

NEBRASKA REAL ESTATE COMMISSION

January 19, 2017

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 19, 2019, 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.

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 agenda items 6c, 19g, 19h and 19i had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Alloway and seconded by Freeman to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Minutes of November 17, 2016

The minutes of the Commission meeting held on November 17, 2016, were considered. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. On page six relating to the Informal Special Appearance for Tyler Joseph Allis, there was an incorrect reference to the attendance of meetings required. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Freeman and seconded by Alloway to approve the minutes as amended. Motion carried with Alloway, Bourne, Freeman, and Stange voting aye, with Dover not participating or voting, being absent and excused and with Titus and Gale not voting having not been in attendance at the November 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.

Financial Matters

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, 2016, was \$1,778,767.01, which compared to a cash fund balance of \$1,514,072.43 on November 30, 2015.

The cash fund balance as of December 31, 2016, was \$1,993,599.10, which compared to a cash fund balance of \$1,732,984.00 on December 31, 2015.

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

Governor's Budget Recommendation and Cash Fund Transfer

Director Lemon presented the Fund Transfers Report as shown in the Governor's Budget Recommendation and Cash Fund Transfer. A copy of said report is attached to and made a part of these minutes.

Director Lemon explained that the Governor's Budget Recommendation would require the Commission to transfer funds in the amount of \$200,000 to the general fund for fiscal year 2016/2017. The recommendation also rejected the Commission's Biennium Budget request for Fiscal Years 2017/2018 and 2018/2019 and reduced the expenditures based on prior year's expenditures.

There was discussion regarding contesting the recommendation to justify the support for the implementation of the database and the pass through of the education testing funds expenditures.

There was discussion and many expressed concern that the money being taken from the Commissions fund is a hidden tax for the industry who pay the fees to the Commission. The law provides that the General Fund will not be used to support the Commission, which is self-funded but the Commission's fund is being taken to support the State's General Fund. There was discussion regarding the Commission's ability to protect the funds to allow for a six month balance to avoid hardship and fee increases.

A motion was made by Freeman and seconded by Titus that Director Lemon oppose the cash fund transfer and budget cuts in the Governor's Budget Recommendation and seek support from the Nebraska REALTORS Association. Motion carried with Alloway, Bourne, Freeman, Stange, 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

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

Director Lemon presented a specialized registration report which included the registration of amendment to 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.

Subdivided Land Registration Amendment - Reynolds Plantation

Director Lemon presented a specialized registration report which included the subdivided land registrations for Reynolds Plantation. A copy of said report is attached to and made a part of these minutes.

Time-Share Registration – Welks Resort Platinum Program

Director Lemon presented a specialized registration report which included the registration of amendment to time-share registration for Welks Resort Platinum Program. A copy of said report is attached to and made a part of these minutes.

A motion was made by Titus and seconded by Stange to approve the three registrations as presented. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

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 Freeman and seconded by Alloway to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Freeman, Stange, 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 Alloway and seconded by Freeman to ratify the November and December Examination Reports for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Freeman, Stange, 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 for November and December, copies of which are attached to and made a part of these minutes.

No action was necessary on this report.

AMP School Reports

Deputy Director Roubal presented the AMP Review of Examination Performance Reports for comparison for the periods of May 1, 2014 through April 30, 2015 and May 1, 2015 through April 30, 2016 and School Summaries for the period of July 1, 2016 through December 31, 2016, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal explained each of the reports relating to the national tests and the school reports. Deputy Director Roubal indicated that by being able to provide the school reports to each of the schools, she is hoping that this opportunity will provide for improved dialog between the Commission and the providers.

No action was necessary on this report.

Discussion Regarding Student Tracking

There was discussion regarding the Commission adding information to the exam passing reports correlating the instructors to the test takers. Deputy Director Roubal indicated that by improving instruction across the board such as through training at the IDW's, the Commission can then fine tune instructor performance in the future.

Commissioner Stange indicated that he was in favor of the steps the Commission had recently taken to create and disseminate the exam passing reports by school. He did not feel it was necessary for the Commission to drill further down by instructor since the schools are responsible for their own instructors and the Commission should not micromanage.

There was discussion regarding the importance of test prep courses on exam performance. Deputy Director Roubal indicated that the Commission does not track the test prep courses, and the Commission's pre-license education requirement of sixty hours of pre-license education is intended to allow for sufficient instruction for applicants to pass the examination.

No action was necessary with regard to this matter.

Real Estate Education Matters

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.

Broker-Approved Training Activity Significant Change

Deputy Director Roubal presented a Broker-Approved Training Activity Significant Change 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 Alloway to ratify the six reports. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Pre-License Education Instructor Rejection

Deputy Director Roubal presented a Pre-License Education Instructor Rejection Report, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

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 2016-002 – Randy Folts & Jennifer Niemier vs. Peter V. Sabaliauskas

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 that the complaint be dismissed without prejudice. The motion died for a lack of a second.

After discussion, a motion was made by Freeman and seconded by Stange that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

After discussion of this Complaint item, it was the consensus of the Commission that the Commission staff review the laws and rules relating to dual agency, particularly as they relate to licensees who are also acting as a principal in the transaction, and make recommendations regarding a possible regulatory or legislative changes.

Item B Complaint 2016-003

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 this complaint be held in abeyance and a the Commission file a complaint on its own motion and set for hearing on the alleged violations of 81-885.24(22), Title 299, Chapter 5-003.20 and 81-885.24(29). Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

Complaint 2015-021, Greg Wayman vs. Heeran Hi Workman

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2015-021, Greg Wayman vs. Heeran Hi Workman. A copy of said Order is attached to and made a part of these minutes.

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

Disciplinary Hearings

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

Informal Special Appearances

Anthony Thomas Acome, Salesperson Applicant

Director Lemon presented an exhibit which included: correspondence regarding this special appearance; a letter of explanation from Mr. Acome; character reference letters, Mr. Acome's salesperson application form, the Justice System Search Summary for Mr. Acome, Mr. Acome's

criminal history report, and information regarding Mr. Acome's previous special appearance in January 2013. A copy of said exhibit is attached to and made a part of these minutes. Mr. Acome was present.

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Stange to allow Mr. Acome to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Acome 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. Motion carried with Bourne, Freeman, Stange, Titus and Gale voting aye, 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.

Rule Hearings

Rule Hearing on Title 299, Chapters 1, 2 and 7 – Rules Relating to advertising and Teams – 9:30 a.m.

At 9:35 a.m. on January 19, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapters 1, 2 and 7, of the Commission's Rules and Regulations.

Director Lemon presented four exhibits, which included: 1) a copy of the meeting notice, which was published in two newspapers and filed with the Secretary of State, the Executive Board of the Legislative Council, and the Governor's Policy Research Office; 2) a copy of the Lincoln Journal-Star and Omaha Daily Record proofs of publication of the meeting notice; 3) a Fiscal Impact Statement; and 4) a copy of the proposed amendments to Title 299, Chapters 1, 2 and 7, in legislative style. Exhibits are attached to and made a part of these minutes.

Director Lemon noted that he had not received any written comments or testimony which had been solicited through the notice of hearing and also on the Commission's website.

Director Lemon summarized the changes to the rules as provided in the exhibits.

There was discussion regarding the wording of Title 299, Chapter 2.003.07c and the intent implied in Chapter 7.001. It was the consensus of the Commission that the wording is acceptable as drafted.

Chairperson Gale asked if any member of the public wished to speak regarding the proposed amendments.

Arla Meyer with Woods Bros, Lincoln indicated that the continuing education requirement may be reduced to sixty days instead of one-hundred eighty days as previously discussed if the Commission chooses to make the change. Commissioner Freeman indicated that the Commission needed to consider those licensees who were not members of the association so that they also would have ample time to meet the requirement.

Jeff Searcy with the Searcy Team, Home Real Estate, requested clarification of the rule change process. There was discussion regarding the process a full explanation was provided. Mr. Searcy indicated that he had been involved in the team task force and felt that the discussion on the task force was to allow for more flexibility and was surprised by the specificity found in the current pending rules on advertising. Chairperson Gale indicated that the rules were drafted to protect the public interest.

The Commission reviewed the amendment as proposed by Arla Myer. It was the consensus of the Commission to leave the proposed rule regarding the 180 day education requirement as proposed.

There was discussion regarding two clerical revisions to further clarify the intent of the regulations, it was suggested that the final draft change the second Section 003.07b to 003.07c, and in renumbered Sections 003.07b and 003.07c add the word "which" in front of "...the broker supervising the team."

A motion was made by Titus and seconded by Freeman that the Commission adopt Title 299, Chapters 1, 2 and 7, as amended by the changes discussed in the preceding paragraph, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Chairperson Gale declared the rule hearing concluded at 10:14 a.m.

Commissioner Freeman wanted to thank Arla Meyer for her work, energy and effort done on the teams' task force.

2016-2017 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2016-2017 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 this quarter on each of the objectives.

No action was necessary with regard to this matter.

Review and Approval of Travel to 2017 Regularly Attended Meetings

Director Lemon presented an exhibit regarding the estimated costs of Commissioners and staff participating in regularly-attended meetings in 2017. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Freeman and seconded by Alloway to approve the reimbursement of expenditures for Commissioners and staff who attend the meetings set forth in the exhibit. Motion carried with Alloway, Bourne, Freeman, Stange, 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 Commissions 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 Stange and seconded by Alloway to approve the exhibit as presented. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Consider Approval of Special Assistant Attorneys General Appointment

Letter of Appointment

Director Lemon presented a letter from the Attorney General's Office appointing Christopher R. Heinrich as the Special Assistant Attorney General for the Nebraska Real Estate Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that Mr. Heinrich's appointment expires December 31, 2017. There was discussion regarding the appointment and whether it is per individual or firm.

A motion was made by Freeman and seconded by Stange to approve appointment of the firm appointment and to seek clarification from the Attorney General's Office regarding the letter. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

2017 Fee Schedule

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective January 1, 2017. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained that the Finance Subcommittee's recommendation in summary suggested there be no rate increase effective January 1, 2017 and that the fee schedule is to be presented every two years to coincide with the State's biennium budget cycle.

After discussion, a motion was made by Stange and seconded by Freeman to reject the proposed fee increase effective January 1, 2017 and review the rates for a two year cycle beginning in July, 2017. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Legislative Matters

LB 9 - Director Lemon reported that this bill will be monitored as an industry issue.

LB 15 - Director Lemon reported that this bill will be monitored as an industry issue.

LB 16 – Director Lemon reported that the hearing for this bill was held and there was discussion regarding the fingerprinting process. Director Lemon explained that he would be researching this issue to provide feedback to the Committee if fingerprints are required in order for the FBI to do criminal background checks.

LB 127 – Director Lemon indicated that this bill would have required each State Agency to publish a public notice in each county where they have jurisdiction. He was told that this bill was aimed at public subdivisions rather than state agencies, and it was indicated that it would be amended so that it did not affect state agencies. Director Lemon reported that this bill would continue to be monitored.

LB 208 – Director Lemon indicated that this bill would further define where a trust account can be held which would include credit unions as long as they are insured. Director Lemon reported that this bill would continue to be monitored.

LB 36 – Director Lemon explained that this bill would require a review of each of the Commission's regulations every five years. A motion was made by Freeman and seconded by Titus that the Commission oppose this bill to the Legislature. Motion carried with Alloway, Bourne, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

LB 299 – Director Lemon indicated that this bill, in summary, would create an executive branch agency called "Office of Supervision of Occupational Boards". This bill provides guidelines and may assess costs to agencies and increase fees to cover the costs of the assessment. He indicated that the bill would take authority away from the Commission's ability to license and regulate the real estate profession. A motion was made by Freeman and seconded by Stange that the Commission oppose the bill to the Legislature.

LB 257 – Director Lemon indicated that this bill was introduced at the request of the Nebraska REALTOR's Association. He explained that the bill would put a statute of limitations for real estate licensees on civil actions, but not disciplinary actions. He further explained that other professions have had similar legislation passed. Director Lemon reported that this bill would continue to be monitored and would testify in a neutral capacity if requested.

LB 312 – Director Lemon indicated that while this bill is not a regulatory issue, it is an industry issue which would create a sales tax on real estate services. Director Lemon reported that this bill would continue to be monitored.

Information Matters

Errors and Omissions Loss Report – Fourth Quarter 2016

Director Lemon presented the Errors and Omissions Loss Report – Fourth Quarter 2016. 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 – San Diego, CA –
January 10-12, 2017 – Report of Attendee**

Deputy Director Rut discussed her experiences at the ARELLO Meeting.

No action was necessary on this report.

Future Meeting Dates

February 16-17, 2017 – Staybridge Suites, Lincoln

March 16-17, 2017 – Staybridge Suites, Lincoln

April 20, 2017 – Staybridge Suites, Lincoln

May 25-26, 2017 – Staybridge Suites, Lincoln

June 22-23, 2017 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:45 a.m.

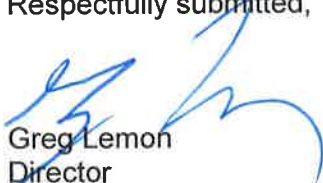
Commissioner Gale was briefly excused from the meeting at 11:54 a.m., and rejoined the meeting at 11:57 a.m.

Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:31 p.m.

At 2:35 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Titus that the meeting adjourn Motion carried with Alloway, Bourne, 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 19, 2017, meeting of the Nebraska Real Estate Commission were available for inspection on **February 2, 2017**, 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 Real Estate, Omaha
Arla Myer, Woods Bros, Lincoln
Rob Predmore, Keller Williams, Lincoln
Johnathan Silvia, CBSHOME Real Estate, Omaha
David Wheeler, CBSHOME Real Estate, Omaha
Jeff Hebb, Nebraska REALTORS Association, Lincoln
Kim Zwiener, Sellstate Performance, Lincoln
Christie Bevington, NRA, Lincoln

Jack Gregg, Sellstate Performance, Lincoln
Leighun Brabec, Home Real Estate, Lincoln
Megan Ourada, Home Real Estate, Lincoln
Jeff Searcy, Searcy Team, Home Real Estate, Lincoln
Mari Jo Mentzer, Larabee, Lincoln
Brad Hulse, Lincoln First Realty, Lincoln