

NEBRASKA REAL ESTATE COMMISSION

August 13, 2009

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Acting Chairperson Grady convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on August 13, 2009, 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 Chairperson Gale and Commissioner Dover, who were absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut.

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. Acting Chairperson Grady reported that all Commissioners had been notified of the meeting simultaneously, in writing, and that a proposed tentative agenda accompanied the notification.

Acting Chairperson Grady pointed out to those in attendance that a public copy of the materials being used during the meeting was 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. Acting Chairperson Grady asked that guests sign the guest list.

Director Lemon noted that agenda items 11a and 11b had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Bohrer and seconded by Leisey to adopt the final agenda as presented. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Minutes of July 9, 2009

The minutes of the Commission meeting held on July 9, 2009, were considered.

After review, a motion was made by Griess and seconded by Bohrer to approve the minutes as presented. Motion carried with Bohrer, Griess, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused, and with Leisey not voting having not been in attendance at the July Meeting.

Public Comment

Acting Chairperson Grady asked the members of the audience if anyone wished to comment on any of the agenda items. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for June & 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, 2009, was \$579,387.16, which compared to a cash fund balance of \$544,760.00 on June 30, 2008.

The cash fund balance as of July 31, 2009, was \$512,173.21, which compared to a cash fund balance of \$472,557.91 on July 31, 2008.

After discussion, a motion was made by Bohrer and seconded by Griess to file the June and July Receipts and Expenditures Reports for audit. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Fiscal Year 09-10 Monthly Budget Allocations

Director Lemon presented the Monthly Budget Allocations for Fiscal Year 09-10. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon pointed out the expenditure item of note was the IT consulting expenditure which had the approximate \$208,967.95 carryover or re-appropriation amount placed as a lump sum rather than spreading the money throughout the fiscal year, so as not to skew the figures. He indicated that the re-appropriation amount could be spent on special projects but no expense was currently anticipated.

After discussion, a motion was made by Bohrer and seconded by Leisey to approve the budget as presented. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Consider 2010 License Fees

Director Lemon presented an exhibit in which the Budget and Planning Subcommittee recommended that license fees remain at their 2009 levels for 2010. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that economic indicators and licensee numbers had been reviewed, during the evaluation process, and reflected projected activity levels which were essentially flat over 2009. He indicated that the "worst case scenario" had been provided for the Commission's review to reflect the cash fund balance should the projection be inaccurate. He also indicated that he did not feel the "worst case scenario" would occur but if it did, the Commission would still have adequate funding to operate. He explained that in the second year figures there was a modest five percent growth projection. He noted that he felt the recommendation was a conservative approach which had been approved by the subcommittee.

Commissioner Leisey felt that the numbers of licensees could decrease, but felt that the current budget would be acceptable and also that perhaps next year a increase of fees may need to be considered.

Commissioner Griess indicated that she noticed that the industry is beginning to get more new licensees, perhaps due to those who lost their jobs, and felt that the new start up fees would help

offset those who are not renewing, however, she felt that everyone would be happy with no fee increase and that this was the right thing for the Commission to do. Commissioner Grady indicated that there had been a typographical error on the first page of the exhibit. Director Lemon indicated that the date should read January 1, 2009.

After discussion, a motion was made by Leisey and seconded by Bohrer to retain same fees. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

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 Hoffman 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 Leisey and seconded by Bohrer to ratify issuance of the licenses as set forth in the report. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Reciprocal Agreement with Kentucky, Rescinded

Deputy Director Hoffman presented a letter from the Kentucky Real Estate Commission, rescinding the reciprocal agreement with Nebraska. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman indicated that the rescinded agreement had been replaced by language in the Kentucky statutes that will recognize licensure in other jurisdictions but will require that applicants for a Kentucky license pass the jurisdiction part of the licensing examination. Kentucky will no longer utilize reciprocal agreements. Deputy Director Hoffman pointed out that the actual affect of this change is that the element of the agreement that allowed jurisdictions to recognize the continuing education compliance in the resident jurisdiction was now cancelled. Nebraska residents with Kentucky licenses will now have to produce education certificates to meet the Kentucky continuing education requirement. Acting Chairperson Grady asked if the reciprocal agreement had been rescinded as a result of the three-hour course requirement which Nebraska had begun requiring. Deputy Director Hoffman did not believe that Nebraska's actions were the cause but rather Kentucky's actions seemed to follow a trend being enacted by many jurisdictions who are imposing either an education requirement or are requiring passage of the jurisdiction specific examination prior to licensure.

Acting Chairperson Grady asked if the reciprocal agreement had been rescinded as a result of the three-hour course requirement which went into effect. Deputy Director Hoffman did not believe that this had resulted from the pre-license education course requirement, but rather a trend in which many jurisdictions are imposing either an education requirement or the examination prior to licensure.

No action was necessary on this report.

Examination Report - June

Deputy Director Hoffman presented for ratification the June Examination Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman explained that also attached to the exhibit was a report on whether broker candidates qualified for the examination through education alone or through a combination of education and experience. This additional information will be provided in future reports.

After review, a motion was made by Leisey and seconded by Bohrer to ratify the June Examination Report for the purpose of issuing licenses. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Real Estate Education Matters

Pre-License Education Instructor Approval

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

After review, a motion was made by Bohrer and seconded by Leisey to ratify the three reports identified as agenda items 9a, b and c. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Continuing Education Activity Rejection

Deputy Director Hoffman presented a Continuing Education Activity Rejection Report, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose 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 2008-032

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

Deputy Director Mayrose 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 Leisey and seconded by Griess that the complaint be set for hearing on Neb. Rev. Stat. §81-855.24(29). Motion carried with Bohrer, Griess, Leisey and Grady voting aye, with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Gale and Dover not participating or voting, being absent and excused.

A motion was made by Griess and seconded by Bohrer that the Commission file a complaint on its own motion against the Sellers Agent for allowing the buyer and buyers agent to make alterations to the property prior to closing without the consent of the seller and for not reducing the addendum to writing.

An amendment to the pending motion was offered by Acting Chairperson Grady to have legal counsel assist in drafting the complaint and determining the alleged violations of the law. The friendly amendment was accepted by the mover and second.

The amended motion carried with Bohrer, Griess, Leisey and Grady voting aye, with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Gale and Dover not participating or voting, being absent and excused.

Item B Complaint 2008-039 – Henry C Gramann vs. Patrick Lynn Mooberry and Ronald Adolph Tonniges

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

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After discussion, a motion was made by Leisey and seconded by Rouch that the complaint be dismissed without prejudice. Motion carried with Bohrer, Leisey, Rouch and Grady voting aye, with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Gale and Dover not participating or voting, being absent and excused.

Item C Complaint 2009-031

Deputy Director Mayrose 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 Bohrer and seconded by Griess that the complaint be set for hearing per staff

recommendation. Motion carried with Bohrer, Griess, Rouch and Grady voting aye, with Leisey voting nay, and with Gale and Dover not participating or voting, being absent and excused.

Item D Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation, a motion was made by Griess and seconded by Bohrer that the Commission file a complaint on its own motion on the violations alleged in the report.

A friendly amendment was suggested by Deputy Director Mayrose to set it for hearing. The friendly amendment was accepted by the mover and the second.

The amended motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

Complaint 2008-028, Mitzi Ann Detavernier vs. Rajean Marie Jaksich

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2008-029, Mitzi Ann Detavernier vs. Rajean Marie Jaksich. A copy of said Order is attached to and made a part of these minutes. (Note: It was discovered after the meeting adjourned that the Exhibit for this Agenda Item was incorrect. The Complaint number was set forth as "2008-029" when, in fact, the number should have been "2008-028". The Exhibit was corrected for attachment to these minutes.)

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

After discussion, a motion was made by Griess and seconded by Bohrer to enter into the Order as presented. Motion carried with Bohrer, Griess, Leisey and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Complaint 2009-005, Commission vs. Scott Allen Schaefer

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-005, Commission vs. Scott Allen Schaefer. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Bohrer to enter into the Order as presented. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Hearings

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

Informal Special Appearances

Krista Michelle Kleinschrodt Jackson, Nonresident Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Jackson 's special appearance; a summary of trial cases from the State of Iowa on Ms. Jackson's cases; a explanation of cases from Ms. Jackson with notes taken by the Application Secretary; Ms. Jackson's criminal history report; character reference letters; course completion certificate for the required pre-license course; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Jackson was present.

Acting Chairperson Grady reviewed the procedure for informal special appearances.

Ms. Jackson explained the situation regarding her past criminal history. Ms. Jackson distributed a picture and a list of convictions of an individual for reference to one of her charges listed. A copy of said exhibit is attached to and made a part of these minutes, denoted as Exhibit 13a1.

After discussion, a motion was made by Bohrer and seconded by Leisey that Ms. Jackson not be allowed to sit for the salesperson examination at this time. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Adam Joseph Sanders, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Sanders' special appearance; a summary of trial cases from the State of Nebraska on Mr. Sanders' cases; character reference letters; pre-license course completion certificates; Mr. Sander's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Sanders was present.

Acting Chairperson Grady reviewed the procedure for informal special appearances.

Mr. Sanders explained the situation regarding his past criminal history.

After discussion, a motion was made by Leisey and seconded by Bohrer to allow Mr. Sanders to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Consider 2009-2010 Objectives

Director Lemon presented an exhibit regarding the proposed 2009-2010 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the exhibit and indicated that some of the objectives listed had either been added or reworded per the Commission recommendation at the last meeting. There was discussion regarding objective number 11 and whether the Commission had jurisdiction to regulate closing agents and home inspectors. It had been discussed that since the closing agents and home inspectors had an impact on real estate licensees that the Commission would be proactive and research the standards and regulations relating to the professions. Director Lemon indicated that once research had been completed, information would be provided to the Commission.

No action was necessary on this report.

Errors and Omissions Insurance Contract with Williams Underwriting Group, Inc. for 2010

Assignment of Contract to Maverick Insurance

Director Lemon presented an exhibit regarding the consolidation of Williams Underwriting Group and Maverick Insurance and the assignment of contract for errors and omissions insurance. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the consolidation of Williams Underwriting Group and Maverick Insurance and verified that Maverick Insurance was appropriately licensed and had been approved by the Department of Insurance. He indicated that the basic structure remained the same and the assignment of contract was conditionally signed based upon the Commission's approval.

After discussion, a motion was made by Leisey and seconded by Bohrer to approve the assignment of contract as presented. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Renewal of Contract with Williams/Maverick for 2010

Director Lemon presented an exhibit regarding the 2010 Renewal Quotation from Williams Underwriting Group. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the errors and omissions insurance coverage and underwriter would be the same as the current year. He noted that the fee would be increased by seven dollars. There was discussion regarding the coverage which was being provided and also changes which would be welcomed for the upcoming RFP process.

After discussion, a motion was made by Leisey and seconded by Bohrer to approve the renewal of contract with Williams/Maverick for 2010. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Distribution of Commission Meeting Materials Electronically

Director Lemon indicated that the Commission would like to offer the Commissioners a chance to review the meeting materials electronically prior to the meeting. He indicated that in addition to the paper copies sent by mail, the option could be available to distribute it electronically as well. He indicated that certain materials would not be made available on the internet but would be sent to the Commissioners as an e-mail attachment instead.

Commissioners Leisey and Rouch indicated that they would still prefer to receive the exhibits as paper copies in the mail. Commissioner Griess indicated that if the material would be made available electronically, it would be beneficial. She felt that the investigative matters would be most beneficial to receive electronically, if it could be done securely. Acting Chairperson Grady indicated that if this would not cost the Commission much expense than the instant availability would be beneficial. He also agreed that paper copies would still be the desired method. Director Lemon indicated that the paper copies would still be sent out to the Commissioners and that the option to view the meeting materials electronically would also be made available.

Acting Chairperson Grady asked Director Lemon if there had been any progress made on sending the Commission Comment newsletter out electronically. Deputy Director Hoffman indicated that at this time e-mail address were being input into the database, however, updates would need to be made to the database in order to accommodate this distribution method.

No action was necessary on this report.

Broker Simulation Examination Presentation

Larry Fabrey presented an example of the broker simulation examination. Mr. Fabrey distributed a copy of the printed presentation. A copy of said exhibit is attached to and made a part of these minutes, denoted as Exhibit 17.

No action was necessary on this report.

Adopt Bruce Bohrer Resolution

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

It was consensus of the Commission that the resolution for Bruce Bohrer be adopted.

Information Matters

ARELLO Annual Conference – Miami, Florida – October 22-24, 2009

Director Lemon reminded the Commissioners that the ARELLO Annual Conference would be held October 22-24. He noted that the Commissioner College would be offered at this meeting on the 25th and would need to be preregistered by October 9. He also indicated that the registration forms needed to be sent into the Commission office by September 25.

Director Lemon asked which Commissioners were planning to attend the Annual Conference. Commissioners Grady, Griess, and Rouch indicated they planned on attending.

No action was necessary on this report.

Trust Account Examination Evaluation Report - Second Quarter 2009

Director Lemon presented the Trust Account Examination Evaluation Report – Second Quarter 2009. A copy of said report is attached to and made a part of these minutes.

There was discussion regarding the brokers requesting advance notice prior to a trust account examination. Director Lemon explained that the policy of not giving advanced notice was adopted in 1990. There was also discussion about how the trust account examination applied to the nonresident brokers. Deputy Director Mayrose indicated that the trust account examinations for nonresident brokers were completed by mail, with the exception of the bordering states.

Director Lemon indicated that the comments received on the evaluations noted the good job the examiners were doing. He also explained that the procedures used by the examiners would be reviewed as part of the Objectives.

After discussion, a motion was made by Leisey and seconded by Bohrer to recognize the good job performed by the trust account examiners. Motion carried with Bohrer, Griess, Leisey, Rouch and Grady voting aye, with Gale and Dover not participating or voting, being absent and excused.

Future Meeting Dates

September 10-11, 2009 – Staybridge Suites, Lincoln
October 15-16, 2009 – Hampton Inn-Airport, Lincoln
November 19-20, 2009 - Hampton Inn-Airport, Lincoln
January 7-8, 2010 - Hampton Inn-Airport, Lincoln

Recesses and Adjournment

At 9:53 a.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 10:05 a.m.

At 10:58 a.m., Acting Chairperson Grady declared a brief recess, and reconvened the meeting at 11:10 a.m.

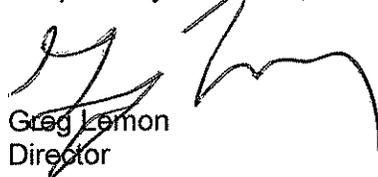
At 11:40 a.m., Acting Chairperson Grady declared a recess for lunch, and reconvened the meeting at 1:30 p.m.

Commissioner Bohrer was excused from the remainder of the meeting at 11:40 a.m.

At 2:31 p.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Griess that the meeting adjourn. Motion carried with Griess, Leisey, Rouch and Grady voting aye, with Bohrer, Gale and 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 August 13, 2009, meeting of the Nebraska Real Estate Commission were available for inspection on August 21, 2009, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Deb Danielson, Lincoln
Kristen Jackson, Lincoln
Adam Sanders, Omaha
Trudy Meyer, CBSHome Real Estate, Omaha
Susan Geschwender, Randall School of Real Estate, Omaha
Larry Fabrey, AMP, Olathe, KS