

**NEBRASKA REAL ESTATE COMMISSION**

**May 23, 2019**

**Staybridge Suites**

**Staybridge Room**

**Lincoln, NE**

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**Opening**

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:00 a.m. on May 23, 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, with the exception of Commissioner Dover, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Duran Cell, Deputy Director for Licensing Monica Rut, and Trust Account Examiner John Clark.

**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 item 9g had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Alloway and seconded by Titus to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

**Minutes of April 18, 2019**

The minutes of the Commission meeting held on April 18, 2019, were considered.

After review, a motion was made by Gehrki and seconded by Starman to approve the minutes as presented. Motion carried with Alloway, Bourne, Gehrki, Starman, and Evnen voting aye, with Dover not participating or voting, being absent and excused, and with Titus not voting having not been in attendance at the April 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 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, 2019, was \$1,599,838.23, which compared to a cash fund balance of \$1,805,650.844 on April 30, 2018.

After discussion, a motion was made by Titus and seconded by Gehrki to file the April Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

## **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 Titus and seconded by Starman to ratify issuance of the licenses as set forth in the report. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

## **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 Starman and seconded by Bourne to ratify the April Examination Report for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

## **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.

### **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 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 for ratification the 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 Alloway and seconded by Bourne to ratify the six reports. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

### **Minutes from Education Advisory Group – Second Quarter - May 21, 2019**

Deputy Director Roubal presented the Minutes from the Education Advisory Group-Second Quarter – May 21, 2019, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal reviewed the minutes and explained the discussion which occurred during the meeting for the agenda items.

There was discussion regarding a survey that will be sent to designated brokers and the Commissioners expressed their interest in the feedback on what education courses would have been helpful prior to becoming a designated broker. The discussed that the Education Advisory Group would be meeting again soon so that the new education requirements would be ready for providers and licensees when the laws go into effect in July 2020.

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 2018-034**

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 Bourne that this complaint be held in abeyance and a new complaint be filed against the respondent per the Staff recommendation. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover not participating or voting, being absent and excused.

### **Item B Complaint 2017-001 – Millard & Scott Seldin vs. Robert Allen Dean, Aaron M. Flaugh, Randall Richard Lenhoff, Theodore M. Seldin & Marilyn Wynne Watson**

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 Gehrki and seconded by Titus that the complaint be dismissed without prejudice. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover not participating or voting, being absent and excused.

### **Item C Complaint 2018-035**

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 the complaint be amended and set for hearing per Staff recommendation. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover not participating or voting, being absent and excused.

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

### **Complaint 2019-008, Commission vs. Justin Lewis Shanahan**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2019-008, Commission vs. Justin Lewis Shanahan. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Gehrki to enter into the Order as presented. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover not participating or voting, being absent and excused.

**Complaint 2019-009,  
Commission vs. Samantha Denise Johnson**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2019-009, Commission vs. Samantha Denise Johnson. 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 Gehrki to enter into the Order as presented. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover not participating or voting, being absent and excused.

**Complaint 2019-011,  
Commission vs. Victoria Marie Keck**

Deputy Director Cell presented a Stipulation and Consent Order in the matter of Complaint 2019-011, Commission vs. Victoria Marie Keck. A copy of said Order is attached to and made a part of these minutes.

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

**Shelly Kay Glissman, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Ms. Glissman explained the situations regarding her criminal history.

A motion was made by Titus and seconded by Bourne that Ms. Glissman not be allowed to sit for the salesperson examination at this time. Motion carried with Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Alloway voting nay, and with Dover not participating or voting, being absent and excused.

### **John Jeffery Muir, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Muir explained the situations regarding his criminal history.

After discussion, a motion was made by Gehrki and seconded by Starman to allow Mr. Muir to sit for the salesperson examination after making proper application and to have a license issued upon passing.

Commissioner Alloway offered an amendment that a provision be noted in the licensee's permanent record by Commission Staff regarding nondisclosure on Mr. Muir's application. This provision would be brought to the Commissions attention should Mr. Muir have future disciplinary actions against his license. The amendment was accepted by the mover and the second.

Commission Alloway offered an amendment that Mr. Muir 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. Muir 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 five years. The amendment was accepted by the mover and the second.

Chairperson Evnen reviewed the pending provisions of allowing Mr. Muir to sit for the salesperson examination.

Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

### **Marcos E Castillo, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Castillo explained the situations regarding his criminal history.

After discussion, a motion was made by Alloway and seconded by Starman to allow Mr. Castillo to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Castillo 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 for the entire time Mr. Castillo holds a real estate license. Mr. Castillo must also notify the Commission staff and his employing broker of any criminal charge, except those charges where there is no possible sentence of jail time within five days.

Commissioner Alloway offered an amendment that the reporting of any criminal charge, except for those where there is no possible sentence of jail time within five days be for a period of five years. The amendment was accepted by the second.

Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

### **Consider Requirement for Trust Accounts**

#### **Consider Waiver for Trust Account Requirement for Designated Brokers**

Director Lemon presented a letter explaining the proposed trust account waiver. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the waiver process and various states currently utilizing the waiver form. He indicated that many brokers do not report any activity in their trust account when audited annually and many brokers have difficulty with local banks not wanting to open trust accounts or sign the consent to examine trust account forms. He noted that there are no anticipated changes in the audit procedures, and the auditors would continue to review transaction files even if they have no activity in their trust account.

The Commissioners discussed the possible exemptions for allowing a designated broker to waive the trust account. There was discussion regarding addendums to include specific language regarding funds.

John Clark, Trust Account Examiner, indicated that many brokers currently use a third party, such as a title company for depositing funds and do not use their trust account. This has been occurring with Commercial brokers for many years and is recently becoming more common especially in the Omaha and Lincoln areas. He also noted that there would be little change in the trust account auditing procedures as they typically go through the transaction files even if there is no activity in their trust account.

There was discussion regarding different scenarios where money may need to be deposited into a trust account and scenarios where no trust account was necessary. There was also discussion regarding a review process to approve or deny the waiver.

Director Lemon explained that many surrounding states have implemented the waiver process and has not heard of any problems arising from not requiring a trust account for all designated brokers.

Chairperson Evnen indicated that he would be interested in Director Lemon developing appropriate language to implement a trust account waiver procedure so that the Commission can review at a future meeting.

No action was necessary with regard to this matter.

## **Consider Possible Changes Regarding Prohibition Against ACH Debits to Trust Accounts**

Director Lemon presented a letter explaining automated withdrawals from trust accounts. A copy of said exhibit is attached to and made a part of these minutes. Tim Langan and RJ Neary from Investors Realty, Inc, Omaha, NE, were also present to discuss this matter.

Director Lemon explained that currently automated withdrawals are prohibited from property management accounts as stated in the Trust Account Manual because such withdrawals could result in a negative balance in the trust account. He indicated that he would like to discuss the possibility of allowing automated withdrawals if they prevented overdrafts or negative balances, provided that certain measures were in place.

Mr. Langan explained his interpretation of the rules regarding ACH debits from trust accounts. He indicated that he would like to utilize and automate technology for customers regarding ACH debits rather than having to manually issue checks.

Mr. Langan distributed a flow chart for MRI Vendor Pay – Round Trip to show how this third party vendor processes the ACH debits. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14a1.

Mr. Langan indicated that he would like the Commission to consider an amendment to allow for the technology to leverage benefits to all parties.

There was discussion regarding the interpretation of the rules regarding ACH payments and the proposed amendments to allow for automated ACH payments.

John Clark, Trust Account Examiner, indicated that the ACH payments being described where the payment is approved prior to each withdrawal of funds is currently being practiced by many designated brokers throughout the state. He noted that automated ACH payments where no approval is obtained prior to individual withdrawal of the funds is not acceptable under the current provisions in the trust account manual and expressed concern regarding this type of transaction when there are multiple properties sharing the same trust account. He explained that should the Commission consider allowing this type of transaction, it would be best that the broker have dedicated accounts for each property management client or contract.

There was discussion regarding a sweep account or a zero balance account that would not allow the trust account to show a negative balance. There was also discussion that the broker was responsible for the trust account balance and should have business practices in place to avoid such an occurrence.

It was the consensus of the Commission that Director Lemon research automated ACH payments and provide a proposal at a future meeting.



## **Consider Changes to Policy and Interpretation on Use of Unlicensed Persons**

Director Lemon presented an exhibit regarding possible changes to the Policy and Interpretation on the Use of Unlicensed Persons. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that this matter had been discussed during the March 21, 2019 meeting and the proposed changes as presented were a reflection of the motion and action taken at the last meeting. He reviewed the proposed changes and indicated that a statutory change would need to be made prior to the implementation of the proposed changes.

There was discussion regarding the current policy and interpretation being hard to regulate. Commissioner Alloway indicated that the proposed change was the best course of action and was in favor of the change.

A motion was made by Alloway and seconded by Titus to authorize Director Lemon to prepare the suggested Legislation change for discussion at a future meeting. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, with Dover not participating or voting, being absent and excused.

## **Fill Vacancy on Finance Subcommittee**

Chairperson Evnen noted that the vacancy position on the Finance Subcommittee is an appointment made by the Chairperson. He explained that with Herb Freeman leaving the Commission after fulfilling his term, a position in the Finance Subcommittee is now vacant and needed to be filled. Chairperson Evnen appointed Commissioner Bourne to fill the vacancy on the Finance Subcommittee, which will consist of Commissioners Dover and Bourne and Chairperson Evnen.

## **Legislative Matters**

**LB 12** - No new information presented.

**LB 55** - No new information presented.

**LB 130** – Director Lemon reported that the bill had been approved by the Governor on May 8, 2019.

**LB 258** – No new information presented.

**LB 384** – No new information presented.

**LB 454** – Director Lemon reported that the bill had been placed on Final Reading

No action was necessary with regard to these matters.

## Information Matters

### ARELLO Annual Meeting – Denver, CO – September 18-21, 2019

Director Lemon explained that the registration for the ARELLO Annual Meeting is open for those Commissioners who wish to attend. He also noted that Commissioner College is offered at annual meetings and explained what was taught during Commissioner College.

No action was necessary on this report.

### Future Meeting Dates

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

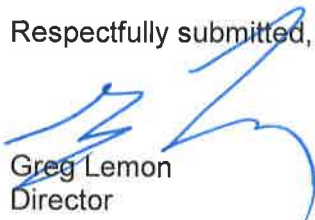
At 10:05 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:15 a.m.

At 11:13 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 11:19 a.m.

At 12:18 p.m., there being no further business to come before the Commission, a motion was made by Gehrki and seconded by Alloway that the meeting adjourn. Motion carried with Alloway, Bourne, Gehrki, Starman, Titus and Evnen voting aye, and with Dover 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 May 23, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on May 24, 2019, 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  
Samantha Johnson, Lincoln Board of REALTORS®, Lincoln  
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln  
Mary Jo Mentzer, NP Dodge Real Estate Sales, Inc., Omaha  
Lauren Gehrki, Omaha  
Tim Langan, Investors Realty, Inc, Omaha  
RJ Neary, Investors Realty, Inc, Omaha