

NEBRASKA REAL ESTATE COMMISSION

April 20, 2023

Country Inn & Suites

Lighthouse Room

Lincoln, NE

Opening

Chairperson Evnen convened a meeting of the Nebraska Real Estate Commission at 9:03 a.m. on April 20, 2023, in the Lighthouse Room of the Country Inn & Suites, located at 5353 N 27th Street in Lincoln, Nebraska. All of the members of the Real Estate Commission were present. Also present were Director Greg Lemon, Deputy Director for Licensing Monica Rut, and Deputy Director for Enforcement Samantha Lowery.

Swearing-In Ceremony- Commissioner Paul J. Peter

Chairperson Evnen conducted a swearing-in ceremony for recently appointed Commissioner Paul J. Peter, presented him with his Commission pin, and welcomed him to the Commission.

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 west wall of the meeting room by the north 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 6b and 11a had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Dohse and seconded by Gehrki to adopt the final agenda as presented. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye and with Peter abstained.

Minutes of March 16, 2023

The minutes of the Commission meeting held on March 16, 2023, were considered.

After review, a motion was made by Gehrki and seconded by Starman to approve the minutes as presented. Motion carried with Dohse, Gehrki, Geiser, Ritter, Starman and Evnen voting aye, and with Peter not voting having not been in attendance at the March Meeting.

Public Comment

Chairperson Evnen asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for March

Director Lemon presented the Receipts and Expenditures Report for March. 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 March 31, 2023, was \$1,762,836.85, which compared to a cash fund balance of \$1,713,716.21 on March 31, 2022.

After discussion, a motion was made by Dohse and seconded by Gehrki to file the March Receipts and Expenditures Report for audit. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Specialized Registrations

Time-Share Registrations - Amendments for Marriott Vacation Club Destinations and CLUBWYNDHAM ACCESS VACATION OWNERSHIP PLAN

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

A motion was made by Starman and seconded by Ritter to approve the amendments to the two registrations as presented. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman 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 Ritter and seconded by Gehrki to ratify issuance of the licenses as set forth in the report. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

License Statistic Report for March

Deputy Director Rut presented the License Statistic Report for the month of March, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Examination Report - March

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

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

Examination Passing Roster

Deputy Director Rut 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.

Fourth Quarter PSI School Reports

Deputy Director Rut presented the PSI Review of Examination Performance Reports for comparison for the period of January 1, 2023 through March 31, 2023, copies of which are attached to and made a part of these minutes.

Deputy Director Rut explained each of the reports relating to the national tests and the school reports. Commission Dohse noticed that the report dates only reflected one month. Deputy Director Rut explained that she would report back next month with a new report if necessary.

No action was necessary on this report.

Real Estate Education Matters

Pre-License Education Instructor Approval

Director Lemon 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

Director Lemon 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

Director Lemon 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

Director Lemon 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 Provider/Activity Recognition

Director Lemon presented a Commission-Approved Training Provider/Activity Recognition Report, a copy of which is attached to and made a part of these minutes.

Commission-Approved Training Provider Significant Change

Director Lemon presented a Commission-Approved Training Provider Significant Change 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 Ritter to ratify the six reports. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Pending Sworn Complaints and Investigative Matters

Deputy Director Lowery 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 2022-030 - Nicholas Muchowicz vs. Matthew Wayne Clure & Vincent W. Leisey

Deputy Director Lowery 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 Ritter and seconded by Dohse that the complaint be dismissed without prejudice. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Item B Complaint 2023-005 - Shawn Patrick McGuire v. Scott Allen Rosenthal and Brenda Hamre

Deputy Director Lowery 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 Ritter and seconded by Dohse that the complaint be dismissed without prejudice. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Item C Complaint 2022-029 - Nicholas Muchowicz vs. Tracy N. Earnest

Deputy Director Lowery 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 Starman and seconded by Ritter that the complaint be dismissed without prejudice. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and

Evnen voting aye.

Item D Complaint 2022-032

Deputy Director Lowery 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 Ritter and seconded by Gehrki that complaint be set for hearing against the buyers agent per the Staff recommendations. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

It was the consensus of the Commission to hold the complaint against the broker in abeyance until further investigation was completed by Deputy Director Lowery.

Item E Investigative Report

Deputy Director Lowery presented an investigative report to the Commission.

After being advised of the results of the investigation and discussion, a motion was made by Gehrki and seconded by Starman that set for hearing per the Staff recommendation. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Presentation of Stipulation and Consent Orders

**Complaint 2022-008,
Commission vs. Holly Lee Jones**

Deputy Director Lowery presented a Stipulation and Consent Order in the matter of Complaint 2022-008, Commission vs. Holly Lee Jones. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Ritter and seconded by Gehrki to enter into the Order as presented. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Disciplinary Hearings

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

Informal Special Appearances

Aaron Jay Nielsen, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Nielsen's special appearance; a letter of explanation from Mr. Nielsen; character reference letters for Mr. Nielsen; Mr. Nielsen's salesperson application form; Denial and Notice of Right to Request Hearing before the Board of Chiropractic for Mr. Nielsen; Finding of Fact and Conclusions of Law Order from the State of Nebraska Department of Health and Human Services for Mr. Nielsen; Petition for Disciplinary Action from the State of Nebraska Department of Health and

Human Services Division of Public Health for Mr. Nielsen; License query details from the Iowa Department of Public Health for Mr. Nielsen; trial court cases from the State of Nebraska on Mr. Nielsen's cases; and Mr. Nielsen's criminal history report. A copy of said exhibit is attached to and made a part of these minutes. Mr. Nielsen was present.

Prior to discussion of this matter, Commissioner Ritter recused herself, thereby nullifying any potential conflict of interest.

Chairperson Evnen reviewed the procedure for informal special appearances.

Mr. Nielsen explained the situations regarding his criminal history.

A motion was made by Dohse and seconded by Gehrki that Mr. Nielsen not be allowed to sit for the salesperson examination at this time. Motion carried with Dohse, Gehrki, Geiser, Peter, Starman and Evnen voting aye, with Ritter not participating or voting, having recused herself, thereby nullifying any potential conflict of interest.

Review of Possible Changes to Disclosure and Advertising Policies Under the License Act and Regulations when a Licensee is Acting as a Principal in a Real Estate Transaction

Director Lemon presented proposed changes to NAC Title 299, Chapter 2 Sections 004 and 005 for the Commissions review. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon distributed a new proposed changed exhibit which further defined the proposed policies to NAC Title 299, Chapter 2 Sections 004 and 005 for the Commissions review. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 14a.

Director Lemon explained the proposed changes as outlined in the exhibits. He indicated that language would require licensee disclosure for purchasing property. He further explained that the proposed language can either be broad or detailed as desired by the Commission. He noted that the changes to NAC Title 299, would typically seek input from the Nebraska REALTORS® Association and then require a rule hearing before the changes can be approved.

There was discussion regarding the proposed language on whether to define the language in the policy or to leave it more broad and general. Chairperson Evnen felt that general language put the licensees on notice that the disclosure needed to be made and then it would give the Commission the opportunity to further define how to education the licensees on how the disclosure needed to be made depending on their situation. He further stated that keeping it broad would not lock the Commission into a specific definition.

A motion was made by Dohse and seconded by Ritter to move forward with the proposed language in Exhibit 14 as presented. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

Award of License Examination Contract RFP NREC2023-01

Director Lemon presented an explanation of the RFP results and the Final Evaluation Document. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained Request for Proposal (RFP) process. He indicated that two bid were received, one from the current vendor, PSI and a second from Pearson Vue. He noted that as required, both vendors are ARELLO certified. He further explained that Pearson Vue received the higher score based on the RFP received, and if the Commission chooses to award the contract, it would begin September 1, 2023.

A motion was made by Ritter and seconded by Peter to authorize Director Lemon to enter into the contract with Pearson Vue as the new examination provider.

There was discussion regarding the possibility of proctored examinations and additional examination sites throughout the State of Nebraska.

Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye

Consider Action Based Upon Nebraska Ethics Advisory Opinion for Lawyers No. 23-02

Director Lemon presented an exhibit regarding a potential conflict of interest between an attorney representing a petitioner and the Secretary of State Robert Evnen. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the history regarding this issue.

Chairperson Evnen explained the conflict of interest between himself and the Attorney involved in the matter and felt that he would be able to recuse himself from this matter and that Commission Peter could conduct the appeal hearing, if acceptable with Commissioner Peter and the Commission.

It is the consensus of the Commission to allow Chairperson Evnen to determine if he wants to recuse himself.

It was the consensus of the Commission to set the matter for hearing in at the earliest available date.

Appointment of Finance Subcommittee and Special Assistant Attorney General Appointment

Director Lemon indicated that an informal request letter will be sent to a few firms in search of a resume and rates for a Special Assistant Attorney General. There has not been a search since 2005 so this would just be to review the current firm or potential new firms.

Director Lemon explained that the Commission uses the finance subcommittee to review appointments, budgets and various other functions on the Commission and the only two currently on the Subcommittee are Commissioner Starman and Chairperson Evnen. He indicated that the next senior member is typically appointed, which would be Commissioner Gehrki.

A motion was made by Ritter and seconded by Starman to appoint Commissioner Gehrki to the finance subcommittee. Motion carried with Dohse, Geiser, Peter, Ritter, Starman and Evnen voting aye, and with Gehrki abstained.

Legislative Matters

LB 16 - No new information presented.

LB 43 - No new information presented.

LB 92 – No new information presented.

LB 151 - Director Lemon reported that he would be working with Senator Dover to see if this bill could get passed this session.

LB 152 – Director Lemon reported that he would be working with Senator Dover to see if this bill could get passed this session.

LB 628 – No new information presented

LB 684 – No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO Mid-Year Conference – April 26-28, 2023 Boston, MA

Director Lemon explained Commissioners Dohse and Starman were planning on attending and Deputy Directors Rut and Lowery would also be attending the conference.

No action was necessary on this report.

Proper Procedures for Handling Checks and Record Keeping when the Purchase Agreement Calls for Trust Account Bypass

Director Lemon explained that during an audit a question came up if the licensees should have copy of the check from the title company if the brokerage was bypassed. Currently the Commission does not require the brokerage to have a copy of the check so this is a point of clarification.

It was the consensus of the Commission that the brokerage just needed a receipt of the check.

Staffing Update

Director Lemon explained that the Commission had a few weeks where there were four positions open. The positions have been filled including the Deputy Director for Education which has been accepted by Mari Jo Mentzer. Ms. Mentzer will begin her position on May 1, 2023.

No action was necessary on this report.

Commission Objectives 3rd Quarter Update

Director Lemon presented an exhibit regarding the 2022-2023 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the objectives and provided updates on them as necessary.

No action was necessary with regard to this matter.

Errors and Omissions Loss Report – Third Quarter 2023

Director Lemon presented the Errors and Omissions Loss Report – Third Quarter 2023. A copy of said exhibit is attached to and made a part of these minutes.

No action was necessary with regard to this matter.

Education Efforts – “Know the Value of Your Home”

Deputy Director Lowery presented an exhibit regarding the public information campaign “Know What Your Home is Worth”. A copy of said exhibit is attached to and made a part of these Minutes.

Deputy Director Lowery explained that Commissioner Geiser brought to the Staff’s attention this type of announcement had been reviewed and circulated in other states. Commission Staff developed this announcement and are working with other groups, agencies and organizations to get this information out to the public.

No action was necessary at this time.

Future Meeting Dates

May 18-19, 2023 - Country Inn and Suites, Lincoln
June 15-16, 2023 - Country Inn and Suites, Lincoln
August 17-18, 2023 – Graduate Lincoln, Lincoln
September 14-15, 2023 - Country Inn and Suites, Lincoln
October 19-20, 2023 - Country Inn and Suites, Lincoln
November 9, 2023 – Graduate Lincoln, Lincoln

Recesses and Adjournment

At 10:26 a.m., Chairperson Evnen declared a brief recess, and reconvened the meeting at 10:36 a.m.

At 11:36 p.m., there being no further business to come before the Commission, a motion was made by Dohse and seconded by Gehrki that the meeting adjourn. Motion carried with Dohse, Gehrki, Geiser, Peter, Ritter, Starman and Evnen voting aye.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the April 20, 2023, meeting of the Nebraska Real Estate Commission were available for inspection on May 5, 2023, 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, Omaha
Ashlee Hendrickson, Nebraska REALTORS® Association, Lincoln
Leighun Brabec, Larabee School of Real Estate, Lincoln
Jim Ohmberger, Home Real Estate, Lincoln
Pat Ohmberger, Home Real Estate, Lincoln
Tami Lambie, Woods Bros, Lincoln
Tammy Peter, Woods Bros, Lincoln