

# NEBRASKA REAL ESTATE COMMISSION

May 20, 2010

Staybridge Suites

Staybridge Room

Lincoln, NE

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## **Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on May 20, 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. 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.

## **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 item 11a had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Dover and seconded by Ptak to adopt the final agenda as presented. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Minutes of April 22, 2010**

The minutes of the Commission meeting held on April 22, 2010. (Note: It was discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. The location of the meeting was set forth as "Staybridge Suites" when, in fact, the location should have been "Hampton Inn & Suites". Also, the Report of Attendees for the ARELLO Mid-Year Meeting in Colorado Springs, CO, indicated that Commissioner Griess had attended, when in fact she had not. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Dover and seconded by Ptak to approve the minutes as amended. Motion carried with Dover, Leisey, Ptak and Rouch voting aye, and with Grady, Griess and Gale not voting having not been in attendance at the April Meeting.

## **Public Comment**

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on any Commission related business. No audience member indicated a desire to come forward.

## **Receipts and Expenditures Report for April**

Director Lemon presented the Receipts and Expenditures Report for April. 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 April 30, 2010, was \$699,466.67, which compared to a cash fund balance of \$688,318.86 on April 30, 2009.

After discussion, a motion was made by Leisey and seconded by Grady to file the April Receipts and Expenditures Report for audit. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **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 Leisey and seconded by Grady to ratify issuance of the licenses as set forth in the report. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Examination Report - April**

Deputy Director Hoffman presented for ratification the April Examination 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 Grady to ratify the April Examination Report for the purpose of issuing licenses. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Real Estate Education Matters**

### **Pre-License Education Instructor Approval**

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

### **Continuing Education 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.

There was discussion regarding pre-license education courses which offer Nebraska law specific instruction. Susan Geschwender, Randall School of Real Estate, indicated that the pre-license education course Real Estate Principals and Practices offered general or national laws not specific to Nebraska, while the Real Estate Sales and Brokerage course offers Nebraska specific laws.

After review, a motion was made by Grady and seconded by Leisey to ratify the two reports. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Continuing Education Activity Rejection**

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

No action was necessary on this report.

### **Consideration of Additional "R" Subject Matter**

Deputy Director Hoffman indicated that the Commission's education subcommittee had met and discussed several items, one of which was regarding those continuing education courses designated as "R" courses. Deputy Director Hoffman presented a list of approved continuing education courses with activities related to contracts and contract law highlighted, a copy of which is attached to and made a part of these minutes.

Commissioner Griess indicated that it was the consensus of the Education Committee that the courses relative to the subject matter of contract law should receive the "R" designation.

Deputy Director Hoffman noted that the Education Committee also recommended that the designation be retroactive to the licensees which had taken the contract course for the current education period.

A motion was made by Leisey and seconded by Dover that the "R" designation be given to the continuing education courses which include the subject of "Contract Law" and apply such change retroactively. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **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.

Deputy Director Mayrose reported that Jennifer Lynn Hellman and Brady Kieth Bock, Show Cause 2010-001, have appealed the Commission's decision to the District Court. No hearing date has been set for the Appeal at this time.

No action was necessary on this report.

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

**Item A** Complaint 2009-037

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

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 Rouch that the complaint be set for hearing. Motion carried with Dover, Grady, Leisey, Ptak, Rouch and Gale voting aye, with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

**Item B** Complaint 2009-038

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

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.

There was discussion regarding a letter of admonishment being sent to the Respondent, or an article being placed in the Commission Comment newsletter for educational purposes regarding disclosure issues and potential "trap doors".

Motion failed with Grady, Ptak, Rouch and Gale voting nay, with Dover and Leisey voting aye, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

A motion was made by Gale and seconded by Grady that the matter be further investigated regarding the training provided in the broker's office. Motion passed with Grady, Ptak, Rouch and Gale voting aye, with Leisey and Dover voting nay, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

**Item C** Complaint 2009-042

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 Grady that the complaint be set for hearing.

There was discussion regarding verbal vs. written contracts. It was decided that Director Lemon would research the court cases regarding this issue which had been provided to Deputy Director Mayrose.

A friendly amendment was made by Commissioner Grady that this Complaint be held in abeyance and a new complaint be filed against the Respondents per Staff recommendation. It was accepted by the mover and the second.

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

A motion was made by Leisey and seconded by Ptak that the complaint be set for hearing against Respondent # 1 and Respondent # 2 . Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was made by Griess and seconded by Grady that this Complaint be held in abeyance against Respondent # 3 and a new complaint be filed against Respondent # 3 per Staff recommendation. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Item D** Complaint 2010-005

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

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 Dover that the complaint be set for hearing.

There was discussion regarding the language as displayed on the forms required by the Commission.

Motion carried with Dover, Grady, Griess, Rouch and Gale voting aye, with Ptak voting nay, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

**Item E** Complaint 2010-011

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 Grady that the complaint be set for hearing. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Item F** Complaint 2010-015

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 Grady that the complaint be set for hearing. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Presentation of Stipulation and Consent Orders**

### **Complaint 2010-004, Commission vs. Rebecca Mae Estrada**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-004, Commission vs. Rebecca Mae Estrada. A copy of said Order is attached to and made a part of these minutes.

Commissioner Dover recused himself, thereby nullifying any potential conflict of interest.

After discussion, a motion was made by Grady and seconded by Gale to propose that the Order be amended to reflect a two-year suspension, with six months served and the remainder stayed and served on probation plus three hours of additional continuing education in each of the areas of disclosures and ethics to be completed within 120 days of the date of the Order and a civil fine in the amount of one thousand five hundred dollars to be paid within 30 days of the date of the Order.

Commissioner Ptak offered an amendment to reject the proposed Stipulation and Consent Order as presented, which was seconded by Gale. Amendment to the motion was adopted with Grady, Griess, Ptak, Rouch and Gale voting aye, with Leisey voting nay, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

The motion as amended carried with Grady, Griess, Ptak, Rouch and Gale voting aye, with Leisey voting nay, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

## **Hearings**

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

## **Informal Special Appearances**

### **Drew Landyn Topp, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Topp's special appearance; Mr. Topp's criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Topp was present.

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

Director Lemon also summary dispositions of trial court cases from the State of Nebraska involving Mr. Topp. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1. Director Lemon additionally distributed letters of reference for Mr. Topp. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a2.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Dover and seconded by Griess to allow Mr. Topp to sit for the salesperson examination after making proper application and to have a license issued upon passing with the conditions that Mr. Topp notify Commission staff within thirty days of any felony or misdemeanor charges during his first year of licensure; Mr. Topp must notify his employing broker of his criminal convictions and the circumstances of the convictions; and the employing broker must confirm said notification, in writing, to the Commission prior to issuance of the license. Motion carried with Dover, Grady, Griess, Ptak, Rouch and Gale voting aye, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

### **Approval of Travel to ARELLO Investigator Workshop – August 3-6, 2010 – Denver, Colorado**

Director Lemon presented information regarding the estimated costs for Deputy Director for Enforcement Mayrose to attend the ARELLO Investigator Workshop in Denver, Colorado, August 3-6, 2010. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Grady and seconded by Dover to approve the travel request. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Personnel Matters - Closed Session**

At 12:40 p.m., a motion was made by Ptak and seconded by Grady to go into closed session for discussion of personnel matters. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 1:10 p.m., a motion was made by Dover and seconded by Griess to reconvene in open session. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

After reconvening in open, public session, a motion was made by Leisey and seconded by Griess to increase Deputy Director Hoffman's annual salary \$1,500.00 beginning July 1, 2010. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was then made by Gale and seconded by Griess that Director Lemon's salary be frozen consistent with the recommendations made by the Governor and the Legislature due to the tight financial times faced by the State. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

### **Report on New Website Development**

Director Lemon presented the design layout for the new Commission website, answered questions regarding the content of the website and noted some new features of the design.

The Commissioners offered suggestions regarding the layout of the new web pages. Director Lemon stated he would incorporate the changes if technologically and economically feasible.

No action was necessary on this report.

## **Appoint Evaluation Committee for Errors & Omissions RFP**

Director Lemon discussed the dates and processes involved in awarding the contract for the Errors & Omissions RFP. Director Lemon explained that an evaluation committee was needed in order to score and evaluate the proposal received.

After discussion, a motion was made by Dover and seconded by Leisey to appoint Commissioners Grady, Ptak and Rouch and Deputy Director Hoffman to conduct the RFP evaluations. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

## **Information Matters**

### **ARELLO District Meeting – Des Moines, Iowa - July 17-19, 2010**

Director Lemon reminded the Commissioners that the ARELLO District Meeting would be held July 17-19, 2010. He also indicated that the registration forms needed to be sent into the Commission office by June 25.

Director Lemon asked which Commissioners were planning to attend the District Meeting. Commissioners Grady, Griess, and Rouch indicated they planned on attending.

No action was necessary on this report.

### **Trust Account Examination Evaluation Report - First Quarter 2010**

Director Lemon presented the Trust Account Examination Evaluation Report - First Quarter 2010. 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.

### **Reminder: 2010-2011 Objectives**

Director Lemon reminded the Commission that the 2010-2011 objectives would be discussed at the next Meeting and to keep in mind items which they may want to include on next year's list.

Chairperson Gale asked that the progress of the Objectives be provided to the Commissioner's on a quarterly basis.

No action was necessary with regard to this matter.

## **Future Meeting Dates**

June 24-25, 2010 - Staybridge Suites, Lincoln  
August 19-20, 2010 - Staybridge Suites, Lincoln  
September 30-October 1, 2010 – Country Inn & Suites, Lincoln



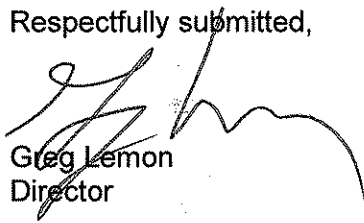
## **Recesses and Adjournment**

At 10:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:00 a.m.

At 1:14 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Grady that the meeting adjourn. Motion carried with Dover, Grady, Griess, Leisey, Ptak, Rouch and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the May 20, 2010, meeting of the Nebraska Real Estate Commission were available for inspection on May 25, 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  
Susan Geschwender, Randall School of Real Estate, Omaha  
JoAnn Grady, North Platte  
Mark Leaders, CBSHome, Omaha