

NEBRASKA REAL ESTATE COMMISSION

September 15, 2022

Country Inn & Suites

Omaha Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:03 a.m. on September 15, 2022, 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 Enforcement Samantha Lowery, and Deputy Director for Licensing Monica Rut.

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 south 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 item 11a and 13b had been added since the tentative agenda was mailed to the Commissioners.

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

Minutes of August 18, 2022

The minutes of the Commission meeting held on August 18, 2022, were considered.

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

Chairperson Evnen wanted to congratulate Commissioner Dohse for becoming the 2023 Nebraska REALTORS® Association's President and wanted to give praise to the current president, Connie Burleigh for the achievements made in such a difficult year.

Receipts and Expenditures Report for August

Director Lemon presented the Receipts and Expenditures Report for August. 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 August 31, 2022, was \$1,481,702.35, which compared to a cash fund balance of \$1,237,809.42 on August 31, 2021.

After discussion, a motion was made by Gehrki and seconded by Dohse to file the August Receipts and Expenditures Report for audit. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman 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 Starman and seconded by Ritter to ratify issuance of the licenses as set forth in the report. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman and Evnen voting aye.

License Statistic Report for March

Deputy Director Rut presented the License Statistic Report for the month of March, a copy of which is attached to and made a part of these minutes.

Deputy Director Rut noted that the report would be provided to the Commission on a monthly basis.

No action was necessary on this report.

Examination Report - August

Deputy Director Rut presented for ratification the August Examination 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 Gehrki to ratify the August Examination Report for the purpose of issuing licenses. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman and Evnen voting aye.

Examination Passing Roster

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

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Provider/Course Approval

Director Lemon 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.

Post-License Education Instructor Approval

Director Lemon 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 Activity Approval

Director Lemon presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. Under the provider Omaha Area Board of Realtors, the course named Inflation and Real Estate showed a course number of "(1356R)" when, in fact, the course number should have been "(1356)". The Exhibit was corrected for attachment to these minutes.)

Continuing Education Instructor Approval

Director Lemon presented for ratification the Continuing Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

Commission-Approved Training Activity Recognition

Director Lemon 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 Ritter and seconded by Gehrki to ratify the five reports as amended. Motion carried with Bourne, Gehrki, Post, Ritter, Starman, and Evnen voting aye, and with Dohse not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Pending Sworn Complaints and Investigative Matters

Deputy Director Lowery 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. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The hearings listed on page four of the Exhibit for November 17, 2022 did not include Complaint 2021-005, Stephen Anthony vs. Khanh Ngoclu Tran & Andrew James Panebianco, which will be held at 1:30 p.m. The Exhibit was corrected for

attachment to these minutes.)

No action was necessary on this report.

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

Item A Investigative Report

Deputy Director Lowery presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Ritter and seconded by Dohse that the complaint be set for hearing. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Item B Complaint 2021-018

Deputy Director Lowery 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 Dohse that this complaint be held in abeyance and a new complaint be filed against the respondent per the Staff recommendation. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Item C Complaint 2022-019; Complaint 2022-020; Complaint 2022-021; Complaint 2022-022

Deputy Director Lowery 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 Ritter that this complaint be held in abeyance and a new complaint be filed against the Affiant 1 per the Staff recommendation. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Item D Complaint 2022-005 and Complaint 2021-021

Deputy Director Lowery 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 Dohse and seconded by Ritter that this complaint be held in abeyance and a new complaint be filed against the respondent per the Staff recommendation. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Item E Complaint 2021-015

Deputy Director Lowery 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 this complaint be held in abeyance and a

new complaint be filed against the respondent per the Staff recommendation. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Item F Complaint 2021-011- James D. Hertel vs. Larry Dean Flamme & James Marlin Brabec

Deputy Director Lowery asked that this matter be tabled for further investigation.

A motion was made by Gehrki and seconded by Starman to table this matter. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

ITEM G 2022-025 – Nebraska Real Estate Commission v. Michael Pokorny

Deputy Director Lowery indicated that the Respondent in this matter is deceased and therefore, the Commission no longer had jurisdiction over this matter.

A motion was made by Ritter and seconded by Gehrki that Complaint 2022-025 be dismissed without prejudice. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

Presentation of Stipulation and Consent Orders

Complaint 2022-011, Commission vs. Kelby Robert Kraft

Deputy Director Lowery presented a Stipulation and Consent Order in the matter of Complaint 202-011, Commission vs. Kelby Robert Kraft. A copy of said Order is attached to and made a part of these minutes.

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

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

Disciplinary Hearings

September 15, 10:30 a.m. – Petition for Review Hearing on P2022-001, Scott Lawrence Mausbach vs. Commission

The Hearing regarding Petition for Review P2022-001, Scott Lawrence Mausbach vs. Commission was continued.

Complaint 2022-011 Commission vs. Kelby Robert Kraft

The Hearing regarding Complaint 2022-011, Commission vs. Kelby Robert Kraft was continued.

Informal Special Appearances

Tyla Renice Colliers, Non-Resident Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Ms. Collier explained the situations regarding her criminal history.

A motion was made by Bourne and seconded by Starman that Ms. Collier to deny the license. not be allowed to sit for the salesperson examination at this time. Motion carried with Bourne, Dohse, Gehrki, Ritter, and Starman voting aye and with Post and Evnen voting nay.

Michael Thomas Rensch, Informal Special Appearance - Reappearance

Director Lemon presented exhibits which included: correspondence regarding Mr. Rensch's preliminary informal special appearance; a journal entry and order from the Douglas County court; Mr. Rensch's salesperson application form; trial court cases from the State of Nebraska on Mr. Rensch's cases; Mr. Rensch's criminal history report; and a copy of Mr. Rensch's previous preliminary informal special appearance on August 18, 2022. A copy of said exhibit is attached to and made a part of these minutes. Mr. Rensch was present.

Chairperson Evnen reviewed the procedure for preliminary informal special appearances.

Mr. Rensch explained the situations regarding his criminal history.

After discussion, a motion was made by Gehrki and seconded by Bourne to allow Mr. Rensch to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Rensch 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. Rensch 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 Bourne, Dohse, Gehrki, Post, Ritter, Starman and Evnen voting aye.

Proposed 2023 Commission Legislation

Director Lemon presented a list of possible changes for the 2023 Legislative Session. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that there are three possible changes to discuss, and drafts will be brought back for review should the Commission choose to proceed with the changes.

Director Lemon explained the current law regarding Commissioner appointments is based upon old congressional districts and approximately twenty years out of date, it was the consensus of the Commission that new legislation be drafted to base Commissioner appointments on the current congressional districts.

Director Lemon noted that based upon the recommendations of the wholesaler subcommittee, language may be clarified or enhanced to better regulate this activity.

Director Lemon indicated that membership campground laws were passed based on the national industry at the time. Many campgrounds falling under the definition of membership campgrounds are no longer national companies, and the laws make it difficult companies to register. Membership campground operators and the public are unaware of the laws, and it is very difficult to enforce with the limited Commission staff. He also indicated that there are many provisions of the law that should remain in force to protect the public, however, the registration could be eliminated should the Commission desire.

No action was necessary on this report.

Proposed Regulatory Clean Up and Amendments

Director Lemon presented a list of the draft regulation changes. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the changes are to Title 299, Chapters 1, 2, 5 and 7. He indicated that when statutes change, the regulations may not have been updated at the same time so these items would coincide with the prior statutory changes. Director Lemon reviewed the changes as described on the exhibit.

No action was necessary on this report.

Information Matters

ARELLO Annual Conference – August 29-September 2, 2022, Nashville, TN – Report of Attendees

Director Lemon noted that Commissioner Dohse, and Deputy Director Rut and he attended the ARELLO Annual Meeting.

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

No action was necessary on this report.

Future Meeting Dates

October 20-21, 2022 - Country Inn and Suites, Lincoln
November 17-18, 2022 - Country Inn and Suites, Lincoln
January 19-20, 2023 – Country Inn and Suites, Lincoln
February 16-17, 2023 – Country Inn and Suites, Lincoln
March 16-17, 2023 – Country Inn and Suites, Lincoln

April 20-21, 2023 – Country Inn and Suites, Lincoln
May 18-19, 2023 – Country Inn and Suites, Lincoln
June 15-16, 2023 - Country Inn and Suites, Lincoln

Recesses and Adjournment

At 10:10 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:18 a.m.

At 11:43 a.m., there being no further business to come before the Commission, a motion was made by Gehrki and seconded by Dohse that the meeting adjourn. Motion carried with Bourne, Dohse, Gehrki, Post, Ritter, Starman, and Evnen voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the September 15, 2022, meeting of the Nebraska Real Estate Commission were available for inspection on **September 29**, 2022, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Ryan Swinney, Nebraska REALTORS® Association, Lincoln
Leighun Brabec, Larabee School, Lincoln