

# NEBRASKA REAL ESTATE COMMISSION

April 18, 2014

Staybridge Suites

Staybridge Room

Lincoln, NE

---

## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on April 18, 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 Commissioners Alloway and Stange, 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.

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

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

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

Director Lemon noted that no agenda items had been added since the tentative agenda was mailed to the Commissioners.

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

## **Minutes of March 20, 2014**

The minutes of the Commission meeting held on March 20, 2014, were considered.

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

Director Lemon presented the Receipts and Expenditures Report for March. 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 March 31, 2014, was \$1,149,775.66, which compared to a cash fund balance of \$956,185.46 on March 31, 2013.

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

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

## **Examination Report - March**

Deputy Director Hoffman presented for ratification the March Examination 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 Avery to ratify the March Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange 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.

### **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 Alloway to ratify the three reports. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange not participating or voting, being absent and excused.

### **Consideration of Commission's Position on Recognizing Correspondence Courses for Pre-Licensing and Continuing Education Credit**

Deputy Director Hoffman presented an exhibit regarding the recognition of correspondence study, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman indicated that an exception to the requirement that all distance education be ARELLO Certified was included in the rules and regulations effective July 2012, to allow the Commission to continue to recognize correspondence courses that held ARELLO Certification prior to that date. She indicated that this exception had been necessary since Nebraska specific online courses were unavailable and the conversion of these correspondence courses to online courses was more problematic than anticipated. However, Deputy Director Hoffman noted that the Commission's expectation was that the conversion of correspondence courses to an online format would have been complete by now and that they had not intended to continue to recognize correspondence courses indefinitely. She advised that it was her opinion that should the Commission choose to eliminate correspondence courses, a two-year time frame, similar to ARELLO's original allowance, could be given to providers to convert courses into an online format and get ARELLO certification completed.

A motion was made by Ptak and seconded by Avery that a two-year notice be given to providers that after such time, correspondence courses for pre-license and continuing education credit would no longer be approved by the Commission.

In reviewing the challenges to eliminating correspondence study Deputy Director Hoffman noted that many national online course providers do not develop courses specific to Nebraska since limiting the applicability limits the market. Additionally, expenses related to online course development may be an impediment to development of online courses, and such development would be a major business decision for providers. While the thirty-hour pre-license correspondence courses are expected to be replaced soon, she explained that new licensees seeking license recognition with Nebraska are required to take a three-hour course specific to Nebraska Agency and License laws, which is currently available only in live classroom or correspondence study format. She noted that there is currently no other format being considered for this course. Should this course become unavailable in a distance format license applicants would have to physically attend the course in Nebraska.

Chairperson Gale inquired as to the possibilities of offering grants to providers to develop the course which is Nebraska specific. Deputy Director Hoffman indicated that this had not been done in the past, but since other jurisdictions have done so, she would research the possibility.

She also noted that while the online development process is costly, the ARELLO certification is also costly. She indicated that she would research the possibility of a grant for ARELLO certification as well as online course development.

Deputy Director Hoffman explained that the pending motion would require a rule change which would include a rule hearing, in which time the two-year date would be based from the enactment of the rule.

An amendment was made by the mover, to proceed with the rule amendment procedures required to implement the change incorporated in the motion. The amendment was accepted by the second.

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

### **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.

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

#### **Item A Complaint 2013-038**

Prior to discussion of this matter, Deputy Director Cell indicated that the discussion on this matter would be delayed to a future meeting.

#### **Item B Complaint 2013-039 – Russ Quick & Cindi Hahn vs. Jordan Lewis Brasch**

Deputy Director Cell 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 Avery that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange not participating or voting, being absent and excused.

#### **Item C Complaint 2014-001**

Deputy Director Cell 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 Ptak that the complaint be dismissed without prejudice.

After further discussion, Commissioner Freeman offered an amendment to the pending motion that this complaint be held in abeyance, a new complaint be filed and set for hearing against the Seller's Agent per Staff recommendation, and the notary issues be

disclosed to the Nebraska Secretary of State's office. The amendment was accepted by the second. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange not participating or voting, being absent and excused.

**Item D** Complaint 2014-002 -- Terry L. Bouge, Prairie Homes Inc vs. Tyrone Jay Scott

Deputy Director Cell 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 Avery that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, and with Stange not participating or voting, being absent and excused.

**Item E** Investigative Matter

Deputy Director Cell presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Alloway and seconded by Avery that the Commission file a complaint on its own motion and set it for hearing on the violations alleged in the report against the licensee's spouse. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, and with Stange not participating or voting, being absent and excused.

**Item F** Investigative Matter

Deputy Director Cell presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Rouch and seconded by Freeman that the matter be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, and with Stange not participating or voting, being absent and excused.

**Item G** Complaint 2014-005

Prior to discussion of this matter, Deputy Director Cell indicated that the discussion on this matter would be delayed to a future 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**

**Brandon Artez Jackson, Potential Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Jackson's special appearance; a letter of explanation from Mr. Jackson; character reference letters for Mr.

Jackson; Mr. Jackson's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Jackson was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Rouch to allow Mr. Jackson to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Jackson 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. Jackson 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. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange not participating or voting, being absent and excused.

#### **David Rex Tarvin, Jr., Potential Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Tarvin distributed an additional letter of reference. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13b1.

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

After discussion, a motion was made by Freeman and seconded by Rouch to allow Mr. Tarvin to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Tarvin 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. Tarvin 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. Should Mr. Tarvin request a broker's license in the future, he must appear before the Commission before he would be granted such license. Motion carried with Alloway, Freeman, Rouch and Gale voting aye, with Avery and Ptak voting nay, and with Stange not participating or voting, being absent and excused.

#### **Gloria Angela Allen, Salesperson Applicant**

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

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Allen explained the situations regarding his past criminal history.

After discussion, a motion was made by Avery and seconded by Rouch to allow Ms. Allen to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Allen 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. Ms. Allen 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 should Ms. Allen receive her salesperson license that the prior complaint against Ms. Allen's license be refiled. The amendment was accepted by the mover and second.

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

### **2013-2014 Objectives – Quarterly Report**

Director Lemon presented an exhibit regarding the proposed 2013-2014 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained each of the objectives and the updates made to date.

No action was necessary with regard to this matter.

### **Legislative Matters**

**LB 687** - Director Lemon reported that the Change Application Procedures for Real Estate Licensees bill had been approved by the Governor on April 10.

**LB 785** - No new information presented.

**LB 852** – No new information presented.

**LB 13** – No new information presented.

**LB 120** – No new information presented.

**LB 427** – No new information presented.

No action was necessary with regard to these matters.

### **Initial Report of the Trust Account Examination Subcommittee**

Director Lemon presented an exhibit of the initial report of the trust account examination procedures subcommittee. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained that the trust account examination procedures subcommittee discussed the issues and narrowed it down to two main areas of concern. He explained that one main concern was the use of digital records rather than review of the records in their original form,

and the second concern is conducting the examination by reviewing the electronic records directly rather than having the broker print them out for review. He further explained that a trial examination based on electronic records will be conducted and a broker licensee has agreed to be the test subject. After the trial examination has been completed, the subcommittee will bring an updated report to the Commission.

No action was necessary with regard to this matter.

### **Information Matters**

#### **Errors and Omissions Loss Report – First Quarter 2014**

Director Lemon presented the Errors and Omissions Loss Report – First Quarter 2014. A copy of said exhibit is attached to and made a part of these minutes.

A suggestion was made by Commissioner Ptak that the allegations be summarized to use for trending or continuing education purposes. Director Lemon indicated that he would follow up with the provider to see if standard allegations were used and if such report could be made available.

No action was necessary with regard to this matter.

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

Director Lemon noted that Commissioner Avery and Deputy Director Hoffman and he attended the ARELLO Mid-Year Meeting.

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

No action was necessary on this report.

#### **ARELLO District Meeting – Omaha, NE – June 3-5, 2014**

Director Lemon noted that the registration for the ARELLO District Meeting which will be held in Omaha is available on the ARELLO website and would encourage each of the Commissioners to register. He also noted that separate tickets will be available for social functions should non-members wish to attend.

Deputy Director Hoffman also noted that the jurisdiction updates which are usually discussed on the last day of the meeting is an open forum and tends to be very educational.

Commissioner Rouch suggested that a separate ticket also be made available for various business sessions. Director Lemon indicated that since this had not been done in the past, he would research the possibility.

No action was necessary on this report.

### **Future Meeting Dates**

May 22-23, 2014 - Staybridge Suites, Lincoln  
June 19-20, 2014 - Staybridge Suites, Lincoln

August 21-22, 2014 - Staybridge Suites, Lincoln  
September 25-26, 2014 - Staybridge Suites, Lincoln  
October 17, 2014 - Staybridge Suites, Lincoln  
November 20-21, 2014 - Staybridge Suites, Lincoln

**Recesses and Adjournment**

Commissioner Alloway was briefly excused from the meeting at 9:02 a.m., and joined the meeting at 9:04 a.m.

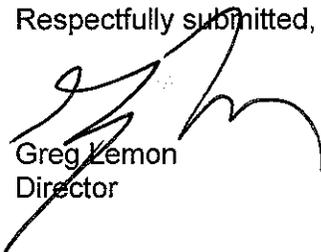
At 10:05 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:13 a.m.

At 12:05 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:11 p.m.

At 12:56 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Rouch that the meeting adjourn. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch and Gale voting aye, with Stange 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 April 18, 2014, meeting of the Nebraska Real Estate Commission were available for inspection on April 30, 2014, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

**Guests Signing the Guest List**

David Wilson, Jr., Nebraska Secretary of State's Office, Lincoln  
Robin Montgomery, Omaha  
Bryan Fraser, CBSHOME Real Estate, Omaha  
Susan Geschwender, Randall School, Omaha

