

NEBRASKA REAL ESTATE COMMISSION

February 18-19, 2010

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on February 18, 2010, 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 Leisey and Ptak, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Petition for Review Hearing and the Cotner Center Condominium Association, Compliance Plan Update.

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, 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.

Director Lemon noted that agenda items 2a, 11d and 11e 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 Griess to adopt the final agenda as presented. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

A Note Regarding the Passing of Past Director Leslie L. Tyrrell

Chairperson Gale noted that with the passing of the past Director, Leslie L. Tyrrell, and noted that the Commission would be adjourning the meeting early on February 18, to allow the Commission and Staff to attend the funeral service.

Minutes of January 7, 2010

The minutes of the Commission meeting held on January 7, 2010, were considered.

After review, a motion was made by Griess and seconded by Rouch to approve the minutes as presented. Motion carried with Dover, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused, and with Grady not voting having not been in attendance at the January Meeting.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on any of the agenda items.

Kristen Anderson, on behalf of the Nebraska REALTORS® Association, indicated that review of continuing education requirements were currently being reviewed and requested participation from the Commission. She indicated that the Nebraska REALTORS® Association had anticipated drafting a bill for the next legislative session to increase the continuing education requirements.

Chairperson Gale indicated that the Commission had an education subcommittee with Rita Griess being the Chairperson, which she could contact to review the proposed changes. He also suggested that Ms. Anderson review the licensee survey, conducted by the Commission, which reflected the licensee's views on continuing education requirements. He noted that the licensee survey was on the agenda for discussion and would be reviewed during this Commission meeting.

Receipts and Expenditures Report for January

Director Lemon presented the Receipts and Expenditures Report for January. 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 January 31, 2010, was \$853,489.86, which compared to a cash fund balance of \$847,709.62 on January 31, 2009.

Director Lemon pointed out that the January report reflected half the Special Session budget reduction and transfer for the current fiscal year, and that the other half would be taken in June, with additional reductions and transfers the next fiscal year. Commissioner Grady voiced concern regarding the Legislature taking money from the Commission since it is a cash fund agency and is not allowed assistance should fund become critically reduced. He indicated that in the future stronger opposition should be given to any proposed transfers from the Commission's cash fund. Chairperson Gale noted that the current cuts were due to extraordinary circumstances and the legislature indicated that the money taken from cash fund agencies would only occur one time and should not become common policy. Director Lemon explained that the Commission would strongly oppose any additional reductions. He noted that the Governor's budget did not include any further changes to the Commission's appropriations and he did not anticipate any during this session.

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

Renewal Report

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

No action was necessary on this report.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

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

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

Examination Report – December & January

Deputy Director Hoffman presented for ratification the December and January Examination Reports, copies of which are attached to and made a part of these minutes. (Note: At the Meeting it was discovered that the Exhibit for this Agenda Item had not correctly reflected the applicants who had taken the examination multiple times. On the December report, she noted that seven applicants had taken the examination twice and one applicant took the examination three times. On the January report, five applicants had taken the examination twice. The Exhibit was corrected for attachment to these minutes.)

There was discussion regarding the current testing environment provided to applicants by Applied Measurement Professionals.

After review, a motion was made by Grady and seconded by Griess to ratify the December and January Examination Reports for the purpose of issuing licenses. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak 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.

Continuing Education Instructor Approval

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

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

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. (Note: At the Meeting it was discovered that the Exhibit for this Agenda Item noted that Scott Schaefer had completed his suspension. It should have reflected that both suspension and education were completed by Scott Schaefer. The Exhibit was corrected for attachment to these minutes.)

No action was necessary on this report.

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

Item A Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Grady and seconded by Dover that the Commission file a complaint on its own motion and set it for hearing per Staff recommendation. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not participating or voting, being absent and excused.

Item B Complaint 2009-032

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 Griess and seconded by Rouch that the complaint be set for hearing against the Respondent per Staff recommendation. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not participating or voting, being absent and excused.

After being advised of the results of the investigation and discussion, a motion was made by Grady and seconded by Rouch that the Commission file a complaint on its own motion against Licensee #1 per Staff recommendation. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not participating or voting, being absent and excused.

Item C Complaint 2009-028

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 against Respondent #1 per Staff Recommendation.

After further discussion, the pending motion was withdrawn by the mover and second.

Chairperson Gale indicated that this complaint be held in abeyance and the Commission file a complaint on its own motion.

A motion was made by Dover and seconded by Rouch that this Complaint be held in abeyance against Respondent # 1 and the Commission file a new Complaint on its own motion against Respondent #1 on §§76-2417 (1)(b), 81-885.24 (29), 76-2421 (1)(a)(b) and Title 299, Chapter 5-003.22. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not participating or voting, being absent and excused.

After being advised of the results of the investigation and discussion, a motion was made by Dover and seconded by Grady that this Complaint against the Respondent #2 be set for hearing per the Staff recommendation.

Chairperson Gale offered a friendly amendment to omit that Respondent #2 failed to mark to the boxes on the Offer to Purchase but add Respondent # 2 was not acting in client's best interest when completing the Offer to Purchase. It was accepted by the mover and the second.

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

Presentation of Stipulation and Consent Orders

Complaint 2009-024, Richard Pearce vs. Taryn Jo Long

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-024, Richard Pearce vs. Taryn Jo Long. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Grady and seconded by Rouch to enter into the Order as presented.

Chairperson Gale offered a friendly amendment to change the wording in the Stipulation and Consent Order on Page 5; Paragraph 2; Line 2 of the Order from "suspension" to "probation".

After further discussion, the pending motion was withdrawn by the mover and second.

After further discussion a motion was made by Dover and seconded by Rouch that the Stipulation and Consent Order be accepted with an amendment made to page five changing the wording from suspension to probation. Motion carried with Dover, Griess, Rouch and Gale voting aye, with Grady voting nay, and with Leisey and Ptak not participating or voting, being absent and excused.

Complaint 2009-029, Brittney Maloley vs. Jennifer Lynn Hellman

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-029, Brittney Maloley vs. Jennifer Lynn Hellman. A copy of said Order is attached to and made a part of these minutes. Greg Scaglione, Counsel for Ms. Hellman was present.

There was discussion regarding the repercussions should Ms. Hellman choose not to follow through with the conditions of the Stipulation and Consent Order. There was further discussion regarding the period of suspension set forth in the Order.

Counsel Scaglione indicated that the Order could be amended to require Ms. Hellman to provide the alcohol dependency assessment to Director Lemon within fifteen days of the Order if accepted. He also explained that the prior disciplinary action taken by the Commission was not a result of alcohol consumption but rather a failure to document an agreement between buyer and seller pertaining to the carpet.

Counsel Scaglione distributed a timeline leading up to these matters. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 11b1.

Counsel Scaglione explained the timeline and situation regarding these Complaints which were undisputed facts. He also noted that given the situation, he felt the punishment was appropriate and would amend the Order to include the completion of the alcohol dependency assessment within ten days and a copy of the findings be given to the Commission.

Chairperson Gale indicated that the Order in no way would diminish Ms. Hellman's actions and he was concerned that the alleged actions were an obstruction of justice. He explained that Ms. Hellman had previous disciplinary actions taken against her license and should be mindful of her actions. He also noted that the results of the alcohol dependency assessment to be provided to Director Lemon were confidential and would not be shared with the Commissioners. Counsel Scaglione indicated that the Commission could receive the results of the assessment should they desire.

Commissioner Dover indicated that the Order should be amended to reflect a one year suspension rather than six months. Chairperson Gale felt that an additional six month probation period would be reasonable. Commissioner Grady felt that the one year probation was appropriate.

Counsel Scaglione indicated that Hellman could complete the alcohol dependency assessment within fifteen days. Chairperson Gale felt that wording from the Order should exclude the requirement that the assessment be given on a confidential basis and should allow Director Lemon to review the assessment and share it with the Commission if needed. He also felt that one year's probation would provide the Commission opportunity to more adequately supervise Ms. Hellman's behavior.

Deputy Director Mayrose clarified that the Order as discussed would be amended that Ms. Hellman receive a one year suspension with the first forty-five days served.

After discussion, a motion was made by Grady and seconded by Dover to enter into the Order as amended. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

**Complaint 2009-019,
Commission vs. Bennie C. Taylor**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-019, Commission vs. Bennie C. Taylor. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Grady and seconded by Dover to decline the proposed Stipulation and Consent Order. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

**Complaint 2009-012,
Michele J. Bonge vs. Shelli Marie Novotny and Tammy L. Wherley**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-012, Michele J. Bonge vs. Shelli Marie Novotny and Tammy L. Wherley. A copy of said Order is attached to and made a part of these minutes.

There was discussion regarding a matter in which similar violations were brought before the Commission. Deputy Director Mayrose reviewed the prior matter with the Commission and the disciplinary action taken.

After discussion, Commissioner Grady did not feel that the Order imposed adequate disciplinary action for these licensees. Commissioner Griess felt that the actions of the licensees were not being adequately disciplined due to the fact that Ms. Wherley receipted for money she had not paid and Ms. Novotny should have been overseeing the actions of Ms. Wherley. She noted that Ms. Novotny also misstated the preapproval of loan for a purchase by Ms. Wherley. Commissioner Dover felt that Ms. Novotny's office procedures should be reviewed if she would allow for money to be receipted and not received. Chairperson Gale felt that a broker should be setting the standards for the licensees they supervise. Commissioner Griess felt that the broker violated their fiduciary duties to the clients and to the licensee.

A motion was made by Gale and seconded by Dover to decline the proposed Stipulation and Consent Order. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

**Complaint 2009-023,
HomeServices of Nebraska, Inc. vs. Steven Wiley**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-023, HomeServices of Nebraska, Inc. vs. Steven Wiley. A copy of said Order is attached to and made a part of these minutes. Abbie Widger, Counsel for Mr. Wiley was present.

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

Chairperson Gale asked for clarification regarding the essence of this complaint since there was no allegation that Mr. Wiley's actions were unlawful but rather that listings were not removed from the Multiple Listing Service (MLS) which is not regulated by the Commission.

Counsel Widger indicated that Mr. Wiley was in the process of setting up a new website with a link to pull information from the MLS. She explained that Mr. Wiley was working with the webmaster to get the link to work, therefore did not pay attention to the listings which should have been pulled off the websites. She also indicated that once Mr. Wiley received the complaint, the link was taken off the website and the listings removed from the MLS.

Commissioner Dover indicated that since this type of media is used for advertising purposes he felt that Mr. Wiley should have monitored the accuracy of the information in order to comply with the laws. Counsel Widger noted that Mr. Wiley had overlooked the link since he had been

working with the webmaster to get it fixed. Commissioner Dover felt that Mr. Wiley should not have published the link until it was functioning properly. Counsel Widger indicated that based on conversations she had with Mr. Wiley, he understood the link to be a test and did not think the link was active according to the correspondence with the webmaster. Commissioner Dover did not understand how Mr. Wiley did not know the link was active.

Commissioner Grady felt that the maximum fine, in addition to the penalty assessed to his license, should be given to Mr. Wiley since he had been unprofessional on what he had been trying to accomplish. Commissioner Dover felt this complaint contained a very important subject matter due to the fact that the Commission would likely see additional technology related complaints.

Chairperson Gale explained that the Commission could not punish Mr. Wiley for the incorrect use of the link from the MLS, but rather punishment should be focused on not properly removing the expired listings.

Commissioner Dover explained that Mr. Wiley did not monitor his advertising and could not believe that he was unaware the information was available to the public.

Counsel Widger indicated that there were only thirty-seven hits on the website. She also noted that Mr. Wiley had no communication with any member of the public regarding his website.

Commissioner Rouch indicated that she understood the confusion of technology to some extent. She explained that many licensees rely on larger companies to monitor the websites. She also indicated that since Mr. Wiley operates a small company which had been working with a website company who may not have understood the laws, she understood how this could happen without the intention of malicious activity. Commissioner Dover did not feel that Mr. Wiley's lack of knowledge was a good defense since he did not monitor his advertising. Chairperson Gale noted that Mr. Wiley admitted wrong doing. Counsel Widger explained that once Mr. Wiley received communication regarding the website it had been taken down.

Chairperson Gale explained that websites should be tested prior to being published. He indicated that some webmasters may have no idea what they are getting into and when the public is being linked to a real estate licensee, there should not be sloppy intervention. He also indicated that while he felt the website may have been negligently published and done without oversight, the public had not been harmed.

Commissioner Grady felt that the Commission should not take action on this matter until more Commissioners were available and Mr. Wiley could appear before the Commission to discuss this matter. Chairperson Gale explained that each matter was reviewed on a case-by-case basis. He reviewed the current Order and asked what additional punishments were being considered by the Commissioners. Commissioner Rouch felt that the Order as presented was satisfactory and did not feel additional action should be taken unless the actions were re-occurring.

After discussion, a motion was made by Dover and seconded by Rouch to enter into the Order as presented. Motion carried with Dover, Grady, Rouch and Gale voting aye, Griess recused, with Leisey and Ptak not participating or voting, being absent and excused.

Hearings

February 18, 9:30 a.m. – Complaint 2009-019, Commission vs. Bennie C. Taylor

The Hearing regarding Complaint 2009-019, Commission vs. Bennie C. Taylor was continued at the request of the Complainant's Counsel.

February 19, 9:30 a.m. – Complaint P2009-001, Petition for Review Hearing - Jennifer Robertson

At 9:30 a.m., Chairperson Gale asked if Ms. Robertson or Counsel for Ms. Robertson was present. Director Lemon attempted to contact Ms. Robertson by telephone. He also contacted the Commission Office to check if she had tried to contact the Commission either by telephone or by e-mail correspondence. Deputy Director Mayrose checked the premises to determine if the Respondent and/or her Counsel were on the premises but had not found this meeting room. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, contacted his office to see if any attempt had been made by Ms. Robertson to contact him or his office. Director Lemon, Counsel Barton and Deputy Director Mayrose all indicated that none of the attempts to contact or locate Ms. Robertson or a representative of Ms. Robertson had been successful.

Chairperson Gale indicated that additional time would be given to Ms. Robertson in case she had complications on her arrival.

A Hearing was held on February 19 at 9:57 a.m., in the matter of P2009-001. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Commission. Respondent Jennifer Robertson was not present and was not represented by Counsel.

Chairperson Gale asked if there was anyone present on Ms. Robertson's behalf and no one responded. Chairperson Gale indicated that Ms. Robertson had made no attempt to contact the Commission regarding the Hearing, adequate time had been given to Ms. Robertson to appear or contact the Commission, therefore, the Hearing will proceed in her absence.

After Opening Statements, Counsel Barton offered sixteen Exhibits, all of which were received by Chairperson Gale. Counsel Barton called Terry Mayrose and Greg Lemon as witnesses.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

Prior to any motion the following occurred:

Commissioners Grady and Griess indicated that nothing had changed their mind to give Ms. Robertson a license since her informal special appearance.

A motion was made by Grady and seconded by Dover to deny the Petition for Review. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, and with Leisey and Ptak not participating or voting, being absent and excused.

Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale directed Counsel Barton to notify the Petitioner that the costs incurred for the court reporter and any witness fees would be billed to the Respondents, as provided for in 305 NAC Chapter 4, and that the Respondents 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 11:14 a.m.

Informal Special Appearances

Ashley Sicka, Potential Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Sicka 's special appearance; letters of explanation from Ms. Sicka; character reference letters for Ms. Sicka; a letter from the United States District Court, Probation Office regarding Ms. Sicka; trial court cases from the State of Nebraska on Ms. Sicka's cases; and a copy of Ms. Sicka's Motor Vehicle Record. A copy of said exhibit is attached to and made a part of these minutes. Ms. Sicka was present.

Chairperson Gale reviewed the procedure for informal special appearances.

After discussion, a motion was made by Grady and seconded by Dover to allow Ms. Sicka to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

Scott Allen Schaefer, Potential Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Schaefer's special appearance; a letter of explanation from Mr. Schaefer; a copy of the Stipulation and Consent Order which was accepted at the August 2009 Commission Meeting. A copy of said exhibit is attached to and made a part of these minutes. Mr. Schaefer was present.

Chairperson Gale reviewed the procedure for informal special appearances.

A motion was made by Grady and seconded by Dover that Mr. Schaefer not be allowed to sit for the broker examination at this time. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

Review and Approval of Travel to 2010 Regularly Attended Meetings

Deputy Director Hoffman presented an exhibit regarding the estimated costs of Commissioners and staff participating in regularly-attended meetings in 2010. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Grady to approve the reimbursement of expenditures for Commissioners and staff who attend the meetings set forth in the exhibit. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

Discussion Regarding Various Industry Related Technical Subjects

Director Lemon presented an exhibit regarding the various industry related technical subjects.

After discussion, a motion was made by Dover that this matter be continued until all of the Commissioners are present.

A friendly amendment was offered by Commissioner Rouch that the matter be continued until the next Commission Meeting, and was accepted by the mover.

The amended motion was seconded by Grady. Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Leisey and Ptak not participating or voting, being absent and excused.

Cotner Center Condominium Association – Compliance Plan Update

Director Lemon presented documentation received from Greg Barton, Special Assistant Attorney General and Counsel to the Commission, and the Cotner Center Condominium Association regarding the compliance plan update. A copy of said exhibit is attached to and made a part of these minutes. Greg Barton, Special Assistant Attorney General and Counsel to the Commission and Andrew Willis, Counsel for Cotner Center Condominium Association were present. Roger L. Hill, Representative for the Cotner Center Condominium Association was also present.

Counsel Barton explained that the revised policy was reviewed and offered an opinion letter. He explained that on its face the policy was lawful however, in practice the policy might lend itself to license law violations.

Counsel Willis explained that while the policy is valid he agreed that the prohibited actions could be abused. He also explained that while any policy could be abused, they have explained in the policy what are considered lawful actions and by setting up those limits they are comfortable with the current policy.

Chairperson Gale felt that the Association knows what the limits are and while policies may always be violated, he felt that the Association was better educated on license law. He explained that complaints could be filed should the Association commit any violations of law, however, he felt that the policy as presented was lawful and was provided in good faith.

Commissioner Grady felt the intention of the policy was clear but not practical. He felt that the policy would be subjecting undue liability to the manager of the Association. Commissioner Griess also felt that the policy would be difficult to comply with and felt the while the policy was carefully constructed to be within the law, it was tiptoeing around it. Chairperson Gale indicated that the policy was well drafted and met the law.

Counsel Willis indicated that the administration has a policy which states the laws and duties which may not be side stepped. While the Association does not want to run into future problems, and the policy does not alleviate all of the Commission's concerns, he indicated that the Associated had tried.

Chairperson Gale indicated that the Association significantly modified the policy and has actions on representation have been narrowed within the law. He understood that there were concerns of possible future violations, however, there are no current violations. He felt the Association had met the requirements of the law and it would be up to them to perform lawfully in the future.

Director Lemon explained that should the Commission get a report that the Association is performing unlawfully, it would be reported to the Commission for further action. He also explained that it was important to establish proper policies and procedures since there are other Associations which may be in a similar situation.

Chairperson Gale indicated that in the future, the Association could consult with Director Lemon regarding lawful actions. Counsel Willis indicated that this had been a beneficial experience.

No action was necessary on this report.

Licensee Survey Results

Director Lemon presented a report of the licensee survey questions and the corresponding results. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the results of the survey with the Commissioners. He explained that the survey results were a compilation of the responses received on the previous online survey as well as those received as part of the Commission Comment Newsletter.

The wide variety of suggested subject matter for continuing education courses was discussed. It was suggested that the Commission's education subcommittee work with the Nebraska REALTORS® Association to address the education matters of concern.

There was also discussion regarding the broad interest in technology related issues. Deputy Director Hoffman explained that there was an article in a previous issue of the Commission Comment newsletter entitled, "Internet Best Practices Guidelines". She indicated that ARELLO had updated the research and the article has been rewritten to include information concerning social media. She indicated that this article had been included in an exhibit for this meeting, however, the Commission had tabled this agenda item until the March meeting. It is her hope that this article could be published in the Commission Comment newsletter in the near future.

Commissioner Rouch noted the large number of licensees in favor of the two-year renewal cycle. Director Lemon explained that this would require legislation and could be drafted for the next session.

Chairperson Gale suggested that the Commission receive a subcommittee recommendation on the use of online services, a two-year renewal cycle, continuing education requirements, and possible changes to broker licensing requirements. He felt that the suggestions should also include those received from the Nebraska REALTORS® Association. He explained that the Commission has until late 2010 to propose legislation.

Director Lemon indicated that he would work with the subcommittees regarding these issues and they would be placed on the Commission objectives in June. Chairperson Gale also noted that digital signature requirements should also be placed on the objectives.

No action was necessary with regard to this matter.

Consideration of Article on Expired Offers to Purchase and Listing Agreements

Director Lemon presented an article regarding expired offers to purchase and listing agreements. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that it was proposed by the Commission at a previous meeting that research be conducted and an article drafted to address expired offers to purchase and listing agreements.

There was discussion regarding the explanation that if a listing agreement expired then the agency agreement would also be expired. Deputy Director Hoffman explained that when the role of a licensee changes the agency agreement would be expired and a new agreement would be signed. She also noted that ongoing relationships would not require a new agency agreement.

Commissioner Grady urged Director Lemon to shorten the article and make bullet points which are brief and to the point.

Chairperson Gale felt that the article was helpful but due to the size of the article, perhaps the article could be split into two series. Commissioner Dover felt that the article should just be split into two separate articles. Director Lemon indicated that if the article was split into two separate articles, it would be shorter and easier for the licensees to comprehend.

No action was necessary with regard to this matter.

Review of Suggested Changes to the Seller Property Condition Disclosure Statement

Director Lemon presented documentation regarding the suggested changes to the seller property condition disclosure statement. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that at the direction of the Commission, he had solicited possible changes to the seller property condition disclosure statement form. He indicated that the form had not been changed since 2003. He noted that any changes would require a rule change, not legislative action.

Commissioner Grady asked if Director Lemon had received suggested changes from the Nebraska REALTORS® Association. Kristen Anderson with the Nebraska REALTORS® Association indicated that she had not sent those to Director Lemon yet, but would forward the suggestions she received. Commissioner Dover indicated that he had not sent the suggested changes to Director Lemon either.

The suggested changes were reviewed by the Commission. Commission Staff was instructed to make the appropriate changes to the form so the Commission can review the changes.

No action was necessary with regard to this matter.

Legislative Matters

LB 691 - Director Lemon reported that this bill would provide the Commission with authority to assess and collect administrative fines against unlicensed persons. He noted that he had received an attorney general's opinion regarding the drafted bill which gave a favorable outcome. Director Lemon reported that this bill advanced to final reading and would continue to be monitored.

LB 736 - Director Lemon reported this bill would provide for liens, assessments and fines by homeowner's associations. Director Lemon reported that this bill advanced to final reading and would continue to be monitored.

LB 818 –Director Lemon reported that this bill would allow broker price opinions to be used for lending purposes for certain real estate transactions. Director Lemon reported that there was a hearing held on February 9, 2010 on this bill and the bill would continue to be monitored. There was discussion regarding the liability this bill, if passed, could potentially put on real estate licensees as well as its possible effect on errors and omissions insurance premiums.

LB 931 – Director Lemon reported that this bill would make various changes to the Real Property Appraiser Act. Director Lemon reported that there was a hearing held on February 9, 2010 on this bill and would continue to be monitored.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report – Fourth Quarter 2009

Director Lemon presented the Trust Account Examination Evaluation Report – Fourth Quarter 2009. A copy of said report is attached to and made a part of these minutes.

Director Lemon reviewed some of the comments received and how the situations were handled.

No action was necessary on this report.

ARELLO Mid-Year Meeting – April 8-10, 2010 – Colorado Springs, Colorado

Director Lemon reminded the Commissioners that the ARELLO Mid-Year Meeting would be held April 8-10. He noted that the Commissioner College would be offered at this meeting on the 10th and would need to be preregistered by March 24. He also indicated that the registration forms needed to be sent into the Commission office by March 8.

Director Lemon asked which Commissioners were planning to attend the Annual Conference. Commissioners Dover, Grady and Rouch indicated they planned on attending. It was suggested that Director Lemon attend the Commissioner College training.

No action was necessary on this report.

ARELLO Leadership Symposium and Board of Directors Meeting – January 6-7, 2010 - Newport Beach, California – Report of Attendee

Deputy Director Hoffman reported that this meeting had primarily addressed internal matters concerning the organization. In addition, the goals and objectives-of the various committees and task force were reviewed which prepared them to hit the ground running. She felt that ARELLO had an ambitious year ahead. Deputy Director Hoffman confirmed that the committee information had been sent to all members. She indicated that if there were committees which someone was interested in being on to let her know.

No action was necessary on this report.

Information on South Dakota's Citation System for Disciplinary Matters

Director Lemon presented an article from the ARELLO Newsletter regarding South Dakota's citation system for disciplinary matters. A copy of said report is attached to and made a part of these minutes.

Director Lemon explained that after he discussed the citation system for disciplinary actions currently used by South Dakota with Chairperson Gale, it was decided to that this item be added to the Agenda for discussion purposes. He explained that if this system was used in Nebraska it would eliminate the investigative report process for a set type of violations. This system would allow Commission Staff to deal with certain lesser violations with approval of the Commission without the lengthy process currently used. Currently the process used by the Commission would include the investigation process, a complaint being filed, a hearing or stipulation and consent order. The process used by South Dakota would save steps and time. He indicated that this would be a voluntary issue for the licensees, and if they did not wish to settle the matter would go before the Commission which could then pursue a complaint.

Chairperson Gale indicated that in other agencies, the Director has the authority to assess a fine under certain circumstances involving routine violations. He felt that the Director could be given a discretionary area for violations which occur often, such as if the licensee has not had a prior record and there was not a huge fine given. He explained that the costs for the hearing would be reduced and the complaint process would be expedited. He encouraged others to review this matter.

No action was necessary on this report.

Future Meeting Dates

March 18-19, 2010 – Staybridge Suites, Lincoln
April 22-23, 2010 – Hampton Inn & Suites, Lincoln
May 20-21, 2010 - Staybridge Suites, Lincoln
June 24-25, 2010 - Staybridge Suites, Lincoln
August 19-20, 2010 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:20 a.m. on February 18, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:30 a.m.

At 12:22 p.m. on February 18, Chairperson Gale recessed the meeting.

At 9:05 a.m. on February 19, Chairperson Gale reconvened the meeting.

At 9:25 a.m. on February 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:37 a.m.

At 11:14 a.m. on February 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:25 a.m.

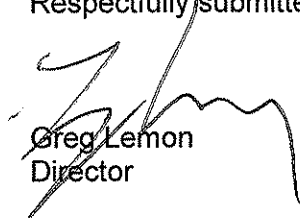
Commissioner Griess was excused from the remainder of the meeting at 12:10 p.m.

At 12:25 p.m. on February 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 12:40 p.m.

At 1:26 p.m., there being no further business to come before the Commission, a motion was made by Grady and seconded by Dover that the meeting adjourn. Motion carried with Dover, Grady, Rouch and Gale voting aye, with Griess, Leisey and Ptak 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 February 18-19, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on March 2, 2010, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

- Kristen Anderson, Nebraska REALTORS® Association, Lincoln
- Bryan Fraser, CBSHOME Real Estate, Omaha
- Jane Moreland, Moreland Realty, Imperial
- Thane Jensen, Woods Bros Realty, Lincoln
- Susan Geschwender, Randall School of Real Estate, Omaha
- Greg Scaglione, Omaha
- Andrew Willis, Cline Williams, Lincoln
- Roger L. Hill, Cotner Center Condos, Lincoln
- Emil Volnek, Home Real Estate – North, Lincoln
- Scott Schaefer, Omaha
- Ashley Sicka, Norfolk
- Rodger Sicka, Norfolk
- Abbie Widger, Lincoln