

# NEBRASKA REAL ESTATE COMMISSION

March 17, 2011

Staybridge Suites

Staybridge Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on March 17, 2011, 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 Commissioners Dover and Ptak, who was 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.

## **Notice of Meeting (Adopt Agenda)**

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, 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 agenda items 11c and 11d had been added since the tentative agenda was mailed to the Commissioners.

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

## **Minutes of February 17, 2011**

The minutes of the Commission meeting held on February 17, 2011, were considered. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. The motion to adjourn the meeting located on the last page reflected that Commissioner Leisey and Chairperson Gale were present, when in fact, they were absent and excused. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Avery and seconded by Rouch to approve the minutes as corrected. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused, and with Leisey not voting having not been in attendance at the February 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.

Sharon Warnke, a member of the public and a Complainant in a case filed against a real estate licensee came forward. She explained the circumstances of the complaint and expressed concerns about how complaint proceedings were handled by the Commission. She was unhappy about the lengthy process and the discipline received by the Respondent in the case. She also noted that there were few laws which protect the buyer in real estate transactions and requested the laws in which the Commission has jurisdiction be reviewed. She especially was concerned regarding a licensee representing two buyers interested in the same property. She also noted that if part of the licensee's discipline required the licensee to take continuing education classes, she thought that it was inappropriate that the licensee was able to resume practicing real estate after her disciplinary suspension without first completing the required courses.

Chairperson Gale agreed that the complaint process was lengthy and explained that this process has been discussed by the Commission. Director Lemon indicated that the complaint process had been a concern of the Commission and staff, which prompted the formation of a task force to review the process in order to expedite the proceedings.

Chairperson Gale indicated that Ms. Warnke's opinion was appreciated and felt that since the Commission's duty was to protect the public, there would be a discussion regarding the laws and the procedures. He noted that he would be reviewing the Commission's file relating to the complaint which she filed. He explained that the Commission works hard and makes every effort to uphold a high standard for real estate licensees and he thanked her for voicing her concerns and felt her suggestions were valuable.

Chairperson Gale requested that Director Lemon obtain a legal opinion regarding buyer's agents which represent multiple buyers and upon receipt of such opinion. If it is determined that legislation is needed Chairperson Gale indicated he would like the Legislative Committee to review this issue for a possible legislative proposal for introduction during the next session.

## **Receipts and Expenditures Report for February**

Director Lemon presented the Receipts and Expenditures Report for February. 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 February 28, 2011, was \$681,382.70, which compared to a cash fund balance of \$815,515.30 on February 28, 2010.

There was discussion regarding the increase of revenues once the two-year renewal cycle is implemented, Commissioner Leisey noted that it should be communicated to the Legislature and the Governor that any additional funding is not excess funds but merely an early collection of revenues needed for operations, and that transferring funds from the Real Estate Commission Fund would not be advisable.

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

## **Renewal Report**

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

No action was necessary on this report.

## **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 amendment to time-share registration for ClubWyndham 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 Leisey and seconded by Avery to approve the amendment to the registration as presented. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak 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 Leisey and seconded by Rouch to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

### **Examination Report - February**

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

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

## **Real Estate Education Matters**

### **Pre-License Education Instructor Approval**

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

### **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 Leisey and seconded by Avery to ratify the three reports. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

### **Continuing Education Annual Report**

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

Deputy Director Hoffman explained the contents in the report and the process followed to obtain the annual report.

After review, a motion was made by Leisey and seconded by Rouch to remove the providers on the Continuing Education Annual Report from approved status. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

### **Continuing Education Renewal Report**

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

Deputy Director Hoffman explained the contents in this report and the course renewal process providers have to engage in to renew courses or let them expire every three years

After review, a motion was made by Leisey and seconded by Rouch to ratify the courses listed on the Continuing Education Renewal Report. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

### **Consider Adoption of Resolution**

Deputy Director Hoffman presented a resolution regarding Dr. Roger P. Sindt's service to the real estate industry. A copy of said exhibit is attached to and made a part of these minutes.

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

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

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

No action was necessary on this report.

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

**Item A** Complaint 2009-057

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 Griess and seconded by Avery that the complaint be set for hearing per staff recommendation. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

**Item B** Complaint 2010-003

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 Avery and seconded by Rouch that this complaint be set for hearing on 81-885.24(29). Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

**Item C** Complaint 2010-024

Deputy Director Mayrose indicated that this investigative matter has been withdrawn and would be presented at a future meeting.

**Item D** Complaint 2010-027 – Lana Fronev and John Tilley Jr. vs. Scott Mitchell McGowan

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Leisey and seconded by Avery that the complaint be dismissed without prejudice.

An amendment was offered by Griess that a letter of admonishment be sent to the Respondent. The amendment was accepted by the mover and the second.

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

**Item E** Complaint 2010-028 – George C. Haberman vs. Jerry Lee Weaver

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

**Item F** Complaint 2010-034

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Leisey and seconded by Avery that the complaint be dismissed without prejudice. Motion failed with Avery and Leisey voting aye, with Griess, Rouch and Gale voting nay, and with Dover and Ptak not participating or voting, being absent and excused.

A motion was made by Griess and seconded by Gale that the complaint be set for hearing. Motion failed with Griess, Rouch and Gale voting aye, with Avery and Leisey voting nay, and with Dover and Ptak not participating or voting, being absent and excused.

There was discussion regarding the procedures since the motion to dismiss and the motion to set for hearing both failed. It was the consensus of the Commission that this complaint be held in abeyance until further research regarding the procedure in these circumstances was reviewed by the Commission.

**Item G** Complaint 2009-051 – Kristi S. Bevirt vs. Eric Scott Lundstrom

Deputy Director Mayrose requested Complaint 2009-051 be dismissed. Deputy Director Mayrose explained that Complaint 2009-051 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2009-051 in abeyance until the new complaint had been adjudicated. Complaint 2011-008 was the new complaint.

A motion was made by Leisey and seconded by Griess to dismiss Complaint 2009-051, since the Commission accepted the Stipulation and Consent Order for Complaint 2011-008 at this meeting. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

**Presentation of Stipulation and Consent Orders**

**Complaint 2011-004,  
Commission vs. Michael Rae Crawford**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-004, Commission vs. Michael Rae Crawford. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Avery to enter into the Order as presented.

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

It was the consensus of the Commission to decline the proposed Stipulation and Consent Order.

**Complaint 2011-008,  
Commission vs. Eric Scott Lundstrom**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-008, Commission vs. Eric Scott Lundstrom. A copy of said Order is attached to and made a part of these minutes.

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

**Complaint 2010-012,  
Lisa Kohles and Dan Brown vs. Beverly Ann Crowell**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-012, Lisa Kohles and Dan Brown vs. Beverly Ann Crowell. A copy of said Order is attached to and made a part of these minutes.

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

**Complaint 2010-039,  
Sheryll Mowinkel vs. Keith Lewis Brown**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-039, Sheryll Mowinkel vs. Keith Lewis Brown. A copy of said Order is attached to and made a part of these minutes.

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

**Hearings**

There were no hearings scheduled to be held at the meeting.

**Informal Special Appearances**

**LaSunya Sanders, Potential Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Sanders' special appearance; character reference letters for Ms. Sanders; a summary of trial court cases from the State of Nebraska on Ms. Sanders' cases; a summary of Ms. Sanders' situation, and correspondence with staff. A copy of said exhibit is attached to and made a part of these minutes. Ms. Sanders was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Leisey and seconded by Rouch to allow Ms. Sanders 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. Ms. Sanders must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

### **Use of Electronic Signatures and Electronic Documents in the Practice of Real Estate**

Director Lemon presented a summary of uses and statutes regarding electronic signatures and electronic documents. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the Commission receives frequent questions regarding the use of electronic signatures and electronic documents in the practice of real estate. He noted that the Commission's legal counsel had reviewed the exhibit which had been drafted for discussion purposes. He noted that electronic signatures and documents are recognized and enforceable under Nebraska law. However, he further explained the laws, as written, do not provide detailed guidance and ultimately the courts determine the acceptable use and enforceability of electronic signatures and documents. He also noted that licensees should consult an attorney prior to using electronic methods, taking into account that the technology used and how it protects the signature and documents from alternation and also attributes the document to the signer in some readily provable way.

It was the consensus of the Commission that an article summarizing the research be prepared and published in the Commission Comment newsletter article that a full version of the memorandum be made available on the website.

### **Legislative Matters**

**LB 23** - Director Lemon reported that the two-year renewal and fee provisions bill had been approved by the Governor on February 22.

**LB 24** - Director Lemon reported that the broker training requirements bill had been approved by the Governor on March 10.

**LB 25** – Director Lemon reported that the exemptions relating to real property for asset management companies bill had been approved by the Governor on March 10.

**LB 26** – Director Lemon reported that the adoption of the Private Transfer Fee Obligation Act bill had been approved by the Governor on March 10.

**LB 315** – Director Lemon reported that the hearing was held on the Amendment to LB315 on March 15, 2011. The amendment would allow designated brokers to operate their firms as business corporations or as Professional Corporations. A copy of said Amendment is attached to and made a part of these minutes. There was discussion regarding commission payments to individuals, professional corporations and professional limited liability companies and not to business corporations. No action was taken by the Commission on this matter.

**LB 347** – Director Lemon reported that the authorization of interest-bearing trust accounts under the Nebraska Real Estate License Act bill had been approved by the Governor on March 10.

No action was necessary with regard to these matters.

### **Information Matters**

#### **ARELLO Mid-Year Meeting – April 4-6, 2011 - Destin, Florida**

Director Lemon noted that the deadline to register for the ARELLO Mid-Year meeting was March 18, and while he was not aware of any Commissioners wishing to attend, he wanted those who may be interested to be aware of the deadline.

No action was necessary on this report.

### **Criminal Background Checks**

Director Lemon indicated that the completion of the Criminal Background Checks provided to our office by the Nebraska State Patrol are now taking approximately fourteen days on average to be completed. He noted that the Commission had expressed concerns regarding the length of time it took for the Nebraska State Patrol to produce the background checks. With help from the Governor's office and a letter from the REALTORS Association the time had gone from an average of 49-51 days to approximately 14 days.

There was discussion regarding the application process, such as when applicants need to start contacting the Commission to see if their criminal background reports have been received by the Commission office, when a person can send in their application, if their pre-license education needed to be completed prior to making application and how this information was provided to the potential applicants.

When asked if the Commission could contact people when their report is received Deputy Director Hoffman explained that the Commission is unable to contact these individuals because we have no contact information for applicants until an application is submitted to our office which cannot be received until after the criminal background report is received. She also explained that once the criminal background check is received by our office, an individual must submit the application and fees within 90 days of the report's date. It was emphasized that an applicant's pre-license education does not have to be completed when application is made, they will just not be able to sit for the examination until their education has been completed and verified to the Commission. Deputy Director Hoffman noted that a previous Commission Comment newsletter article had been published in the past explaining the process and that perhaps it was time to run an updated one again.

No action was necessary on this report.

### **Future Meeting Dates**

April 21-22, 2011 – Staybridge Suites, Lincoln  
May 19-20, 2011 – Staybridge Suites, Lincoln  
June 16-17, 2011 - Staybridge Suites, Lincoln  
August 18-19, 2011 - Staybridge Suites, Lincoln  
September 15-16, 2011 – Hampton Inn & Suites, Lincoln  
October 27-28, 2011 - Staybridge Suites, Lincoln

## **Recesses and Adjournment**

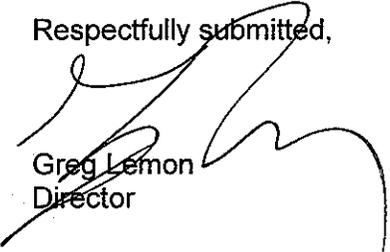
At 9:51 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:00 a.m.

At 11:10 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:20 a.m.

At 12:23 p.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Avery that the meeting adjourn. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, with Dover and Ptak not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 17, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on March 24, 2011, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

## **Guests Signing the Guest List**

Sharon Warnke  
Trudy Meyer, CBSHOME Real Estate, Omaha  
LaSunya Sanders, Lincoln  
Harold Johnson, NP Dodge Co, Omaha