

**NEBRASKA REAL ESTATE COMMISSION**

June 16, 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 June 16, 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 Commissioners Stange and Titus, who were 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 agenda items 20d and 20d1 have been added since the tentative agenda was mailed to the Commissioners.

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

**Minutes of May 19, 2016**

The minutes of the Commission meeting held on May 19, 2016, were considered.

After review, a motion was made by Avery and seconded by Alloway to approve the minutes as presented. Motion carried with Alloway, Avery, Freeman and Gale voting aye, with Stange and Titus not participating or voting, and with Dover not voting having not been in attendance at the May 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 May**

Director Lemon presented the Receipts and Expenditures Report for May. 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 May 31, 2016, was \$1,564,520.06, which compared to a cash fund balance of \$1,137,404.21 on May 31, 2015.

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

There was discussion regarding the time required for applicant criminal background checks. It was the consensus of the Commission that Director Lemon explore possible solutions with the Nebraska State Patrol or to provide recommendations to the Commission about alternative processes.

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

## **Examination Report - May**

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

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

### **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 2015-020 – Greg Wayman vs. Brian Allan Thomas and Kathryn Ann Pflaum**

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

**Item B Complaint 2015-021**

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 Dover that this complaint be held in abeyance and the Commission file a complaint on its own motion and set it for hearing on §§81-885.24(29), 76-2417(1)(b) and 76-2417(1)(c). Motion carried with Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused, and with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

**Presentation of Stipulation and Consent Orders**

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

**Disciplinary Hearings**

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

**Informal Special Appearances**

**Rachelle Annette Bartlett, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Bartlett's special appearance; a letter of explanation from Ms. Bartlett; Ms. Bartlett's professional profile; character reference letters for Ms. Bartlett, Ms. Bartlett's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Bartlett was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Bartlett explained the situations regarding her past criminal history.

After discussion, a motion was made by Freeman and seconded by Dover to allow Ms. Bartlett to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

**Susan L. Steele, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Steele's special appearance; a letter of explanation from Ms. Steele; character reference letters for Ms. Steele, a Nebraska Justice System search summary of Ms. Steele's cases; Ms. Steele's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Steele was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Steele explained the situations regarding her past criminal history.

After discussion, a motion was made by Alloway and seconded by Freeman to allow Ms. Steele to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Steele 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. Ms. Steele must also notify the Commission staff of any probation violation, and any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years. Motion failed with Alloway and Freeman voting aye, with Avery, Dover, and Gale voting nay, and with Stange and Titus not participating or voting, being absent and excused.

#### **Fred Kamal Grande, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Grande's special appearance; a letter of explanation from Mr. Grande; character reference letters for Mr. Grande, a Nebraska Justice System search summary of Mr. Grande's cases, Mr. Grande'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. Grande was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Alloway and seconded by Avery to allow Mr. Grande to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Grande 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. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

#### **2015-2016 Objectives – Final Report**

Director Lemon presented an exhibit regarding the 2015-2016 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the changes and current status for the objectives listed.

No action was necessary on this discussion.

#### **Consider 2016-2017 Objectives**

Director Lemon presented an exhibit regarding the proposed 2016-2017 Objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained each of the new objectives and those which had been carried over from the 2015-2016 Objectives. He welcomed any additions the Commissioners may have for the proposed objectives.

Commissioner Alloway asked that the method of submitting the score report to the Commission Office be researched and placed on the 2016-2017 Objectives.

A motion was made by Alloway and seconded by Freeman to approve the Commission Objectives as amended. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

### **Personnel Matter – Closed Session**

At 1:45 p.m., a motion was made by Freeman and seconded by Avery to go into closed session for discussion of personnel matters. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 2:16 p.m., a motion was made by Avery and seconded by Freeman to reconvene in open session. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

After reconvening in open, public session, a motion was made by Freeman and seconded by Alloway to increase Director Lemon's annual salary by three percent for the next fiscal year beginning July 1, 2016. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

### **Possible Statutory and Regulatory Changes for Further Study**

Director Lemon presented a list of the proposed statutory and regulatory changes. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that item 6, has its own agenda item and therefore would be excluded from the discussion of this agenda item. Director Lemon discussed the changes as proposed in items 1, 2, 4, 7, and 9.

After discussion, a motion was made by Alloway and seconded by Dover that Director Lemon research the items in more detail and provide recommendations at a future meeting. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

Director Lemon discussed the proposed changes for items 3, 5, and 8.

After further discussion, a motion was made by Alloway and seconded by Avery that Director Lemon provide the recommendations at a future meeting on these items. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus not participating or voting, being absent and excused.

### **Draft Changes to Title 299, Chapter 3, Record Keeping Requirements**

Director Lemon presented proposed changes to Title 299, Chapter 3, Record Keeping Requirements. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon distributed a revised exhibit which reflected additional language to be changed.

A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 18a.

Director Lemon reviewed the proposed changes to Title 299, chapter 3, Record Keeping Requirements. There was discussion regarding the revisions needed for the proposed language as provided in items three and four.

It was the consensus of the Commission that Director Lemon revise the proposed language and bring back for the Commission's review.

### **New Language Regarding Chain of Custody for Client Funds-Trust Account Manual**

Director Lemon presented proposed language changes to the Trust Account Manual regarding the Chain of Custody for Client Funds. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the changes, as requested, had been incorporated into the proposed changes to the Trust Account Manual. There was discussion regarding the revisions and it was recommended that a subcommittee be formed to make the appropriate changes and brought back for review at a future meeting. Commissions Alloway, Dover and Freeman volunteered to be on such subcommittee.

### **Information Matters**

#### **ARELLO District Conference – June 1-3, 2016 - Oklahoma City, OK – Report of Attendees**

Director Lemon noted that Commissioner Avery, Deputy Director Rut and he attended the ARELLO District 2 & 3 Conference.

Each of the Attendees discussed their experiences at the ARELLO meeting.

No action was necessary on this report.

#### **Real Estate Education Association (REEA) Conference - June 10-12, 2016 - Denver, CO – Report of Attendees**

Deputy Director Roubal indicated that she attended the Real Estate Education Association (REEA) Conference which was held on June 10-12, 2016 in Denver, Colorado.

Deputy Director Roubal discussed her experience at the REEA conference.

No action was necessary on this report.

#### **ARELLO Annual Conference – September 21-25, 2016 – Vancouver, BC**

Director Lemon explained that the deadline for registration is August 28, 2016, and asked which Commissioners were planning on attending the conference. Commissioners Titus, Freeman and Gale indicated that they plan on attending.

No action was necessary on this report.

## **Leslie Rae Young Appeal Ruling**

Director Lemon presented a copy of Eighth Circuit Court of Appeals case ruling. A copy of said exhibit is attached to and made a part of these minutes. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission was present to discuss this matter.

Director Lemon distributed an additional exhibit which reflected the case as shown in local newspapers articles. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 20d1.

Mr. Prochaska reviewed the court ruling and explained that the ruling upheld provisions in the license act related to enforcement of cease and desist orders to persons practicing without a license. He indicated that the Respondents have until September 9, 2016 to appeal the court decision.

Mr. Prochaska indicated that he also wanted to discuss the Curtis Hart matter in which the preservation of records was cited as one of the violations. He indicated that Mr. Hart appealed to the District Court which overturned the Commission's ruling regarding the preservation of records. The Commission has filed an appeal to address the other violations of the case.

There was discussion regarding the current language in the law and how the judge perceived that language which overturned the Commission's ruling.

No action was necessary on this report.

### **Future Meeting Dates**

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

### **Recesses and Adjournment**

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:45 a.m.

At 12:00 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:09 p.m.

Chairperson Gale was briefly excused from the meeting at 1:03 p.m., and rejoined the meeting at 1:05 p.m.

At 1:38 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 1:44 p.m.

At 2:19 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Avery that the meeting adjourn. Motion carried with Alloway, Avery, Dover, Freeman and Gale voting aye, with Stange and Titus 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 June 16, 2016, meeting of the Nebraska Real Estate Commission were available for inspection on June 22, 2016, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,

  
Greg Lemon  
Director

**Guests Signing the Guest List**

Mark Leaders, CBSHOME Real Estate, Omaha  
Jeff Hebb, Nebraska REALTORS<sup>7</sup> Association, Lincoln  
Greg Wayman, F2R, Inc, Omaha  
Adam Prochaska, NREC, Lincoln

