

NEBRASKA REAL ESTATE COMMISSION

November 15, 2012

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on November 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 11d 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 Stange to adopt the final agenda as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Minutes of October 18, 2012

The minutes of the Commission meeting held on October 18, 2012, were considered.

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 October

Director Lemon presented the Receipts and Expenditures Report for October. 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 October 31, 2012, was \$648,931.52, which compared to a cash fund balance of \$338,438.60 on October 31, 2011.

After discussion, a motion was made by Stange and seconded by Ptak to file the October Receipts and Expenditures Report for audit. Motion carried with Avery, Dover, Freeman, 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 Registration - Amendment for Marriott Vacation Club Destinations

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

A motion was made by Rouch and seconded by Stange to approve the amendment to the registration as presented. Motion carried with Avery, Dover, Freeman, 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 Ptak 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 - October

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

Commissioner Freeman asked what percentage of those passing the broker examination qualified for that examination by taking 6 courses. After reviewing reports, Deputy Director Hoffman reported that this percentage in 2010 was 45%, in 2011 was 51% and through October of 2012 was 42%.

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

Consideration of Implementation Plan for Changes to the Salesperson Examination

Deputy Director Hoffman presented a proposed implementation plan for changes to the salesperson examination, a copy of which is attached to and made a part of these minutes.

Deputy Director Hoffman explained that she had worked with the examination company regarding the proposed implementation schedule and felt it satisfied the Commission's request.

After review, a motion was made by Stange and seconded by Dover to pursue the implementation schedule 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 Avery and seconded by Rouch to ratify the three reports. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange 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. . (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The date of the Allen Hearing was set forth as "Jan. 17, 2012" when, in fact, the date should have been "Jan. 17, 2013". The Exhibit was corrected for attachment to these minutes.)

It was also suggested that previous years be included in the Investigative Summary Comparison report.

No action was necessary on this report.

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

Item A Complaint 2012-018 – Glenn and Maurine Cofer vs. Sharon Kay Bourne, Linda Hosmer and Wesley William Grady

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, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item B Complaint 2012-019 – Jackie Lunzmann vs. Deana Marie Guhde

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

Item C Complaint 2012-028

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

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

Presentation of Stipulation and Consent Orders

**Complaint 2012-024,
Commission vs. Michael Neal Helmuth**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-024, Commission vs. Michael Neal Helmuth. A copy of said Order is attached to and made a part of these minutes.

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

**Complaint 2012-030,
Commission vs. Julie Christie David**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-030, Commission vs. Julie Christie David. A copy of said Order is attached to and made a part of these minutes.

**Complaint 2012-031,
Commission vs. Steven Andrew Alloway**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-031, Commission vs. Steven Andrew Alloway. 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 Rouch to enter into the Orders in Complaint 2012-030 and Complaint 2012-031 as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Complaint SC2012-002,
Commission vs. SELLS, dba/The Firm LLC**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint SC2012-002, Commission vs. SELLS, dba/The Firm LLC. A copy of said Order is attached to and made a part of these minutes.

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

Disciplinary Hearings

Complaint SC2012-002 – Show-Cause Hearing - Commission vs. Cortney Sells DBA/The Firm, LLC

The Hearing regarding Complaint SC2012-002, Commission vs. Cortney Sells DBA/The Firm, LLC was continued.

Informal Special Appearances

There were no informal special appearances at the meeting.

First Substantial Contact Committee Report

Director Lemon presented a letter of the subcommittees report on first substantial contact and a draft of the proposed policy and interpretation. A copy of said exhibit is attached to and made a part of these minutes. Joe Gehrki and Fred Hoppe, with the Nebraska REALTORS Association, were present for the discussion.

Director Lemon noted that Commissioners Dover, Freeman and Ptak were the members who served on the subcommittee. Commissioner Ptak, who served as Chairman of the subcommittee, explained that there were concerns regarding using legislation to further define first substantial contact, including more difficulty in adapting the interpretation to changing needs and the lack of control of over the final interpretation as it goes through the legislative process. He further explained that the majority of the subcommittee members felt that first substantial contact could be best defined through policy and interpretations. Commissioner Freeman had prepared the draft of such policy and interpretations with the assistance and input from the other subcommittee members.

There was discussion regarding the discrepancies in the current interpretation of the law by both the Commission and the licensees.

Mr. Gehrki indicated that legislation had been drafted in preparation for such change but was in favor of defining the first substantial contact through policy and interpretations. He also indicated that he would like the opportunity to discuss the proposed policy with the Nebraska REALTORS Association's Board of Directors which will be meeting in January, prior to the Commission's approval. Mr. Hoppe noted that the concept of the policy would be appropriate provided that some revisions be made to avoid possible confusion by the licensees.

Commissioner Dover noted that there were issues with compliance with the current law that might be better addressed through a more comprehensive review of agency disclosure requirements.

It was the consensus of the Commission that the subcommittee work on revisions to the policy and interpretation as discussed at the meeting and seek input from the industry representatives on a revised draft to be presented at the January Commission meeting.

Consider 2013 Legislation

Consider Legislation for Four Year Commissioner Terms

Director Lemon presented a list of the Commissioner terms in other states. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the exhibit is a more complete list of the Commissioner terms in other states than the one presented at the last meeting. He explained that he had not had legislation drafted yet but could be done quickly based upon the final direction on this matter provided by the Commission.

There was discussion regarding the current Commissioner terms compared to those in the other states. There was also discussion relating to the appropriate length of the term and if the term was shortened that multiple terms might be beneficial. The Commissioner's reviewed the circumstances which could arise should the terms be shorter and the institutional knowledge which could potentially be lost which could be a disservice to the licensees and the public.

A motion was made by Dover and seconded by Stange to prepare legislation that will change the Commissioner term length from six years to three years and allow for a two term limit. Motion failed with Dover and Stange voting aye, with Avery, Freeman, Ptak and Rouch voting nay, and with Gale abstaining.

Agency Disclosure/First Substantial Contact

Director Lemon presented a drafted legislative bill relating to the agency disclosure and first substantial contact. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted this was placed on the Agenda to determine how the Commission wanted to him to testify on this issue when this bill was presented to the Legislation.

Since this was discussed as a previous Agenda item, no action was necessary on this report.

Post Dating Listing Contracts

Director Lemon presented a drafted legislative bill relating to post dating listing contracts. A copy of said exhibit is attached to and made a part of these minutes. Joe Gehrki and Fred Hoppe, with the Nebraska REALTORS Association, were present for the discussion.

A motion was made by Dover and seconded by Freeman to allow this Agenda item to be considered for discussion since it was previously tabled with a stipulation to only discuss after a Commission vote. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Mr. Gehrki indicated that the proposed legislation bill was originally drafted by Director Lemon and adopted by the Nebraska REALTORS Association to be presented to the legislation this year. He also indicated that since this had been before the Commission several times he did not feel there any new information which needed to be discussed, and stated that the Association was seeking the support from the Commission.

Commissioner Freeman noted that post dated listing agreements had been utilized in the past and had not seemed to lead to additional complaints or issues before the Commission. There was also discussion regarding the negative impact such changes could have on licensees and public. The Commission discussed the potential for increased conflicts in the industry and the potential for complaints being filed with the Commission. They also discussed that there was not a consensus in the industry that such practice should be allowed even though the Association had voted to endorse the change, and some indicated that in certain areas this practice was already being conducted.

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

Approve Travel to ARELLO Leadership Symposium

Deputy Director Hoffman presented an exhibit regarding the estimated costs for Director Lemon and herself to attend the ARELLO Leadership Symposium. A copy of said exhibit is attached to and made a part of these minutes.

A motion was made by Dover and seconded by Freeman to approve the reimbursement of expenditures for Deputy Director Hoffman and Director Lemon to attend the meeting as set forth in the exhibit. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Information Matters

Trust Account Examination Evaluation Report - Third Quarter 2012

Director Lemon presented the Trust Account Examination Evaluation Report - Third Quarter 2012. 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.

Commission Employee of the Year

Tawny Snider

Director Lemon noted that Tawny Snider had been selected as the Commission's Employee of the Year. Tawny was known to the Commissioners as the Secretary for Education and Enforcement. Tawny Snider was recognized at a ceremony in the Capitol.

No action was necessary on this report.

License Law Updates

Director Lemon explained that due to the cost associated with distributing the license law updates, he proposed to provide the licensees the option of going online to print out the updates as needed, the entire license law and rules and regulations, or request a copy be mailed to them. He indicated that notification would be given to licensees regarding the new process and also suggested that would recommend that designated brokers and branch office managers print out or request a new manual on a regular basis, perhaps once a year or so, or whenever significant changes were made to the license act. The Commissioners suggested also providing an index of the changes to the manual.

No action was necessary with regard to this matter.

Future Meeting Dates

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 9:45 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:03 a.m.

At 11:50 a.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Freeman 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 November 15, 2012, meeting of the Nebraska Real Estate Commission were available for inspection on November 19, 2012, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Nancy Bierman, NP Dodge Real Estate, Omaha

Carole Souza, NP Dodge Real Estate, Omaha

Mark Leaders, CBSHome, Omaha

Kristen Anderson, Nebraska REALTORS® Association, Lincoln

Susan Geschwender, Randall School, Omaha

Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln

Fred Hoppe, Nebraska REALTORS® Association, Lincoln

Joe Gehrki, Nebraska REALTORS® Association, Lincoln

