

NEBRASKA REAL ESTATE COMMISSION

March 19, 2009

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:04 a.m. on March 19, 2009, 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 Bohrer and Rouch, who were absent and excused. Also present were Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present for personnel matters.

Notice of Meeting (Adopt Agenda)

Deputy Director Hoffman 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, in writing, 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 to the public 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.

Deputy Director Hoffman noted that agenda items 5a – Specialized Registration and 8d – Continuing Education Expiration Report had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Grady and seconded by Leisey to adopt the final agenda as presented. Motion carried with Dover, Grady, Griess, Leisey, and Gale voting aye, with Bohrer and Rouch not participating or voting, being absent and excused.

Minutes of February 19, 2009

The minutes of the Commission meeting held on February 19, 2009, were considered.

After review, a motion was made by Griess and seconded by Leisey to approve the minutes as presented. Motion carried with Dover, Grady, Griess, Leisey, and Gale voting aye, with Bohrer and Rouch not participating or voting, being absent and excused.

Receipts and Expenditures Report for February

Deputy Director Hoffman presented the Receipts and Expenditures Report for February. A copy of said report is attached to and made a part of these minutes. Deputy Director Hoffman noted that an explanation page was included on the report.

The cash fund balance as of February 28, 2009, was \$800,255.68, which compared to a cash fund balance of \$729,858.89 on February 29, 2008.

After discussion, a motion was made by Leisey and seconded by Dover to file the February Receipts and Expenditures Report for audit. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Specialized Registrations

Time-Share Registrations - Amendment for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site)

Deputy Director Hoffman presented a specialized registrations report which included the registration of amendment to the time-share registration for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site). A copy of said report is attached to and made a part of these minutes.

A motion was made by Leisey and seconded by Grady to approve the amendment to the registration as presented. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Hoffman 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 Grady and seconded by Leisey to ratify issuance of the licenses as set forth in the report. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Wyoming's Termination of Reciprocal Agreement

Deputy Director Hoffman presented a letter from the Wyoming Real Estate Commission announcing the termination of its reciprocal agreement with Nebraska, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman indicated that effective May 1, 2009, all Nebraska licensees who had a reciprocal license with Wyoming would convert to non-resident Wyoming licensees and no longer be governed by the terms of the Reciprocal Agreement. She noted that she had contacted the Wyoming Director and inquired into the reasoning behind the rescission of the Agreement. He had indicated that approximately twenty-percent of the Wyoming licensees were licensed through reciprocal agreement, and while there had not been excessive problems noted with these licensees, they felt that, overall, it was bad practice to conduct activities without schooling applicants on Wyoming laws.

Chairperson Gale asked if the termination of reciprocal Agreements had applied to all jurisdictions or specifically Nebraska. Deputy Director Hoffman indicated that the termination included all jurisdictions with which Wyoming had an Agreement and was not jurisdiction specific. Commissioner Grady asked how the termination of the Agreement would affect the Wyoming licensees seeking a Nebraska license. Deputy Director Hoffman explained that there would be

no affect on those seeking licensure from Wyoming, it would only affect the Wyoming licensees after license issuance by requiring them to provide course completion certificates to prove Nebraska's twelve hour continuing education requirement had been met. She also indicated that an explanation letter had been prepared for those licensees affected and would be sent immediately. Commissioner Dover asked why the termination of the Agreement would affect their continuing education requirement. Deputy Director Hoffman indicated that the wording in the reciprocal Agreement allowed for the licensees to meet the continuing education requirement in their resident jurisdiction only, and since there is no longer an Agreement, that assumption of continuing education can no longer be made.

No action was necessary on this report.

Examination Report – February

Deputy Director Hoffman presented for ratification the February Examination Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Leisey and seconded by Griess to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused

Real Estate Education Matters

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

Chairperson Gale indicated that while speaking to a group of licensees, it was suggested that a course be made available on real estate contracts and forms. Deputy Director Hoffman indicated that there were good courses on contracts already available and she would contact providers and encourage them to offer these courses more frequently. She also noted that if the Commission gave the course an "R" designation it would provide additional demand for the course. Chairperson Gale indicated that licensees were not using one set of documents, they were using forms purchased through various sources and were, therefore, inconsistent. Commissioner Leisey agreed that inconsistency in the form usage had been a concern, especially when licensees personalize them. Chairperson Gale indicated that he did not feel the Commission should get involved in the marketing of courses, rather it could be suggested to providers that this subject matter would be valuable for licensees around the state. He also noted that in order to have further discussion this should be made an agenda item.

It was the consensus of the Commission to put the discussion of a real estate contract and form course on the agenda for a Commission meeting.

Continuing Education Annual Report

Deputy Director Hoffman presented the Continuing Education Annual Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Renewal Report

Deputy Director Hoffman presented the Continuing Education Renewal Report, a copy of which is attached to and made a part of these minutes. (Note: The Exhibit for this Agenda Item had changed after it had been mailed to the Commissioners. CLE International requested that the 2007 Nebraska Water Law course be allowed to expire. The Exhibit was corrected for attachment to these minutes.)

Deputy Director Hoffman explained that on pages one through three of the Exhibit, the courses had an expiration date in 2009 and had been renewed for another three years. Deputy Director Hoffman also explained that on page four of the Exhibit were distance education courses, which were recommended for renewal but had to receive ARELLO certification before officially being renewed. Upon receiving ARELLO certification during 2009 the courses, if approved, would be renewed.

Continuing Education Expirations Renewal Report

Deputy Director Hoffman explained that on pages one and two of the Exhibit, were courses for which providers had requested expiration. On page three of the Exhibit were expirations which would expire since the provider had not responded to renewal requests. (Note: The Exhibit for this Agenda Item had changed after it had been mailed to the Commissioners. CLE International requested that the 2007 Nebraska Water Law course be allowed to expire. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Leisey and seconded by Grady to ratify the four reports. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Instructor Development Workshop

Deputy Director Hoffman indicated that the workshop had been scheduled for May 28, 2009. The workshop would be held in Omaha at the Randall School of Real Estate location. Deputy Director Hoffman noted Randall School's generosity in donating their facility. She noted that Pat Johnson would be conducting a six hour program which would be specific to Nebraska.

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose 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 2008-011 – Steve and Kathleen Worm vs. Janet A. Palmtag

Deputy Director Mayrose 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 Dover and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Item B Complaint 2008-018

Deputy Director Mayrose 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 Grady and seconded by Griess that the complaint be set for hearing per Staff recommendation.

Commissioner Leisey offered a friendly amendment to set the hearing for the alleged violation of Neb. Rev. Stat. § 76-2422(6) only. The friendly amendment was not accepted by the mover or second.

Motion carried with Bohrer, Dover, Grady and Griess voting aye, with Leisey, Rouch and Gale voting nay.

Item C Complaint 2008-021

Deputy Director Mayrose 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 Leisey and seconded by Grady that the complaint be dismissed against Respondent 3. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

After further discussion, a motion was made by Leisey and seconded by Dover that this complaint be held in abeyance and a new complaint be filed against Respondents 1 and 2 per Staff recommendation. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Item D Complaint 2008-023

Deputy Director Mayrose 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 Leisey and seconded by Dover that the complaint be set for hearing per Staff recommendation against the listing agent for the alleged violations.

A friendly amendment was made by the mover to set the hearing against the listing agent for violating Neb. Rev. Stat. §81-885.24 (22) only. It was accepted by the second.

The motion as amended carried with Bohrer, Dover, Grady, Leisey, Rouch and Gale voting aye, with Griess voting nay.

After further discussion, a motion was made by Dover and seconded by Griess that the buyer's agent and seller's agent failed to represent the client's best interest and that a complaint be filed and set against the seller's agent for an alleged violation of Neb. Rev.

Stat. §76-2417(1)(b) and §76-2417(1)(c), and against the buyer's agent for an alleged violation of Neb. Rev. Stat. §76-2418(1)(b) and §76-2418(1)(c). Motion carried with Bohrer, Dover, Rouch and Gale voting aye, with Grady and Leisey voting nay.

Item E Complaint 2008-024

Deputy Director Mayrose 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 Dover and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

It was the consensus of the Commission to have Deputy Director Hoffman run an article in the Commission Comment Newsletter regarding agency relationships with builders and conducting dual agency.

After further discussion, a motion was made by Leisey and seconded by Bohrer that a letter of admonishment be sent to the Respondent. Motion failed with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting nay.

After further discussion, a motion was made by Grady and seconded by Bohrer that the Commission file a complaint on its own motion and set it for hearing per Staff recommendation. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Item F Complaint 2008-025

Deputy Director Mayrose 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 Grady and seconded by Leisey that the complaint be set for hearing. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Item G Complaint 2009-006

Deputy Director Mayrose 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 Grady and seconded by Griess that the complaint be set for hearing. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Presentation of Stipulation and Consent Orders

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

Hearings

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

Informal Special Appearances

Randy James Wells, Salesperson Applicant

Deputy Director Hoffman presented exhibits which included: correspondence regarding Mr. Wells' special appearance; a summary of Mr. Wells' situation; a copy of Mr. Wells' motor vehicle record; reports from the Nebraska Judicial Branch regarding Mr. Wells' court cases; Mr. Wells' criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Wells was present.

Chairperson Gale reviewed the procedure for informal special appearances.

After discussion, a motion was made by Grady and seconded by Leisey that Mr. Wells not be allowed to sit for the salesperson examination at this time. Motion carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Molly Ruth McClure, Salesperson Applicant

Deputy Director Hoffman presented exhibits which included: correspondence regarding Ms. McClure's special appearance; letters of reference for Ms. McClure; reports from the Nebraska Judicial Branch regarding Ms. McClure's court cases; a copy of Ms. McClure's motor vehicle record; Ms. McClure's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. McClure was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. McClure distributed additional letters of reference and a record of negative alcohol tests taken since April 2007 from the Nebraska Probation Administration, NPMIS website. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 12b1.

After discussion, a motion was made by Dover and seconded by Leisey to allow Ms. McClure to sit for the salesperson examination after making proper application and to have a license issued upon passing and a letter from the probation officer be submitted to the Commission on a monthly basis.

A friendly amendment was made by the second to include in the motion that Ms. McClure be required to notify the Commission immediately of any arrest; the broker be notified of her criminal convictions and such notification be confirmed, in writing, to the Commission from the broker. The friendly amendment was accepted by the mover.

The motion as amended carried with Dover, Grady, Griess, Leisey, Rouch and Gale voting aye, with Bohrer not participating or voting, being absent and excused.

Discussion on Implementing Fining

Deputy Director Hoffman presented a list of fining practices in other jurisdictions. A copy of said exhibit is attached to and made a part of these minutes. Deputy Director Hoffman distributed an additional exhibit which included jurisdictions which had responded after the exhibit had been mailed to the Commissioners. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a.

Deputy Director Hoffman explained that the jurisdictions listed had replied to her request for information regarding how the fining amount had been set as a penalty in their jurisdiction. She indicated that, overall, the jurisdictions which responded did not have a set menu on fining. She also indicated that the jurisdictions had recommended against doing that and felt that the penalty should be reviewed for the circumstances of each case. She noted that the jurisdictions tried to keep the penalties consistent and did not penalize based on the size of the operation but on the violation. She also indicated that she would provide updated information to the Commissioners as it was received.

Chairperson Gale suggested that Staff prepare a recommendation to the Commission of guidelines to use while implementing fines. Chairperson Gale indicated that the Staff should give their best judgement on how fining should occur to give the Commission a starting point. Commissioner Grady suggested providing ranges rather than specific numbers. Commissioner Leisey felt that Deputy Director Mayrose should provide his suggestions since he dealt with the complaints. Chairperson Gale indicated that the Staff, in general, should draft guidelines. Deputy Director Hoffman indicated that the guidelines could be discussed at either the April or May Commission meeting. Chairperson Gale suggested May for the fining discussion. Deputy Director Hoffman also indicated that she would discuss fining guidelines with her ARELLO colleagues. Commissioner Griess indicated that perhaps other jurisdictions could review the history of penalties and relay that information to Deputy Director Hoffman. Deputy Director Hoffman indicated that she was unsure if other jurisdictions kept a catalog such as Nebraska, but she would make that inquiry.

No action necessary on this report.

Legislative Matters

LB 11 - No new information presented.

LB 29 - No new information presented.

LB 30 – No new information presented.

LB 226 – No new information presented.

LB 311 – No new information presented.

LB 315 – No new information presented.

LB 403 – Deputy Director Hoffman reported that this bill which related to illegal aliens and would require verification of lawful presence in the United States as prescribed and to require an annual report. She indicated that the bill had gone through numerous amendments and she would continue to monitor the bill.

No action was necessary with regard to these matters.

Information Matters

**ARELLO Mid-Year Meeting – April 27-29, 2009 -
Asheville, North Carolina**

Deputy Director Hoffman reminded the Commissioners that the meeting would be held April

27-29. She noted that she and three of the Commissioners had submitted the registration forms and reminded them to make their hotel reservations by March 25, 2009.

No action was necessary on this report.

ARELLO District Conference – June 25-27, 2009 – Louisville, Kentucky

Deputy Director Hoffman presented an exhibit regarding the ARELLO District Conference, which would be held June 25-27 in Louisville, Kentucky. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman asked that Commissioners planning to attend this meeting complete the registration form and send it to the Commission office by May 15, 2009, with a check or credit card information for the guest registration, if applicable. Deputy Director Hoffman reported that the deadline for hotel reservations was May 27, 2009.

No action was necessary on this report.

AIG Information Update

Deputy Director Hoffman presented an exhibit regarding recent financial issues surrounding AIG. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Hoffman noted that a subsidiary of AIG was the carrier for the state-offered Errors and Omissions (E & O) Insurance program. The information contained in the exhibit was received from Williams Underwriting Group, Inc., the E & O Insurance Plan Administrator.

No action was necessary on this report.

Personnel Matters - Closed Session

At 10:14 a.m., a motion was made by Grady and seconded by Leisey to go into closed session for discussion of personnel matters and receiving legal advice regarding personnel matters. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Chairperson Gale again indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters. Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, was present to discuss personnel matters and offer legal advice in this matter.

At 11:52 a.m., a motion was made by Grady and seconded by Griess to reconvene in open session. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

After reconvening in open, public session, Commissioner Dover felt Deputy Director Hoffman should be compensated appropriately while serving as acting Director.

A motion was made by Dover and seconded by Leisey to increase Deputy Director Hoffman's annual salary \$8,000.00 beginning March 16, 2009, and continue as long as she was acting Director.

Chairperson Gale indicated that Administrative Services', State Personnel Director, Mike McCrory had indicated that once a decision had been made by the Commission to increase Deputy Director Hoffman's salary, the salary review could begin. Chairperson Gale expressed confidence that the recent budget deficit request would be granted and felt that while Deputy Director Hoffman had not been seeking or asking for compensation, he felt the salary increase was justified and would be adequate.

Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

A motion was made by Grady and seconded by Leisey to authorize the Director Search Committee, which consists of Commissioners Grady, Dover and Griess, to post the Director's position as outlined by counsel.

Chairperson Gale distributed the Director's job posting document. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 16-1.

Chairperson Gale indicated that the posting will be made by means deemed appropriate by the Search Committee, and that any inquiries to the job posting should be directed to the work number of Commissioner Grady at 308-532-1810.

Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Chairperson Gale also indicated that a letter should be drafted to advise Mr. McCrory of the request of the increased salary for Deputy Director Hoffman.

A motion was made by Leisey and seconded by Grady to have counsel draft a letter to advise of salary increase. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

Future Meeting Dates

April 17, 2009 – Atrium Building, Lincoln
March 19-20, 2009 - Staybridge Suites, Lincoln
May 21-22, 2009 - Staybridge Suites, Lincoln
July 9-10, 2009 – Hampton Inn-Airport, Lincoln
August 13-14, 2009 – Staybridge Suites, Lincoln
September 10-11, 2009 – Staybridge Suites, Lincoln
October 15-16, 2009 – Hampton Inn-Airport, Lincoln

Recesses and Adjournment

Commissioner Rouch joined the meeting at 9:09 a.m.

Commissioner Bohrer joined the meeting at 10:12 a.m.

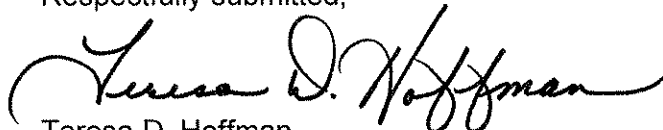
At 10:00 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:12 a.m.

At 12:58 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 1:10 p.m.

At 1:34 p.m., there being no further business to come before the Commission, a motion was made by Griess and seconded by Bohrer that the meeting adjourn. Motion carried with Bohrer, Dover, Grady, Griess, Leisey, Rouch and Gale voting aye.

I, Teresa D. Hoffman, Deputy Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 19, 2009, meeting of the Nebraska Real Estate Commission were available for inspection on March 31, 2009, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Teresa D. Hoffman
Deputy Director

Guests Signing the Guest List

Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Beth Lube, Re/Max Real Estate Group, Omaha
Harold Johnson, NP Dodge Co, Omaha
Dale McClure, McClure Land, Omaha
Molly McClure, Omaha