

**NEBRASKA REAL ESTATE COMMISSION**

**June 27, 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 June 27, 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 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 Alloway and seconded by Gehrki to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

**Minutes of May 23, 2019**

The minutes of the Commission meeting held on May 23, 2019, were considered.

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

Commissioner Bourne asked if it was possible to add a topic of discussion to the agenda regarding purchase agreements being completed with the team names versus licensees names. Director Lemon indicated that this could be put on an agenda for another meeting but for clarification purposes until such time, the purchase agreements must have the licensees name not the team name listed. Commissioner Bourne explained that the public was confused as to who was representing them and felt that clarification was needed.

### **Receipts and Expenditures Report for May**

Director Lemon presented the Receipts and Expenditures Report for May. 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 May 31, 2019, was \$1,567,844.62, which compared to a cash fund balance of \$1,762,999.18 on May 31, 2018.

After discussion, a motion was made by Gehrki and seconded by Starman to file the May Receipts and Expenditures Report for audit. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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 the 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 Dover and seconded by Starman to approve the amendment to the registration as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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 Gehrki 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 - May**

Deputy Director Roubal presented for ratification the May 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 Starman to ratify the May 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**

### **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 a Commission-Approved Training Recognition 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 Titus to ratify the six reports. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen 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.

## **Instructor Development Workshop**

Deputy Director Roubal presented an exhibit regarding the proposed Instructor Development Workshop, a copy of which is attached to and made a part of these minutes.

Deputy Director Roubal noted that this Workshop would be three hours long. Chanda Turnbull with PSI would spend three hours with pre-licensing instructors and providers sharing information regarding the new examination processes and answering questions.

There was discussion regarding who would be able to receive the three hours of continuing education credit. Deputy Director Roubal indicated that besides those invited which are the pre-license education providers and instructors, the instructor development workshops are always open to the Commissioners.

A motion was made by Alloway and seconded by Starman to approve the expenditures for the Instructor Development Workshop, continuing education credit of three hours for completion of the three-hour course for the attendees and to provide the Workshop free of charge. 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.

## **Duran Cell Resolution**

Commission Alloway indicated that on behalf of the Commission they appreciated and thanked Mr. Cell for his work as Deputy Director for Enforcement. Chairperson Evnen added that Mr. Cell expressed interest in the issues concerning the real estate profession and appreciated his work.

A motion was made by Alloway and seconded by Titus that a resolution recognizing Mr. Cell's service to the Commission and the real estate industry and thanking him for his work be adopted. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

The following sworn complaints and investigative matters were presented to the Commission:

### **Item A 2018-033**

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 set for hearing on 81-855.24(29) and 299 NAC 5-003.23 only.

After further discussion, a motion was made by Alloway and seconded by Starman to table this discussion until a future Commission meeting. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

#### **Item A Investigative Matter**

Deputy Director Cell presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Titus and seconded by Dover that the Commission file a complaint on its own motion and set it for hearing. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

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

##### **Complaint 2019-016, Commission vs. Lisa Jo Balaalid-Daugherty**

Deputy Director Cell indicated that a Stipulation and Consent Order in the matter of Complaint 2019-016, Commission vs. Lisa Jo Balaalid-Daugherty had been proposed by the Respondents Attorney. Since there was no meeting scheduled for July, Deputy Director Cell indicated that he was asking the Commission if they were interested in accepting the terms offered in the stipulation and consent order as proposed. He explained that Ms. Balaalid-Daugherty had been charged with petty theft and the penalty being proposed would coincide with the penalty she was receiving in her resident real estate licensing state of South Dakota.

After discussion, it was the Consensus of the Commission not to take any action at this time on the matter.

#### **Disciplinary Hearings**

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

#### **Informal Special Appearances**

##### **James Thomas Endebrock, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Endebrock explained the situations regarding his criminal history.

After discussion, a motion was made by Alloway and seconded by Dover to allow Mr. Endebrock 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.

### **David Allen Rasmussen, Non-Resident Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Rasmussen explained the situations regarding his criminal history.

After discussion, a motion was made by Starman and seconded by Bourne to allow Mr. Rasmussen to have a license issued after making proper application. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

### **Consider Renewal of Errors and Omissions Insurance Contract with Williams Underwriting Group for 2020**

Director Lemon presented an exhibit regarding the 2020 Renewal of Contract Quotation from Williams Underwriting Group (WUG). A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the errors and omissions insurance coverage and underwriter would be the same as the current year. He noted that the terms would remain the same as the current program and the premium amount would not be increased.

After discussion, a motion was made by Alloway and seconded by Dover to approve the renewal of contract with WUG for 2020 as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

### **2018-2019 Objectives – Final Report**

Director Lemon presented an exhibit regarding the final report of the 2018-2019 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the outcomes of the 2018-2019 objectives. Deputy Director Rut provided a status update of the new database and implementation schedule.

No action was necessary on this report.

### **Consider 2019-2020 Objectives**

Director Lemon presented an exhibit regarding the proposed 2019-2020 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained which current objectives had been carried over for consideration on the 2019-2020 Objectives. He also welcomed any additions or corrections to the proposed list.

There was discussion possible certifications and registrations to be researched by the Commission this next fiscal year. They also discussed adding disclosure requirements for surveillance activities.

Chairperson Evnen reviewed the proposed changes to the 2019-2020 objectives as discussed. He indicated that it was discussed that an Objective 9 would be added to the Objectives, called Policy Initiatives with the subcategories of a. Property Management Certification; b. Home Inspector Registration; c. Commercial Sales and Leasing Certification; d. Farm and Ranch Management Certification; and e. Disclosure Requirements for Surveillance Activities.

A motion was made by Alloway and seconded by Gehrki to adopt the Commission Objectives as amended. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

### **Review proposed Language for Broker Trust Account Waiver**

Director Lemon presented proposed regulation language change and a new Broker Trust Account Waiver Application. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that based on previous discussions with the Commission, he had been tasked with looking into possible changes with the trust account manual. One of the issues regarding the trust account manual was regarding the trust account requirement. Many bordering states allow for a trust account waiver and do not have an issue with those who have utilized this option. He further explained that the regulation would be amended to reflect the changes once the complete trust account manual had been reviewed. He was seeking clarification that this was the direction the Commission wanted to proceed.

There was discussion regarding audits still occurring even if waiver granted since the transaction files are also reviewed. They also discussed whether criteria to approve or deny the waiver should be developed or if they should allow flexibility to exercise discretion regarding these matters. They discussed that parameters and guidelines could be discussed in the future.

Director Lemon indicated that he would bring back the proposed changes to the trust account manual, the proposed waiver form and the proposed regulation changes prior to setting a hearing on the regulation changes.

It was the consensus of the Commission that Director Lemon move forward in the direction as discussed.

### **Consider Approval of Special Assistant Attorneys General 2019-2021 Fee Schedule**

Director Lemon presented an exhibit of the proposed hourly rate schedule for the special assistant attorneys general to become effective July 1, 2019. A copy of said exhibit is attached to and made a part of these Minutes.

There was discussion regarding comparable market rates and the proposed rates.

After discussion, a motion was made by Bourne and seconded by Starman to approve the hourly rate schedule as presented effective July 1, 2019. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

### **Discussion – Disclosure Requirements for Surveillance Activity on Listed Properties**

Director Lemon presented an exhibit explaining the current use of digital recording devices and the lack of specific provisions regarding this activity. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon distributed an additional exhibit provided by the Nebraska REALTOR's Association of a survey conducted of what other states are doing with the surveillance issue. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 19a.

Director Lemon explained that it was becoming more common for devices to be on properties without individual's knowledge of such recordings. He was seeking guidance from the Commission as to their interest in pursuing a disclosure or an awareness campaign.

There was discussion regarding privacy concerns for both the buyers and sellers. There was discussion that the Commission can provide awareness through Commission Comment articles or that disclosures could be required but research would have to be conducted regarding what authority the Commission has to impose such requirements as well as what the best method of disclosing would be.

After further discussion, Director Lemon noted that since it had been adopted as an objective, this could be brought to a future meeting with specific options that could be presented for a focused discussion. He explained that should the Commission desire to require the seller or agent to disclose the surveillance activity, there is no current law requiring this for the seller. He indicated that he would provide a list of options at a future meeting.

No action was necessary with regard to this matter.

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

At 11:20 a.m., a motion was made by Bourne and seconded by Alloway to go into closed session for discussion of personnel matters. 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 personnel matters.

At 11:51p.m., a motion was made by Starman 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 then made by Alloway and seconded by Bourne that Director Lemon's annual salary be increased by \$4,500 beginning July 1, 2019. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.



## **Approval of Reappointment of Pre-Hearing Officers**

Director Lemon presented a letter providing a list of the current pre-hearing officers and a proposed extension period and contracted amount. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that every two years the contracts for pre-hearing officers are reviewed. He noted that there are currently two pre-hearing officers who have indicated that they were interested in continuing to be on the list.

There was discussion regarding pre-hearing officers duties and how those duties benefit the Commissioner prior to the disciplinary hearings.

A motion was made by Gehrki and seconded by Starman to reappoint the current pre-hearing officers and give Director Lemon the authority to extend their agreements until June 30, 2021 and increase their rate as reflected in the memo. The Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

## **Legislative Matters – Final Report**

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

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

**LB 130** – No new information presented.

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

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

**LB 454** – Director Lemon reported that the bill had been approved by the Governor on May 29, 2019.

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.

No action was necessary on this report.

### **Commissioner College at ARELLO Annual Conference – September 22, 2019**

Director Lemon explained 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**

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 10:01 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:13 a.m.

At 11:52 a.m., there being no further business to come before the Commission, a motion was made by Dover and seconded by Titus 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 June 27, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on **June 28, 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  
Charles Chadwick, CNC Realty, Omaha  
Tammy Brookhouser, Nebraska REALTORS® Association, Lincoln  
Debbie Mitchell, Coldwell Banker REA, Omaha  
Connie Hain, HomeServices of NE, Lincoln  
Christie Bevington, Nebraska REALTORS® Association, Lincoln  
Mary Jo Mentzer, NP Dodge Real Estate Sales, Inc., Omaha  
David Rasmussen, Woods Brothers, Lincoln