



North Dakota Real Estate Commission Meeting Minutes – FINAL
1:00 p.m. Mountain Time, Thursday, June 9, 2022
Little Missouri North Room, Rough Riders Hotel, 301 3rd Ave, Medora, ND
www.realestatend.org

Present: Steven Bitz, chair; Steven Link, vice chair; members: Tate Cymbaluk (via Teams online), Sandra Meyer, Scott Breidenbach; Connie Hofland, special assistant attorney general; staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist, Candie Robinson, licensing specialist. Members of the public also present in person and by phone.

1. Call to order, roll call and determination of quorum, introductions. Chair Mr. Steven Bitz called the meeting to order at 1:00 p.m. Ms. Jeanne Prom, executive director, called the roll, with a quorum of all 5 members present.
2. Review and approval of agenda. Mr. Tate Cymbaluk moved to approve the agenda with Mr. Bitz's request to add under 9. Other, the topic of office summer hours. Ms. Sandra Meyer seconded. Motion carried by unanimous voice vote.
Mr. Bitz congratulated Commissioner Ms. Meyer on her reappointment to the N.D. Real Estate Commission for a second 5-year term.
3. Review of applicants. See attachment for actions on all license applications.
4. Final administrative rules approved – actions. Ms. Prom that all rule changes will be communicated to all licensees by e-newsletter and posted on our website. Ms. Prom will also notify all continuing education providers, errors and omissions insurance providers, and other stakeholders. Links on our website to the Legislative Council website now shows the updated rules, and other areas of our website will be updated to reference the rules changes.

The commission reviewed the final administrative rules and took actions based on the changes that will take effect July 1, 2022.

The reference to a post office box was removed from the rules. Mr. Steven Link moved the commission no longer maintain a post office box as of July 1, 2022. Mr. Scott Breidenbach seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

The new rules allow the commission to charge up to \$300 for an organization application. The fee is now \$200. In 2019, the commission approved \$300 for an organization application. Until now, the commission did not have the authority to implement the \$300 fee. Ms. Connie Hofland recommended the commission entertain another motion if the commission wanted to implement a \$300 organization application fee. Mr. Breidenbach moved the commission review all fees as part of the budget and not adjust any fees during the discussion on new rules. Commissioners commented that a motion might not be needed and expressed agreement with discussing fees as part of the budget review. Ms. Prom continued to point out where in the rule changes the commission has authority to raise certain fees.

Members of the North Dakota Real Estate Commission are: Steven Bitz, Chair; Steven Link, vice chair; members: Tate Cymbaluk, Scott Breidenbach, and Sandra Meyer. Special Assistant Attorney General: Connie Hofland. Staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist; Candie Robinson, licensing specialist.

The commission now has authority to charge up to \$200 as the fee for pre-licensure course review. This \$200 fee applies only to the 90-hour salesperson pre-licensure course and the 60-hour broker pre-licensure course. Rules changes now set certification for pre-licensure courses to 3 years, an increase from the previous period of 2 years.

The commission discussed and agreed by consensus not to extend the time to comply to new advertising rules beyond what is already stated in the new rules. The rules state that brokers have until January 1, 2023 to comply with the new advertising rules, including the rules stating that the brokerage agency's trade name must be equal to or greater than, in size and visibility, the name of any salesperson, associate broker, or team on the advertising. As of January 1, 2023, the commission may discipline licensees based on failure to meet the size and visibility requirement.

The rules changes list broker responsibilities for supervising teams, such as keeping a detailed list of team members over time. The commission directed staff to audit for compliance with rules on broker responsibility for supervising teams. Auditing will start with future trust account audits that include time periods beginning July 1, 2022, when the rules take effect.

Required annual continuing education (CE) will increase from 9 to 12 hours beginning July 1, 2022. Ms. Meyer moved to waive 3 hours of the 12 continuing education hours for the current CE period only, which ends November 15, 2022. Mr. Link seconded.

Discussion: Stakeholders present were asked and indicated they agreed with this waiver. The first complete CE cycle in which 12 hours of CE will be required will be November 16, 2022 through November 15, 2023. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

The web links on the commission website to the final rules are updated. The commission discussed whether to print the updated law and rules handbook. Ms. Hofland stated that the commission is not required to provide printed copies of the law and rules. The commission decided by consensus to print and mail a book to all licensees, but not print any books in the future.

5. Financial reports – February to April 2022. Mr. Link moved to approve the February to April 2022 financial reports. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Trust account audits. The commission discussed the trust account report. The commission agreed by consensus that Mr. Rob Yost, CPA/Auditor, will continue to direct brokers to send any trust account interest to the Real Estate Trust Account (RETA) committee for any remaining trust account audits still covering time before August 1, 2021.

6. 2022-2023 draft budget, priorities, fees. Ms. Prom explained the 2022-2023 draft budget, priorities, and fees. Mr. Link moved that all staff receive a 3% salary/wage increase. Mr. Breidenbach seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Link moved the commission compensation increase from \$189/day to \$193/day effective July 1, 2022. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Bitz moved to increase the hourly rate for legal services from \$220 to \$250 effective July 1, 2022. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr.

Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Breidenbach moved to accept the 2022-2023 priorities as presented with the addition of CE as a priority. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Link moved to accept the 2022-2023 detailed budget. Mr. Breidenbach seconded. Discussion: Mr. Breidenbach asked and it was clarified that no fee increases were included in the detailed budget, but the commission will review fees at a later time. Vice Chair Link asked and it was clarified that upgrades to the Online Services in the budget, the commission has an existing contract with Big Picture Software. Big Picture charges \$135/hour for services, and the amount for Big Picture projects in the budget was based on estimates from Big Picture Software. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

The commission took a recess at 2:39 p.m. and reconvened at 2:46 p.m.

7. Update on complaints.

- A. 2020-08 – Samantha Kapphahn v. Llona Helenske. Mr. Link moved to approve Ms. Samantha Kapphahn’s request to withdraw the complaint against Ms. Llona Helenske. Mr. Breidenbach seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
- B. 2022-04 – NDREC v. Scott Helphrey and Janice Hoge. Mr. Breidenbach moved to set complaint 2022-04 – NDREC v. Scott Helphrey and Janice Hoge for a hearing but offer a stipulation and settlement agreement of a \$300 fine and payment of actual costs. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
- C. 2022-05 – NDREC v. Robert Veland and Jeffrey Kaul. Mr. Cymbaluk moved to set complaint 2022-05 – NDREC v. Robert Veland and Jeffrey Kaul for a hearing but offer a stipulation and settlement agreement of a \$300 fine and payment of actual costs. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
- D. 2022-06 – NDREC v. Parker Pladson and Michelle Larson-Hoppe. Mr. Link moved to set complaint 2022-06 – NDREC v. Parker Pladson and Michelle Larson-Hoppe for a hearing but offer a stipulation and settlement agreement of a \$300 fine and payment of actual costs. Ms. Meyer seconded. Discussion: Mr. Breidenbach asked and Ms. Hofland clarified that each licensee will be fined \$300 individually, but payment of actual costs will be split between the licensees. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
- E. 2021-14 – Pearl Burroughs v. Shannon Gar. Mr. Breidenbach moved to set complaint 2021-14 for a hearing and offer a stipulation agreement. Mr. Cymbaluk seconded. Discussion: Mr. Link asked what the stipulation would include. Ms. Hofland clarified that it is the commission’s determination what the stipulation and settlement would be, and this does not have to be determined at this time. In previous complaints, often the commission decides to set for hearing without determining what the stipulation would be. If a stipulation is a possibility, Ms. Hofland reviews previous similar settled complaints and drafts the proposed stipulation and settlement agreement based on

that review. If the stipulation and settlement agreement is signed by the respondent, it is presented to the commission at its next meeting for final approval. The commission did not set the terms of the stipulation at this time. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

- F. 2022-03 – NDREC v. Sheila Kubas. Mr. Link moved to set complaint for hearing offer a stipulation. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
- G. 2022-01 – Cody Sattler v. Jacob Henderson – Mr. Link moved to dismiss the complaint. Mr. Cymbaluk seconded. Discussion: The commissioners discussed the complaint. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Ms. Hofland explained that she did not file the complaint against Ms. Sheila Kubas' broker, Ms. Dawn Rasmussen, although the original motion made by the commission was to file the complaint against both Ms. Kubas and Ms. Rasmussen. The commission discussed past practice. Complaints requiring broker certification of a licensee's CE include the broker, but other complaints have not included brokers unless there's a specific action by the broker, or if the complainant includes the broker in the complaint. The commission could decide to include the broker in complaints. Ms. Hofland said the commission could decide to continue the complaint against Ms. Rasmussen, or amend the original motion, made at the March 10, 2022 meeting.

Mr. Breidenbach amended his motion from March 10, 2022, that the complaint be initiated against Ms. Sheila Kubas and not the broker, Ms. Dawn Rasmussen. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

8. Update from management.

- A. Trust account waivers. Ms. Prom presented the trust account waivers and asked if the commission wanted to continue to receive the waivers. Commissioners said he would like to continue to receive the list of waivers, so waivers will continue to be reported.
- B. Trust account audits. Discussed above and acted on during the financial reports.
- C. Fingerprints/criminal checks. Staff reported that digital fingerprinting is limited at this time. Staff has found the N.D. Bureau of Criminal Investigation (BCI) reports to be accurate, with applicants self-reporting history not on the BCI report. The BCI background check includes the nationwide FBI information, but at a recent ARELLO meeting, a state reported that they found the FBI reports to be inaccurate as not all states report criminal histories to the FBI. On current applications, salesperson applicants report information for the past 3 years and broker applicants report information for the past 5 years, but not a long history of where an applicant has lived. Ms. Hofland reviewed the commission's authority, 43-23-08.4, which allows the commission to require an applicant to submit to a statewide and national criminal history record check, which must be conducted in the manner provided by section 12-60-24. The commission may be able to conduct a public records search of applicants who have lived in other states. Ms. Hofland suggested that to be consistent, the commission continue the BCI/FBI background checks and, based on this record check report, search public records in other states the applicant lived.
- D. Next meetings. Commission agreed by consensus to meeting at 10 a.m. on the following schedule on Thursdays: August 11, October 13 and in 2023, January 12,

March 9, and June 8. Meeting dates can change if needed. The commissioners decided not to meet after the 2022 Realtor Convention of the Dakotas in September in Bismarck, as not all commissioners were available then.

- E. PSI first-time test pass rates. Ms. Prom distributed these pass rates and reported that so far this year, the first-time pass rates for the salesperson state and national tests are above the same rate for all of 2021. Broker first-time pass rates are higher. On January 1, 2021, the required salesperson pre-licensure course hours increased from 45 to 90 hours.

Former commissioner Mr. Roger Cymbaluk briefly joined the meeting online and greeted the commission.

9. Minutes – March 10, 2022 meeting. Mr. Link moved to approve the minutes from the March 10, 2022 meeting. Mr. Cymbaluk seconded. Motion carried by unanimous voice vote.

10. Other business – election of chair, vice chair, passing of gavel. Mr. Bitz moved to name Mr. Steven Link as chair and Mr. Tate Cymbaluk as vice chair for 2022-2023. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Link, as the new chair, received the gavel and thanked Mr. Bitz for his year as chair. Mr. Link also noted that the administrative rules are now final and that we should focus on the 2022-2023 priorities, including the background checks and any other priorities the commission determines.

Ms. Prom requested summer hours that include public office hours from 8:30 a.m. to 5:00 p.m., Monday through Thursday, and 8:30 a.m. to 12:00 noon on Friday. Staff would work 40 hours/week or take annual leave, as before, but the summer public office hours Monday through Thursday would be the same as always, but Friday summer public office hours would be a half-day, Memorial Day through Labor Day. Mr. Breidenbach moved to approve these summer hours for the commission office staff: 8:30 a.m. to 5:00 p.m. Monday through Thursday and 8:30 a.m. to 12:00 noon on Friday, Memorial Day through Labor Day. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.

Mr. Link explained that he, Mr. Bitz and Ms. Prom had discussed the office closure process and recommended the office closure policy would follow the Governor's orders, or Ms. Prom would inform the commission 10-14 days before of the date the office will be closed because all staff are out of the office. Ms. Meyer moved to approve office closure policy of following the Governor's orders when state offices are closed, and otherwise having Ms. Prom inform the commission within 10-14 days before the date the office will be closed. Mr. Breidenbach seconded. Discussion: Ms. Prom will post of the website and office door and inform stakeholder groups. Motion carried by unanimous voice vote.

- Adjourn. Mr. Cymbaluk moved to adjourn. Chair Link adjourned the meeting at 3:51 p.m.
Attachment



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3. Review of applicants

NAME and LICENSE APPLICATIONS:	ACTION BY COMMISSION:
A. John Kendrick – salesperson – on phone	Mr. Breidenbach moved to table the application until the commission can review references letters. Ms. Meyer seconded. Discussion: The applicant should submit 2-3 letters of references from individuals who address the applicant’s rehabilitation. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
B. Miguel Marquez – salesperson – not present or on phone	Mr. Breidenbach moved to deny the salesperson application for Mr. Marquez. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
C. John Kuchera – broker -- reciprocal	Mr. Link moved to approve waiver of the requirement of 2 years’ experience as an active salesperson. Mr. Breidenbach seconded. Discussion: Mr. Breidenbach said the commission should receive the broker assessment and that receipt of the broker assessment be added to the motion. Mr. Link agreed to adding receipt of the broker assessment to the motion. The commission discussed if the receipt of the broker assessment was sufficient, regardless of the information on the assessment. Ms. Hofland clarified the meaning of the 2-year waiver requirement and the motion. Mr. Link retracted the motion and Mr. Breidenbach retracted the second. Mr. Link moved to approve the waiver of 2-year experience requirement and sit for the broker exam. Mr. Breidenbach seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.
D. John Ledesma -- salesperson	Mr. Breidenbach moved to allow Mr. John Ledesma to sit for the salesperson exam. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none. Motion carried unanimously.