

# NEBRASKA REAL ESTATE COMMISSION

January 7, 2010

Hampton Inn & Suites

Husker Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on January 7, 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, with the exception of Grady and Ptak, who was absent and excused. Also present were Director Greg Lemon and Deputy Director for Enforcement Terry Mayrose. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the discussion on proceedings when a complaint is filed against multiple Respondents and Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present for the consideration of the 2010 fee schedule for the special assistant attorneys general.

## **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 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.

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

## **Minutes of November 19-20, 2009**

The minutes of the Commission meeting held on November 19-20, 2009, were considered.

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

## **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 Reports for November and December**

Director Lemon presented the Receipts and Expenditures Reports for November and December. 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 November 30, 2009, was \$750,838.22, which compared to a cash fund balance of \$689,242.16 on November 30, 2008.

The cash fund balance as of December 31, 2009, was \$891,217.35, which compared to a cash fund balance of \$847,709.62 on December 31, 2008.

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

## **Renewal Report**

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes. Commissioner Dover suggested that the Renewal Report could be reformatted to show the year to year comparisons side by side similar to the Receipts and Expenditures Reports. Director Lemon indicated that this change could be made.

No action was necessary on this report.

## **Specialized Registrations**

### **Time-Share Registrations - Amendment for ClubWyndham Access Vacation Ownership Plan**

Director Lemon presented a specialized registrations report which included the registration of amendment to the time-share registration for ClubWyndham Access Vacation Ownership Plan. A copy of said report is attached to and made a part of these minutes.

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

## **Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report**

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

## **Examination Report - November**

Director Lemon presented for ratification the November 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 November Examination Report for the purpose of issuing licenses. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

## **Real Estate Education Matters**

### **Continuing Education Activity Approval**

Director Lemon 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 Activity Significant Change**

Director Lemon 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 two reports. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak 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 2009-012**

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 Dover that the complaint be dismissed without prejudice.

The motion was withdrawn by the mover and the second.

A motion was made by Griess and seconded by Rouch that the complaint be set for hearing against Respondent #1 for an alleged violation of Neb. Rev. Stat. §76-2417 and 81-885.24(22). Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

A motion was made by Griess and seconded by Dover that the complaint be set for hearing against Respondent #3 for an alleged violations of Neb. Rev. Stat. §81-885.24(22) and 81-885.24(29). Motion failed with Dover, Griess and Gale voting aye, with Leisey and Rouch voting nay, and with Grady and Ptak not participating or voting, being absent and excused.

A motion was made by Griess and seconded by Leisey that the complaint be set for hearing against Respondent #3 for an alleged violation of Neb. Rev. Stat. §81-885.24(22). Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

A motion was made by Leisey and seconded by Rouch that the complaint be dismissed without prejudice against Respondent #2. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item B** Complaint 2009-024

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 Dover that this complaint be set per hearing per the Staff recommendation. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item C** Complaint 2009-023

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 Leisey that the complaint be dismissed without prejudice against Respondent #2. Chairperson Gale ruled the pending motion out of order and it was withdrawn by the mover and second.

A motion was made by Dover and seconded by Leisey to reconsider the action taken by the Commission on this matter against Respondent #2 at the prior meeting. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

A motion was made by Dover and seconded by Leisey that the complaint be dismissed without prejudice against Respondent #2. Motion carried with Dover, Griess, Leisey and Rouch voting aye, with Gale voting nay, and with Grady and Ptak 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 Leisey and seconded by Dover that the Commission file a complaint on its own motion for an alleged

violation of Neb. Rev. Stat. §81-885.24(29). Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item E** Investigative Matter

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

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation, a motion was made by Dover and seconded by Griess that the Commission file a complaint on its own motion for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report and for engaging in activity demonstrating negligence, incompetency or unworthiness to act as a broker, associate broker or salesperson. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, and with Grady and Ptak not participating or voting, being absent and excused.

**Item F** 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 Dover and seconded by Griess that the Commission file a complaint on its own motion for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item G** 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 Dover and seconded by Leisey that the Commission file a complaint on its own motion for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report and for engaging in activity demonstrating negligence, incompetency or unworthiness to act as a broker, associate broker or salesperson. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item H** 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 Leisey and seconded by Dover that the Commission file a complaint on its own for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report and for engaging in activity demonstrating negligence, incompetency or unworthiness to act as a broker, associate broker or salesperson. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and

excused.

**Item I** 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 Dover and seconded by Leisey that the Commission file a complaint on its own motion for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report and for engaging in activity demonstrating negligence, incompetency or unworthiness to act as a broker, associate broker or salesperson.. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Item J** 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 Leisey and seconded by Griess that the Commission file a complaint on its own motion for an alleged violation of Neb. Rev. Stat. §81-885.24(29) for filing a false report and for engaging in activity demonstrating negligence, incompetency or unworthiness to act as a broker, associate broker or salesperson.. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

**Consideration and Presentation of Investigative Reports**

Director Lemon presented a summary of comments received to date on the investigative process. A copy of said summary is attached to and made a part of these minutes.

Commissioner Dover suggested that relevant documents to the investigative reports be included in the exhibits and reviewed by the Commissioners. After much discussion there was no consensus among the Commissioners on this matter..

It was suggested that the word "on" be deleted before the dates used in the investigative reports.

They discussed the changes requested and felt that a summary of the complaint and a summary of response rather than a complaint synopsis would help in reviewing the investigative reports. They also felt that there needed to be more emphasis than italics to identify staff comments. It was also suggested that the aspects of the format for investigative reports used in Ohio be reviewed for consideration in Nebraska, and the use of investigator comments was appropriate to provide correction and clarification to the investigative report.

Chairperson Gale suggested that the Director and Deputy Director for Enforcement could implement changes to the investigative reports as discussed and that no action was necessary on this report.

**Presentation of Stipulation and Consent Orders**

**Complaint 2009-029,  
Brittney Maloley vs. Jennifer Lynn Hellman**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-029, Brittney Maloley vs. Jennifer Lynn Hellman. 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.

A motion was made by Rouch and seconded by Dover to decline the proposed Stipulation and Consent Order. Motion carried with Dover, Griess, Rouch and Gale voting aye, with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, and with Grady and Ptak not participating or voting, being absent and excused.

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

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-006, Commission vs. Terry Keith Held and Harvey Lee Quiring. A copy of said Order is attached to and made a part of these minutes.

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

**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 at the request of the Respondent's Counsel.

**Discussion on Proceedings When Complaint Is Filed Against Multiple Respondents**

Director Lemon explained that there had been prior discussion regarding the proceedings when a complaint is filed against multiple respondents. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for this discussion.

Director Lemon discussed the background for this matter. Counsel Barton suggested that each complaint should be reviewed on a case-by-case basis. Commissioner Dover asked if a licensee could agree to a stipulation and consent order after a hearing. Counsel Barton did not believe that was acceptable. After further discussion, Commissioners Leisey and Rouch concurred with Counsel Barton and felt each complaint should be reviewed on a case-by-case basis. It was suggested that the Commission should allow time for receipt of a stipulation and consent order from one of the parties but taken on a case-by-case basis.

No action was necessary on this report.

**Informal Special Appearances**

**Neal Kenneth Mann, Nonresident Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Mann's special

appearance; character reference letters for Mr. Mann; Mr. Mann's licensee verification information from the Kansas Real Estate Commission's website; Mr. Mann's licensee and business details from the Colorado Real Estate Commission's website; Mr. Mann's license information from the ARELLO website; notes taken by a staff member during a telephone conversation with Mr. Mann; Mr. Mann's criminal history report; Mr. Mann's license issuance form; Mr. Mann's license history from the Kansas Real Estate Commission; Mr. Mann's Acknowledgement of Personal Jurisdiction; Mr. Mann's nonresident affidavit; Mr. Mann's United States Citizenship Attestation Statement; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Mann was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Mann distributed a letter of personal/professional information. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

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

#### **Annual Review and Approval of Trust Account Examination Schedule**

Deputy Director Mayrose presented a reference copy of the Commission's Approved Procedures and Cycle for Trust Account Examinations. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Mayrose indicated that there were no recommended changes to the document.

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

#### **Consider Approval of Special Assistant Attorneys General New Fee Schedule**

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective January 1, 2010. A copy of said exhibit is attached to and made a part of these Minutes. Mr. Chris Heinrich and Gregory Barton from the Harding and Schultz law firm were present to present the proposed fee schedule and answer any questions the Commissioners might have.

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

#### **Review of New Commissioner Orientation Manual**

Director Lemon presented an exhibit of the proposed Commissioner Orientation Manual. A copy of said exhibit is attached to and made a part of these Minutes.

After discussion, it was suggested that there be some changes made to the manual relating to the format of some of the attachments, providing a glossary of legal and procedural terms used by the Commission and, include a summary of dispositions of investigative matters, and explain the

ARELLO emails notifications and lists. .

A motion was made by Leisey and seconded by Rouch that the manual be approved with the suggested changes. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

### **Cotner Center Condominium Association – Compliance Plan Update**

Director Lemon presented documentation received from Greg Barton, Special Assistant Attorney General and Counsel to the Commission regarding the Cotner Center Condominium Association compliance plan update. A copy of said exhibit is attached to and made a part of these minutes.

It was the consensus of the Commission that this matter be continued pending receipt of a revised compliance plan from the Cotner Center Condominium Association.

### **Legislative Matters**

#### **Jurisdiction Over Unlicensed Activity – Draft of Proposed Law**

Director Lemon presented the draft of the proposed legislative bill to provide fining authority to the Commission over persons conducting activity requiring a license. Director Lemon indicated the Bill had been introduced by Senator Langemeier and designated LB691 by the Legislature. A copy of said exhibit is attached to and made a part of these minutes.

A motion was made by Griess and seconded by Rouch to authorize Director Lemon to testify regarding this legislation. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak not participating or voting, being absent and excused.

### **Information Matters**

#### **Request for Proposals on Errors and Omissions Insurance Plan**

Director Lemon requested the authorization from the Commission to begin requesting proposals on the Errors and Omissions Insurance Plan.

Director Lemon explained the proposed process for going out for bid for the errors and omissions insurance Request For Proposal (RFP) and informed the Commission that in the past the budget and finance subcommittee had participated in the RFP drafting and review process with work done primarily by staff. Chairperson Gale indicated that work should begin on the RFP following the same process that had been used in the past.

No action was necessary on this report.

### **Future Meeting Dates**

February 18-19, 2010 – Staybridge Suites, Lincoln  
March 18-19, 2010 – Staybridge Suites, Lincoln  
April 22-23, 2010 – Hampton Inn & Suites, Lincoln  
May 20-21, 2010 - Staybridge Suites, Lincoln  
June 24-25, 2010 - Staybridge Suites, Lincoln  
August 19-20, 2010 - Staybridge Suites, Lincoln

### **Recesses and Adjournment**

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:48 a.m.

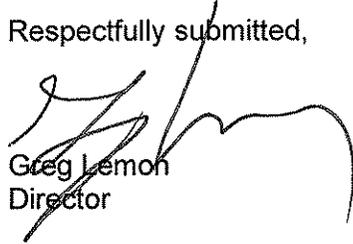
At 12:05 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 12:55 p.m.

At 1:58 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 2:03 p.m.

At 3:05 p.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Dover that the meeting adjourn. Motion carried with Dover, Griess, Leisey, Rouch and Gale voting aye, with Grady and Ptak 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 January 7, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on January 8, 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  
Arla Meyer, Woods Bros Realty, Lincoln  
D. Thane Jensen, Woods Bros Realty, Lincoln