

NEBRASKA REAL ESTATE COMMISSION

September 10, 2009

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:04 a.m. on September 10, 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 Commissioners Bohrer and Leisey, 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. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Presentation of Stipulation and Consent Orders.

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, in writing, 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 to the public 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 agenda item 13b had been added since the tentative agenda was mailed to the Commissioners.

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

Minutes of August 13, 2009

The minutes of the Commission meeting held on August 13, 2009, were considered.

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

Public Comment

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

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, 2009, was \$448,244.03, which compared to a cash fund balance of \$409,139.03 on August 31, 2008.

After discussion, a motion was made by Grady and seconded by Dover to file the August Receipts and Expenditures Report for audit. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey 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 Griess and seconded by Grady to ratify issuance of the licenses as set forth in the report. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey not participating or voting, being absent and excused.

Examination Report - July

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

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

Real Estate Education Matters

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 Dover and seconded by Grady to ratify the two reports. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey not participating or voting, being absent and excused.

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 2008-034 – Leland L. Sullins vs. Nan Mull

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 Grady and seconded by Rouch that this complaint be dismissed and a new complaint be filed against the Respondent per the Staff recommendation.

Chairperson Gale offered a friendly amendment to include alleged violation of Neb. Rev. Stat. §76-2421 as well as the Staff recommendation. It was accepted by the mover and the second.

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

Presentation of Stipulation and Consent Orders

Complaint 2008-027, Justin Laura Anderson vs. Brian Michael King and Michael Raymond Bunach and Complaint 2009-031, Commission vs. Brian Michael King and Michael Raymond Bunach

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2008-027, Justin Laura Anderson vs. Brian Michael King and Michael Raymond Bunach and Complaint 2009-031, Commission vs. Brian Michael King and Michael Raymond Bunach. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Grady and seconded by Dover to decline the proposed Stipulation and Consent Order as presented. Motion carried with Dover, Grady, Griess and Rouch voting aye, with Gale voting nay, and with Bohrer and Leisey not participating or voting, being absent and excused.

A motion was made by Grady and seconded by Dover to propose that the Order include a six month suspension, with the first sixty days served on suspension, the remainder stayed and served on probation and nine hours of additional continuing education. Motion carried with Dover, Grady, Griess and Rouch voting aye, with Gale voting nay, and with Bohrer and Leisey not participating or voting, being absent and excused.

**Complaint 2008-037,
Theresa Marie Garthright vs. Kimberly Anne Topp and Matthew Barrett O'Shea**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2008-037, Theresa Marie Garthright vs. Kimberly Anne Topp and Matthew Barrett O'Shea. A copy of said Order is attached to and made a part of these minutes. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Presentation of the Stipulation and Consent Order.

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

Greg Barton explained the advantages and disadvantages to accepting a Stipulation and Consent Order for one respondent when two are named in the Complaint and the Second respondent intends to go to Hearing. The Commissioners considered the effect this would have on the Hearing as well as considering the consequences of honoring both Respondents request.

After discussion, a motion was made by Grady and seconded by Dover to decline the proposed Stipulation and Consent Order. Motion failed with Dover and Grady voting aye, with Rouch and Gale voting nay, with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Bohrer and Leisey not participating or voting, being absent and excused.

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

As a result, this matter will be set for Hearing.

Hearings

Complaint 2009-006 - Commission vs. Terry Keith Held and Harvey Lee Quiring

The Hearing regarding Complaint 2009-006 Commission vs. Terry Keith Held and Harvey Lee Quiring was continued to the January 2010 Meeting at the request of the Respondent's Counsel.

Informal Special Appearances

Nathan Todd Rawe, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Rawe's special appearance; character reference letters for Mr. Rawe; trial court cases from the State of Nebraska on Mr. Rawe's cases; Mr. Rawe'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. Rawe was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

A motion was made by Grady and seconded by Dover that Mr. Rawe not be allowed to sit for the salesperson examination at this time. Motion carried with Dover, Grady, Griess, Rouch and Gale

voting aye, with Bohrer and Leisey not participating or voting, being absent and excused.

Justin Richard Hogan, Salesperson Applicant - Reappearance

Director Lemon presented exhibits which included: correspondence regarding Mr. Hogan's special appearance; a letter from Mr. Hogan's probation officer; a letter of reference for Mr. Hogan; Mr. Hogan's criminal history report; his salesperson application form; and information regarding Mr. Hogan's previous special appearance in February 2009. A copy of said exhibit is attached to and made a part of these minutes. Mr. Hogan was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Hogan explained the situations regarding his past criminal history and the accomplishments made since his prior special appearance.

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

Consider Change of Records Retention Policy

Director Lemon presented a proposed change to the current language as shown in the Commission Policies and Interpretations. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that there is currently a Commission Policy that states that non-active records be retained for seven years or under. The current Records Retention Schedule which is filed with the Secretary of State's Office states that the non-active records are to be maintained for fourteen years. He explained that when licensees do not renew their license and then choose to get their license ten years later, the process is simplified if the Commission has the prior information maintained. He also noted that making the change to this policy would make the process consistent.

A motion was made by Dover and seconded by Rouch to change the language as presented. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey not participating or voting, being absent and excused.

Cotner Center Condominium Association – Cease and Desist

Director Lemon presented a copy of the Cease and Desist letter dated August 19, 2009 and a history of letters received and sent. A copy of said exhibit is attached to and made a part of these minutes. Mr. Andrew Willis, Attorney representing the Cotner Center Condominium Association and Mr. Roger Hill, Administrator for Cotner Center Condominium Association were present to discuss the Cease and Desist letter received from the Commission.

Director Lemon explained the previous discussions and correspondence regarding the activities conducted by the Cotner Center Condominium Association, including prior correspondence from the Commission from 1991 and 2001 indicating that the Cotner Condominium Association was not engaged in unlicensed activity.

Mr. Willis explained the services performed by the Association and the forms used to provide the services.

Mr. Willis explained the pledge form and indicated that the form was only used if a percentage of the sale price were to be donated to the Association. Chairperson Gale asked if there was an alternative document used if the seller was not making a donation since this document was more than a donation document and also served as authorization for the Association to market their property. Mr. Hill indicated that the pledge form was to inform the Association of the donation intent of the owner, but a neither the donation nor the form were required. Mr. Willis indicated that the Association still provides services to the sellers even if they do not sign the pledge form, he also indicated that a resident would show the property even if the seller had hired a real estate licensee. He noted that the signed donation pledge arguably served as a type of power of attorney form which allows others to act on the owner's behalf. Chairperson Gale explained that the form indicates to the family or heirs the owner's desires rather than legally directing the family on the selling options. Mr. Willis indicated that the form could be changed in order to satisfy the Commission's concerns. Commissioner Griess asked for clarification on forms provided at listing and at closing. Mr. Hill indicated that forms are available and they assist the buyers in filling them out. Commissioner Griess asked if the Association negotiated between the buyer and seller. Mr. Hill indicated that when an offer is made, the Association contacts the seller and negotiates the selling price and then assists the buyer in filling out the forms.

Commissioner Dover explained that builders can show properties without a license and was curious why the same did not apply to the Association. Deputy Director Hoffman indicated that an unlicensed individual or employee of a builder without ownership could not show properties for a builder. Mr. Willis indicated that the Association does not own the units but the Association has ownership in the commons areas and has interest in the development when selling a unit.

Commissioner Grady indicated that he felt that the cease and desist order was appropriate. Chairperson Gale did not feel that prior Commission actions and rationale were documented adequately. Chairperson Gale stated that if the donation was to recover costs then it should be a net return rather than a percentage. Therefore, he felt that the donation was a fee rather than cost recovery. He also indicated that the pledge form was a commitment by the owner and used as a promotional tool to benefit the Association. Mr. Hill indicated that if there was an open house for a unit, the seller would be charged an hourly rate of fifty dollars in certain instances if they did not sign the agreement since the Association was a secure facility.

Chairperson Gale felt that the historical documents initially were approved for the Association to provide a service to the owners, such as finding potential buyers and saving equity and to recover costs, however, the Association is now conducting activities which require a real estate license.

Chairperson Gale asked what Director Lemon's intent was to put this cease and desist on the Agenda. Director Lemon indicated that the intent was for the Commissioners to have further discussion and decide whether the cease and desist should stand in light of the prior rulings that had come from the Commission on this matter, and that an appropriate motion would be either one to approve the cease and desist order or to rescind it. Director Lemon also indicated that a power of attorney form could be used in isolated instances as an exemption to the license law, but should not be used in multiple instances on an ongoing basis to circumvent the license law. Chairperson Gale felt that the Association should receive thirty to forty-five days to defend their current policy or to suggest different ways to comply with the law.

Mr. Hill indicated that out of one hundred and one owners only fifteen have completed the donation form. He explained that the form is not mandatory just a suggestion. He also noted that the completed forms are given to the marketing committee at the Association and the donation does recoup some of the costs of the open houses.

Chairperson Gale noted that Mr. Hill needed to work with counsel to get the full explanation since there had been a contradiction in statements and seemed as though the Association had provided more now than in the past. He explained that what the Association was currently doing was services that a real estate licensee provides.

Mr. Willis indicated that the Association wanted to be compliant and appreciated suggestions and guidance from the Commission. Chairperson Gale indicated that Association documents and policies would require redrafting to be made compliant. Commissioner Griess indicated that there was a list in the License Act which indicates the items which unlicensed persons could not do.

A motion was made by Grady and seconded by Rouch to sustain the Cease and Desist Order for a period of sixty days to allow the Association to respond appropriately, for the Commission Staff and Commission to review the Association response and to bring the Association's activities into compliance with the License Act. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey not participating or voting, being absent and excused.

Mr. Willis indicated that the Association would like to continue to hold open houses without donation despite the cease and desist. He asked if the Association did not receive commissions or if there were no compensation made during that period if they could continue since it was more important to get the condominium units moving. Commissioner Griess indicated that they would benefit from the real estate pre-license education courses. Mr. Hill indicated that he had sent for a real estate application packet. Deputy Director Mayrose indicated that the law defines that they cannot receive compensation or valuable consideration unless licensed.

2010 Legislation

Director Lemon explained that due to the timing of the Legislative session, he felt this Agenda item necessary to discuss. He had not heard of any major legislation suggestions for this year but felt that if there were any items the Commission felt the Staff should be working on it should be discussed now. He also noted that a survey had been placed on the Commission's website asking the licensees general questions which may be used to help in drafting future Legislation. Chairperson Gale indicated that the issue of continuing education had been discussed due to Nebraska's requirements possibly being lighter than those of other jurisdictions. Director Lemon indicated that there were ARELLO surveys conducted which could be reviewed to compare Nebraska's requirements to other jurisdictions.

The current makeup of the Real Estate Commission was also discussed.

The complexity of Hearings was also discussed and whether the use of a hearing officer could be considered.

There was discussion regarding the Seller Property Condition Disclosure Statement and what changes could be made regarding new construction and HUD code homes. It was agreed that staff would bring a proposal of the Seller Property Condition Disclosure Statement for the November meeting.

The Commission's Objectives for fiscal year 2009-2010 were also discussed which could lead to future legislation.

No action was necessary on this report.

Information Matters

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

Director Lemon noted that Commissioners needed to submit to our office the completed conference registration form by September 25. He indicated that at the previous meeting Commissioners Grady, Griess and Rouch indicated they planned on attending. He asked if any others had planned on attending. He also reminded them that those planning to attend the Commissioner College would need to be preregistered by October 9.

No action was necessary on this report.

Future Meeting Dates

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

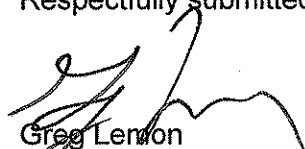
At 10:40 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:55 a.m.

At 12:04 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:06 p.m.

At 2:20 p.m., there being no further business to come before the Commission, a motion was made by Griess and seconded by Rouch that the meeting adjourn. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Bohrer and Leisey 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 September 10, meeting of the Nebraska Real Estate Commission were available for inspection on September 15, 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
Andrew Willis, Cotner Center Condominium Association of Co-Owners, Inc., Lincoln
Roger L. Hill, Cotner Center Condominium Association of Co-Owners, Inc., Lincoln
Justin Hogan, Lincoln