

## NEBRASKA REAL ESTATE COMMISSION

August 15, 2013

Staybridge Suites

Staybridge Room

Lincoln, NE

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### **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on August 15, 2013, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut.

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

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

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

Director Lemon noted that agenda items 8b, 11c and 13c 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 Rouch to adopt the final agenda as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

### **Minutes of June 20, 2013**

The minutes of the Commission meeting held on June 20, 2013, were considered.

Commissioner Rouch noted under the third paragraph on page 9 under the agenda item, Discussion on Acceptable Use of Broker Price Opinions and Comparative Market Analysis, there was a typographical error transposing the words "action disciplinary" which should read "disciplinary action".

After review, a motion was made by Ptak and seconded by Avery to approve the minutes as amended. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover not voting having not been in attendance at the June 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 Reports for June and July**

Director Lemon presented the Receipts and Expenditures Reports for June and July. Copies of said reports are attached to and made a part of these minutes. Director Lemon noted that an explanation page was included in each report.

The cash fund balance as of June 30, 2013, was \$777,922.54, which compared to a cash fund balance of \$877,516.62 on June 30, 2012.

The cash fund balance as of July 31, 2013, was \$727,086.86, which compared to a cash fund balance of \$818,394.57 on July 31, 2012.

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

## **Final 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.

## **Fiscal Year 13-14 Monthly Budget Allocations**

Director Lemon presented the monthly budget allocations for Fiscal Year 2013-14. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary on this report.

## **Consider 2014 License Fees**

Director Lemon presented an exhibit in which the Budget and Finance Subcommittee recommended no increase in fees for 2014. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Stange and seconded by Dover to make no changes the Commission's fees at this time. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

## **Specialized Registrations**

### **Time-Share Registrations - Amendment for Marriott Vacation Club Destinations**

Director Lemon presented a specialized registrations report which included the registration of amendment 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 Dover and seconded by Ptak to approve the amendment to the registration as presented. Motion carried with Avery, Dover, Freeman, 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 Dover and seconded by Rouch to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

### **Examination Reports – June and July**

Deputy Director Hoffman presented for ratification the June and July Examination Reports, copies of which are attached to and made a part of these minutes.

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

### **Examination Passing Rosters**

Deputy Director Hoffman presented the Examination Passing Rosters for June and July, copies of which are attached to and made a part of these minutes.

No action was necessary on this report.

### **Report on the AMP Advisory Task Force Meeting**

Deputy Director Hoffman presented an exhibit containing two graphs reflecting Nebraska's first-time real estate examinees' performance on the national portion of the salesperson examination compared to the twelve other states who are also real estate licensing examination clients of AMP, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman explained that she had recently attended the AMP Advisory Task Meeting in which the graph was distributed. She noted the first graph indicated that out of thirteen states in which AMP administers the examinations, Nebraska had the fourth highest rate for first-time salesperson examinees on the national portion of the examination. The graph indicated these individuals' performance on each of the 7 sections of the national examination compared to the average performance of the other twelve states. Ms. Hoffman

indicated that she believed this information to be favorable and to show that our candidates being well-prepared to enter the real estate industry as reflected by their performance on the examinations.

Deputy Director Hoffman also noted that one of the practices that underscores AMP's professionalism is that every five years, AMP conducts a job analysis which keeps the examination pertinent to the practice of real estate. She reported that AMP and the Advisory Committee would develop and conduct the related survey in 2014. She noted that Nebraska licensees are served best by strong representation on the survey and she requested the Commissioners to alert their colleagues to expect the survey sometime next year and to encourage them to complete it.

Deputy Director Hoffman also noted that two-thirds of the examination sites have been remodeled with completion in 2013. This will include additional security and they will be more closely monitored with the assistance of new video cameras.

No action was necessary on this report.

### **Real Estate Education Matters**

#### **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.

After review, a motion was made by Freeman and seconded by Ptak to ratify the three reports. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

#### **Report on Instructor Development Workshop held June 21**

Deputy Director Hoffman presented a 2013 Instructor Development Workshop Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman reported that the Instructor Development Workshop (IDW) had been a success and she was impressed with the dedication of those who attended. She noted that the report indicated several instructors who had attended multiple IDW's in the past. She also noted that she had received feedback from several of the attendees who had already incorporated some suggestions received from the IDW in their classrooms.

No action was necessary on this report.

## **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 2013-008**

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

### **Item B Complaint 2013-011**

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

After being advised of the results of the investigation and discussion, a motion was made by Ptak and seconded by Dover that Complaints 2013-008 and 2013-011 be set for Hearing. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye. .

### **Item C Complaint 2013-018 – Mary Lehmann vs. Joshua Jeremiah Sand**

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 set for Hearing per Staff recommendation. Motion failed with Avery and Rouch voting aye, and with Dover, Freeman, Ptak, Stange and Gale voting nay.

After discussion, a motion was made by Stange 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, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover voting nay.

### **Item D Complaint 2013-019 – Ruth Richter vs. Craig William Horobik**

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

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

**Item E Investigative Matter**

Deputy Director Mayrose presented an investigative report to the Commission.

**Item F Investigative Matter**

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigations and discussion, a motion was made by Dover and seconded by Ptak that the Commission file complaints on its own motion and set Investigative Matters E and F for hearing per Staff recommendation. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Presentation of Stipulation and Consent Orders**

**Complaint 2013-006,  
Commission vs. Amy M. Mosser**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-006, Commission vs. Amy M. Mosser. A copy of said Order is attached to and made a part of these minutes. Amy Mosser was present. Steven Mossman, Legal Counsel for Ms. Mosser was present to discuss the Order.

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

Counsel Mossman explained the circumstances regarding the stipulation and consent order.

After discussion, a motion was made by Stange and seconded by Dover to decline the proposed Stipulation and Consent Order and propose that the Order include a two year suspension all served on probation, and the fine and education remain as stated in the proposed Order.

Counsel Mossman indicated that Ms. Mosser would agree to sign the Order as amended.

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

**Complaint 2013-021,  
Commission vs. Craig Matthew Jungjohann**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-021, Commission vs. Craig Matthew Jungjohann. 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 Rouch to enter into the Order as presented. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman voting nay.

**Complaint 2013-025,  
Commission vs. David Frank Harders**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-025, Commission vs. David Frank Harders. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Dover and seconded by Ptak to decline the proposed Stipulation and Consent Order. Motion carried with Avery, Dover, Ptak, Rouch, Stange and Gale voting aye, and with Freeman voting nay.

**Disciplinary Hearings**

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

**Informal Special Appearances**

**Anthony James Collins, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Collins' special appearance; a letter of explanation from Mr. Collins'; character reference letters for Mr. Collins; Mr. Collins' criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Collins was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Avery and seconded by Dover to allow Mr. Collins to sit for the salesperson examination after making proper application and to have a license issued upon passing.

Chairperson Gale offered an amendment to include that Mr. Collins 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. Collins must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time. The amendment was accepted by the mover and second.

Commissioner Stange offered an amendment to include that Mr. Collins notification requirements, as mentioned above, be in place for a period of two years. The amendment was accepted by the mover and second.

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

**Timothy Francis Kenkel, Broker Applicant  
Reconsideration of the Motion**

Director Lemon presented exhibits which included: correspondence regarding Mr. Kenkel's special appearance; an excerpt from the Commission's Quorum and Voting Procedures Manual; and information regarding Mr. Kenkel's previous special appearances held in June 2013 and

2013. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kenkel was present.

Director Lemon explained that in the Commission's Procedures, there is a provision requiring another vote at the next meeting when all members are present on any item which did not get four votes either for or against. The Kenkel appearance was once again on the agenda, not having received four votes either for or against, and all members now being present.

A motion was made by Dover and seconded by Rouch to reconsider the matter of Timothy Francis Kenkel. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

After discussion, a motion was made by Dover and seconded by Stange to allow Mr. Kenkel to obtain a brokers license after making proper application and to have a license issued. Mr. Kenkel 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. Kenkel 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 five years. Motion carried with Dover, Freeman, Rouch and Stange voting aye, and with Avery, Ptak and Gale voting nay.

#### **Joseph N. Johnson, Potential Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Johnson's special appearance; a letter of explanation from Mr. Johnson; character reference letters for Mr. Johnson; and Mr. Johnson's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Johnson was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Director Lemon distributed a letter of explanation of Mr. Johnson's criminal charges. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13c1.

Mr. Johnson distributed an additional letter of recommendation. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13c2.

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

After discussion, a motion was made by Dover and seconded by Rouch to allow Mr. Johnson to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Johnson must notify any anticipated employing broker of his prior 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. Johnson must also notify the Commission staff of any new criminal charge, except those charges where there is no possible sentence of jail time for a period of two years.

Commissioner Ptak offered an amendment to extend the notification to the Commission staff of any criminal charge from two years to five years. The amendment was accepted by the mover and the second.

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

**Consider Nebraska Realtors Association Proposed Legislation – Representatives of the Association Will Make Presentation at 11:00 a.m.**

Julie Joeckel, President of the Nebraska REALTORS® Association was present to discuss the proposed changes to the notary requirements for the transfer of homesteads and the Agency Disclosure law which will be presented to the Legislature in 2014. Ms. Joeckel indicated that she would like to receive the Commission's support on the proposed Legislation or request that the Commission remain neutral on the issues as to move the Legislation forward. Ms. Joeckel indicated that the proposed changes were in the best interest of the consumers and real estate agents.

**Discussion of Notary Requirements for the Transfer of Homesteads**

Director Lemon presented a copy of the Chapter 40 Homestead Act with changes noted. A copy of said exhibit is attached to and made a part of these minutes.

Julie Joeckel explained the proposed changes to Chapter 40 Homestead Act and the reasoning for changing such law. She noted that the change was intended to only affect the notarization requirement on the purchase agreement.

There was discussion regarding compliance with the current law and potential issues with the wording as revised. It was suggested that additional research be conducted by the REALTORS Association and, if changes are deemed necessary, revisions be made to the proposed law changes to reduce the possibility of opposition.

No action was necessary with regard to this matter.

**Discussion of Agency Disclosure Law**

Director Lemon presented a letter from the Nebraska Realtors Association and a sample Legislative Bill regarding the Agency Disclosure Law. A copy of said exhibit is attached to and made a part of these minutes.

Julie Joeckel explained that the proposed changes to the Agency Disclosure Law would help eliminate confusion for both the licensees and the customer when obtaining a signature on the Agency Disclosure Brochure.

There was discussion regarding when the agency disclosure brochure would be required to be signed under the proposed changes. There was concern that if licensees were not required to provide the brochure to the customers, the customers would not be aware of obligations the licensees are required to provide. There was also discussion regarding the reason the agency disclosure laws were implemented, which was because of concerns by the Consumer Federation of America regarding the public's understanding of who licensees were representing. It was suggested that the elimination of the requirement could potentially lead to more lawsuits for licensees and/or the public and may also result in increased claims made to errors & omissions insurance companies.

Ms. Joeckel indicated that the purpose of the proposed law change was to solve compliance problems in the industry and practice in the field where the law is being broken or not complied with in a timely fashion, and to simplify the process. The thought was shared that rather than disclosures being minimized to reflect errant practice it would be better for the public and

licensees if licensees were encouraged to make practice conform with the statutes and proper disclosures given.

It was discussed that additional research would be conducted on the proposed change.

No action was necessary with regard to this matter.

### **Consideration of Possible Rule Changes**

#### **Time-Share Act – Exchange Agent Expiration**

Director Lemon presented a copy of Title 299, Chapter 9 relating to the Nebraska Time Share Act. A copy of said exhibit is attached to and made a part of these minutes. The proposed change would provide for the expiration of exchange agent registrations under the Time Share Act after three years.

#### **Broker-Approved Training – Activity Expiration Date**

Director Lemon presented a copy of Title 299, Chapter 7 relating to Continuing Education Activities; Required Hours; Approval; Restrictions; Denial; Revocation; Appeal Process; Record Keeping. Proposing language that would allow Training activities to expire after three years. A copy of said exhibit is attached to and made a part of these minutes.

A motion was made by Freeman and seconded by Rouch to approve proposed draft changes and set for rule hearings. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

#### **Adopt Robert Dover Resolution**

Director Lemon presented a resolution commemorating service on the Commission by Robert Dover. A copy of said resolution is attached to and made a part of these Minutes.

A motion was made by Ptak and seconded by Freeman that the resolution for Robert Dover be adopted. Motion carried by acclamation.

### **Information Matters**

#### **Trust Account Examination Evaluation Report - Second Quarter 2013**

Director Lemon presented the Trust Account Examination Evaluation Report - Second Quarter 2013. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled.

No action was necessary on this report.

#### **Errors and Omissions Loss Report – Second Quarter 2013**

Director Lemon presented the Errors and Omissions Loss Report – Second Quarter 2013. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

**ARELLO Annual Meeting – Seattle, Washington-  
September 18-22, 2013**

Director Lemon explained that the deadline for registration is August 26, 2013, and asked which Commissioners were planning on attending the conference. Commissioners Avery and Freeman indicated that they plan on attending.

No action was necessary on this report.

**ARELLO District Conference - Biloxi, Mississippi – June 25-27, 2013 –  
Report of Attendees**

Director Lemon noted that Deputy Director Hoffman and he attended the ARELLO District Conference.

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

No action was necessary on this report.

**ARELLO Education Certification Task Force Report**

Deputy Director Hoffman noted that she had been asked to serve on a task force to update the Distance Education Certification Standards by the ARELLO Education Certification Committee. She noted that since Nebraska education providers were affected by the certification process, she felt her participation would allow her to voice the concerns for both the Commission and the Education Providers. She explained that the recommendations would be presented at the ARELLO annual meeting.

No action was necessary on this report.

**Grant For Online Submission of Education Attendees**

Director Lemon noted that he had applied for a grant from the Records Management division to assist in the development of an online submission process for education providers to report education attendance to the Commission. He further explained that the electronic submission would assist the Commission with the renewal process and would allow for a more rapid update of licensee records. He indicated that although the Commission had requested twenty-five thousand dollars, they received fifteen thousand which was acceptable by the developers.

No action was necessary on this report.

**Request For Information Regarding NREC Licensee Database**

Director Lemon noted a Request for Information (RFI) had been sent out to gather information regarding a new licensee database. The RFI will also provide a cost range which will be required to assist in requesting appropriations for implementation from the Legislation.

No action was necessary on this report.

## Leslie Rae Young Case Update

Director Lemon presented a Memorandum and Order from the United States District Court. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the court in the Leslie Rae Young case had lifted the stay on the federal proceeding and the case was now before the Federal Court once again for review.

No action was necessary on this report.

### Future Meeting Dates

September 27, 2013- Staybridge Suites, Lincoln  
October 24-25, 2013- Staybridge Suites, Lincoln  
November 21-22, 2013- Staybridge Suites, Lincoln

### Recesses and Adjournment

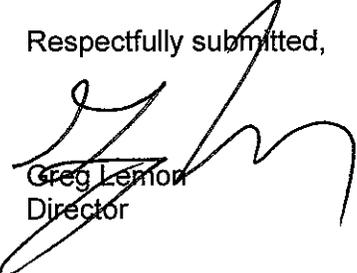
At 10:07 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:22 a.m.

At 12:03 a.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 12:50 p.m.

At 2:52 p.m., there being no further business to come before the Commission, a motion was made by Dover and seconded by Rouch that the meeting adjourn. Motion carried with Avery, Dover, Freeman, 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 August 15, 2013, meeting of the Nebraska Real Estate Commission were available for inspection on August 22, 2013, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

### Guests Signing the Guest List

Val Kircher, Coldwell Banker Kircher & Associates Realty, Inc., McCook  
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln  
Kristen Anderson, Nebraska REALTORS® Association, Lincoln  
Joe Gehrki, CBSHOME Real Estate, Omaha  
Marcia Weddle, Realtors Association of Lincoln, Lincoln  
Julie M Joeckel, Nebraska REALTORS® Association, Lincoln