

NEBRASKA REAL ESTATE COMMISSION

September 30-October 1, 2010

Country Inn & Suites

Lighthouse Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on September 30, 2010, in the Lighthouse Room of the Country Inn & Suites, located at 5353 N 27th St., in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. 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 and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, was present for the Estrada Hearing and Mullenberg Hearing.

Swearing-In Ceremony - Commissioner Al Avery

Chairperson Gale conducted a swearing-in ceremony for recently appointed Commissioner Al Avery, presented him with his Commission pin, and welcomed him to the Commission.

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 sent notification 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 along the south wall of the meeting room; 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 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 Leisey and seconded by Dover to adopt the final agenda as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Minutes of August 19-20, 2010

The minutes of the Commission meeting held on August 19-20, 2010, were considered. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The Gary Thompson Hearing reflected a vote of "aye" and "not participating or voting, being absent and excused" for Commissioner Leisey, when in fact, the vote should have reflected that Commissioner Leisey was "not participating or voting, being absent and excused". The Exhibit was corrected for attachment to these minutes.)

Commissioner Leisey noted an error in the minutes, which indicated that he had voted aye during the Thompson Hearing, when in fact, he had not been participating when the agenda item was discussed.

After review, a motion was made by Griess and seconded by Rouch to approve the minutes as amended. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye, and with Avery 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 Commission related business. 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, 2010, was \$430,478.58, which compared to a cash fund balance of \$448,244.03 on August 31, 2009.

There was discussion regarding the legal services expense and the use of a temporary staffing.

After discussion, a motion was made by Leisey and seconded by Ptak to file the August Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale 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 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 Griess to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Examination Report - August

Deputy Director Hoffman 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 Leisey and seconded by Dover to ratify the August Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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 Leisey and seconded by Rouch to ratify the two reports. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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.

Presentation of Stipulation and Consent Orders

There were no Stipulation and Consent Orders to be presented at the meeting.

Hearings

Complaint 2010-004 Commission vs. Rebecca Mae Estrada

A Hearing was held on September 30, at 9:30 a.m., in the matter of Complaint 2010-004, Commission vs. Rebecca Mae Estrada. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent Rebecca Mae Estrada was present and represented by Counsel William Blake of Lincoln.

Commissioner Dover recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

After Opening Statements, Counsel Barton offered twenty-six Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Terry Mayrose as a witness and Counsel Ekeler called Rebecca Estrada as a witness.

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 10:42 a.m.

Counsel Blake offered six Exhibits, none of which were received by Chairperson Gale. Counsel Blake called Terry Mayrose and Rebecca Estrada as witnesses.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made by Leisey and seconded by Ptak in Complaint 2010-004, that Rebecca Mae Estrada was violated Neb. Rev. Stat. § 81-885.11, 81.885.12 and 81-885.24(29).

The motion carried with Avery, Griess, Leisey, Ptak, Rouch and Gale voting aye, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Ptak and seconded by Rouch in Complaint 2010-004, that Rebecca Mae Estrada receive a four year suspension, served and stayed on probation, plus six hours of additional continuing education with three hours in the area of ethics and three in the area of disclosure to be completed within 180 days, and a fine of two-thousand, five-hundred dollars. Motion carried with Avery, Griess, Leisey, Ptak, Rouch and Gale voting aye, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

With the consent of the Respondent, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

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

The Hearing was adjourned at 12:05 p.m.

Complaint 2010-009 Commission vs. Michael Victor Mullenberg

A Hearing was held on October 1, at 9:15 a.m., in the matter of Complaint 2010-009, Commission vs. Michael Victor Mullenberg. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Michael Victor Mullenberg was present and represented by Counsel Rodney G. Gnuse of Omaha.

Chairperson Gale indicated that this Hearing was similar to the Hearing held on the first day of the meeting. He suggested that Respondent be offered with the same penalty as assessed in the previous Hearing for consistency purposes.

A motion was made by Dover and seconded by Leisey to offer Respondent the same penalty as assessed in Complaint 2010-004.

Chairperson Gale reviewed the terms which would be offered to Michael Victor Mullenberg which included a four year suspension, served and stayed on probation, plus six hours of additional continuing education with three hours in the area of ethics and three in the area of disclosure to be completed within 180 days, and a fine of two-thousand, five-hundred dollars to be paid within 30 days of the signed Order. He explained that if those terms were not acceptable to the Respondent then the case would go to Hearing.

There was discussion regarding the terms offered and the similarities between the two Complaints.

Commissioner Avery also noted that as part of the penalty in the previous case, the Respondent was required to pay the hearing fee and the court reporter fee. He asked if that would also be part of the penalty in this case. Chairperson Gale indicated that Mr. Mullenberg would be required to pay the costs incurred for the court reporter which would be billed to the Respondent, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Motion carried with Avery, Dover, Griess, Leisey, Ptak and Gale voting aye, and with Rouch voting nay.

At 9:19 a.m., Chairperson Gale declared a recess of the Hearing in order for Counsels to discuss the terms and conditions of the proposed Order. The Hearing reconvened at 9:25 a.m.

Counsels Barton and Gnuse discussed the terms and conditions of the proposed Order. Counsel Barton cited the terms of the Order and explained that the Respondent would accept the terms and conditions of the Order with the condition that the fines and fees would be paid in ninety days rather than the thirty days previously offered.

A motion was made by Ptak and seconded by Leisey that in the matter of Complaint 2010-009, Commission vs. Michael Victor Mullenberg, an Order be entered into as stated. The terms of the Order would include a four year suspension, stayed and served on probation, plus six hours of additional continuing education with three hours in the area of ethics and three in the area of disclosure to be completed within 180 days, and a fine of two-thousand, five-hundred dollars to be paid within ninety-days of the signed Order. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

With the consent of the Respondent, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have ninety days from the date of the Order to reimburse the Commission for said costs.

The Hearing was adjourned at 9:30 a.m.

Informal Special Appearances

There were no Informal Special Appearances scheduled for this meeting.

Education Subcommittee Recommendations

Deputy Director Hoffman distributed a real estate continuing education concept paper which was approved by the Education Committee. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman explained that the exhibit reflected how the Committee conceived the process of the broker approved training would flow. She indicated that the concept paper recommended that active licensees would be required to submit six hours of broker training every two years which would be coordinated to match their continuing education period, while inactive licensees would not have to have the training and would not incur a deficit. She further explained that the broker training and continuing education would be predicated on a 50-minute hour with the exception that when training is submitted as a one-hour program it can be no less than 60 minutes. Finally, licensees could substitute continuing education for training.

Commissioner Griess indicated that the provider would be required to submit the course for approval and complete the reporting and record keeping process. Deputy Director Hoffman indicated further that a Provider could be a firm's training director, a third-party, even a broker who would serve dual roles.

Chairperson Gale asked what actions were needed to proceed. Deputy Director Hoffman indicated that if approved, statutory language would be drafted and brought to the Commission for approval prior to submission to a bill drafter and being presented to the Legislature. Director Lemon indicated that statutory language would be kept simple and the detailed information would be outlined through rules and regulations or policy.

Chairperson Gale asked what the implementation process would be if approved. Deputy Director Hoffman explained that while the implementation process had not been discussed in detail, she did not feel that it could be imposed until 2012.

There was discussion regarding the process of administrating the broker approved training concept.

Deputy Director Hoffman indicated that the process would be similar to the continuing education process. It is perceived that a provider would submit training for approval and upon approval the provider would be able to offer the training. An approved training report would be brought to the Commission to ratify the approval given.

Commissioner Ptak asked if an annual approval process would be required. Deputy Director Hoffman did not feel a renewal process would be necessary, however, she indicated that an annual report would be required to review the provider's activities. Commissioner Rouch asked how a provider would update the subject matter if needed. Commissioner Griess indicated that details of the training would not be required by the Commission, therefore, it would be the provider's responsibility to keep the material up to date.

Commissioner Leisey indicated that many national franchises provide webinar's and was unsure if such training would be approved. Deputy Director Hoffman noted that since the training concept was similar to that of continuing education, any distance education programs would need to be ARELLO certified. There was discussion regarding the distance education requirement and the ARELLO certification process.

Chairperson Gale indicated that the Committee's intent was to receive approval for the concept as an overview and to move forward with legislation. He explained that detailed conversation could be conducted at a later meeting.

A motion was made by Leisey and seconded by Dover to approve the broker training concept.

There was further discussion regarding the requirement that distance training being ARELLO certified.

An amendment was suggested by the mover that the concept be approved with the exception of the requirement that ARELLO certification be required for distance broker approved training. The amendment was accepted by the second.

Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

2011 Legislation

Director Lemon explained that these legislative matters were placed on the Agenda for discussion purposes. These considerations were based on staff notes and recollections from previous Commission meetings. He further explained that should these matters to be discussed would require a motion to draft legislation should the Commission wish to proceed.

Application Fees, Licensure By Recognition

Director Lemon explained that the currently applicants seeking licensure by recognition pay for the licensee fee and do not pay for the application fee as required by Nebraska residents. He proposed for consistency purposes an application fee also be assessed to those seeking licensure from other jurisdictions. The legislative change would allow the Commission to collect the application fee from applicants seeking licensure by recognition.

A motion was made by Leisey and seconded by Dover to propose legislation which would amend the law to include similar language for applications received by those seeking licensure by recognition to current language used for Nebraska residents. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Pocket Cards

Director Lemon explained that pocket cards requirements had changed through the years and many feel that licensees do not need them and many licensees do not like them. While the pocket cards are currently being used in the transfer process, there should not be any problem changing the internal processes.

A motion was made by Dover and seconded by Leisey to eliminate pocket card. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Two Year License Renewal

Director Lemon explained that a survey was conducted last year of licensees in which the majority of licensees were in favor of moving to a two-year license renewal cycle. He felt that by renewing every two years would require less work for licensees and the process could be synchronized with the licensee's education period.

Commissioner Leisey indicated that he felt it was logical to synchronize the renewal to the education requirement and felt that for efficiency purposes the staff would spend half of the time with the processing.

Director Lemon felt that the two-year cycle would allow Commission staff to deal with the process and not become distracted due to the quantity being received. He explained that there was a potential issue with those licensees who do not practice much or at all. Those licensees may pay a one-year renewal fee but not a two-year renewal since it may be a financial burden.

There was discussion regarding the synchronization of continuing education and the renewal period.

A motion was made by Ptak and seconded by Leisey to draft Legislation to change the license renewal period to a two-year cycle and to line up with the licensees current continuing education requirement. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Asset Management Companies

Director Lemon explained that he had many discussions regarding concerns about the practices of asset management companies. He indicated that these companies have their own procedures which do not comply with the License Act and when this type of company uses a licensee in a transaction, the licensee may be in violation of the License Act if they follow the asset management company's procedures. He discussed with the Commission options on handling these concerns.

There was discussion regarding the options of addressing the concerns of asset management companies while protecting the licensees as well as the public.

A motion was made by Leisey and seconded by Dover to allow Director Lemon and Commission Staff to present the Commission with proposed changes regarding the asset management companies. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Citation System

Director Lemon explained that a proposed citation system had been discussed multiple times at previous Commission meetings. He indicated that other jurisdictions have adopted such processes of allowing either staff or the Director to issue a citation for certain violations. The citation defines a licensees' admission of guilt for violations such as late continuing education, expired errors and omissions insurance, and false reporting on renewal applications. He noted that those parameters could be discussed in detail later should this concept be embraced. He anticipated that the citation system could include a reporting system in which a report would be brought to the Commission for ratification.

Commissioner Leisey felt that the citation process would eliminate minor Complaints which would require more time from the staff and the Commissioners than necessary.

Chairperson Gale explained that it takes a lot of work by Commission staff to put together a whole Complaint case. If a Complaint is brought before the Commission as an investigative matter and dismissed, many hours were wasted. He felt if there was probable cause in a Complaint that the problem could be resolved administratively, rather than by the Commission. He noted that a citation would be placed on the licensee's record or dismissed depending on the case.

Commissioner Leisey believed that many complaints are dismissed and since it wasted a lot of staff time, he felt that the Director should have the authority to dismiss certain Complaints.

Commissioner Dover felt that when the investigations are presented to the Commission, some Commissioners feel there where violations while some do not. Not all violations are viewed the same. He felt the determinations should be made by the Commission rather than the Director.

Commissioner Ptak indicated that the Commissioner's could provide the Director with a tool to use in order to make such determinations. He felt that the investigations and reports completed by Deputy Director Mayrose was an exhausting process and felt that the citation system was worthy of consideration. He suggested that a subcommittee be formed to review the use of this type of system rather than designing the system today. He volunteered to be on the subcommittee if formed.

Commissioner Leisey also volunteered for the subcommittee.

It was the consensus of the Commission that a subcommittee be formed to discuss the details of using and implementing a citation system. The appointed subcommittee members were Commissioners Ptak and Leisey as well as Director Lemon and Deputy Director Mayrose.

Home Inspectors

Director Lemon explained that there have many discussions regarding licensees working with home inspectors and if legislation should be introduced requiring home inspectors to be licensed.

Commissioner Griess asked if the Commission staff dealt with many complaints or problems from the public or licensees regarding home inspectors. Deputy Director Mayrose indicated that he was aware of problems licensees were encountering with home inspectors.

Director Lemon explained that many jurisdictions have home inspectors licensed by the real estate regulatory body and not as a standalone agency. He felt that now may not be the time to generate a new license requirement for home inspectors unless there was a strong urge to do so.

Commissioner Avery expressed opposition in the license requirement for home inspectors. He felt that it may create a bigger problem that currently being encountered.

It was the consensus of the Commission that a home inspector licensing act not be introduced into Legislation.

Awarding of Errors and Omissions Insurance Contract for 2011

Director Lemon presented an exhibit regarding the errors and omissions insurance request for proposals (RFP). A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the RFP was sent out as the Commission had instructed. The Commission received two proposals, from Rice Insurance Services Company LLC (RISC) and Williams Underwriting Group Inc./Maverick (WUGI). The evaluation subcommittee, consisted of Commissioner Rouch, Commissioner Griess, Beverly Anderson, Administrator of the Property and Casualty Division of the Nebraska Department of Insurance and former Commissioner Michael Poskochil.

Director Lemon reviewed the evaluation made by the committee as set forth in the exhibit. He indicated that all calculations were verified by the accounting staff member for the Commission.

Commissioner Griess indicated that the step-by-step evaluation process was laid out very well. Director Lemon explained that the RFP process was designed by the State of Nebraska, Purchasing Department, and the structured process was followed by all parties involved which were fair and impartial. Chairperson Gale asked if the individuals on the committee completed the process individually and independent by law and were not bias or prejudice. Director Lemon indicated that the process required all committee members to sign a form which indicated that there are no conflicts with those be evaluated, such form will remain in the RFP file. Director Lemon also indicated that after the points were tallied and the subcommittee had made their recommendation, he contacted the references to verify the quality of service being provided. Commissioner Ptak complimented the subcommittee for completing the process which followed the law and the recommendations made by the State Purchasing Department.

A motion was made by Rouch and seconded by Avery to award the 2011 errors and omissions insurance contract to Rice Insurance Services Company LLC (RISC). Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Update Young V. NREC Lawsuit

Director Lemon explained that Special Assistant Attorney General, Chris Heinrich was present to discuss the Young V. NREC Lawsuit.

Counsel Heinrich reviewed the Federal Court Case filed by Leslie Rae Young regarding a Cease and Desist Order issued by the Commission on July 20, 2010. He indicated that to date, the presiding judge had not made a case determination. He explained that until a determination had been made, Ms. Young would remain unable to market Nebraska properties. He noted that he would keep Director Lemon informed on the case progression.

No action was necessary with regard to this matter.

Information Matters

ARELLO Annual Conference - September 16-18, 2010 - Anchorage, Alaska – Report of Attendees

Director Lemon noted that Commissioners Dover, Griess, and Rouch, himself and Deputy Director Hoffman attended the ARELLO Annual Conference.

The attendees of the conference presented reports on sessions of interest that they attended.

No action was necessary on this report.

PRESS RELEASES

Director Lemon presented exhibits regarding Press Releases issued by the Commission. Copies of said exhibits are attached to and made a part of these minutes.

Director Lemon explained that one Press Release was issued for past Commissioner Wes Grady for recognition of service and the other was issued for newly appointed Commissioner Al Avery.

Chairperson Gale thanked Director Lemon for issuing the press releases which he felt were news worthy and an excellent way to create a sense of presence and acknowledgment of service to the public.

No action was necessary on this report.

Future Meeting Dates

October 28-29, 2010 – Hampton Inn & Suites, Lincoln
December 2-3, 2010 - Country Inn & Suites, Lincoln
January 20-21, 2011 – Staybridge Suites, Lincoln
February 17-18, 2011 – Staybridge Suites, Lincoln
March 17-18, 2011 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:30 a.m. on September 30, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:42 a.m.

At 12:10 p.m. on September 30, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:30 p.m.

At 2:46 p.m. on September 30, Chairperson Gale declared a brief recess, and reconvened the meeting at 3:02 p.m.

At 4:15 p.m. on September 30, Chairperson Gale recessed the meeting.

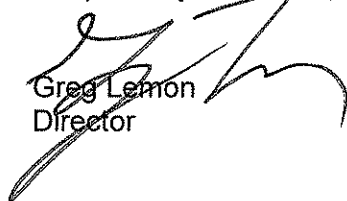
At 9:00 a.m. on October 1, Chairperson Gale reconvened the meeting.

At 9:19 a.m. on October 1, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:25 a.m.

At 9:35 a.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Leisey that the meeting adjourn. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the September 30 – October 1, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on October 13, 2010, 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
Harold Johnson, NP Dodge Co, Omaha
Christie Bevington, Nebraska REALTORS® Association, Lincoln
Kylie Brookhouser, Nebraska REALTORS® Association, Lincoln
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln
William Blake, Lincoln
Rebecca Estrada, Scottsbluff
David Gompert, Scottsbluff
Susan Geschwender, Randall School, Omaha
Jarrod Crouse, RICE, Lincoln
Rod Gnuse, Omaha
Michael Mullenberg, Omaha