

NEBRASKA REAL ESTATE COMMISSION

March 16, 2017

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on March 16, 2017, 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. 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 Freeman and seconded by Titus to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

Minutes of February 16, 2017

The minutes of the Commission meeting held on February 16, 2017, were considered.

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

Financial Matters

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 28, 2017, was \$1,967,807.17, which compared to a cash fund balance of \$1,688,291.71 on February 29, 2016.

Receipts and Expenditures Report December Changes

Director Lemon presented the Receipts and Expenditures Report for December. A copy of said report is attached to and made a part of these minutes.

Director Lemon noted that the changes are reflected on the last page of the exhibit under line items 475230 and 475240. The amounts entered for these receipts were inadvertently entered in under the wrong account codes and should have appeared under line items 475320 and 475340.

After discussion, a motion was made by Freeman and seconded by Alloway to file the February Receipts and Expenditures Report for audit and approved the amended December Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus 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 Titus and seconded by Alloway to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

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.

There was discussion regarding the ability to evaluate other variables when providing the first-time test takers results. Deputy Director Roubal indicated that she would review the possibility of taking the available variables and compile results accordingly in order to assist providers and instructors.

After review, a motion was made by Stange and seconded by Alloway to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus 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

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 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.

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 Significant Change

Deputy Director Roubal presented a Broker-Approved Training 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 Stange to ratify the six reports. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

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 Renewal Report

Deputy Director Roubal presented the Continuing Education 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.

Broker-Approved Training Expirations

Deputy Director Roubal presented the Broker-Approved Training Expirations, 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 expiration process providers have to engage in every three years to renew courses or let them expire.

After review, a motion was made by Freeman and seconded by Titus to remove the providers from approved status who had failed to provide an Annual Report for 2016 activities, to ratify the courses listed on the Continuing Education Renewal Report and Broker-Approving Training Annual Report exhibit. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

There was also discussion regarding the Commission's review of the definition of "R" course designation, specifically the consideration of adding a topic related to finance.

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 2016-006 – Joan Boomgarden vs. Charlotte Dee Smith, Tammy Sue Nicola, and Dennis Blair Smith

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 and a letter of admonishment be sent to Respondent 3. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

Item B Complaint 2016-007

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 Titus and seconded by Bourne that this complaint be held in abeyance pending the outcome of the civil litigation. Motion carried with Bourne, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

After further discussion, an amendment was offered by Commissioner Freeman that the complaint be dismissed against Respondent 3. The amendment was accepted by the mover and second. Motion carried with Bourne, Dover, Freeman, Stange, Titus and Gale voting aye, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

After further discussion, a motion was made by Freeman and seconded by Titus that the Commission file a complaint on its own motion and set it for hearing per Staff recommendation. Motion carried with Bourne, Dover, Freeman, Stange, Titus and Gale voting aye, 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

Kevin Dean Irish, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Irish's special appearance; a letter of explanation from Mr. Irish; character reference letters for Mr. Irish; Mr. Irish's salesperson application form, trial court cases from the State of Nebraska on Mr. Irish's cases; and Mr. Irish's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Irish was present.

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

Director Lemon reviewed the Exhibit and provided the Commission a brief explanation of circumstances regarding Mr. Irish and disciplinary actions relating to his prior salespersons license.

Chairperson Gale reviewed the procedure for informal special appearances.

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

A motion was made by Stange and seconded by Alloway to allow Mr. Irish to sit for the salesperson examination and to have a license issued upon passing. Mr. Irish was subject to disciplinary order in case #2007-012 when he voluntarily failed to renew his license at the end of 2008. Mr. Irish must complete the remainder of the probationary period and follow the terms of the order for the remaining probationary period, with credit given for the time served from the beginning of the probationary period on April 18, 2008, through December 31, 2008, as well as 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.

After discussion, an amendment was offered by the mover to require Mr. Irish to contemporaneously notify the Commission staff and the employing broker of any criminal charge, except those charges where there is no possible sentence of jail time for a period of three years. The amendment was accepted by the second.

Motion carried with Alloway, Bourne, Dover, Stange, Titus and Gale voting aye, with Freeman not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Interpretation of Title 299, Chapter 2, Advertising Rules

Director Lemon presented letter of explanation and sample advertising rules. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the Exhibit was developed to provide guidance to the industry regarding new rules and regulations that are effective July 1, 2017. He further explained that the examples as shown in the Exhibit were developed based on the interpretations discussed at the prior Meeting.

A motion was made by Freeman and seconded by Alloway to approve the interpretations as presented while allowing staff to further define the presentation of the examples. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

Review Laws Related to Dual Agency when the Dual Agent is a Principal to the Transaction

Director Lemon explained that due to a complaint that the Commission received, the Commission requested that the Assistant Attorney General, Adam Prochaska provide an interpretation regarding whether dual agency can be prohibited under the current law when the principal is acting as a dual agent. He explained that the law as written allows dual agency with the written consent of all parties including in instances where the agent has an interest in the property. He further explained that Counsel Prochaska indicated that changes could be made by way of rules and regulations, but felt it best to change the law in statute.

There was discussion that drafted changes be made as recommended and presented at a future meeting. There was further discussion if the changes should be made in rules and regulations as well as statute.

Commissioner Dover and Commissioner Stange provided examples of situations where dual agency as a principal to the transaction may not be avoidable and by prohibiting dual agency may complicate situations.

There was further discussion regarding a separate disclosure form allowing for situations where dual agency as a principal to the transaction would be required.

Chairperson Gale recapped the previous discussion and explained that the issue could be placed on a future agenda if requested for further discussion.

No action was necessary regarding this agenda item.

Revised Agency Disclosure Form

Director Lemon presented a revised Agency Disclosure Form. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the revised Agency Disclosure Form was produced with the Commissions concept and desired changes and sought guidance as to any changes that they felt necessary.

There was discussion regarding the placement and wording of the agent name and proper identification.

It was the consensus of the Commission that Director Lemon change the wording on the back page of the Agency Disclosure Form to provide for a list of all agents offering to represent the client and that the changes be presented at the next Commission Meeting.

Legislative Matters

LB 9 - Director Lemon reported that this bill had been placed on General File on February 15, 2017.

LB 15 - No new information presented.

LB 16 – Director Lemon reported that LB 549 was added to this bill and had advanced to Final Reading as of March 16, 2017.

LB 36 – No new information presented.

LB 127 – No new information presented.

LB 208 – No new information presented.

LB 257 – No new information presented.

LB 299 – Director Lemon reported that the hearing was held on February 24, 2017.

LB 312 – Director Lemon reported that the hearing was held on February 22, 2017.

LB 426 – Director Lemon reported that the hearing was scheduled for March 23, 2017.

LB 549 – Director Lemon reported that LB 549 became part of LB16.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – Louisville, Kentucky – April 26-29, 2017

Director Lemon explained that the deadline for registration is April 3, 2017, and indicated that Commissioners Freeman, Stange and Titus had shown interest in attending the meeting.

No action was necessary on this report.

ARELLO District 2 & 3 Meeting – Charleston, West Virginia – June 8-10, 2017

Director Lemon explained that the deadline for registration is May 23, 2017.

No action was necessary on this report.

Future Meeting Dates

- April 20, 2017 - Staybridge Suites, Lincoln
- May 25-26, 2017 - Staybridge Suites, Lincoln
- June 22-23, 2017 - Staybridge Suites, Lincoln
- August 17-18, 2017
- September 28-29, 2017
- October 19-20, 2017
- November 16-17, 2017

Recesses and Adjournment

At 11:05 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:15 a.m.

At 12:13 p.m., there being no further business to come before the Commission, a motion was made by Freeman and seconded by Titus that the meeting adjourn. Motion carried with Alloway, Bourne, Dover, Freeman, Stange, Titus and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 16, 2017, meeting of the Nebraska Real Estate Commission were available for inspection on March 20, 2017, 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
Jim McCord, J.J. Palmtag, Nebraska City
Henry Kammandel, Omaha
Arla Meyer, Woods Bros Realty, Lincoln

