

**NEBRASKA REAL ESTATE COMMISSION**

**March 16, 2023**

**Country Inn & Suites**

**Lighthouse Room**

**Lincoln, NE**

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**Opening**

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:03 a.m. on March 16, 2023, in the Lighthouse Room 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 Mary Daily, 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 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 Gehrki and seconded by Ritter to adopt the final agenda as presented. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

**Minutes of February 23, 2023**

The minutes of the Commission meeting held on February 23, 2023, were considered.

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

### **Receipts and Expenditures Report for February**

Director Lemon presented the Receipts and Expenditures Report for February. 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 February 28, 2023, was \$1,782,279.25, which compared to a cash fund balance of \$1,722,460.14 on February 28, 2022.

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

No action was necessary on this report.

### **Examination Report - February**

Deputy Director Daily presented for ratification the February 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 February Examination Report for the purpose of issuing licenses. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

### **Examination Passing Roster**

Deputy Director Daily 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 Instructor Approval**

Deputy Director Daily 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 Daily 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 Provider Significant Change**

Deputy Director Daily presented for ratification the Continuing Education Provider Significant Change Report, a copy of which is attached to and made a part of these minutes.

### **Commission-Approved Training Provider/Activity Recognition**

Deputy Director Daily presented a Commission-Approved Training Provider/Activity Recognition Report, a copy of which is attached to and made a part of these minutes.

### **Commission-Approved Training Activity Recognition**

Deputy Director Daily presented a Commission-Approved Training Activity Recognition Report, a copy of which is attached to and made a part of these minutes.

### **Continuing Education Renewal Report**

Deputy Director Daily presented the Continuing Education Renewal Report, a copy of which is attached to and made a part of these minutes.

### **Commission-Approved Training Expirations**

Deputy Director Daily presented the Commission-Approved Training Expirations, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Gehrki and seconded by Ritter to ratify the seven reports. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

### **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.

No action was necessary on this report.

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

**Item A** Complaint 2022-009 - Karie Lynn Milford vs. Jasmin Kalyn Jensen

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 Dohse that the complaint be dismissed without prejudice. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

**Item B** 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 Dohse and seconded by Gehrki that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

**Item C** Complaints 2022-019 - Sara Muchowicz vs. Bryan D. Hartmann; 2022-020 - Sara Muchowicz vs. Timothy Michael Kerrigan; 2022-021 - Sara Muchowicz vs. Richard Secor, Jr.; 2022-022 – Sara Muchowicz vs. Jeffrey William Wyatt

Deputy Director Lowery requested Complaints 2022-019, 2022-020, 2022-021 and 2022-022 be dismissed. Deputy Director Lowery explained that Complaint 2022-019, 2022-020, 2022-021 and 2022-022 were presented to the Commission as investigative matters. The Commission had voted to file a new complaint on its own motion and to hold Complaints 2022-019, 2022-020, 2022-021 and 2022-022 in abeyance until the new complaint had been adjudicated. Complaint 2022-035 was the new complaint.

A motion was made by Gehrki and seconded by Starman to dismiss Complaint 2022-019, 2022-020, 2022-021 and 2022-022, since the Commission held the Hearing for Complaint 2022-035 at the prior meeting. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

**ITEM D** Complaints 2021-018 - Nicholas C. Muchowicz vs. Vincent W. Leisey; 2021-019 – Nicholas C. Muchowicz vs. Dale Koch Scott

Deputy Director Lowery requested Complaints 2021-018 and 2021-019 be dismissed. Deputy Director Lowery explained that Complaints 2021-018 and 2021-019 were presented to the Commission as investigative matters. The Commission had voted to file a new complaint on its own motion and to hold Complaints 2021-018 and 2021-019 in abeyance until the new complaint had been adjudicated. Complaint 2022-038 was the new complaint.

A motion was made by Gehrki and seconded by Ritter to dismiss Complaint 2021-018 and 2021-019, since the Commission accepted a Stipulation and Consent Order for Complaint 2022-030 at this meeting. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

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

### **Complaint 2023-003, Rachel Sabata v. Erica Lynn Zywiec**

Deputy Director Lowery presented a Stipulation and Consent Order in the matter of Complaint 2023-003, Rachel Sabata v. Erica Lynn Zywiec. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Gehrki and seconded by Dohse to enter into the Order as presented. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, and Evnen voting aye.

### **Complaint 2022-038, Commission vs. Dale Koch Scott**

Deputy Director Lowery presented a Stipulation and Consent Order in the matter of Complaint 2022-038, Dale Koch Scott. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Ritter to enter into the Order as presented. Motion carried with Bourne, Dohse, Gehrki, Ritter, Starman, and Evnen voting aye.

## **Disciplinary Hearings**

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

## **Informal Special Appearances**

### **Aden Boyle, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Boyle explained the situations regarding his criminal history.

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

## **Broker Qualification Review**

### **Susan Beth Olson**

Director Lemon presented exhibits which included: correspondence regarding Ms. Olson's Broker Qualification Review Hearing; a letter of explanation from Ms. Olson, character reference letters for Ms. Olson, Ms. Olson's Broker Qualification Review form, and Ms. Olson's resume. A copy of said exhibit is attached to and made a part of these minutes. Ms. Olson was present.

Chairperson Evnen reviewed the procedure for Broker Qualification Review Hearings.

Ms. Olson explained the situation regarding the request for the hardship.

After discussion, a motion was made by Ritter and seconded by Geiser that the Director prepare an order of the Commission that the applicant has not supplied sufficient evidence of a hardship in finding an available qualified broker to provide designated broker services in the region to qualify under the statutory provision. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

### **Review of Disclosure and Advertising Policies Under the License Act and Regulations when a Licensee is Acting as a Principal in a Real Estate Transaction**

Director Lemon presented the relevant regulations as it relates to licensees acting as principals in solicitations for real estate to identify themselves in advertising and notices. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that there are rules regarding disclosure of license status in solicitations when a real estate licensee is selling real estate but not when a real estate licensee is sending solicitations for buying real estate. He indicated that should the Commission desire to make a change to the Rules and regulations, it would require a rule hearing.

Commissioner Geiser presented an example of a solicitation of a real estate licensee soliciting buying real estate. A copy of said exhibit is attached to and made a part of these minutes and denoted as exhibit 15a1.

Commissioner Geiser indicated that it was his understanding of the rules and regulations that real estate licensees had to disclose their profession during all solicitations and advertising. Commissioner Gehrki explained that solicitations should indicate, in his opinion, that they are a real estate licensee and that they are asking for personal reasons.

Director Lemon suggested that he draft proposed changes to the rules and regulations as discussed and bring those changes to a future meeting. He further indicated that acting as a private party, acting as an agent, or not acting on someone else's behalf, and disclosing early would be included in the draft changes.

Commissioner Dohse indicated that he would also like to see added in the draft changes to clearly apply in situations where the licensee has an interest in a limited liability company or a other business entity acting as principal in the transaction. Director Lemon indicated that he would clarify the language and get that added as well.

No action was necessary with regard to this matter.

**Consider Extension of License Examination Contract Period to August 31, 2023**

Director Lemon presented a letter of explanation to extend the current contract with PSI. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that should the new License Examination Contract get awarded in May, with a start date of July 1, it may be difficult for a vendor to develop and implement a new license examination in that short time frame. To eliminate the concern of a possible challenge, Director Lemon contacted the current vendor to ask for an extension which they agreed to under the same terms and conditions as the current contract.

A motion was made by Starman and seconded by Gehrki to authorize Director Lemon to enter into an agreement with the current License Examination vendor and to extend the contract to August 31, 2023 with the same terms and conditions as the current contract. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye.

**Legislative Matters**

**LB 16** - Director Lemon reported that a letter of opposition was sent, and he will continue to monitor this bill.

**LB 43** - No new information presented.

**LB 92** – Director Lemon reported that this bill was placed on General File.

**LB 151** – No new information presented.

**LB 152** – Director Lemon reported that this bill was placed on General File.

**LB 628** – Director Lemon reported that this bill was placed on Select File.

**LB 684** – Director Lemon reported that this bill was placed on General File.

No action was necessary with regard to these matters.

**Information Matters**

**ARELLO Mid-Year Conference – April 26-28, 2023 – Boston MA**

Deputy Director Rut explained that the Room cutoff deadline for registration is March 17, 2023, and Registration closed on March 5, 2023. Commissioners Dohse and Starman indicated they were planning on attending the conference.

No action was necessary on this report.

**Future Meeting Dates**

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  
August 17-18, 2023 – TBA  
September 14-15, 2023 – TBA  
October 19-20, 2023 – TBA  
November 9, 2023 - TBA

### **Recesses and Adjournment**

At 10:33 a.m., there being no further business to come before the Commission, a motion was made by Ritter and seconded by Gehrki that the meeting adjourn. Motion carried with Bourne, Dohse, Gehrki, 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 March 16, 2023, meeting of the Nebraska Real Estate Commission were available for inspection on March 30, 2022, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,

  
Greg Lemon  
Director

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

Ashlee Hendrickson, Nebraska REALTORS® Association, Lincoln  
Leighun Brabec, Home Real Estate, Lincoln  
Kim Zwiener, Lincoln