



# REAL ESTATE

FALL

2011

## NEWS & VIEWS

### North Dakota's New Law on Duties Owed and Disclosures Required



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During the 2011 legislative session, North Dakota legislators extensively amended section 43-23-12.1 of the North Dakota Century Code ("N.D.C.C."). This

section covers the duties real estate licensees owe to clients. Prior to the amendments, the section was just one paragraph primarily providing that licensees owe the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting to clients with whom they have a written agency agreement.

Now the section has six subsections spelling out limited duties owed to a non-client customer and other specific limitations to the duties owed to clients in certain situations. Additionally, the statute specifies that disclosures must be in writing pursuant to rules adopted by the board of real estate commissioners. So, in addition to the new sections of the statute, the commissioners have also drafted new proposed administrative rules corresponding to the new statute. Both the statute and the proposed administrative rules are included in this newsletter.

Two main areas covered by the new statute and rules are the nonagency relationship with a customer and clarification of duties owed to clients in an agency relationship.

#### What does the new law say about a "customer" and what duties are owed to customers?

A customer is a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that licensee in a real estate transaction. In other words, if I am a licensee and represent the seller but not the buyer, the buyer is a customer of mine. If I agree to directly provide limited services to the customer to assist in the transaction to its closing, I have a nonagency relationship with this customer and owe that customer the limited duties to assist with honesty and good faith and to disclose to the customer any adverse material facts actually known by me about the property. Also, if I provide these limited services to the customer, I must disclose this nonagency relationship to the customer and have the customer sign the written disclosure prior to doing anything for the customer. I need to include in that disclosure the fact that I do not owe that customer the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting. Also, I need to point out that if I owe any duties to a client

*cont. on page 3*

**Don't  
FORGET!**



**IT'S TIME TO RENEW YOUR REAL ESTATE LICENSE (ACTIVE AND INACTIVE) FOR 2012. CHECK INSIDE FOR 2012 LICENSE RENEWAL INFORMATION!**

## NDREC Renews Errors & Omissions Contract with RISC

We are pleased to announce that the Commission has approved a renewal of the group E&O insurance contract with Rice Insurance Services Company, LLC (RISC). The group carrier for the 2012 program is Continental Casualty Company, a member of the CNA Financial Corporation's group of insurance companies. The premium is \$167/year (no increase) per licensee. Information regarding the 2012 group program will be mailed to all licensees. The contract was renewed under the same terms and conditions as the previous year which are: \$100,000/\$500,000 limit, \$1000 damages deductible and \$1000 claims expenses deductible.

For more information, please visit RISC's website listed below or call their office directly:

**RISC Insurance Services Company, LLC PO Box 6709 Louisville, KY 40206-0709**

**Phone: 502.897.1876 Toll free: 800.637.7319 Fax: 502.897.7174**

**[www.risceo.com](http://www.risceo.com)**

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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because we feel they will be of interest to our readers.

#### Commission Meetings Open to the Public

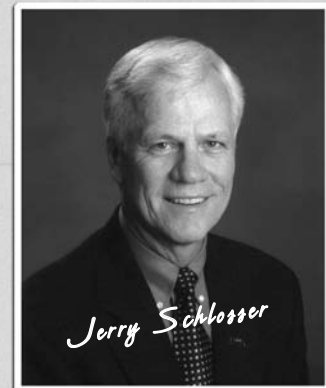
All Commission meetings are open to the public and that includes real estate licensees. Commissioners welcome and encourage attendance and observation by any licensee. Location, dates, and times can be found on the Commission's web site [www.realestatend.org](http://www.realestatend.org)

## COMMENTS FROM THE CHAIR:

### TODAY'S 3 R's

Reminder - Relief - Remember

1- In the way of a **Reminder**; when it comes to advertising real estate (aka your listings) Licensees are required to disclose the real estate brokerage agency's trade name AND information on how the public can contact the real estate brokerage agency. Advertising includes the internet and the world wide web. Don't let your seller/listing put you in jeopardy by them advertising in your name without proper disclosures.



2- **Relief**...On September 12, 2001 the REALTORS® Housing Relief Fund was launched 10 years ago. Today North Dakota is listed among those states receiving assistance due to flooding. I would like to thank you for donating to this fund. For more information, contact the NDAR office 701-355-1010. Our friends, neighbors and associates need our help.

3- **Remember**...Today is September 11, 2011. I'm sitting in seat 4B on Flight 3051 from Minneapolis to Nashville. I don't think I could feel more intense if this flight was going to NY. Feelings of anger and sadness give way to more positive feelings of grateful, thankful and pride... The Passengers on the 9-11 flights - the Firemen, the Policemen and Civilians heroes all.... The Armed Forces...Heroes. I can't imagine. But I try. Captain just announced we will be landing shortly....safely. God Bless you and your families and God Bless America.

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in the same transaction, I will place the interests of my client first. The details of the statutory changes regarding customers are found at N.D.C.C. § 43-23-12.1(2) and the applicable proposed North Dakota Administrative Code ("N.D.A.C.") section is 70-02-03-15.2.

The reasons for these new rules is that it is important the customer knows, before working with a licensee, that the duties that licensee owes to the customer are limited and although the licensee is bound to act in honesty and good faith, the licensee's primary duties are owed to the client, not the customer.

#### **What do the new rules say about agency relationships?**

All agency relationships must be disclosed in writing. Also, and this has not changed, agents owe clients the full agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting. See N.D.C.C. § 43-23-12.1(1).

However, the revised statute clarifies that unless otherwise agreed in writing, the licensees are not obligated to a client, customer or other person to discover defects or verify ownership or verify accuracy of representations made by any person other than the brokerage firm and licensees involved in the transaction. Also, unless a licensee is directly involved in a transaction, the knowledge that someone else in the brokerage firm possesses about the property is not imputed to another licensee. Neither is a duty imposed on a licensee to disclose facts regarding the affected real property to another licensee within the brokerage firm. See N.D.C.C. § 43-23-12.1(3) & (4) and the disclosure requirements at N.D.A.C. § 70-02-03-15.1(7) (d).

The amended statute also clarifies duties concerning multiple offers and representing competing clients. For example, it is acceptable for different licensees within the same brokerage firm to represent two or more buyers who want to make competing offers on the same property. Also, the licensees are not required to disclose the existence of competing offers in this situation. However, if the *same* licensee represents two buyers who both want to make an offer on the same property, the licensee is required to disclose to the competing buyer clients the fact that a competing written offer has been submitted by another buyer, without disclosing the identity of the other buyer client or the terms of the offer. See N.D.C.C. § 43-23-12.1(5) and the requirement to disclose this at N.D.A.C. § 70-02-03-15.1(7) (b).

The statute also clarifies that it is not a breach of any duty for the same brokerage firm to represent two or more sellers who want to offer competing real property for sale. See N.D.C.C. § 43-23-12.1(6) and the requirement to disclose this at N.D.A.C. § 70-02-03-15.1(7) (a).

#### **Next steps**

The statutory changes made by the legislature were effective August 1, 2011. The corresponding administrative rules proposed by the commission are included for your review and comment. A public hearing will be held on these rules, as indicated in the notice. After the hearing, the commission will receive further written comments for 10 or more days. The commission will then consider the comments, make any necessary revisions, and submit the proposed administrative rules for final approval and adoption. The target effective date for the administrative rules is April 1, 2012.

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## **NORTH DAKOTA CENTURY CODE AS AMENDED LAST LEGISLATIVE SESSION**

### **43-23-12.1. Real estate brokerage firm—Duties required.**

1. A real estate brokerage firm and ~~its~~ **the real estate brokerage firm's** licensees, ~~that~~ **which** provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency **relationship, which must be established through a written agency agreement,** may be a seller ~~agent~~ **agency,** a buyer ~~agent~~ **agency,** or a ~~subagent~~ **dual agency, an appointed agency, a subagency,** or, ~~if~~

**another form of agency relationship. If a different relationship, including a nonagency relationship with a customer,** between the real estate brokerage firm and the person for ~~whom~~ **which** the real estate brokerage firm performs the services is intended, ~~including a dual agent,~~ the relationship must be disclosed **in writing pursuant to rules adopted by the board.**

2. **If a buyer, prospective buyer, or seller is not represented by a real estate brokerage firm in the real property transaction, that buyer or seller remains a customer, and, as to that customer, the real estate brokerage firm and**

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the real estate brokerage firm's licensees are nonagents that owe the following legal duties: to perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided; to perform these acts with honesty and good faith; and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. These limited duties are subordinate to any duties the real estate brokerage firm and the real estate brokerage firm's licensees owe to a client in the same transaction.

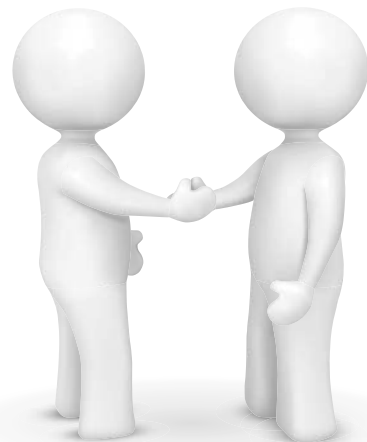
any duty by assisting such clients with multiple offers, even though the interests of such clients are competing, and are not required to disclose the existence of competing offers, except as otherwise set forth under this subsection. The real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection. However, if an individual licensee has a written agency agreement with two or more buyers that desire to make an offer for the purchase or lease of the same real property, that licensee shall disclose to those competing buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee.

3. Unless otherwise agreed in writing, a real estate brokerage firm and the real estate brokerage firm's licensees are not obligated to a client, to a customer, or to any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.

6. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more sellers or lessors as clients that desire to offer competing real property for sale or lease, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach any duty to such clients by performing such services, even though the interests of such clients are competing. In such event, the real estate brokerage firm and the real estate brokerage firm's licensees shall continue to honor agency duties to such clients, except as limited under this subsection.

4. Unless the licensee is directly involved in a transaction regarding the affected real property, this section does not result in imputing knowledge, regarding the affected real property, of one licensee within a real estate brokerage firm to another licensee within the same real estate brokerage firm or in imposing a duty upon a licensee within a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm.

5. If a real estate brokerage firm and the real estate brokerage firm's licensees represent two or more buyers or lessees as clients that desire to make an offer for the purchase or lease of the same real property, the real estate brokerage firm and the real estate brokerage firm's licensees do not breach



# NORTH DAKOTA REAL ESTATE COMMISSION

## SCHEDULES RULES HEARING

A public hearing to receive comments on proposed rules changes is scheduled for 1:00 pm CT,  
Wednesday, December 7, 2011  
in the Peace Garden Room, State Capital • 600 E Boulevard Ave, Bismarck, North Dakota

The purpose of the amendments is to comply with changes in NDCC § 43-23-12.1 during the 2011 Legislative Session and to clarify certain provisions pertaining to agency and non-agency relationships.

Written comments may be submitted to the North Dakota Real Estate Commission, PO Box 727, Bismarck, ND 58502-0727 until December 17, 2011. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Real Estate Commission at the above address or call 701-328-9749 at least 7 days prior to the public hearing.

*The following are the Commission's proposed rules and amendments to be considered. Original language is stricken and new language is underlined.*

### **70-02-03-15.1. Licensee to disclose agency relationships— Duty of confidentiality.**

1. As used in this section, unless the context or subject matter otherwise requires:

- a. “Dual agency” means a situation in which a licensee owes a duty to more than one party to the real estate transaction. Dual agency is established as follows:
  - (1) When one licensee represents both the buyer and the seller in a real estate transaction; or
  - (2) When two or more licensees, licensed to the same broker, each represent a party to the real estate transaction.
- b. “Party to the real estate transaction” includes any individual or individuals who are a seller or buyer, or potential seller or buyer.
- c. “Real estate transaction” means any transaction involving residential real property that consists of separate dwelling units for one through four families. “Real estate transaction” does not include transactions involving agricultural or commercial property, residential property that provides separate dwelling units for five or more families, or commercial leaseholds.

2. In all real estate transactions in which the licensee represents any party to a real estate transaction, the licensee must make an affirmative written disclosure identifying which party that person represents in the transaction. The disclosure must be made at the time of the first substantive contact between the licensee and any party to the real estate transaction. The disclosure must be represented by a separate written document, and offered to the party to the real estate transaction for signature. True copies of the disclosure form must be retained in the broker's file. As used in this subsection, the

term “substantive contact” means:

- a. When representing the seller, prior to the signing of a listing agreement.
- b. When representing a buyer, prior to the signing of a buyer's broker agreement.
- c. As to all other parties, such as potential buyers or sellers, who are not represented by the licensee, prior to the discussion of personal financial information or the commencement of negotiations, which could affect that party's bargaining position in the transaction. However, a licensee shall have complied with the provisions of this subsection if, in those circumstances where it is impossible as a practical matter to obtain a signed written disclosure statement from a party at the time of the first substantive contact, such as telephone contact with an absent party, the licensee orally discloses the status of the licensee's representation and, as soon as practicable thereafter, makes the written disclosure required by this subsection.
- d. As to any change in the licensee's representation, including dual agency, that makes the initial disclosure of representation incomplete, misleading, or inaccurate, a new disclosure must be made at once to any party to the transaction.
- e. Nothing in this section requires written notice to each prospective buyer who comes to an open house display of real property; provided, however, the licensee, by sign, poster, distributed listing literature, or property description form, conspicuously discloses the licensee's agency relationship.

3. Each licensee owes a duty of confidentiality to a party being represented in a real estate transaction. The following information may not be disclosed without the informed, written consent of the party being represented:

- a. That the party being represented is willing to pay more than the purchase price or lease price offered for the property.
  - b. That the party being represented is willing to accept less than the purchase price or lease price being asked for the property.
  - c. What the motivating factors are for the buying, selling, or leasing of the property by the party being represented.
  - d. That the party being represented will agree to terms for financing of the property other than those which are offered.
4. A licensee shall also keep confidential all information received from a party being represented, which has been made confidential by request or instruction of that party.
  5. The obligation of confidentiality set forth in subsections 3 and 4 continues in effect during the time a party is being actively represented, and continues on after the termination, expiration, or completion of the representation until one of the following occurs:
    - a. The party being represented permits the disclosure by subsequent word or conduct.
    - b. Disclosure is required by law, by court order, or order of the commission.
    - c. The information is made public through disclosure from a source other than the licensee.
  6. The provisions of subsections 3 and 4 do not serve to permit or require a licensee to keep confidential any material defects in the property of which the licensee is aware or which would constitute fraudulent misrepresentation unless disclosed.
  7. The written disclosure required by this section must advise a party to the real estate transaction of the different types of representation that are available. The explanation must include information pertaining to how that party's interest shall be represented if the party chooses the licensee to act as the owner's agent, the buyer's agent, or as a dual agent. The written disclosure forms, in clearly understood terms, must inform the party to the transaction as follows:
    - a. If the party chooses seller representation, it must be explained that this relationship typically arises from entering into a listing agreement, or by agreeing to act as a subagent through the listing agency. A subagent may work in a different real estate office. A listing agent or subagent can assist the buyer but does not represent that party. A listing agent or subagent is required to place the interest of the owner first, and a buyer should not tell a listing agent or subagent anything that the buyer would not want the owner to know, because

the listing agent or subagent must disclose any material information to the owner. **Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more sellers as clients who both desire to offer competing real property for sale or lease, the real estate brokerage firm and its licensees may do so without breaching any duty to such clients. In such an event, the brokerage firm and its licensees still owe agency duties to the clients, except as limited in this subsection.**

- b. If the party chooses buyer representation, it must be explained that the licensee typically becomes the buyer's agent by entering into an agreement for such representation. A buyer's agent may assist the owner but does not represent the owner. A buyer's agent must place the interest of the buyer first, and the owner should not tell a buyer's agent anything the owner would not want the buyer to know because the buyer's agent must disclose any material information to the buyer. **Also, it must be explained that if the real estate brokerage firm and its licensees represent two or more buyers as clients who desire to make an offer to purchase the same real property, the brokerage firm and its licensees do not breach any duty by assisting such clients with multiple offers even though the interest of such clients are competing. However, if the same licensee represents two or more buyers who desire to make an offer to purchase the same property that licensee must disclose to buyer clients the fact that a competing written offer has been submitted by another buyer client of that licensee without disclosing the identity of the other buyer client or the terms of the offer. In such an event, the brokerage firm and its licensees still owe agency duties to the clients, except as limited in this subsection.**
- c. If the party selects dual agency, it must be explained that the licensee must enter into a written agreement obtaining the consent of both parties before such representation is authorized. This agreement must set forth who will be responsible for paying the licensee's fee. Under this arrangement, the licensee is required to treat both parties honestly and impartially so as not to favor one over the other. Unless written permission from the appropriate party is obtained, the licensee is prohibited from disclosing that the owner will accept less than the asking price, that the buyer will

pay a price greater than that submitted in the written offer, or any other information of a confidential nature or which the party has instructed the licensee not to disclose. Potential conflicts exist when the licensee represents more than one party, and the licensee's activities may be more limited. The licensee is required to inform each party of any facts that would affect a party's decision to permit representation of both the owner and buyer. This includes any arrangement by which the licensee will or expects to represent a party in a future transaction.

- d. **It must be explained** that a duty of loyalty and faithfulness are owed to the party or parties to the transaction with whom the licensee has an agency relationship, and the licensee must inform that party of all important information which might affect a decision concerning the real estate transaction. This includes disclosure of any material facts to the buyer that may adversely and significantly affect that person's use or enjoyment of the property. It also includes disclosure of any information to either party which may indicate that one of the parties ~~may not~~ **does not intend to perform** in accordance with the terms of the purchase agreement or any other written agreement or obligation. **However, it must be explained that knowledge of one licensee of a real estate brokerage firm regarding an affected real property is not imputed to another licensee in the same brokerage firm and no duty is imposed upon a licensee in a real estate brokerage firm to disclose facts that are known by that licensee regarding the affected real property to another licensee within the same real estate brokerage firm. Also, it must be explained that unless otherwise agreed in writing, a real estate brokerage firm and its licensees are not obligated to a client, a customer or any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than the real estate brokerage firm and the real estate brokerage firm's licensees involved in the transaction under question.**

- e. **It must be explained that** ~~no a licensee may deal unfairly~~ **must deal honestly** with any party to a real estate transaction, regardless of whether the party is represented by that licensee.

8. No person required to be licensed by North Dakota Century Code chapter 43-23 may maintain any action to recover any commission, fee, or other compensation with respect to the purchase, sale, lease, or other disposition or conveyance of real property, or with respect to the offer, negotiation, or attempt to negotiate any sale, lease, purchase, or other disposition or conveyance of real property, or with respect to the offer, negotiation, or attempt to negotiate any sale, lease, purchase, or other disposition, unless that person's agency relationship has been disclosed to the party or parties to the transaction in accordance with the requirements of this section.
9. The commission may approve a specific form or forms to implement the provisions of this section.

#### **70-02-03-15.2 Licensee to disclose nonagency relationship**

**In all real estate transactions in which the licensee performs services for a customer, as that term is defined by section 43-23-0.6.1(4), N.D.C.C., the licensee must disclose the nonagency relationship in writing to the customer. This document must be signed by the customer prior to the licensee performing any services for the customer. A copy of the signed written disclosure must be retained in the broker's file. The written disclosure must explain that as to a customer the real estate brokerage firm and its licensees are nonagents that owe to the customer only limited legal duties. These limited legal duties are to perform the customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion with honesty and good faith and to disclose to the customer any adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. The real estate brokerage firm and its licensees do not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting to the customer. The disclosure must also explain that if the brokerage firm and its licensees represent another party in the same real estate transaction, the licensee is required to place the interest of the represented client first.**

History: Effective September 1, 1994.

General Authority:

NDCC 28-32-02

Law Implemented:

NDCC 43-23-05

**Approved by ND Real Estate Commission  
September 20, 2011**

# Renew *ONLINE*- it's so easy!

Online renewals open up November 1, 2011.

The email address we have on file for you as of October 15, 2011 will be the email address you will use to access your information. If there has been a change you will need to call our office to have your email address entered before you can continue with the online renewal process.

## Follow These Easy Steps to Renew Your License Online:

1. Go to the Commission's web site at [www.realestatend.org](http://www.realestatend.org) and click on "Online License Renewals".
2. This will take you to a screen to create your account OR to login with your user name & password from last year.
3. Once you have created your account you will be able to begin the process of renewing your license.
4. Once you have completed your renewal form, click "Continue" – this will take you to the Billing Information page. Verify your payment information then click "Continue to Payment". Enter your credit card information and click "Pay". Your renewal will then be placed in a pending state until the completion of continuing education hours has been verified by your broker & we have received proof of errors and omissions insurance.
5. The Payment page gives you the renewal fee and payment options. You will then select the method of payment: Discover, Master Card or Visa. Upon completion of payment, there will be a confirmation page to print and keep for your records.
6. Once your broker has certified completion of your continuing education and we have received certification of E&O insurance coverage from you, you will be notified that your license has been renewed for 2012.

## Deadline:

Remember: if you renew online, you must do so by **midnight December 31, 2011** to avoid a late fee. Hint: Do not rely on your computer clock if you are renewing close to midnight.

## Renewing Company License Online:

Designated brokers may now renew the company license and their license in one transaction once they have created an account under their own name.

## Transaction Fee:

A transaction fee will not be charged this year.

## Payment Online:

Credit cards accepted: Discover, MasterCard & Visa



## Renewal Fees

### If submitted by December 31, 2011:

(Submitted means paid online by midnight December 31, 2011 or if submitted by mail, the postmark, not your postage meter mark, on your envelope is on or before December 31, 2011)

- Corporate/firm license fee \$150.00
- Broker license fee \$120.00
- Salesperson license fee \$100.00
- Duplicate license fee \$ 10.00
- Branch office fee \$ 10.00

### If submitted on or after January 1, 2012:

(Submitted means paid online after midnight on December 31, 2011 or if submitted by mail, the postmark, not your postage meter mark, is on or after January 1, 2012) a \$50 late fee will be assessed to the license renewal fee.

- Corporate/firm license fee \$200.00  
(\$150 + \$50 late fee)
- Broker license fee \$170.00  
(\$120 + \$50 late fee)
- Salesperson license fee \$150.00  
(\$100 + \$50 late fee)

### If submitted on or after February 1, 2012:

(Submitted means paid online after midnight on January 31, 2012 or if submitted by mail, the postmark, not your postage meter mark, is on or after February 1, 2012) a \$100 late fee will be assessed.

- Corporate/firm license fee \$250.00  
(\$150 + \$100 late fee)
- Broker license fee \$220.00  
(\$150 + \$100 late fee)
- Salesperson license fee \$200.00  
(\$150 + \$100 late fee)

## Renewal Deadlines for 2012 Licenses

- December 31, 2011 – last day to renew without penalty
- January 1, 2012 – add \$50 late fee
- February 1, 2012 – add \$100 late fee
- March 1, 2012 – if not renewed license is automatically cancelled without notice



# Importance of Maintaining Continuous Errors and Omissions Coverage

RISC Rice Insurance Services  
Company, LLC  
4211 Norbourne Blvd.  
Louisville, KY 40207  
Phone: 502-897-1876  
Fax: 502-897-7174

Rice Insurance Services Company, LLC (RISC) administers real estate licensee errors and omissions (E&O) insurance policies issued by Continental Casualty Company in twelve states that require licensees to maintain such coverage. While the policies vary from state to state, it is uniformly important to maintain continuous coverage. That means having no gaps, not even one day, between when one policy period ends and the next begins. Real estate commissions in states that require licensees to carry E&O coverage may issue fines and penalties if you do not maintain continuous coverage. Further, failure to maintain continuous coverage will cause you to lose coverage for professional services performed before the policy's effective date.

RISC's policies, like most E&O policies, are claims-made and reported policies. Four dates are important in determining whether a claim will be covered under a claims-made and reported policy: (1) the policy's retroactive date, (2) the date of the professional services giving rise to the claim, (3) the date the claim is made, and (4) the date the insured reports the claim to the insurance company.

RISC's policies' retroactive dates are established separately for each insured licensee. The retroactive date is the date the licensee first obtained and, from which, has continuously maintained E&O coverage. Any gap in coverage will terminate the previously-established retroactive date and the new retroactive date will be the date the licensee reestablishes coverage.

Coverage is considered under the policy in effect the date the claim is made. RISC's policies only cover claims that relate to professional services provided on or after the retroactive date. That means for a claim to be covered, the insured must have coverage on the date the claim is made, have had coverage on the date of the professional services, and have continuously maintained coverage between the date of the professional services and the date of the claim. If the licensee has not maintained continuous coverage during that time, then the policy's retroactive date would not go back to the date of the professional services, and there would be no coverage for the claim. Further, the claim must be timely reported to the insurance company.

## **Example: Failure to Timely Renew Coverage**

Ms. Agent first purchased E&O coverage when she obtained her real estate license on May 1, 2006. The effective dates of her 2006 policy were

May 1, 2006 to January 1, 2007. Ms. Agent timely renewed coverage in 2007 and 2008, which policies had effective dates of January 1, 2007 to January 1, 2008 and January 1, 2008 to January 1, 2009, respectively. The retroactive date of her 2007 and 2008 policies was May 1, 2006, because that was the first date Ms. Agent obtained E&O coverage and she had maintained it continuously from that time.

Ms. Agent forgot to timely renew her coverage in 2009 and did not pay her premium until April 1, 2009. Therefore, her 2009 policy's effective dates were April 1, 2009 to January 1, 2010. Ms. Agent did purchase coverage timely in 2010 and 2011, so her policies' effective dates for those years were January 1, 2010 to January 1, 2011 and January 1, 2011 to January 1, 2012, respectively. Ms. Agent's retroactive date was no longer May 1, 2006, because she had not continuously maintained coverage since that time. The retroactive date of her 2009, 2010, and 2011 policies was April 1, 2009.

Shortly after obtaining her license, Ms. Agent represented a buyer in a real estate transaction that closed August 1, 2006. On February 1, 2011, the client sued Ms. Agent alleging that Ms. Agent's professional services in the 2006 transaction were negligent and damaged the client. Ms. Agent timely submitted the complaint to her insurance company and asked the company to hire an attorney to represent her in the lawsuit. Ms. Agent was upset to learn the claim is not covered, because the professional services took place before her policy's retroactive date. For purposes of this example, assume the lawsuit would otherwise be covered under the policy.

In this example, the claim arose on February 1, 2011, so coverage is considered under Ms. Agent's 2011 policy. As discussed above, the 2011 policy's retroactive date is April 1, 2009, because that is the date from which Ms. Agent continuously maintained coverage. The transaction closed on August 1, 2006, more than two years before the retroactive date. Even though Ms. Agent had E&O coverage when the transaction closed and when the claim arose, the claim is not covered, because the applicable policy does not cover conduct that occurred before its retroactive date. Ms. Agent's failure to timely renew coverage in 2009 caused her to lose coverage for any transactions that occurred prior to April 1, 2009.

In the example above, Ms. Agent had a three-month gap in coverage. However, the result would be the same if the gap was one day. Thus, it is important to timely renew your coverage each year.

## **Protect Yourself**

In light of the serious consequences of even a one-day gap, RISC currently offers reinstatement of coverage for licensees who fail to timely renew in certain situations. Reinstatement means that the effective date of the licensee's individual coverage will be backdated and deemed to be the inception date of the applicable group policy. This helps licensees maintain continuous coverage and prior acts coverage. If you fail to timely renew, call RISC immediately to see if you qualify for reinstatement of coverage. Reinstatement is only allowed in certain situations, so do not rely on it. The best way to protect yourself from situations like Ms. Agent's is to always renew your coverage and pay your premium on time. Further, real estate commissions in states that require E&O coverage may issue fines and penalties for a licensee's failure to timely renew regardless of reinstatement, because reinstatement does not change the fact that the licensee was without coverage for a period of time.

Your insurance coverage is important. Please take the time to read and understand your policy's coverage provisions, conditions, and exclusions. To obtain sample copies of RISC's policies, visit our website, [www.riscoe.com](http://www.riscoe.com), or call our administrative office at (800) 637-7319, extension 1.

## ***Renew By Mail***

- You will need to request a renewal form from your broker or go to our website [www.realestatend.org](http://www.realestatend.org) and download a form.
- Active licensees: submit your renewal form, signed by your broker, with proof of Errors and Omissions insurance, and the appropriate fee.
- Inactive licensees: submit your renewal form and the appropriate fee.
- Have your renewal postmarked by December 31, 2011 to avoid any late fees.
- Make sure your check is in the correct amount.
- If you need to notify us of a change of address or name change you must do so on a Change of address or name form and submit that separately – NOT on the renewal form.



## QUESTIONS & ANSWERS

Q: *In what time frame do courses have to be taken to count toward the 2012 renewal?*

A: **Courses taken between January 1, 2011 and December 31, 2011 meet the continuing education requirements to renew your license for 2012.**



Q: *Do my certificates of course completion have to be sent to the Commission office?*

A: **No.**

Q: *What do I do with the certificates of completion?*

A: **Keep them in case of a Commission audit in the future.**

Q: *If I took CE hours during this current CE cycle (2011) to activate my license, can I use those hours as part of the 9 hrs required to renew my license for this CE cycle?*

A: **No.**

Q: *What if I took some courses in another state?*

A: **Courses taken in another state that have been approved for real estate CE can be used to satisfy the 6 hours of elective courses.**

Q: *Can I take a mandatory course online?*

A: **Yes, be sure the course number begins with "MAN".**

Q: *What if I don't know how many CE hours I have taken?*

A: **CE certificates are not kept at the Commission office. Licensees are expected to maintain their own records. If you do not have a CE certificate contact the course provider for a duplicate copy.**

Q: *I am a new licensee. What CE hours do I need?*

A: **If you have completed your 15 hours of post licensing in 2011 you are exempt from this CE cycle (2011). HOWEVER, if you completed your 15 hours post licensing education in 2010 you will need to comply with the CE requirements of this CE cycle. If you are not sure about your situation call our office. 701-328-9749**

## Continuing Education Requirements for 2012 License Renewal

### Total CE needed:

- 9 hours taken in 2011



### Deadline:

- December 31, 2011 - Courses must be completed **PRIOR** to license renewal.

### Courses to take:

- 3 hours mandatory business etiquette & ethics course
- 6 hours in approved elective courses

## REMINDER TO INACTIVE LICENSEES

Your inactive license ***must*** be renewed annually or it will be automatically cancelled March 1, 2012. This means you must either renew online or complete a 2012 renewal form and pay the appropriate fee.

There are no continuing education or Errors and Omissions insurance requirements to renew an inactive license.

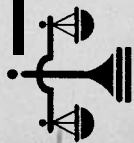


### *In Memory*

The ND Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensees who recently passed away:

James E Fay ..... Moorhead, MN  
 Thomas A Gilbertson ..... Watson, MN  
 Laurice L Loberg ..... Fargo, ND  
 Naureen M Metz ..... Bismarck, ND  
 Mon J Prellwitz ..... Sawyer, ND

# Disciplinary Actions Taken



The following disciplinary actions have become effective since the last report in the newsletter. A Stipulated Agreement is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

Monday, October 10, 2011

Name	Complaint	Hearing Type	Order	Violation	Penalty
Hardy, Andrew M	2010-12	Formal	06/21/2011	Found in violation of NDCC 43-23-08.2 by failing to take the required 16 hrs of ce in 08/09 & failing to provide proof of the required ce credits, NDCC 43-23-11.1(1)(a) by making a material false statement in information furnished to the Commission, NDCC 43-23-11.1(1)(v) dishonest & fraudulent conduct of writing in 2008 dates on certificates for 2006 courses, NDCC 43-23-11.1(1)(w) conduct that did not meet the generally accepted standard of expertise, care or professional ability expected of a real estate salesperson when he failed to respond to ce audit requests, NDCC 43-23-13.1 by failing to properly certify compliance w/ce requirements, 43-23-11.1(1)(p) by violating 2 sections of NDAC: 70-02-04-02 failing to complete required hrs of ce for 08/09 & 70-02-04-21(3) by failing to retain attendance certificates for ce courses.	90 day license suspension commencing June 30, 2011, \$2000 fine, \$2655 legal/investigative costs, and 3 hrs of hours of education on ethics (not to be used as part of his continuing education requirement). All penalties must be taken care of before license will be reactivated.
Richter, Rodney G	2011-02	Stipulated	06/16/2011	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) and Administrative Code 70-02-03-11 Negotiate Listings. The complaint alleges that Richter drafted a purchase agreement with a buyer who had an existing written exclusive agency agreement with another brokerage that was still in effect.	Stipulated to a \$1000 fine, payment of \$650 investigative/legal fees both to be paid within 30 days of issuance of order & 3 hours of education on agency to be taken within 90 days of issuance of the order (not to be used as part of his continuing education).
Wright, Janet M	2011-01	Stipulated	06/16/2011	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(c) & (w) and 43-23-12.1. Respondent may have violated the rules and regulations by making a substantial and willful misrepresentation with reference to special assessments in a real estate transaction and conduct which in the determination of the Commission does not meet the generally accepted standards of expertise, care or professional ability expected of real estate brokers or salespersons.	Stipulated to a \$800 fine, payment of \$750 investigative/legal fees both to be paid within 30 days of issuance of order & 3 hours of education on dual agency to be taken within 90 days of issuance of the order (not to be used as part of her continuing education).

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