

NEBRASKA REAL ESTATE COMMISSION

December 2-3, 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 December 2, 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 with the exception of Chairperson Gale and Commissioner Griess on December 3. 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 Stipulation and Consent Orders for Switzer and Schaefer and the Slatten 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 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 agenda item 10a and 11c had been added 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 October 28-29, 2010

The minutes of the Commission meeting held on October 28-29, 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 October

Director Lemon presented the Receipts and Expenditures Report for October. 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 October 31, 2010, was \$273,196.39, which compared to a cash fund balance of \$497,619.42 on October 31, 2009.

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

Renewal Report

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

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 Leisey 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 - October

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

There was discussion regarding the examination passing rate trending lower. How much of a role the examination has in this phenomenon and how much is due to other factors remains a question to be researched. The Commission expressed their intention that the examination and other requirements for licensing remain high in the interest of maintaining professionalism. The Commission also wants to ensure that the examination remains a legitimate measure of knowledge necessary for entry into the real estate industry.

Deputy Director Hoffman indicated as part of the Commission objectives, the pre-license education would be thoroughly reviewed and felt that a task force of education providers could be formed to review the entire education curriculum leading to licensure. She also noted 2011 is the year for the Commission's bi-annual Instructor Development Workshop and that perhaps Larry Fabrey, the Real Estate Program Director from Applied Measurement Professionals, could attend

to do brainstorming and discuss concerns with the educators. She noted that those who typically attend the Instructor Development Workshop are pre-license and continuing education instructors and providers, and all of the Commissioners are welcome to attend as well.

As a part of this discussion, the Commissioners generally discussed the fact that they were uncomfortable with the fact that individuals' can obtain a broker's license without first having some experience in licensed real estate activity. Commissioner Avery indicated that perhaps different levels of a broker's license could be researched. Deputy Director Hoffman felt that the discussion merited research. Commissioner Griess indicated that she had research regarding this matter and would like to address this subject at a later date with that material available.

After review, a motion was made by Leisey and seconded by Ptak to ratify the October Examination Report for the purpose of issuing licenses. 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

Director Lemon presented an exhibit regarding the proposed amendments to the examination contract, 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 Ptak to approve the contract renewal as amended. 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.

After review, a motion was made by Griess and seconded by Rouch to ratify the report. 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 2009-049

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 Ptak and seconded by Dover that this complaint be held in abeyance and a new

complaint be filed against the Respondent for violating 81-885.24(29), 81-885.24(17), 81-885.24(12), 81-855.24(22), and others as determined by staff and or legal counsel. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item B Complaint 2000-051

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 Ptak and seconded by Leisey that this complaint be held in abeyance and a new complaint be filed against the Respondent for violating 81-885.24(29) and 76-2421 (1)(a) and (b). Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item C Complaint 2010-032

Deputy Director Mayrose explained that this complaint had been received by the Commission but had been returned to the Complainant for amendment. The Complainant had not returned the amended complaint.

After being advised of this, a motion was made by Leisey and seconded by Ptak that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Interpretation of Neb. Rev. Stat. §81-885.24(14) and §81-885.24(15),
Future Listing Agreements**

Director Lemon presented an exhibit regarding the interpretations as requested, a copy of which is attached to and made a part of these minutes.

Director Lemon explained the exhibit and the various research sources used to support the interpretations of Neb. Rev. Stat. §81-885.24(14) and §81-885.24(15) when read in conjunction would specifically prohibit "negotiating the sale exchange or listing or lease" of real estate with an owner when the owner has an outstanding listing agreement with another licensee. He indicated that he also consulted Special Assistant Attorney General Greg Barton, who felt that the language in the aforementioned statutes were clear.

There was discussion regarding misinterpretations made regarding these statutes. The majority of Commissioners were in support of keeping the law as written but were concerned about the current practice and how to educate the licensees on the correct interpretation of the law.

A motion was made by Gale and seconded by Dover that the Commission clarify this interpretation, having an article written in the Commission Comment Newsletter to further clarify to the industry the meaning and interpretation of these laws.

An amendment was offered by the second to also send out an email notification which was accepted by the mover.

An amendment was offered by Commissioner Leisey to send a letter of clarification to all designated brokers. The amendment was accepted by the mover and second.

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

Presentation of Stipulation and Consent Orders

Complaint 2010-015, Commission vs. Laura Ann Switzer

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-015, Commission vs. Laura Ann Switzer. A copy of said Order is attached to and made a part of these minutes.

Counsel Barton discussed the proposed stipulation and consent order.

After discussion, a motion was made by Ptak 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 2010-053, Sandra L. and George O. Nichols vs. Candice M. Potratz

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-053, Sandra L. and George O. Nichols vs. Candice M. Potratz. A copy of said Order is attached to and made a part of these minutes.

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

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

Complaint SC2010-004, Commission vs. Scott Allen Schaefer

Deputy Director Mayrose presented a verbal Stipulation and Consent Order in the matter of Complaint 2010-004, Commission vs. Scott Allen Schaefer.

Counsel Barton discussed the proposed stipulation and consent order which had been verbally agreed to by Mr. Schaefer which included an additional six month suspension with the first thirty-days served on suspension and the remaining five months added to his current probation period.

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

Hearings

December 2 – 9:30 a.m. - Complaint 2010-015 - Commission vs. Laura Ann Switzer

The Hearing regarding Complaint 2010-015, Commission vs. Laura Ann Switzer was continued at the request of the Complainant's Counsel.

**December 2, 2:00 p.m. - Show-Cause Hearing on
SC2010-004, Commission vs. Scott Allen Schaefer**

A motion was made by Leisey and seconded by Avery to continue the Hearing regarding Complaint 2010-005, Commission vs. Scott Allen Schaefer pending signing of the Order by Mr. Schaefer. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**December 3, 9:30 a.m. - Show-Cause Hearing on
SC2010-005, Commission vs. Michael Dean Slatten**

A Hearing was held on December 3 at 9:30 a.m., in the matter of SC2010-005. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Michael Dean Slatten was present without Counsel.

After Opening Statements, Counsel Barton offered thirteen Exhibits. Counsel Barton called Greg Lemon, Terry Mayrose, Teresa Hoffman and Michael Slatten as witnesses.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made by Dover and seconded by Rouch in Complaint SC2010-005, that Michael Dean Slatten did not comply with the requirements of the disciplinary order dated June 1, 2009. Motion carried with Avery, Dover, Leisey, Ptak, and Rouch voting aye, with Griess and Gale not participating or voting, being absent and excused.

Acting Chairperson Ptak opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #2003-023, dated May 28, 2003, suspending Mr. Slatten's license for two years with the entire period stayed and served on probation, plus an additional twelve hours of continuing education, including three hours in the area of agency, three hours in the area of license law, three hours in the area of contracts and three hours in the area of trust accounts. It also showed that the Commission held a hearing on May 22, 2009 in which Mr. Slatten's license was suspended for two years with the first thirty days actually served on suspension and the remainder stayed and served on probation, plus an additional six hours of continuing education, including three hours in the area of trust accounts and three hours in the area of license law. Mr. Slatten's license is restricted in that he is absolutely barred indefinitely into the future from acting as a designated broker, employing broker or managing broker until completion of the order and acceptance of the Commission to have such restrictions removed.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Ptak and seconded by Dover in Complaint SC2010-005, that Michael Dean Slatten should receive an additional six month suspension with the first thirty days served on suspension and the remainder stayed and served on probation. Motion carried with Avery, Dover, Leisey, Ptak, and Rouch voting aye, with Griess and Gale not participating or voting, being absent and excused.

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

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

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

The Hearing was adjourned at 10:58 a.m.

Informal Special Appearances

There were no informal special appearances scheduled to be held at this meeting.

Review and Approval of Travel for Teresa Hoffman to Attend the ARELLO Leadership Symposium and Board of Directors Meeting – Scottsdale, Arizona – January 4-7, 2011

Deputy Director Hoffman presented an estimated travel expenses list for the ARELLO leadership Symposium and Board of Directors Meeting. A copy of said exhibit is attached to and made a part of these minutes.

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

2011 Proposed Legislation – For Public Comment

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

Director Lemon presented a proposed legislative bill 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.

Asset Management Companies

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

Broker Approved Training

Director Lemon presented a proposed legislative bill to address broker approved training. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon gave a brief synopsis of each of the legislative bills and requested public comment on the proposed changes relating to the proposed law changes.

Kristen Anderson with the Nebraska REALTORS® Association indicated that they were in support of the proposed legislation.

No action was necessary on the proposed legislation.

Any Other Proposals

Kristen Anderson with the Nebraska REALTORS® Association indicated that the Association would be introducing two Legislative bills but was unsure if Director Lemon had received the proposals for review yet. She indicated that the first legislative bill would change the law regarding real estate broker trust accounts and allow trust accounts to be allowed to be interest bearing accounts for the purpose of educating first time home buyers on affordable housing. She noted that the funds would be monitored by a third-party non-profit organization. She also explained that the interest bearing trust accounts would not be required.

Ms. Anderson asked for the Commission's support when introducing the bill.

She indicated that the second legislative bill was a preemptive gesture to prohibit the practice of developer fees, known as private transfer fees, being added to the selling price of the property for up to ninety-nine years. She explained that seventeen other states had prohibited this practice and while she was unaware of this practice occurring in Nebraska this preemptive gesture was being proposed.

Director Lemon noted that this was not a regulatory issue for the Commission to introduce but rather could be supportive of the proposal being made by the Nebraska REALTORS® Association. Chairperson Gale indicated that the Commission did not regulate land titles.

A motion was made by Dover and seconded by Ptak to support the legislation being introduced by the Nebraska REALTORS® Association. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Information Matters

Trust Account Examination Evaluation Report - Third Quarter 2010

Director Lemon presented the Trust Account Examination Evaluation Report - Third Quarter 2010. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled.

Commissioner Leisey noted that the examiners were helpful and did not conduct an examination in order to "go after you" but rather to help brokers and staff be more productive and commended the examiners on that approach.

No action was necessary on this report.

Future Meeting Dates

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 10:20 a.m. on December 2, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:35 a.m.

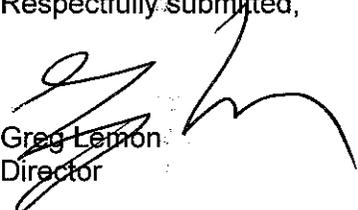
At 12:15 p.m. on December 2, Chairperson Gale recessed the meeting.

At 9:30 a.m. on December 3, Acting Chairperson Ptak reconvened the meeting.

At 11:00 a.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Ptak that the meeting adjourn. Motion carried with Avery, Dover, Leisey, Ptak, and Rouch voting aye, with Griess and Gale 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 December 2-3, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on December 15, 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
Cari Hancock, Nebraska REALTORS® Association, Lincoln
JoAnn Grennan, CBSHOME Real Estate, Omaha

