

**NEBRASKA REAL ESTATE COMMISSION**

**November 15, 2018**

**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 November 15, 2018, 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 Lindauer and Blume Hearings.

**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 Titus and seconded by Bourne to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

**Minutes of October 18, 2018**

The minutes of the Commission meeting held on October 18, 2018, were considered.

Commissioner Freeman indicated that the language related to the adopting of motions was unclear on page nine of the Minutes, and suggested amending the wording to clarify the motions.

After review, a motion was made by Starman and seconded by Titus to approve the minutes as amended. Motion carried with Alloway, Bourne, Freeman, Starman, 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 Report for October**

Director Lemon presented the Receipts and Expenditures Report for October. 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 October 31, 2018, was \$1,371,542.18, which compared to a cash fund balance of \$1,466,757.71 on October 31, 2017.

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

## **Specialized Registrations**

### **Time-Share Registration – Disney’s Riviera Resort**

Director Lemon presented a specialized registrations report which included the time-share registration for Disney’s Riviera Resort. A copy of said report is attached to and made a part of these minutes.

A motion was made by Titus and seconded by Bourne to approve the registration as presented. Motion carried with Alloway, Bourne, Freeman, Starman, 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.

There was discussion regarding nonresident team leaders and the possibility of future clarification of rules regarding supervision of team regulation. It was discussed that Director Lemon would research how other jurisdictions addressed concern regarding nonresident team leaders and report findings back to the Commission at a future meeting.

After review, a motion was made by Alloway and seconded by Titus to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

## **Examination Report - October**

Deputy Director Roubal presented for ratification the October Examination Report, a copy of which is attached to and made a part of these minutes. (Note: It was discovered that the Exhibit for this Agenda Item was incorrect. The graph under the first chart was renamed to "64 Test Takers in October", first time test taker calculation percentage calculations and accompanying pie chart were corrected and the corrected document is attached to these minutes.)

After review, a motion was made by Alloway and seconded by Bourne to ratify the October Examination Report as amended for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

## **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.

(Note: It was discovered after the Meeting that the Exhibit for this Agenda Item was incorrect. There were names listed on this roster that had only passed one portion of the examination but not both which have since been removed. The Exhibit was corrected for attachment to these minutes.)

No action was necessary on this report.

## **Real Estate Education Matters**

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

## **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 2018-007 - Laura Paynter vs. Mary Clare Marsh

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 Bourne that the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

After further discussion, it was the consensus of the Commission that Deputy Director Cell notify the Nebraska Department of Insurance of the practice being conducted by the title company as identified in this complaint.

**Item B** Complaint 2018-008 - Fountain Hills Properties, LLC vs. Thomas David McGregor & Alexis Lyn McNeal

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 Starman that the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

**Item C** Complaint 2018-009 - Greg Wayman vs. Timothy Leroy Reeder & April Marie Tucker

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, Bourne, Freeman, Starman, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

**Item D** Complaint 2018-015 - Norma J. Shullaw vs. Kevin Michael Yontz, Jayne Von Forell Debus & Karalyn Hoefler

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 dismissed without prejudice. Motion carried with Alloway, Bourne, Freeman, Titus and Gale voting aye, with Starman abstained, 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 this meeting.

## **Disciplinary Hearings**

### **10:30 a.m. – Complaint 2017-028, Commission vs. Matthew Richard Lindauer**

A Hearing was held on November 15 at 10:30 a.m., in the matter of 2017-028. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Matthew Richard Lindauer was present without Counsel.

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

After Opening Statements, Counsel Prochaska offered ten Exhibits. Counsel Prochaska called Duran Cell and Matthew Richard Lindauer as witnesses.

Matthew Richard Lindauer 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 Titus and seconded by Freeman in Complaint 2017-028, that Matthew Richard Lindauer violated Neb. Rev. Stat. § 81-885.12(4) and 81-885.24(29). Motion carried with Bourne, Freeman, Starman, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused, 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 either Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Starman in Complaint 2017-028, that Matthew Richard Lindauer should receive a one-year suspension with thirty-days served and the remainder served on probation; pay a civil fine of two-thousand dollar; notify the Commission staff and the designated broker of any criminal charge, except those charges where there is no possible sentence of jail time for a period of three years; and take an additional six hours of continuing education in the areas of license law and ethics.

Commission Bourne offered an amendment to change the suspension to ninety days served. The amendment was not accepted by the mover and second.

Director Lemon suggested the terms of the conditions should match regarding the suspension and probation periods, which would change it from a one-year suspension to a three-year suspension. The suggestion was accepted by the mover and the second.

Motion failed with Freeman and Starman voting aye, with Bourne, Titus, and 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.

A motion was made by Titus and seconded by Bourne in Complaint 2017-028, that Matthew Richard Lindauer's license be suspended for three years, with ninety-days served and the remainder served on probation; Mr. Lindauer must notify the Commission staff and the designated broker of any criminal charge, except those charges where there is no possible sentence of jail time for a period of three years; and pay a civil fine of one-thousand dollars.

Motion carried with Bourne, Starman, Titus and Gale voting aye, with Freeman voting nay, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, 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 Respondent 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 11:50 a.m.

### **2:00 p.m. – Complaint 2017-029, Commission vs. Dirk Conrad Blume**

A Hearing was held on November 15 at 2:05 p.m., in the matter of 2017-029. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Dirk Conrad Blume was present via telephone without Counsel.

After Opening Statements, Counsel Prochaska offered ten Exhibits. Counsel Prochaska called Duran Cell and Dirk Conrad Blume as witnesses.

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 Alloway and seconded by Bourne Complaint 2017-029, that Dirk Conrad Blume violated Neb. Rev. Stat. §81-885.12 and 81-885.24(29). Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, and 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 #2010-013, dated October 28, 2010, suspending Mr. Blume's license for six months with the entire six months stayed and served on probation, plus an additional 3 hours of continuing education, in the area of license law and pay a civil fine of \$1,500.00. Mr. Blume violated Neb. Rev. Stat. §81-885.24(29)

Demonstrating negligence, incompetency, or unworthiness to act as a salesperson; for conducting licensed real estate activities in Nebraska during the period of January 1, 2010 and January 31, 2010, a period of time when Mr. Blume failed to renew his real estate salesperson's license for 2010.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Starman and seconded by Bourne in Complaint 2017-029, that Dirk Conrad Blume's real estate license be revoked. Motion carried with Alloway, Bourne, Freeman, Starman, 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 indicated that typically the Respondent incurs the costs for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4.

After discussion, a motion was made by Titus and seconded by Freeman that the assessment of the fees as provided for in 305 NAC Chapter 4 be waived for Mr. Blume. Motion carried with Alloway, Freeman, Starman, Titus and Gale voting aye, with Bourne voting nay, and with Dover not participating or voting, being absent and excused.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 3:33 p.m.

### **Informal Special Appearances**

#### **Melony Lynn Nance, Salesperson Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Alloway and seconded by Titus to allow Ms. Nance to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Nance 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. Nance must also notify the Commission staff and the designated broker 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, Freeman, Starman, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

### **Gregory Allen Eloge, Salesperson Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Alloway and seconded by Starman to allow Mr. Eloge to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Eloge 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. Eloge must also notify the Commission staff and the designated broker 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, Freeman, Starman, Titus and Gale voting aye, with Bourne voting nay, and with Dover not participating or voting, being absent and excused.

### **Consider Legislation Regarding Pre-License Education and Broker Qualifications**

Director Lemon presented draft legislation intended to address the Nebraska Realtor's Associations recommendation regarding increased pre and post license education requirements. A copy of said exhibit is attached to and made a part of these minutes. Shannon Harner, Broker for HomeServices of Nebraska, Inc. was present to discuss this matter.

Director Lemon noted that the information that was provided to the Revisor of Statutes was the same in substance as presented at the last meeting. The proposed legislation was sent to the Nebraska Realtor's Association for comment. Director Lemon explained the changes as provided in this bill and how this bill codifies the Nebraska Realtor's task force education recommendation adding six hours of pre-license education and twelve hours of post license education, and limiting broker by education provisions.

Director Lemon distributed comments from Shannon Harner, Broker for HomeServices of Nebraska, Inc., on the proposed legislative revision. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14a.

Ms. Harner applauded the concept of proposed legislation, however, she felt the current language was too broad and offered the suggested changes as further explained in the comments she provided that were distributed by Director Lemon.

There was discussion regarding the impact to the industry and public of the proposed legislative changes and those proposed by Ms. Harner.

There was also discussion regarding the equivalent experience needed including understanding standards, management, professionalism, supervision, transaction information required to protect the public with no experience as a designated broker.



At 10:20 a.m., Chairperson Gale declared a recess of this Agenda Item in order for the Lindauer Hearing to take place. This Agenda Item reconvened at 11:50 a.m.

There was discussion regarding different levels of licenses, endorsements, or education for designated brokers.

A motion was made by Freeman and seconded by Starman to adopt the language in the draft legislation, with the following changes in 3(b) to read as "Upon special application and hearing before the Commission, provide satisfactory evidence of: 1) equivalent or sufficiently related experience in real estate related industry; or 2) hardship that a real estate brokerage is unable to retain the services of a broker who has the experience required in this subsection to act as its designated broker and...". Also, that the following language be added to the legislation: "No person issued a Broker's license may act as a designated broker for any other licensee until such person has taken additional courses of post-licensure education in the subjects of Real Estate Trust Accounting/Brokerage Finance, Business Ethics and Risk Management (which shall include sections on RESPA and Information Security), except that the commission may extend, for up to six months, the post-licensure course work requirement under the hardship provisions above."

There was discussion regarding wording related to real estate related industries as defined in 3b1 in the pending motion.

Commissioner Titus offered an amendment to 3b1 to instead read "equivalent or sufficiently relevant experience in a real estate related industry". The amendment was accepted by the mover and the second.

Director Lemon suggested the removal of the parenthetical language as stated in the pending motion and to remove the specific references to RESPA and Information Security. The suggestions was accepted by the mover and the second.

An amendment was offered by the mover that the language be sent for revision to the bill drafter and introduced to the legislature. The amendment was accepted by the second.

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

### **Review Procedures for Filing Complaints in Instances of Multiple Advertising Violations**

Director Lemon explained that the Commission had approved the Director filing advertising complaints when initial warnings were issued by the Commission office. He further explained that there are several Director generated complaints pending the outcome of this discussion. Director Lemon indicated that he was seeking advice as to whether the designated broker should be named as a Respondent in the Complaints for failure to supervise since all advertising should be done under supervision of a designated broker or if there is a presumption that they should not share the responsibility.

There was discussion regarding the responsibility of designated brokers to supervise advertising but felt the expectation may be unreasonable for all designated brokers.

Commissioner Titus indicated that the designated broker should follow up with the licensees regarding advertising issues and depending on the problem, perhaps each complaint against the broker can be reviewed on a case-by-case basis.

Director Lemon explained that the procedure, which is consistent for all licensees, in the Commission office is to advise and educate the licensee of any advertising violation and include the broker in the correspondence. The correspondence also explains that further violations may result in a Complaint being filed against them and their designated broker.

There was discussion regarding the advertising guidelines and many felt that a good portion of the licensees understand the advertising guidelines, some licensees do not understand them and some licensees do not care to understand them. In any case, they did not feel the guidelines were hard to understand.

There was further discussion regarding how much responsibility should be put on the designated broker and if a complaint should also be filed against him or her automatically when the Director filed advertising complaint is filed against the licensee.

There was discussion that a Designated Broker can be included in a complaint and be dismissed later if they prove that they supervise sufficiently. There was discussion about using discretion and providing an investigative report when necessary regarding a team leader or a designated broker.

Commissioner Titus indicated that the complaint against the licensee and the team leader would be different standards than the broker.

Chairperson Gale recapped the discussion and indicated that advertising violation complaints can be filed by the Director against the Licensee and the Team Leader but complaints against the broker should be provided to the Commission as an investigative report.

No action was necessary on this report.

### **Adopt John Gale's Resolution**

Commissioner Freeman presented a resolution commemorating service on the Commission by John Gale. A copy of said resolution is attached to and made a part of these Minutes.

A motion was made by Freeman and seconded by Alloway that the resolution for John Gale be adopted as presented. Motion carried with Alloway, Bourne, Freeman, and Starman voting aye, with Gale abstained, and with Dover not participating or voting, being absent and excused.

### **Information Matters**

There were no information matters to be presented at this meeting.

### **Future Meeting Dates**

January 24-25, 2018 – Staybridge Suites, Lincoln  
February 21-22, 2018 – Staybridge Suites, Lincoln

### **Recesses and Adjournment**

At 10:22 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

At 1:05 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 2:03 p.m.

At 3:50 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Freeman that the meeting adjourn. Motion carried with Alloway, Bourne, Freeman, Starman, Titus and Gale voting aye, and 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 November 15, 2018, meeting of the Nebraska Real Estate Commission were available for inspection on November 20, 2018, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

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

Jim McCord, Nemaha Valley Board of Realtors, Nebraska City  
Terry Mayrose, Lincoln  
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln  
Christie Bevington, Nebraska REALTORS® Association, Lincoln  
Kim Zwiener, Sellstate, Lincoln  
Shannon Harner, HomeServices, Lincoln

