

## NEBRASKA REAL ESTATE COMMISSION

January 23, 2015

Hampton Inn & Suites

Husker Room

Lincoln, NE

---

### **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on January 23, 2015, in the Husker Room of the Hampton Inn & Suites, located at 7343 Husker Circle 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 Perry and Miller Hearings.

### **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; 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 11a, 19b, 19c and 19d 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 Alloway to adopt the final agenda as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Minutes of November 20, 2014**

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

(Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The motion on page six stated that Commissioner Ptak voted twice, when in fact, one of the names should have been Dover. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Stange and seconded by Avery to approve the minutes as amended. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **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 November and December**

Director Lemon presented the Receipts and Expenditures Reports for November and December. 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 November 30, 2014, was \$1,038,123.89, which compared to a cash fund balance of \$983,817.65 on November 30, 2013.

The cash fund balance as of December 31, 2014, was \$1,292,870.81, which compared to a cash fund balance of \$1,263,432.05 on December 31, 2013.

After discussion, a motion was made by Ptak and seconded by Freeman to file the November and December Receipts and Expenditures Reports 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**

### **Time-Share Registrations - Amendments for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site)**

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

A motion was made by Ptak and seconded by Stange to approve the amendments to the two registrations as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

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

## **Examination Reports – November and December**

Deputy Director Roubal presented for ratification the November and December 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 Alloway to ratify the November and December Examination Reports for the purpose of issuing licenses. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Examination Passing Rosters**

Deputy Director Roubal presented the Examination Passing Rosters for November and December, copies of which are attached to and made a part of these minutes.

No action was necessary on this report.

### **Discussion Regarding Reporting Options**

Deputy Director Roubal presented reformatted November and December Examination Reports, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal presented the reformatted examination reports at the request of the Commission, for discussion purposes. There was discussion on whether there should be a subcommittee to review the report, it was agreed that the report, as presented, would be acceptable for use at future meetings and no subcommittee was necessary.

No action was necessary on this report.

## **Real Estate Education Matters**

### **Pre-License Education Provider/Course Approval**

Deputy Director Roubal presented for ratification the Pre-License Education Provider/Course Approval Report, a copy of which is attached to and made a part of these minutes.

### **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.

### **Continuing Education Activity Significant Change**

Deputy Director Roubal presented for ratification the Continuing Education Activity Significant Change Report, a copy of which is attached to and made a part of these minutes.

### **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 Stange and seconded by Avery to ratify the six reports. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Continuing Education Activity Rejection**

Deputy Director Roubal presented a Continuing Education Activity Rejection Report, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

### **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 2014-010 – Bryan Turner vs. Galen Elting Saathoff**

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 Avery and seconded by Stange that this complaint be dismissed without prejudice and letters of admonishment be sent to the Respondent and the Respondents broker. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

#### **Item B Complaint 2014-023 – Joseph Baughman & Courtney Kommer vs. Gina Marie Ogle**

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

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

Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

**Item C** Complaint 2014-026 – Leslie J. Andersen vs. Derek Joel Kats

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

**Presentation of Stipulation and Consent Orders**

**Complaint 2014-006,  
Louis E. Halperin vs. Kathryn Pocras**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-006, Louis E. Halperin vs. Kathryn Pocras. 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 Stange to enter into the Order as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

**Disciplinary Hearings**

**Complaint 2014-006, Louis E. Halperin vs. Kathryn Pocras**

The Hearing regarding Complaint 2014-006, Louis E. Halperin vs. Kathryn Pocras was continued.

**January 23, 9:30 a.m. - Show-Cause Hearing on  
SC2014-002, Commission vs. Conway T. Perry**

A Hearing was held on January 23 at 9:30 a.m., in the matter of SC2014-002. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Conway T. Perry was present without Counsel.

After Opening Statements, Counsel Barton offered ten Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Duran Cell as a witness.

Mr. Perry called himself 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.

There was discussion regarding the documentation which was sent out to the Respondent from the Real Estate Commission.

A motion was made by Freeman and seconded by Avery in Complaint SC2014-002, that Conway T. Perry violated the Order. Motion carried with Alloway, Avery, Dover, Freeman, Stange and Gale voting aye, and with Ptak voting nay.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission held a hearing on August 21, 2014, ordered entered September 5, 2014, suspending his license until the following conditions have been met: completion of the supervised release under the United States Probation office; receipt of an application letter to terminate suspension; present certified documentation that all terms and conditions of the supervised release have been completed, at which time a special appearance before the Commission shall be scheduled to determine whether the license suspension should be terminated, at such special appearance Perry shall provide any additional information the Commission may require, including but not limited to a current criminal background report and evidence of the current status of restitution payments in the bank fraud matter; plus hearing costs in the amount of \$160.00, to be paid by October 5, 2014.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Alloway in Complaint SC2014-002, that no further sanctions be placed against Conway T. Perry's real estate license.

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

With the consent of the Respondent, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 10:41 a.m.

**January 23, 1:00 p.m. - Show-Cause Hearing on  
SC2014-001, Commission vs. Chris Miller, d.b.a Delta Real Estate Portfolio**

A Hearing was held on January 23 at 1:03 p.m., in the matter of SC2014-001. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Chris Miller was present without Counsel.

After Opening Statements, Counsel Barton offered twelve Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Duran Cell as a witness.

At 2:21 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 2:35 p.m.

Christopher Miller offered one Exhibit, which was received by Chairperson Gale. Mr. Miller called himself 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 Ptak and seconded by Avery in Complaint SC2014-001, that Chris Miller failed to show cause as to why he should not be found to be in violation of the License act, and that he had offered real estate brokerage services without a proper license. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against either Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Avery and seconded by Alloway in Complaint SC2014-001, that Chris Miller should receive a civil fine of one-thousand dollars.

After further discussion, Commissioner Ptak offered a substitute amendment and seconded by Gale that Mr. Miller receive a one-thousand dollar civil fine for each date that Mr. Miller was offering or providing real estate brokerage services as shown by the evidence presented at the hearing, which included July 14, 2014, October 7, 2014, November 10, 2014 and January 6, 2015, for a total fine of four-thousand dollars.

Motion carried with Alloway, Avery, Dover, Freeman, Ptak, 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 Respondents, 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 4:07 p.m.

### **Informal Special Appearances**

#### **Pernell S. Hottell, Non-Resident Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Hottell's special appearance; a letter of explanation from Mr. Hottell; character reference letters for Mr. Hottell; Mr. Hottell'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. Hottell was not present.

Chairperson Gale reviewed the procedure for informal special appearances.

Director Lemon explained that he had advised Mr. Hottell that his attendance at the meeting was not required and should questions arise, they could contact him via phone.

A motion was made by Freeman and seconded by Avery that Mr. Hottell be allowed a Nebraska Real Estate License provided no further information appears on a justice search report. Motion carried with Alloway, Avery, Dover, Freeman, Stange and Gale voting aye, and with Ptak voting nay.

### **Joel Samuel Pilka, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Pilka's special appearance; a letter of explanation from Mr. Pilka; character reference letters for Mr. Pilka; a copy of Illinois' Department of Financial and Professional Regulation regarding Mr. Pilka's real estate license; Mr. Pilka'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. Pilka was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

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

An amendment was offered by Chairperson Gale to require Mr. Pilka to continue with a support network for three years. The amendment was accepted by the mover and second.

After further discussion, the pending motion was withdrawn by the mover and second.

A motion was made by Alloway and seconded by Stange to allow Mr. Pilka to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Pilka must notify any anticipated employing broker of the criminal convictions as 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. Pilka 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 three years. Also, Mr. Pilka must show evidence on a quarterly basis to the Commission of continued substance abuse treatment in a support program for three years.

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

### **Review and Approval of Travel to 2015 Regularly Attended Meetings**

Director Lemon presented an exhibit regarding the estimated costs of Commissioners and staff participating in regularly-attended meetings in 2015. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Ptak and seconded by Alloway to approve the reimbursement of expenditures for Commissioners and staff who attend the meetings set forth in the exhibit. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Annual Review and Approval of Procedures and Cycle for Trust Account Examinations**

Director Lemon presented a reference copy of the Commission's Approved Procedures and Cycle for Trust Account Examinations. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that there were no substantive changes to the document, but noted that a few minor changes to wording had been made for clarification purposes.

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

## **Consider Approval of Special Assistant Attorneys General New Fee Schedule**

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective January 1, 2015. A copy of said exhibit is attached to and made a part of these Minutes.

After discussion, a motion was made by Ptak and seconded by Dover to table the discussion until the February Commission Meeting.

After further discussion, it was suggested that this matter also be placed on the February Agenda as a closed session for Personnel Matters. The Amendment was accepted by the mover and the second.

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

## **2014-2015 Objectives – Quarterly Report**

Director Lemon presented an exhibit regarding the proposed 2014-2015 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained changes on the proposed objectives. It was determined that items three and ten should be combined.

No action was necessary with regard to this matter.

## **Awarding of Examination Contract under RFP EX2014-1 – 9:05 a.m.**

Director Lemon presented proposals received in response to the Real Estate Licensing Examination Request for Proposal (RFP) EX2014-1. There was one proposal from Applied Measurement Professionals (AMP) and additional exhibits to assist in the review of the proposals. These additional exhibits, along with the Proposals, were mailed to the Commissioners earlier in January so that they would have ample time to review and evaluate the proposals.

Director Lemon reviewed a few of the Contract provisions which state that AMP could not increase examination fees more than six percent every two year renewal period, and the Contract would be for a two-year term with three additional two-year terms. The contract would become effective July 1, 2015.

A motion was made by Avery and seconded by Alloway to enter into the Contract for Examination Services with Applied Measurement Professionals. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Legislative Matters**

**LB 28** - There was discussion that this Bill would adopt the Radon Resistant New Construction Act. Director Lemon indicated that he had not yet reviewed this bill but would begin tracking per request.

**LB 34** – Director Lemon reviewed this Bill which would Adopt Carbon Monoxide Safety Act. He indicated that this bill was introduced by Senator Howard and was referred to the Health and Human Services Committee. He noted that there was currently a Hearing Scheduled for January 29, 2015.

**LB 253** – Director Lemon reviewed this Bill which would Change Acknowledgment Requirements Relating to Homesteads. He indicated that this bill was introduced by Senator Morfeld and referred to the Judiciary Committee.

**LB 375** – Director Lemon reviewed this Bill which would Allow Broker Price Opinions for Property Tax Appeals. He indicated that this bill was introduced by Senator Craighead and referred to the Banking, Commerce and Insurance Committee.

**LB 420** – Director Lemon reviewed this Bill which would Require Acknowledgments from Purchasers of Real Estate in a Sanitary & Improvement District. He indicated that this bill was introduced by Senator Crawford and referred to the Urban Affairs Committee.

No action was necessary with regard to these matters.

### **Information Matters**

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

Director Lemon presented the Errors and Omissions Loss Report – Fourth Quarter 2014. 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 Leadership Meeting – January 6-8, 2015 - Miami, Florida – Report of Attendee**

Director Lemon discussed his experience at the ARELLO Meeting.

No action was necessary on this report.

#### **ARELLO Mid-Year Meeting – April 15-18, 2015 – Albuquerque, New Mexico**

Director Lemon asked who had planned on attending and noted that Commissioners needed to preregister by April 4, 2015 and make the room reservations by March 25, 2015.

Chairperson Gale, Commissioners Avery and Freeman all indicated that they were interested in attending.

No action was necessary on this report.

**Future Meeting Dates**

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 9:15 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 10:41 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:00 a.m.

At 12:12 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:03 p.m.

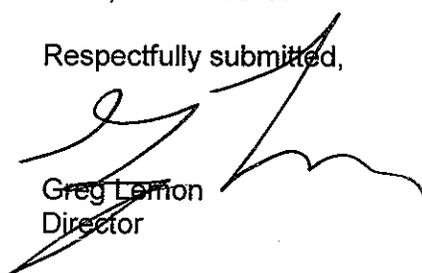
At 2:21 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 2:35 p.m.

At 4:07 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 4:17 p.m.

At 5:28 p.m., there being no further business to come before the Commission, a motion was made by Ptak 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 January 23, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on February 4, 2015, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

**Guests Signing the Guest List**

Gail (Galen) Weis, DEEB Realty, Omaha  
Deda Myhre, CBSHOME Real Estate, Omaha  
Susan Geschwender, Randall School, Omaha  
Scott Vest, CBSHOME Real Estate, Omaha

