

NEBRASKA REAL ESTATE COMMISSION

August 18-19, 2011

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on August 18, 2011, 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. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, were present for the Herbst Hearings. Special Assistant Attorney General Barton was present for the Slatten Hearing.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting 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 had been 11a and 11b had been misnumbered on the agenda and were switch to match the numbered exhibits since the tentative agenda was mailed to the Commissioners.

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

Minutes of June 16, 2011

The minutes of the Commission meeting held on June 16, 2011, were considered.

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

Public Comment

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

Receipts and Expenditures Report for June and July

Director Lemon presented the Receipts and Expenditures Reports for June and July. Copies of said reports are attached to and made a part of these minutes. Director Lemon noted that an explanation page was included in each report.

The cash fund balance as of June 30, 2011, was \$398,904.95, which compared to a cash fund balance of \$552,705.16 on June 30, 2010.

The cash fund balance as of July 31, 2011, was \$339,824.34, which compared to a cash fund balance of \$492,906.95 on July 31, 2010.

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

Final 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.

Fiscal Year 11-12 Monthly Budget Allocations

Director Lemon presented the Monthly Budget Allocations for Fiscal Year 11-12. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon pointed out the expenditure items of note which included the allowance of reappropriation of the unexpended amounts from Fiscal Year 10-11 which is reflected in the expenditure balance.

No action was necessary on this report.

Consider 2012 License Fees

Director Lemon presented an exhibit in which the Budget and Planning Subcommittee recommended an increase in broker and salesperson renewal fees and original license fees. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the Budget Subcommittee recommended an increase of ten dollars for salespersons and fifteen dollars for brokers for the 2012 broker renewal fees and new licenses issued to original salesperson and broker licensees effective January 1, 2012. The combined annual revenue would increase by approximately ninety thousand dollars.

A motion was made by Leisey and seconded by Rouch to approve the fee increases as proposed. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Specialized Registrations

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

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

A motion was made by Ptak and seconded by Leisey to approve the amendment to the registration as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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

Examination Report – June and July

Deputy Director Hoffman presented for ratification the June and July Examination Reports, copies of which are attached to and made a part of these minutes.

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

Real Estate Education Matters

Pre-License Education Provider Approval

Deputy Director Hoffman presented for ratification the Pre-License Education Provider 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.

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 Leisey and seconded by Rouch to ratify the three reports. Motion carried with Avery, Dover, 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.

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 2010-037 – Katherine E. Knight vs. Ralph Dominic Marasco and Larry Dean Melichar

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 Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item B Complaint 2010-041 – Donald and Deborah Oldenkamp vs. Kathleen Lee Mumgaard

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 Dover and seconded by Ptak that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Ptak, Rouch and Gale voting aye, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item C Complaint 2010-047 – Charles Richter and Carolyn Richter vs. Gary Edward Tusa, Vincent Leisey and Brian Alan Thomas

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 Avery and seconded by Dover that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Ptak, Rouch and Gale voting aye, with Griess voting nay, and with Leisey not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item D Complaint 2010-048 – Christine Pickett vs. Jacob A. Martin

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 dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item E Complaint 2010-051

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 Ptak that this complaint be held in abeyance and a new complaint be filed and set for hearing against the respondent per the Staff recommendation. Motion carried with Avery, Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Griess not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Item F Complaint 2010-053 – Professional Management Midwest, Inc., James W. Huntington, and Tony C. Clark vs. Alvin Wayne Shipps

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 Avery and seconded by Leisey that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item G Complaint 2009-033 – Bessie Mae Carnahan and Patricia Ann Glaze vs. Douglas William Chamberlain and Kurtis E. Campbell

Item H Complaint 2009-037 – Terry R. Gilson vs. Scott Venable Addison

Item I Complaint 2010-008 – Commission vs. Joel Thomas McNeil

Item J Complaint 2010-026 – David Joseph Paladino vs. Robert S. Stevens

Item K Complaint 2010-034 – Commission vs. Kurtis E. Campbell

Item L Complaint 2010-035 – Commission vs. Mary Ellen Taylor

Item M Complaint 2010-056 – Larry Geiger vs. Gregg M. Shaw

Deputy Director Mayrose indicated that the Respondents in items G through M had not renewed their license for 2011.

A motion was made by Leisey and seconded by Griess that Complaints 2009-033, 2009-037, 2010-008, 2010-026, 2010-034, 2010-035 and 2010-056 be dismissed without prejudice. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item N Complaint 2009-028 – Beth and John Wiersma vs. Betty Jane Warren and Jamie Paul Bollwitt

Deputy Director Mayrose explained that Complaint 2009-028 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion against Betty Jane Warren and set Complaint 2009-028 for hearing against Jamie Paul Bollwitt. Complaint 2010-021 was the new complaint against Betty Jane Warren. Deputy Director Mayrose requested Complaint 2009-028 be dismissed against Betty Jane Warren only.

A motion was made by Leisey and seconded by Ptak to dismiss Complaint 2009-028 against Betty Jane Warren only, since the Commission accepted a Stipulation and Consent Order on Complaint 2010-021 at this meeting. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Item O Complaint 2010-007 – Margaret Ann Neal vs. Hank Knisley, Jr. and Matthew Kurt Pieper

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

Deputy Director Mayrose explained that Complaint 2010-007 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2010-007 in abeyance until the new complaint had been adjudicated. Complaint 2011-021 was the new complaint.

A motion was made by Leisey and seconded by Dover to dismiss Complaint 2010-007 since the Commission accepted a Stipulation and Consent Order on Complaint 2011-021 at this meeting. Motion carried with Avery, Dover, Griess, Leisey, Ptak and Rouch voting aye, and with Gale not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Presentation of Stipulation and Consent Orders

**Complaint 2009-028,
Beth and John Wiersma vs. Betty Jane Warren and Jamie Paul Bollwitt**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2009-028, Beth and John Wiersma vs. Betty Jane Warren and Jamie Paul Bollwitt. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Rouch to enter into the Order as presented against Bollwitt only. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Complaint 2010-021,
Commission vs. Betty Jane Warren**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-021, Commission vs. Betty Jane Warren. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Leisey to enter into the Order as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak and Rouch voting aye and with Gale voting nay.

**Complaint 2010-060,
Brandon Schroeder vs. Douglas Lee Meier**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2010-060, Brandon Schroeder vs. Douglas Lee Meier. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey to enter into the Order as presented. The motion died for a lack of a second.

It was the consensus of the Commission to decline the proposed Stipulation and Consent Order. It was also the consensus of the Commission to offer Respondent a six month suspension of his license all stayed and served on probation, a five hundred dollar fine, and six hours of additional continuing education, including three hours in the area of agency and three hours in the area of contracts.

**Complaint 2011-009,
Commission vs. Michael Robert Kelly**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-009, Commission vs. Michael Robert Kelly. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Dover and seconded by Griess to enter into the Order as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Complaint 2011-023,
Commission vs. Beverly Arlene Redwine**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-023, Commission vs. Beverly Arlene Redwine. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Leisey and seconded by Rouch to enter into the Order as presented. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

**Complaint 2011-021,
Commission vs. Matthew Kurt Pieper**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-021, Commission vs. Matthew Kurt Pieper. A copy of said Order is attached to and made a part of these minutes.

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

After discussion, a motion was made by Leisey and seconded by Avery to enter into the Order as presented. Motion carried with Avery, Griess, Leisey, and Rouch voting aye, with Dover and Ptak voting nay, and with Gale not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Hearings

Complaint 2010-003 – Richard and Janet Marler vs. Gayle Gene Herbst

A Hearing was held on August 18, at 9:30 a.m., in the matter of Complaint 2010-003, Richard and Janet Marler vs. Gayle Gene Herbst. Greg Barton and Kelly Ekeler, Special Assistant Attorneys General and Counsel to the Commission, appeared for the Complainant. Respondent Gayle Gene Herbst was present and represented by Counsel Mark Porto of Grand Island.

Commissioner Avery recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

After opening statements, Counsels Ekeler and Porto jointly offered thirty-two Exhibits, all of which were received by Chairperson Gale.

Counsels Ekeler and Barton called Janet Marler and Gayle Gene Herbst as witnesses.

At 10:30 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 10:46 a.m.

Counsel Porto called Gayle Gene Herbst as a witness.

At 12:30 p.m., Chairperson Gale declared a recess of the Hearing in order to break for lunch. The Hearing reconvened at 1:15 p.m.

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

The Commission deliberated on the matters adduced at hearing.

After discussion, a motion was made by Leisey to dismiss Complaint 2010-003. The motion died for a lack of a second.

A motion was made by Ptak and seconded by Dover to find in Complaint 2010-003, that Gayle Gene Herbst violated Neb. Rev. Stat. §76-2417 (1)(a) and (b).

A motion was made by Rouch to reconsider the pending motion. The motion died for a lack of a second.

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

A motion was made by Rouch and seconded by Dover to find in Complaint 2010-003, that Gayle Gene Herbst violated Neb. Rev. Stat. § 81-885.24(29) for failure to inspect managed properties on a regular basis. Motion failed with Dover and Rouch voting aye, with Griess, Leisey, Ptak and Gale voting nay, and with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

A motion was made by Griess and seconded by Ptak to find in Complaint 2010-003, that Gayle Gene Herbst violated Neb. Rev. Stat. § 81-885.24(29) for mismanagement of the property and neglect for allowing the property to become damaged. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye, and with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Leisey and seconded by Ptak in Complaint 2010-003, that Gayle Gene Herbst should receive a censure plus three hours of additional continuing education in the area of agency to be completed within 120 days. Motion carried with Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye, and with Avery not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

With the consent of the Respondent, Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale notified the Respondent that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 2:40 p.m.

**Rule Hearing on Title 299, Chapter 1 -
Amendment to Make Regulations Conform with Recent Statutory Changes Requiring a
Two Year License Renewal Process and Eliminating Pocket Cards**

At 3:00 p.m. on August 18, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapter 1, of the Commission's Rules and Regulations.

Director Lemon presented three exhibits, which included: 1) a copy of the meeting notice, which was published in two newspapers and filed with the Secretary of State, the Executive Board of the Legislative Council, and the Governor's Policy Research Office; 2) a copy of the Lincoln

Journal-Star and Omaha Daily Record proofs of publication of the meeting notice; and 3) a copy of the proposed amendments to Title 299, Chapter 1, in legislative style. Exhibits are attached to and made a part of these minutes.

Director Lemon reviewed the proposed amendments set out in Title 299, Chapter 1.

Director Lemon noted that he had not received any written comments or testimony which had been solicited.

Chairperson Gale asked if any member of the public wished to speak regarding the proposed amendments. Kristen Anderson with the Nebraska Realtors Association indicated they were in support of this rule change.

Commissioner Dover asked if the licensees would be receiving a receipt instead of the pocket card. Director Lemon indicated that upon renewal, the licensees will receive a wallet sized receipt for payment, which will not need to be turned back in to the Commission office for any reason, and will contain useful information, such as the license number, rather than simply just being a receipt.

Chairperson Gale indicated that all interested parties were invited to participate in the rule hearing either in person or by written comment. He noted that comments had been solicited and the proposed regulations were available on the Commission's website to peruse.

A motion was made by Leisey and seconded by Rouch that the Commission adopt Title 299, Chapter 1, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye

Chairperson Gale declared the rule hearing concluded at 3:09 p.m.

**Rule Hearing on Title 299, Chapter 7 -
Amendment Relating to Policies and Procedures for the Broker Approved Training
Requirements for Real Estate Licensees**

At 3:10 p.m. on August 18, Chairperson Gale called to order the public hearing on the proposed amendments to Title 299, Chapter 7, of the Commission's Rules and Regulations.

Director Lemon presented three exhibits, which included: 1) a copy of the meeting notice, which was published in two newspapers and filed with the Secretary of State, the Executive Board of the Legislative Council, and the Governor's Policy Research Office; 2) a copy of the Lincoln Journal-Star and Omaha Daily Record proofs of publication of the meeting notice; and 3) a copy of the proposed amendments to Title 299, Chapter 7, in legislative style. Exhibits are attached to and made a part of these minutes.

Director Lemon noted that he had not received any written comments or testimony, regarding the rule hearing, which had been solicited. He noted the proposed rule changes had been discussed at multiple Commission Meetings in which speakers had addressed concerns with the Commission.

Deputy Director Hoffman reviewed the proposed amendments to Title 299, Chapter 7.

Kristen Anderson with the Nebraska Realtors Association indicated that they were in support of this change. She noted that the Association received very little feedback but were aware that

many were interpreting the reference to, "Broker Approved Training", to mean that the requirement applied only to brokers. She indicated that the Nebraska Realtors Association was working to correct that misunderstanding.

A motion was made by Rouch and seconded by Ptak that the Commission adopt Title 299, Chapter 7, and to direct staff complete the filing process for the proposed rule changes. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Chairperson Gale declared the rule hearing concluded at 3:21 p.m.

**August 19, 9:15 a.m. - Show-Cause Hearing on
SC2011-002, Commission vs. Michael Dean Slatten**

A Hearing was held on August 19 at 9:25 a.m., in the matter of SC2011-002. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Michael Dean Slatten was present without Counsel.

After Opening Statements, Counsel Barton offered nine Exhibits. Counsel Barton called Terry Mayrose, Greg Lemon and Michael Dean Slatten as witnesses.

Respondent Slatten called himself as a witness.

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

The Commission deliberated on the matters adduced at hearing.

A motion was made by Dover and seconded by Rouch that Michael Dean Slatten had not shown cause why his license should not be sanctioned for failing or refusing to abide by specific terms and conditions of an Order of the Commission dated December 3, 2010. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint 2003-023, dated May 28, 2003, suspending Mr. Slatten's license for two years with the entire period stayed and served on probation, plus an additional twelve hours of continuing education, including three hours in the area of agency, three hours in the area of license law, three hours in the area of contracts and three hours in the area of trust accounts. It showed relating to Complaint 2008-004, dated May 22, 2009, that the Commission suspended Mr. Slatten's license for two years with the first thirty days actually served on suspension and the remainder stayed and served on probation, plus an additional six hours of continuing education, including three hours in the area of agency and three hours in the area of ethics. It also showed relating to Complaint SC2010-005, dated December 3, 2010, that Mr. Slatten's license was suspended for an additional six months with the first thirty days served on suspension and the remainder five months stayed and served on probation.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Dover and seconded by Avery in Complaint SC2011-002, that Michael Dean Slatten's real estate license be revoked and after two years if he desired to once again obtain a real estate license and his attitude toward complying with the rules of the Commission had changed, he be allowed an Informal Special Appearance.

After further discussion, an amendment to the motion was made by the mover for the revocation of Michael Dean Slatten's real estate license without a time frame for reapplication. The amendment was approved by the second.

Motion failed with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting nay.

A motion was made by Dover and seconded by Avery in Complaint SC2011-002, that Michael Dean Slatten's real estate license be revoked.

An amendment was offered by Commissioner Rouch that Mr. Slatten be refunded the 2011 license renewal fee and late fees totaling \$290.00 since his license was unused in 2011. The amendment was approved by the mover and second.

Motion carried with Avery, Dover, Griess, Rouch and Gale voting aye, and with Leisey and Ptak voting nay.

A motion was made by Ptak and seconded by Leisey that that the costs incurred for the court reporter normally billed to the Respondent, as provided for in 305 NAC Chapter 4 be waived. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

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

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 11:00 a.m.

Informal Special Appearances

Randy James Wells, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Wells' special appearance; letters of explanation from Mr. Wells, character reference letters for Mr. Wells; Mr. Wells salesperson application form and information regarding Mr. Wells' previous special appearances in March, 2009. 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.

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

After discussion, a motion was made by Dover and seconded by Leisey to allow Mr. Wells to sit for the salesperson examination after making proper application and to have a license issued upon passing, provided nothing else appeared on his criminal background check. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

At 3:55 p.m. Mr. Wells returned to address the Commission with concerns regarding an additional item which may appear on his criminal background check.

A amendment to the motion was made by Dover and seconded by Leisey that Mr. Wells must notify any anticipated employing broker of the criminal convictions and the circumstances of the

convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Mr. Wells must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Levi Scott Ashley, Salesperson Applicant

Chairperson Gale asked if Mr. Ashley was present. He indicated that the Commission would take a few moments to allow Commission Staff to check the premises to determine if Mr. Ashley was on the premises but had not found the meeting room.

Commission Staff was unable to locate Mr. Ashley. Chairperson Gale indicated that should Mr. Ashley appear they would try and accommodate his request for an informal special appearance at that time but would continue with the agenda items.

Consider 2011-2012 Objectives

Director Lemon presented an exhibit regarding the proposed 2011-2012 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the exhibit and indicated that most of the items had either been on the previous year objectives, were related to the implementation of legislation, or had been added upon request. He asked if the Commissioners had any additions or corrections to the proposed Objective.

After discussion, it was the consensus of the Commission to add an Objective that the complaint process be completed within a year of receipt.

A motion was made by Ptak and seconded by Leisey to adopt the Commission Objectives as amended. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Consideration of Changes to the Seller Property Condition Disclosure Statement

Director Lemon presented an exhibit of the proposed 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 the exhibits reflected the comments and suggestions received to date regarding the proposed changes to the Seller Property Condition Disclosure Statement. He indicated that any changes to the Seller Property Condition Disclosure Statement would require changes to the Commission's Rules and Regulations and a public hearing would be held.

There was discussion regarding question seventeen under Section D., Other Conditions. Many felt the language was too broad, while others questioned if the wording should be changed from "would" to "may". After further discussion, it was determined that the wording was adequate.

Chairperson Gale indicated that in order to expedite the process of any proposed changes to the form as presented that a motion regarding the items should be entertained.

A motion was made by Dover and seconded by Leisey to change the wording in Part II, Section A, Number 10 from "Property" to "Dwelling". Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was made by Dover and seconded by Griess to make two questions out of Part II, Section C, Number 10. He noted that Number 10a should read "Is there a common wall or wall?" and 10b should read "If so, is there a party wall agreement?". Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was made by Dover and seconded by Leisey to add servicing/winterizing of sprinkler system in Part II, Section E. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was made by Leisey and seconded by Dover to change the first question on the first page in the box located near the top of the page to say "Is seller occupying the property? Yes I No" which would be consistent with the language in the remainder of the paragraph. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

A motion was made by Ptak and seconded by Griess to approve the changes to the Seller's Property Condition Disclosure Statement as amended. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye

LB 315 – Business Entity Compliance Plan

Director Lemon presented an Affiliated Licensee's Compensated as Business Entity Compliance Plan. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that LB315 was originally drafted to allow affiliated real estate licensees to be compensated as regular business corporations or limited liability companies (LLC's). He indicated that he and Chairperson Gale met with the task force formed by the Nebraska Realtors Association regarding follow up study on the bill, which ultimately did not address the issue of affiliated licensees utilizing business entities.. The task force concluded that the current policy of the Commission regarding affiliated licensees and business entities should be upheld. He noted that under the proposed plan both the Nebraska Real Estate Commission and the Secretary of State's office would grant amnesty for those licensees to get into compliance by January 1, 2012, the Commission will educate licensees, as well as attorneys and accountants who assist licensees in forming business organizations on the current requirements and that every effort will be made to identify the licensees which may be out of compliance.

Commissioner Leisey indicated that most broker know that they have to pay commissions to an individual, professional corporation or professional limited liability company, but it would need to be made very clear for those who may not know.

A motion was made by Leisey and seconded by Griess to adopt compliance plan as proposed. Motion carried with Avery, Dover, Griess, Leisey, Ptak, Rouch and Gale voting aye.

Implementation of 2011 Legislation

Director Lemon presented a report on how the law changes will be implemented as a result of the 2011 Legislative session. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained how the Commission staff was implementing each of the legislative bills passed, most of which which will become effective on August 27, 2011.

No action was necessary on this report.

Adopt Rita Griess Resolution

Director Lemon presented a resolution commemorating service on the Commission by Rita Griess. A copy of said resolution is attached to and made a part of these Minutes.

A motion was made by Leisey and seconded by Ptak that the resolution for Rita Griess be adopted.

Chairperson Gale noted that it was a great pleasure and honor to serve on the Commission with Rita Griess for six years and appreciated her service.

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

Information Matters

Trust Account Examination Evaluation Report – First and Second Quarter 2011

Director Lemon presented the Trust Account Examination Evaluation Reports for the First and Second Quarters in 2011. A copy of said reports are attached to and made a part of these minutes.

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

Commissioner Avery indicated that the evaluation forms are mailed to the broker which may not have had any interaction with the auditor during their trust account examination. He wanted to know if language could be added to the evaluation form which would allow the broker to forward the evaluation form to the appropriate individual. Director Lemon indicated that he would review the language located in the letter and form which are mailed to the broker and amend where possible.

Commissioner Dover indicated that one of the comments received was relating to the top ten concerns of trust accounts and felt that it would make a good article for the Commission Comment newsletter.

No action was necessary on this report.

ARELLO District Conference – August 12-14, 2011 - Orange Beach, Alabama – Report of Attendees

Director Lemon noted that Commissioner Rouch, and Director Lemon and Deputy Director Hoffman attended the ARELLO District Conference.

The attendees of the conference presented reports on sessions of interest that they attended.

No action was necessary on this report.

Errors and Omissions Loss Report through June 30, 2011

Director Lemon presented the Errors and Omissions Loss Report through June 30, 2011. A copy of said report is attached to and made a part of these minutes.

There was discussion regarding the column definitions in the Report. Director Lemon indicated that he would contact the insurance provider to get the report clarifications.

No action was necessary on this report.

Future Meeting Dates

September 15-16, 2011 – Hampton Inn & Suites, Lincoln
October 27-28, 2011 - Staybridge Suites, Lincoln
December 6-7, 2011 - Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:18 a.m. on August 18, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 10:30 a.m. on August 18, Chairperson Gale declared a brief recess, and reconvened the meeting at 10:46 a.m.

At 12:30 p.m. on August 18, Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:15 p.m.

At 2:42 p.m. on August 18, Chairperson Gale declared a brief recess, and reconvened the meeting at 3:00 p.m.

At 4:50 p.m. on August 18, Chairperson Gale recessed the meeting.

At 9:00 a.m. on August 19, Chairperson Gale reconvened the meeting.

At 9:13 a.m. on August 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 9:25 a.m.

At 11:03 a.m. on August 19, Chairperson Gale declared a brief recess, and reconvened the meeting at 11:22 a.m.

At 1:05 p.m., there being no further business to come before the Commission, a motion was made by Griess and seconded by Leisey that the meeting adjourn. Motion carried with Avery, Dover, 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 August 18-19, 2011, meeting of the Nebraska Real Estate Commission were available for inspection on August 25, 2011, 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

Judy Burford, CBSHOME Real Estate, Omaha

Drew Stange, Lincoln

Janet Marler, Lincoln

Gayle Herbst, Action Property Management, Grand Island

Mark Porto, Action Property Management, Grand Island

Susan Geschwender, Randall School, Omaha

Harold Johnson, NP Dodge Co, Omaha

