

## NEBRASKA REAL ESTATE COMMISSION

December 6, 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 December 6, 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 Commissioner Leisey, 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. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, was present for the Thompson Hearing.

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

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been 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 Avery to adopt the final agenda as presented. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

### **Minutes of October 27, 2011**

The minutes of the Commission meeting held on October 27, 2011, were considered.

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

Director Lemon presented the Receipts and Expenditures Report for October. 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 October 31, 2011, was \$338,438.60, which compared to a cash fund balance of \$273,196.39 on October 31, 2010.

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

## **Renewal Reports**

Director Lemon presented the Renewal Reports dated November and December. A copy of said reports are attached to and made a part of these minutes denoted as exhibits 5a and 5a1.

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 Stange and seconded by Rouch to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

## **Examination Report - October**

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

There was discussion regarding the information as displayed on the exhibit. It was suggested that a brief explanation of the broker examination score report information be included in future reports for ease in referencing. Additionally, it was requested that passing percentages for both the salesperson and the broker examinations be broken out by number of individuals taking the examination per month in addition to the percentages by examinations administered that is currently made available.

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

Deputy Director Hoffman presented for ratification the Continuing Education Activity Significant Change 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 Avery to ratify the three reports. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey 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.

There was discussion regarding a licensee presently under disciplinary order which had not complied with the conditions of the Stipulation and Consent Order and the repercussions of such actions.

No action was necessary on this report.

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

#### **Item A Complaint 2011-003**

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

#### **Item B Complaint 2011-011 – Commission vs. Paul C. Londer**

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

**Item C** Complaint 2011-013 – David J. Mettlen and Cindy F. Mettlen vs. Jay D. Nitz

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

**Item D** Complaint 2011-016 – G. Rosanna Moore vs. Michael Anthony Sodoro

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 Stange and seconded by Dover that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

**Item E** Complaint 2011-018 – Kathryn Pocras Halperin vs. John T. Fowler

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

**Item F** Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After discussion, a motion was made by Ptak and seconded by Avery that the Respondent appear before the Commission as a special appearance. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

**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 Ptak that the Commission file a complaint on its own motion.

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

**Item H Investigative Matter**

Deputy Director Mayrose explained to the Commission that a licensee under disciplinary action had contacted the Commission to discuss difficulties meeting the requirements of a signed Stipulation and Consent Order.

A motion was made by Ptak and seconded by Rouch that due to extraordinary circumstances, the continuing education required by the Stipulation and Consent Order in Complaint 2011-023 be extended until March 1, 2012. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

**Item I Complaint 2009-043 – Mark and Kaylene Lockwood vs. Paul C. Londer**

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

Deputy Director Mayrose requested Complaint 2009-043 be dismissed. Deputy Director Mayrose explained that Complaint 2011-003 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 2009-043 in abeyance until the new complaint had been adjudicated. Complaint 2011-003 was the new complaint.

A motion was made by Dover and seconded by Ptak to dismiss Complaint 2009-043, since the Commission dismissed Complaint 2011-003 at this meeting. Motion carried with Dover, Ptak, Rouch, Stange and Gale voting aye, with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest, and with Leisey not participating or voting, being absent and excused.

**Presentation of Stipulation and Consent Orders**

**Complaint 2011-006,  
Matthew M. Steinhausen vs. Shelly J. Nitz**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-006, Matthew M. Steinhausen vs. Shelly J. Nitz. 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.

There was discussion regarding the hours of additional continuing education required by the Order. Deputy Director Mayrose indicated that the error on page 4 of the Order would be corrected to reflect a six (6) hour course in ethics.

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

**Complaint 2011-002,  
Jason K. Hesser vs. Charles Robert Winkler**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-002, Jason K. Hesser vs. Charles Robert Winkler. 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.

It was the consensus of the Commission to decline the proposed Stipulation and Consent Order and propose that the Order include a five-hundred dollar fine.

**Hearings**

**Complaint 2011-012  
Commission vs. Gary Thomas Thompson**

A Hearing was held on December 6, at 9:45 a.m., in the matter of Complaint 2011-012, Commission vs. Gary Thomas Thompson. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent Thompson was present and represented by Counsels Robert B. Creager of Lincoln.

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

Counsel Barton called Ronald E. Pierson, John Clark and Gary T. Thompson as witnesses. Counsel Ekeler called Michael Garrison as a witness.

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

At 12:43 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 12:50 p.m.

Counsel Creager made a motion to dismiss the charges against Mr. Thompson in Complaint 2011-012 in which the Complainant failed to provide evidence in the prehearing conference order which would subject Mr. Thompson's license to be disciplined. After discussion, Chairperson Gale indicated that it was the consensus of the Commission to grant dismissal of items three and four under the controverted and unresolved issues as noted in the prehearing conference order. He further explained that a sufficient case to proceed on item two had been presented, and items five and six would be preserved for possible appeal.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Dover and seconded by Avery in Complaint 2011-012, that Gary Thomas Thompson violated Neb. Rev. Stat. § 81-885.24(29) by demonstrating negligence, incompetency, or unworthiness to act as a broker by failing to satisfy or appropriately manage debts owed by his company, Realty Linc, to the Nebraska Department of Labor. Motion carried with Avery, Dover,

Rouch and Gale voting aye, with Ptak and Stange voting nay, and with Leisey not participating or voting, being absent and excused.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #94-032, dated September 28, 1994, suspending Mr. Thompson's license for 60 days, plus an additional 3 hours of continuing education in the area of trust accounts. A Hearing was held on May 26, 2009 relating to Complaint #2008-004, suspending Mr. Thompson's license for two years with the first year served on suspension and the second year stayed and served on probation, plus an additional 6 hours of continuing education in the areas of license law and trust accounts and develop written policies and procedures for governing the maintenance of transaction files and trust account records in all of his real estate offices and submit the written policies and procedures to the Commission for review. A Show-Cause Hearing was held on August 20, 2010 relating to Complaint #2008-004, suspending Mr. Thompson's license for an additional six months stayed and served on probation, plus a civil fine of \$1,000.00 and the Court Reporter's fee of \$260.00. He is currently under probation until May 31, 2012.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Dover and seconded by Rouch in Complaint 2011-012, that Gary Thomas Thompson's license be suspended, all stayed and served on probation for an additional three years, with trust accounts examinations being conducted on a quarterly basis, with Mr. Thompson's accounting program being brought current and accurate within ninety-days and a system backup to be instituted in order to be compliant with the trust account examination.

Chairperson Gale offered an amendment that the motion specified that the additional three year suspension be added consecutively to the current discipline beginning May 31, 2012. The amendment was approved by the mover and second.

Director Lemon asked for clarification of the accounting system compliance requirement.

Commissioner Dover indicated that the accounting system must be in compliance within ninety days of the date of this Order.

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

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

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

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

The Hearing was adjourned at 2:48 p.m.

**December 6, 3:00 p.m. – Petition for Review Hearing on  
P2011-002 – Jeff Rothlisberger**

The Hearing scheduled to be held on December 6 at 3:00 p.m., in the matter of P2011-002 was continued.

**Informal Special Appearances**

**Todd Allen Haverkamp, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Haverkamp's special appearance; character reference letters for Mr. Haverkamp; a summary of Mr. Haverkamp's criminal background report; Mr. Haverkamp's abstract of record from the Department of Motor Vehicles; a certificate of release or discharge from active duty issued to Mr. Haverkamp from the Marine Corps; Mr. Haverkamp's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Haverkamp was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Dover and seconded by Rouch to allow Mr. Haverkamp to sit for the salesperson examination after making proper application and to have a license issued upon passing. An amendment was offered by Chairperson Gale that Mr. Haverkamp 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. The amendment was accepted by the mover and second. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

**Tracy Lynn Babcock, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Babcock's special appearance; character reference letters for Ms. Babcock; a summary of Ms. Babcock's criminal background report; Ms. Babcock's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Babcock was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Babcock explained the situations regarding her past criminal history.

After discussion, a motion was made by Dover and seconded by Avery to allow Ms. Babcock to sit for the salesperson examination after making proper application and to have a license issued upon passing. An amendment was offered by Chairperson Gale that Ms. Babcock 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. The amendment was accepted by the mover and second. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

## **Review and Approval of Travel for Teresa Hoffman to Attend the ARELLO Leadership Symposium and Board of Directors Meeting – Fort Myers, Florida – January 3-5, 2012**

Deputy Director Hoffman presented estimated travel expenses for the ARELLO leadership Symposium and Board of Directors Meeting. A copy of said exhibit is attached to and made a part of these minutes.

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

## **Review Proposed Legislation**

### **Authorize Post Dated Listing Agreements**

Director Lemon presented an exhibit of the proposed legislation which would allow licensees to post date listing agreements. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon also distributed letters of opposition regarding the introduction of this bill, as well as a letter from the Nebraska Realtor's Association in support of the change. Copies of said exhibits are attached to and made a part of these minutes, denoted as exhibits 15a1 and 15a2.

Director Lemon noted that parties interested in speaking to the Commission regarding the proposed legislation were unable to be in attendance and would entertain the option to postpone discussion until the next Meeting of the Commission.

Chairperson Gale noted had he felt that the Commission needed to have additional discussion regarding the proposed legislation. He felt that by drafting the legislation it was perceived that the Commission was rushing through this process and had generated a lot of conversation through the licensees. He explained that the legislation was drafted in case this was to be approved by the Commission and advance to legislation in order to get introduced in a timely manner not because this had been discussed in length by the Commission. He felt that a committee should be formed to conduct research and investigation regarding the proposed legislation but acting on the proposed legislation would be premature.

Commissioner Ptak felt that Staff could research the parameters of the matter, such as what other states do and if ARELLO has any thoughts or has taken a position on the matter.

After discussion, a motion was made by Ptak and seconded by Dover to have Commission Staff research the proposed legislation and table the discussion regarding post dated listing agreements until the next Commission Meeting. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, with Leisey not participating or voting, being absent and excused.

## **Verifying Authority to Enter into Contracts**

Director Lemon presented an exhibit of the provisions and rules regarding whether real estate licensees have received correct signatures on listing and purchase agreements and if a real estate licensee had properly ascertained who has authority to buy or sell property or bind the potential seller or buyer to contractual obligations.

Director Lemon explained that he worked closely with Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, to outline the licensee's obligations as described in the exhibit.

Commissioner Dover indicated that this would be a good article for the Commission Comment newsletter. Director Lemon noted that the article was designed with that in mind to offer guidance to the licensees and as a standard to the Commission should these circumstances arise.

It was suggested by Chairperson Gale that a few grammatical changes be corrected in the exhibit prior to publication.

No action was necessary on this report.

### **Information Matters**

#### **Meeting with Director of Insurance Department**

Director Lemon explained that he and Chairperson Gale met with the Director of the Nebraska Department of Insurance regarding title and closing companies. He explained that during the discussion he felt that the title and closing companies were regulated more closely than originally perceived. He indicated that after discussions he felt that the Director of Insurance Department was willing to work with the Commission on issues and concerns.

Chairperson Gale added that it was suggested that closing agents provide a cover sheet, or overview which would be helpful for the consumers. He also noted that he felt there was an open door policy developed between the Commission and the Director of Insurance Department.

No action was necessary on this report.

### **Future Meeting Dates**

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 9:35 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 9:45 a.m.

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

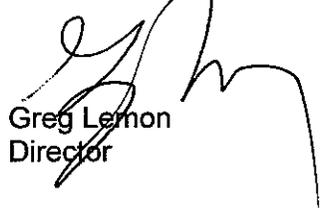
At 12:43 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:50 p.m.

At 2:50 a.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 4:00 p.m.

At 5:23 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, Ptak, Rouch and Gale voting aye, with Leisey 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 December 6, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on December 9, 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  
Joseph D. Gehriki, CBSHOME Real Estate, Omaha  
Michael Garrison, Lincoln  
Tracy Babcock, York

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