

NEBRASKA REAL ESTATE COMMISSION

September 15-16, 2011

Hampton Inn & Suites

Husker Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:07 a.m. on September 15-16, 2011, in the Husker Room of the Hampton Inn & Suites, located at 7343 Husker Circle in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. 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, was present for the Crawford and McCully Hearings.

Swearing-In Ceremony - Commissioner Drew Stange

Chairperson Gale conducted a swearing-in ceremony for recently appointed Commissioner Drew Stange, presented him with his Commission pin, and welcomed him to the Commission.

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 southeast corner of the meeting room by the east 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 Dover and seconded by Ptak to adopt the final agenda as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Minutes of August 18-19, 2011

The minutes of the Commission meeting held on August 18-19, 2011, were considered.

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

Director Lemon presented the Receipts and Expenditures Report for August. 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 August 31, 2011, was \$271,826.92, which compared to a cash fund balance of \$430,478.58 on August 31, 2010.

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

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 Rouch to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Examination Report - August

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

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

Real Estate Education Matters

Pre-License Education Course Approval

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

Pre-License Education Instructor Approval

Deputy Director Hoffman presented for ratification the Pre-License Education Provider 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 Dover to ratify the four reports. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange 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 informed the Commission that an injunction was filed against Mr. Wuestehube and Tri Star Realty Inc. for failing to cease and desist from unlicensed activities in Nebraska and failing to remit the \$5,000.00 fine imposed as a result of the Show Cause Hearing against Wuestehube.

No action was necessary on this report.

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

Item A Complaint 2010-058 – LaLinda Finley Swanson vs. Michelle Lee Hiers

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, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item B Complaint 2010-061

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 against the Buyer's Agent. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

A motion was made by Dover and seconded by Leisey that this complaint be set for hearing against the Seller's Agent per Staff recommendation. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item C Complaint 2009-003 – Alma I Bullington, Valma D. Smith, and Garth E. Bullington vs. Kevin Dean McCully

Deputy Director Mayrose requested Complaint 2009-003 be dismissed. Deputy Director Mayrose explained that Complaint 2009-003 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 2009-003 in abeyance until the new complaint had been adjudicated. Complaint 2009-057 was the new complaint.

A motion was made by Ptak and seconded by Dover to dismiss Complaint 2009-003, since the Commission held the Hearing for Complaint 2009-057 at this meeting. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item D Complaint 2009-049 – Zac & Stacey Heller vs. Michael Rae Crawford

Deputy Director Mayrose requested Complaint 2009-049 be dismissed. Deputy Director Mayrose explained that Complaint 2009-049 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 2009-049 in abeyance until the new complaint had been adjudicated. Complaint 2011-004 was the new complaint.

A motion was made by Leisey and seconded by Avery to dismiss Complaint 2009-049, since the Commission held the Hearing for Complaint 2011-004 at this meeting. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item E Complaint 2010-033 – Philip J. Rosfield vs. Michael Rae Crawford

Deputy Director Mayrose requested Complaint 2010-033 be dismissed. Deputy Director Mayrose explained that Complaint 2010-033 included similar allegations as alleged in Complaint 2009-049 and Complaint 2011-004 and therefore was held until Complaints 2009-049 and 2011-004 had been adjudicated.

A motion was made by Leisey and seconded by Ptak to dismiss Complaint 2010-033, since the Commission held the Hearing for Complaint 2011-004 at this meeting. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

It was the consensus of the Commission that a letter of admonishment be sent to Mr. Rosfield.

Presentation of Stipulation and Consent Orders

**Complaint 2010-060,
Brandon Schroeder vs. Douglas Lee Meier**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-060, Brandon Schroeder vs. Douglas Lee Meier. 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, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Hearings

Complaint 2011-004 - Commission vs. Michael Rae Crawford

A Hearing was held on September 15, at 9:30 a.m., in the matter of Complaint 2011-004, Commission vs. Michael Rae Crawford. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent Crawford was present and represented by Counsel Derek Zimmerman of Lincoln.

After opening statements, Counsels Barton, Ekeler and Zimmerman jointly offered 19 Exhibits, all of which were received by Chairperson Gale.

Counsel Ekeler called Stacey Heller and Philip Rosfeld as witnesses and Counsel Barton called Michael Rae Crawford as a witness.

At 10:50 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:05 a.m.

Counsel Zimmerman offered 1 Exhibit, which was received by Chairperson Gale. Counsel Zimmerman called Michael Rae Crawford as a witness.

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.

After discussion, a motion was made by Ptak and seconded by Dover in Complaint 2011-004, that Michael Rae Crawford violated the Nebraska Real Estate License Act and the Rules and Regulations in counts 2, 5, 7 and 8 of the complaint, and that counts 1, 3, 4 and 6 be dismissed.

An amendment was offered by Chairperson Gale to exclude count 7 from the violations. The amendment was accepted by the mover and the second.

An amendment was offered by Commissioner Stange to exclude language in count 5, 34(b) from the violation. The amendment was accepted by the mover and the second.

An amendment was offered by the mover to exclude language in count 5, 34(c)(2) from the violation. The amendment was accepted by the second.

A motion was made by Ptak and seconded by Stange to remove the last sentence of language located in count 5, 34(b) and 34(c)(2) from the violation. Motion carried with Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye, and with Avery voting nay.

Chairperson Gale reviewed the pending motion that Mr. Crawford violated the Nebraska Real Estate License Act and the Rules and Regulations in counts 2, 8 and the amended count 5.

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

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 Leisey and seconded by Rouch in Complaint 2011-004, that Michael Rae Crawford receive a two year suspension, all served on probation plus fifteen hours of additional continuing education in the areas of short sales, license law, landlord tenant law, agency and contract law to be completed within six months from the date of the order. Motion failed with Leisey and Rouch voting aye, and with Avery, Dover, Ptak, Stange and Gale voting nay.

A motion was made by Dover and seconded by Avery in Complaint 2011-004, that Michael Rae Crawford receive a two year suspension, all served on probation plus fifteen hours of additional continuing education in the areas of short sales, license law, landlord tenant law, agency and contract law to be completed within six months from the date of the order and payment of a two thousand five hundred dollar fine be due in conjunction with administrative fees as required by 305 NAC Chapter 4. Motion failed with Dover and Avery voting aye, and with Leisey, Ptak, Rouch, Stange and Gale voting nay.

A motion was made by Ptak and seconded by Leisey in Complaint 2011-004, that Michael Rae Crawford receive a two year suspension, all served on probation plus fifteen hours of additional continuing education in the areas of short sales, license law, landlord tenant law, agency and contract law to be completed within six months from the date of the order and payment of a one thousand five hundred dollar fine be due in conjunction with administrative fees as required by 305 NAC Chapter 4. Motion carried with Leisey, Ptak, Rouch, Stange and Gale voting aye and with Avery and Dover voting nay.

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 12:40 p.m.

Complaint 2009-057 - Commission vs. Kevin Dean McCully

A Hearing was held on September 16, at 9:15 a.m., in the matter of Complaint 2009-057, Commission vs. Kevin Dean McCully. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent McCully was not present.

Counsel Barton indicated that an email was received by Director Lemon regarding Mr. McCully being unable to appear at the Hearing. He indicated that Mr. McCully was not able to attend in person but has expressed his views in writing and would be presenting the email on behalf of Mr. McCully.

After opening statements, Counsel Ekeler called Garth Bullington and Valma Smith as witnesses and Counsel Barton called Terry Mayrose as a witness. Counsels Barton and Ekeler offered seven Exhibits, all of which were received by Chairperson Gale. Counsel Barton offered one exhibit on behalf of the Respondent, which was received by Chairperson Gale.

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 Leisey in Complaint 2009-057, that Kevin Dean McCully violated the Nebraska Real Estate License Act and Rules and Regulations as noted in counts 2, 3, and 4 and to dismiss the Complaint against count 1 as alleged in the report.

After discussion, an amendment was offered by the mover to amend the pending motion to dismiss count 3 and find that Mr. McCully violated the Nebraska Real Estate License Act and Rules and Regulations as noted in counts 2 and 4. The amendment was accepted by the second.

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

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 Leisey and seconded by Dover in Complaint 2009-057, that Kevin Dean McCully receive a censure, a five hundred dollar fine plus three hours of additional continuing education in the area of agency. Motion carried with Avery, Dover, Leisey, Rouch and Stange voting aye, and with Ptak and Gale voting nay.

Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale directed that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and that the 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 10:50 a.m.

Informal Special Appearances

There were no Informal Special Appearances to be presented at the meeting.

Proposed Rule Change For Correspondence Courses

Deputy Director Hoffman presented an overview of the proposed rule changes for pre-license education and continuing education presented in a correspondence study format. A copy of said exhibit is attached to and made a part of these minutes. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. The Exhibit was corrected for

attachment to these minutes and distributed prior to the meeting as "New 14".)

Deputy Director Hoffman reviewed the Exhibit and explained that since the Association of Real Estate License Law Officials (ARELLO) would no longer be certifying correspondence study courses, the proposed rule change would allow for those courses currently approved to continue to be recognized. She further explained that eliminating these courses before alternatives are available would be quite unfortunate for Nebraska licensees and applicants for license.

There was discussion regarding ARELLO's decision to eliminate certification of the correspondence study courses and the formats which may be certified.

Chairperson Gale indicated that in the Exhibit under the proposed rule changes there needed to be a comma in the first sentence instead of a period.

A motion was made by Dover and seconded by Leisey to approve the drafted amendments to Title 299, Chapter 1, Section 004-03 and Title 299, Chapter 7, Section 002.02 as amended. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Information Matters

ARELLO Annual Conference - September 28 - October 1, 2011 - Baltimore, Maryland

Director Lemon noted that Commissioners Dover and Avery and Deputy Director Hoffman will be attending the ARELLO Annual Conference. He asked if anyone else was planning on attending.

No action was necessary on this report.

Future Meeting Dates

October 27-28, 2011 - Staybridge Suites, Lincoln
December 6-7, 2011 - Staybridge Suites, Lincoln
January 19-20, 2012 - Staybridge Suites, Lincoln
February 16-17, 2012 - Staybridge Suites, Lincoln
March 15-16, 2012 - Staybridge Suites, Lincoln
April 19-20, 2012 - Staybridge Suites, Lincoln
May 17-18, 2012 - Staybridge Suites, Lincoln
June 21-22, 2012 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:25 a.m. on September 15, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 10:50 a.m. on September 15, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:05 a.m.

At 12:40 p.m. on September 15, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:35 p.m.

At 2:32 p.m. on September 15, Chairperson Gale recessed the meeting.

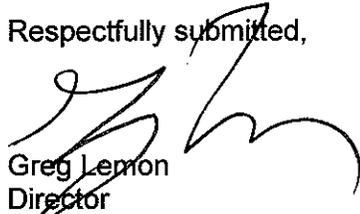
At 9:02 a.m. on September 16, Chairperson Gale reconvened the meeting.

Commissioners Dover and Leisey joined the meeting at 9:03 a.m.

At 11:00 a.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, Leisey, Ptak, Rouch, Stange and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the September 15-16, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on September 22, 2011, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

- Stacey Heller, Wisner
- Philip Rosfeld, Western View Real Estate, Chadron
- Trudy C. Meyer, CBSHOME Real Estate, Omaha
- Michael R. Crawford, Re/Max Sandstone Real Estate, Chadron
- Derek Zimmerman, Lincoln
- Jim Merrigan, Re/Max Sandstone Real Estate, Scottsbluff
- Kristen Anderson, Nebraska REALTORS® Association, Lincoln
- Susan Geschwender, Randall School, Omaha
- Jodi Bullington, Mullen
- Garth Bullington, Mullen
- Valma Smith, Mullen

