

NEBRASKA REAL ESTATE COMMISSION

February 20, 2014

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Acting Chairperson Rouch convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on February 20, 2014, 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 Chairperson Gale, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Duran Cell, and Administrative Assistant Monica Rut, Trust Account Examiner John Clark, and contract consultant Terry Mayrose.

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. Acting Chairperson Rouch 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.

Acting Chairperson Rouch 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. Acting Chairperson Rouch 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 Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

Minutes of January 17, 2014

The minutes of the Commission meeting held on January 17, 2014, were considered.

After review, a motion was made by Stange and seconded by Freeman to approve the minutes as presented. Motion carried with Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

Public Comment

Acting Chairperson Rouch 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 January

Director Lemon presented the Receipts and Expenditures Report for January. 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 January 31, 2014, was \$1,245,581.58, which compared to a cash fund balance of \$1,048,643.57 on January 31, 2013.

Director Lemon noted that there was a deficit appropriation bill which was waiting approval from the legislation for staff retirement payout and increased amount of examination fees.

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

Specialized Registrations

Time-Share Registrations Amendment- ClubWyndham Access Vacation Ownership Plan (Non-Specific Site)

Director Lemon presented a specialized registrations report which included the registration of amendment to time-share registration for ClubWyndham Access Vacation Ownership Plan. A copy of said report is attached to and made a part of these minutes.

A motion was made by Freeman and seconded by Stange to approve the amendment to the registration as presented Motion carried with Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

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

Examination Report - January

Deputy Director Hoffman presented for ratification the January Examination 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 Alloway to ratify the January Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

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

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. Commissioner Stange complimented the new web-based education credit submission process. Deputy Director Hoffman shared credit for that process with staff members Monica Rut and Tawny Snider.

After review, a motion was made by Stange and seconded by Freeman to ratify the four reports. Motion carried with Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

Discussion of Designated Subject Matter Topics ("R" Courses)

Deputy Director Hoffman indicated that she had had a request to have the Commission consider making the Real Estate Settlement Procedures Act (RESPA) one of the designated subject matter licensees could take toward fulfilling the 6 required hours of "R" courses every two years. She presented an exhibit explaining the Commission could take this action through a motion and containing a list of the various subject matter currently designated, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman noted that when a designation is changed, a retroactive approval is typical so that those who may have already taken the subject as part of their current continuing education period would also benefit from the decision. She noted that she thought it reasonable that RESPA be considered for the designation because it was an important compliance issue for licensees and in the public interest.

Commissioner Alloway agreed that the issue was significant enough to be considered for the designation. However, Commissioner Avery noted that some RESPA courses focus on

consumers, licensees and lenders and he did not feel that the courses specific to lenders would assist licensees and consumers. Deputy Director Hoffman agreed and indicated that the approved RESPA courses would have to assist licensees in their real estate practice and she would not approve those directed to other audiences. She also noted that when she is in doubt of the applicability of content she has brought them to the Commission for input and would continue to do so. Commissioner Freeman asked if RESPA could be added to the already recognized category of Fair Housing/ADA since they are all Federal laws. Deputy Hoffman indicated that she would recommend it as its own category so that there was no generalization that "federal laws" were a designated category.

After review, a motion was made by Freeman and seconded by Alloway to allow courses related to RESPA receive an "R" designation upon Deputy Director Hoffman's approval. Motion carried with Alloway, Avery, Freeman, Ptak, Stange and Rouch voting aye, with Gale not participating or voting, being absent and excused.

Commissioner Alloway noted that the subject of Finance had also been suggested to receive the "R" designation, however, the subject was very broad. Deputy Director Hoffman explained that part of the reason for the prescription of "R" subject matter was to address those topics the Commission considered pertinent to the practice of real estate and the protection of the public but which were not necessarily popular or prevalent. The designation, then, encourages providers to both develop and offer these topics and encourages licensees to attend them. Courses related to finance are frequently offered and there are currently at least fifty different course content numbers dedicated to aspects of real estate finance so that licensees need not worry about duplication issues or lack of access to education in this area. She suggested that should the Commissioners decide to review this topic they narrow it down to a specific aspect of finance.

There was discussion regarding the importance of finance in commercial versus residential transactions. The Commission also discussed the availability of "R" courses in various areas throughout Nebraska. Deputy Director Hoffman noted that through both distance and classroom options "R" courses were available in all areas of the state.

Commissioner Alloway indicated that different education formats need to be reviewed by the Commission since correspondence study is preferred but only offered by few providers and the online courses were not preferred by many licensees. Deputy Director Hoffman indicated that the correspondence study format was no longer being certified by ARELLO because it could not be monitored and the quality controlled satisfactorily. She explained that two schools continued to have their existing correspondence courses approved in the same format they had when certified by ARELLO. Commissioners Freeman and Ptak both indicated that while correspondence study may be time effective, it may not be learning effective.

Commissioner Stange suggested the Commission consider a sunset period for those providers still offering correspondence courses. It was the consensus of the Commission that at a future meeting, Deputy Director Hoffman present a recommendation of the sunset time frame to be given to providers who currently offer education in a correspondence study format.

Pending Sworn Complaints and Investigative Matters

Deputy Director Cell 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.

Director Lemon noted that the Commission Staff would begin making changes to the website which would allow Commissioners to access the disciplinary actions summary for use during the meetings.

There were no sworn complaints and investigative matters to be presented at the meeting.

Presentation of Stipulation and Consent Orders

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

Disciplinary Hearings

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

Informal Special Appearances

There were no informal special appearances scheduled to be held at the meeting.

Review Trust Account Examination Procedures

Director Lemon presented a Commission policy and interpretation and newsletter article regarding giving brokers advance notice of trust account examinations; and guidelines for trust account records on alternative media. A copy of said exhibit is attached to and made a part of these minutes. John Clark, Trust Account Examiner for the Nebraska Real Estate Commission, and Vince Leisey with Ambassador Real Estate were also present for the discussion.

Director Lemon distributed an explanation of current notifications procedures for trust account exams. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14a.

Director Lemon reviewed the guidelines, policies and processes relating to retention of trust account records on alternative media which are approximately sixteen years old.

Mr. Leisey indicated that many companies and other jurisdictions have progressed to paperless files and audits are being conducted electronically. He referred to the Commission Guidelines which indicate that the records be maintained in the original medium. He explained that currently the records are being maintained in both electronic and paper format which is additional work and if they were all compiled in an electronic format then they could be obtained by the examiner through computer access. He noted that many companies are going paperless, and while not cost effective, he would be willing to print the records out on paper for the examiners. He asked that in an effort to go paperless the Commission review the guidelines and embrace technology.

Commissioner Freeman indicated that many of the paperless systems maintain every version of every document and felt the online system were superior to the paper files. He noted that if the examiners were in the office, they would be able to look at the screen to see all trust account examination documents rather than having the paper printed. Commissioner Alloway concurred and added that the documents on the online systems cannot be changed and printing the files for auditors would be a waste of paper.

Director Lemon noted that the Commission gave broad authority for the storage of trust account and transaction records. He suggested looking at the Commission's policies and interpretations made under that statute.

Director Lemon noted that the Commission may want to require the printed files due to the concern that every system is different and the examiners may not be familiar with each program and would not want to be liable for inadvertently viewing or deleting any documents.

Commissioner Ptak noted that many forms are provided in a pdf or free adobe acrobat reader format which could be transferred to the examiner rather than gaining access to the individual computer systems.

Mr. Leisey noted that paper files can be changed and the electronic records are more reliable and would provide for a more accurate audit.

Director Lemon noted that while some companies are embracing this type of electronic technology, many companies have not and some changes being discussed may be overly burdensome to many licensees and also the examiners.

There was discussion regarding potential savings for licensees and the Commission since many licensees may be able to send electronic records to the Commission's examiners therefore reducing the travel expenses of the Commission.

Commissioner Ptak suggested that a study be conducted by a subcommittee and provide the results as a recommendation to the Commission.

Commissioner Stange indicated that while most of the discussion has been regarding transactional files, the commercial brokers may have many trust accounts and transferring such records or conducting the examinations online could potentially be very difficult for licensees and examiners.

There was discussion regarding changes which could be implemented immediately. Director Lemon indicated that it may be worth looking into and studying rather than making any decisions on policy today. He also noted that while the Commission should not be adverse to change or to technology, the trust account examiner's presence does have educational benefits for brokers.

It was the consensus of the Commission to form a subcommittee which included Commissioners Alloway, Freeman and Stange and various Commission Staff members.

Director Lemon explained that another topic needed to be discussed as part of this agenda item which was whether advance notice of trust account examinations is given to the brokers by the Commission. He reviewed the current notifications given to licensees by the trust account examiners and reviewed the policies for such notices.

Commissioner Alloway noted that it would be helpful to receive a twelve hour notice in order to allow staff to pull files for the examiners. He did not feel that such notification should adversely affect the broker's bookkeeping systems.

Commissioner Alloway explained that the brokers do not need to be provided with a lot of advance notice, but a little time is good. Commissioner Ptak explained that an informal notice is being provided currently for small companies according to the exhibit. Mr. Clark noted that in certain cases notification is given. Commissioner Alloway pointed out that the examiners have discretion on who they notify and suggested that licensees should have the option to request advance notice. Commissioner Freeman noted that there may be instances where no notice is desired. Commissioner Ptak noted that the trust account surveys indicate that the examinations

are efficient and while notification could be provided to large agencies, by making a rule it may eliminate the ability for the examiners to use their discretion.

It was the consensus of the Commission to allow the examiners to use discretion when providing brokers with advanced notice of trust account examinations.

Legislative Matters

LB 687 - Director Lemon reported that a hearing was held on January 21, 2014 and has been placed on general file.

LB 785 –Director Lemon reported that a hearing was held on February 6, 2014. Kristen Anderson with the Nebraska REALTORS® Association indicated that there had been opposition to the bill and due to volume of bills was unsure if it would progress out of the committee.

LB 852 – Director Lemon reported that the hearing was held on February 19, 2014.

LB 13 – Director Lemon reported that the consideration of this bill has been delayed until April 10, 2014.

LB 120 – No new information presented.

LB 427 – Director Lemon reported that this bill was placed on general file.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report - Fourth Quarter 2013

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

ARELLO Mid-Year Meeting – San Diego, California – April 9-12, 2014

Director Lemon explained that the deadline for registration is March 18, 2014 and asked which Commissioners were planning on attending the conference. Commissioners Avery and Freeman indicated that they would be attending, while Commissioner Rouch would not. Director Lemon noted that he and Deputy Director Hoffman had also registered for the meeting.

No action was necessary on this report.

Future Meeting Dates

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 10:45 a.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Freeman that the meeting adjourn. Motion carried with Avery, Alloway, Freeman, Ptak, Stange and Rouch voting aye, with Gale 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 February 20, 2014, meeting of the Nebraska Real Estate Commission were available for inspection on March 3, 2014, 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
Vince Leisey, Ambassador Real Estate, Omaha
Joe Gehrki, CBSHOME Real Estate, Omaha
Terry Mayrose, Lincoln