

**NEBRASKA REAL ESTATE COMMISSION**

**March 20, 2014**

**Staybridge Suites**

**Staybridge Room**

**Lincoln, NE**

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**Opening**

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on March 20, 2014, 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, with the exception of Commissioner Ptak, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Duran Cell, 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 Avery and seconded by Rouch to adopt the final agenda as presented. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

**Minutes of February 20, 2014**

The minutes of the Commission meeting held on February 20, 2014, were considered.

After review, a motion was made by Freeman and seconded by Rouch to approve the minutes as amended. (Note: It was discovered at the meeting that the Exhibit for this Agenda Item was incorrect. The name of the entity guest Vince Leisey was representing was set forth as "Prudential Ambassador Real Estate" when, in fact, the name should have been "Ambassador Real Estate". The Exhibit was corrected for attachment to these minutes.) Motion carried with Alloway, Avery, Freeman, Rouch and Stange voting aye, with Ptak not participating or voting, being absent and excused and with Gale not voting having not been in attendance at the February 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 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 28, 2014, was \$1,199,491.57, which compared to a cash fund balance of \$999,260.61 on February 28, 2013.

After discussion, a motion was made by Freeman and seconded by Avery to file the February Receipts and Expenditures Report for audit. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

## **Specialized Registrations**

### **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 Freeman and seconded by Avery to approve the amendment to the registration as presented. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

## **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 Freeman to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

## **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.

After review, a motion was made by Freeman and seconded by Stange to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

## **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.

### **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 Rouch to ratify the three reports. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **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.

### **Continuing Education and Broker-Approved Training Annual Report**

Deputy Director Hoffman presented the Continuing Education and Broker-Approved Training 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 Avery and seconded by Rouch to remove the providers from approved status who had failed to provide an Annual Report for 2013 activities and who were reported on the Continuing Education and Broker-Approving Training Annual Report exhibit. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

## **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.

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 Rouch and seconded by Stange to ratify the courses listed on the Continuing Education Renewal Report. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **Pending Sworn Complaints and Investigative Matters**

Deputy Director Cell 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 2013-032 – James Atwood vs. Mary Anne Thomas

Deputy Director Cell 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 Avery that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, being absent and excused.

#### **Item B** Complaint 2013-035 – Thomas Mchugh vs. SA "Chip" Smith

Deputy Director Cell 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 Freeman and seconded by Rouch that the complaint be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, being absent and excused.

#### **Item C** Complaint 2013-036

Deputy Director Cell 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 Freeman and seconded by Rouch that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondent. Motion failed with Freeman and

Rouch voting aye, with Alloway, Avery, Stange and Gale voting nay and with Ptak not participating or voting, being absent and excused.

After further discussion, a motion was made by Freeman and seconded by Alloway that the 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 Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, being absent and excused.

**Item D** Complaint 2013-037 – Gale R. Streff vs. Brenda Lou Sedivy

**Item E** Complaint 2013-040 – Gale R. Streff vs. Brenda Lou Sedivy

Deputy Director Cell presented the alleged violations and investigative reports to the Commission and, when necessary, answered questions on these matters.

After being advised of the results of the investigation and discussion, a motion was made by Stange and seconded by Freeman that complaints 2013-037 and 2013-040 be dismissed without prejudice. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, being absent and excused.

**Item F** Complaint 2013-033 – Gregory & Kathi Mundy vs. Mark Hold Richardson

Deputy Director Cell presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Freeman and seconded by Avery that the complaint be dismissed without prejudice against the Respondent and an investigative report be presented for possible action against another licensee involved in the transaction. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, and with Ptak not participating or voting, being absent and excused.

## **Presentation of Stipulation and Consent Orders**

### **Complaint 2014-008, Commission vs. George N. Herrington**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-008, Commission vs. George N. Herrington. A copy of said Order is attached to and made a part of these minutes. Doug Ruge, counsel for Mr. Herrington was present for the discussion of this agenda item.

Director Lemon indicated that a request had been made by Mr. Herrington and Counsel Ruge that the suspension commence in forty-five days rather than thirty. He explained that typically the Commission does not allow for such accommodations and instructed Counsel Ruge to make such request to the Commission.

Counsel Ruge indicated that due to Mr. Herrington's scheduled vacation leave that he would prefer to postpone the suspension period to forty-five days rather than thirty days. He further explained that Mr. Herrington would begin his vacation leave at the end of May and would like the suspension to begin during that time.

There was discussion regarding the purpose of having a suspension serve as discipline rather than being served at the convenience for the licensee. After discussion, Counsel Ruge withdrew the request to postpone the suspension period.

After discussion, a motion was made by Stange and seconded by Freeman to enter into the Order as presented. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **Disciplinary Hearings**

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

### **Informal Special Appearances**

#### **Carl Otto Nitsch, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Nitsch's special appearance; a letter of explanation from Mr. Nitsch; character reference letters for Mr. Nitsch; Mr. Nitsch'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. Nitsch was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Director Lemon distributed additional letters of reference. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

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

After discussion, a motion was made by Rouch and seconded by Avery to allow Mr. Nitsch to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Nitsch 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. Nitsch 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 Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

#### **Keith R. Feilmeier, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Feilmeier's special appearance; a letter of explanation from Mr. Feilmeier's attorney; character reference letters for Mr. Feilmeier; Mr. Feilmeier'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. Feilmeier was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Alloway and seconded by Stange to allow Mr. Feilmeier to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **Jamie Paul Miller, Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Miller's special appearance; a letter of explanation from Mr. Miller; character reference letters for Mr. Miller; summary of trial court cases from the State of Nebraska on Mr. Miller's cases; Mr. Miller'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. Miller was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Rouch and seconded by Avery to allow Mr. Miller to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Miller 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. Miller 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 Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **Pearlene Foreman, Potential Applicant**

Director Lemon presented exhibits which included: correspondence regarding Ms. Foreman's special appearance; a letter of explanation from Ms. Foreman; Lancaster County District Court Order of Probation for Ms. Foreman; Lancaster County District Court Order for Probation Discharge for Ms. Foreman; character reference letters for Ms. Foreman; and Ms. Foreman's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Ms. Foreman was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Foreman explained the situations regarding her past criminal history.

After discussion, a motion was made by Stange and seconded by Alloway to allow Ms. Foreman to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. Foreman 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. Ms. Foreman 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 after issuance of licensing. Motion carried with Alloway, Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

### **Discussion of Additional Continuing Education Requirement on Agency – 10:30 a.m.**

Director Lemon explained that the Nebraska REALTORS® Association notified the Commission that a Committee would be reviewing and revising the Agency Disclosure pamphlets and once completed would be suggesting a required continuing education course relating Agency or Agency Disclosure be taken every four years by all licensees.

There was discussion that an effective course on Agency or Agency Disclosure could not be developed properly until revisions to the Agency Disclosure pamphlets had been considered, with the ultimate goal of simplifying the pamphlets and making them easier to understand for consumers. They also discussed forming a subcommittee or task force to work with the Association on redrafting the Agency Disclosure brochure.

It was the consensus of the Commission to form a subcommittee which includes Commissioners Alloway, Avery, Rouch and various Commission Staff members.

There was also discussion regarding the current parameters allowed to designated brokers to alter the brochure based on the types of services they offer.

### **Discussion of Appropriate Use of Unlicensed Persons in Model Homes – 11:00 a.m.**

Director Lemon presented the Use of Unlicensed Persons by Licensees section from the Commission's Policy and Interpretations. A copy of said exhibit is attached to and made a part of these minutes. Cassi Peterson representing MOBA and Marc Stodola representing MOBA and Charleston Homes were also present for discussion regarding this matter.

Director Lemon indicated that he was contacted by builders who requested clarification regarding the use of licensed and unlicensed persons in model homes. He noted that the policy and interpretation did not list model homes specifically. He explained that one purpose of a model home is to sell the property and a licensee would be required should any discussion regarding a purchase arise.

Mr. Stodola indicated that the purpose for this request was to provide consistency for home builders as some use licensees and others use unlicensed persons in model homes. He explained that there was gray area in the Commission's policy regarding model homes and would like to clear up any confusion. He also provided examples of the uses of licensed and unlicensed persons.

There was discussion regarding the Commission's policy and which sections were relevant to model homes. There was also discussion regarding unlicensed persons being employees of the builder or the assistant of a licensee. Also discussed was the exemption for property management and if such exemption would be similar to what MOBA was requesting. There were many examples of situations which an unlicensed person may or may not be appropriately utilized.

Ms. Petersen noted that many builders have choice studios which do not have a licensed person assisting potential buyers but provides them with instruction, builds a relationship with the client and discusses whether the buyer may be able to afford a home.

There was discussion regarding licensed activity and when it is permissible to use unlicensed persons in various situations according to the current Commission Policy and Interpretation.



There was also discussion regarding the broker's Agency policy and whether they use sub-agency should a licensee not be available in required circumstances.

It was the consensus of the Commission that MOBA correspond with members and with Commission staff to provide a proposed modification to the language of the current Policy and Interpretation and present such revisions at a future meeting for discussion.

### **Legislative Matters**

**LB 687** - Director Lemon reported that this bill may be placed on the consent calendar.

**LB 785** - No new information presented.

**LB 852** – No new information presented.

**LB 13** – No new information presented.

**LB 120** – No new information presented.

**LB 427** No new information presented.

No action was necessary with regard to these matters.

### **Information Matters**

#### **ARELLO Mid-Year Meeting – San Diego, California – April 9-12, 2014**

Director Lemon noted that the deadline for registration was March 19, 2014.

No action was necessary on this report.

#### **ARELLO District Meeting – Omaha, Nebraska – June 3-5, 2014**

Director Lemon noted that the registration is now available for the district meeting on the ARELLO website. He encouraged the Commissioners to be present and participate at the district meeting since it was being held in Nebraska.

There was discussion regarding the possibility of selling a limited number of tickets for specific events. Director Lemon indicated that he would research the request.

No action was necessary on this report.

### **Future Meeting Dates**

April 18, 2014- Staybridge Suites, Lincoln  
May 22-23, 2014 - Staybridge Suites, Lincoln  
June 19-20, 2014 - Staybridge Suites, Lincoln  
August 21-22, 2014 - Staybridge Suites, Lincoln  
September 25-26, 2014 - Staybridge Suites, Lincoln  
October 17, 2014 - Staybridge Suites, Lincoln  
November 20-21, 2014 - Staybridge Suites, Lincoln

## **Recesses and Adjournment**

At 10:18 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:32 a.m.

At 1:05 p.m., there being no further business to come before the Commission, a motion was made by Freeman and seconded by Rouch that the meeting adjourn. Motion carried with Alloway, Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 20, 2014, meeting of the Nebraska Real Estate Commission were available for inspection on March 25, 2014, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

## **Guests Signing the Guest List**

Trudy Meyer, CBSHOME Real Estate, Omaha  
Susan Geschwender, Randall School, Omaha  
Kathy Welch, Keller Williams, Omaha  
Marc Stodola, MOBA/Charleston Homes, Omaha  
Cassi Petersen, MOBA, Omaha  
Kristen Anderson, Nebraska REALTORS® Association, Lincoln