

NEBRASKA REAL ESTATE COMMISSION

March 21, 2019

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on March 21, 2019, 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 thereof relating to this meeting, which is attached to and made a part of these minutes. Chairperson Evnen 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 Evnen 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 Evnen asked that guests sign the guest list.

Director Lemon noted that agenda items 14a and 16 had been added since the tentative agenda was mailed to the Commissioners and agenda item 13a had been postponed since the Final Agenda had been distributed.

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

Minutes of February 21, 2019

The minutes of the Commission meeting held on February 21, 2019, were considered.

After review, a motion was made by Gehrki and seconded by Titus to approve the minutes as presented. Motion carried with Alloway, Gehrki, Starman, Titus and Evnen voting aye, and with Bourne and Dover not voting having not been in attendance at the February Meeting.

Public Comment

Chairperson Evnen 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, 2019, was \$1,667,178.73, which compared to a cash fund balance of \$1,863,557.63 on February 28, 2018.

After discussion, a motion was made by Alloway and seconded by Starman to file the February Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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 Alloway and seconded by Titus to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Examination Report - February

Deputy Director Roubal 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 Bourne and seconded by Gehrki to ratify the February Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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 Provider/Course Approval

Deputy Director Roubal presented for ratification the Continuing Education Provider/Course 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.

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.

Commission-Approved Training Provider/Activity Recognition

Deputy Director Roubal presented a Commission-Approved Training Provider/Activity Recognition Report, a copy of which is attached to and made a part of these minutes.

Commission-Approved Training Activity Recognition

Deputy Director Roubal presented a Commission-Approved Training Activity Recognition Report, a copy of which is attached to and made a part of these minutes.

Commission-Approved Training Activity Significant Change

Deputy Director Roubal presented a Commission-Approved Training Activity Significant Change 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 the seven reports. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Continuing Education Renewal Report

Deputy Director Roubal presented the Continuing Education Renewal Report, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal 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.

Broker-Approved Training Expirations

Deputy Director Roubal presented the Broker-Approved Training Expirations, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Gehrki and seconded by Starman to ratify the two reports as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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 Complaints 2018-010, 2018-011, 2018-012, 2018-013, 2018-014, and 2018-031

This investigative matter had been tabled at the previous meeting and brought to this meeting for discussion when all Commissioners were present. There was a pending motion, prior to the item being tabled, which required to be reviewed and voted upon.

After discussion and review of the pending motion, which was made by Titus and seconded by Alloway that the complaints be set for hearing. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye

Item B Complaint 2018-027

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 Gehrki that this complaint be held in abeyance and a new complaint be filed against the Respondent per Staff recommendation. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item C Complaint 2017-022

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 Bourne to amend the original complaint to include 81.885.24(29). The motion failed for lack of a second.

There was discussion that there is currently a motion to hold this in abeyance pending civil litigation. Deputy Director Cell will continue to monitor the civil litigation.

It was the consensus of the Commission not to take additional action at this time and to keep the Complaint in the current status of being held in abeyance pending civil litigation.

Item D Complaint 2018-023

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 Dover that the complaint be set for hearing. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item E Complaint 2018-028 - Bill Matzke, Jeff Betley & Marc Braun vs. Richard Thomas Bretz

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 Gehrki that the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Item F Complaint 2018-026

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 Titus that Complaint 2018-026 be amended to include violation of 81.885.24(29) per Staff recommendation, and set for hearing. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2018-022,
Commission vs. Christopher Joseph Redfield**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2018-022, Commission vs. Christopher Joseph Redfield. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Titus and seconded by Alloway to enter into the Order as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Disciplinary Hearings

Complaint 2018-022 – Commission vs. Brian Tyler Littler – Continued

The Complaint 2018-022, Commission vs. Brian Tyler Littler was continued at the request of the Complainant's Counsel.

Informal Special Appearances

Brian Paul Schwartz, Salesperson Applicant

The special appearance scheduled for Brian Paul Schwartz was postponed to a future meeting.

David Joseph Carrig, Broker Applicant - Reappearance

Director Lemon presented exhibits which included: correspondence regarding Mr. Carrig's special appearance; a character reference letter for Mr. Carrig; and information regarding Mr. Carrig's previous informal special appearances in February 2019 and September 2018. A copy of said exhibit is attached to and made a part of these minutes. Mr. Carrig was present.

Chairperson Evnen reviewed the procedure for informal special appearances and noted that there had been an additional letter of reference received in the exhibit and that he had received a telephone call regarding a reference for Mr. Carrig.

Mr. Carrig explained the situations regarding his past criminal history and his past informal special appearance.

After discussion, a motion was made by Evnen and seconded by Alloway to reconsider the informal special appearance for Mr. Carrig. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

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

Matthew James Zuroski, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

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

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

Adam Paul Berg, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

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

After discussion, a motion was made by Starman to allow Mr. Berg to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Berg 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. Berg must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time within five days for a period of three years. Mr. Berg must also provide the Commission proof of vehicle insurance every six months for three years. The motion died for a lack of a second.

A motion was made by Gehrki and seconded by Alloway that Mr. Berg not be allowed to sit for the salesperson examination at this time.

There was discussion that Mr. Berg wait a year before reappearing in front of the Commission and that he perhaps attend AA or a similar program within the next year. Chairperson Evnen clarified that while suggestions have been made by the Commissioners, those suggestions do not mean that should Mr. Berg return in one year and attend AA classes, he will be guaranteed the opportunity to sit for a real estate license.

Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Consider Requiring In-Classroom Training Requirements for Continuing Education

Deputy Director Roubal presented a letter of explanation regarding in-classroom training requirements for continuing education, proposed changes to the regulations and feedback from the REALTORS Association. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon thanked the Nebraska REALTORS Association® for getting the word out to the members and their responses to the survey to him so quickly regarding the proposed in-classroom requirements for continuing education.

Deputy Director Roubal reviewed the exhibit as presented and pointed out that during the last renewal period, sixty percent of the courses were taken in the classroom versus forty percent that were taken online.

Commissioner Starman indicated that she did not want to dictate how licensees take their courses based on the responses regarding the burden for out state Nebraska licensees. Commissioner Gehrki concurred with Commissioner Starman and asked what the

consequences were for a licensee who had someone take a course for them. Deputy Director Roubal indicated that she was unclear how that currently could be proven. Director Lemon indicated that if there is solid evidence that they did not take the course, they would not get credit, but the Commission had not previously addressed this issue.

Commissioner Alloway discussed the benefits of the different learning styles. He also indicated that he felt that the Commission should look into allowing correspondence courses as a form of distance education even though ARELLO no longer certifies this format.

There was discussion regarding the members of the Advisory Committee. Deputy Director Roubal indicated that the group consisted of Nebraska based education providers, some of whom are also licensees.

A motion was made by Alloway and seconded by Titus that no change be made requiring in-classroom continuing education requirements at this time. It is requested that the Director write letters thanking the Education Advisory Committee Members and provide possible options for allowing the Commission to approve continuing education courses in correspondence format. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye

There was discussion regarding penalties for licensees who are allowing others to take their online courses for them. There was discussion of what sections of law currently applies to this scenario, Director Lemon stated that the Commission had not had any official complaints filed of that nature, but if a complaint were to be filed the violation would be demonstrating negligence, incompetence or unworthiness to act as a licensee under 81-885.24(29). There was also discussion regarding verification of who is taking online course and disclaimers currently in place on the provider websites regarding such identity issue. Deputy Director Roubal indicated that she would review what online students agree to regarding their identity when taking courses.

Report of Subcommittee on Use of Unlicensed Assistants

Director Lemon presented a report from the Subcommittee regarding the Use of Unlicensed Assistants. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the report being presented included findings and issues that the Subcommittee wanted to bring to the Commission for discussion. If the clarifications or interpretations to current law were adopted by the Commission, these guidelines could be incorporated into the Commission's existing policy and interpretations on the use of unlicensed persons. Director Lemon noted a secondary issue regarding referrals, which may need to be discussed in closed session.

Commissioner Alloway indicated that there are different means of communications being utilized in the industry today, which is why the laws and the Policies and Interpretations regarding the Use of Unlicensed Assistants needed to be revisited to see if they are still applicable.

Director Lemon indicated that the lack of knowledge, understanding of the law, and how it applies to their assistants is what he believes is the most common issue with licensees. He felt that if the new guidelines were adopted the first step would be an education effort to facilitate compliance, followed by followed by enforcement efforts as necessary.

There was discussion regarding the distinction between telemarketers and assistants making

phone calls. There was also discussion regarding the distinction between old online practices where a form was submitted online and a lead was sent to a licensee versus the practice some are using where an unlicensed individual will contact the consumer and then forward the lead to a licensee, or as some called it "scrubbing the lead". There was discussion regarding the Commissions approach to providing licensees with the most distinct and enforceable approach to the use of unlicensed assistants.

Jeff Searcy, a licensed Nebraska Real Estate Salesperson indicated that many consumers are going online and initiating these types of requests. He feels that in many instances professionals need to be involved and wondering what role real estate professionals have in these types of consumer driven online automated services. He felt that it is a valid discussion to differentiate receiving phone calls versus initiating listings and services online through a website such as Zillow.

There was discussion regarding consumer driven leads, marketing firms and cold calls.

At 11:51 p.m., a motion was made by Titus and seconded by Bourne to go into closed session for discussion of potential litigation and potential damage to a company. Motion carried with, Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Chairperson Evnen indicated, prior to the closed session beginning, that the reason for the closed session was to discuss an individual company.

At 12:20 p.m., a motion was made by Bourne and seconded by Dover to reconvene in open session. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

A motion was made by Alloway and seconded by Gehrki that Director Lemon provide information for the Commission's review on additional guidelines allowing greater use of unlicensed assistants including acting as a point of first contact, but not allowing unlicensed persons to discuss specifics about client motivation, property characteristics, pricing and desirability as well as information on whether any law or regulation changes would be needed or recommended to make such a change. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Review and Approval of Procedure for Advertising Complaints

Director Lemon presented an exhibit regarding the proposed procedure for Advertising Complaints. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that the procedures had been reviewed and discussed and informally agreed to at several meetings but at the advice of counsel, it was suggested that a formal motion and vote ratify the procedures previously determined.

A motion was made by Starman and seconded by Dover to allow the Director, on his own motion, to file complaints related to advertising which on its face violates the requirements of the Nebraska Real Estate License Act and Regulations related to advertising broker name and prominence against affiliated licensees and team leaders, and also provide that such complaints be brought before the Commission as investigative reports prior to being set for hearing. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

A motion was made by Titus and seconded by Gehrki to dismiss advertising complaints 2018-018, 2018-019, 2018-025, 2018-042 and 2019-004 that were filed prior to the adoption of the above procedures at which point the Director could refile those complaints against the appropriate parties under the authority granted in the first motion. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Legislative Matters

LB 12 - Director Lemon reported that LB12 bill provided a license fee exemption for service members and their spouses, and had been approved by the Governor on March 6. He further explained that this bill was passed with the emergency clause and went into effect upon receiving the Governor's signature and the Commission has implemented new procedures, forms and a webpage to accommodate this change.

LB 55 - Director Lemon reported that the bill had been approved by the Governor on March 7.

LB 130 – Director Lemon reported that the bill had advanced to Enrollment and Review.

LB 258 – Director Lemon reported that the bill had been approved by the Governor on March 7.

LB 384 – Director Lemon reported that the bill had been presented to Governor on March 15.

LB 454 – Director Lemon reported that the bill had been placed on General File.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Meeting – Salt Lake City, Utah – April 10-13, 2019

Director Lemon explained that the deadline for hotel registration was March 11, 2019. He indicated that at this time Commissioner Bourne, Deputy Director Rut and himself were currently signed up to attend the conference.

No action was necessary on this report.

Amendments to Title 299 Ch. 1 & 7

Director Lemon indicated that the Amendments to Title 299 Ch. 1 & 7 were approved by the Governor and implemented on March 6, 2019.

No action was necessary at this time.

Future Meeting Dates

April 18-19, 2019 – Staybridge Suites, Lincoln
May 23-24, 2019 – Staybridge Suites, Lincoln
June 20-21, 2019 – Staybridge Suites, Lincoln
August 15-16, 2019 – Staybridge Suites, Lincoln
September 26-27, 2019 – Staybridge Suites, Lincoln

October 17-18, 2019 - Staybridge Suites, Lincoln
November 21-22, 2019 – Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:44 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:54 a.m.

At 12:20 p.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 12:25 p.m.

At 12:51 p.m., there being no further business to come before the Commission, a motion was made by Alloway and seconded by Dover that the meeting adjourn. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the March 21, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on March 26, 2019, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon
Director

Guests Signing the Guest List

Jim McCord, Nemaha Valley Board of Realtors, Nebraska City
Charles Chadwick, CNC Realty, Omaha
Christie Bevington, Nebraska REALTORS® Association, Lincoln
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln
Jeff Searcy, Lincoln

