

**NEBRASKA REAL ESTATE COMMISSION**

**September 26, 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 September 26, 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 Rasmussen 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 agenda items 11a and 11b 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 Gehrki to adopt the final agenda as presented. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

**Minutes of August 15, 2019**

The minutes of the Commission meeting held on August 15, 2019, were considered.

After review, a motion was made by Starman and seconded by Dover 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. No audience member indicated a desire to come forward.

Director Lemon announced that he had received notification from the Governor's office and Lisa Ritter had been appointed as the new Broker at Large member of the Commission effective September 30, 2019.

### **Receipts and Expenditures Report for August**

Director Lemon presented the Receipts and Expenditures Report for August. 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 August 31, 2019, was \$1,438,777.99, which compared to a cash fund balance of \$1,410,044.26 on August 31, 2018.

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

### **Specialized Registrations**

#### **Membership Campground Registration – Linder Lakes**

Director Lemon presented a specialized registrations report which included the membership campground registration for Linder Lakes. A copy of said report is attached to and made a part of these minutes

#### **Membership Campground Registration – Riverview Park Resort and Marina, LLC**

Director Lemon presented a specialized registrations report which included the membership campground registration for Riverview Park Resort and Marina, LLC. A copy of said report is attached to and made a part of these minutes

A motion was made by Starman and seconded by Titus to approve the registrations 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 – August**

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

There was discussion regarding testing limits in other jurisdictions, such as how many times an applicant is allowed to take a test, the passing rate after failing the examination more than three times, if resources are offered to applicants who are not successfully passing the examination, or if another course is required after numerous failed attempts.

After review, a motion was made by Alloway and seconded by Gehrki to ratify the August 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 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 Starman and seconded by Dover to ratify the six reports. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

## **Minutes from Education Advisory Group – Third Quarter**

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

Deputy Director Roubal explained that the education advisory group discussed the pre and post licensing requirement topics that were needed to prepare an outline. She reported that some providers voiced concern during the meeting that a detailed outline was not provided by the chosen vendor, Karel Murray, who instead focused on delivery method and sought further clarification from the Commission on topics and time spent on each. She explained that a meeting would be scheduled in October for the education advisory group to choose the various topics that Ms. Murray provided so that PowerPoint presentations could be developed and ready for training in February at the train-the-trainer meeting so that the providers are ready for the course to be provided July 1, 2020.

Commissioner Alloway indicated that he had heard some members of the Education Advisory Group had been frustrated that they were not utilized during the selection process, or for content. He explained that he was not criticizing the Commission's decision or the staff, he had just heard comments that it could have been handled in a different manner.

Director Lemon explained that Education Advisory Group was consulted regarding input and parameters, however, since he thought some of the members would be bidding on the project he felt that it was not appropriate to include the group to review the bids. He also indicated that all of the education advisory group members had provided input into the course criteria prior to bidding and would be involved in the detailed development of the courses.

No action was necessary on this report.

### **Pending Sworn Complaints and Investigative Matters**

Deputy Director Dahlke 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 2018-041**

Deputy Director Dahlke 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 set for hearing 81-885.24 (29) only. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

There was discussion regarding the Commission's responsibility to forward this Complaint to law enforcement to investigate possible criminal violations. It was the consensus of the Commission that the appropriate law enforcement agency be provided information regarding this matter for their review.

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

### **Complaint 2018-038, Commission vs. Ryan Patrick Hines**

Director Lemon presented a Stipulation and Consent Order in the matter of Complaint 2018-038, Commission vs. Ryan Patrick Hines. A copy of said Order is attached to and made a part of these minutes.

A motion was made by Bourne and seconded by Titus to decline the proposed Stipulation and Consent Order. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

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

Director Lemon presented a Stipulation and Consent Order in the matter of Complaint 2019-016, Commission vs. Lisa Jo Balaalid-Daugherty. 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, Dover, Gehrki, Starman, Titus and Evnen voting aye.

## **Disciplinary Hearings**

### **Complaint 2017-023 – Commission vs. Matthew Rasmussen**

The Hearing regarding Complaint 2017-023, Commission vs. Matthew Rasmussen was continued.

Adam Prochaska, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Matthew Rasmussen was present and represented by Counsel Robert F. Peterson of Omaha.

Chairperson Evnen indicated that this matter would be placed on the October meeting agenda and presented as a Stipulation and Consent Order, at which time the Commission will have the opportunity to either accept or deny the Order. He wanted to thank Counsels Prochaska and Peterson who worked diligently with the clients to negotiate the stipulation and consent order, and appreciated their efforts.

No action was necessary on this report.

## **Informal Special Appearances**

### **Adam James Nesbitt, Preliminary Informal Special Appearance**

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

Chairperson Evnen reviewed the procedure for preliminary informal special appearances.

Mr. Nesbitt explained the situations regarding his criminal history.

At 9:13 a.m., a motion was made by Bourne and seconded by Gehrki to go into closed session to consider Mr. Nesbitt's application and to protect his reputation. Motion carried with Avery, Alloway, Dover, Gehrki, Ptak, Starman and Evnen voting aye.

At 9:50p.m., a motion was made by Titus and seconded by Gehrki to reconvene in open session. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

After reconvening in open, public session, a motion was made by Alloway and seconded by Dover that the Director prepare an order for the next meeting of the Commission outlining findings of fact and conclusions of law that the preliminary applicant is not qualified to be approved for licensure under the Nebraska Real Estate License Act based upon the criminal history and information provided at the preliminary special appearance. Motion carried with Alloway, Dover, Gehrki, Starman, Titus and Evnen voting aye, and with Bourne voting nay.

#### **Richard G Vance, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Vance explained the situations regarding the revocation of his professional certification as a law enforcement officer.

After discussion, a motion was made by Alloway and seconded by Gehrki to allow Mr. Vance to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Vance must notify any anticipated employing broker of the revocation of his certification and the circumstances of the revocation 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, Dover, Gehrki, Starman, and Evnen voting aye, and with Bourne and Titus voting nay.

#### **Resolution Honoring Wesley Grady**

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

A motion was made by Bourne and seconded by Alloway that the resolution for Wesley Grady be adopted. Motion carried with Alloway, Bourne, Dover, Gehrki, Starman, Titus and Evnen voting aye.

## **Procuring Prospects/Unlicensed Assistants Legislation**

Director Lemon presented a draft of proposed language regarding the use unlicensed assistants in real estate practice. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon noted that the language being proposed was discussed at the August Meeting, which would create a limited exemption to unlicensed assistants and procuring prospects as described in Neb. Rev. Stat. §§ 81-885.04.

There was discussion that this proposed language may provide more opportunity for unlicensed activity to occur. There was discussion regarding the fact that unlicensed activity is currently occurring so the Commission would need to either enforce the current laws or conform to the reality of the recent activity.

Director Lemon indicated that the proposed language would be provided to the industry for feedback, brought back to the Commission for a final review and approval of final legislation.

A motion was made by Gehrki and seconded by Starman to proceed as outlined by the Director. Motion carried with Alloway, Dover, Gehrki, Starman, Titus and Evnen voting aye, and with Bourne voting nay.

## **Discuss the Use of Social Media and Real Estate Advertising Compliance**

Director Lemon presented a brief explanation of advertising concerns on social media and the rules and regulations regarding the advertising to be discussed. A copy of said exhibit is attached to and made a part of these minutes. Vincent Leisey, with Berkshire Hathaway Home Services Ambassador Real Estate, was present for discussion regarding this matter.

Mr. Leisey indicated that the current rules and regulations regarding advertising do not line up with some of the options available on various social platforms. Many services do not provide enough characters to include the licensee's name or team name and broker's business name, or for them to be adjacent. Since it is very unlikely that the social media would change their functionality to accommodate the laws, he would like the Commission to provide guidance on how to find a solution to this issue. He feels that the licensee has a duty to promote clients' property and social media is an effective way to advertise, however, doing so within the laws is challenging. He also noted that the various devices also display the content differently as well which is another issue that should be reviewed and clarified.

Director Lemon added that social media is ever evolving and it is becoming more difficult for brokers to review and approve the advertising. He also indicated that he is not an expert on social media and while the Commission has worked with licensees regarding their advertising, the Commission is firm regarding broker prominence.

There was discussion regarding flexibility with the laws or modifications to accommodate for the various social platforms or devices. Commissioner Alloway suggested that a subcommittee be formed to review the laws and provide recommendations to the Commission for possible action.

Mr. Leisey also discussed printed versus social media advertising which contains other broker's listings. Mr. Leisey indicated that the printed version had been done for years and accepted, however, the same information is not allowed to be distributed on social media and was asking for clarification regarding the reasoning.

Director Lemon indicated that he would look into this discrepancy since it is either acceptable for both or neither and the answer needs to be consistent.

No action was necessary with regard to this matter.

### **Discussion of Surveillance Issues and Options**

Director Lemon presented an exhibit regarding possible options for voluntary or required disclosures to deal with surveillance issues. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the topic regarding surveillance was previously discussed and he was asked to provide the Commission with various options to deal with this option. He reviewed the relevant considerations as outlined in the exhibit, which were compiled by the Nebraska REALTORS® Association and other states. He explained that this topic would be dealt with best as an educational effort but if the Commission felt that specific wording needed to be added to forms, it would need to be added to forms which are provided to all parties at the earliest stages of representation. He also commended brokers for notifying the public on other education efforts made in the past and felt it was prudent to work with the industry on this issue.

There was discussion and many agreed that the Commission can take a lead on this issue, however, he felt that this was an education issue and the local boards and brokers can educate the client regarding this issue. There was also discussion that brokers needed to educate the licensees taking pictures in clients' houses and posting the pictures on social media which could be cause for a complaint.

Commissioner Alloway indicated that a distinction needed to be made so that licensees understand that there is a difference between the seller surveillance recording and a licensee setting up surveillance, which would be cause for a complaint.

Director Lemon indicated that he would work with the industry to raise awareness regarding this issue. Commissioner Gehrki asked Director Lemon to report comments received regarding this issue back to the Commission as well.

No action was necessary with regard to this matter.

### **Information Matters**

#### **ARELLO Annual Meeting - September 18-21, 2019 and September 22<sup>nd</sup> Commissioner College- Denver, CO – Report of Attendees**

Deputy Director Rut noted that Commissioners Bourne and Starman and Director Lemon and she attended the ARELLO Annual Meeting and Commissioner Starman attended the Commissioner College.

Each of the Attendees discussed their experiences at the ARELLO Meeting.

No action was necessary on this report.



## **Future Meeting Dates**

October 17-18, 2019 – Staybridge Suites, Lincoln  
November 21-22, 2019 – Staybridge Suites, Lincoln  
January 23-24, 2020 – Country Inn & Suites, Lincoln  
February 27-28, 2020 - Staybridge Suites, Lincoln  
March 19-20, 2020 - Staybridge Suites, Lincoln  
April 16-17, 2020 - Staybridge Suites, Lincoln  
May 21-22, 2020 - Staybridge Suites, Lincoln  
June 18-19, 2020 - Staybridge Suites, Lincoln

## **Recesses and Adjournment**

At 10:24 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:39 a.m.

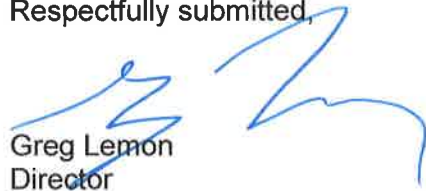
At 11:19 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 11:28 a.m.

At 12:07 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 12:24 a.m.

At 12:30 p.m., there being no further business to come before the Commission, the Chairperson declared the meeting adjourned. 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 September 26 2019, meeting of the Nebraska Real Estate Commission were available for inspection on October 2, 2019, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

## **Guests Signing the Guest List**

Debbie Mitchell, Coldwell Banker REA, Omaha  
Christie Bevington, Nebraska REALTORS<sup>7</sup> Association, Lincoln  
Connie Hain, HomeServices of NE, Lincoln  
Vincent Leisey, BHHS, Omaha  
Kim Zwiener, Sellstate Empire Realty, Lincoln  
Leighun Brabec, Lincoln  
Michael Riedmann, Omaha

