

NEBRASKA REAL ESTATE COMMISSION

May 19, 2016

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on May 19, 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 Dover, 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.

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 no agenda items had been added since the tentative agenda was mailed to the Commissioners.

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

Minutes of April 21, 2016

The minutes of the Commission meeting held on April 21, 2016, were considered.

(Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. There was a typographical error on page two of the Exhibit where it referred to "here" when, in fact, it should have said "her". The Exhibit was corrected for attachment to these minutes.)

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

Director Lemon presented the Receipts and Expenditures Report for April. 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 April 30, 2016, was \$1,613,987.60, which compared to a cash fund balance of \$1,167,401.39 on April 30, 2015.

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

Examination Report - April

Deputy Director Roubal presented for ratification the April Examination 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 the April Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover 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.

Nebraska Real Estate School Statistics

Deputy Director Roubal presented the Examination Program School Summary, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained that Applied Measurement Professionals (AMP) provided a new report for the Commission that would indicate to the individual schools the passing rates of the students who completed the pre-license education courses through their school. She indicated that many schools were interested in receiving the report and would like to be able to provide the Examination Program School Summary report on a monthly basis. She also noted that at this time, the report would be provided to the individual school only and not provided publically.

There was discussion regarding the contents and benefits of providing such report to the schools.

A motion was made by Freeman and seconded by Stange to provide the Examination Program School Summary to individual schools on a monthly basis. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

There was also discussion of providing the Commission with a similar report on an annual or semi-annual basis so that the schools performance can be reviewed by the Commissioners.

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.

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.

Broker-Approved Training Activity Significant Change

Deputy Director Roubal presented for ratification the Broker-Approved Training Activity Significant Change 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 six reports. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not

participating or voting, being absent and excused.

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 this Workshop would be one day long.

A six-hour workshop will be led by Mark Barker, author of Generally Accepted Principles of Education (GAPE).

A motion was made by Freeman 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, Freeman, Stange, Titus and Gale voting aye, with Dover 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 2015-015

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 Alloway that the complaint be set for hearing on Neb. Rev. Stat. §§81-885(29) only. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item B Complaint 2015-016 – Anitra T. Venable vs. Victor Lee Frost

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

Presentation of Stipulation and Consent Orders

There were no Stipulations and Consent Orders to be presented at this meeting.

Rule Hearings

Rule Hearing on Title 302, Chapter 1 – Seller Property Condition Disclosure Statement

At 9:40 a.m. on May 19, Chairperson Gale called to order the public hearing on the proposed amendment to Title 302, Chapter 1, 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 proposed amendment to Title 302, Chapter 1, 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 both through the notice of hearing and on the Commission's website

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 Stange that the Commission adopt Title 302, Chapter 1, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Chairperson Gale declared the rule hearing concluded at 9:48 a.m.

Rule Hearing on Title 299, Chapter 7 – Continuing Education for Licensees Engaged in Property Management

At 10:05 a.m. on May 19, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapter 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 proposed amendments to Title 299, Chapter 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 both through the notice of hearing and on the Commission's website.

Chairperson Gale asked if any member of the public wished to speak regarding the proposed amendments. John Watson with Century Sales and Management indicated he was present to support the rule change. He commended the Commission for pursuing this change and encouraged the Commission to further expand the requirement within the eighteen hours for both property management and in the area of trust accounting.

There was discussion of a license endorsement rather than the proposed continuing education requirement.

A motion was made by Freeman and seconded by Alloway that the Commission adopt Title 299, Chapter 7, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Chairperson Gale declared the rule hearing concluded at 10:15 a.m.

Rule Hearing on Title 299, Chapter 1 - Commission Certification of Pre-License Education Courses Offered in Correspondence Format

At 10:25 a.m. on May 19, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapter 1, 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 proposed amendments to Title 299, Chapter 1, 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 both through the notice of hearing and on the Commission's website.

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, Chapter 1, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Chairperson Gale declared the rule hearing concluded at 10:28 a.m.

Disciplinary Hearings

There were no disciplinary hearings scheduled to be held at the meeting.

Informal Special Appearances

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

Awarding of Errors and Omissions Insurance Contract for 2017

Director Lemon presented an exhibit regarding the errors and omissions insurance request for proposals (RFP). A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the RFP was sent out as the Commission had instructed. The Commission received two proposals, from Rice Insurance Services Company, LLC (RISC) and Williams Underwriting Group Inc. (WUG).

Director Lemon reviewed the evaluation made by the committee as set forth in the exhibit. He indicated that all calculations were verified by the accounting staff member for the Commission.

Director Lemon explained that the RFP process was designed by the State of Nebraska, Purchasing Department, and the structured process was followed by all parties involved, the process being designed to make the evaluation fair and impartial. Director Lemon also explained that five members were on the evaluation team, including members of the Commission and an attorney from the Department of Insurance.

A motion was made by Freeman and seconded by Avery to award the 2017 errors and omissions insurance contract to Williams Underwriting Group (WUG) and to authorize the Director to enter into a contract with WUG. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Closing Statement Requirements for Sales Transactions

Director Lemon presented an exhibit explaining the TILA/RESPA or "TRID" changes and the effects it is having on the trust account requirements. A copy of said exhibit is attached to and made a part of these Minutes. Mike Poskochil, licensed salesperson appearing on his own behalf, was present to discuss this matter.

Director Lemon explained that the current requirement as stated in the Trust Account Manual indicates that closing statements for both buyer and seller should be in the transaction file. A recent amendment to the trust account manual accommodated changes to banks and title companies practices regarding providing such statements by providing that it was not required to have a closing statement for a party that the broker does not represent if the bank or closing company is withholding such statement and will not provide it. He indicated that some feedback due to this recent change was that it may go too far in allowing the broker not to have the statements on file, or that it should be expanded even further since it does not cover all instances where the closing statements may not be available.

Mr. Poskochil explained his concerns with being unable to obtain the closing statements and is seeking uniformity on receipt of such closing statements. He also explained that by being unable to obtain such closing statements, agents may not be able to meet their fiduciary duties they have to their clients.

There was discussion regarding the information that appears on the closing statements, and the agents' ability to follow the agency laws. There was also discussion regarding the possibility that the statute relating to this matter being outdated.

A motion was made by Freeman and seconded by Avery that in the trust account manual where referencing the closing statements – buyer and seller, be amended to say closing statements required provided that the closing statement was prepared by the broker. The motion failed with Avery, Freeman and Stange voting aye, with Alloway and Titus voting nay, with Gale abstaining, and with Dover not participating or voting, being absent and excused.

After further discussion a motion was made by Alloway and seconded by Stange that in the trust account manual where referencing the closing statements – buyer and seller, be amended to say "**Provided – it shall not be considered a compliance issue if the closing statement is absent from the file because the financial institution, closing agent or other party with access to the records will not provide such statements due to privacy concerns." Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Record Keeping Requirements for Deposits and Other Funds that Bypass the Broker Trust Account

Director Lemon presented an exhibit explaining the proper documentation required for funds that bypass the Broker Trust Account. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon indicated that Neb. Rev. Stat. §§81-885.24(3), the unfair trade practices section provides that "failing to account for and remit any money coming into his or her possession belonging to others" (emphasis added) is a violation of the Act. He indicated that this could be explained further with specific instructions in the Trust Account Manual for educational purposes. He introduced John Clark, Senior Trust Account Examiner and indicated that Mr. Clark would be available for questions regarding this matter.

There was discussion regarding receipting for such payment when funds were payable to a third party. After further discussion, Mr. Clark noted that an acknowledgement of the custody of the check for tracking purposes is desired.

After discussion, a motion was made by Freeman and seconded by Stange to amend the Trust Account Manual to create a general requirement that any cash, checks, or other monies coming into a licensee's possession on behalf of a client should be accounted for in writing, with a record sufficient to identify the check or other type of payment, when and from whom it was received, and when and to whom given or transferred. Such a record could be a standalone document, or incorporated into other transactional documents. If no party is available or willing to sign such a record or receipt, the broker should make a note of the possession and disposition of such funds in the transaction file. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Information Matters

ARELLO District Conference – June 1-3, 2016 - Oklahoma City, OK

Director Lemon explained that the deadline for HOTEL registration was May 18, 2016, and asked which Commissioners were planning on attending the conference. No action was necessary on this report.

Update on Curtis Hart Case Appeal

Director Lemon indicated that the Commission had lost the appeal in Lancaster County District Court for the Curtis Hart Case (2015-008) relating to the retention of records requirement for real estate brokers.

Director Lemon indicated that he would consult with the Assistant Attorney General Adam Prochaska to decide whether the Commission should file an appeal or amend the statutes.

A motion was made by Freeman and seconded by Alloway to allow Director Lemon to determine how best to proceed with the matter upon consultation with Assistant Attorney General Prochaska. Motion carried with Alloway, Avery, Freeman, Stange, Titus and Gale voting aye, with Dover not participating or voting, being absent and excused.

Future Meeting Dates

August 18-19, 2016– Staybridge Suites, Lincoln
September 29-30, 2016 -
October 27-28, 2016 -
November 17-18, 2016 -

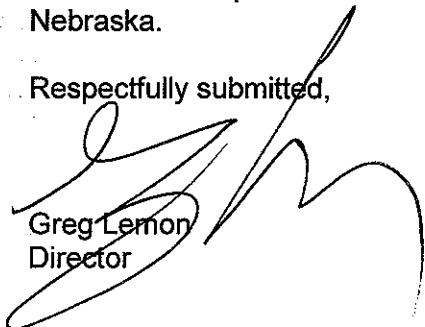
Recesses and Adjournment

At 11:04 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:12 a.m.

At 12:28 p.m., there being no further business to come before the Commission, a motion was made by Avery and seconded by Titus that the meeting adjourn. Motion carried with Avery, Alloway, Freeman, Titus, Stange and Gale voting aye, with Dover 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 May 19, 2016, meeting of the Nebraska Real Estate Commission were available for inspection on **June 2, 2016**, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Jeff Hebb, Nebraska REALTORS® Association, Lincoln
Judy Burford, CBSHOME Real Estate, Omaha
John Watson, Century Sales-Management, Lincoln
Arla Meyer, Realtors Association of Lincoln
Michael Poskochil, Lincoln

