

NEBRASKA REAL ESTATE COMMISSION

August 19, 2021

Country Inn & Suites

Omaha Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:04 a.m. on August 19, 2021, in the Omaha Room of the Country Inn & Suites, located at 5353 N 27th 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 Antwan Montague, and Deputy Director for Licensing Monica Rut. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Hayes Hearing.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice thereof relating to this meeting, which is attached to and made a part of these minutes. Chairperson Evnen 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 Evnen 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 southeast corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Evnen asked that guests sign the guest list.

Director Lemon noted that agenda items 16c and 16d had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Starman and seconded by Bourne to adopt the final agenda as presented. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Minutes of June 17, 2021

The minutes of the Commission meeting held on June 17, 2021, were considered.

After review, a motion was made by Titus and seconded by Ritter to approve the minutes as presented. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Public Comment

Chairperson Evnen 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 Report for June and July

Director Lemon presented the Receipts and Expenditures Reports for June and July. 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 June 30, 2021, was \$1,323,748.73, which compared to a cash fund balance of \$1,669,095.67 on June 30, 2020.

The cash fund balance as of July 31, 2021, was \$1,309,005.24, which compared to a cash fund balance of \$1,610,002.81 on July 31, 2020.

After discussion, a motion was made by Dohse and seconded by Titus to file the June and July Receipts and Expenditures Reports for audit. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

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.

Consider 2022 License Fees

Director Lemon presented an exhibit in which the Budget and Finance Subcommittee recommended a reduction in broker and salesperson renewal fees and original license fees for 2022. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the Budget Subcommittee recommended a decrease of ten dollars for salespersons and brokers for the 2022 broker renewal fees and new licenses issued to original salesperson and broker licensees effective January 1, 2022. Director Lemon reviewed the documentation as set out in the exhibit noting the revenue projections and the lowest anticipated level the fund balance may reach as shown on the exhibit.

After review, a motion was made by Starman and seconded by Ritter to establish the fee reduction as contained in the report, as presented. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Rut presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Titus and seconded by Ritter to ratify issuance of the licenses as set forth in the report. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Examination Report – June and July

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

There was discussion regarding the inaccurate data that is being represented on this report. A clarification was requested for next month's reports.

After review, a motion was made by Dohse and seconded by Starman to ratify the June and July Examination Reports for the purpose of issuing licenses. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Examination Passing Rosters

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

No action was necessary on this report.

PSI Second Quarter School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of April 1, 2021 through June 30, 2021, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal explained each of the reports relating to the school.

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Provider/Course Approval

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

Pre-License Education Course Approval

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

Pre-License Education Instructor Approval

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

Post-License Education Instructor Approval

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

Continuing Education Provider/Activity Approval

Deputy Director Roubal presented for ratification the Continuing Education Provider/Activity 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.

Commission-Approved Training Activity Recognition

Deputy Director Roubal presented a Commission-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 Dohse and seconded by Starman to ratify the eight reports. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Report on Instructor Development Workshop held July 15, 2021

Deputy Director Roubal reported that the Instructor Development Workshop (IDW) was well attended. She felt that JMan Seminars put on a great zoom presentation and felt that she and the attendees learned a lot about ZOOM presentations. She also noted that the comments made on the evaluation forms were very positive and felt the workshop was well received.

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Deputy Director Montague 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 2019-028 – Randall Burianek vs. Jeffery J. Johnson

Deputy Director Montague 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 Starman and seconded by Dohse that the complaint be dismissed without prejudice. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Item B Complaint 2020-032 – Michael Kuzma vs. Rocio Linda Cubas

Deputy Director Montague 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 Ritter and seconded by Gehrki that the complaint be dismissed without prejudice. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Item C Complaint 2020-031 – James Krieger & Kathleen Taylor-Krieger vs. John Robert Miles

Deputy Director Montague 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 Gehrki and seconded by Starman that the complaint be dismissed without prejudice. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2021-001,
Commission vs. Shannon Renae Mesenbrink**

Deputy Director Montague presented a Stipulation and Consent Order in the matter of Complaint 2021-001, Commission vs. Shannon Renae Mesenbrink. A copy of said Order is attached to and made a part of these minutes.

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

After discussion, a motion was made by Ritter and seconded by Gehrki to enter into the Order as presented. Motion carried with Bourne, Gehrki, Ritter, Starman, Titus and Evnen voting aye, with Dohse not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Disciplinary Hearings

August 19, 10:30 a.m. – Petition for Review Hearing on 2021-001PR, Commission vs. Ashley Hayes

A Hearing was held on August 19 at 10:47 a.m., in the matter of 2021-001PR. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Ashley Hayes was present without Counsel.

After opening statements, Counsels Prochaska offered 23 Exhibits, all of which were received by Chairperson Evnen. Counsel Prochaska called Antwan Montague and Ashley Hayes as witnesses.

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

The Commission deliberated on the matters adduced at hearing.

At 11:56 a.m., a motion was made by Titus and seconded by Gehrki to go into closed session to deliberate matters and to protect the reputation of Ms. Hayes. A motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

At 12:25 p.m., a motion was made by Titus and seconded by Starman to reconvene in open session. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

A motion was made by Titus and seconded by Dohse in the Petition for Review P2021-001, to affirm the decision that Ashley Hayes not be allowed to sit for the salesperson examination at this time. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

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

Chairperson Evnen notified the Respondent that as a part of the Order in this matter, the Respondent is required, under Nebraska Revised Statutes Section 84-914(1) and Title 305 Nebraska Administrative Code, Chapter 4-007.05, to pay the costs of the appearance fee by the court reporter, and any and all witness fees, including mileage and the cost of serving any witness. The Respondent will be billed by the Commission Office, or the amount may be specified in the Order, and will have thirty days from receipt of the costs to totally reimburse the Commission.

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

The Hearing was adjourned at 12:27 p.m.

Informal Special Appearances

Kindra Marie Fenceroy, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Ms. Fenceroy explained the situations regarding her criminal history.

After discussion, a motion was made by Gehrki and seconded by Titus to allow Ms. Fenceroy to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Fenceroy 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. Fenceroy 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 four years.

After further discussion, a motion was made by Evnen and seconded by Bourne to table the motion until next meeting to allow Ms. Fenceroy the opportunity to review and conclude any pending charges and bond payment in Illinois. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Review and Approval of Travel to ARELLO Investigators Workshop – October 6-8, 2021 – Birmingham, AL

Deputy Director Rut presented an exhibit regarding the estimated costs of staff participating in the ARELLO Investigators Workshop. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Gehrki to approve the reimbursement of expenditures for staff who attend the meeting set forth in the exhibit. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, Titus and Evnen voting aye.

Adopt Jim Titus Resolution

Director Lemon presented a resolution commemorating service on the Commission by Jim Titus. A copy of said resolution is attached to and made a part of these Minutes.

Evnen thanked him for his service on the Commission and read the resolution.

The resolution for Jim Titus was unanimously approved by acclamation.

Information Matters

ARELLO Annual Conference - September 15-19, 2021 - Orlando, FL

Director Lemon explained that the deadline for registration is September 15-19, 2021, and asked which Commissioners were planning on attending the conference.

No action was necessary on this report.

Errors and Omissions Loss Report – Second Quarter 2021

Director Lemon presented the Errors and Omissions Loss Report – Second Quarter 2021. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

Enforceability of Text Messages in Real Estate Contracts

Director Lemon presented an exhibit regarding text message enforceability and electronic signatures. A copy of said exhibit is attached to and made a part of these Minutes.

There was discussion regarding contracts and what the court may deem enforceable. Director Lemon summarized the exhibit and asked for input if this was the best practice to use for real estate contracts.

The Commission concurred that the use of text messages is not a recommended practice for real estate contracts.

No action was necessary at this time.

ARELLO Mid-Year Meeting – June 30- July 3, 2021 - San Antonio, Texas - Report of Attendees

Director Lemon noted that Commissioners Dohse, Ritter, and Starman and Deputy Director Rut attended the ARELLO Mid-Year Meeting.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

No action was necessary on this report.

Future Meeting Dates

September 23-24, 2021- Country Inn and Suites, Lincoln

October 21-22, 2021- Country Inn and Suites, Lincoln

November 18-19, 2021- Country Inn and Suites, Lincoln

Recesses and Adjournment

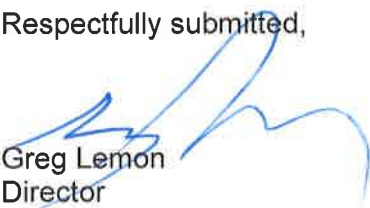
At 10:27 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:47 a.m.

At 12:27 p.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 12:29 p.m.

At 1:26 p.m., there being no further business to come before the Commission, the Chairperson declared the meeting adjourned.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the August 17, 2021, meeting of the Nebraska Real Estate Commission were available for inspection on August 23, 2021, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Debbie Mitchell, Coldwell Banker REA, Omaha
Kim Zwiener, Sellstate Empire Realty, Lincoln
Charles Chadwick, CNC Realty, Omaha
Leighun Brabec, Larabee School of Real Estate, Lincoln
Dale Greaves, Nebraska Realty, Lincoln

