

NEBRASKA REAL ESTATE COMMISSION

September 27, 2012

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:06 a.m. on September 27, 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. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Plate and Delgado Hearings.

Swearing-In Ceremony- Commissioner Herb Freeman

Chairperson Gale conducted a swearing-in ceremony for recently appointed Commissioner Herb Freeman, presented him with his Commission pin, and welcomed him to the Commission.

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 no agenda items 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 Rouch to adopt the final agenda as presented. Motion carried with Avery, Dover, Ptak, Freeman, Rouch, Stange and Gale voting aye.

Minutes of August 23, 2012

The minutes of the Commission meeting held on August 23, 2012, were considered. (Note: It was discovered after the meeting adjourned that the Exhibit for this Agenda Item was incorrect. On page 6 under the Informal Special Appearance for Kelby Robert Kraft, it indicated that Mr. Haber was present when, in fact, the name should have said "Mr. Kraft". The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Rouch and seconded by Avery to approve the minutes as presented. Motion carried with Avery, Dover, Freeman, 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 August

Director Lemon presented the Receipts and Expenditures Report for August. 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 August 31, 2012, was \$773,832.66, which compared to a cash fund balance of \$271,826.92 on August 31, 2011.

After discussion, a motion was made by Rouch and seconded by Ptak to file the August Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange 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 Stange and seconded by Avery to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Examination Report - August

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

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

Amendment to Examination Contract to Extend Contract Through June 30, 2015 and Consideration of Examination Fee

Director Lemon presented an exhibit regarding a proposed amendment to the examination contract, a copy of which is attached to and made a part of these minutes. (Note: It was

discovered prior to the meeting that the Exhibit for this Agenda Item was incorrect. The date of contract extension date was set forth as "through June 30, 2013" when, in fact, the date should have been "through June 30, 2015". The Exhibit was corrected for attachment to these minutes.)

Director Lemon explained that the amendment would extend the licensing examination contract with Applied Measurement Professionals (AMP) beyond the current expiration date of July 1, 2013, through June 30, 2015 with a \$1 increased cost per examination for both the salesperson and the broker examinations. He explained that the original contract had been awarded in 2007 to administer the examination with three opportunities to extend the contract for two-years. The second extension option extended through June 30, 2013. This would be the third of those options. He further indicated that he felt the performance of the examination company had been satisfactory and recommended that the Commission extend the contract through June 30, 2015. After discussion, a motion was made by Dover and seconded by Stange to approve the contract renewal as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

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.

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.

After review, a motion was made by Dover and seconded by Rouch to ratify the three reports. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Rejected Continuing Education

Deputy Director Hoffman presented the Continuing Education Rejected 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.

Deputy Director Mayrose requested guidance regarding the negotiation of a pending stipulation and consent order.

No action was necessary on this report.

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

Item A Complaint 2012-013

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 Rouch that the complaint be dismissed without prejudice. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

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

Item B Complaint 2012-015

Prior to discussion of this matter, Commissioner Dover 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 Stange and seconded by Freeman that this complaint be held in abeyance and a new complaint be filed against the respondent per the Staff recommendation. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Item C Complaint 2012-017 – Justin & Michele Haislip vs. Robin A. Petersen

Deputy Director Mayrose requested Complaint 2012-017 be dismissed. Deputy Director Mayrose explained that Complaint 2012-017 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 2012-017 in abeyance until the new complaint had been adjudicated. Complaint 2012-023 was the new complaint.

A motion was made by Ptak and seconded by Avery to dismiss Complaint 2012-017, since the Commission accepted a Stipulation and Consent Order for Complaint 2012-023 at this meeting. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item D Investigative Matter

Deputy Director Mayrose explained that a motion had been made at the previous meeting to have this matter set for a Show Cause Hearing as to why the Salesperson's real estate license should not be revoked for demonstrating negligence, incompetency, and unworthiness. Since this matter would not be considered a Show Cause Hearing, the Commission would need to reconsider the motion to allow for a Disciplinary Hearing.

A motion was made by Ptak and seconded by Avery to reconsider the motion. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

A motion was made by Ptak and seconded by Avery that the complaint be filed and set for hearing against the Respondent per Staff recommendation. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item E Investigative Matter

Deputy Director Mayrose previously e-mailed an investigative report to the Commission.

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

Item F Complaint 2011-019 – Commission vs. Melissa Ann Lucas

Item G Complaint 2011-030 – Christopher J. Lehner vs. Melissa Ann Lucas

Item H Complaint 2011-032 – Justin L. Hall vs. Melissa Ann Lucas

Deputy Director Mayrose indicated that the Respondent in these matters had not renewed their license for 2012.

A motion was made by Ptak and seconded by Freeman that Complaints 2011-019, 2011-030 and 2011-032 be dismissed without prejudice. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item I Settlement Offer Discussion Regarding Monte Froehlich

Deputy Director Mayrose indicated that the Commission entered into a Stipulation and Consent Order with Monte Froehlich which required a fine to be paid by a specific date. Mr. Froehlich was delinquent in paying his fine. Deputy Director Mayrose contacted Mr. Froehlich and the fine was paid three days late. Deputy Director Mayrose offered, on behalf of the Commission, a Stipulation and Consent Order but did not feel Mr. Froehlich's counter offer was acceptable. He asked for the Commission's guidance in this matter.

A motion was made by Ptak and seconded by Freeman that either Mr. Froehlich accept the Stipulation and Consent Order offered or the matter should proceed towards the scheduled hearing on October 18, 2012. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Presentation of Stipulation and Consent Orders

Complaint 2012-023, Commission vs. Robin A. Petersen

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-023, Commission vs. Robin A. Petersen. 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 Avery to enter into the Order as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Disciplinary Hearings

Complaint 2011-026 – John V. and Jamie D. Eberly vs. Timothy Charles Plate

A Hearing was held on September 27, 2012, at 9:30 a.m., in the matter of Complaint 2011-026, John V. and Jamie D. Eberly vs. Timothy Charles Plate. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Plate was present and represented by Counsel Delaney of LaVista.

Commissioners Avery and Rouch recused themselves from participating in this matter, thereby nullifying any potential conflict of interest.

After Opening Statements, Counsels Barton and Delaney jointly offered one Exhibit which was received by Chairperson Gale.

Counsel Barton offered three Exhibits which were received by Chairperson Gale. Counsel Barton called John V. Eberly, Jamie D. Eberly and Timothy Charles Plate as witnesses.

At 10:31 a.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 10:45 a.m.

Counsel Delaney offered five Exhibits all of which were received by Chairperson Gale. Counsel Delaney called Timothy Charles Plate, Dianne L. Schulte and Curt Ratliff as witnesses.

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 Stange in Complaint 2011-026, that Timothy Charles Plate violated Neb. Rev. Stat. § 81-885.24(16) and 76-2417(1) (b) & (c). Motion carried with Dover, Ptak, Stange and Gale voting aye, with Freeman voting nay, and with Avery and Rouch not participating or voting, having recused themselves, thereby nullifying any potential conflict of interest.

Chairperson Gale opened the past disciplinary action envelope. It showed the Commission accepted a Stipulation and Consent Order relating to Complaint #93-003, censuring Mr. Plate's license.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Ptak in Complaint 2011-026, that Timothy Charles Plate should receive a censure. A friendly amendment was offered by the second to also require six hours of additional continuing education in the areas of agency and contracts. The amendment was accepted by the mover. Motion carried with Dover, Freeman, Ptak, Stange and Gale voting aye, with Avery and Rouch not participating or voting, having recused themselves, 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 12:31 p.m.

**September 27 – 3:00 p.m. – Petition for Review -
P2012-001, Commission vs. Abelardo Delgado**

A Hearing was held on September 27 at 3:15 p.m., in the matter of P2012-001. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Delgado was not present and not represented by Counsel.

Counsel Barton offered fifteen Exhibits. 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.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Ptak and seconded by Dover in Complaint P2012-001, to sustain Director Lemon's decision. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale indicated that the Respondent would be notified that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in Title 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 3:45 p.m.

Informal Special Appearances

Robert Scott Walton, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Walton's special appearance; a copy of Mr. Walton's Application for Full Pardon; character reference letters for Mr. Walton; a copy of ARELLO's Disciplinary Action Data Bank record for Mr. Walton; Mr. Walton'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. Walton was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Dover and seconded by Ptak to allow Mr. Walton to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Walton 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 until such time as a pardon is granted by the Nebraska Board of Pardons. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Commission Policy: Guideline for Original Applicants with Criminal Convictions

Director Lemon presented a revised copy of the guidelines for original applicants with criminal convictions. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted per Commission request, the guidelines had been revised and welcomed comments. In addition to self-reporting prior to an informal special appearance, which is now required they also must complete a criminal background check. He also indicated that instructions which are provided to potential applicants would be reviewed.

A motion was made by Freeman and seconded by Dover to approve guidelines as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Information Matters

ARELLO Annual Conference - September 19-23, 2012 - Halifax, Nova Scotia, Canada – Report of Attendees

Director Lemon noted that Commissioners Avery, Rouch and Stange and himself and Deputy Director Hoffman attended the ARELLO Annual Conference.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

Deputy Director Hoffman indicated that the Commission received the ARELLO education award recognizing Broker-Approved Training for its design and innovation. She explained that there is always a lot of competition for awards among the jurisdictions in ARELLO. She noted that due hard work by the Commissioners, past and present, and the industry, who have helped make it

Deputy Director Hoffman indicated that the Commission received the ARELLO education award recognizing Broker-Approved Training for its design and innovation. She explained that there is always a lot of competition for awards among the jurisdictions in ARELLO. She noted that due to hard work by the Commissioners, past and present, and the industry, who have helped make it successful, Nebraska had been on the cutting edge in this area and may serve as a role model for other jurisdictions.

No action was necessary on this report.

Leslie Rae Young Litigation Update

Director Lemon indicated that the Leslie Rae Young litigation case had become active again, with new attorneys representing Young. The new attorneys, from the Pacific Legal Foundation, have challenged Nebraska's regulation of Young's activity in Nebraska on a freedom of speech argument. He noted that for Young to be successful in her free speech arguments he felt the court would have to reverse long standing legal precedents in the area of free speech and government regulation. He also noted that even though the Commissioners were named individually in the Complaint, they were not being sued in their individual capacities, but only in their official capacity as Commissioners, and that the Commission's Special Assistant Attorneys General would represent them in that capacity in the lawsuit

No action was necessary on this report.

Gary Thompson Matter

Counsel Barton presented a Judgment regarding the Gary Thompson Complaint. A copy of said report is attached to and made a part of these minutes.

Counsel Barton indicated that he received the appeal determination yesterday afternoon and wanted to share that Thompson's appeal of his license revocation had been denied.

Former Commissioner Joan Nigro

Director Lemon noted that former Commissioner Joan Nigro had passed away recently, and that the funeral would be October 5 in Omaha.

Future Meeting Dates

October 18, 2012 - Staybridge Suites, Lincoln
November 15-16, 2012 - Staybridge Suites, Lincoln
January 17-18, 2013- Staybridge Suites, Lincoln
February 21-22, 2013- Staybridge Suites, Lincoln
March 21-22, 2013- Staybridge Suites, Lincoln
April 18, 2013- Staybridge Suites, Lincoln
May 16-17, 2013- Staybridge Suites, Lincoln
June 20-21, 2013- Staybridge Suites, Lincoln

Recesses and Adjournment

At 9:23 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 9:30 a.m.

At 10:31 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:45 a.m.

At 12:35 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:25 p.m.

At 2:55 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 3:15 p.m.

At 4:48 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Stange that the meeting adjourn. Motion carried with Avery, Dover, Freeman, 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 September 27, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on October 5, 2012, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Rusty Hike, CBSHOME Real Estate, Bellevue
Steve Dely, Plate Realty, LaVista
David Moody, NP Dodge, Omaha
Mary Sindelar, NP Dodge, Omaha
Jamie Eberly, Grand Island
John V. Eberly, Grand Island
Craig Larabee, Lincoln
Curt Ratliff, Plate Realty, Grand Island
Tim C. Plate, Plate Realty, Grand Island
Dianne L. Schulte, Plate Realty, Grand Island
Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Susan James, Tilden
Ruth Alberts, Norfolk
Robert Walton, Norfolk