

NEBRASKA REAL ESTATE COMMISSION

April 19, 2018

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on April 19, 2018, 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 agenda item 6b 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 Dover to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Titus and Gale voting aye, with Starman not participating or voting, being absent and excused.

Minutes of March 15, 2018

The minutes of the Commission meeting held on March 15, 2018, were considered.

After review, a motion was made by Freeman and seconded by Titus to approve the minutes as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business.

Mr. Greg Wayman indicated that he wanted to clarify his intent regarding the complaints he filed. He explained that he wanted the buyers and sellers to be provided free choice to choose

vendor for home inspections and various other services. The Commission thanked Mr. Wayman for the clarification.

Mr. Jim McCord thanked Director Lemon for attending the Nemaha Board of REALTORS® meeting in Nebraska City. He felt Director Lemon dispelled myths about the Commission and licensees felt that less scared of Director Lemon. The Commission thanked Mr. McCord for the report and Director Lemon for representing the Commission.

Commissioner Freeman also thanked Director Lemon for attending the annual convention.

Commissioner Bourne indicated that she had recently attended the ARELLO Mid-year meeting and wanted to thank Director Lemon and Deputy Director Rut for their professionalism and doing an excellent job representing the Commission

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, 2018, was \$1,842,172.11, which compared to a cash fund balance of \$1,938,842.57 on March 31, 2017.

There was discussion regarding transitioning to a new designated broker being less cumbersome for large group transfers including the fees. Director Lemon indicated that he would look into a succession plan for brokers.

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

Specialized Registrations

Campground Registration --Amendment for Thousand Trails

Director Lemon presented a specialized registrations report which included the registration of amendment to campground registration for Thousand Trails. A copy of said report is attached to and made a part of these minutes

Time-Share Registrations - Amendment for Marriott Vacation Club Destinations

Director Lemon presented a specialized registrations report which included the registration of amendments to time-share registrations Marriott Vacation Club Destinations. A copy of said report is attached to and made a part of these minutes.

A motion was made by Titus and seconded by Starman to approve the amendments to the two registrations as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

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 Dover to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus 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.

There was discussion regarding potential issues for applicants passing the examination who took six pre-license education courses, rather than to qualify by two years' experience.

Commissioner Freeman suggested further data be collected which indicated the method of study for broker's candidates over a longer period of time.

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

First Quarter PSI School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of January 1, 2018 through March 31, 2018, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal explained each of the reports relating to the national tests and the school reports.

Commissioner Freeman considered the policy of retaining records of Pre-license course work for a 50 year period of time. Some discussion was held over whether or not a candidate would need to retake course work after a period of time.

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.

Pre-License Education Course Significant Change

Deputy Director Roubal presented for ratification the Pre-License Education Course Significant Change 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.

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 Activity 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 Alloway to ratify the six reports. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

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 2017-007 – Kalle Georgiev vs. Mary Katherine Rosenthal

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, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Item B Complaint 2016-007 – John A. & John H. Garlock vs. Ryan Basye, David A. Maloy & Shawn Patrick Maloy

Deputy Director Cell requested Complaint 2016-007 be dismissed. Deputy Director Cell explained that Complaint 2016-007 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2016-007 in abeyance until the new complaint had been adjudicated. Complaint 2017-024 was the new complaint.

A motion was made by Freeman and seconded by Dover to dismiss Complaint 2016-007, since the Commission accepted a Stipulation and Consent Order for Complaint 2017-024 at this meeting. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2016-016,
Greg Wayman v. Duane Joseph Safarik Sr.**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2016-016, Greg Wayman v. Duane Joseph Safarik Sr. A copy of said Order is attached to and made a part of these minutes.

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

After discussion, a motion was made by Alloway and seconded by Dover to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, and Titus voting aye, with Gale voting nay, and with Freeman not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

**Complaint 2017-024,
Commission v. Ryan Basye**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2017-024, Commission v. Ryan Basye. A copy of said Order is attached to and made a part of

these minutes.

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

After discussion, a motion was made by Starman and seconded by Freeman to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Disciplinary Hearings

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

Informal Special Appearances

Eric Anthony Guerrero – Salesperson Applicant

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

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

After discussion, a motion was made by Alloway and seconded by Freeman to allow Mr. Guerrero to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Guerrero 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. Guerrero must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within five days for a period of three years. Mr. Guerrero must also cease any activity which may require a real estate license. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Jack G. Irons – Salesperson Applicant

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

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

After discussion, a motion was made by Alloway and seconded by Freeman to allow Mr. Irons to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Joshua Adam Waxberg – Salesperson Applicant

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

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

After discussion, a motion was made by Freeman and seconded by Alloway to allow Mr. Waxberg to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Waxberg 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. Waxberg must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within five days for a period of three years. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye

Education Issues

PSI Services, LLC Update

Director Lemon presented an exhibit regarding education issues. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that PSI Services, LLC had acquired another company. There was discussion during the ARELLO Mid-Year Meeting and Director Lemon wanted to provide an update for clarification purposes. He explained that PSI Services, LLC was restructuring, however, the services relating to exam administration and update continue to be available as usual. He also explained that the Commission had not seen any changes and the contract was still in place with PSI Services, LLC.

No action was necessary on this report.

State Exam Question Bank Review

Director Lemon presented an exhibit regarding the exam question writing session. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that himself, Deputy Director Roubal and several others participated in a two day review and writing session for the state portion of the license examination. He indicated that some questions were eliminated while others were added. He further explained that communications would need to occur in the near future regarding the possible migration from the AMP test to the PSI delivery system which would eliminate the broker simulation portion of the broker examination.

Deputy Director Roubal explained that it takes a significant amount of time to remove text or questions from the examination using the AMP structure versus the PSI delivery system.

There was discussion regarding questions on the examination being present when the laws had

been changed or removed. It was further discussed that Deputy Director Roubal provide the outdated question information to the providers so that they can relay this information to the students.

No action was necessary on this report.

Pre-License Education Recruitment Prohibition

Director Lemon presented an exhibit regarding recruitment issues in Pre-Licensing courses. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that during pre-license education recruiting is prohibited. He explained while there was no specific language in the License Act or the Rules and Regulations, this has been the Commission's requirement for many years. He indicated that a formalized policy should be made to prohibit such activity since it is outside the scope of education activity and distracts from their education. He further indicated it may be viewed that if the Commission permits a school to recruit, the Commission may be perceived as approving or endorsing that brokerage for whom they are recruiting, therefore giving an advantage to that brokerage.

A motion was made by Freeman and seconded by Starman that staff draft proposed regulation changes addressing promotion or recruiting during pre-license education courses. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Education Advisory Group – Broker Approved Training Recommendations

Director Lemon presented an exhibit regarding outcomes of Education Advisory Group meetings. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that broker-approved training had been discussed during the last education advisory group meeting. It was the consensus of the group that the paperwork and oversight regarding broker-approved training, including the TRG-2 form which is currently required for licensees to get credits for courses is cumbersome. The Education Advisory Group's proposed to get rid of the broker approval and change it to commission approval for the training credit if the provider has properly applied and been approved by the Commission which would save everyone time and effort.

There was discussion regarding the popularity of the training courses and the confusion associated with the courses. It was also discussed how the courses were approved by the Commission.

A motion was made by Freeman and seconded by Dover to eliminate the requirement of the TRG-2 form.

Director Lemon indicated that there may be ongoing reporting requirements which may need some adjustment to streamline the process.

Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

After further discussion, a motion was made by Freeman and seconded by Alloway that Staff propose rule changes as deemed desirable to improve the regulations and functions of other education activities mandated by the Commission.

Commissioner Alloway offered an amendment that the staff work with the education advisory committee regarding these proposed changes. The amendment was accepted by the mover.

Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

2017-2018 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2017-2018 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the updated objectives. There was discussion regarding objectives two and six. Commissioner Dover indicated that the videos had received positive responses from the board and people viewing them.

No action was necessary on this report.

Approve Release of Request for Proposal for License Database

Director Lemon presented an exhibit of the proposed Request for Proposal for License Database. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon summarized the contents of the Request for Proposal for a license database. He indicated that the Legislature reapproved \$550,000 to be funded for this project and an approval for release of the Request for Proposal would be needed in order to begin the search for another suitable vendor.

After discussion, a motion was made by Alloway and seconded by Titus to approve the release of the Request for Proposal pending approval by the State's Purchasing Department.

Director Lemon offered an amendment to also authorize him to appoint an evaluation committee. The amendment was accepted by the mover and the second.

Motion carried with Alloway, Bourne, Dover, Freeman, Starman, and Titus voting aye and with Gale abstaining.

Nebraska Realtors Association Home Inspector Licensing Task Force Report (10:30 am)

Director Lemon explained that Jon Vacha, President of the American Society of Home Inspectors (ASHI) and Ms. Arla Meyer from Nebraska REALTORS® Association was present to discuss the Home Inspector Licensing Task Force report.

Mr. Vacha explained that ASHI was opposed to the licensing of home inspectors at this time. He felt that ASHI requirements and self-regulating was sufficient for the profession. He further

explained ASHI wants to be involved should regulation be required in the future.

There was discussion regarding ASHI's presence in the Omaha and Lincoln areas but not in greater Nebraska.

Mr. Vacha discussed the ASHI Certification process and the potential opportunities regarding education.

There was discussion regarding the examination and inspection process.

Ms. Meyer provided information regarding the background leading up to the development of the home inspector licensing task force and explained that Nebraska is one out of sixteen states that currently do not license home inspectors. She explained that when polled, seventy-six percent of Realtors wanted some oversight put in place for home inspectors. She indicated that while many options had been discussed regarding oversight, it was the task forces' recommendation that an annual registration fee for inspectors be paid to the Nebraska Real Estate Commission. She further explained that the ASHI board would potentially create a board to oversee any complaints and should the complaint be forwarded to the Commission, a liaison from ASHI be available to the Commission for questions during the hearing.

There was discussion regarding ASHI's licensing requirements, criminal background checks, errors and omissions insurance and warranties.

Commissioner Dover explained that ASHI is a designation that is obtained by an inspector, however, not everyone is, nor can they be required to obtain this designation.

Ms. Myer indicated that there is currently no basic standard for home inspections and while she understands the apprehension of ASHI, she also believes that a standard is in the best interest of the public.

There was discussion regarding the Commission delegating their responsibility to a trade association. The Commission's responsibility is to protect the public while a trade association is to protect their members and peers.

Mr. Vacha indicated that the courts currently oversee the home inspectors and did not feel that regulation was necessary. There was discussion regarding a registration process being implemented for home inspectors rather than licensing which would also help determine how many home inspectors are practicing in Nebraska.

Director Lemon indicated that there is a benefit to licensing home inspectors, however, the atmosphere in government may not be receptive to adding regulation. He indicated that the Commission would be able to oversee home inspectors, should legislation be passed. While the idea of using a trade association for oversight of the profession seemed plausible, he would need to conduct some research since it may result in legal issues.

There was discussion regarding the various ways other jurisdictions have dealt with home inspector licensing. It was also discussed who would be the instigator and how to move home inspection legislation forward. It was further discussed that proposed legislation be drafted based on other jurisdiction models and presented to the Commission to review.

It was the consensus of the Commission that the Nebraska Realtors Association Home

Inspector Licensing Task Force conduct additional research and provide recommendations to the Commission for review.

No action was necessary on this report.

Legislative Matters

LB 15 - Director Lemon reported that this bill did not advance.

LB 36 - No new information presented.

LB 127 – No new information presented.

LB 208 – No new information presented.

LB 299 – Director Lemon reported that this bill was passed on April 18. There was discussion regarding the changes made to the bill since it was first introduced. Director Lemon noted that the bill had not been signed by the Governor at this time and he has five days to approve or veto the bill.

LB 312 – No new information presented.

LB 426 – No new information presented.

LB 683 –Director Lemon reported that this bill was not prioritized and did not advance.

LB 695 – No new information presented.

LB 736 –Director Lemon reported that this bill did not advance out of committee.

LB 751 – No new information presented.

LB 1060 – No new information presented. Commissioner Freeman discussed how a bill similar to the proposed bill had caused problems in other jurisdictions.

No action was necessary with regard to these matters.

Information Matters

Errors and Omissions Loss Report – First Quarter 2018

Director Lemon presented the Errors and Omissions Loss Report – First Quarter 2018. A copy of said exhibit is attached to and made a part of these minutes.

There was discussion regarding the report and its content.

No action was necessary with regard to this matter.

ARELLO Mid-Year Meeting – New Orleans, LA - April 4-7, 2018– Report of Attendees

Director Lemon noted that Commissioners Bourne, Dover, and Freeman and 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.

Future Meeting Dates

May 24-25, 2018 – Staybridge Suites, Lincoln
June 21-22, 2018 – Staybridge Suites, Lincoln
August 16-17, 2018 – Staybridge Suites, Lincoln
September 20-21, 2018 – Staybridge Suites, Lincoln
October 18-19, 2018 – Country Inn & Suites, Lincoln
November 15-16, 2018 – Staybridge Suites, Lincoln

Recesses and Adjournment

Commissioner Bourne joined the meeting at 9:02 a.m.

Commissioner Starman joined the meeting at 9:03 a.m.

At 10:12 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:29 a.m.

At 11:47 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:56 a.m.

Commissioner Gale was briefly excused from the meeting at 12:34 p.m., and rejoined the meeting at 12:37 p.m.

Commissioner Starman was briefly excused from the meeting at 12:53 p.m., and rejoined the meeting at 12:54 p.m.

At 1:06 p.m., there being no further business to come before the Commission, a motion was made by Dover and seconded by Starman that the meeting adjourn. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the April 19, 2018, meeting of the Nebraska Real Estate Commission were available for inspection on **May 4, 2018**, 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 REALTORS⁷ Association, Lincoln

James McCord, Nemaha Valley Board of Realtors, Nebraska City

Bryan Fraser, CBSHOME, Omaha

Arla Meyer, Nebraska Realty, Lincoln

Greg Wayman, Foundation 2 Rooftops, Omaha

