

NEBRASKA REAL ESTATE COMMISSION

October 18, 2018

Country Inn & Suites

Lighthouse Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on October 18, 2018, in the Lighthouse Room of the Country Inn & Suites, located at 5353 N 27th Street 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. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, was present for the Knopp 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 was available on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located on the south wall 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 6a and 11b 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 Bourne to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Minutes of September 20, 2018

The minutes of the Commission meeting held on September 20, 2018, were considered.

After review, a motion was made by Starman and seconded by Dover 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. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for September

Director Lemon presented the Receipts and Expenditures Report for September. 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 September 30, 2018, was \$1,338,117.37, which compared to a cash fund balance of \$1,435,963.57 on September 30, 2017.

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

Specialized Registrations

Time-Share Registration – Westgate Cocoa Beach Resort

Director Lemon presented a specialized registration report which included the time-share registration for Westgate Cocoa Beach Resort. A copy of said report is attached to and made a part of these minutes.

After discussion, a motion was made by Alloway and seconded by Dover to approve the report 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 Titus and seconded by Bourne 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 - September

Deputy Director Roubal presented for ratification the September Examination 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 September 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.

PSI Third Quarter School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of July 1, 2018 through September 30, 2018, copies of which are attached to and made a part of these minutes.

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

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Course Approval

Deputy Director Roubal presented for ratification the Pre-License Education 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 Provider/Activity Approval

Deputy Director Roubal presented for ratification the Continuing Education Provider/Activity 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.

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

Education Advisory Group Report – Third Quarter

Deputy Director Roubal reported that the quarterly meeting of the Education Advisory Group was held on September 5, 2018. She indicated that the Education Steering Committee discussed possible topics and uniformity for the proposed 6 prelicense education hours and 12 hours post licensing education. She reported that they had also discussed professional standards and perhaps using Character Counts program, which are professionalism courses similar to the NAR standards. She also reported that the examination would be migrated from AMP to PSI in the near future, which means that she will be informing the providers of the changes in organization of the questions and testing categories.

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.

There was discussion regarding the new layout of Exhibit 10 and it was determined that the new format met the needs of the Commission and should continue to be used.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

There was discussion regarding the investigative matters reports. It was the consensus of the Commission that the investigative reports be provided in the new layout as double-sided blue sheets, with the addition of the inserting relevant comments in the chronological order of presentation of facts in the reports as well as the identification of the party who made the comments..

Item A Complaint 2018-001- Matt Steinhausen v. Christopher P. Harrison

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 Titus that the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Item B Complaint 2018-006 – Douglas Crawford v, Dale Alan Hahn & Michelle Marie Hahn

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 the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2017-016,
Mark C. & Mary B. Gallagher v. Rebecca L. Marble**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2017-016, Mark C. & Mary B. Gallagher v. Rebecca L. Marble. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Dover to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye

**Complaint 2017-027,
Commission v. Ronald Lynn Nitzel**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2017-027, Commission v. Ronald Lynn Nitzel. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Alloway and seconded by Starman to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Rule Hearings

Rule Hearing on Title 299, Chapters 1 and 7 – Rules Relating to Education

At 9:40 a.m. on October 18, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapters 1 and 7, of the Commission's Rules and Regulations.

Director Lemon presented four 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 fiscal impact statement 3) a copy of the Lincoln Journal-Star and Omaha Daily Record proofs of publication of the meeting notice; and 4) a copy of the proposed amendments to Title 299, Chapters 1 and 7, in legislative style. Exhibits are attached to and made a part of these minutes.

Director Lemon reviewed the proposed amendments set out in Title 299, Chapters 1 and 7.

Director Lemon noted that he had not received any written comments or testimony which had been solicited in both the public notice to the hearing and on the Commission's website.

Chairperson Gale asked if any member of the public wished to speak regarding the proposed amendments.

Paul Vojchegoske with Randall School of Real Estate indicated that he was opposed to the changes as proposed in Title 299, Chapter 1, Subsection 004.02 second paragraph, section number 3 which states "Obtaining from or providing to applicants actual real estate examination questions" And that such a rule would interfere with current processes used for the education and preparation of student applicants for the license examination.

Commissioner Bourne indicated that she did not feel that a government should dictate how to teach.

Chairperson Gale indicated that the proposed change was more specific that Mr. Vojchegoske suggested. He indicated that the change refers to actual questions suggesting that the providers may not obtain questions and answers from students who have memorized them from the examination.

Mr. Vojchegoske indicated that test questions are usually not remembered by the students and only some answers are actually remembered. He indicated that the questions are always changing and evolving and therefore he is not sure what is on the test. He explained that there are others who contact students to see what questions they remember.

Chairperson Gale indicated that this proposed rule change is not to hinder general examination content but rather to preserve the confidentiality of the examination questions.

Shannon Harner with HomeServices of Nebraska representing Larabee School of Real Estate indicated that she also opposed the changes as set forth in Title 299, Chapter 1, Subsection 004.02 second paragraph, sections 1, 2 and 3. She indicated that section 2 relating to offering classes within the same building of any active brokerage firm is currently being utilized since there is not a lot of profit for education course. She discussed potential rationale for making the change prohibiting co-space with a brokerage firm, recruiting and test questions but felt that wording may just need to be tweaked. She further explained that the Department of Education inspects on a periodic basis and approves the learning environment for pre-license education courses and ADA issues are also checked. Commissioner Freeman asked Ms. Harner if Larabee School of Real Estate also debriefed students of questions or if they utilized the same service with out of state companies calling the students regarding test questions. Ms. Harner indicated that she was not aware of any test questions being obtained by the school or an out of state company.

Mary Jo Mentzer with NP Dodge, indicated that she felt that everyone had brought up good points relating to the proposed rule changes. She wanted to add that the Department of Education inspects the learning environment for pre-license education but not for continuing education. She indicated that the Department of Education provides a list of items needed before the inspection, which includes course materials, the length of course, and the course instructor. She felt that the Commission should work with the Department of Education regarding learning environment concerns. She also noted that she is aware that her

competitors have actual questions from the test. She further noted that AMP explained the examination to instructors during an Instructor Development Workshop hosted by the Commission and the Commission and Department of Education have provided specific tools regarding the examination to the providers and instructors. She indicated that there is some conflicts between the standards of education and the Commission and feels that everyone does not understand the requirements. She also felt that the post license education requirement will influence the recruiting.

Deputy Director Roubal indicated the Commission coordinates with the Department of Education on the regulation of pre-license education and understands what is required for the process and the visit regarding the pre-license education environment. She indicated that regarding the third section as it relates to exact examination questions, Applied Measurement Professionals, the Commissions contracted real estate examination provider, will prosecute those who are providing the exact examination questions. She felt that while a survey of examination questions is problematic, that she is more concerned with the exact questions being provided rather than just a specific topic that a student is trying to understand.

Commissioner Titus asked for clarification regarding how the providers obtain the questions and answers and if a student asks a question regarding the test if they would be breaking this rule.

Deputy Director Roubal indicated that she receives many telephone calls from applicants regarding test questions and typically what they remember is incorrect, however, the exact question is being provided in other circumstances which is not necessary. She feels that the students need to know the content of the questions not the exact questions and answers. Commissioner Freeman indicated that he did not feel that a student could not break this rule, but rather the rules are written for the providers. Commissioner Titus felt that the wording as shown in the proposed rule should be reworded to eliminate the solicitation of the test questions.

A motion was made by Freeman that in Title 299, Chapter 1, Subsection 004.02 second paragraph, third subparagraph the word obtain be replaced with solicit to address the innocent questions rather than the surveying the students. The motion failed for lack of a second.

Commissioner Alloway indicated that testimony was received regarding the proposed rule changes and did not feel that there was an adverse effect on the public that would be prevented by the new regulations on pre-license education. He felt that the Commission should not tell private businesses where they can locate their school located. He also indicated that stealing test questions is wrong but that the schools do not know what is on the test, they rely on student's information and did not see the harm in surveying students so they know where the strengths and weaknesses are in the subjects.

Chairperson Gale indicated that the Commission had previously approved of the drafted language and felt that an attempt to amend the proposed language may jeopardize any advancement in the rule and regulation. He further noted that the proposed rule changes are a step in the direction to preserve equality and fairness in how real estate schools perform, and the rules provide generality and require good judgement.

There was discussion regarding the rules, who they pertain to and how it would affect schools and brokers.

A motion was made by Titus and seconded by Freeman that the proposed rules be approved as presented. Motion failed with Freeman, Titus and Gale voting aye, and with Alloway, Bourne, Dover, and Starman voting nay.

A motion was made by Titus and seconded by Dover that the Commission adopt the proposed rule changes in Title 299, Chapters 1 and 7 with an amendment to delete language as stated in Title 299, Chapter 1, Subsection 004.02 second paragraph, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Alloway, Bourne, Dover, Titus and Starman voting aye, and with Freeman and Gale voting nay. Chairperson Gale declared the rule hearing concluded at **10:36 a.m.**

Disciplinary Hearings

October 18, 10:30 a.m. - Show-Cause Hearing on SC2017-026, Commission vs. John Robert Knopp

A Hearing was held on October 18 at 10:50 a.m., in the matter of SC2017-026. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent John Robert Knopp was present without Counsel.

After Opening Statements, Counsel Prochaska offered fourteen Exhibits.

Counsel Prochaska called Duran Cell and John Robert Knopp as witnesses.

Mr. Knopp offered one Exhibit. Mr. Knopp called Jack Gregg 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 Freeman and seconded by Alloway in Complaint SC2017-026, that John Robert Knopp violated Neb. Rev. Stat. § 81-885.12(2) and 81-885.24(29). Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

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 Titus and seconded by Freeman in Complaint SC2017-026, that John Robert Knopp should receive a five year suspension all stayed and served on probation; report any new charge other than minor traffic violations to the Commission within five days, provide the Commission a criminal background report annually by February each year, notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within five days; and attend weekly AA meetings or similar meeting for substance addiction, and provide proof of attended for such meetings quarterly.

There was discussion regarding a fine also being assessed to the penalty.

A motion to amend the original motion was made by Bourne and seconded by Starman that Mr. Knopp pay a thousand dollar fine in addition to the penalty included in the pending motion. Motion failed with Bourne and Starman voting aye, and with Alloway, Dover, Freeman, Titus and Gale voting nay.

The original motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

With the consent of the Respondents, Chairperson Gale directed Counsel Prochaska to prepare the Order.

Chairperson Gale notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent 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 12:10 p.m.

Informal Special Appearances

Cassandra Kim Wright, Nonresident Salesperson Applicant

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

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Wright explained the situations regarding her criminal history.

After discussion, a motion was made by Alloway and seconded by Starman to allow Ms. Wright to be allowed to obtain a nonresident salesperson license after making proper application and to have a license issued. Ms. Wright 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. Wright 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; Ms. Wright must attend A.A. or similar support group and deliver proof to the Commission on a quarterly basis for a period of three years. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Consider Commission Forms and Disclosures for Possible Elimination or Revision

Director Lemon presented a list of the current forms as published by the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that this discussion regarding Commission forms and disclosures was requested to be discussed at a previous meeting. He reviewed the list of the forms

promulgated by the Commission.

Chairperson Gale indicated that Commission Staff and Counsel should identify areas needing change and bring finished product back for the Commissions review.

There was discussion regarding the purpose of the Commission providing forms to licensees was for the standardization of forms and for those who do not belong to an association which may provide these forms. There was also discussion regarding updating the forms for future use.

A motion was made by Alloway and seconded by Dover to eliminate the sample listing agreement from the Commission's sample forms but provide instead the necessary elements of a listing agreement as required by license law. In addition, to update the rest of the forms listed as needed and to seek guidance from legal counsel if necessary.

There was discussion regarding the listing agreement and that the necessary elements being optional or required. There was also discussion regarding the need for the listing agreement form to be provided as a sample only and to seek legal advice.

Chairperson Gale suggested an amendment to include the listing contract elements and those matters that are not required be shown as optional. The amendment was not accepted by the mover and the second.

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

A motion was made by Freeman and seconded by Titus that the five forms as promulgated by the Commission be reviewed and updated as needed by Staff and legal counsel. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

2018-2019 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the proposed 2018-2019 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 progress of the objectives.

No action was necessary on this report.

Review and Approval of Travel to ARELLO Leadership Conference

Director Lemon presented an exhibit regarding the estimated costs of staff participating in the leadership conference in January 2019. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Alloway and seconded by Starman to approve the reimbursement of expenditures for those who are qualified to attend the meeting set forth in the exhibit. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Pre License Education Draft Legislation

Director Lemon presented an exhibit of the proposed legislative changes to address the recommendation regarding increased pre and post license education requirements. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon summarized the contents of the proposed legislative changes.

There was discussion regarding the experience necessary to become designated brokers. There was also discussion regarding the development of the twelve-hour post license course curriculum. There was also clarification provided that the completion of the six-hour course be required prior to the applicant taking the examination.

It was the consensus of the Commission that Director Lemon seek input from the REALTORS® Association regarding these changes and have the language provided to the legislative bill drafters so that the Commission can review the proposed changes at a future meeting.

Consider Change in Publication Notice for Meetings

Director Lemon presented an exhibit of the proposed change to publication notices for the Commission Meetings. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon summarized the contents of the proposed changes to the publications for meeting notices.

After discussion, a motion was made by Titus and seconded by Bourne to change notices of Commission Meeting be posted on the State's website rather than in newspapers of general circulation. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Information Matters

ARELLO Annual Conference - September 26-30, 2018 - St. Louis, Missouri – Report of Attendees

Director Lemon noted that Commissioner Starman and Deputy Director Rut attended the ARELLO Annual Conference.

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

No action was necessary on this report.

Errors and Omissions Loss Report – Third Quarter 2018

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

There was discussion regarding the report and it was requested that the Commission be provided information regarding the claims and if the amount of filed claim are increasing.

No action was necessary with regard to this matter.

Future Meeting Dates

November 15-16, 2018 – Staybridge Suites, Lincoln

January 24-25, 2018 – Staybridge Suites, Lincoln

February 21-22, 2018 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:36 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:50 a.m.

At 12:10 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:36 p.m.

At 2:17 p.m., there being no further business to come before the Commission, a motion was made by Gale and seconded by Titus 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 October 18, 2018, meeting of the Nebraska Real Estate Commission were available for inspection on October 30, 2018, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Jim McCord, Nemaha Valley Board of Realtors, Nebraska City

Jack Greg, Sellstate Performance Realty, Lincoln

Leighun Brabec, Home Real Estate, Lincoln

A J Owen, NP Dodge, Omaha

Dani Jennings, Nebraska Realtors Association, Lincoln

Jeff Hebb, Nebraska REALTORS® Association, Lincoln

Mari Jo Mentzer, NP Dodge, Lincoln

Arla Meyer, Nebraska Realty, Lincoln

Shannon Harner, HomeServices of Nebraska, Lincoln

Paul Vojchegoske, Randall School of Real Estate, Omaha

Kim Zwiener, Sellstate Performance, Lincoln