

NEBRASKA REAL ESTATE COMMISSION

May 16, 2013

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on May 16, 2013, 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 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, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Minutes of April 18, 2013

The minutes of the Commission meeting held on April 18, 2013, were considered. (Note: It was discovered that the date of the Minutes being approved were for the Meeting held on "January 19" when, in fact, the date should have been "March 21". The Exhibit was corrected for attachment to these minutes.)

After review, a motion was made by Avery and seconded by Ptak to approve the minutes as amended. 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 April

Director Lemon presented the Receipts and Expenditures Report for April. A copy of said report is attached to and made a part of these minutes. Director Lemon noted that an explanation page was included on the report.

The cash fund balance as of April 30, 2013, was \$908,600.08, which compared to a cash fund balance of \$983,026.61 on April 30, 2012.

After discussion, a motion was made by Ptak and seconded by Rouch to file the April 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 Rouch 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 - April

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

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

Examination Passing Roster

Deputy Director Hoffman presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Instructor Approval

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

Continuing Education Activity Approval

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

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.

Continuing Education Activity Significant Change

Deputy Director Hoffman presented for ratification the Continuing Education Activity Significant Change 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 Stange and seconded by Ptak to ratify the five reports. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Instructor Development Workshop

Deputy Director Hoffman indicated that there were approximately twenty-five educators committed to attending the Real Estate Educator Association's (REEA) annual conference on June 21 in Ames, Iowa. She noted that those committed to attending are from a broad geographical area as well as areas of expertise.

Commissioner Rouch inquired as to how many educators normally attend when held in Nebraska by the Commission and also if the extension of continuing education credit encouraged more to attend. Deputy Director Hoffman explained that an average of thirty educators attend the Instructor Development Workshop (IDW) provided by the Commission and that while educators had not indicated that their attendance was influenced by granting continuing education credit for attendance, she appreciated being able to do so and thanked the Commission for that decision.

Deputy Director Hoffman also noted that the Commission's expenses to host instructors in attending the REEA IDW will most likely be less than the expenses had the Commission offered its own. 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 2012-034 – Joshua Gray Lively vs. Robert F. Wray

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.

Commissioner Stange offered a friendly amendment to send a letter of admonishment to the Respondent. The amendment was accepted by the mover and second.

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

Item B Complaint 2013-001

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 Dover and seconded by Ptak that the complaint be dismissed without prejudice.

After discussion, it was the consensus of the Commission that Deputy Director Mayrose conduct an investigation on the Complainant. Motion to dismiss carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item C Investigative Matter

Deputy Director Mayrose presented 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 Rouch that the Commission file a complaint on its own motion and set it for hearing against the Licensee per Staff recommendation. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item D Complaint 2013-010 – Eric Church and Dr. Jaine Brownell vs. Todd S. Bartusek

Deputy Director Mayrose requested Complaint 2013-010 be dismissed. Deputy Director Mayrose explained that Complaint 2013-010 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 2013-010 in abeyance until the new complaint had been adjudicated. Complaint 2013-016 was the new complaint.

A motion was made by Dover and seconded by Ptak to dismiss Complaint 2013-010, since the Commission accepted a Stipulation and Consent Order for Complaint 2013-016 at this meeting. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Item E Investigative Matter

Deputy Director Mayrose discussed an investigative matter with the Commission.

It was the consensus of the Commission to have Deputy Director Mayrose request the licensee sign a Stipulation and Consent Order for self-revocation.

Presentation of Stipulation and Consent Orders

**Complaint 2013-006,
Commission vs. Amy M. Mosser**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-006, Commission vs. Amy M. Mosser. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Stange and seconded by Ptak to enter into the Order as presented. After discussion, the pending motion was withdrawn by the mover and second.

A motion was made by Avery and seconded by Rouch to decline the proposed Stipulation and Consent Order and propose that the Order include a \$2,500.00 civil fine, a four year suspension all stayed and served on probation, plus six hours of additional continuing education in the area of ethics and disclosures to be completed within six months of the date of the Order. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2013-013,
Commission vs. William Robert Milczski**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-013, Commission vs. William Robert Milczski. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Ptak and seconded by Avery to decline the proposed Stipulation and Consent Order and propose that the Order include an annual criminal background report be completed and submitted to the Commission, and add language to sections 19 C and 19 D that include reporting any violation of probation, and make a clerical change to page six under section 16 B. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2013-015,
Commission vs. John E. Wiedel**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-015, Commission vs. John E. Wiedel. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Freeman and seconded by Ptak to decline the proposed Stipulation and Consent Order and propose that the Order include an annual criminal background report be completed and submitted to the Commission, and add language to sections 16 C and 16 D that include report any violation of probation. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2013-016,
Commission vs. Todd S. Bartusek**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-016, Commission vs. Todd S. Bartusek. 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 Dover to enter into the Order as presented. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

**Complaint 2012-037,
Angela M. Pofahl vs. Rodney Scott Hornby**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2012-037, Angela M. Pofahl vs. Rodney Scott Hornby. 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.

**Complaint 2013-009,
Commission vs. William Glenn Swanson**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-009, Commission vs. William Glenn Swanson. A copy of said Order is attached to and made a part of these minutes. Doug Ruge, Legal Counsel for Mr. Swanson was present to discuss the Order.

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

Counsel Ruge discussed Mr. Swanson's situation. Chairperson Gale discussed the Commission's issues and concerns.

A motion was made by Stange and seconded by Ptak to decline the proposed Stipulation and Consent Order and propose that the Order include a three-year suspension with ninety days served and the remainder served on probation, plus an annual criminal background report be completed and submitted to the Commission, and begin attending Alcoholics Anonymous (AA) courses and maintain a relationship with a sponsor who reports involvement to the Commission office.

Counsel Ruge indicated that Mr. Swanson currently has an institution he is using rather than specifically the AA and would like the Commission to reconsider allowing Mr. Swanson to continue to use the same outpatient treatment center.

A friendly amendment was offered by Commissioner Freeman to allow Mr. Swanson to use the current institution provided they can provide a monthly report of participation to the Commission. The amendment was accepted by the mover and second.

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

Disciplinary Hearings

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

Informal Special Appearances

There were no informal special appearances scheduled to be held at the meeting.

Approval of Reappointment of Pre-Hearing Officers

Director Lemon presented a list of the current pre-hearing officers. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the current Pre-Hearing Officers were doing a good job and would like to continue serving.

A motion was made by Dover and seconded by Ptak to reappoint the current pre-hearing officers and give Director Lemon the authority to extend their agreements until June 30, 2015. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

Legislative Matters

LB 13 - No new information presented.

LB 72 - No new information presented.

LB 120 – No new information presented.

LB 289 – Commissioner Stange indicated that LB289 merged with LB3 and was presented to the Governor on May 10, 2013.

LB 427 – No new information presented.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report - First Quarter 2013

Director Lemon presented the Trust Account Examination Evaluation Report – First Quarter 2013. 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.

Errors and Omissions Loss Report – First Quarter 2013

Director Lemon presented the Errors and Omissions Loss Report – First Quarter 2013. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

ARELLO District Conference – Biloxi, Mississippi – June 25-27, 2013 -

Director Lemon noted that Deputy Director Hoffman planned on attending the ARELLO District Conference. He reminded the Commissioners to submit their registration and make accommodations soon.

No action was necessary on this report.

Nebraska State Records Board Grant Application, Online Education Submission

Director Lemon explained that current process for education providers to submit their verification lists to the Commission office. He indicated that due to the difficulty and volume of the current method, he asked Nebraska.gov to develop an electronic web-based method. Since the Commission does not charge fees for educators, Nebraska.gov assisted in preparing and submitting a grant for the development fees. He noted that the electronic submission would be more efficient for the educators and staff.

No action was necessary with regard to this matter.

Leslie Rae Young Case Update

Chris Heinrich, Special Assistant Attorney General and Counsel to the Commission, presented the Memorandum and Order from the United States District Court for the District of Nebraska, for the Leslie Rae Young case. was present for the discussion.

At 10:38 a.m., a motion was made by Ptak and seconded by Rouch to go into closed session for discussion of pending litigation and receive legal advice. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

At 11:01 a.m., a motion was made by Ptak and seconded by Avery to reconvene in open session. Motion carried with Avery, Dover, Freeman, Ptak, Rouch, Stange and Gale voting aye.

No action was necessary with regards to this matter.

Future Meeting Dates

June 20-21, 2013- Staybridge Suites, Lincoln
August 15-16, 2013- Staybridge Suites, Lincoln
September 27, 2013- Staybridge Suites, Lincoln
October 24-25, 2013- Staybridge Suites, Lincoln
November 21-22, 2013- Staybridge Suites, Lincoln

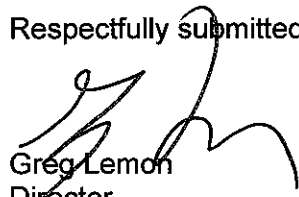
Recesses and Adjournment

At 10:20 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:37 a.m.

At 12:28 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 May 16, 2013, meeting of the Nebraska Real Estate Commission were available for inspection on May 21, 2013, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Christie Bevington, Nebraska REALTORS® Association, Lincoln
Bryan Fraser, CBSHOME, Omaha
Joseph Valenti, CBSHOME Real Estate Company, Omaha

