

NEBRASKA REAL ESTATE COMMISSION

November 16, 2017

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 16, 2017, 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. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, were present for the Polinsky Hearing.

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 been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Starman and seconded by Titus to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Minutes of October 20, 2017

The minutes of the Commission meeting held on October 20, 2017, were considered.

Commissioner Titus noted that on page 5 of the exhibit, in the motion under the Agenda item titled 2016-2017 Objectives – Quarterly Report there is additional language that should be stricken to make the motion more easily readable.

After review, a motion was made by Freeman and seconded by Titus to approve the minutes as amended. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus 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, 2017, was \$1,466,757.71, which compared to a cash fund balance of \$1,395,887.44 on October 31, 2016.

After discussion, a motion was made by Freeman and seconded by Alloway to file the October Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Specialized Registrations

Time-Share Registration - Amendments for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site) and Marriott Vacation Club Destinations

Director Lemon presented a specialized registrations report which included the registration of amendments to time-share registrations for ClubWyndham Access Vacation Ownership Plan (Non-Specific Site) and 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 Freeman to approve the amendments to the two registrations as presented. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus 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 Titus and seconded by Alloway to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Examination Report - October

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

Deputy Director Roubal indicated that she had attended a session with PSI Examination Company to discuss and add the national examination questions. She also noted that it was

brought to her attention that they would be seeking in the near future additional state examination questions.

Deputy Director Roubal reported that the Instructor Development Workshop (IDW) would be held on June 19, 2018 and had already received the Agenda and deliverables from the presenter, Karel Murray.

Deputy Director Roubal noted that she had reached out to ten individuals to participate in the Advisory Education Committee and plan on the first meeting being held prior to the January Commission meeting. The subject that would be discussed is broker-approved training (BAT) regarding improvements and recommendations.

After review, a motion was made by Alloway and seconded by Freeman to ratify the October Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus 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 Freeman and seconded by Dover to ratify the four reports. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Continuing Education Activity Rejection

Deputy Director Roubal 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.

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 2016-022

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

Commissioner Bourne made a motion to set the complaint for hearing. The motion died for a lack of a second.

A motion was made by Freeman and seconded by Alloway that Complaint 2016-022 be held in abeyance. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

A motion was made by Freeman and seconded by Alloway that the Commission file a complaint on its own motion and set it for hearing on the alleged violation of 81-885.24(12). Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

A motion was made by Bourne and seconded by Freeman that the Commission filed complaint also include the alleged violation of 76.2421(1) in the new complaint. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Item B Complaint 2016-023

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

A motion was made by Bourne and seconded by Freeman to set the Complaint for hearing on alleged violation 81-885.24(29). After discussion, the motion was withdrawn by the mover and the second.

A motion was made by Freeman and seconded by Alloway that this matter be further investigated. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Item C Complaint 2015-026 – Greg Wayman vs. Troy Arthur Trumm

Deputy Director Cell requested Complaint 2015-026. Deputy Director Cell explained that Complaint 2015-026 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 2015-026 in abeyance until the new complaint had been adjudicated. Complaint 2017-010 was the new complaint.

A motion was made by Titus and seconded by Alloway to dismiss Complaint 2015-026, since the Commission held the Hearing for Complaint 2017-010 at this meeting. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Presentation of Stipulation and Consent Orders

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

Disciplinary Hearings

Complaint 2017-010 - Commission vs. Maria Carmen Polinsky

A Hearing was held on November 16, at 10:40 a.m., in the matter of Complaint 2017-010, Commission vs. Maria Carmen Polinsky. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Maria Carmen Polinsky was present and represented by Counsel Michael J. Matukewicz of Omaha.

Commissioner Freeman recused himself from participating in this matter, thereby nullifying any potential conflict of interest.

After opening statements, Counsels Prochaska and Matukewicz jointly offered 25 Exhibits, all of which were received by Chairperson Gale.

Counsel Prochaska called Duran Cell, Kara Reilly, Sean Reilly, Troy Trumm, and Maria Carmen Polinsky as witnesses.

At 12:15 p.m., Chairperson Gale declared a brief recess, and reconvened the Hearing at 12:28 p.m.

Counsel Matukewicz motioned for a directed verdict. After discussion, Chairperson Gal denied the motion for a directed verdict.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Titus and seconded by Alloway in Complaint 2017-010, that all charges be dismissed with prejudice against Maria Carmen Polinsky. Motion carried with Alloway, Bourne, Dover, Starman, Titus and Gale voting aye, with Freeman not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 1:15 p.m.

Informal Special Appearances

Tory Ray Lethcoe, Salesperson Applicant

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Alloway and seconded by Dover to allow Mr. Lethcoe to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Bryan Scott Curtis, Non-Resident Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Curtis' special appearance; a letter of explanation from Mr. Curtis; character reference letters for Mr. Curtis; Mr. Curtis' salesperson application form; trial court cases from the State of Nebraska on Mr. Curtis' cases; and Mr. Curtis' criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Curtis was present.

Chairperson Gale reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Freeman and seconded by Starman to allow Mr. Curtis to have a non-resident license issued after making proper application. Mr. Curtis must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions. Mr. Curtis must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within seven days.

After discussion the mover offered an amendment to require a three year reporting period, the amendment was accepted by the second.

Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Sandra Marie McMurry, Salesperson Applicant

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

McMurry; Ms. McMurry's salesperson application form; trial court cases from the State of Nebraska on Ms. McMurry's cases; and Ms. McMurry's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Ms. McMurry was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. McMurry explained the situations regarding his past criminal history.

After discussion, a motion was made by Alloway and seconded by Freeman to allow Ms. McMurry to sit for the salesperson examination after making proper application and to have a license issued upon passing. Ms. McMurry 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. McMurry must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within seven days for a period of two years. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Zachary Spencer Call, Salesperson Applicant

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

Chairperson Gale reviewed the procedure for informal special appearances.

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

A motion was made by Freeman and seconded by Bourne that Mr. Call not be allowed to sit for the salesperson examination at this time. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Consider Request for Revision to Seller Property Disclosure Statement Regarding Smoke Alarms

Director Lemon presented an exhibit from Senator Steve Erdman requesting the Commission to change the wording on the Seller Property Condition Disclosure Statement form. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained what the letter Senator Steve Erdman was requesting. There was discussion regarding the requirements of the Nebraska Fire Marshall and the possibility of a law being introduced into the Legislature during this session. There was also discussion regarding the process to change the Sellers Property Condition Disclosure Statement form.

A motion was made by Freeman and seconded by Dover that this matter be tabled and see if the matter is addressed by Legislation. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

Information Matters

Governor's Memorandum on Budget Constraints

Director Lemon presented an exhibit the Governor regarding budget constraints. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon explained the memorandum from the Governor regarding budget constraints and how that is applicable to the Commission as a non-code agency.

Director Lemon also introduced Ann Linneman, State of Nebraska Budget Management Analyst, who had recently been appointed to the Commission. Ms. Linneman provided a summary of her background prior to being appointed as the Commission's Budget Management Analyst and explained that she was appointed to 14 different Agencies at this time. The Commission welcomed Ms. Linneman.

No action was necessary on this report.

Future Meeting Dates

January 18-19, 2018 - Country Inn and Suites, Lincoln

February 15-16, 2018 – Staybridge Suites, Lincoln

March 15-16, 2018 – Staybridge Suites, Lincoln

April 19-20, 2018 – Staybridge Suites, Lincoln

May 24-25, 2018 – Staybridge Suites, Lincoln

June 21-22, 2018 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:27 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:40 a.m.

At 12:15 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 12:28 p.m.

At 2:37 p.m., there being no further business to come before the Commission, a motion was made by Titus and seconded by Alloway that the meeting adjourn. Motion carried with Alloway, Bourne, Dover, Freeman, Starman, Titus and Gale voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the November 16, 2017, meeting of the Nebraska Real Estate Commission were available for inspection on **December 5, 2017**, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,


Greg Lemon
Director

Guests Signing the Guest List

James McCord, Nemaha Valley Board of Realtors, Nebraska City
Dede Mann, Lincoln
Ann Linneman, Budget, Lincoln
Bryan Fraser, CBSHOME, Omaha
Jeff Hebb, Nebraska REALTORS® Association, Lincoln
Jerry Vogel, NP Dodge, Omaha
Michael Riedmann, NP Dodge, Omaha
Jennifer Petak, NP Dodge, Omaha
Arla Meyer, Nebraska Realty, Lincoln

