

NEBRASKA REAL ESTATE COMMISSION

April 22, 2010

Hampton Inn & Suites

Husker Room

Lincoln, NE

Opening

Acting Chairperson Leisey convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on April 22, 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 Gale, Grady and Griess, who were absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Greg Barton and Kelly Eckler, Special Assistant Attorneys General and Counsel to the Commission, were present for the Terry Keith Held and Harvey Lee Quiring 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. Acting Chairperson Leisey reported that all Commissioners had been notified of the meeting simultaneously, in writing, and that a proposed tentative agenda accompanied the notification.

Acting Chairperson Leisey pointed out to those in attendance that a public copy of the materials being used during the meeting was 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 northeast corner of the meeting room; and that the procedures followed were in accordance with the Open Meetings Act. Acting Chairperson Leisey 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 Ptak and seconded by Dover to adopt the final agenda as presented. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess not participating or voting, being absent and excused.

Minutes of March 18, 2010

The minutes of the Commission meeting held on March 18, 2010, were considered.

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

Public Comment

Acting Chairperson Leisey asked the members of the audience if anyone wished to come forward to provide public comment on any of the agenda items.

Kristen Anderson, Nebraska REALTORS® Association indicated that suggestions would be submitted to the Commission for review by the Commission's subcommittee regarding education matters. She also noted that suggested changes to the Seller Property Condition Disclosure Statement had been solicited from their members and would be forwarded to the Commission.

Receipts and Expenditures Report for March

Director Lemon presented the Receipts and Expenditures Report for March. 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 March 31, 2010, was \$763,981.57, which compared to a cash fund balance of \$726,970.65 on March 31, 2009.

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

Specialized Registrations

Time-Share Registrations - Amendment for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site)

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

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

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

Examination Report - March

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

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

Real Estate Education Matters

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Instructor Approval

Deputy Director Hoffman presented for ratification the Continuing Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Ptak and seconded by Rouch to ratify the two reports. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess 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 2009-027 – Tammy and Andy Ingwerson vs. Sandra Lee Harder

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 Rouch and seconded by Dover that the complaint be dismissed without prejudice. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Item B Complaint 2009-034 – John R. Hartsock vs. Patrick Lynn Mooberry

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 Rouch and seconded by Dover that the complaint be dismissed without prejudice. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Item C Complaint 2010-004

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 set for hearing on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Item D Complaint 2010-005

Deputy Director Mayrose indicated that the review of Complaint 2010-005 has been postponed until a future meeting.

Item E Complaint 2010-008

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 on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Item F Complaint 2010-009

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 on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Item G Complaint 2010-010

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 on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess 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 and discussion, a motion was made by Ptak and seconded by Dover that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess 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 and discussion, a motion was made by Dover and seconded by Ptak that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, and with Gale, Grady, Griess not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

Complaint 2009-012, Michele J. Bonge vs. Shelli Marie Novotny and Tammy L. Wherley

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-012, Michele J. Bonge vs. Shelli Marie Novotny and Tammy L. Wherley. A copy of said Order is attached to and made a part of these minutes.

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

Hearings

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

A Hearing was held on April 22, at 9:35 a.m., in the matter of Complaint 2009-006, Commission vs. Terry Keith Held and Harvey Lee Quiring. Greg Barton and Kelly Eckler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondents Held and Quiring were present and represented by Counsel Scott Gray of Norfolk.

After Opening Statements, Counsel Barton offered ten Exhibits, all of which were received by Presiding Commissioner Ptak. Counsel Gray offered ten Exhibits, all but one which was received by Presiding Commissioner Ptak.

Counsel Barton called Terry Keith Held and Harvey Lee Quiring as witnesses.

At 11:10 a.m., Presiding Commissioner Ptak declared a brief recess, and reconvened the Hearing at 11:22 p.m.

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

Prior to any motion the following occurred:

Commission Dover indicated that all sellers should have signed the purchase agreement which was a violation of law. He felt that Mr. Held and Mr. Quiring had knowledge in agricultural sales and language regarding the CRP contract should have been added to the purchase agreement. Commission Rouch concurred.

Commissioner Leisey indicated that Mr. Held should have obtained signatures from all of the sellers. He felt that Mr. Quiring should have received better advice from Mr. Held, the supervising broker.

Commissioner Ptak felt that both Mr. Held and Mr. Quiring had not complied with the laws and if the appropriate language had been included in the purchase agreement, there may not have been a complaint filed against them. He indicated that while there were clear violations of the license law, he did not feel that a significant penalty should be imposed.

A motion was made by Leisey and seconded by Rouch in Complaint 2009-006, that Terry Keith Held and Harvey Lee Quiring violated Neb. Rev. Stat. § 81-885.24(29) and 76-2417(1). Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess not participating or voting, being absent and excused.

Presiding Commissioner Ptak opened the past disciplinary action envelope. It showed no prior disciplinary action against either Respondent.

The Commissioners then discussed the penalty to be assessed.

Discussion surrounded the educational courses which may be imposed as a penalty to Mr. Held and Mr. Quiring.

A motion was made by Dover and seconded by Leisey in Complaint 2009-006 that Terry Keith Held and Harvey Lee Quiring receive a censure plus three hours of additional continuing education in the area of contracts.

After further discussion, the pending motion was withdrawn by the mover and the second.

Commissioner Rouch indicated that the penalty imposed in the withdrawn motion was acceptable in her opinion. Commission Ptak concurred.

A motion was made by Dover and seconded by Leisey in Complaint 2009-006 that Terry Keith Held and Harvey Lee Quiring receive a censure plus three hours of additional continuing education in the area of contracts to be completed within 180 days. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess not participating or voting, being absent and excused.

With the consent of the Respondents, Presiding Commissioner Ptak directed Counsel Barton to prepare the Order.

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

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

The Hearing was adjourned at 12:45 p.m.

Informal Special Appearances

Jaye A. Ott, Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Ott's special appearance; a letter of explanation and request for an informal special appearance from Mr. Ott; Certificate of Release or Discharge From Active Duty from the Navy-USN for Mr. Ott; character reference letters for Mr. Ott; and Mr. Ott's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Ott was present.

Acting Chairperson Leisey reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Rouch and seconded by Dover to allow Mr. Ott to sit for the salesperson examination after making proper application and to have a license issued upon passing with the conditions that Mr. Ott notify Commission staff within thirty days of any felony or misdemeanor charges during his first year of licensure; Mr. Ott must notify his employing broker of his criminal convictions and the circumstances of the convictions; and the employing broker must confirm said notification, in writing, to the Commission prior to issuance of the license. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess not participating or voting, being absent and excused.

Legislative Matters

LB 691 - No new information presented.

LB 736 - No new information presented.

LB 818 – No new information presented.

LB 931 – Director Lemon reported that the bill had been approved by the Governor on April 14, with Emergency Clause. He indicated that this would affect real estate licensees regarding the allowable uses of Broker Price Opinions. The amended provisions regarding Broker price opinions were moved from the Real Estate Appraiser Act to the Real Estate License Act.

LB 226 - No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – April 8-10, 2010 - Colorado Springs, CO – Report of Attendees

Director Lemon noted that Commissioners Dover, Grady and Rouch, himself and Deputy Director Hoffman attended the ARELLO Mid-Year Meeting.

Director Lemon noted that this was the first ARELLO Mid-Year meeting he attended. He noted that he also attended the "Commissioner College". He indicated that he attended subcommittee meetings, one in which Deputy Director Hoffman is co-chair. This task force is moving to prepare a response should the federal government indicate an interest in intervening in the regulation and

licensing of real estate practitioners similar to the action taken in the regulation of real estate appraisers. He also explained that while such action is not currently on the horizon, it was in the best interest of ARELLO members and the industry to be prepared in advance should such a case be presented.

Commissioner Rouch indicated that she also had attended committee meetings. She felt especially impressed with the level of experience in the ARELLO staff involved in the distance education certification program.

Deputy Director Hoffman was asked and explained that the format of this meeting was the implemented change discussed at the annual meeting and that it appeared to be popular and would be implemented at future ARELLO mid-year meetings.

Commissioner Dover felt that ARELLO offered a very good speaker during this program. He also felt that future forums would open discussion for other members rather than just the subcommittees.

No action was necessary on this report.

Agency Law Compliance in Third Party Sales of HUD, FANNIE MAE, etc. Properties

Director Lemon presented an exhibit regarding the sale of HUD, foreclosure, etc. properties by asset managers and compliance with agency law requirements. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the Commission receives many questions regarding sales in which asset managers are involved. He explained that asset managers in most cases have their own procedures to follow in the sales and transaction processes which may not comply with the laws in Nebraska. He indicated that after the processes were analyzed, procedures were drafted to give guidance to licensees regarding these types of sales. He further explained a licensee would need to receive a NAID certification or registration with HUD in order to provide these third party sales. Such NAID registration enrolls the licensees to be considered an officer of the Federal Government in which the licensee would be exempt from the License Act and Rules and Regulations of the Commission. He noted that the procedure would be to require the licensees to place a copy of said NAID registration in the applicable sales file.

Commissioner Leisey suggested Director Lemon review the NAID registration process since he understood that the designated broker would obtain NAID registration which was also used by affiliated licensees.

Director Lemon indicated that those sales which are not conducted as federal assets, those would still be required to comply with the Nebraska License Act and Rules and Regulations.

There was discussion regarding how the national asset managers do not allow for compliance with state license laws.

Director Lemon indicated that unless changed, the Nebraska License Act and Rules and Regulations were inconsistent with many third party asset manager procedures for the disposition of real estate in Nebraska.

Commissioner Dover suggested discussion at a later meeting regarding proposed changes to the laws when licensees are involved in third party sales by asset managers who are not working for HUD.

Director Lemon indicated that only the procedures dealing with HUD would be provided to licensees once the NAID registration was reviewed at this time. He noted that compliance with the non-federal third party sales would be brought before the commission at a later scheduled meeting and that Commission staff would do further research on the options available to deal with the issues raised.

No action was necessary with regard to this matter.

Future Meeting Dates

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 9:29 a.m., Acting Chairperson Leisey declared a brief recess, and reconvened the meeting at 9:35 a.m.

At 11:10 a.m., Acting Chairperson Leisey declared a brief recess, and reconvened the meeting at 11:22 a.m.

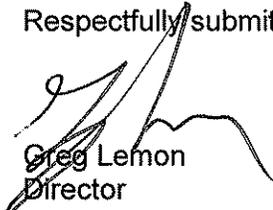
At 12:45 p.m., Acting Chairperson Leisey declared a recess for lunch, and reconvened the meeting at 1:33 p.m.

At 1:55 p.m., Acting Chairperson Leisey declared a brief recess, and reconvened the meeting at 2:39 p.m.

At 3:05 p.m., there being no further business to come before the Commission, a motion was made by Dover and seconded by Rouch that the meeting adjourn. Motion carried with Dover, Ptak, Rouch and Leisey voting aye, with Gale, Grady, Griess 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 April 22, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on April 27, 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

Michael Moreland, Moreland Realty, Imperial

Rod Faubion, NP Dodge Co, Omaha

Harold Johnson, NP Dodge Co, Omaha