

NEBRASKA REAL ESTATE COMMISSION

May 21, 2015

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 21, 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 April, 2015

The minutes of the Commission meeting held on April 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. 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, 2015, was \$1,167,401.39, which compared to a cash fund balance of \$1,071,468.69 on April 30, 2014.

After discussion, a motion was made by Freeman and seconded by Alloway to file the April Receipts and Expenditures Report for audit. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, 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 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 Ptak 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 - April

Deputy Director Roubal 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 Stange and seconded by Avery to ratify the April 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

Pre-License Education Instructor Approval

Deputy Director Roubal 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 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.

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

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 2014-025

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 Stange that the complaint be dismissed without prejudice and a letter of admonishment be sent to the Respondents Salesperson and Broker. Motion failed with Freeman and Stange voting aye, and with Avery, Alloway, Dover, Ptak and Gale voting nay.

After further discussion, a motion was made by Ptak and seconded by Alloway that this complaint be held abeyance and a new complaint be filed against the Respondent on 81-885.21(6). Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Item B Complaint 2014-027 – David Sullivan, Omaha Lounge, LLC vs. Thomas Joseph Twit, Jr.

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

Presentation of Stipulation and Consent Orders

There were no Stipulation and Consent Orders to be presented at the meeting.

Disciplinary Hearings

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

Informal Special Appearances

Deborah L. Waterman, Nonresident Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Waterman's special appearance; a letter of explanation from Ms. Waterman; character reference letters for Ms. Waterman; a Missouri Certification of Licensure for Ms. Waterman; correspondence requesting additional information from Ms. Waterman's; a summary of trial court cases from the State of Nebraska on Ms. Waterman's cases; Ms. Waterman's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Waterman was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Dover to allow Ms. Waterman to have a nonresident salesperson license issued after making proper application and to have a license issued. Ms. Waterman 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. Motion carried with Alloway, Avery, Dover, Freeman, Ptak and Stange voting aye and Gale voting nay.

Discussion of the Regulation of Property Management

Director Lemon presented a draft report developed by the ARELLO Task Force on Property Management. A copy of said exhibit is attached to and made a part of these minutes. Paul Vojchehoske and Jeremy Aspen were present to discuss this matter.

Director Lemon noted that the one of the Commission's objectives for Fiscal Year 2014-2015 is to explore the possibility of a property management endorsement or credential from the Commission. This report was provided to give the Commission the general idea and to identify some of the issues of implementing an endorsement or credential for property management as discussed during ARELLO meetings. He explained that since property management is different than residential sales, some jurisdictions have separate regulations and requirements for property management. He explained that some of those jurisdictions also require more education for property management and or different requirements for errors and omissions Insurance and recovery funds due to the fact that they obtain and hold funds for a longer period of time than many real estate licensees.

Mr. Vojchehoske indicated that he felt that the Commission should have a separate license or endorsement for property management since the transactions are different than real estate sales. He indicated that the requirement would benefit the consumer, the owner, and the client or tenant.

He explained that should the Commission require continuing education for property managers, the current number of available continuing education courses approved by the Real Estate Commission is significantly less for property managers than for salespersons.

Mr. Aspen indicated that since the laws permit salespersons to perform property management tasks, and as previously indicated, the two professions are not similar, the salesperson may do more harm to the public and an owner/landlord. He is seeking that the Commission provide a different regulatory approach for property management than currently in the laws.

There was discussion regarding the lack of public protection and representation in property management as currently provided in the law.

There was also discussion regarding various requirements, staffing concerns and repercussions of implementing an endorsement or a license for property managers.

Commissioner Ptak indicated that if a complaint was filed against a property manager based on landlord tenant type activities, the Commission does not have authority to take action against his or her license. He also indicated the many other concerns regarding education, agency disclosure, auditing procedures, staffing for the Commission office, the cost to implement a new license, approved forms for property managers to use, and discipline issues to name a few.

Commissioner Alloway suggested implementing a designation allowing the designated broker to elect a sub-designated broker to oversee property management if desired.

Commissioner Stange indicated that he did not feel that the property management issues were extreme at this point, and instead of trying to over regulate, it would be more appropriate to take a gradual approach.

After discussion, a motion was made by Stange and seconded by Freeman to form a task force to include the Director, a trust account examiner and no more than three members of the Commission to review the issues regarding property management. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Discussion of "Coming Soon" Listings

Director Lemon presented an exhibit explaining advertising property as "coming soon" and the current laws and rules which would relate to such advertising. A copy of said exhibit is attached to and made a part of these Minutes. Doug Rotthaus was present to discuss this agenda item.

Director Lemon noted that the one of the Commission's objectives for Fiscal Year 2014-2015 is to consider developing a Commission policy or position on "Coming Soon" Listings. He indicated that while the License Act allows for this type of pre-advertisement, however, the industry lends itself to problems both legally and ethically by utilizing this type of advertisement to a limited group or sells it before the coming soon period is complete, which limits the market in some areas and may not serve the best interest of the seller. The Commission staff is seeking direction on how to control improper uses of this type of activity and suggests making an interpretation of the law, implementing regulation, or providing education to licensees regarding this issue.

Mr. Rotthaus indicated that the practice currently used is not in the best interest of the seller but of the licensee. He noted that many licensees are advertising, such as with yard signs, prior to having a listing agreement becoming effective.

There was discussion regarding the effectiveness of a listing agreement and if "coming soon" advertisements meet the letter of the law.

It was suggested that this exhibit be used to create a Commission Comment newsletter article.

After further discussion, a motion was made by Stange and seconded by Ptak that Director Lemon draft a Commission guideline and, and once adopted also to place an article in the Commission Comment newsletter.

Personnel Matter – Closed Session

At 12:40 p.m., a motion was made by Ptak and seconded by Avery to go into closed session for discussion of personnel matters. Motion carried with Avery, Alloway, Dover, Freeman, Ptak, 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 1:18 p.m., a motion was made by Ptak and seconded by Dover to reconvene in open session. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye. After reconvening in open, public session, a motion was made by Stange and seconded by Avery to increase Director Lemon's annual salary by three percent beginning July 1, 2015. Motion carried with Alloway, Avery, Dover, Freeman, Ptak, Stange and Gale voting aye.

Legislative Matters

LB28 – No new information presented.

LB34 – Director Lemon indicated that with the passing of this bill, the seller property condition disclosure statement would need to be revised by January 1, 2017 to reflect the carbon monoxide requirements.

LB253 – Director Lemon indicated that this bill had been approved by the Governor on May 13, 2015.

LB375 – No new information presented.

LB420 Amended into LB324– Director Lemon indicated that this bill had been approved by the Governor on April 29, 2015.

No action was necessary with regard to these matters.

Information Matters

Trust Account Examination Evaluation Report - First Quarter 2015

Director Lemon presented the Trust Account Examination Evaluation Report - First Quarter 2015. 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 District Meeting – June 4-6, 2015 - Little Rock, AR

Director Lemon explained that the deadline to register is May 30, 2015 and noted that he and Deputy Director Rut were planning on attending the conference.

No action was necessary on this report.

ARELLO Annual Meeting – September 9-13, 2015 – Washington, D.C.

Director Lemon explained that the deadline to register is September 13, 2015 and the deadline to register for hotel reservations is August 18, 2015.

No action was necessary on this report.

Future Meeting Dates

June 18-19, 2015 – Staybridge Suites, Lincoln
August 20-21, 2015 – Staybridge Suites, Lincoln
September 17-18, 2015 – Staybridge Suites, Lincoln
October 15-16, 2015 – Staybridge Suites, Lincoln
November 19-20, 2015 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:02 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:18 a.m.

At 11:30 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:45 a.m.

At 1:20 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, Alloway, Dover, Freeman, Ptak, 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 21, 2015, meeting of the Nebraska Real Estate Commission were available for inspection on **June 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

Mark Leaders, CBSHOME Real Estate, Omaha
Paul Vojchehoske, Omaha
Jeremy Aspen, Certified Property Management, Omaha
Doug Rotthaus, Omaha Area Board of REALTORS®, Omaha

