

# NEBRASKA REAL ESTATE COMMISSION

November 20, 2014

Staybridge Suites

Staybridge Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:03 a.m. on November 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. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Duran Cell, and Deputy Director for Licensing Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Briley 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 were 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 13b had been continued 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, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Minutes of October 17, 2014**

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

After review, a motion was made by Stange and seconded by Alloway to approve the minutes as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye, with Gale 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, 2014, was \$830,790.68, which compared to a cash fund balance of \$669,056.85 on October 31, 2013.

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

## **Examination Report - October**

Deputy Director Roubal presented for ratification the October Examination Report, a copy of which is attached to and made a part of these minutes.

There was discussion regarding the report design and layout and suggestions were given on possible improvements to the report format.

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

## **Examination Passing Roster**

Deputy Director Roubal 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 Roubal 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 Roubal 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 Roubal presented for ratification the Continuing Education Instructor Approval 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 three reports. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Broker-Approved Training Recognition**

Deputy Director Roubal 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 Alloway and seconded by Stange to ratify the report. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **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 2014-021**

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 Stange and seconded by Avery that set for Hearing on staff recommendation with the addition of 81-884.24(12).

An Amendment was offered by Commissioner Freeman to also add 76-2422(2) & 2421 (1a) to the violations. The Amendment was accepted by the mover and the second.

Commissioner Ptak offered an Amendment to hold this in Complaint in abeyance and the Commission file a new complaint on its own motion. The Amendment was accepted by the mover and second.

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

**Item B** Complaint 2014-022 – David R. & Trent P. Anderson vs. John Janovy III

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 Alloway and seconded by Freeman that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

**Item C** 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 Ptak 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. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

**Presentation of Stipulation and Consent Orders**

**Complaint 2014-017,  
Commission vs. Lisa Renee Richardson**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-017, Commission vs. Lisa Renee Richardson. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Ptak and seconded by Freeman to enter into the Order as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Rule Hearings**

### **Rule Hearing on Title 299, Chapters 1 and 7 – Amendments relating to approval of distance education courses for pre-license and continuing education**

At 9:30 a.m. on November 20, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapters 1 and 7, of the Commission's Rules and Regulations.

Director Lemon presented three exhibits, which included: 1) a copy of the meeting notice, which was published in two newspapers and filed with the Secretary of State, the Executive Board of the Legislative Council, and the Governor's Policy Research Office; 2) a copy of the Lincoln Journal-Star and Omaha Daily Record proofs of publication of the meeting notice; and 3) a copy of the originally proposed amendments to Title 299, Chapters 1 and 7, in legislative style and a copy of the corrected proposed amendments to Title 299, Chapters 1 and 7, in legislative style. Exhibits are attached to and made a part of these minutes.

Director Lemon noted that he had not received any written comments or testimony which had been solicited.

Director Lemon reviewed the proposed amendments set out in Title 299, Chapters 1 and 7, and explained that the language change proposed did not change the intent of the proposed changes, but merely changed wording to more appropriately reflect the intent.

There was discussion regarding the proposed amendments.

Chairperson Gale asked if any member of the public wished to speak regarding the proposed amendments.

A motion was made by Freeman and seconded by Avery that the Commission adopt Title 299, Chapters 1 and 7, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Chairperson Gale declared the rule hearing concluded at 9:36 a.m.

## **Disciplinary Hearings**

### **Complaint 2014-003, Daniel and Susana Torres vs. Adam Briley**

A Hearing was held on November 20, at 10:30 a.m., in the matter of Complaint 2014-003, Daniel Susana Torres vs. Adam Briley. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Adam Briley was present and represented by Counsel Robert F. Peterson of Omaha.

After opening statements, Counsels Barton and Peterson jointly offered 19 Exhibits, all of which were received by Acting Chairperson Ptak.

Counsel Barton called Daniel Torres, Sr., Susana Torres and Adam Briley as witnesses.

At 11:58 a.m., Acting Chairperson Ptak declared a brief recess, and reconvened the Hearing at 12:12 p.m.

Counsel Peterson called Vincent Leisey as a witness.

After closing arguments had been presented, Acting Chairperson Ptak declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Gale and seconded by Avery in Complaint 2014-003, that Adam Briley violated Neb. Rev. Stat. § 81-885.24(22), 81-885.24(06) and 81-885.24(29). Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Acting Chairperson Ptak opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

After discussion, a motion was made by Stange and seconded by Alloway in Complaint 2014-003, that Adam Briley should receive a three year suspension all served on probation, three hours of additional continuing education in the area of disclosures, and a one-thousand five hundred dollar fine.

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

An amendment was offered by Stange to provide Mr. Briley six months to complete the additional continuing education requirement. The amendment was accepted by the second.

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

The amended motion was reconsidered. Motion carried with Alloway, Avery, Dover, Ptak, Stange and Gale voting aye, and with Freeman voting nay.

With the consent of the Respondents, Acting Chairperson Ptak directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondents that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and that the Respondents 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 1:07 p.m.

**November 21, 9:30 a.m. - Show-Cause Hearing on  
SC2014-001, Commission vs. Chris Miller, dba Delta Real Estate Portfolio**

The Hearing regarding Complaint SC2014-001 Commission vs. Chris Miller, dba Delta Real Estate Portfolio was continued at the request of the Complainant.

## **Informal Special Appearances**

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

## **Revised Agency Disclosure Form**

Director Lemon presented final draft of the revised agency disclosure form. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the revised form was a joint effort between the task forces of the Commission and the Nebraska Realtors Association. The form was generally approved by the Commission at a prior meeting and staff was directed to make further technical changes to the form as needed. The primary changes being presented are the addendum which had been added to accommodate common law agents and the additional form for landlords and tenants. The task force's goal was to make the form easier for the licensees and consumers to understand, therefore improving compliance.

There was discussion regarding the form being provided in duplicate or allowed to have a tear-off provision.

Chairperson Gale expressed his appreciation for the work done on the form for the benefit of the public.

A motion was made by Ptak and seconded by Avery to forward the form as presented to the Nebraska Realtors Association for review and to provide recommendations. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Approve Travel to ARELLO Leadership Symposium**

Director Lemon presented an exhibit regarding the estimated costs to attend the ARELLO Leadership Symposium. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Freeman and seconded by Avery to approve travel to the meeting and travel expenditures, including the reimbursement of necessary and allowable travel expenditures by staff, as set forth in the exhibit. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Legislative Matters**

### **Funding Request for Licensee Database**

Director Lemon explained that typically the Commission requests the support of the Nebraska Realtors Association on legislative bills which are introduced. While this is not a bill being introduced to the Legislature, he was seeking approval to approach the state Realtors Association to gain support for the licensee database funding request submitted to the Legislature.

It was the consensus of the Commission to seek support for the request.

### **Nebraska Realtors Association Notary Requirement Bill**

Director Lemon presented draft legislative bill relating to homesteads notary requirement. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the Nebraska Realtors Association was asking for our review or position on this matter.

A motion was made by Freeman and seconded by Stange to support in this legislation as proposed. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Information Matters**

#### **ARELLO Investigator Workshop – October 28-30, 2014 - Columbus, OH-- Report of Attendee**

Director Lemon noted that Deputy Director Cell attended the ARELLO Investigator Workshop.

Deputy Director Cell discussed his experience at the ARELLO Meeting.

No action was necessary on this report.

#### **Trust Account Examination Evaluation Report - Third Quarter 2014**

Director Lemon presented the Trust Account Examination Evaluation Report - Third Quarter 2014. 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 22-23, 2015 – Hampton Inn & Suites, Lincoln

February 19-20, 2015 - Staybridge Suites, Lincoln

March 19-20, 2015 - Staybridge Suites, Lincoln

April 23, 2015 – Country Inn & Suites, Lincoln

May 21-22, 2015 – Staybridge Suites, Lincoln

### **Recesses and Adjournment**

At 10:10 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:27 a.m.

At 11:58 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:12 p.m.

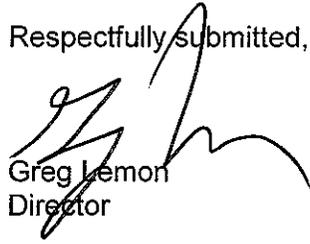
At 1:07 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:10 p.m.

At 2:10 p.m., there being no further business to come before the Commission, a motion was made by Avery and seconded by Alloway that the meeting adjourn. Motion carried with Avery, Alloway, Dover, Freeman, Ptak, 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 20, 2014, meeting of the Nebraska Real Estate Commission were available for inspection on November 25, 2014, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

**Guests Signing the Guest List**

Mark Leaders, CBSHOME Real Estate, Omaha  
Davida Smidt, UNMC College of Nursing Student, Lincoln

