

NEBRASKA REAL ESTATE COMMISSION

October 28-29, 2010

Hampton Inn & Suites

Husker Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on October 28, 2010, in the Husker Room of the Hampton Inn & Suites, located at 7343 Husker Circle 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, Special Assistant Attorney General and Counsel to the Commission, was present for the Hofer Hearing.

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 in the southeast corner of the meeting room by the east 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 the exhibits for agenda items 6a and 15 had been changed since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Griess and seconded by Rouch to adopt the final agenda as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Minutes of September 30 - October 1, 2010

The minutes of the Commission meeting held on September 30-October 1, 2010, were considered.

After review, a motion was made by Leisey and seconded by Rouch to approve the minutes as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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 September

Director Lemon presented the Receipts and Expenditures Report for September. 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 September 30, 2010, was \$354,871.72, which compared to a cash fund balance of \$438,818.59 on September 30, 2009.

It was the consensus of the Commission to have Director Lemon be prepared for any legislative actions which may reduce the cash fund balance in order to boost the general fund and express the Commission's opposition to any such actions to appropriate parties.

After discussion, a motion was made by Leisey and seconded by Ptak to file the September Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Specialized Registrations

Time-Share Registration Amendments for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site) and Marriott Vacation Club Destination

Director Lemon presented a specialized registrations report which included the amendments to the time-share registrations for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site) and Marriott Vacation Club Destination. A copy of said report is attached to and made a part of these minutes.

A motion was made by Leisey and seconded by Ptak to approve the amendments as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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 Rouch 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 - September

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

There was discussion indicating concern over decreased passing rate of those taking the salesperson examination. Deputy Director Hoffman indicated that she would speak to Applied Measurement Professionals regarding the Commission's concerns.

After review, a motion was made by Leisey and seconded by Dover to ratify the September Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Amendment to Add One More Simulation Problem to the Broker Examination

Deputy Director Hoffman presented an exhibit regarding a proposed amendment to the current examination contract, a copy of which is attached to and made a part of these minutes. Deputy Director Hoffman explained that the amendment would increase the number of simulation problems on the broker examination from eight to nine scored items while maintaining the 75 multiple choice items. She indicated that, if approved, Applied Measurement Professionals (AMP) would like to implement this change as of March 20, 2011, rather than the date originally indicated on the meeting exhibit. The stated purpose of adding the problem was to broaden the knowledge base being tested which would increase the reliability factor of the examination. Deputy Director Hoffman explained that after a review by Applied Measurement Professionals (AMP) where it was determined that all candidates spend an average of ten minutes on each simulation problem and Nebraska applicants typically take less time to complete the examination, it was determined that there would be more than adequate time to accommodate the additional simulation problem.

After discussion, a motion was made by Leisey and seconded by Griess to authorize the Director to enter into the agreement to amend the contract to add another simulation problem to the broker examination. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Amendment to Examination Contract to Extend Contract Through June 30, 2013 and Consideration of Examination Fee

Deputy Director Hoffman presented an exhibit regarding a proposed amendment to the examination contract, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman explained that the amendment would extend the licensing examination contract with Applied Measurement Professionals (AMP) beyond the current expiration date of July 1, 2011, through June 30, 2013 with a \$3 increased cost per examination for both the salesperson and the broker examinations. Upon inquiry, she explained that the original contract had been awarded in 2007 to administer the examination with three opportunities to extend the contract for two-years. This would be the second of those options. Deputy Director indicated that AMP was just completing another Job Analysis and update of the examinations, which it undertakes regularly, maintaining the integrity of the examination. She further indicated that she felt the performance of the examination company had been satisfactory and recommended that the Commission extend the contract through June 30, 2013. She noted that if the Commission decided not to extend the contract with AMP than the RFP bid process would need to begin soon.

There was discussion regarding the concern of raising the examination fee at this time.

After discussion, a motion was made by Ptak and seconded by Leisey to approve the contract renewal without the fee increase. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Having made this decision, the question as to whether to increase the licensing examination fee, which was also posed in the exhibit, was deemed unnecessary and was not addressed.

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.

Continuing Education Activity Significant Change

Deputy Director Hoffman presented for ratification the Continuing Education Activity Significant Change 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 three reports. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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 2009-040

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 Dover and seconded by Rouch that the complaint be set for hearing and the Commission file a new complaint on its own motion for an alleged violation of 81-885.24(14) and 81-885.24(29). Motion carried with Avery, Dover, Griess, Ptak, Rouch and Gale voting aye, and with Leisey voting nay.

After further discussion, a motion was made by Dover and seconded by Griess that the Commission file a complaint on its own motion against Respondent's Broker and set it for hearing on an alleged violation of Neb. Rev. Stat. § 81-885.24(29). Motion carried with Dover, Ptak, Rouch and Gale voting aye, and with Avery, Griess and Leisey voting nay.

After discussion, it was the consensus of the Commission to acquire an advisory opinion from counsel on this matter.

There was additional discussion regarding the interpretation of the license laws and the requested clarification.

A motion was made by Dover and seconded by Griess to not file the new Complaints against Respondent and Respondent's Broker until a legal opinion regarding the license law had been received from the Commission's legal counsel. Motion carried with Avery, Dover, Griess, Leisey, Rouch and Gale voting aye, and with Ptak voting nay.

After further discussion, a motion was made by Rouch and seconded by Leisey to reconsider the filing of the complaint. Motion failed with Leisey and Rouch voting aye, and with Avery, Dover, Griess, Ptak and Gale voting nay.

Item B Complaint 2009-053 - Sandra L and George O Nichols vs Candice M Potratz

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 being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Gale that the complaint be set for hearing. Motion carried with Dover, Ptak, Rouch and Gale voting aye, with Avery and Leisey voting nay, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Item C Complaint 2009-054 - Gloria Breault vs James K Hunt

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 Dover and seconded by Ptak that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item D Investigative Matter

Deputy Director Hoffman and Director Lemon presented an investigative report to the Commission.

After discussion, the Commissioners requested a letter be received from the broker indicating that the lock box key had been taken away from the licensee and that an internal suspension of the party had occurred.

It was the consensus of the Commission to hold this matter in abeyance until such time as the resolution of the criminal case was revealed.

Presentation of Stipulation and Consent Orders

**Complaint 2009-042,
Gopal Rao vs. John H. Dickerson, Deborah A. Wojcinski and John S. Krecek**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-042, Gopal Rao vs. John H. Dickerson, Deborah A. Wojcinski and John S. Krecek. 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 Dover to enter into the Order as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye

**Complaint 2010-013,
Commission vs. Dirk Conrad Blume and Donald Wray Evans**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-013, Commission vs. Dirk Conrad Blume and Donald Wray Evans. 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 Rouch to enter into the Order as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Complaint 2010-036,
Commission vs. Terry Jo Hofer**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-036, Commission vs. Terry Jo Hofer. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Griess and seconded by Dover to decline the proposed Stipulation and Consent Order. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Complaint 2010-005,
Commission vs. Kenneth J. Landolt, Jr.**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-005, Commission vs. Kenneth J. Landolt, Jr. A copy of said Order is attached to and made a part of these minutes.

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

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

Hearings

Complaint 2010-005 – Commission vs. Kenneth J. Landolt, Jr.

The Hearing regarding Complaint 2010-005, Commission vs. Kenneth J. Landolt, Jr. was continued at the request of the Complainant's Counsel.

Complaint 2010-036 – Commission vs. Terry Jo Hofer

A Hearing was held on October 29, at 9:15 a.m., in the matter of Complaint 2010-036, Commission vs. Terry Jo Hofer. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Terry Jo Hofer was not present but was represented by Counsel Jennifer D. Kearney of North Platte.

After Opening Statements, Counsel Barton offered eight Exhibits. Counsel Barton called Terry Mayrose as a witness.

Counsel Kearney offered one Exhibit and called no 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 Ptak and seconded by Leisey in Complaint 2010-036, that Terry Jo Hofer violated Neb. Rev. Stat. § 81-885.24(29). Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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

The Commissioners then discussed the penalty to be assessed.

A motion was made by Dover seconded by Ptak that the real estate license of Terry Jo Hofer be revoked. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

With the consent of the Respondent's attorney, Chairperson Gale directed Counsel Barton to prepare the Final 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 10:07 a.m.

Informal Special Appearances

Jeff Jedlicka, Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Jedlicka's special appearance; a summary of Mr. Jedlicka's situation; character reference letters for Mr. Jedlicka; a copy of Mr. Jedlicka's criminal history report completed on July 20, 2009; and a Release of Probation issued by the US District Court. A copy of said exhibit is attached to and made a part of these minutes. Mr. Jedlicka was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Dover and seconded by Rouch to allow Mr. Jedlicka to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Jedlicka must notify any anticipated employing broker of the criminal

convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Mr. Jedlicka must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of five years. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

2010-2011 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2010-2011 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed each objective and the progress which had been made with reference to each. The Commissioners commended Director Lemon on the progress of the Commission's objectives.

It was the Consensus of the Commission that an additional objective be added to review the examinations administered by AMP for clarity, adequacy and worth.

A motion was made by Leisey and seconded by Dover to approve the objectives as amended. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

2011 Proposed Legislation

Application Fee for Licensure By Recognition, Pocket Cards and Two Year License Renewal

Director Lemon presented an exhibit regarding the proposed Legislation to address the application fee for licensure by recognition, pocket cards and a two year license renewal. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the proposed legislative bill had been received from the bill drafters since the mailing was made to the Commission, and the bill drafter's version had been substituted for the meeting.

There was discussion regarding the purpose of pocket cards and proposed changes which could be made in order to eliminate undue paper and mailing expenses.

A motion was made by Leisey and seconded by Dover to move forward with the proposed legislation. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Asset Management Companies

Director Lemon presented an exhibit regarding the proposed Legislation to address asset management companies. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the proposed legislative bill had been received from the bill drafters since the mailing was made to the Commission and the bill drafter's version had been substituted for the meeting.

There was discussion regarding cross referencing the sections of the Act.

A motion was made by Leisey and seconded by Ptak to move forward with the proposed legislation. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Broker Approved Training

Director Lemon presented an exhibit regarding the proposed Legislation to address broker approved training. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the proposed legislative bill had been received from the bill drafters since the mailing was made to the Commission and the bill drafter's version had been substituted for the meeting.

A motion was made by Griess and seconded by Rouch to move forward with the proposed legislation. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye, Leisey excused and absent.

Information Matters

Update on Renewal Process

Director Lemon noted that the renewals had been mailed out on October 22, a week earlier than previously anticipated. He indicated that the errors and omissions insurance RFP process delayed the renewal mailing which results in a shorter time to process the renewals. He also noted that in future years, lower volume will be expected due the proposed legislation to move to a two-year renewal cycle as well as the automated process of entering renewals which is anticipated as discussed in the objectives.

Director Lemon also noted that Williams Underwriting Group, Inc. (WUG) had protested the contract awarded to Rice Insurance Services Company, LLC (RISC). He indicated that a public records request was received from WUG. He also indicated that he had denied the protest from WUG. He explained that the basis of the protest was that RISC had not met some technical requirements of the proposal and did not meet the statutory requirements. He further explained that he had drafted a response to WUG and had legal counsel review refuting WUG's claims.

No action was necessary on this report.

Future Meeting Dates

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 10:40 a.m. on October 28, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:52 a.m.

On October 28, Chairperson Gale was briefly excused from the meeting at 12:19 p.m., and rejoined the meeting at 12:24 p.m.

On October 28, Commissioner Leisey was briefly excused from the meeting at 12:25 p.m., and rejoined the meeting at 12:28 p.m.

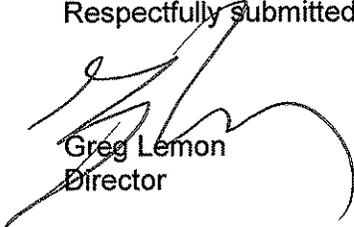
At 12:35 p.m. on October 28, Chairperson Gale recessed the meeting.

At 9:00 a.m. on October 29, Chairperson Gale reconvened the meeting.

At 10:16 a.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 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 October 28-29, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on November 3, 2010, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

- Bryan Fraser, CBSHOME Real Estate, Omaha
- Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln
- Kristen Anderson, Nebraska REALTORS® Association, Lincoln
- Mike Matukewicz, NP Dodge, Omaha
- Don Evans, NP Dodge, Omaha
- Jennifer Kearney, North Platte