

NEBRASKA REAL ESTATE COMMISSION

June 28, 2012

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on June 28, 2012, 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. Jim Titus, Special Assistant Attorney General and Counsel to the Commission, was present for the Monte L. Froehlich Stipulation and Consent Order.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting were available to the public on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Director Lemon noted that agenda item 11C 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 Leisey to adopt the final agenda as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Minutes of May 17, 2012

The minutes of the Commission meeting held on May 17, 2012, were considered.

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

Director Lemon presented the Receipts and Expenditures Report for May. 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 May 31, 2012, was \$920,113.56, which compared to a cash fund balance of \$516,192.81 on May 31, 2011.

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

Specialized Registrations

Retirement Community Registration - Amendment for The Landing at Williamsburg Village

Director Lemon presented a specialized registrations report which included the registration of amendment to the retirement community registration for The Landing at Williamsburg Village. A copy of said report is attached to and made a part of these minutes.

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

Examination Report - May

Deputy Director Hoffman presented for ratification the May 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 Leisey to ratify the May 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 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.

Broker-Approved Training Recognition

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes. An updated Report was distributed at the meeting and is attached to and made a part of these minutes.

After review, a motion was made by Leisey and seconded by Rouch 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 a Motion to Dismiss had been filed with the Lancaster County District Court regarding the Carl Wuestehube case. A hearing on Wuestehube's Motion to Dismiss is scheduled for July 2, 2012

Deputy Director Mayrose updated the Commission on the pending Gary Thomas Thompson Appeal. Mr. Thompson provided a check for \$565.00 to prepare the record for the Court however the check was returned as insufficient funds. The Judge then signed an Order on the Commission's Motion to Dismiss ordering Mr. Thompson to pay the sum of \$565.00 in cash or certified funds on or before the close of business on June 29, 2012, or the case would be dismissed with prejudice.

After discussion, Chairperson Gale indicated that while disciplinary hearings were a costly and time consuming process, the Commission's decisions have been upheld by courts, which reflects well on the Commission's efforts to uphold the standards of the law.

No action was necessary on this report.

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

Item A Complaint 2012-005

Prior to discussion of this matter, Commissioner Rouch recused herself, 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 Ptak that complaint be set for hearing on Neb. Rev. Stat. §§ 81.885.24(29) only. Motion carried with Avery, Dover, Leisey, Ptak, Stange and Gale voting aye, and with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Item B Complaint 2012-011 – Dennis Shipman vs. Jill Ann Beyke

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 Ptak that the complaint be dismissed without prejudice, and a letter of admonishment be sent to the Respondent. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Item C Complaint 2012-014 – Arlena Kelly vs. David Joseph Paladino

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

Item D Complaint 2010-044 – Ronald W. Moore vs. Monte L. Froehlich

Deputy Director Mayrose requested Complaint 2010-044 be dismissed. Deputy Director Mayrose explained that Complaint 2010-044 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 2010-044 in abeyance until the new complaint had been adjudicated. Complaint 2012-001 was the new complaint.

A motion was made by Ptak and seconded by Dover to dismiss Complaint 2010-044, since the Commission accepted a Stipulation and Consent Order on Complaint 2012-001 at this meeting. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2012-004,
Aaron Doriani vs. Melissa L. Jarecke and Richard E. Kavan**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-004, Aaron Doriani vs. Melissa L. Jarecke and Richard E. Kavan. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Ptak to decline the proposed Stipulation and Consent Order. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2012-006,
Charles Jerrell vs. Philip J. Rosfeld**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-006, Charles Jerrell vs. Philip J. Rosfeld. 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, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2012-001,
Commission vs. Monte L. Froehlich**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-001, Commission vs. Monte L. Froehlich. A copy of said Order 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 Director's first name was misspelled on page four of the report. The Exhibit was corrected for attachment to these minutes.) Jim Titus, Special Assistant Attorney General and Counsel to the Commission was present for the presentation of the Order.

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

Counsel Titus indicated that he was involved in the complaint writing process and even though this was not the settlement offered on behalf of the Commission, he felt the Respondents counter offer would be acceptable.

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

Disciplinary Hearings

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

Informal Special Appearances

John Richard, Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Richard's special appearance; a summary of Mr. Richard's situation; character reference letters for Mr. Richard; and a summary of charges against Mr. Richard's. A copy of said exhibit is attached to and made a part of these minutes. Mr. Richard was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Rouch and seconded by Leisey to allow Mr. Richard to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Avery, Dover, Leisey, Rouch, Stange and Gale voting aye,

and with Ptak voting nay.

John F. Linscott, Potential Applicant

The special appearance scheduled for John F. Linscott was postponed to a future meeting.

Director Lemon presented exhibits which included: correspondence regarding Mr. Linscott's special appearance; a summary of Mr. Linscott's situation; character reference letters for Mr. Linscott; a summary of charges against Mr. Linscott's; and a summary of Mr. Linscott's license history. A copy of said exhibit is attached to and made a part of these minutes. Mr. Linscott was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Leisey and seconded by Avery to allow Mr. Linscott to sit for the examination after making proper application and to have a license issued upon passing. Mr. Linscott 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. Mr. Linscott must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of three years. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Real Estate Commission Policy Issues

Postdated Listing Agreements

Director Lemon presented an exhibit regarding Postdated Listing Agreements. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the current statutes do not currently allow for postdated listing agreements. He explained that he included in the exhibit background information regarding this issue as well as correspondence endorsing and opposing this issue. He also noted that should the Commission desire to change the current statutes, proposed legislation had also been attached for review. He indicated that while this issue had been placed on the agenda for discussion purposes, there was no action required if changes were not desired.

Shannon Harner, came forward to address the issue, she stated that her comments were her personal observations and did not necessarily represent the views of her employer. She felt this was a complicated issue and, while postdating listing agreements may sometimes occur in practice, this practice has been an exception rather than a rule. She explained that while this type of practice is to assist the seller not have a lapse in their listing, there was less need for this practice now due to advancements in technology. She indicated that this type of practice could be potentially dangerous to licensees due to agency issues including dual agency issues.

Chairperson Gale suggested there should be a time period set so the seller could not sign a new post-dated listing agreement more than, for example 30-days, prior to the expiration of the current agreement. He also suggested that only a broker be able to postdate a listing agreement and not a salesperson so this practice would only occur in exceptional cases. Finally, he suggested that if the salespersons are allowed to postdate the listing agreements that they could not be affiliated

with the same broker who holds the current listing.

Shannon Harner indicated that from a functional standpoint, brokers may not be available to conduct the postdated listing agreements personally especially in large companies and this would not only make brokers very unhappy it could also inhibit valid purposes for the listing. She noted that these issues among many would need to be addressed prior to allowing such practices.

There was discussion regarding the possibility that postdated listing agreements potentially create dual agency issues and various other problems which may arise with this type of practice. There were suggestions of using different forms for postdated actions. It was also noted through various scenarios discussed, that while there may be practical uses for postdating listing agreements there were many disadvantages to this practice. There were also concerns about the lack of disclosure to the original listing agent. It was also discussed that while some licensees may currently practice postdating listing agreements, it is not allowed by the law.

Herb Freeman noted that other states permit this practice and that it is an ethical practice by NAR standards. Chairperson Gale indicated that the Real Estate Commission did not enforce the REALTOR Code of Ethics but rather the law.

Commissioner Dover felt that if this practice is allowed, it could potentially open doors to more problems.

Commissioner Ptak recapped several issues he noted during the course of conversation which appear to need addressing prior to going forward. One issue is instituting a 30 day time frame before signing the postdated listing agreement; the second issue is providing a notice to the current listing agent; the third issue is agency disclosure requirements; the fourth issue concerned disclosing prior interested parties to the seller; the fifth issue regards transactions currently in process and an extension for a set number of days after original listing expiration and prior to new listing agreement being effective. He expressed his opinion that in order to best protect the public and the licensees, these issues would need to be dealt with prior to supporting legislation.

There was discussion regarding the purpose in the Commission proposing this legislation and what options are available to the Commission. It was suggested that the Commission allow the industry to pursue the legislation since there might not be a majority of the Commissioners supporting the proposed legislation.

A motion was made by Dover to endorse the current statutes and oppose any change in the statutes to allow for postdated listing agreements. The motion died for a lack of a second.

After discussion, a motion was made by Dover and seconded by Ptak to have any discussion regarding postdated listing agreements tabled indefinitely unless brought back by the majority of the Commissioners. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Advance Payment of Licensee Fees

Director Lemon presented an exhibit regarding the interpretation of Neb. Rev. Stat. §81-885.21, Advance Payment and Disbursement of Fees. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that advance payment of licensees' fees is a policy and interpretation that was discussed for possible changes some time ago and since the Commission receives

questions about advance payments there was a request for further clarifications. He indicated some scenarios in which advance payments might be accepted included in certain advertising costs. He also inquired as to whether such advance fees should be run through a brokers' trust account.

The Commissioners then discussed the appropriateness of licensees being reimbursed for these expenses in advance of closing and whether those expenses should be run through an operations account or the broker's trust account for accountability and auditing purposes. There was additional discussion regarding the advisability of requiring all parties to agree, in writing, to such terms.

Commissioner Ptak indicated that expenses, such as advertising, from a third party were not considered trust funds and should not be run through a broker's trust account. Commissioner Stange indicated that he felt the licensees understood the current laws and would track third party expenses on a ledger through the operations account and such expenses were not part of their compensation that they earn and profit from through licensed services.

There was also discussion regarding compensation from home builders upon the transfer of the deed on the lot. It was determined that this was not payment in advance as it was upon the closing on the real property.

Chairperson Gale felt that a Commission Comment newsletter article should be written to delineate the steps on how to handle the fees received and reimbursement of expenses. Commissioner Dover requested to review the article prior to publishing.

There was consensus among the Commission members that the advance fees need not be run through the broker trust account as long as they were documented and all parties agreed in writing to the advance payment.

Communication Directly with Represented Sellers

Director Lemon presented an exhibit regarding licensees communicating directly with represented sellers. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that currently there are services provided by licensees who, for a fee, will put a listing on the MLS. This being the only service they are providing, the listing then more or less functions as a for-sale-by-owner property. The issue is that when a licensee looks up a property on the MLS, they are instructed to contact the seller directly but, by law, these buyer agents should only communicate with the listing agent. Director Lemon asked the Commissioners to provide discussion regarding this issue so he would be able to provide licensees guidance so the buyer's agent can help serve the consumer and stay within the law.

There was discussion regarding the appropriate documentation a buyer's agent may acquire to be allowed to speak directly to the seller and present offers to the sellers.

Commissioner Avery felt that this type of practice puts licensees in a precarious situation and did not feel these listing companies are educating their clients adequately.

Commissioner Stange felt that this type of activity was against the law so either a change needs to be made to protect the buyers' agent or hold the sellers' agent accountable.

Commissioner Dover felt that the current law should be enforced, i.e. seller's agents should present all offers and buyer's agents should be warned they are violating the law once they begin communication directly with the seller.

Commissioner Leisey felt that the listing agent should be held accountable since the buyers' agent has a duty to his/her buyer to present the offer even if he/she has to go directly to the seller. As it is the law is penalizing the sellers whose objective is to get the house sold.

There was discussion regarding the best ways to handle the current pending situations and the licensees currently offering this limited service. Director Lemon indicated that many of these licensees are located in other states, even though they have a Nebraska license, investigation and prosecution of violations may take a considerable amount of time and resources.

It was the consensus of the Commission to research the possibility of a statutory change that allows buyer's agents to communicate directly with represented sellers if the seller's agent refuses, while continuing to enforce current agency requirements regarding receiving and presenting offers.

Consider Addendum to Pre-Hearing Conference Officer Agreement Regarding Compensation

Director Lemon presented a letter of explanation regarding compensation for pre-hearing conference officers. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the pre-hearing conference officer's current rate was established in 2005. He proposed a 10% rate increase and felt it would be reasonable given the yearly rate adjustments with other contracted attorneys. He also noted that such fees were not a major burden to the Commission's expenses, and that he had been approached by one of the pre-hearing conference officers about the present hourly rate.

A motion was made by Leisey and seconded by Ptak to increase the hourly rate for the pre-hearing officers by 10% effective July 1, 2012 and give Director Lemon the authority to amend the current contract for services. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

2011-2012 Objectives – Final Report

Director Lemon presented an exhibit regarding the 2011-2012 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that listed objectives and reported the progress made for each item.

No action was necessary on this report.

Consider 2012-2013 Objectives

Director Lemon presented an exhibit regarding the proposed 2012-2013 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the objectives which were carried over from the 2011-2012 Objectives and also included the objectives which had been suggested at previous meetings as potential objectives for 2012-2013.

Chairperson Gale indicated that he would like to discuss with Director Lemon the objective relating to the Department of Insurance's regulation of closing agents.

Chairperson Gale also suggested that consumer education and information be added to the objectives. He felt the Commission should provide consumers with important information regarding real estate issues by means of papers and television in the form of public service announcements or press releases. He also felt the Commission could provide consumer education to the public or use social media as an avenue for public relations.

Commissioner Dover suggested changing the Commissioner terms from six years to four years. He felt that reducing the term would allow more licensees to serve and would like to explore a phase in option after this year's appointment. Chairperson Gale indicated that those serving as Commissioners on other boards or agencies are allowed to serve double terms, if they so choose. Chairperson Gale also felt that this suggestion should come from the industry rather than the Commission. There was discussion regarding the learning curve for those who get appointed and the possible effect of the four year terms. It was decided that this item be added to the objectives to investigate further.

No action was necessary on this report.

Consider Renewal of Errors and Omissions Insurance Contract with Rice Insurance Services Company, LLC (RISC) for 2013

Director Lemon presented an exhibit regarding the 2013 Renewal of Contract Quotation from Rice Insurance Services Company, LLC (RISC). A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the errors and omissions insurance coverage and underwriter would be the same as the current year. He noted that the terms would remain the same as the current program and the premium amount would be increased by 4%.

After discussion, a motion was made by Leisey and seconded by Rouch to approve the renewal of contract with RISC for 2013. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Information Matters

ARELLO District Meeting – Rapid City, South Dakota – June 5-7, 2012 - Report of Attendees

Director Lemon noted that Commissioner Rouch and Deputy Director Hoffman and he attended the ARELLO District Meeting.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

No action was necessary on this report.

**ARELLO Annual Conference – September 19-23, 2012 -
Halifax, Nova Scotia, Canada**

Director Lemon presented an exhibit regarding the ARELLO Annual Conference. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the deadline for registration is August 22, 2012 and asked if the Commissioners were interested in attending the conference to review the ARELLO's website for additional travel information.

No action was necessary on this report.

Nebraska to Host District 2 & 3 ARELLO Conference in 2014

Director Lemon explained that they had volunteered to host the 2014 ARELLO District Conference. He noted that there would be no additional costs to the Commission since this was an ARELLO event, but that the Staff would be assisting in arrangements. He also noted that the conference would most likely be held in Omaha to better accommodate those attending, but no final decision had been made.

No action was necessary on this report.

Future Meeting Dates

August 23-24, 2012 – Staybridge Suites, Lincoln
September 27-28, 2012 - Staybridge Suites, Lincoln
October 18, 2012 – Staybridge Suites, Lincoln
November 15-16, 2012 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:55 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:06 a.m.

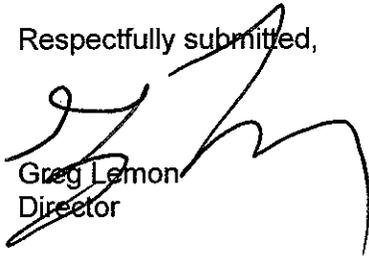
At 11:05 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:20 a.m.

At 12:36 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:25 p.m.

At 3:05 p.m., there being no further business to come before the Commission, a motion was made by Leisey and seconded by Stange 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 June 28, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on July 11, 2012, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Herb Freeman, Omaha

Mark Leaders, CBSHOME, Lincoln

Shannon Harner, CBSHOME/HomeServices of Nebraska, Lincoln

Kristen Anderson, Nebraska REALTORS® Association, Lincoln

John Richard, Omaha

John Linscott, Lincoln