

**NEBRASKA REAL ESTATE COMMISSION**

**September 23, 2021**

**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 23, 2021, in the Omaha Room of the Country Inn & Suites, located at 5353 N 27<sup>th</sup> Street in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Ritter, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education Alane Roubal, Deputy Director for Enforcement Antwan Montague, 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 southeast 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 Bourne and seconded by Starman to adopt the final agenda as presented. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

**Minutes of August 19, 2021**

The minutes of the Commission meeting held on August 19, 2021, were considered.

After review, a motion was made by Bourne and seconded by Dohse to approve the minutes as presented. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

**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.

## **Financial Matters**

### **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, 2021, was \$1,237,809.42, which compared to a cash fund balance of \$1,668,997.73 on August 31, 2020.

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

### **Fiscal Year 21-22 Monthly Budget Allocations**

Director Lemon presented the monthly budget allocations for Fiscal Year 2021-2022. A copy of said exhibit is attached to and made a part of these minutes.

After discussion, a motion was made by Starman and seconded by Dohse to approve monthly allocations as presented. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

## **Specialized Registrations**

### **Time-Share Registrations - Amendments for Marriott Vacation Club Destinations and Disney Vacation Club**

Director Lemon presented a specialized registrations report which included the registration of amendments to time-share registrations for Marriott Vacation Club Destinations and Disney Vacation Club. A copy of said report is attached to and made a part of these minutes.

A motion was made by Starman and seconded by Bourne to approve the amendments to the three registrations as presented. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

## **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 Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

## **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.

After review, a motion was made by Dohse and seconded by Starman to ratify the August Examination Report for the purpose of issuing licenses. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter 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.

### **Post-License Education Course Approval**

Deputy Director Roubal presented for ratification the Post-License Education Course Approval Report, a copy of which is attached to and made a part of these minutes.

### **Post-License Education Instructor Approval**

Deputy Director Roubal presented for ratification the Post-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.

## **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 Gehrki and seconded by Dohse to ratify the seven reports. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, with Ritter not participating or voting, being absent and excused.

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

Deputy Director Montague 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 2020-020 – Tanya Lopez vs. Patrick Slack and Kyle Smith

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

### **Item B** Complaints 2018-041-Constance James vs. Michael Dean Growcock and 2019-026 - Commission vs. Michael Dean Growcock

Deputy Director Montague indicated that the Respondent in these matters had not renewed their license for 2021. Therefore, the Commission no longer had jurisdiction over these matters.

A motion was made by Titus and seconded by Dohse that Complaints 2018-041 and 2019-026 be dismissed without prejudice. Motion carried with Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye and with Ritter not participating or voting, being absent and excused.

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

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

## **Disciplinary Hearings**

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

## **Informal Special Appearances**

### **Devante Jaiden Robertson, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Robertson explained the situations regarding his criminal history.

After discussion, a motion was made by Starman and seconded by Titus to allow Mr. Robertson to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Robertson 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. Robertson 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 two years. Motion carried with Dohse, Gehrki, Starman, and Titus voting aye and with Bourne and Evnen voting nay, and with Ritter not participating or voting, being absent and excused.

### **Clarence Wilder, Salesperson Applicant**

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

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Wilder explained the situations regarding his criminal history.

After discussion, a motion was made by Titus and seconded by Dohse to allow Mr. Wilder to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Wilder 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. Wilder 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 two years. Motion carried with Dohse, Gehrki, Starman, Titus voting aye, with Bourne and Evnen voting nay and with Ritter not participating or voting, being absent and excused.

### **Jeremy Lee Swain, Preliminary Informal Special Appearance**

Director Lemon presented exhibits which included: correspondence regarding Mr. Swain's preliminary informal special appearance; a letter of explanation from Mr. Swain; character

reference letters for Mr. Swain; Mr. Swain's preliminary application for individuals with criminal convictions form; and trial court cases from the State of Nebraska on Mr. Swain's cases. A copy of said exhibit is attached to and made a part of these minutes. Mr. Swain was present.

Chairperson Evnen reviewed the procedure for preliminary informal special appearances.

Mr. Swain explained the situations regarding his criminal history.

A motion was made by Gehrki and seconded by Titus that the Director prepare an order 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 Bourne, Dohse, Gehrki, Starman, Titus and Evnen voting aye, and with Ritter not participating or voting, being absent and excused.

### **Review Proposals for 2022 Legislation**

Director Lemon presented an exhibit explaining the proposed legislation. A copy of said exhibit is attached to and made a part of these Minutes.

#### **Eliminate Broker Qualification by Equivalent Experience Waiver**

Director Lemon presented an exhibit of the proposed legislation change to Neb. Rev. Stat. §§81-885.13 (3)(b) to eliminate the broker qualification if they have equivalent or sufficiently relevant experience in a real estate related industry.

Director Lemon explained that this subject was discussed at a previous meeting and he was instructed to consult with the Nebraska REALTORS Association® License Law committee to get the industry's opinions regarding the broker qualification by equivalent experience waiver. The Committee wanted the licensees to have real estate experience as a licensee and preferred to eliminate the waiver.

There was discussion regarding the purpose of this statute and how it had been used previously by the Commission.

Director Lemon indicated that these changes were sent to the bill drafter and would present the completed draft at a future meeting.

It was the consensus of the commission to proceed with the proposed legislation.

#### **Require Licensing for Wholesalers**

Director Lemon presented an exhibit of the Oklahoma Act regarding wholesalers. A copy of said exhibit is attached to and made a part of these Minutes.

Director Lemon indicated that currently the commission has an attorney option regarding the license requirements of wholesalers. It has been brought to his attention that if the commission wants to take a position in this matter, it should be put into statute rather than to rely on an attorney option.

There was discussion regarding targeting and extortion from the wholesalers. Commissioner Dohse felt that enacting a law similar to Oklahoma's, would allow the Commission to protect the public and consumers.

Kim Zwiener, with Sellstate Empire, felt the public was being deceived, and not informed about the transaction. She explained that the public may not realize that their money is gone, or they are losing money, and the wholesalers have no obligation to inform sellers.

Deputy Director Montague explained that the Commission had received concerns regarding a wholesaler and when contacted, they were adamant that they are not doing anything wrong. He also explained that the wholesalers say they have no financial interest and they are selling the home based on the contract they have with the homeowner, however, they have equitable interest in the contract.

There was discussion regarding unlicensed practice and Director Lemon explained that the Commission has the authority to impose fines for unlicensed practice.

It was the consensus of the commission to proceed with the proposed legislation.

### **Love Letters**

Commissioner Dohse explained that Oregon had recently passed a law that it is illegal for a listing agent to accept "love letters", indicating information on who would be buying and living in the house from buyers. This law protects the public and the licensees by reducing the likelihood of fair housing complaints. He felt that Nebraska should also look into this type of legislation for the same purposes.

There was discussion regarding the presentation of pictures and letters from the buyers, having cameras in the home during open houses, sellers looking potential buyers up on social media, and what implications this may present for fair housing violations.

Charles Chadwick with CNC Realty, LLC, indicated that during prelicense education, they are taught that the transactions should be viewed using a business perspective rather than personal perspective.

Kim Zwiener, with Sellstate Empire, felt that the love letters can help the consumers as much as they can hurt them.

Leighun Brabec, with Larabee School of Real Estate, explained that the National Association of REALTORS has advised them to not give the sellers any love letters, and have even discussed removing the buyers name from the offer to eliminate the seller looking them up on social media.

Commissioner Dohse felt that it would be helpful for the licensees to have a streamlined method to defend themselves.

There was discussion regarding disclosures that could be provided in the agency brochure, provide a discrimination brochure, or put something in the broker policy to address these concerns.

The was no consensus to go forward with any legislation on this issue.

### **Information Matters**

#### **ARELLO Annual Meeting – September 15-19, 2021 – Orlando, FL – Report of Attendees**

Director Lemon noted that Commissioner and Deputy Director Rut attended the ARELLO Annual Meeting.

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

No action was necessary on this report.

### **Future Meeting Dates**

October 21-22, 2021 – Country Inn & Suites, Lincoln  
November 18-19, 2021 – Country Inn & Suites, Lincoln

### **Recesses and Adjournment**

At 10:19 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:33 a.m.

At 11:41 a.m., there being no further business to come before the Commission, the Chairperson declared the meeting adjourned.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the September 23, 2021, meeting of the Nebraska Real Estate Commission were available for inspection on September 23, 2021, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,



Greg Lemon  
Director

### **Guests Signing the Guest List**

Charles Chadwick, CNC Realty, LLC, Omaha  
Kim Zwiener, Sellstate Empire, Lincoln  
Clarence Wilder, Better Homes & Garden, Omaha  
Fred Tichauer, BHHS Ambassador Nebraska, Omaha  
Leighun Brabec, Larabee School of Real Estate, Lincoln