

**NEBRASKA REAL ESTATE COMMISSION**

**March 15, 2012**

**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 March 15, 2012, 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, 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 item 6b had been added since the tentative agenda was mailed to the Commissioners.

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

**Minutes of February 16, 2012**

The minutes of the Commission meeting held on February 16, 2012, were considered.

(Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. On page 5 and page 9, Commissioner Stange's name had been omitted from the motion and Ex-Commissioner Griess's name had been inadvertently included. The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Stange and seconded by Leisey to approve the minutes as amended above. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

## **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 February**

Director Lemon presented the Receipts and Expenditures Report for February. 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 February 29, 2012, was \$1,055,743.39, which compared to a cash fund balance of \$681,382.70 on February 28, 2011.

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

## **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**

### **Time-Share Registrations - Amendment for Marriott Vacation Club Destinations**

Director Lemon presented a specialized registrations report which included the registration of amendment to time-share registration for Marriott Vacation Club Destinations. A copy of said report is attached to and made a part of these minutes.

### **Campground Registration – Amendment for Thousand Trails**

Director Lemon presented a specialized registrations report which included the registration of amendment to campground registration for Thousand Trails. A copy of said report is attached to and made a part of these minutes

A motion was made by Leisey and seconded by Avery to approve the amendments to the two registrations as presented. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange 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, Leisey, Ptak, Rouch, Stange and Gale voting aye.

### **Examination Report - February**

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

There was discussion regarding the quality of the pre-license education courses currently being offered and if they properly prepare applicants for practicing real estate. Deputy Director Hoffman indicated that each year the examination company provides statistics on the passing rates of its real estate clients. Nebraska consistently ranks among the top of these states indicating that schools are preparing students well for the entry level examination. There was discussion regarding the implementation process and benefits of a mandatory pre-license on Nebraska license and agency law. An education subcommittee, consisting of Commissioner Dover, Commissioner Rouch and Deputy Director Hoffman was formed to discuss and research this matter.

After review, a motion was made by Ptak and seconded by Rouch to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange 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.

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

After review, a motion was made by Leisey and seconded by Rouch to ratify the report. Motion carried with Avery, Leisey, Ptak, Rouch, Stange and Gale voting aye, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

#### **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.

Prior to discussion of these matters, Commissioner Stange recused himself, thereby nullifying any potential conflict of interest.

#### **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.

### **Broker-Approved Training Recognition**

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes. An updated Report was distributed at the meeting and is attached to and made a part of these minutes.

There was a consensus of the Commission to have the approved broker-approved training recognition report emailed to the employing brokers each month.

After review, a motion was made by Leisey and seconded by Dover to ratify the three reports. Motion carried with Avery, Dover, Leisey, Ptak, Rouch and Gale voting aye, and with Stange not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

### **Continuing Education Annual Report**

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

Deputy Director Hoffman explained the contents in the report and the process followed to obtain the annual report.

After review, a motion was made by Leisey and seconded by Ptak to remove the providers on the Continuing Education Annual Report from approved status. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

### **Continuing Education Renewal Report**

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

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

Deputy Director Hoffman explained the contents in this report and the course renewal process providers have to engage in every three years to renew courses or let them expire. After review, a motion was made by Leisey and seconded by Stange to ratify the courses listed on the Continuing Education Renewal Report. Motion carried with Avery, Dover, Leisey, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

### **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 2011-028 – Ruth Richter vs. Sheila Rae Kusmierski

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

**Item B** Complaint 2011-037 – Ruth Richter vs. Melissa L. Jarecke

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 Stange that the complaint be set for hearing on Neb. Rev. Stat. § 81-855.24(29). Motion failed with Dover, Stange and Gale voting aye, and with Avery, Leisey, Ptak and Rouch voting nay.

After further discussion, a motion was made by Leisey and seconded by Avery that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion carried with Avery, Leisey, Ptak and Rouch voting aye, and with Dover, Stange and Gale voting nay.

**Item C** Complaint 2011-036 – Ruth Richter vs. Craig William Horobik

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 set for hearing on Neb. Rev. Stat. §81-855.24(14). Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

**Item D** Complaint 2012-001

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Leisey and seconded by Avery that the complaint be set for hearing. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

**Item E Complaint 2011-005**

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 this complaint be held in abeyance and a new complaint be filed against the Respondent per the Staff recommendation. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

**Item F Complaint 2010-054 - Janet B. Lane vs. Robert L. Hupp**

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

Deputy Director Mayrose requested Complaint 2010-054 be dismissed. Deputy Director Mayrose explained that Complaint 2010-054 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 2010-054 in abeyance until the new complaint had been adjudicated. Complaint 2012-002 was the new complaint.

A motion was made by Leisey and seconded by Rouch to dismiss Complaint 2010-054, since the Commission accepted a Stipulation and Consent Order on Complaint 2012-002 at this meeting. Motion carried with Avery, Dover, Leisey, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

**Presentation of Stipulation and Consent Orders**

**Complaint 2012-002,  
Commission vs. Robert L. Hupp**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-002, Commission vs. Robert L. Hupp. A copy of said Order is attached to and made a part of these minutes.

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

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

**Complaint 2011-017,  
Tiffany A. Trofino vs. Jeffrey Michael Rensch**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2011-017, Tiffany A. Trofino vs. Jeffrey Michael Rensch. 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, Leisey, Ptak, Rouch, Stange and Gale voting aye.

## **Rule Hearings**

### **Rule Hearing on Title 302, Chapter 1 – Amendments to revise and update the Seller Property Condition Disclosure Statement to conform to statutory changes and clarify and expand upon information requested in the Statement**

At 9:40 a.m. on March 15, Chairperson Gale called to order the public hearing on the proposed amendments to Title 302, 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 302, Chapter 1, 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 which had been solicited. He explained that this was the second hearing regarding the proposed amendments.

Director Lemon reviewed the proposed amendments set out in Title 302, Chapter 1.

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 as presented.

A motion was made by Rouch and seconded by Dover that the Commission adopt Title 302, Chapter 1, and to direct staff to complete the filing process for the proposed rule changes. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

Chairperson Gale declared the rule hearing concluded at 9:50 a.m.

## **Disciplinary Hearings**

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

## **Informal Special Appearances**

### **Charles Andrew Ekberg, Non-Resident Broker Licensee**

Director Lemon presented exhibits which included: correspondence regarding Mr. Ekberg's special appearance; a letter of explanation from Mr. Ekberg. A copy of said exhibit is attached to and made a part of these minutes. Mr. Ekberg was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Ekberg explained the situations regarding his Wyoming license and a pending lawsuit.

Mr. Ekberg distributed two separate confidential seller's fee agreements, one initialed and another which was not. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14a1.

A motion was made by Leisey and seconded by Rouch that the investigations regarding Mr. Ekberg be dismissed without prejudice. An amendment was offered by Ptak that Mr. Ekberg be required to inform the Commission of the results of the pending lawsuit discussed at the informal special appearance. The amendment was accepted by the mover and second.

There was discussion regarding the procedures of the Commission with regard to action taken against licensees by other jurisdictions.

After further discussion, an amendment was offered by Ptak that the motion reflect that extraordinary circumstances was evidence by the State of Wyoming's civil case against Mr. Ekberg and that he be allowed to have a broker's license in Nebraska and that the investigative report be dismissed and that the results of the civil case be reported to the Commission. The amendment was accepted by the mover and second.

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

#### **Scott Steven Peekenschneider, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Peekenschneider's special appearance; character reference letters for Mr. Peekenschneider; a summary of Mr. Peekenschneider's criminal history; Mr. Peekenschneider'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. Peekenschneider was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Leisey and seconded by Rouch to allow Mr. Peekenschneider to sit for the salesperson examination after making proper application and to have a license issued upon passing.

An amendment was offered by Commissioner Ptak that additional language be added to the pending motion which would require Mr. Peekenschneider to 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. Peekenschneider must also notify the Commission staff of any criminal charge. The amendment was not accepted by the mover and second.

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

#### **James Ehlers, Potential Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Ehlers' special appearance; character reference letters for Mr. Ehlers; a summary of Mr. Ehlers' criminal history; and an emailed explanation from Mr. Ehlers. A copy of said exhibit is attached to and made a part of these minutes. Mr. Ehlers was present. Chairperson Gale reviewed the procedure for



informal special appearances.

The Commission had distributed an additional letter of reference which was received on Mr. Ehler's behalf after the exhibits were sent to the Commissioners. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14c1.

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

A motion was made by Leisey and seconded by Rouch to allow Mr. Ehlers to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Ehlers must also notify the Commission immediately, if he receives another DUI charge, for the period of two years. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

### **Legislative Matters**

**LB 818** - Director Lemon reported that was still placed on General File.

**LB 1013** - Director Lemon reported that while this bill related to the Administrative Procedure Act. The hearing was held on February 23, 2012.

No action was necessary with regard to these matters.

### **Information Matters**

#### **Errors and Omissions Loss Report – Fourth Quarter 2011**

Director Lemon presented a Nebraska Claim Listing Report Explanation page. A copy of said exhibit is attached to and made a part of these minutes.

There was discussion regarding the Errors and Omissions Loss Report presented at the previous meeting and the explanation provided by Rice Insurance Services Company, LLC (RISC). Director Lemon explained that claims might take years to fully process, so lower claim pay outs in the first year of the Rice Insurance Services Company contract were not directly comparable to the claims paid out in the final years of the prior WUG contract. There was also discussion on the reports column headings. Director Lemon indicated that the information and column headings would be addressed with the next quarterly report.

No action was necessary with regard to this matter.

### **Future Meeting Dates**

April 19-20, 2012 - Staybridge Suites, Lincoln

May 17-18, 2012 - Staybridge Suites, Lincoln

June 28, 2012 - Staybridge Suites, Lincoln

August 23-24, 2012 – Staybridge Suites, Lincoln

September 27-28, 2012 – Staybridge Suites, Lincoln

## **Recesses and Adjournment**

At 10:06 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:15 a.m.

At 11:58 a.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Leisey that the meeting adjourn. Motion carried with Avery, Dover, Leisey, Ptak, Rouch, Stange and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 15, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on March 20, 2012, 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  
JoAnn Grennan, CBSHOME Real Estate, Omaha