It was discussed that section 33 be changed to "Utilizing a team name in advertising which does not prominently state the name the broker supervising the team does business under or using terms in the team name suggesting the team is an independent real estate brokerage entity." Also that section 34 be added to state "Advertising which does not prominently state the name of the

broker supervising does business under or using terms which suggest they are an independent real estate brokerage.

After further discussion, a motion was made by Freeman and seconded by Titus to amend the proposed bill and support the amendment as discussed. Motion carried with Alloway, Avery, Dover, Freeman, Stange, and Titus and Gale voting aye.

### **Information Matters**

#### **ARELLO Mid-Year Meeting – April 13-16, 2016 - Atlanta, GA**

Director Lemon explained that the deadline for registration is March 21, 2016, and asked which Commissioners were planning on attending the conference.

Commissioners Avery and Freeman indicated that they were interested in attending the Mid-Year meeting.

No action was necessary on this report.

### **Future Meeting Dates**

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**

At 10:00 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:15 a.m.

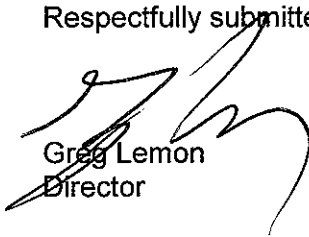
Chairperson Gale was briefly excused from the meeting at 11:20 a.m., and rejoined the meeting at 11:24 a.m.

Commissioner Avery was briefly excused from the meeting at 11:25 a.m., and rejoined the meeting at 11:29 a.m.

At 12:30 p.m., there being no further business to come before the Commission, a motion was made by Avery and seconded by Alloway that the meeting adjourn. Motion carried with Avery, Alloway, Dover, Freeman, Stange, Titus, and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the February 18, 2016, meeting of the Nebraska Real Estate Commission were available for inspection on February 23, 2016, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

**Guests Signing the Guest List**

- Allison Bentley, Lincoln
- Paul Vojchehoski, Randall School, Omaha
- Christie Bevington, Nebraska REALTORS® Association, Lincoln
- Jeff Hebb, Nebraska REALTORS® Association, Lincoln
- Mark Leaders, CBSHOME Real Estate, Omaha
- Brent Meyer, Nebraska Wee Control, Lincoln