

**NEBRASKA REAL ESTATE COMMISSION**

**January 18, 2018**

**Country Inn & Suites**

**Nebraska Ballroom**

**Lincoln, NE**

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**Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:04 a.m. on January 18, 2018, in the Nebraska Ballroom of the Country Inn & Suites, located at 5353 N 27<sup>th</sup> Street 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. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Moaveni (Ramazani) 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 north wall of the meeting room 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 6a and 6b had been added and the location changed to the Nebraska Ballroom in the Country Inn and Suites meeting room complex since the tentative agenda was mailed to the Commissioners.

Notices were placed on the doors and staff was available to direct people to the new meeting room.

After review of the final agenda, a motion was made by Freeman and seconded by Dover to adopt the final agenda as amended. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

**Minutes of November 16, 2017**

The minutes of the Commission meeting held on November 16, 2017, were considered.

After review, a motion was made by Alloway and seconded by Freeman to approve the minutes as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus 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.

## **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, 2017, was \$1,835,883.54, which compared to a cash fund balance of \$1,778,767.01 on November 30, 2016.

The cash fund balance as of December 31, 2017, was \$1,942,206.47, which compared to a cash fund balance of \$1,993,599.10 on December 31, 2016.

After discussion, a motion was made by Starman and seconded by Dover to file the November and December Receipts and Expenditures Reports for audit. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus 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 Registration – Westgate Branson Woods**

Director Lemon presented a specialized registrations report which included the time-share registration for Westgate Branson Woods. A copy of said report is attached to and made a part of these minutes.

### **Subdivided Land Registration Amendment – Reynolds Lake Oconee**

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

After discussion, a motion was made by Dover and seconded by Starman to approve the report as presented. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus 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 Bourne and seconded by Starman to ratify issuance of the licenses as set forth in the report. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus 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 Dover and seconded by Bourne to ratify the November and December Examination Report for the purpose of issuing licenses. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus 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.

## **Fourth Quarter PSI School Reports**

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of October 16, 2017 through December 31, 2017, 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.

No action was necessary on this report.

## **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 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 Activity 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 Dover and seconded by Starman to ratify the four reports. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus not participating or voting, being absent and excused.

### **Summary of Education Advisory Group Meeting**

Deputy Director Roubal indicated that the Education Advisory Group Meeting was held on January 16, 2018 at the Commission Office.

Deputy Director Roubal explained that the Education Advisory Group discussed the laws relating to broker-approved training and the processes involved. The Education Advisory Group's quarterly meeting will be held in April to discuss possible changes to the broker-approved training process which may allow the training to be utilized better by the brokers.

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.

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

There were no Stipulation and Consent Orders to be presented at this meeting.

### **Disciplinary Hearings**

#### **2016-001, Timothy A. Ogle vs. Z.Z. Moaveni (Ramazani)**

A Hearing was held on January 18 at 10:00 a.m., in the matter of 2016-001. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Z. Z. Moaveni (Ramazani) was present and represented by Counsel Ward F. Hoppe of Lincoln.

It was noted that since the filing of this Complaint, Ms. Ramazani had changed her last name to Moaveni and the new name was changed for the record and used throughout the Hearing.

Commissioner Alloway recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

After Opening Statements, Counsel Prochaska offered seven Exhibits. Counsel Prochaska withdrew his offer of one of the exhibits, the other ten were received by Chairperson Gale. Counsel Prochaska called Duran Cell, Timothy Ogle and Z. Z. Moaveni (Ramazani) as witnesses.

At 11:34 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:45 a.m.

Counsel Hoppe called Timothy Ogle as a witness.

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

At 12:57 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 1:03 p.m.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Freeman and seconded by Dover in Complaint 2016-001, that Z. Z. Moaveni (Ramazani) violated Neb. Rev. Stat. § 81-885.24 (22) and 81-885.24 (29). Motion carried with Bourne, Dover, Freeman, Starman, Titus and Gale voting aye, and with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Titus and seconded by Freeman in Complaint 2016-001, that Z. Z. Moaveni (Ramazani) receive two-years probation, a one-thousand five hundred dollar fine, plus three hours of additional continuing education in the area of license law. Motion carried with Bourne, Dover, Freeman, Starman, Titus and Gale voting aye, and with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

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 1:45 p.m.

## **Informal Special Appearances**

### **Kenton Donzell Duncan, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Duncan's special appearance; a letter of explanation from Mr. Duncan; an Order Setting Aside Conviction for Mr. Duncan; character reference letters for Mr. Duncan; Mr. Duncan's salesperson application form; trial court cases from the State of Nebraska on Mr. Duncan's cases; and Mr. Duncan's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Duncan was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Titus and seconded by Alloway to allow Mr. Duncan to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Duncan 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. Mr. Duncan must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time, within five days for a period of two years. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

### **Darryl Vincent Tolbert, Salesperson Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

A motion was made by Bourne and seconded by Dover that Mr. Tolbert not be allowed to sit for the salesperson examination at this time and wait for a minimum of three years to reapply.

Chairperson Gale suggested an amendment to remove the three year application restriction from the motion and instead offer such limitation as a recommendation. The amendment was accepted by the mover and the second.

Motion carried with Alloway, Bourne, Dover, Starman and Gale voting aye and with Freeman and Titus voting nay.

## **Bryan John Bergdale, Salesperson Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Starman to allow Mr. Bergdale to have a nonresident salespersons license issued upon making proper application. Mr. Bergdale 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. Mr. Bergdale must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time, within five days for a period of three years. Motion carried with Alloway, Dover, Freeman, Starman and Gale voting aye, and with Bourne and Titus voting nay.

## **2017-2018 Objectives – Quarterly Report**

Director Lemon presented an exhibit regarding the proposed 2017-2018 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the progress on the objectives listed. There was discussion regarding the complaint process and the progress made internally to expedite the complaint process. There was also discussion regarding videos and the positive responses from the licensees.

No action was necessary with regard to this matter.

## **Review and Approval of Travel to 2018 Regularly Attended Meetings**

Deputy Director Rut presented an exhibit regarding the estimated costs of Commissioners and staff participating in regularly-attended meetings in 2018. A copy of said exhibit is attached to and made a part of these minutes.

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

### **Consider Approval of Special Assistant Attorneys General Appointment**

Director Lemon presented a letter from the Attorney General's Office appointing Adam Prochaska and Chris Heinrich as Special Assistant Attorneys 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 and Mr. Prochaska's appointments expire December 31, 2018.

A motion was made by Starman and seconded by Bourne to authorize Director Lemon to ratify the appointment by the Attorney general and utilize the services of the Special Assistant Attorneys General pursuant to any existing or future memorandums of understanding effective for the time period of their appointment. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus not participating or voting, being absent and excused.

### **Database Contract Status Update – Closed Session**

At 2:47 p.m., a motion was made by Titus and seconded by Freeman to go into closed session for contractual and possible litigation discussion. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss the status of the database contract.

At 4:02 p.m., a motion was made by Alloway and seconded by Freeman to reconvene in open session. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

After reconvening in open, public session, a motion was made by Freeman and seconded by Alloway to authorize Director Lemon to engage in discussions with the contracted database provider for mutual release of the contract, with any settlement negotiated being the subject to approval by the Commission.

A motion was made by Freeman and seconded by Starman to authorize Director Lemon to communicate with the Appropriations Committee of the Legislature to secure funds for development of a new database up to the amount of five hundred and fifty thousand dollars. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye

### **Legislative Matters**

**LB 15** - Director Lemon reported that this is a carryover bill that would adopt the first-time home buyer savings account act.

**LB 36** - Director Lemon reported that this is a carryover bill to provide for review by state agencies of occupational credentials and provide for critical assessment document.



**LB 127** – Director Lemon reported that this is a carryover bill that would change notice requirements under the Open Meetings Act.

**LB 208** – Director Lemon reported that this is a carryover bill that would change provisions relating to broker trust accounts.

**LB 299** – Director Lemon reported that this is a carryover bill that would adopt the Occupational board Reform Act and change procedures for Rules and Regulations.

**LB 312** – Director Lemon reported that this is a carryover bill that would change and eliminate revenue and taxation provisions.

**LB 426** – Director Lemon reported that this is a carryover bill that would change expense reimbursement provisions for state officers and agencies

**LB 683** – Director Lemon reported that this would provide a license fee exemption for servicemembers and their spouses under the Nebraska Real Estate License Act. A hearing has been scheduled for January 22, 2018.

**LB 695** – Director Lemon reported that this would authorize and define smart contracts and authorize use of distributed ledger technology as prescribed.

**LB 736** – Director Lemon reported that this bill would change real estate agent duties with respect to certain written disclosures. Expands and creates agency disclosure in commercial transactions. A hearing has been scheduled for January 22, 2018. A motion was made by Freeman and seconded by Bourne that the Commission oppose this bill at the Hearing. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

**LB 751** – Director Lemon reported that this is a general government bill which would change agency duties with respect to adoption of rules and regulations.

**LB 1060** – Director Lemon reported that this bill was introduced on January 17, 2018 by Senator Wayne and would be added to the list of Bills to watch. This bill would adopt the Healthy Kids Act and require tests for lead-based hazards in housing.

No action was necessary with regard to these matters.

## **Information Matters**

### **Errors and Omissions Loss Report – Fourth Quarter 2017**

Director Lemon presented the Errors and Omissions Loss Report – Fourth Quarter 2017. 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 – Lost Pines, TX -  
January 9-11, 2018 – Report of Attendees**

Deputy Director Rut discussed her experiences at the ARELLO Meeting.

No action was necessary on this report.

**Future Meeting Dates**

February 15-16, 2018 – Staybridge Suites, Lincoln

March 15-16, 2018 – Staybridge Suites, Lincoln

April 19-20, 2018 – Staybridge Suites, Lincoln

May 24-25, 2018 – Staybridge Suites, Lincoln

June 21-22, 2018 – Staybridge Suites, Lincoln

**Recesses and Adjournment**

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

At 11:34 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:45 a.m.

At 12:52 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 1:03 p.m.

At 1:53 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 2:46 p.m.

Commissioner Titus was excused from the meeting at 3:55 p.m.

Commissioners Alloway, Freeman and Titus were excused from the meeting at 4:28 p.m.

At 4:28 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 4:34 p.m.

At 5:20 p.m., there being no further business to come before the Commission, a motion was made by Bourne and seconded by Dover that the meeting adjourn. Motion carried with Bourne, Dover, Starman and Gale voting aye, and with Alloway, Freeman and Titus 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 18, 2018, meeting of the Nebraska Real Estate Commission were available for inspection on **February 1, 2018**, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,

  
Greg Lemon  
Director

### **Guests Signing the Guest List**

James McCord, Nemaha Valley Board of Realtors, Nebraska City

Christie Bevington, Nebraska REALTORS® Association, Lincoln

Mary Jo Mentzer, NP Dodge, Omaha

Judy Burford, CBSHOME Real Estate, Omaha

