

NEBRASKA REAL ESTATE COMMISSION

May 19, 2011

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on May 19, 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. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, were present for the Wuestehube Show-Cause Hearing and Petition for Review Hearings.

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 Leisey and seconded by Ptak to adopt the final agenda as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Minutes of April 21, 2011

The minutes of the Commission meeting held on April 21, 2011, were considered. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The date of the 2010 cash balance comparison in the Receipts and Expenditures Report for March was set forth as "March 31, 2011" when, in fact, the date should have been "March 31, 2010". The Exhibit was corrected.)

After review, a motion was made by Avery and seconded by Leisey to approve the minutes as amended. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Public Comment

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

Receipts and Expenditures Report for April

Director Lemon presented the Receipts and Expenditures Report for April. 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 April 30, 2011, was \$574,757.36, which compared to a cash fund balance of \$699,466.67 on April 30, 2010.

After discussion, a motion was made by Leisey and seconded by Rouch to file the April 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

Time-Share Registrations - Amendment for Marriott Vacation Club Destinations

Director Lemon presented a specialized registrations report which included the registration of amendments to time-share registration for Marriott Vacation Club Destinations. A copy of said report is attached to and made a part of these minutes.

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

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

Examination Report - April

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

There was discussion regarding the passing percentage of the examination and improvements to the rate due to the new version of the examination having been instituted. Deputy Director Hoffman noted that since the new examination began being administered on April 27th, such statistics were not yet available.

After review, a motion was made by Leisey and seconded by Avery to ratify the April 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

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

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

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 2010-017 – Robert G Krafka vs. Michael Howard Salkin

Prior to discussion of this matter, Commissioner Leisey recused himself, 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 Griess and seconded by Rouch that the complaint be dismissed without prejudice. Motion carried with Avery, Griess, Ptak, Rouch and Gale voting aye, with Dover voting nay, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item B Complaint 2010-016 – Robert G. Krafta vs. Jillian Ann Currie

Prior to discussion of this matter, Commissioner Leisey recused himself, 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 Griess and seconded by Avery that the complaint be dismissed without prejudice. Motion carried with Avery, Griess, Ptak, Rouch and Gale voting aye, with Dover voting nay, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item C Complaint 2010-029 – Todd A. & Laura Baase vs. Susan R. Hawkins, Darryl E. Wikoff, and Brian Alan Thomas

Prior to discussion of this matter, Commissioner Leisey recused himself, 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 Dover and seconded by Griess that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Ptak, Rouch and Gale voting aye, with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item D Complaint 2010-038 - Marguerite Vey-Miller vs. Philip J. Rosfeld

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 Leisey that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item E Complaint 2011-004

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

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Griess that this Complaint be set for hearing on the violations alleged in the report. Motion carried with Avery, Dover, Griess, Leisey, Ptak and Gale voting aye, and with Rouch voting nay.

Item F Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Griess and seconded by Leisey that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item G Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Leisey that the Commission file a complaint on its own motion and set it for hearing against Respondent #1 on the violations alleged in the report. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Presentation of Stipulation and Consent Orders

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

Hearings

**May 19, 9:30 a.m. - Show-Cause Hearing on
SC2011-001, Carl Wuestehube**

A Hearing was held on May 19 at 9:44 a.m., in the matter of SC2011-001. Greg Barton and Kelly Ekeler, Special Assistants Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Carl Wuestehube was telephonically present without Counsel.

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

After Opening Statements, Counsel Barton offered fifteen Exhibits. Counsel Barton called Terry Mayrose and Greg Lemon as witnesses. Greg Lemon was excused from the witness stand briefly and was recalled.

At approximately 10:25 a.m., Mr. Westehube indicated that he no longer wished to participate in the Hearing and ended the telephone call.

At 10:45 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:00 p.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 Ptak and seconded by Dover that in Complaint SC2011-001, Carl Wuestehube did not show cause why he should not be subject to civil penalties for failing or refusing to abide by the Cease and Desist Order dated November 4, 2009. Motion carried with Avery, Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Ptak and seconded by Leisey in Complaint SC2011-001, that Carl Wuestehube should receive a fine of five thousand dollars, one-thousand dollars a day for the five specific dates he had listings in Nebraska as reflected in the received exhibits. Motion carried with Avery, Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale noted 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 12:30 p.m.

**May 19, 10:30 a.m. - Petition for Review Hearing on
P2011-001, Carl Wuestehube**

A Hearing was held on May 19 at 12:45 p.m., in the matter of P2011-001. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent Carl Wuestehube was telephonically present without Counsel.

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

Prior to opening statements, Carl Wuestehube indicated that he would like to make a statement. Chairperson Gale indicated that he would allow Mr. Wuestehube to make a statement and allow this to be his opening argument.

Mr. Wuestehube indicated that if his application for licensure in Nebraska would be contested, then he would like to withdraw the application. Chairperson Gale indicated that since this was a petition for review hearing and because Director Lemon denied his application, then his application would be considered contested. Mr. Wuestehube indicated that the Commission should consider the application withdrawn.

Counsel Barton indicated that in Complaint P2011-001, the Commission could use administrative notice in evidentiary hearing on Complaint SC2011-001 for this case.

Chairperson Gale indicated that since Mr. Wuestehube withdrew his application that did not seem necessary. Director Lemon indicated that since Mr. Wuestehube withdrew his application any

matters would be rendered moot. Chairperson Gale denied a motion offered by Counsel Barton since there were no evidentiary matters and since Mr. Wuestehube was willing to withdraw his application for licensure. He also noted that he appreciated and understood Mr. Wuestehubes position regarding the withdrawal of his license application and would consider the Petition for Review dismissed.

This matter was concluded on Complaint P2011-001 at 12:56 p.m.

Informal Special Appearances

Sheryl A Racine-Smith, Potential Applicant

Chairperson Gale asked if Ms. Racine-Smith was present. He indicated that the Commission would take a brief recess to allow Commission Staff to check the premises to determine if Ms. Racine-Smith were on the premises but have not found the meeting room.

At 2:28 p.m., Chairperson Gale declared a brief recess, and reconvened the informal special appearance at 3:06 p.m.

Commission Staff was unable to locate Ms. Racine-Smith. Chairperson Gale indicated that should Ms. Racine-Smith appear they would try and accommodate her request for an informal special appearance at that time but would continue with the agenda items.

Personnel Matter – Closed Session

At 3:30 p.m., a motion was made by Ptak and seconded by Griess to go into closed session for discussion of personnel matters. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 3:54 p.m., a motion was made by Ptak and seconded by Leisey to reconvene in open session. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

After reconvening in open, public session, a motion was made by Ptak and seconded by Rouch to increase Deputy Director Hoffman's annual salary to \$68,000.00 beginning July 1, 2011. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was then made by Ptak and seconded by Rouch to increase Director Lemon's annual salary to \$96,000.00 beginning July 1, 2011. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Reconsideration of Motions under Commission Meeting Procedures

Director Lemon presented proposed changes to the current Commission Meeting Procedures. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that these procedures were discussed at the April Commission meeting and indicated that the procedures were changed to reflect the Commissioners' requests. He noted that the motions could be made by the Chairperson when matters requiring resolution were deadlocked. Also, when there is not a majority vote to take action on a matter when there are all

members eligible to vote on the matter are present, the matter will be presented for reconsideration at a second meeting when all members eligible to vote are present. If the matter does not receive four votes, either for or against, at the second meeting the matter will be considered to be approved and will not receive further consideration.

A motion was made by Dover and seconded by Avery to approve the proposed changes to the quorum and voting procedures from the Commissioner Manual. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Reappointment of Pre-Hearing Officers

Director Lemon presented a list of the current pre-hearing officers and a sample Agreement. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that three of the pre-hearing officers were asked to extend their agreements.

A motion was made by Rouch and seconded by Leisey to reappoint the current pre-hearing officers.

After discussion, the mover amended the motion to give Director Lemon the authority to extend their agreements until June 30, 2013 which was agreed upon by the second.

The amended motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Draft Amendments to Title 299, Chapter 1 – Two-Year License Renewals and Pocket Cards

Director Lemon presented the proposed changes to Title 299, Chapter 1, to allow for two-year license renewals and to eliminate language referring to pocket cards. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the proposed changes due to the passing of Legislative Bill 23 which would amend Title 299, Chapter 1 to reflect a two-year license renewal cycle and eliminate language referring to pocket cards. He explained that per Commissioner request, there would be no changes regarding the errors & omissions insurance and it would continue to be based on a one-year cycle.

A motion was made by Leisey and seconded by Avery to approve the drafted amendments to Title 299, Chapter 1.

Chairperson Gale asked if there were any visitors which would like to speak regarding the proposed changes to Title 299, Chapter 1. Mark Leaders, CBSHome, Omaha, indicated that he has an Iowa license which is due every three years but the errors and omissions insurance remains on a one-year cycle and felt that the changes made sense. Commissioner Dover asked how often the continuing education was due in Iowa. Mr. Leaders indicated that education was due every three years.

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

Draft Amendments to Title 299, Chapter 7 – Continuing Education Requirements

Deputy Director Hoffman presented the proposed changes to Title 299, Chapter 7, to allow for changes in the continuing education requirements. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman reviewed the drafted Amendments to Title 299, Chapter 7 as outlined in the exhibit and answered questions when necessary.

A motion was made by Leisey and seconded by Rouch to approve the drafted amendments to Title 299, Chapter 7.

Chairperson Gale asked if there were any visitors which would like to speak regarding the proposed changes to Title 299, Chapter 7. Kristen Anderson, Nebraska REALTORS® Association, Lincoln, asked if Section 007 could set a more specific time limit for the Commission's consideration of activities. Deputy Director Hoffman indicated that this is the current Rules and Regulations language that has been applied to the review of continuing education activities and while it does not specify a date or time period, these are currently being reviewed in a timely manner. Ms. Anderson indicated that she was unaware of the details and variances, but did not understand that review was timely. Deputy Director Hoffman noted that sometimes when providers use national instructors it is more difficult to get responses from them if there are questions regarding the application, therefore, incomplete applications could delay the review. She also explained that complete applications usually are responded to within a week. Susan Geschwender, Randall School, Omaha, indicated that as a representative of a local school, applications for instructors and courses receive immediate response. Commissioner Griess noted that it may be unreasonable to add a specific time frame since the Commission may be inundated with applications the first year of broker-training.

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 the bill regarding Corporations had been signed by the Governor on May 17, 2011 with an emergency clause.

LB 347 – No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO District Conference – August 12-14, 2011 - Orange Beach, Alabama

Director Lemon noted that the deadline for registration is July 29, noted that Deputy Director Hoffman planned on attending the ARELLO District Conference and asked if any Commissioners planned on attending. Commissioners Dover and Rouch indicated that they would be also be attending the Conference.

No action was necessary on this report.

Future Meeting Dates

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 9:22 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 9:34 a.m.

At 10:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:00 a.m.

At 12:30 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:45 p.m.

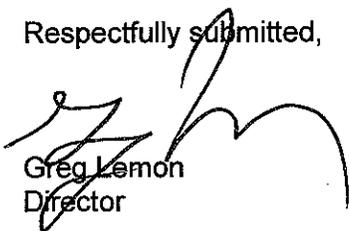
At 1:00 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:55 p.m.

At 2:58 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 3:06 p.m.

At 4:00 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Rouch 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 May 19, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on June 1, 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
Mark Leaders, CBSHOME, Omaha

