

# NEBRASKA REAL ESTATE COMMISSION

April 21, 2011

Staybridge Suites

Staybridge Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on April 21, 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. 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 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 Griess to adopt the final agenda as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Minutes of March 17, 2011**

The minutes of the Commission meeting held on March 17, 2011, were considered.

After review, a motion was made by Griess and seconded by Rouch to approve the minutes as presented. Motion carried with Avery, Griess, Leisey, Rouch and Gale voting aye, and with Dover and Ptak not voting having not been in attendance at the March 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 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, 2011, was \$630,306.95, which compared to a cash fund balance of \$763,981.57 on March 31, 2010.

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

## **Renewal Report**

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

No action was necessary on this report.

## **Specialized Registrations**

There were no specialized registrations to be presented at the meeting.

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

Deputy Director Hoffman presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Leisey and seconded by Avery to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Examination Report - 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. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The salesperson passing rate for May 2010 reflected a "67%" passing rate when, in fact, the percentage should have been "45%". The Exhibit was corrected for attachment to these minutes.)

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

## **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, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Instructor Development Workshop**

Deputy Director Hoffman presented an exhibit detailing estimated expenses for a proposed Instructor Development Workshop, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman noted that this Workshop would be one day long. She proposed retaining Dr. Carmel Streater from Louisiana to present a Workshop on performance related training.

Deputy Director Hoffman indicated that a mailing would be sent to all pre-license and continuing education instructors and education providers. She indicated that administrators are notified that potential instructors would be welcome as well. She noted that with the new broker training requirements, efforts would be made to inform brokers of the program so that they may attend or send their training staff. She speculated that the website might be utilized to get the word out. She explained that while people were requested to register in advance so that adequate materials would be made available, there should be sufficient meeting space to accommodate late registrants.

There was discussion regarding the attendance to the Workshop being voluntary rather than mandatory. Deputy Director Hoffman indicated while the Workshop is voluntary, a good percentage of instructors attend. Deputy Director Hoffman expressed concern that if the training were to be made mandatory the Commission would need to make multiple training opportunities available and the Commission had not committed those resources.

Commissioner Griess explained that she attends the Workshop when possible, and feels that the Commission offers an excellent program which is well received and attended.

Deputy Director Hoffman indicated that everyone is welcomed, including the Commissioners. Deputy Director Hoffman expressed appreciation that Craig Larabee with the Larabee School of Real Estate & Insurance had committed to sponsor the event with refreshments for the morning and afternoon breaks.

A motion was made by Leisey and seconded by Griess to approve the expenditures for the Instructor Development Workshop and to provide the Workshop free of charge. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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

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

Deputy Director Mayrose indicated that a new page had been added to the report which is titled "Investigative Summary Comparison". He explained the contents of the provided statistics report.

No action was necessary on this report.

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

#### **Item A Complaint 2009-045 – David Willis vs. Nancy Jo Faulhaber**

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

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

There was discussion regarding the requirements of title insurance companies to provide the covenants to the buyer at closing. It was suggested that a letter of concern be sent to the Nebraska Department of Insurance as well as publishing an article in the Commission Comment newsletter regarding restrictive covenants.

#### **Item B Complaint 2010-007**

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 Gale and seconded by Griess that this complaint be held in abeyance and file a complaint on its own motion against the Respondent #1 and set for hearing on 81-885.24(29). Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

#### **Item C Complaint 2010-018**

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 this complaint be dismissed and file a complaint on its own motion against the Respondent per Staff recommendation. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Item D** Complaint 2010-024 – Mark A Edwards vs. Marla J Kraft

Prior to discussion of this matter, Commissioners Avery and Griess recused themselves, thereby nullifying any potential conflict of interest.

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

After being advised of the results of the investigation and discussion, a motion was made by Leisey and seconded by Dover that the complaint be set for hearing on 76-2421(1). Motion failed with Dover, Leisey and Rouch voting aye, with Ptak and Gale voting nay and with Avery and Griess not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

After further discussion, a motion was made by Gale and seconded by Ptak that the complaint be set for hearing on 76-2421(1) and 81-885.24(29). Motion failed with Ptak and Gale voting aye, with Dover, Leisey and Rouch voting nay, and with Avery and Griess not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

A motion was made by Gale and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Avery and Griess not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

**Item E** Complaint 2010-034 – Commission vs. Douglas William Chamberlain and Kurtis E Campbell

Because this matter had been considered and voted on at the previous Commission meeting, with neither the motion to set for hearing nor the motion to file a complaint being successful, there was discussion regarding the Commission's Quorum and Voting Procedures. It was the consensus of the Commission to redraft the procedures to reflect a clear understanding of the procedures during investigative matters and present the proposed changes at a future meeting. After further discussion, it was the consensus of the Commission to have Director Lemon work with Chairperson Gale to redraft the policy.

A motion was made by Leisey and seconded by Dover to amend the policy to reflect the suggested changes. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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 against Respondent #1 and a hearing be set against Respondent #2. Motion carried with Avery, Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Griess voting nay.

**Item F Complaint 2009-040**

Deputy Director Mayrose requested Complaint 2009-040 be dismissed. Deputy Director Mayrose explained that Complaint 2009-040 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 2009-040 in abeyance until the new complaint had been adjudicated. Complaint 2011-007 was the new complaint.

A motion was made by Leisey and seconded by Ptak to dismiss Complaint 2009-040, since the Commission accepted a Stipulation and Consent Order for Complaint 2011-007 at this meeting. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Presentation of Stipulation and Consent Orders**

**Complaint 2010-019,  
Mary A. Redman vs. Sheila Rae Hulme**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-019, Mary A. Redman vs. Sheila Rae Hulme. A copy of said Order is attached to and made a part of these minutes.

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

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

**Complaint 2011-007,  
Commission vs. David Joseph Egan**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-007, Commission vs. David Joseph Egan. 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 Rouch to enter into the Order as presented. Motion carried with Avery, Griess, Leisey, and Rouch voting aye, and with Dover, Ptak and Gale voting nay.

**Hearings**

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

**Informal Special Appearances**

**Sheryl A. Racine-Smith, Potential Applicant**

The special appearance scheduled for Sheryl A. Racine-Smith was postponed to a future meeting because Ms. Racine Smith was unable to attend.

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

Director Lemon presented an exhibit which included: correspondence regarding this special appearance; information regarding Mr. Kortan's previous special appearances in January 2011 and August 2010. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kortan was present.

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

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Kortan explained his past criminal history and indicated that his interlock device would be removed on April 22, 2011.

After discussion, a motion was made by Dover and seconded by Avery that Mr. Kortan not be allowed to sit for the salesperson examination at this time. Motion carried with Avery, Dover, Griess, Leisey, Ptak and Gale voting aye, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

### **2010-2011 Objectives – Quarterly Report**

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 explained the status of the objectives.

There was discussion regarding the two-year license requirements including the errors and omissions insurance. Director Lemon indicated that proposed Rules and Regulations would be presented at a future meeting.

It was also suggested that Objective #6 which is stated as "Research and establish Commission policies and best practices on the use of electronic documents and electronic signatures in real estate practice" be amended to eliminate the word policies and instead just refer to them as best practices.

There was also discussion regarding suggested objectives for the next fiscal year, such as use of social media by the Commission.

No action was necessary on this report.

### **Review of Audit Conducted on Calendar Year 2010**

Director Lemon presented a Representation letter-Attestation and the Attestation Report received by the Nebraska Auditor of Public Accounts. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the audit had just been concluded for Calendar Year 2010. He indicated that there were no official findings of any audit exceptions or issues, just the usual "boiler plate" standard language in the report. He explained that there were unofficial findings which were discussed, such as travel expenses which were technical in nature and asked that the

Commissioners understand that Staff would scrutinize all expenses closely.

No action necessary on this report.

### **Commission Meal Reimbursement Policy**

Director Lemon presented a memo regarding the Commission's current meal reimbursement policy and the State Auditor's recommendation. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that he had received a recommendation from the State Auditor that the Commission follow State Accounting's recommended federal guidelines for meal reimbursement rates. Director Lemon further noted that examples of the federal daily reimbursement rates were contained in the accompanying exhibit. He indicated that the Commission's policy for meal reimbursement was legal and legitimate, but felt it was appropriate timing to review the current policy.

After review and discussion there were no proposed changes to the Commission's current policy.

No action necessary on this report.

### **Citation System Subcommittee Report**

Director Lemon presented a draft of the Commission's Subcommittee's Preliminary Recommendations. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon gave a brief summary of the recommendations.

It was suggested that section 3 of the process be eliminated, grammatical errors be corrected, and these recommendations as discussed be incorporated into the current complaint procedures.

A motion was made by Leisey and seconded by Rouch to incorporate the amended draft of the citation system, as discussed, into the complaint and investigative procedures. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Legislative Matters**

**LB 23** - No new information presented.

**LB 24** - No new information presented.

**LB 25** – No new information presented.

**LB 26** – No new information presented.

**LB 315** – Director Lemon reported that an amendment had been filed on March 16, 2011 and was placed on General File. A copy of said exhibit is attached to and made a part of these minutes.

**LB 347** – No new information presented.

No action was necessary with regard to these matters.



## **Information Matters**

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

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

The attendees of the conference presented reports on sessions of interest that they attended.

No action was necessary on this report.

## **Future Meeting Dates**

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 9:56 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:10 a.m.

At 11:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:00 p.m.

Commissioner Ptak was briefly excused from the meeting at 12:54 p.m., and rejoined the meeting at 12:56 p.m.

At 1:35 p.m., there being no further business to come before the Commission, a motion was made by Griess and seconded by Leisey that the meeting adjourn. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the April 21, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on April 27, 2011, 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  
Susan Geschwender, Randall School, Omaha  
JoAnn Grennan, CBSHOME Real Estate, Omaha

