

NEBRASKA REAL ESTATE COMMISSION

April 18, 2019

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:03 a.m. on April 18, 2019, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Titus, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Duran Cell, and Deputy Director for Licensing Monica Rut.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice thereof relating to this meeting, which is attached to and made a part of these minutes. Chairperson Evnen 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 Evnen 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 Evnen asked that guests sign the guest list.

Director Lemon noted that agenda item 9g 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 Gehrki to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Minutes of March 21, 2019

The minutes of the Commission meeting held on March 21, 2019, 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, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Public Comment

Chairperson Evnen 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 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, 2019, was \$1,649,775.09, which compared to a cash fund balance of \$1,842,172.11 on March 31, 2018.

After discussion, a motion was made by Gehrki and seconded by Dover to file the March Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Specialized Registrations

Time-Share Registrations - Amendment for ClubWyndham Access Vacation Ownership Plan

Director Lemon presented a specialized registrations report which included the registration of an amendment to the time-share registration for ClubWyndham Access Vacation Ownership Plan. A copy of said report is attached to and made a part of these minutes.

A motion was made by Alloway and seconded by Starman to approve the amendment to the registration as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

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 Starman and seconded by Bourne to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

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.

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

Fourth Quarter PSI School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of January 1, 2019 through March 31, 2019, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal explained the reports relating to the national and state tests and the individual schools.

No action was necessary on this report.

Real Estate Education Matters

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.

Commission-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.

Commission-Approved Training Activity Significant Change

Deputy Director Roubal presented a Commission-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 Alloway and seconded by Starman to ratify the six reports. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Minutes from Education Advisory Group – Second Quarter

Deputy Director Roubal presented the Minutes from the Education Advisory Group-Second Quarter, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained that the second quarter Education Advisory Group meeting was held on Tuesday at the 2019 Nebraska REALTORS® Convention. She highlighted a few topics discussed during the meeting such as the new test conducted by PSI will become effective May 1, 2019 and the switch from BAT to CAT was making both the providers and the brokers happy by reducing paperwork and approvals involved. She also noted that there was discussion regarding the new education requirements, which will go into effect on July 1, 2020 due to the passing of LB384. She explained that there will be continued discussion regarding this issue and more than quarterly meetings may need to be held.

There was discussion regarding different licenses such as commercial versus residential.

In conclusion, Deputy Director Roubal indicated that she was happy to report that they had participation from one of the internet schools in the Education Advisory Group and that would continue to be done via telephone at future meetings.

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.

Commissioner Bourne complimented Deputy Director Cell regarding the time line in which complaints are being handled. She explained that during the ARELLO meeting she had heard some jurisdictions had a longer time line and therefore she felt Nebraska was doing well.

There was discussion regarding advertising complaints. There was discussion regarding the font size, logo size and the entire space or footprint including both the name and logo. It was discussed that more information and examples needed to be provided to the licensees to educate them regarding advertising requirements. It was also discussed that licensees may ask the Commission to review any advertising before printing, when questionable.

Director Lemon indicated that he would provide examples, put an article in the Commission Comment newsletter and produce a License Law Minute video on the subject of advertising to better educate the licensees.

No action was necessary on this report.

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

Item A Complaint 2018-030 - Lonnie Dale Davis vs. Tiffany Ann Reinders

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 Alloway and seconded by Dover that the complaint be amended and set for hearing on 81-885.24(29) and 76-2419(3). Motion carried with Alloway, Dover, Gehrki, Starman, and Evnen voting aye, with Bourne voting nay, and with Titus not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

**Complaint 2018-037,
Tyson Patrick Chohon**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2018-037, Commission vs. Tyson Patrick Chohon. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Starman to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, and with Titus not participating or voting, being absent and excused.

There was discussion regarding licensee convictions and the underlying circumstances regarding those convictions. Director Lemon indicated that underlying circumstance would be taken into account when reviewing future convictions.

Disciplinary Hearings

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

Informal Special Appearances

Alison Ilene Warner, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Ms. Warner explained the situations regarding her criminal history.

After discussion, a motion was made by Alloway and seconded by Gehrki to allow Ms. Warner to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Warner 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 two years. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Amy Leigh Fries Chatelain, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Fries Chatelain's special appearance; a letter of explanation from Ms. Fries Chatelain; a Completion Certificate and Information regarding the Probe Program completed by Ms. Fries Chatelain; character reference letters for Ms. Fries Chatelain; an Order on Agreed Settlement and the Agreed Settlement between the State of Nebraska Department of Health and Human Services and Ms. Chatelain; a Petition for Disciplinary Action issued by the Nebraska Department of Health and Human Services Division of Public Health; Ms. Fries Chatelain's salesperson application form; trial court cases from the State of Nebraska on Ms. Fries Chatelain's cases; and Ms. Fries Chatelain's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Ms. Fries Chatelain was present.

Chairperson Evnen reviewed the procedure for informal special appearances.

Ms. Fries Chatelain explained the situation regarding the revocation of professional licensure from the Nebraska Board of Psychology.

After discussion, a motion was made by Bourne and seconded by Dover to allow Ms. Fries Chatelain to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Fries Chatelain 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. Fries Chatelain 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, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Consider Changes to Sample Listing Agreement (10:30 am)

Director Lemon presented a sample Listing Agreement with proposed changes. A copy of said exhibit is attached to and made a part of these minutes. Special Assistant Attorney General, Chris Heinrich from the O'Neill Heinrich Damkroger Bergmeyer & Shultz law firm was present to discuss this matter.

Mr. Heinrich reviewed the proposed revisions as indicated on the exhibit with the Commission. He indicated that rather than recreate the document, it was decided to keep changes to a minimum and revise the document instead.

There was discussion regarding the proposed changes and additional changes were discussed.

Chairperson Evnen proposed changes to the introductory paragraph. He explained that in his opinion, the second sentence should be separated into two sentences and should read "This document contains some provisions that may or may not apply to your particular transaction. This agreement may be modified to a non-exclusive listing agreement..."

Commissioner Starman suggested that in the third paragraph, the wording could be changed from pamphlet to "form" when relating to the broker disclosure. Commissioner Alloway suggested striking the word pamphlet and not adding the word form.

Director Lemon suggested a change in number 2, that "Listing Contract" be changed to "Agreement" to be consistent with the reference change to agreement made throughout the document.

Commissioner Dover indicated that in number 9, there is a reference to "seller company", which should read "seller".

Commissioner Bourne suggested changing the language in number 10 from compensation to include an administration fee to be inserted. After discussion, it was decided that it would be best to lengthen the line to allow sufficient space to specify whatever form of compensation is contemplated rather than adding or replacing language.

Mr. Heinrich further explained the change regarding number 16. It was discussed that a reference should be made regarding the statute 76-2417 (f).

Commissioner Alloway indicated that after review of numbers 18 through 21, a new paragraph should be added regarding new construction and verifying that area codes are met. After discussion, Chairperson Evnen reviewed proposed language for a new paragraph to state the following: Seller represents that Federal, State and Local building laws and codes have been met at the time the certificate of occupancy is issued.

There was also discussion regarding the dual agent addendum on the last page of the exhibit and that the contents would be incorporated into the agreement.

Commissioner Bourne discussed the new number 21 listed on the exhibit. She felt that the reference to for sale signs is outdated. After discussion it was decided that number 21 have the heading of "Advertising, Lockbox", and that the language should say that the Seller gives permission to Broker for all advertising on the property except as follows: (and a line is provided for what advertising the client does not want) and to use a "Lock Box".

Commissioner Dover asked that a new number be added for additional comments. After discussion, it was decided that the new number should be called "Additional Provisions" and two lines provided for comments.

Commissioner Bourne indicated that under the seller signature section, she would like to see an email address line entered.

Chairperson Evnen reread the changes as discussed and agreed upon.

A motion was made by Alloway and seconded by Dover to adopt the revised Sample Listing Agreement as modified. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

Report on Use of Correspondence Classes for Real Estate Education

Director Lemon and Deputy Director for Education Roubal presented a list of historical information regarding correspondence classes as well as information to get correspondence

courses approved through ARELLO. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that at the last meeting he had been asked to explore options to allow for continuing education in distance format to be approved by the Commission. He further explained the exhibit to provide a clear history and timeline regarding the approval of correspondence classes going back to 2012. He explained that ARELLO began approving the courses again at the end of 2017 and provided the Commission with the guidelines for approval.

Director Lemon indicated that the law currently states that the Commission can approve distance courses approved by ARELLO, therefore the Commission can approve correspondence continuing education. He also indicated that the Commission should publicize this option so that providers are aware that it is available.

Commissioner Alloway indicated that the cost factor involved with certification of courses through ARELLO was difficult for local providers who are competing with national companies and working on slim margins due to the relatively small licensee base in Nebraska .

There was discussion regarding the fees charged by ARELLO. Deputy Director Roubal indicated that what ARELLO offers for solidifying a delivery system is far more than she can provide. She explained the CDEI certification and instructor designation for distance education, which she felt was invaluable.

Director Lemon mentioned that there is significant work and expertise involved in distance education and the ARELLO fees reflect the resources needed, The Commission does not provide distance education delivery method review, and would need to additional resources to do so.

Chairperson Evnen indicated that going through ARELLO for the certification process provides equality for all providers versus have different processes for internet versus pen and paper correspondence, and it saves the Commission money by not having to hire a full-time employee to conduct these reviews. He felt that it was important that the Commission promote and make this delivery format option better known for providers.

No action was necessary on this discussion.

Amendment to Examination Contract to Extend Contract Through June 30, 2021 and Consideration of Examination Fee

Director Lemon presented an exhibit regarding a proposed amendment to the examination contract, a copy of which is attached to and made a part of these minutes.

Director Lemon explained that the amendment would extend the licensing examination contract with Applied Measurement Professionals (AMP) now PSI Services, LLC (PSI) beyond the current expiration date of July 1, 2019, through June 30, 2021. He explained that the original contract had been awarded in 2015 to administer the examination with three opportunities to extend the contract for two-years. He further indicated that he felt the performance of the examination company had been satisfactory and recommended that the Commission extend the contract through June 30, 2021.

After discussion, a motion was made by Alloway and seconded by Dover to approve the contract renewal as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, with Titus not participating or voting, being absent and excused.

2018-2019 Objectives – Quarterly Report

Director Lemon presented an exhibit regarding the 2018-2019 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 the current status for the objectives listed.

There was discussion regarding best practices regarding investigations and provided Deputy Director Cell ideas on how the investigative reports and process may be improved.

There was discussion regarding changing the Consumer Guide to make it easier for consumers to read would be helpful and provide more impact. Commissioner Dover suggested a condensed version might have more impact, and be more likely to be read by consumers.

There was discussion regarding Zillow such as advertising and unlicensed assistant issues. Director Lemon indicated that he would continue discussions with Zillow once the subcommittee finalizes the use of unlicensed assistants policy information that will be presented at a future meeting.

No action was necessary on this discussion.

Legislative Matters

LB 12 - No new information presented.

LB 55 - No new information presented.

LB 130 –Director Lemon reported that the bill had been placed on Select File.

LB 258 – No new information presented.

LB 384 – No new information presented.

LB 454 –No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – Salt Lake City, UT – April 10-13, 2019 – Report of Attendees

Director Lemon noted that Commissioner Bourne 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.

ARELLO Annual Meeting – Denver, CO – September 18-21, 2019

Director Lemon encouraged the Commissioners who may be interested to attend as there will be very good speakers and is located at a neighboring state.

No action was necessary on this report.

Errors and Omissions Loss Report – First Quarter 2019

Director Lemon presented the Errors and Omissions Loss Report – First Quarter 2019. A copy of said exhibit is attached to and made a part of these minutes.

There was discussion regarding the report and it was discussed why the Commission does not inquire as to the parties listed on the report. Director Lemon indicated that in the past the Commission did not want to discourage submissions so that the consumers were not harmed and they could receive compensation, if desired.

After further discussion, Director Lemon indicated that he could ask the errors and omissions insurance provider for the information with the names redacted from the report for educational purposes. Director Lemon also noted that he would inquire as to the top reasons why claims were filed.

No action was necessary with regard to this matter.

Future Meeting Dates

Director Lemon noted that the June Commission Meeting had been changed from June 20-21, 2019 to June 27-28, 2019.

May 23-24, 2019 – Staybridge Suites, Lincoln

June 27-28, 2019 – Staybridge Suites, Lincoln

August 15, 2019 – Staybridge Suites, Lincoln

September 26-27, 2019 – Staybridge Suites, Lincoln

October 17-18, 2019 – Staybridge Suites, Lincoln

November 21-22, 2019 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:35 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:40 a.m.

At 12:48 p.m., there being no further business to come before the Commission, a motion was made by Starman and seconded by Bourne that the meeting adjourn. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Evnen voting aye, and with 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 April 18, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on April 19, 2019, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Matt Hardesty, Woods Bros Realty, Lincoln
Jim McCord, Nemaha Valley Board, Nebraska City
Debbie Mitchell, Coldwell Banker REA, Omaha
Mari Jo Mentzer, NP Dodge Real Estate, Omaha
Paul Vojchehoske, Randall School, Omaha

