

NEBRASKA REAL ESTATE COMMISSION

April 23, 2015

Country Inn & Suites

Lighthouse Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on April 23, 2015, in the Lighthouse Room of the Country Inn & Suites, located at 5353 N 27th Street 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. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Malone 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 on the south wall 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 item 11a 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, Dover, Freeman, Ptak, Stange and Gale voting aye.

Minutes of March 19, 2015

The minutes of the Commission meeting held on March 19, 2015, were considered.

After review, a motion was made by Avery and seconded by Stange to approve the minutes as presented. Motion carried with Alloway, Avery, Dover, Ptak and Stange voting aye, and with Freeman and Gale 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, 2015, was \$1,225,927.60, which compared to a cash fund balance of \$1,149,775.66 on March 31, 2014.

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

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 Alloway 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 Report - March

Deputy Director Roubal 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 Ptak and seconded by Avery to ratify the March 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

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.

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 Alloway to ratify the three reports. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Broker-Approved Training Activity Rejection

Deputy Director Roubal presented a Broker-Approved Training Activity Rejection Report, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Instructor Development Workshop

Deputy Director Roubal presented an exhibit regarding the proposed Instructor Development Workshop, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal noted that the Workshop was being planned for two days. On the first day, Dr. Larry Fabrey with Applied Measurement Professionals (AMP) would attend the Workshop to present information pre-licensing instructors need to know about the examination, including the new testing blueprint. Also, the second portion of the day will be discussion with Commission Staff regarding pre-licensing education material and submissions, as well as, changes in requirements and forms for continuing education and broker-approved training.

The second day of the Workshop, Mark Barker with a Distinguished Real Estate Instructor (DREI) designation, will present a speech focusing on improving course design and enhancing learning through active participation.

Deputy Director Roubal indicated that a save the date email and a mailing would be sent to all pre-license education instructors, continuing education and broker-approved providers and potential instructors would be welcome as well.

A motion was made by Ptak and seconded by Alloway to approve the expenditures for the Instructor Development Workshop and to provide the Workshop free of charge. 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 2014-024 - Vincent Bellino, Bellino Fireworks, Inc. vs. Brett Robert Cover

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 Aver that this 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 2014-042,
Greg Lemon, Director vs. Sheryl K. Matzen**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-042, Greg Lemon, Director vs. Sheryl K. Matzen. A copy of said Order is attached to and made a part of these minutes.

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

Disciplinary Hearings

Complaint 2014-031 Greg Lemon, Director vs. Daniel M. Malone

A Hearing was held on April 22, at 10:05 a.m., in the matter of Complaint 2014-031, Greg Lemon, Director vs. Daniel M. Malone. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Daniel M. Malone was not present or represented by Counsel.

At 10:07 a.m., Chairperson Gale declared a brief recess, to search the premises for either Mr. Malone or legal counsel which may appear on his behalf. After Commission Staff found no evidence of Mr. Malone or legal counsel on the premises, the Hearing reconvened at 10:15 a.m.

After opening statements, Counsel Prochaska offered 16 Exhibits, all of which were received by Chairperson Gale. Counsel Prochaska called Duran Cell 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 2014-031 that Daniel M. Malone violated Neb. Rev. Stat. § 81-885.24(29) and was not guilty of Neb. Rev. Stat. § 81-885.12. After further discussion, the pending motion was retracted. A motion was made by Freeman and seconded by Avery in Complaint 2014-031, that Daniel M. Malone violated Neb.

Rev. Stat. § 81-885.24(29). 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 the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Alloway in Complaint 2014-031, that Daniel M. Malone receive three years of suspension, all stayed and served on probation, plus six hours of additional continuing education, three hours in the area of license law and three hours in the area of business practices or supervision, and a civil fine of two-thousand five hundred dollars. Motion failed with Freeman voting aye, and with Alloway, Avery, Dover, Ptak, Stange and Gale voting nay.

A motion was made by Avery and seconded by Stange in Complaint 2014-031 that Daniel M. Malone's license be placed on probation for three years beginning today, with his license being suspended until restitution has been made and his supervised release as ordered by the court has been completed or until August 18, 2015, whichever is later, and pay a civil fine of one-thousand five hundred dollars. When all the contingencies for the end of Mr. Malone probation have been met, Mr. Malone must attend an informal special appearance before the Commission, and be approved by the Commission before reinstatement of his active license

After discussion, an amendment was offered by the second that Mr. Malone's three year suspension begin the date when full restitution and fines had been paid and his criminal probation has ended, and that an additional three year suspension will begin at that time, all stayed and served on probation, and that no informal special appearance be required. The amendment was accepted by the mover.

After further discussion, an amendment was offered by Commissioner Ptak to also add that in addition to the restitution, that Mr. Malone's federal fine of three-thousand dollars be paid prior to ending the suspension. The amendment was accepted by the mover and second.

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

Chairperson Gale directed Counsel Prochaska 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 11:43 a.m.

Complaint 2014-042 - Greg Lemon, Director vs. Sheryl K. Matzen

The Hearing regarding Complaint 2014-042, Greg Lemon, Director vs. Sheryl K. Matzen was continued.

Informal Special Appearances

Edwin Glen Ziska, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Ziska's special appearance; information regarding Mr. Ziska's previous special appearances in March 2015, a letter of explanation from Mr. Ziska; character reference letters for Mr. Ziska; a Justice System Search summary from the State of Nebraska on Mr. Ziska's cases; Mr. Ziska'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. Ziska was present.

Commissioner Avery recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

Chairperson Gale reviewed the procedure for informal special appearances.

Director Lemon distributed an additional letter of reference for Mr. Ziska. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

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

After discussion, a motion was made by Stange and seconded by Dover to allow Mr. Ziska to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Ziska 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. Ziska 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 four years, continue to obtain support through Alcoholics Anonymous or another reputable support group for four years, and provide the Commission staff with a quarterly report of attendance. Motion carried with Alloway, Dover, Freeman and Stange voting aye, with Ptak and Gale voting nay, and with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

2014-2015 Objectives – Quarterly Report

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

Director Lemon explained the progress made this quarter on each of the objectives.

No action was necessary on this report.

Real Estate Team Matters – 1:30 p.m.

Commission Policy and Interpretation – Team Advertising

Director Lemon presented an exhibit proposing the adoption of a Commission Policy and Interpretation regarding affiliated licensees and advertising the name of the Broker. A copy of said exhibit is attached to and made a part of these minutes. Broker Joe Valenti and affiliated licensee Jeff Searcy were present for this discussion.

Director Lemon noted that at a previous meeting there was discussion regarding teams advertising concerns and as a result of that discussion he was instructed to draft a Commission Policy and Interpretation and explore a list of other potential team issues. He explained that along with the proposed policy and interpretation draft, he was also provided the current laws regarding advertising for the Commission's review.

Commissioner Ptak indicated that more information was desired before he could make a decision on this issue and in order to look at the whole picture.

There was discussion regarding the magnitude of advertising issues in print, online, and on various social media.

There was discussion regarding commissions earned by teams and how funds were distributed to licensees.

Commissioner Freeman indicated that the proposed Policy and Interpretation is similar to an issue that was present and resolved regarding franchises. He also noted that the proposed Policy and Interpretation is a good starting point and provides guidance to licensees and brokers to advertise so that it is not confusing to the public.

There was discussion regarding the benefits to develop teams by licensees and to promote their team, as well as the concerns that many brokers may have with supervising teams.

It was the consensus of the Commission to table this discussion.

Team Regulatory Issues

Director Lemon presented an exhibit regarding the regulatory issues which need to be addressed by the Teams Task Force. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that since these issues were discussed during the previous Agenda item, there was no need to discuss this item again separately.

Appointment of Joint Task Force on Teams

Director Lemon explained that the Nebraska REALTORS Association proposed the idea of forming Joint Task Force between regulation and industry regarding Teams. Jeff Hebb with the Nebraska REALTORS Association was present for this discussion.

Mr. Hebb explained that the Nebraska REALTORS Association was asking for members of the Commission to join a diverse group in a task force to discuss teams.

Chairperson Gale explained that the Nebraska REALTORS Association would need to share the burden with the Commission so that the responsibilities do not become cumbersome to those volunteers who also devote their time to other committees, issues and responsibilities. Mr. Hebb indicated that the Commission and the Nebraska REALTORS Association had worked well together in the past on many issues and joint task forces.

It was discussed that the Commission would appoint three to the joint task force but no more than four. Commissioners Alloway and Freeman, and Director Lemon agreed to be on the joint task force. A motion was made by Ptak and seconded by Alloway to participate in the Joint Task Force on Teams regarding regulation and advertising and report recommendations back to the Commission.

An amendment was suggested that no more than three members of the Commission be on the joint task force and to allow real estate Commission staff to participate in and facilitate task force activities as needed. The amendment was accepted by the mover and the second.

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

Consideration for Agency "R" Course Requirement

Director Lemon presented an exhibit received from the Nebraska REALTORS Association requesting that the Commission require all licensee take three hours of continuing education in the area of agency every four years. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that currently the Commission is unable to require a specific course every four years without a change in policy. This requirement would also require a change be made in the programming of our database, which at this time would not be efficient since we are exploring the opportunity of obtaining a new database.

There was discussion regarding the decrease in compliance issues that are expected with the implementation of the new agency disclosure form and that perhaps postponing this requirement will provide time to determine any lingering compliance issues.

There was discussion regarding the requirement of the Agency "R" course be made by the Nebraska REALTORS Association rather than the Commission.

Director Lemon suggested that the discussion be tabled until the ability to track the proposed course requirement is available to the Commission.

A motion was made by Ptak and seconded by Alloway to table this discussion for the time being. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Legislative Matters

LB28 – No new information presented.

LB34 – Director Lemon indicated that should this bill be passed by the Legislature and approved by the Governor, the Commission will need to adjust the seller property condition disclosure statement to include the carbon monoxide requirements as provided in the bill by January 1, 2017.

LB253 – Jeff Hebb with the Nebraska REALTORS Association indicated that this item may have moved to select file. Director Lemon indicated that he would continue to monitor this bill.

LB375 – No new information presented.

LB420 Amended into LB324– Director Lemon reported that LB420 was amended and added to LB324 which had been placed on final reading.

No action was necessary with regard to these matters.

Information Matters

Errors and Omissions Loss Report – First Quarter 2015

Director Lemon presented the Errors and Omissions Loss Report – First Quarter 2015. 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 Mid-Year Meeting – April 15-18, 2015 - Albuquerque, NM – Report of Attendees

Director Lemon noted that Chairperson Gale, Commissioner Avery, Deputy Director Rut 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 – June 4-6, 2015 - Little Rock, AR

Director Lemon explained that the deadline for hotel reservations is May 5, 2015 and May 30, 2015 for registration, and asked which Commissioners were planning on attending the conference.

No action was necessary on this report.

Update on the Implementation of the New Agency Disclosure Forms

Director Lemon explained that this item had been discussed during the discussion of the 2014-2015 Objectives – Quarterly Report, and had no further information to add to this agenda item.

No action was necessary on this report.

Future Meeting Dates

June 18-19, 2015 – Staybridge Suites, Lincoln
August 20-21, 2015 – Staybridge Suites, Lincoln
September 17-18, 2015 – Staybridge Suites, Lincoln
October 15-16, 2015 – Staybridge Suites, Lincoln

November 19-20, 2015 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:55 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:05 a.m.

At 10:07 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:15 a.m.

At 11:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:56 a.m.

At 1:19 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 1:32 p.m.

At 2:49 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 April 23, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on May 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

- Beverly Brewer, Grand Island
- Deda Myhre, CBSHOME, Omaha
- Jeff Hebb, Nebraska REALTORS® Association, Lincoln
- Brett Cover, Universal Property Management, Lincoln
- Joe Valenti, CBSHOME, Omaha
- Jeff Searcy, Searcy Team, HOME Real Estate, Lincoln