

NEBRASKA REAL ESTATE COMMISSION

August 15, 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 August 15, 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 Ken Dahlke, and Deputy Director for Licensing Monica Rut. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, were present for the Littler Hearing.

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

Minutes of June 27, 2019

The minutes of the Commission meeting held on June 27, 2019, were considered.

After review, a motion was made by Bourne and seconded by Starman to approve the minutes as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Public Comment

Chairperson Evnen asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business.

Charles Chadwick representing CNC Realty in Omaha, indicated that at a previous meeting there was discussion regarding disclosure requirements for surveillance activities on listed properties. He asked if he could be provided with the outcome of the discussion and what disclosures, if any, were required to be provided to clients regarding this matter. Mr. Chadwick also asked what advice could be provided to clients regarding how the information could be used if obtained during the surveillance activities.

Chairperson Evnen indicated that caution should be used when making statements regarding surveillance usage to clients so that there are no misrepresentations.

Director Lemon explained that when the matter was discussed at the last Commission meeting, they had asked Commission Staff to provide options of either disclosure or education efforts which he planned to bring at a future meeting.

No action was necessary on this report.

Financial Matters

Receipts and Expenditures Report for June and July

Director Lemon presented the Receipts and Expenditures Reports for June and July. Copies of said reports are attached to and made a part of these minutes. Director Lemon noted that an explanation page was included in each report.

The cash fund balance as of June 30, 2019, was \$1,537,357.35, which compared to a cash fund balance of \$1,723,652.94 on June 30, 2018.

The cash fund balance as of July 31, 2019, was \$1,482,893.65, which compared to a cash fund balance of \$1,475,703.00 on July 31, 2018.

After discussion, a motion was made by Titus and seconded by Gehrki to file the June and July Receipts and Expenditures Reports for audit. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Renewal Report

Director Lemon presented the Renewal Report. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

Fiscal Year 19-20 Monthly Budget Allocations

Director Lemon presented the monthly budget allocations for Fiscal Year 2019-2020. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary on this report.

Consider 2020 License Fees

Director Lemon presented an exhibit in which the Budget and Finance Subcommittee recommended no increase in fees for 2020. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon reviewed the documentation as set out in the exhibit noting the conservative revenue projections and the lowest anticipated level the fund balance may reach as shown on the exhibit.

After discussion, the motion by recommendation of the Finance Subcommittee, is to maintain the license fees at the current rate for 2020. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Specialized Registrations

Time-Share Registrations - Amendments for ClubWyndham Access Vacation Ownership Plan Nonspecific Site

Director Lemon presented a specialized registrations report which included the registration of amendments to time-share registrations for ClubWyndham Access Vacation Ownership Plan Nonspecific Site. A copy of said report is attached to and made a part of these minutes.

A motion was made by Gehrki and seconded by Starman to approve the two amendments 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 Dover 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 Reports – June and July

Deputy Director Roubal presented for ratification the June and July Examination Reports, copies of which are attached to and made a part of these minutes.

After review, a motion was made by Alloway and seconded by Gehrki to ratify the June and July Examination Reports for the purpose of issuing licenses. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Examination Passing Rosters for June and July

Deputy Director Roubal presented the Examination Passing Rosters for June and July, copies of which are attached to and made a part of these minutes.

No action was necessary on this report.

PSI Second Quarter School Reports

Deputy Director Roubal presented the PSI Review of Examination Performance Reports for comparison for the period of May 1, 2019 through June 30, 2019, copies of which are attached to and made a part of these minutes.

Deputy Director Roubal explained each of the reports relating to the national tests, state tests, and the school reports.

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 Provider/Activity Approval

Deputy Director Roubal presented for ratification the Continuing Education Provider/Activity 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 Recognition 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 Gehrki to ratify five 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.

Report on Instructor Development Workshop held July 11, 2019

Deputy Director Roubal reported that the Instructor Development Workshop was well attended. While the IDW was only three hours long, the PSI Testing Specialist, Chanda Turnbull, put together an informational presentation and the suggested changes to the Candidate Bulletin had been made in a timely manner. She indicated that the scores and comments made on evaluation forms were very positive and felt the workshop was well received.

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Director Lemon 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.

Director Lemon introduced Ken Dahlke, the new Deputy Director for Enforcement at the Commission office. The Commissioners welcomed Mr. Dahlke to the Commission staff.

Presentation of Stipulation and Consent Orders

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

Disciplinary Hearings

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

A Hearing was held on August 15, 2019, at 10:45 a.m., in the matter of Complaint 2018-022, Commission vs. Brian Tyler Littler. Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Brian Tyler Littler was present.

Chairperson Evnen indicated that Mr. Littler had submitted a request for continuance and asked Mr. Littler to explain the reason for the request.

Mr. Littler indicated that he had requested the continuance in order to provide him with additional time to hire an attorney to represent him in this matter. He indicated that after receiving the exhibits from the Commission's Counsel and additional information received from a third party he felt he needed more time to be prepared and to provide the documentation for

submittal. He also indicated that unfortunately his ability to work had been truncated due to health issues as provided in a physician letter he brought for the Commission's review.

Chairperson Evnen indicated that Mr. Littler answered the complaint in July 2018, which should have provided him with adequate time to secure an attorney.

Counsel Prochaska indicated that while Mr. Littler had ample opportunity to secure an attorney, but he also felt that it was important to be represented by counsel. He explained that he was not privy to any personal matters going on with Mr. Littler at the current time. He noted that approximately a week to ten days ago he had communications with Mr. Littler about him hiring an attorney. He had further communications with a new law firm the today and the previous day, however, Mr. Littler was not represented at this time to Counsel Prochaska's knowledge.

Mr. Littler stated that his previous attorney had left the law firm, therefore, he was trying to engage in another attorney but representation had not been confirmed.

Chairperson Evnen indicated that it would be facilitate the conduct of the hearing as well as the presentation of Respondent's case if he were represented by Counsel. He explained to Mr. Littler that he would grant the continuance until October 18, 2019 at 9:00 a.m. He further explained that a pretrial order would be issued with specific deadline dates and requirements that must be complied with prior to the Hearing in October.

Chairperson Evnen noted that the Hearing would be reconvened at 9:00 a.m. on October 18, 2019, and adjourned the Hearing at 11:00 a.m.

Informal Special Appearances

Mark Dewayne Maxwell, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Maxwell explained the situations regarding his criminal history.

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

Kenneth Robert German, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. German explained the situations regarding his criminal history.

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

Jeremy Michael Schafer, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Schafer explained the situations regarding his criminal history.

After discussion, a motion was made by Alloway and seconded by Titus to allow Mr. Schafer to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Schafer 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. Schafer 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. Schafer must provide to the Commission written proof by a sponsor or group leader of attendance two times per week at Alcoholics Anonymous. Such report to be provided to the Commission on a quarterly basis for a period of two years. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, and Titus voting aye, and with Evnen voting nay.

Kyle Jordan Flentje, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Flentje explained the situations regarding his criminal history.

After discussion, a motion was made by Alloway and seconded by Starman to allow Mr. Flentje to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Flentje must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Deron Dupree Johnson, Salesperson Applicant

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Johnson explained the situations regarding his criminal history.

After discussion, a motion was made by Bourne and seconded by Gehrki that Mr. Johnson not be allowed to sit for the salesperson examination at this time. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Consider Legislation Concerning Procuring Prospects/Unlicensed Assistants

Director Lemon presented an exhibit proposing to modify Neb. Rev. Stat. §81-885.01(2) using one of two different approaches. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that there had been discussions at previous meetings regarding this subject. He had been directed to draft legislation to either eliminate the license requirement relating to assisting in procuring prospects or broaden what an unlicensed assistant can do. He provided two different examples that could be used to modify the current statutes. He noted that the second example appeared to be a better approach but was seeking input from the Commissioners.

There was discussion regarding the different examples and a few changes to the language were suggested. There was discussion about enforcing the current law or adjusting the law regarding the unlicensed assistants to be more practical.

After discussion, it was the consensus of the Commission that Director Lemon incorporate the ideas discussed and further refine example two.

Director Lemon asked if the Commissioners wanted to see the draft again before sending it to the industry for review. Chairperson Evnen indicated that since this would require a legislative change, it needed to be ready on or before January which would allow time for the Commissions review again before the industry. All of the Commissioners concurred.

Consider Changes to the Trust Account Manual Related to Automated Withdrawal

Director Lemon presented proposed changes to the Nebraska Trust Account manual that would provide for an exception to the automated withdrawal rule if such trust account were used exclusively for one client who has agreed in writing to allow such withdrawals. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained that at a previous meeting, there had been some confusion regarding Trust Account Manual requirements as they relate to automated withdrawals. He had been tasked with drafted an amendment to the Trust Account Manual to provide for an exception to the automated withdrawal rule if such trust account is used exclusively for one client who has agree in writing to allow such withdrawals.

A motion was made by Titus and seconded by Alloway to approve the change to trust account manual as proposed. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Recommendation from Staff regarding LB 384 Pre- and Post-Licensing Education Course Development

Deputy Director for Education Roubal presented an exhibit regarding the proposed curriculum development expert for the LB 384 requirements. A copy of said exhibit is attached to and made a part of these minutes.

Deputy Director Roubal explained the exhibit, the course definitions for pre and post licensing, the bidding process and the bid which were provided with the exhibit. She indicated that the differences between the bidders came down to experience, methodology, and source material. She further explained that Karel Murray was the staff recommendation based on the availability of source material, the ability to provide webinars to be posted on the Commission's website and the ability to provide the course most expediently.

There was discussion regarding the options provided in the bid from Karel Murray and which option best suited the needs of the Commission. Deputy Director Roubal felt that Option 2 would provide the course and test designs, the webinars and an informal IDW which would be most beneficial to the Commission.

A motion was made by Alloway and seconded by Starman to approve the contract with Karel Murray and approve the expenditures for Option 2 of the bid in the amount of \$22,000.

Deputy Director Roubal also noted that the webinars would be discussed with the advisory group at a future meeting.

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

Consider Legislation to Eliminate Membership Campground Registration

Director Lemon presented an exhibit explaining the Membership Campground Act and current registrations. A copy of said exhibit is attached to and made a part of these Minutes.

After a brief discussion, it was the consensus of the Commission that this topic be brought up again at a future meeting after further review and study.

In discussing the licensing and registration the Commission oversees and possible legislation, the subject of licensing home inspectors was discussed. Commissioner Bourne asked Director Lemon to look into this registration as a possibility. Commissioner Alloway indicated that the industry is currently pursuing it. Director Lemon indicated that he would contact the person heading up this task force and see they could provide a recommendation to the Commission. There was discussion that this would be discussed at the fall meetings to be held in September and a report would be provided to the Commission at the September meeting if possible.

No action necessary.

Review and Approval of Travel to ARELLO Investigator Workshop – October 22-24, 2019 – Oklahoma City, OK

Deputy Director Rut presented an exhibit regarding the estimated costs of staff participating in the ARELLO Investigator Workshop. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Gehrki and seconded by Bourne to approve the travel and reimbursement of expenditures for staff who attend the meeting set forth in the exhibit. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

Adopt Andy Alloway's Resolution

Director Lemon presented a resolution commemorating service on the Commission by Andy Alloway. A copy of said resolution is attached to and made a part of these Minutes.

A motion was made by Dover and seconded by Bourne that the resolution for Andy Alloway be adopted as amended. Motion carried with Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye, with Alloway not participating or voting, having recused himself, thereby nullifying any potential conflict of interest.

Information Matters

Information Matters

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

Director Lemon explained that the deadline for hotel reservations is August 16, 2019. He indicated that Commissioners Bourne and Starman had signed up to attend the conference.

No action was necessary on this report.

2019 Commissioner College -September 22, 2019 - Denver, CO

Director Lemon noted that Commissioners Bourne and Starman had both signed up to attend the Commissioner College.

No action was necessary on this report.

Errors and Omissions Loss Report – Second Quarter 2019

Director Lemon presented the Errors and Omissions Loss Report – Second Quarter 2019. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

Future Meeting Dates

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 10:35 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:45 a.m.

At 12:48 p.m., there being no further business to come before the Commission, a motion was made by Alloway 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 August 15, 2019, meeting of the Nebraska Real Estate Commission were available for inspection on August 20, 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
Debbie Mitchell, Coldwell Banker REA, Omaha
Charles Chadwick, CNC Realty, Omaha
Arla Meyer, Nebraska Realty, Lincoln
Connie Hain, HomeServices of NE, Lincoln
Christie Bevington, Nebraska REALTORS® Association, Lincoln
Chris Redfield, EXP Realty, Omaha
David Wilson, SOS, Lincoln