

**NEBRASKA REAL ESTATE COMMISSION**

**February 19, 2015**

**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 February 19, 2015, 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 Alane Roubal, Deputy Director for Enforcement Duran Cell, and Deputy Director for Licensing 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 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 Freeman to adopt the final agenda as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

**Minutes of January 23, 2015**

The minutes of the Commission meeting held on January 23, 2015, were considered.

After review, a motion was made by Avery and seconded by Freeman to approve the minutes as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, 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. Director Lemon introduced Jeff Hebb, new Government Affairs Director for the Nebraska Realtors' Association, who came forward and provided the Commission with some information about his background. No other audience member indicated a desire to come forward.

## **Receipts and Expenditures Report for January**

Director Lemon presented the Receipts and Expenditures Report for January. 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 January 31, 2015, was \$1,303,773.46, which compared to a cash fund balance of \$1,245,581.58 on January 31, 2014.

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

## **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 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 Alloway and seconded by Stange to approve the amendment to the registration as presented. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report**

Deputy Director Rut 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 Freeman and seconded by Alloway to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Examination Report - January**

Deputy Director Roubal presented for ratification the January Examination 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 the January Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

## **Examination Passing Roster**

Deputy Director Roubal 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**

### **Continuing Education Activity Approval**

Deputy Director Roubal 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 Roubal 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 Roubal 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 Roubal 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 Freeman and seconded by Ptak to ratify the four reports. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Discussion of Broker-Approved Training Survey**

Deputy Director Roubal presented an explanation and results from an online broker-approved training survey, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal explained the contents and results of an online survey sent to all designated brokers regarding broker-approved training.

There was discussion regarding the benefits of broker-approved training in more populated counties in Nebraska versus the availability and usability to those located in the western part of the state.

No action was necessary on this report.

## **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 2014-020 - Glen Alan and Amy Sue Johnson vs. Troy Arthur Trumm

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

**Item B** Complaint 2014-029

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 Ptak and seconded by Freeman that this complaint be held in abeyance and a new complaint be filed against the Seller's agent and Designated Broker per the Staff recommendation. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

**Presentation of Stipulation and Consent Orders**

**Complaint 2014-019,  
Commission vs. Janelle Marie Wise**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-019, Commission vs. Janelle Marie Wise. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Freeman and seconded by Avery to decline the proposed Stipulation and Consent Order and propose that the proposed Order include a one year suspension, stayed and served on probation, a one-thousand five hundred dollar fine, complete six hours of additional continuing education in the area of contracts and ethics and also voluntarily surrender notary license. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, and Stange voting aye, and with Gale abstaining.

**Complaint 2014-035,  
Commission vs. Michael R. Crawford**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2014-035, Commission vs. Michael R. Crawford. A copy of said Order is attached to and made a part of these minutes.

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

A motion was made by Ptak and seconded by Avery to decline the proposed Stipulation and

Consent Order and propose that the Order include a two-thousand five hundred dollar fine. After discussion, the pending motion was withdrawn by the mover and second.

A motion was made by Freeman to decline the proposed Stipulation and Consent Order and propose that the Order also include that during the two year suspension, the Respondent hire and pay for an individual audit firm to complete quarterly audit reports and provide the Commission with a copy of audited statements plus increase fine to two thousand five hundred dollars. The motion died for a lack of a second.

After further discussion, a motion was made by Stange and seconded by Alloway to decline the proposed Stipulation and Consent Order and propose that the Order include a three year suspension, six hours of additional continuing education in the areas of trust accounts and agency law, and a minimum of semi-annual audits conducted by the Commissions trust account examiners during the three year suspension. Motion carried with Alloway, Avery, Dover, Ptak, Stange and Gale voting aye, and with Freeman voting nay.

### **Disciplinary Hearings**

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

### **Informal Special Appearances**

#### **Pernell S. Hottell, Non-Resident Salesperson Applicant**

Director Lemon presented exhibits which included: correspondence regarding Mr. Hottell's special appearance; a letter of explanation from Mr. Hottell; a request for additional information from the Real Estate Commission; a summary of the Justice system search report; and information regarding Mr. Hottell's previous special appearance on January 23, 2015. A copy of said exhibit is attached to and made a part of these minutes. Mr. Hottell was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Avery and seconded by Alloway to allow Mr. Hottell to receive a non-resident salesperson license after making proper application and to have a license issued upon completion of the license requirements. Mr. Hottell 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, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Personnel Matter – Closed Session**

At 10:48 a.m., a motion was made by Ptak and seconded by Alloway to go into closed session for discussion of personnel matters. Motion carried with Avery, Alloway, Freeman, Ptak, Dover, Stange and Gale voting aye.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 11:33 a.m., a motion was made by Ptak and seconded by Alloway to reconvene in open session. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Consider Approval of Special Assistant Attorneys General New Fee Schedule**

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective February 1, 2015. A copy of said exhibit is attached to and made a part of these Minutes. Mr. Chris Heinrich from the Harding and Schultz law firm was present to present the proposed fee schedule and answer any questions the Commissioners might have.

After discussion, a motion was made by Ptak and seconded by Freeman to approve the hourly rate schedule as presented effective February 1, 2015. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Consider Revisions to Agency Disclosure Form – 11:00 a.m.**

Director Lemon presented an exhibit of the revised Agency Disclosure form. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained that the Agency Disclosure form had been revised and would request either a final adoption or any suggested revisions upon the Commission's review.

There was discussion regarding dual agency requirements and the applicable use for such disclosure on the Agency Disclosure form.

There was discussion regarding the blanks for initials being made longer or a slash or space be added to blank to provide for more than one parties' initials.

The wording was discussed to change the instructions from initialing one of the spaces to read "initial one of the boxes."

There was also discussion regarding the instructions which state that both parties should initial if married, when in fact the instructions should reflect all parties initialing, since some parties may jointly own property but not be married, or in case it is an entity rather than individuals.

The proposed amendments to the form were reviewed and suggested that the instructions state "The agency relationship offered is (initial one of the boxes below, all parties initial if applicable):"

After discussion, a motion was made by Alloway and seconded by Avery to approve the Agency Disclosure form as amended. Motion carried with Alloway, Avery, Dover, Ptak, Stange and Gale voting aye, with Freeman abstaining.

A motion was made by Ptak and seconded by Stange that the revised form become effective May 1, 2015. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

### **Discussion of Teams – 11:30 a.m.**

Director Lemon presented an exhibit of the current Nebraska advertising rules, regulations and laws used in other jurisdictions relating to teams. A copy of said exhibit is attached to and made a part of these Minutes. Brokers Vincent Leisey, Joe Valenti and affiliated licensee Jeff Searcy were present for this discussion.

There was discussion regarding teams, the functions of a team, possible confusion teams create for the consumer, and the concern regarding team disclosures.

There was discussion regarding the accountability, supervision and control a designated broker has regarding teams.

There was discussion regarding a national trend in creating and branding teams.

There was discussion regarding advertising appropriately with regard to teams and having the designated brokers' information available.

There was discussion to form a task force to review other jurisdictions' laws regarding teams and explore the possibility of the Nebraska rules and regulations embracing and regulating teams.

There was discussion regarding designating a responsible agent or licensed agent who would be responsible for activities of a team.

It was stated that the concept of teams in theory and practice has evolved and may continue to do so in the absence of any regulation. It was discussed that a subcommittee or task force be formed to discuss and address issues and solutions for regulating teams.

Director Lemon explained that this issue was put on the Agenda for discussion purposes so that the Commission could provide guidance on answering questions regarding advertising and supervision relating to teams. He indicated that if the Commission was interested in regulating teams, that perhaps a task force should be formed to discuss the issues. He felt that some team issues could be handled by adopting a policy and interpretation of the laws that are already in place regarding supervision and advertising.

Mr. Leisey and Mr. Valenti concurred with Director Lemon and felt that clarification would be helpful so that the brokers and teams understood the rules, and it would provide the consumers with a greater sense of security.

There was discussion regarding ways that licensees use teams and the misconceptions that may confuse the consumer.

The Commission discussed the most expedient and productive way to tackle each of the issues regarding teams. The Commission discussed proposing changes in phases as to expedite the process and to provide guidance to Commission staff as well as the licensees.

It was the consensus of the Commission that team supervision and regulation would be reviewed in two phases. Phase one would consist of Director Lemon identifying the issues relating to teams and possible clarifications to advertising rules, working with industry professionals to discuss the issues. After the issues are defined, then Phase two would consist of a broad study of possible statutory or regulatory changes related to the governance of teams.

### **Legislative Matters**

**LB28** - Director Lemon reported that a hearing is scheduled for February 27, 2015 on this bill.

**LB34** - Director Lemon reported that the Carbon Monoxide Safety Act bill had been placed on General file.

**LB253** – Director Lemon indicated that he and the Nebraska Realtors testified in favor of this bill and the Nebraska Bar Association testified against the bill. He also indicated that he would continue to monitor this bill.

**LB375** – Director Lemon reported that a hearing would be held on February 23, 2015 for the Broker Price Opinion for Property Tax Appeals.

**LB420** – Director Lemon reported that the hearing was held on February 10, 2015, for the Require Acknowledgments from Purchasers of Real Estate in Sanitary & Improvement District bill.

No action was necessary with regard to these matters.

### **Information Matters**

#### **Trust Account Examination Evaluation Report - Fourth Quarter 2014**

Director Lemon presented the Trust Account Examination Evaluation Report - Fourth Quarter 2014. 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.

#### **ARELLO Mid-Year Meeting – Albuquerque, NM – April 15-18, 2015**

Director Lemon explained that the deadline for registration is April 4, 2015, and the hotel reservation must be made by March 25, 2015.

No action was necessary on this report.

#### **Young vs. Ricketts Case Update – 10:00 a.m.**

Director Lemon explained that the Commission received a favorable motion to dismiss the Young vs. Ricketts case. He noted that the Respondent has filed an appeal for reconsideration.

Mr. Chris Heinrich from the Harding and Schultz law firm was present to discuss the case and answer any questions the Commissioners might have.

No action was necessary at this time.

### **Future Meeting Dates**

March 19-20, 2015 - Staybridge Suites, Lincoln  
April 23, 2015 – Country Inn & Suites, Lincoln  
May 21-22, 2015 – Staybridge Suites, Lincoln  
June 18-19, 2015 - Staybridge Suites, Lincoln  
August 20-21, 2015 - Staybridge Suites, Lincoln

### **Recesses and Adjournment**



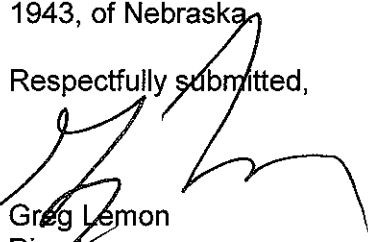
At 10:35 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:48 a.m.

At 12:42 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:58 p.m.

At 2:32 p.m., there being no further business to come before the Commission, a motion was made by Ptak and seconded by Alloway that the meeting adjourn. Motion carried with Avery, Alloway, Freeman, Ptak, Dover, Stange and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the February 19, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on March 5, 2015, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

#### **Guests Signing the Guest List**

Joe Gehrki, CBSHOME Real Estate, Omaha  
Susan Geschwender, Randall School, Omaha  
Jeff Hebb, Nebraska REALTORS® Association, Lincoln  
Craig Larabee, JMSK Corp, Lincoln  
Vincent Leisey, BHHS Ambassador Real Estate, Omaha  
Joe Valenti, CBSHOME Real Estate, Omaha  
Jeff Searcy, Home Real Estate – The Searcy Team, Lincoln