

## NEBRASKA REAL ESTATE COMMISSION

March 17, 2016

Staybridge Suites

Staybridge Room

Lincoln, NE

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### **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on March 17, 2016, 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 Commissioner Alloway, who was absent and excused. 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 Paxton and the Clift and Bretz 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 20 had been added since the tentative agenda was mailed to the Commissioners.

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

### **Minutes of February 18, 2016**

The minutes of the Commission meeting held on February 18, 2016, were considered.

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

### **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 February**

Director Lemon presented the Receipts and Expenditures Report for February. 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 February 29, 2016, was \$1,688,291.71, which compared to a cash fund balance of \$1,260,763.41 on February 28, 2015.

After discussion, a motion was made by Stange and seconded by Avery to file the February Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway 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 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 Titus and seconded by Stange to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

## **Examination Report - February**

Deputy Director Roubal presented for ratification the February Examination 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 February Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

## **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 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.

### **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 Freeman and seconded by Titus to ratify the five reports. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

### **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.

### **Continuing Education Instructor Rejection**

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

No action was necessary on this report.

### **Continuing Education and Broker-Approved Training Annual Report**

Deputy Director Roubal presented the Continuing Education and Broker-Approved Training Annual Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained the contents in the report and the process followed to obtain the annual report.

## **Continuing Education and Broker-Approved Training Renewal Report**

Deputy Director Roubal presented the Continuing Education and Broker-Approved Training Renewal Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained the contents in this report and the course renewal process providers have to engage in every three years to renew courses or let them expire.

After review, a motion was made by Titus and seconded by Stange to remove the providers from approved status who had failed to provide an Annual Report for 2015 activities and who were reported on the Continuing Education and Broker-Approving Training Annual Report exhibit and to ratify the courses listed on the Continuing Education and Broker-Approved Training Renewal Report. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway 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 2015-014 – Pamela G. Steele vs. Lisa Marie Pitts**

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 Titus and seconded by Freeman that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

### **Presentation of Stipulation and Consent Orders**

#### **Complaint 2015-039, Commission vs. Steven Randolph Wiley**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2015-039, Commission vs. Steven Randolph Wiley. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Freeman and seconded by Dover to decline the proposed Stipulation and Consent Order and propose that the Order include a one year suspension, with thirty-day served on suspension plus three hours of additional continuing education in the area of ethics, pay a civil fine of one-thousand five hundred dollars. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

## **Disciplinary Hearings**

### **Complaint 2015-002 Commission vs. Sonya Kaye Paxton**

A Hearing was held on March 17, 2016 at 10:30 a.m., in the matter of Complaint 2015-002, Commission vs. Sonya Kaye Paxton. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Sonya Kaye Paxton was present and represented by Counsel Mark E. Novotny of Omaha.

A motion in limine was made by Counsel Novotny. After discussion, Chairperson Gale denied the motion in limine, but indicated that counsel could raise specific objections to evidence introduced as the trial progressed.

At 10:45 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 10:55 a.m.

After opening statements, Counsels Prochaska and Novotny jointly offered 26 Exhibits, all of which were received by Chairperson Gale.

Counsel Prochaska called Duran Cell and Sonya Kaye Paxton as witnesses.

At 11:50 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 11:55 a.m.

Counsel Novotny offered one exhibit, which was received by Chairperson Gale. Counsel Novotny called Linden Swensen and Sonya Kaye Paxton as witnesses.

At 1:10 p.m., Chairperson Gale declared a recess of the Hearing to break for lunch. The Hearing reconvened at 1:45 p.m.

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 Avery and seconded by Stange that Ms. Paxton violated Neb. Rev. Stat. 76-2422(2) and Title 299, Chapter 5-003.20. The motion was withdrawn by the mover and the second.

After discussion a motion was made by Freeman and seconded by Avery that Ms. Paxton violated Neb. Rev. Stat. § 76-2422(2) and Title 299 Ch. 5-003.20 and the remaining alleged violations be dismissed. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

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 Stange and seconded by Titus in Complaint 2015-002, that Sonya Kaye Paxton receive a one year suspension, stayed and served in probation, a five hundred dollar civil fine and six hours of additional continuing education.

After discussion, an amendment was offered by the mover that the six hours of additional continuing education be in the areas of contracts and agency. The amendment was accepted by the second. Motion carried with Dover, Stange, Titus and Gale voting aye, with Avery and Freeman voting nay, and with Alloway not participating or voting, being absent and excused.

With the consent of the Respondents, Chairperson Gale directed Counsel Prochaska 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 2:55 p.m.

#### **Complaint 2015-018 Commission vs. George Ray Clift and Richard Thomas Bretz**

A Hearing was held on March 17, 2016, at 3:10 p.m., in the matter of Complaint 2015-018, Commission vs. George Ray Clift and Richard Thomas Bretz. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent George Ray Clift was not present. Respondent Richard Thomas Bretz was present and represented by Counsel Joe Stecher of Harrison.

After opening statements, Counsels Prochaska and Stecher jointly offered 17 Exhibits, all of which were received by Chairperson Gale.

Counsel Prochaska called Duran Cell as a witness.

Counsel Stecher offered one exhibit which was received by Chairperson Gale. Counsel Stecher called Richard Thomas Bretz 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 Commissioner Freeman to find in Complaint 2015-018, that George Ray Clift and Richard Thomas Brez violated Neb. Rev. Stat. 81-885.21(6) but that the violation was a technical violation and not substantial. An amendment was made to the pending motion by the mover to strike the language regarding technical and not substantial. The motion died for lack of a second.

A motion was made by Avery and seconded by Titus that Complaint 2015-018, George Ray Clift and Richard Thomas Brez be dismissed without prejudice. Motion failed with Avery and Titus voting aye, with Dover, Freeman, Stange and Gale voting nay, and with Alloway not participating or voting, being absent and excused.

A motion was made by Commissioner Stange to find in Complaint 2015-018, that George Ray Clift and Richard Thomas Brez violated Neb. Rev. Stat. 81-885.24(29). The motion died for a lack of a second.

A motion was made by Freeman and seconded by Titus that Complaint 2015-018, George Ray Clift and Richard Thomas Brez be dismissed without prejudice. Motion failed with Avery, Freeman and Titus voting aye, with Dover, Stange and Gale voting nay, and with Alloway not participating or voting, being absent and excused.

At 5:05 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 5:12 p.m.

A motion was made by Stange and seconded by Dover in Complaint 2015-018, that George Ray Clift and Richard Thomas Brez violated Neb. Rev. Stat. 81-885.24(29). Motion failed with Dover, Stange and Gale voting aye, with Avery, Freeman and Titus voting nay, and with Alloway not participating or voting, being absent and excused.

Chairperson Gale ruled, that in this case, the complaint is dismissed since a motion to find guilt did not get the four votes necessary.

With the consent of the Respondents, Chairperson Gale directed Counsel Prochaska 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 5:20 p.m.

### **Informal Special Appearances**

#### **Colton Jeffrey Luchsinger, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Luchsinger's special appearance; a letter of explanation from Mr. Luchsinger; character reference letters for Mr. Luchsinger; trial court cases from the State of Nebraska on Mr. Luchsinger's cases; Mr. Luchsinger'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. Luchsinger was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Stange to allow Mr. Luchsinger to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Luchsinger 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. Luchsinger 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. Mr. Luchsinger must also provide to the Commission written proof by a sponsor of weekly attendance at Alcoholics Anonymous meetings for three years. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

### **Consideration of Draft Amendments to N.A.C. Title 299, Ch. 1, Pre-license Correspondence Course Offerings**

Director Lemon presented a draft amendment to N.A.C. Title 299, Ch. 1, to allow pre-license correspondence courses. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the draft amendment to allow pre-license correspondence courses which was previously discussed, had been changed per Commission recommendations and clarified the distance education format.

There was discussion regarding the correspondence and distance education format.

A motion was made by Freeman and seconded by Stange to approve the proposed draft of N.A.C. Title 299, Ch. 1 with the amendments as discussed, and to proceed with the Rule change process. Motion carried with Avery, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, being absent and excused.

### **Consideration of Draft Amendments to N.A.C. Title 299, Ch. 7, Required Property Management Education**

Director Lemon presented a draft amendment to require continuing education for licensees who practice property management and their supervisor. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the draft amendment was previously discussed and amended to include the course requirement for supervisors per Commission recommendation.

There was discussion surrounding the proposed language and the activities that are allowed in property management without a real estate license.

A motion was made by Freeman and seconded by Stange to approve the amendments to N.A.C. Title 299, Ch. 7 as presented and proceed with the Rule change process. Motion carried with Dover, Gale, Freeman, Stange, Titus and Avery voting aye, with Alloway not participating or voting, being absent and excused.

There was discussion regarding the approved continuing education courses which would meet the requirement for the property management courses, Director Lemon stated the Commission could review and approve such classes at future meetings.

### **Approval of the Release of the Request for Proposal for the Errors and Omissions Insurance Plan**

Director Lemon presented a Request for Proposals (RFP) for Errors and Omissions Insurance. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted the Request for Proposals (RFP) form and the process are prescribed by the State of Nebraska's Department of Administrative Services Purchasing Division. Director Lemon reviewed the chronology of the Request for Proposals process and discussed the date of the RFP and the necessity of restricting contact with potential vendors beyond this date. The development of an evaluation tool which will be used to evaluate each proposal was also discussed.



### **Approval of Release of the Request for Proposal**

A motion was made by Freeman and seconded by Dover to approve and publish the Request for Proposals as presented.

After discussion, an amendment was offered by the mover and accepted by the second that any changes required by State of Nebraska's Department of Administrative Services Purchasing Division be approved.

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

### **Appointment of the Request for Proposal Evaluation Committee**

Director Lemon indicated that he would solicit a staff member of the Department of Insurance to serve on the Evaluation Committee as done previously and requested Commissioner volunteers to also serve on the Evaluation Committee. Commissioners Freeman, Stange and Gale volunteered to serve on the Evaluation Committee.

### **Discuss Procedures for Recording Receipt of Funds that Bypass Broker Trust Account**

Director Lemon presented an explanation of procedures for recording receipt of funds that bypass broker trust accounts. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon solicited input from the Commissioners on procedures relating to recording receipt of funds that bypass the brokers trust account. There was discussion regarding the best options for addressing this issue and if the procedure should be put in a policy and interpretation, in the trust account manual or on the purchase agreement.

It was the consensus of the Commission to discuss this matter at a future meeting.

### **Review Possible Changes to Seller Property Condition Disclosure Statement §76-2, 120**

Director Lemon presented an explanation and examples of the proposed changes to the Seller Property Condition Disclosure Statement. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the proposed changes were discussed at the last Commission meeting and incorporated into the form as discussed. The changes included the carbon monoxide requirement and the noxious weed recommendation. The recommendation for the noxious weeds question was either for a three year period or any previous notification. It was the consensus of the Commission that there be a three year period of notifications received. A motion was made by Freeman and seconded by Dover to adopt the changes to the Seller Property Condition Disclosure Statement §76-2, 120 as presented and proceed with the Rule change process. Motion carried with Dover, Gale, Freeman, Stange, Titus and Avery voting aye, with Alloway not participating or voting, being absent and excused.

### **Legislative Matters**

**LB 28** - No new information presented.

**LB 678** - Director Lemon presented an exhibit regarding a proposed amendment to LB678. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reported that the Teams bill has been placed on general file. He noted that the bill will potentially be placed on consent calendar therefore there is a good possibility the bill will be passed.

### **Appointment of Gregory D. Barton as a Pre-Hearing Conference Officer**

Director Lemon explained that currently the Commission only had one agreement for a Pre-Hearing Conference Officer. He indicated that the Commission needs to obtain a second agreement, and through discussion, Greg Barton has shown interest in being a pre-hearing conference officer.

A motion was made by Freeman and seconded by Stange to appoint Gregory D. Barton as a Pre-Hearing conference officer and give Director Lemon the authority to enter into an agreement. Motion carried with Dover, Gale, Freeman, Stange, Titus and Avery voting aye, with Alloway not participating or voting, being absent and excused.

### **Information Matters**

#### **ARELLO Mid-Year Meeting – April 13-16, 2016 - Atlanta, GA**

Director Lemon explained that the deadline for registration is March 21, 2016, and noted that currently Commissioners Avery and Freeman had registered for the Mid-Year meeting.

No action was necessary on this report.

### **Future Meeting Dates**

April 21-22, 2016 - Staybridge Suites, Lincoln  
May 19-20, 2016 - Staybridge Suites, Lincoln  
June 16-17, 2016 - Staybridge Suites, Lincoln  
August 18-19, 2016 -

### **Recesses and Adjournment**

At 10:15 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

At 10:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:55 a.m.

At 11:50 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:55 a.m.

At 1:10 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:45 p.m.

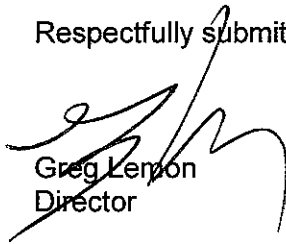
At 2:55 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 3:10 p.m.

At 5:05 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 5:12 p.m.

At 6:18 p.m., there being no further business to come before the Commission, a motion was made by Stange and seconded by Freeman that the meeting adjourn. Motion carried with Dover, Gale, Freeman, Stange, Titus and Avery voting aye, with Alloway 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 March 17, 2016, meeting of the Nebraska Real Estate Commission were available for inspection on March 23, 2016, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

**Guests Signing the Guest List**

Joe Gehrki, CBSHome, Omaha

Jeff Hebb, Nebraska REALTORS<sup>7</sup> Association, Lincoln

Craig Larabee, JMSK Corp, Lincoln

Rob Kinsey, Lincoln

