

# NEBRASKA REAL ESTATE COMMISSION

August 19-20, 2010

Staybridge Suites

Staybridge Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:04 a.m. on August 19-20, 2010, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Leisey, who was absent and excused on the second day of the Meeting. 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 McGargill Hearing and the Thompson Show-Cause 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 northwest corner of the meeting room by the west 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 there was a correction to Agenda Item 5b which changed the Fiscal Year Monthly Budget Allocations from FY09-10 to FY10-11 since the tentative agenda was mailed to the Commissioners.

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

## **Minutes of July 22, 2010**

The minutes of the Commission meeting held on July 22, 2010, were considered.

After review, a motion was made by Griess and seconded by Rouch to approve the minutes as presented. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not voting having not been in attendance at the July Meeting.

## **Public Comment**

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

## **Receipts and Expenditures Report for June & July**

Director Lemon presented the Receipts and Expenditures Reports for June and July. 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. (Note: It was discovered after the meeting that the Exhibits for these Agenda Items were incorrect. The explanation sheets were attached to the incorrect month's reports and the July explanation sheet was set forth as "June 2010" when, in fact, the date should have been "July 2010". The Exhibits were corrected for attachment to these minutes.)

The cash fund balance as of June 1, 2010, was \$637,968.73, which compared to a cash fund balance of \$634,972.27 on June 1, 2009.

The cash fund balance as of July 1, 2010, was \$552,705.16, which compared to a cash fund balance of \$579,387.16 on July 1, 2009.

After discussion, a motion was made by Leisey and seconded by Grady to file the June and July Receipts and Expenditures Reports for audit. Motion carried with Dover, Grady, 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.

Director Lemon explained that the actual variance of the renewals was approximately 3%. Commissioner Dover suggested future reports include a column which reflects such percentage.

No action was necessary on this report.

## **Fiscal Year 10-11 Monthly Budget Allocations**

Director Lemon presented the Budget Spread for Fiscal Year 10-11. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon pointed out the expenditure items of note which included the allowance of reappropriation of the unexpended amounts from Fiscal Year 09-10 which is reflected in the expenditure balance.

No action was necessary on this report.

## **Consider 2011 License Fees**

Director Lemon presented an exhibit in which the Budget and Planning Subcommittee recommended an increase in the transfer fees and other miscellaneous fees. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the Budget Subcommittee recommendation included an increase of ten dollars for the license transfer fees, impose a fee for a Certification of Licensure, and increase the application fee for license applications by license recognition. The combined annual revenue would increase by approximately twenty-four thousand, five hundred and fifty dollars. He explained that the transfer fee would be reverted back to the fee which had been charged prior to

2001 when it was changed from twenty-five dollars to fifteen dollars. He indicated that individuals applying for a resident real estate license are required to pay an application fee and since the processing and review is similar to nonresident applicants it would make sense to charge the same fee to those who are making application for licensure based on license recognition. However, such application fee would require Legislation. He noted that the License Act allows for a fee to be charged when a Certification of Licensure is requested by a licensee to obtain a license in other jurisdictions. He further explained that while these charges would not make a significant impact to the Commission's revenue, it would allow for an increased level of comfort with regard to the cash fund balance.

Chairperson Gale indicated that a request can be made with the proposed Legislation to include an emergency clause to allow charging the application fee for license application by license recognition upon the passing of the bill. He explained that the Budget Subcommittee made a unanimous recommendation based on the risk that if the balance in the fund was significant that it may be taken to increase the State's General Fund balance.

Commissioner Grady felt the predictions were conservative and believed the reduction in revenue would be greater than predicted. He also indicated that it would be difficult to build the cash fund balance once it had been depleted and the Commission should strongly oppose and further reductions or transfers that may be proposed from the Commission's fund. He stated that the Commission's objective discussed would require significant funds and therefore suggested that in addition to the recommended fee increases that a five dollar increase also be imposed for the 2011 license fees and renewal fees.

Commissioner Leisey indicated that while he did think a five dollar increase to license fees might be needed to maintain the desired cash fund balance, he agreed with the recommendation based on the fact that he did not want the licensee's fees to be used to offset the state general fund budget deficit.

Commissioner Griess asked what ramifications could occur if the fee recommendations were approved but the Commission's cash fund balance were significantly lower than predicted.

Commissioner Gale indicated that some fees charged by the Commission could be raised at any time without Legislative changes and since the fund balance is monitored closely, such fee increases could be imposed should the need arise.

Director Lemon indicated that the Commission needed to be proactive and the ability to increase fees at anytime allows the Commission to react to such need.

Commissioner Gale indicated that should the cash fund balance get too low there are means of deferring payments such as postponing Hearings, travel or trust account evaluations until funds allow for such expenditures.

A motion was made by Leisey and seconded by Dover to approve the fee increases as proposed. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Proposed Biennium Budget Request for 2011-2013**

Director Lemon presented the 2011-2013 Biennium Budget Request Proposal. A copy of said proposal is attached to and made a part of these minutes.

Director Lemon pointed out that this was a draft of the budget as it would be submitted unless there were changes to be made. He explained that the account codes which would increase or decrease over the current fiscal year's budgeted amounts and reviewed the explanations in the narrative section of the proposal for these accounts. He explained that the proposed budget was essentially the same as the current fiscal year budget minus the reappropriated balance authority. He also explained that there was an additional request or issue identified in the budget asking that the 5% reduction made in last year's special budget cutting session be restored to the Real Estate Commission's operating base for the next two fiscal years, with no further increases requested.

Chairperson Gale indicated that in the program narrative of the budget it reflected a performance measure goal in which all complaints are investigated and reports made to the Commission within 90-180 days. He did not feel this was a realistic goal.

After further discussion, it was decided based on staff requirements and volume of complaints received that the performance measure goal stating that all complaints are investigated and reports made to the Commission within 90-180 days be changed to 180-270 days.

There was also discussion regarding a citation or censure issued by the Director rather than being brought to the Commission. The Commissioners discussed the level of cases which could be handled in this manner and Director Lemon was instructed to investigate and report the guidelines, volume and staffing in which other jurisdictions use for such proceedings.

Chairperson Gale questioned the amount budgeted for computer hardware due to the fact that the objectives set by the Commission may require additional funds than are listed on the budget. Director Lemon explained that the computer hardware funds were for the office computers on the replacement schedule. He noted that improvements to the online services would be a separate account code.

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

### **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 Grady and seconded by Leisey to ratify issuance of the licenses as set forth in the report. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Examination Report – June & July**

Deputy Director Hoffman presented for ratification the June and July Examination Reports, copies of which are attached to and made a part of these minutes.

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

## **Real Estate Education Matters**

### **Continuing Education Activity Approval**

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

### **Continuing Education Instructor Approval**

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

After review, a motion was made by Grady and seconded by Leisey to ratify the two reports. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Continuing Education Activity Rejection**

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

No action was necessary on this report.

## **Pending Sworn Complaints and Investigative Matters**

Deputy Director Mayrose presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

### **Item A Complaint 2009-042**

Deputy Director Mayrose indicated that Complaint 2009-042 had been presented at a previous meeting and would require a motion to reconsider the Complaint prior to discussion.

A motion was made by Grady and seconded by Griess that Complaint 2009-042 be reconsidered. Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

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 Grady and seconded by Griess that the complaint be set for hearing per Staff recommendation. Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye,

and with Leisey and Rouch not participating or voting, being absent and excused.

**Item B** Complaint 2009-046 – Anthony and Rhonda Cox vs. Jessie Ann Johnson

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 Griess that the complaint be dismissed without prejudice.

An amendment to the motion was made by the second that a letter of admonishment be sent to the Respondent. It was accepted by the mover.

Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

There was discussion regarding the practice of obtaining a signature of receipt of a fully executed agreement before the agreement was fully executed. It was suggested that an article regarding this issue be put in the Commission Comment Newsletter.

**Item C** Complaint 2009-047 – Jerome Richard Settles and Lee A. Vermeer vs. Richard Nicholas Schuit

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 Grady and seconded by Griess that the complaint be dismissed without prejudice.

Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

**Item D** Complaint 2009-048 – Kathleen Chandler vs. John Lawrence Wakefield

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 Grady that the complaint be dismissed without prejudice.

Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

**Item E** Complaint 2010-040 – Don & Judy Fricke vs. Laura Marie Bell

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 Grady that the complaint be dismissed without prejudice.

Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

**Item F** Complaint 2009-011 – David J. and Lee Ann McGregor vs. Julie Lynn Carper

**Item G** Complaint 2009-035 – Commission vs. Julie Lynn Carper

**Item H** Complaint 2009-036 – Jackie L Harpst – Community Action Partnership of Mid-Nebraska vs. Julie Lynn Carper

Deputy Director Mayrose indicated that the Respondent in these matters had not renewed their license for 2010. Therefore, the Commission no longer had jurisdiction over these matters.

A motion was made by Grady and seconded by Ptak that Complaints 2009-011, 2009-035 and 2009-036 be dismissed without prejudice. Motion carried with Dover, Grady, Griess, Ptak and Gale voting aye, and with Leisey and Rouch not participating or voting, being absent and excused.

**Item I** Complaint 2010-015

Deputy Director Mayrose wanted to discuss Complaint 2010-015 since the Respondent presented a Stipulation and Consent Order to the Commission which fails to admit any wrongdoing. He indicated that in the past, a Stipulation and Consent Order had only been accepted by the Commission upon admission of guilt. He sought guidance from the Commission to an acceptable Order.

There was discussion regarding the alleged violations and it was the consensus of the Commission to offer the Respondent a Stipulation and Consent Order which would revoke the license. If the Respondent would not accept the conditions of the Order then the matter would be set for Hearing.

### **Presentation of Stipulation and Consent Orders**

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

### **Hearings**

#### **August 19, 9:30 a.m. - -Complaint 2008-032 – Paul D. and Christmas B. Kitko vs. Anne Jelena McGargill**

A Hearing was held on August 19, at 9:32 a.m., in the matter of Complaint 2008-032, Paul D. and Christmas B. Kitko vs. Anne Jelena McGargill. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Anne Jelena McGargill was present and represented by Counsel Doug Ruge of Omaha.

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

After opening statements, Counsels Barton and Ruge jointly offered twenty-one Exhibits, all of which were received by Chairperson Gale.

Counsel Barton called Anne Jelena McGargill and William Daniel O'Brien as witnesses.

At 11:00 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:12 a.m.

Counsel Ruge offered seventeen Exhibits, all of which were received by Chairperson Gale.

Counsel Ruge called Lauren Errico, formerly known as Lauren Moran, and Anne Jelena McGargill.

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.

Chairperson Gale indicated that mortgage fraud was not stated as part of this complaint and indications made should not taint deliberations.

A motion was made by Dover and seconded by Ptak to dismiss Complaint 2008-032.

Director Lemon reviewed the pre-hearing order at the request of the Commission. There was discussion regarding the importance of the pre-hearing order being received by all of the Commissioners.

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

A motion was made by Dover and seconded by Grady in Complaint 2008-032, that the Commission find that Anne Jelena McGargill violated Neb. Rev. Stat. § 81-885.24(29).

Motion carried with Dover, Grady, Griess, Leisey, Ptak and Gale voting aye, with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

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

The Commissioners then discussed the penalty to be assessed.

A motion was made by Dover and seconded by Grady in Complaint 2008-032, Anne Jelena McGargill receive a thirty-day suspension served and stayed on probation plus six hours of additional continuing education with three hours being in the area of contracts and three hours in the area of license law and a one-thousand dollar fine.

Motion failed with Dover and Grady voting aye, with Griess, Leisey, Ptak and Gale voting nay, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

A motion was made by Leisey and seconded by Gale in Complaint 2008-032, Anne Jelena McGargill receive a censure plus three hours of additional continuing education to be determined by Staff. Motion carried with Grady, Griess, Leisey, Ptak and Gale voting aye, with Dover voting nay, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

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



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

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

The Hearing was adjourned at 1:02 p.m.

After discussion, a motion was made by Dover and seconded by Leisey to review the investigation and identify any further violations that may have occurred. After further discussion the pending motion was withdrawn by the mover and second.

**August 20, 9:15 a.m. - Show-Cause Hearing on  
SC2010-003, Commission vs. Gary Thomas Thompson**

A Hearing was held on August 20, at 9:15 a.m., in the matter of SC2010-003. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Gary Thomas Thompson was present without Counsel.

After opening statements, Counsel Barton offered twelve Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Greg Lemon, Terry Mayrose and Gary T. Thompson as witnesses.

Respondent Thompson offered five Exhibits, all of which were received by Chairperson Gale. Respondent Thompson called himself as a witness.

At 11:15 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:30 a.m.

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 Dover and seconded by Grady in Complaint SC2010-003, that the Commission find that Gary Thomas Thompson failed to show-cause why sanctions should not be taken against his real estate license. Motion carried with Dover, Grady, Griess, Ptak and Rouch voting aye, with Gale voting nay, and with Leisey not participating or voting, being absent and excused.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #94-032, dated September 28, 1994, suspending his license for sixty days with the entire sixty days stayed and served on probation, plus an additional three hours of continuing education in the area of trust accounts.

It also showed the Commission held a Hearing on May 26, 2009 relating to Complaint #2008-004, suspending Mr. Thompson's license for two years with the first year served on suspension and the second year of the suspension stayed and served on probation, plus an additional six hours of continuing education to include three hours of trust accounts and three hours of license law. Also, Mr. Thompson was required to develop written policies and procedures for governing the

maintenance of transaction files and trust account records in all of his real estate offices and submit such policies and procedures be submitted to the Commission for review and approval along with proof of implementation of such policies in procedures in all of the offices.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Ptak and seconded by Rouch to extend the suspension period for an additional six months with the entire six months stayed and served on probation and pay a civil fine of one-thousand dollars.

Motion carried with Griess, Ptak, Rouch and Gale voting aye, with Dover and Grady voting nay, and with Leisey not participating or voting, being absent and excused.

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

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

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

The Hearing was adjourned at 12:22 p.m.

### **Informal Special Appearances**

#### **Christopher J. Kortan, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Kortan's special appearance; a copy of Mr. Kortan's criminal history from the Omaha Police Department; Mr. Kortan's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kortan was present.

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

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Kortan distributed letters of reference and a petition of relief issued by the Superior Court of California, County of San Diego. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

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

After discussion, a motion was made by Ptak and seconded by Dover that Mr. Kortan's request to be allowed to sit for the salesperson examination be denied at this time until he is released from probation.

After further discussion, an amendment to the motion was made by the mover to allow Mr. Kortan, upon release of probation, to file a new application without incurring the application and

examination costs again. It was accepted by the second.

Motion carried with Dover, Grady, Griess, Leisey and Ptak voting aye, with Gale voting nay, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

### **Charles Richard Lueck, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Lueck's special appearance; character reference letters for Mr. Lueck; a copy of Mr. Lueck's District Court docket entries from William F. Eustice, Attorney; notes taken by a staff member during a telephone conversation with Mr. Lueck; Mr. Lueck's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Lueck was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Lueck distributed a letter of reference and Orders issued by the District Court of Douglas County, Nebraska. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

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

After discussion, a motion was made by Ptak and seconded by Dover to allow Mr. Lueck to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Julie Lauritsen, Potential Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Lauritsen's special appearance; an email explanation from Ms. Lauritsen; a letter requesting an informal special appearance from Ms. Lauritsen and character reference letters for Ms. Lauritsen. A copy of said exhibit is attached to and made a part of these minutes. Ms. Lauritsen was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Lauritsen explained the situations regarding his past criminal history.

After discussion, a motion was made by Dover and seconded by Grady to allow Ms. Lauritsen to sit for the salesperson examination after making proper application and to have a license issued upon passing as long as no other criminal convictions appeared on her criminal background check. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Corey B. Abels, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Abels' special appearance; character reference letters for Mr. Abels; Mr. Abels' criminal history report; notes taken by a staff member during a telephone conversation with Mr. Abels and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Abels was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

Lonnie Davis, a Grand Island Broker was present and spoke on behalf of Mr. Abels.

A motion was made by Ptak and seconded by Griess that Mr. Abels not be allowed to sit for the salesperson examination at this time, but upon completion of the probation period and another background check, allow for reapplication without incurring the application and examination fee. Motion carried with Grady, Griess, Ptak, Rouch and Gale voting aye, and with Dover and Leisey voting nay.

### **Consider 2010-2011 Commission Objectives**

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 the exhibit and indicated that the draft was reviewed by the Commission at the June meeting in which input was requested. He noted that item number ten had been added since the draft was presented. He explained that several items listed were administrative matters which would allow the Commissioners, licensees and staff to make better use of their time in the processing of license applications and renewals and other business with the Commission.

Commissioner Leisey requested clarification regarding the two-year renewal cycle. Director Lemon explained that license renewals could be submitted every two years when the continuing education was due. Commissioner Dover felt that renewals should be submitted every year as well as continuing education.

Commissioner Rouch asked if there were any carryover objectives from the previous fiscal year. Director Lemon indicated that most of the objectives from the previous year were completed, however, there were a few still listed.

Commissioner Dover asked what the purpose was for submitting continuing education on a two-year cycle. Deputy Director Hoffman indicated that the requirement was based on the standard practice and for administrative purposes.

Commissioner Dover felt that once renewals could be submitted online that renewals and continuing education should be submitted every year rather than every two years. Chairperson Gale indicated that the discussion regarding the two-year cycle for continuing education and renewals could be placed on the Agenda and discussed at a later meeting.

A motion was made by Leisey and seconded by Rouch to adopt the Commission Objectives as presented. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Consideration of Continuing Education and Training Requirement**

Deputy Director Hoffman distributed a letter of concern over proposed changes to the continuing education requirement from Ken Kunze with Ken Kunze Realty. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 15a. Deputy Director Hoffman also presented a real estate continuing education concept paper which was approved by the Education Committee. A copy of said exhibit is attached to and made a part of these minutes. (Note: A copy of the exhibit circulated prior to the meeting failed to show the proper revision date the exhibit considered at the meeting was corrected to indicate a revision date of August 2010.) Deputy Director Hoffman explained that the education committee reviewed comments from the

June Commission Meeting and various recommendations and concerns were considered when revising the concept paper.

Deputy Director Hoffman indicated that the changes made to the concept paper included the reduction of approved broker training hours to six hours and in lieu of completing the broker training, licensees could take an additional six hours of approved continuing education. She noted that while the training would still need to be approved in blocks of at least three hours, brokers would be allowed to offer training in one-hour segments. She indicated that the paper clarified that original submissions for training programs would need to be submitted to the Commission 30 days in advance but that subsequent offerings simply needed to give advanced notice of scheduling.

Commissioner Dover asked why it would take Commission staff thirty-days to put the information into the database. Deputy Director Hoffman indicated that she had patterned the broker training concept after the manner in which continuing education is processed which has allowed for adequate time to address any contingencies that may arise before the program is offered and licensees' credit is catalogued. Commissioner Leisey expressed concerns regarding the thirty-day preapproval period prohibiting more spontaneous offerings when licensees, instructors and topics all converge.

Commissioner Dover questioned the minimum three-hour program and asked if the content could cover a broad spectrum of subjects within that timeframe.

Deputy Director Hoffman indicated that the reason for submitting the training in a three-hour block was simply to cut down the database input and for tracking purposes. She explained that if training hours were submitted in one-hour increments that it would triple the database input and triple the tracking.

Commissioner Dover indicated that the bundling of courses would make it simple for the staff and when training was completed a form would be signed by the broker and submitted to the Commission upon three hours being completed. There was discussion regarding the format of the form which the brokers would have to submit.

Chairperson Gale asked if the training would be accepted in a distance format. Deputy Director Hoffman replied that distance education would be accepted if approved by ARELLO.

Chairperson Gale asked how licensees in small towns would be affected by the broker training.

Commissioner Leisey indicated that broker training would be easier for those who are affiliated with a large company. Commissioner Griess indicated that smaller companies could get together to provide the training and companies in the communities would be allowed to offer their services as well.

Commissioner Rouch encouraged the Commission to review whether or not this increase was really necessary. Commissioner Rouch felt that most brokers could offer training at no charge but for those who would have to get the additional six-hours through continuing education there would be added expense.

Commissioner Dover explained that the broker training should not be hard to obtain. For example, the loan officer at the local bank could come speak to a group of licensees and that would count toward the broker training.

Commissioner Leisey asked about the prohibition of license law subject matter from training. Deputy Director Hoffman noted that most broker training subjects would be approved with the exception of subjects in laws, rules and regulations which should go through the continuing education review process to insure they would be taught properly and by a qualified teacher. Commissioner Dover asked if acceptable training topics would include purchase agreements and contracts or documents used by his office. Commissioner Ptak indicated that office practices could deal with a number of different topics including forms. Commissioner Leisey asked if approved broker training could include new agent training.

Chairperson Gale asked if a broker would have to provide completion certificates and verification lists. Commissioner Dover suggested that the training could be submitted by the broker in a six-hour block rather than the three-hour block.

Susan Geschwender from the Randall School of Real Estate indicated that at the last meeting she had submitted a letter of concerns to the Commission regarding the broker training and felt that if the Commission was considering increasing the education requirement, it should be in approved education rather than broker training. She also expressed concerns regarding the financial responsibility being placed on licensees who are unable to get the broker training. She distributed a list of the jurisdictions requiring the same or fewer hours of continuing education for salespersons than Nebraska. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 15b. She noted that several states had requirements similar to Nebraska's and that Errors & Omissions Insurance providers routinely complimented Nebraska licensees' practices leading her to question the need to increase the requirement.

Commissioner Ptak explained that he hoped additional training would lower the number of complaints being filed against licensees, and would rather have a licensee excited to stay on the cutting edge. He noted that the Commission needed to protect the public and provide opportunity for licensees and brokers to have training which is not currently approved.

Tammy Brookhouser from the Nebraska REALTORS® Association, Lincoln, indicated that in the concept paper, education providers could offer training and was curious if a designated broker would be required to sign off on the training in advance of the training.

Deputy Director Hoffman indicated that if the training was already approved, then the broker would just notify the Commission that he would authorize the training and the broker or the Provider would submit the list of attendees to the Commission.

Ms. Brookhouser asked if a broker would not provide training, would a licensee, whose broker would not provide training, be allowed to take training from another provider. Commissioner Griess indicated yes, as long as the broker approved the training ahead of time.

Commissioner Dover asked the definition of a "provider". Deputy Director Hoffman indicated that a provider was an individual who is responsible for putting together either a training or continuing education course, keeping the records, and administering it according to the law.

Chairperson Gale indicated that there appeared to be a lack of consensus among the committee regarding the training concept and suggested that no action be taken on this item at this meeting.

A motion was made by Gale and seconded by Grady to table the continuing education concept paper until the September meeting for final review. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Commission Policy Matters – Broker Payments to PLLC's and PC's**

Director Lemon presented a proposed policy which would allow designated brokers to pay compensation to an individual, a professional corporation or a professional limited liability company. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the policy was presented at the June Meeting, in which the Commission decided to wait for an attorney general's opinion before a decision was made. He indicated that the request for an attorney general's opinion was made by State Senator Rogert and an informal oral opinion was rendered, but the question posed related to the tax status of compensated entities and therefore was not directly relevant to the question of broker compensation before the Commission. He noted that the current exhibit had been revised to address the concerns expressed at the June meeting and had been reviewed by the parties voicing their concerns.

Commissioner Leisey asked if the payments made to a PC or and LLC could be a team rather than an individual. Director Lemon indicated that the current language allowed for such practice.

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

## **Consideration of No Contest Pleas in Disciplinary Actions**

Director Lemon explained that the topic of no contest pleas in disciplinary actions was requested to be placed as an Agenda item for discussion by Commissioner Ptak. He explained that Stipulation and Consent Orders are drafted to allow a licensee to admit guilt to the alleged violations, however, there are requests received from licensees where they are not willing to admit guilt but are willing to take a fine or penalty to avoid a hearing. He indicated that the Commission has always taken the position that Stipulation and Consent Orders are only considered if there was an admission of guilt.

Commissioner Ptak indicated that he suggested this discussion item due to significant amount of pending complaints and felt that by adopting a policy to allow for a "no contest plea" that it may assist both the Commissioners and Staff to expedite the processing of complaints.

Chairperson Gale indicated that he did not consider the pending complaints to be in excess, in fact, he had always complimented the licensees during discussions for their positive conduct.

Commissioner Leisey felt that it would be a good suggestion if the allegations were crystal clear but felt in many cases that there were many gray areas but agreed that Hearings may only be necessary in certain cases.

Commissioner Griess was concerned that licensees would plead no contest since it would provide an easy way out. They would not have to face anyone, just take the penalty and not admit to wrong doing. She felt licensees should learn from their mistakes and may not understand what they did wrong if they did not go through a Hearing.

Commissioner Dover felt that many licensees would pay money to keep them out of going to a Hearing and many licensees are concerned about how long the complaint process takes.

Director Lemon indicated that the no contest pleas could be treated as other disciplinary actions and the allegations would be published in the Commission Comment.

Commissioner Ptak indicated that provisions could be in place to only allow a licensee to use the no contest plea once for minor violations, and it could require the licensee to own up to their actions rather than pay a fine and have the problem behind them.

Commissioner Leisey indicated that some licensees cannot afford the expense of a Hearing and this would give them an option to put minor violations behind them.

Chairperson Gale indicated that he had discussed a citation system which would delegate authority to the Director to resolve certain cases that are technical rather than those which may result in a license revocation with Director Lemon. He felt that a new consequence classification could be imposed instead of censure, suspension, probation, have a new category for citations. He explained that he did not like the idea of no contest pleas. He explained that the citation system would also help eliminate any backlog of Complaints.

Commissioner Dover was concerned with the fact that green sheets or investigative matters would not be brought before the Commission.

Chairperson Gale indicated that since the Commissioners are not full time, these types of systems could allow for the Commission to be selective about the more complicated or serious cases at hearings.

Commissioner Ptak indicated that the discussion had satisfied his curiosity and would be supportive of a citation system and offered to serve in any capacity necessary to pursue a new system.

Chairperson Gale indicated that he would be contacting Commissioner Ptak and perhaps discuss this matter further via email so as to move this discussion forward.

### **Adopt Wes Grady Resolution**

Director Lemon presented a resolution commemorating service on the Commission by Wes Grady. A copy of said resolution is attached to and made a part of these Minutes.

A motion was made by Griess and seconded by Rouch that the resolution for Wes Grady be adopted.

Chairperson Gale noted that it was a great pleasure and honor to serve on the Commission with Wes Grady for six years and appreciated his service.

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

### **Information Matters**

#### **Trust Account Examination Evaluation Report - Second Quarter 2010**

Director Lemon presented the Trust Account Examination Evaluation Report - Second 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 Dover expressed concern regarding the difference in requirements and messages the examiners are sending to the Real Estate Brokers and suggested that Director Lemon require consistency. Director Lemon explained that while an examination procedure manual was developed, more detail could be added to eliminate inconsistency.

Chairperson Gale complimented the examiners for the good work and positive report. Commissioner Grady concurred.

No action was necessary on this report.

### **ARELLO Annual Conference - Anchorage, Alaska – September 16-18, 2010**

Director Lemon indicated that Commissioners Dover, Griess and Rouch indicated they planned on attending. Commissioner Ptak indicated that he would also be interested in attending. Director Lemon explained that the registration forms needed to be sent into the Commission office by August 19 and suggested that all interested parties submit their registration at their earliest convenience.

No action was necessary on this report.

### **ARELLO District Meeting – Des Moines, Iowa - July 17-19, 2010 – Report of Attendees**

Director Lemon noted that Commissioner Rouch and Deputy Director Hoffman and he attended the ARELLO Annual Meeting.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

No action was necessary on this report.

### **New Website/Electronic Notification Service**

Director Lemon explained that on August 2, 2010 the new website was published and with the new website the Commission also launched the electronic notification service which sent out an email to all licensees which had provided the Commission with their email address. He noted that with the next issue of the Commission Comment newsletter he would have an article explaining the new service being provided. He felt that this service would provide a good means of communication to licensees since there had been approximately 6,000 emails sent out. He also noted that in the near future the website will allow for licensees to reset their password without having to call the Commission.

No action was necessary on this report.

### **Leslie Rae Young vs. Nebraska Real Estate Commission**

Director Lemon explained that a Lawsuit had been filed against the Commission in the Federal District Court by Leslie Rae Young. The Complaint was regarding the new law passed which stated that the Commission had jurisdiction over individuals providing real estate activities in Nebraska without a license. He indicated that a restraining order had been filed against the Commission against issuing Cease and Desist Orders in reference to this law. He explained that

he had not heard the outcome of the case at this time but a determination should be made in the near future, and he would keep the Commission informed.

No action was necessary at this time.

### **Errors and Omissions Loss Report through June 30, 2010**

Director Lemon presented the Errors and Omissions Loss Report through June 30, 2010. A copy of said report is attached to and made a part of these minutes.

There was discussion regarding tail coverage should the errors and omissions insurance provider change.

No action was necessary on this report.

### **Future Meeting Dates**

September 30-October 1, 2010 – Country Inn & Suites, Lincoln

October 28-29, 2010 – Hampton Inn & Suites, Lincoln

December 2-3, 2010 - Country Inn & Suites, Lincoln

### **Recesses and Adjournment**

At 11:00 a.m. on August 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:12 a.m.

At 1:02 p.m. on August 19, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 2:02 p.m.

At 3:03 p.m. on August 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 3:15 p.m.

At 5:25 p.m. on August 19, Chairperson Gale recessed the meeting.

At 9:00 a.m. on August 20, Chairperson Gale reconvened the meeting.

At 11:15 a.m. on August 20, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:30 a.m.

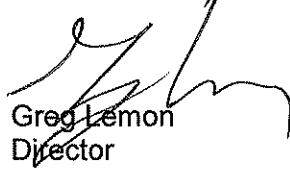
At 12:22 p.m. on August 20, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:12 p.m.

Commissioner Rouch was excused from the remainder of the meeting at 1:45 p.m.

At 2:25 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Grady that the meeting adjourn. Motion carried with Dover, Griess, Leisey, Ptak and Gale voting aye, with Leisey and Rouch 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 August 19-20, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on September 2, 2010, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

### **Guests Signing the Guest List**

Deda Myhre, CBSHOME Real Estate, Omaha  
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln  
Susan Geschwender, Randall School, Omaha  
Larry Melichar, CBSHOME Real Estate, Omaha  
Anne McGargill, CBSHOME Real Estate, Omaha  
William O'Brien, CBSHOME Real Estate, Omaha  
Lauren Errico  
Aaron Lamiki, Omaha  
Kristen Anderson, Nebraska REALTORS® Association, Lincoln  
Chris Kohan, CBRE/MEGA, Omaha  
Jim Kortan, Omaha  
Aaron Moser, CBRE/MEGA, Omaha  
Charles Lueck, Omaha  
Abby Wenninghoff, Omaha  
William Eustice, Omaha  
Corey Abels, Grand Island  
Lonnie Davis, Grand Island  
Jack Gregg, Performance Real Estate, Lincoln