

**NEBRASKA REAL ESTATE COMMISSION**

**November 21, 2013**

**Staybridge Suites**

**Staybridge Room**

**Lincoln, NE**

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**Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on November 21, 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. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Pelshaw 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 was available 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 13a had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Rouch and seconded by Alloway to adopt the final agenda as presented. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Minutes of October 24, 2013**

The minutes of the Commission meeting held on October 24, 2013, were considered.

After review, a motion was made by Stange and seconded by Avery to approve the minutes as presented. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak 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, 2013, was \$709,110.51, which compared to a cash fund balance of \$648,931.52 on October 31, 2012.

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

## **Renewal Report**

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

## **Specialized Registrations**

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

## **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. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The individual broker statistic for total number passed and failed were switched. The individual broker statistics for the number passed should have been 66.67% and the total number failed should have been 33.33%. The exhibit was corrected for attachment to these minutes.)

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

## **Examination Passing Roster**

Deputy Director Hoffman presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

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 Avery and seconded by Rouch to ratify the three reports. Motion carried with Alloway, Avery, Freeman, 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.

No action was necessary on this report.

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

### **Item A Complaint 2013-028**

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 Freeman and seconded by Rouch that the complaint be set for Hearing per Staff recommendation. Motion carried with Freeman, Ptak, Rouch and Gale voting aye and with Alloway, Avery and Stange voting nay.

## **Presentation of Stipulation and Consent Orders**

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

## Disciplinary Hearings

### Complaint 2013-020 Commission vs. Robert Lee Pelshaw

A Hearing was held on November 21, at 10:00 a.m., in the matter of Complaint 2013-020, Commission vs. Robert Lee Pelshaw. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Robert Lee Pelshaw was present via telecommunication and was represented by Counsel David E. Pavel of Omaha.

Director Lemon explained that on or about September 25, there was an Ex Parte, unsolicited email sent to all Commissioners concerning Mr. Pelshaw. Although a notice of Ex Parte communication was properly filed pursuant to NAC Title 305, Chapter 4, Section 002.03 and 002.03A with all parties of record in this matter, in order to clarify the record, Director Lemon asked each Commissioner if they gave a cursory review of their knowledge of the Ex Parte communication and if they felt that receipt of the unsolicited email would in any way influence their decision in this case or compromise their ability to act as an impartial decision maker in this matter. Each Commissioner indicated that such communication would not influence their decision in this case or compromise their ability to act as an impartial decision maker in this matter.

Counsel Pavel waived the opening statement. After opening statement from Counsel Barton, he offered twelve exhibits, all of which were received by Chairperson Gale. Counsel Barton called Terry Mayrose as a witness.

Counsel Pavel offered one exhibit which was received by Chairperson Gale. Counsel Pavel called Robert Lee Pelshaw 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.

A motion was made by Freeman and seconded by Avery in Complaint 2013-020, that Robert Lee Pelshaw be found guilty of counts 1, 2 and 3 of the Complaint.

Commissioner Ptak offered a friendly amendment to change the motion to state that Mr. Pelshaw violated the various counts rather than be found guilty. The amendment was accepted by the mover and second.

Commissioner Ptak indicated that for finding fact and to add clarity to the motion he wanted to point out that the motion stated that Mr. Pelshaw violated Neb. Rev. Stat. 81-885.24(28), 81-885.12, 81-885.24(29) and 81-885.12(2).

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

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #96-032, dated January 22, 1997, suspending Mr. Pelshaw's license for 2 years. It also showed that the Commission held a hearing on May 28, 2003 relating to Complaint 2003-006, censuring Mr. Pelshaw's license, plus an additional 3 hours of continuing education in the area of trust accounts. The Commission's

decision was appealed to the District Court on July 16, 2003 and upheld by the District Court on April 7, 2004.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Avery in Complaint 2013-020, that Robert Lee Pelshaw's license be revoked. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye.

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 12:18 p.m.

### **Informal Special Appearances**

#### **Gary Hardt, Potential Applicant - Reappearance**

Director Lemon presented an exhibit which included: correspondence regarding this special appearance; a letter of explanation from Mr. Hardt; a resume from Mr. Hardt; character reference letters; pre-license course completion certificates; an article from JournalStar.com published September 12, 2013 regarding Mr. Hardt; a justice system and state patrol search regarding Mr. Hardt; Mr. Hardt's criminal history report; and information regarding Mr. Hardt's previous special appearances in August 2004 and June 2004. A copy of said exhibit is attached to and made a part of these minutes. Mr. Hardt was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Ptak and seconded by Alloway to allow Mr. Hardt to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Hardt 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. Hardt 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 two years.

An amendment was offered by Commissioner Freeman that in addition to notifying the Commission of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years that he also notify his employing broker.

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

## **Legislative Matters**

### **Proposed Legislation on Application Procedures**

Director Lemon presented an exhibit of the proposed legislation on application procedures. A copy of said exhibit is attached to and made a part of these Minutes. Julie Joeckel and W. Fred Hoppe with the Nebraska REALTORS Association, were in attendance to speak to this matter.

Julie Joeckel, representing the Nebraska REALTORS Association, indicated that while they were in support of the bill, requested clarification regarding the applicant's fees should they not be allowed to obtain a license due to the results of the background report.

Director Lemon explained that any refunds of application and examination fees could be adopted as a policy rather than put into the law. He also noted that the licensee would still be required to pay the fees for the background report which would not be refunded whether they received a license or not since the Commission would incur the cost.

A motion was made by Avery and seconded by Rouch to authorize Director Lemon to secure legislative support for the proposed bill and to testify to the Legislation on the Commission's behalf. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye.

### **Proposed Legislation on Notary Requirements for the Transfer of Homesteads**

Director Lemon presented an exhibit of the proposed legislation to remove the notary requirements for the transfer of homesteads. A copy of said exhibit is attached to and made a part of these Minutes. W. Fred Hoppe and Julie Joeckel representing the Nebraska REALTORS Association, were in attendance to speak to this matter.

W. Fred Hoppe, representing the Nebraska REALTORS Association reviewed the proposed changes as reflected in the Exhibit. Mr. Hoppe also explained that he had the Nebraska Bar Association and two legislative committees with interest in real estate matters review the proposed legislation and they were agreeable to the proposed changes. Mr. Hoppe asked for the support of the Commission when presenting the bill to the Legislation.

Chairperson Gale noted that the proposed changes were not changing the real estate License Act that the Commission enforces. Mr. Hoppe explained that while the License Act was not changing, the changes will affect the industry which could in turn result in potential complaints should the licensees violate the law.

After discussion, a motion was made by Stange and seconded by Avery that the Commission reflect no objection to the proposed language to the Homestead Act. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye.

### **Discussion Item "Coming Soon" Advertising of Real Estate Listings**

Director Lemon presented an exhibit explaining advertising property as "coming soon" and the current laws and rules which would relate to such advertising. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained that this was requested to be placed on the Agenda to provide the Association additional time to research this discussion item. He explained that he had not

received notification of any completed research to date and felt that the Nebraska REALTORS Association may require more time to research this item.

Julie Joeckel, representing the Nebraska REALTORS Association, indicated that there was no research to be presented to the Commission at the present time. Chairperson Gale indicated that should the subject require discussion, it could be placed on the Agenda in the future.

No action was necessary on this item.

### **Adopt Terry Mayrose Resolution**

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

Commissioner Gale indicated that Mr. Mayrose was a delight and a joy to work with and a competent professional. Director Lemon also noted that Mr. Mayrose was a pleasure to work with and would be hard to replace. Commission Ptak expressed his appreciation for the work that Mr. Mayrose did for the other Commissioners as well as himself.

A motion was made by Freeman and seconded by Ptak that the resolution for Terry Mayrose be adopted. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye.

### **Information Matters**

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

Director Lemon presented the Trust Account Examination Evaluation Report - Third 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.

### **Future Meeting Dates**

January 17, 2014- Staybridge Suites, Lincoln  
February 20-21, 2014- Staybridge Suites, Lincoln  
March 20-21, 2014- Staybridge Suites, Lincoln  
April 18, 2014- Staybridge Suites, Lincoln  
May 22-23, 2014 - Staybridge Suites, Lincoln  
June 19-20, 2014 - Staybridge Suites, Lincoln

### **Recesses and Adjournment**

At 9:50 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:00 a.m.

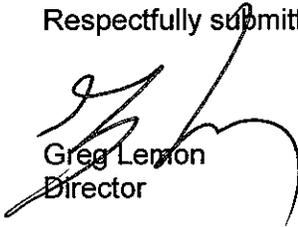
At 11:15 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:25 a.m.

At 12:18 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:45 p.m.

At 2:50 p.m., there being no further business to come before the Commission, a motion was made by Rouch and seconded by Avery that the meeting adjourn. Motion carried with Avery, Alloway, 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 November 21, 2013, meeting of the Nebraska Real Estate Commission were available for inspection on November 26, 2013, 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
- Judi Burford, CBSHOME Real Estate, Omaha
- David E. Pavel, Omaha
- Julie Joeckel, Nebraska REALTORS Association, Lincoln
- W.F. Hoppe, Nebraska REALTORS Association, Lincoln