



REAL ESTATE

FALL

2015

NEWS & VIEWS

**RENEW YOUR ND REAL ESTATE LICENSE BY
November 15, 2015**

Don't put this newsletter away until you mark your calendar with the new deadline to complete your continuing education (ND residents) and submit your 2016 license renewal (all licensees: resident, reciprocal and non-resident.)

Effective this year all real estate license renewals must be renewed online or postmarked by no later than November 15, 2015 – if not late fees begin accruing.

Here's a checklist for you:

- Δ Your continuing education must be completed by the time you submit your license renewal.**
- Δ Your E&O certificate of coverage must be submitted for the year 2016.**
- Δ Be sure you have answered all of the questions & included the documents required – if your renewal is not complete in every way by November 15, 2015 you will be assessed a late fee for every month it remains incomplete.**
- Δ Reciprocal & non-resident licensees: you must include a current (less than 30 days**

old) certificate of licensure with your ND real estate license renewal.

REMEMBER: Your continuing education must be completed and your license renewal MUST be submitted to the Commission office by November 15, 2015.

Check inside for more 2016 license renewal information!

Don't miss important information in this newsletter about:

1. North Dakota Real Estate License Renewal
2. Court Ruling on Independent Contractor Arrangements
3. Reverse Mortgage Warnings
4. Fair Housing Limits on Disparate-Impact Liability
5. Industry Changes
6. Court on Dual Agency

North Dakota Real Estate Commission

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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. 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 or on the ND Secretary of State website www.nd.gov/sos/

EDUCATION CORNER – Did You Know?????

Δ The continuing education requirement for North Dakota licensees is 9 hours to be completed by November 15, 2015. ND resident licensees must complete 9 hours of ce (3 of which are in a mandatory course) prior to renewing their licenses for 2016. Accepted ce must be taken between January 1, 2015 and November 15, 2015.

Δ The **mandatory course topic for 2015** is 3 hours in personal safety. For a list of approved online and classroom courses go to our web site www.realestatend.org click on "Licensees", then "Education", and finally "Approved Courses". It's easy!

Δ *Does it Count?* is a question often asked by licensees who have taken courses that are not approved by the ND Real Estate Commission, typically these are courses taken in another state. If the course taken in another state has been approved by that state's real estate licensing board for real estate continuing education it will be accepted in North Dakota. **This only applies to elective courses. Please note: ND is not allowed by law to accept a ce course for less than 2 hours. Courses must be whole classroom hours. A course taken in another jurisdiction for 3.75 hours will be accepted in ND for 3 hours. No rounding up.**

Δ **There is one exception to the above information:** The mandatory ce must be approved by the ND Real Estate Commission as meeting the mandatory topic requirement. Look for ce courses with course numbers that begin with MAN. They are red on our website so you can find them easily.

Δ **CE Instructors:** If you wish to receive ce credit for courses you teach, please notify our office in writing as to which course you taught (include course number), the date taught, and that you wish to receive ce credit for the course. Be sure to sign the notice. We will send you a ce slip with the appropriate credit to you for your records. NDAC § 70-02-04-16.

Δ **ONLINE CE:** For those who take their ce online – please carefully read the directions on receiving your ce slip. Printing out your completion notice does not constitute a ce slip and cannot be submitted as proof of continuing education

Massachusetts High Court Preserves Independent Contractor Arrangements

The Massachusetts Supreme Judicial Court recently issued a decision that resolves a conflict between the state's real estate licensing laws and its employment laws, and preserves the ability of real estate brokers to engage salespersons as independent contractors without incurring the statutory and other responsibilities that are imposed in employer-employee relationships.

The Massachusetts independent contractor statute [Mass. G.L. c.149, section 148B] creates a presumption of an employer-employee relationship, thus potentially subjecting employers to minimum wage, tax withholding, workers compensation and other employer responsibilities; as well as civil remedies and criminal penalties for misclassification violations. The presumption applies unless the individual is (1) free from an employer's control and direction, (2) the service is performed outside the usual course of the employer's business, and (3) the individual is customarily engaged in an independently established business of the same nature as the service performed. On the other hand, the state's real estate licensing laws specifically permit real estate salespersons to be affiliated with a broker either as an employee or as an independent contractor, but impose standards that conflict with the statutory independent contractor criteria. For example, salespersons cannot operate their own real estate businesses, act except as a representative of the broker, or accept compensation from anyone other than the broker with whom they are affiliated. Brokers also must supervise affiliated salespersons and are responsible for their compliance with the real estate licensing laws.

In Monell v. Boston Pads, licensed Massachusetts salespersons sued their brokerage firms alleging that they were misclassified as independent contractors in violation of the independent contractor statute. The salespersons asserted that they were actually employees because they were required to, among other things, undergo training, pay desk fees, have day planners and cell phones, complete office hours, and meet productivity goals. A trial court granted summary judgment in favor of the brokerage firms, ruling that the statutory conflict is irreconcilable and that the real estate licensing laws control. Thus, the brokerages did not violate the misclassification provision of the independent contractor statute because it does not apply to licensed salespersons.

The salespersons appealed the decision to the Massachusetts Supreme Judicial Court, which affirmed the trial court ruling. The high court agreed that, while the real estate licensing laws expressly allow independent contractor arrangements, the level of supervision and control required of brokers under the licensing laws make it "...impossible for a real estate salesperson to satisfy the three factors required to defeat the [statutory] presumption of employee status and

achieve independent contractor status." The Supreme Judicial Court also affirmed the trial court's reasoning that, where statutes collide, specific provisions such as the real estate licensing laws prevail over more general laws such as the independent contract statute. The appellate court reasoned, "Were we to conclude otherwise, we would be subjecting real estate brokerage firms to potential criminal penalties for misclassifying its real estate salespersons in a manner expressly authorized by the real estate licensing statutes."

Nonetheless, the Supreme Judicial Court underscored the limited nature of its decision, which resolves only the misclassification claim and does not determine whether the plaintiffs are employees or independent contractors under the state's wage payment, minimum wage and overtime pay statutes; or how that issue might be determined in light of the ruling. The court added, "In light of the potential impact of that issue on the real estate industry as a whole and its significant ramifications for real estate salespersons' access to the rights and benefits of employment, we think it prudent to leave that issue's resolution to another day, when it has been fully briefed and argued. Should the legislature be so inclined, it may wish to clarify how a real estate salesperson may gain employee status under the real estate licensing statute."

The Monell case is one of several lawsuits in other jurisdictions that have attracted the attention of the U.S. real estate brokerage community, because they challenge the almost universal business model under which affiliated licensees are treated as independent contractors; thus relieving brokers and brokerage firms from the costs, statutory responsibilities and potential liabilities of employer-employee relationships.

[Monell v. Boston Pads, LLC, 31 N.E. 3d 60, 471 Mass. 566, 2015 Mass. LEXIS 318.]

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CFPB Pans Reverse Mortgage Ads, Warns Consumers

Anyone who has watched television in the U.S. lately has probably seen at least one of the many advertisements that tout the benefits of reverse mortgages for seniors. The U.S. Consumer Financial Protection Bureau (CFPB) is warning that many T.V., print and internet advertisements about the mortgage product are creating misconceptions among consumers.

A reverse mortgages allow homeowners 62 and older to borrow against the accrued equity in their homes, and defer repayment of the loan and interest until the borrower dies, moves or sells the home. The U.S. reverse mortgage market is relatively small and is currently dominated by the Federal Housing Administration's Home Equity Conversion Mortgage (HECM), which ensures that borrowers will receive their payments and insures lenders against losses if the loan balance exceeds the value of the property when the loan becomes due.

The CFPB recently conducted focus group studies which revealed that many advertisements lead consumers to misunderstand the fact that reverse mortgages are loans that have fees and compounding interest that must be repaid, just like any other mortgage loan. Some consumers think that, since reverse mortgage payments represent an owner's accrued equity in the home, the loan doesn't have to be paid back. The advertisements also left some older homeowners with the false impression that reverse mortgages are not loans at all, but rather are a risk-free government benefit that includes consumer protections that don't exist. The CFPB criticized ads featuring celebrities who are perceived to be trustworthy and tout the benefits, but do not explain the risks, of reverse mortgages. And, the ads often don't mention important information like interest rates, repayment terms and other requirements.

In response to those and other misconceptions the CFPB has released a **summary of the study** and a *Consumer Advisory* warning seniors about the advertisements, pointing out that:

Reverse mortgages carry loan fees and interest that must be repaid and, although FHA HECM loans are insured, borrowers pay for the insurance, not the government.

Reverse mortgages do not guarantee that homeowners can live in the home as long as they want. The failure of a borrower to pay homeowners insurance or property taxes, or to meet other loan requirements, can trigger a loan default and foreclosure.

Despite ads that imply otherwise, a reverse mortgage is not a guarantee of financial security throughout retirement and should be part of a financial plan that takes into account the longer lives that Americans live compared to a generation ago.

Reverse mortgages are very complex financial products that can be difficult for even sophisticated consumers to estimate and understand. Reverse mortgages involve significant costs and risks, especially if taken out early in retirement. While reverse mortgages can help some older homeowners meet financial needs, they can also jeopardize retirement security if not carefully considered.

More information is available on the CFPB's reverse mortgage <http://www.consumerfinance.gov/askcfpb/224/what-is-a-reverse-mortgage.html>

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Fair Housing: U.S. Supreme Court Affirms “Disparate-Impact” Liability, Outlines Limitations

In what advocates are calling a “landmark” fair housing decision, the United States Supreme Court has ruled that claims based on the “disparate-impact” theory of liability are cognizable under the U.S. Fair Housing Act (FHA). But in doing so, the court outlined limitations and restrictions whose impact will not be clear until they are applied by lower courts.

As is well known, the FHA prohibits housing-related discrimination based on race, color, religion, sex, handicap, familial status, or national origin. All federal circuit Courts of Appeals have endorsed the proposition that FHA liability may arise not only from proven intentional discrimination, but also from practices that have a discriminatory disparate impact. Disparate-impact claims often rest on statistical evidence establishing that a challenged housing-related practice or policy has a disproportionate, adverse effect on protected classes.

The case, Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., involves allegations that a state housing agency (the Department) violated the FHA by disproportionately approving federal low-income housing tax credits in minority-concentrated neighborhoods and disapproving credits in predominantly Caucasian neighborhoods, thereby perpetuating segregated housing patterns. A federal district court ruled that the allocations resulted in a prohibited disparate impact on African-American residents. Meanwhile, the U.S. Department of Housing and Urban Development (HUD) promulgated disparate-impact burden-shifting regulations under which claimants must show that a challenged policy caused, or predictably will cause, a discriminatory effect; then the defendant may show that the practice is necessary to achieve a legitimate nondiscriminatory interest; upon which showing the plaintiff must establish that the interest could be served by another practice that has a less discriminatory effect. The Fifth Circuit Court of Appeals adopted HUD’s burden-shifting standards as the “law of the circuit” and, because the district court applied a different standard, remanded the case for further proceedings. The Department appealed the decision to the United States Supreme Court.

In a 5-4 decision, the Supreme Court affirmed that disparate-impact claims are cognizable under the FHA. The majority opinion notes that the FHA makes it unlawful to “refuse to sell or rent...or otherwise make unavailable or deny a dwelling...”, or to discriminate in certain real estate transactions “because of” a protected characteristic [emphasis added]. The court reasoned that its previous decisions have interpreted similar language in federal employment discrimination laws to encompass disparate-impact liability when the text refers to

the consequences of actions, not just the mindset of actors. The court also reasoned that 1988 amendments to the FHA provide liability exceptions (for appraisals, drug-related convictions, and maximum occupancy restrictions) that would have been superfluous if Congress did not take into account the acknowledgment of disparate-impact liability by all nine federal Courts of Appeals to have addressed the issue at that time. The Supreme Court also explained that disparate-impact liability is consistent with the central purpose of the FHA, permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as intentional discrimination, and “...may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.”

However, the Supreme Court opinion includes several limitations. For example, a disparate-impact claim relying on a statistical disparity must fail if a plaintiff cannot point to a defendant’s policy causing that disparity. The court noted that a “robust causality requirement” at the early stage of such cases will protect defendants from expensive litigation or being held liable for racial disparities they did not create. Thus, the court noted, in the instant Texas case “...if the plaintiff cannot show a causal connection between the Department’s policy and a disparate impact—for instance, because federal law substantially limits the Department’s discretion in allocating the tax credits—that should result in dismissal of this case.” Although not specifically referring to the HUD standards, the Supreme Court explained that, even if a prima facie case of disparate impact is shown, defendants such as developers and governmental housing authorities must be given leeway to explain the valid interests served by their policies; which is analogous to the “business necessity” rule that is applied in employment discrimination cases. And, when such a valid justification is shown, the burden rests on the plaintiff, not the defendant, to prove that there is an available alternative with a less disparate impact that serves the defendant’s legitimate needs.

In reaching its decision, the Supreme Court concluded that, “Without disparate [-]impact claims, States and others [would] be left with fewer crucial tools to combat the kinds of systemic discrimination that the FHA was intended to address.”

[Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., 192 L. Ed. 2d 514, 2015 U.S. LEXIS 4249.]

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“And the Survey Says...”, A Brief look at Real Estate Consumer Knowledge and Industry Trends

The real estate industry apparently loves surveys, because hardly a week goes by without the release of a new survey/report addressing market conditions, consumer data and a host of other issues. Here’s a brief look at some releases issued over the last few months.

D.A.N.G.E.R.! The National Association of REALTORS® (NAR) “definitive analysis of negative game changers emerging real estate” (D.A.N.G.E.R.) report provides a list of the 50 major threats and challenges that the real estate industry will face over the next three to five years. For example, the predicted top ten dangers facing agents include “Masses of Marginal Agents Destroy Reputation” “Commissions Spiral Downward” “Teams Threaten the Survival of Brokerages” “IRS Forces Exodus of Independent Contractors” and “The Decline in the Relevancy of Agents”. Top ten danger predictions are also provided for brokers, NAR and its associations, and the MLS. **The report** was commissioned by NAR and authored by the Swaenepoel T3 Group, which conducted research that went beyond a simple survey.

Consumers Don’t Understand Mortgage Availability: Financial services giant Wells Fargo Company says that its recent “How America Views Homeownership” **survey** reflects that over 80 percent of 2,000 responding U.S. adults think they understand the financial processes involved in a home purchase. However, 67 percent think they need a “very good” credit score to buy a home and that a “good” credit score is over 780. Wells Fargo says that a credit score of over 780 is generally considered “excellent,” and over 660 is generally considered “good”. Also, many have a mistaken belief that a 20 percent mortgage down payment is always required even though various options exist, with thresholds as low as three percent.

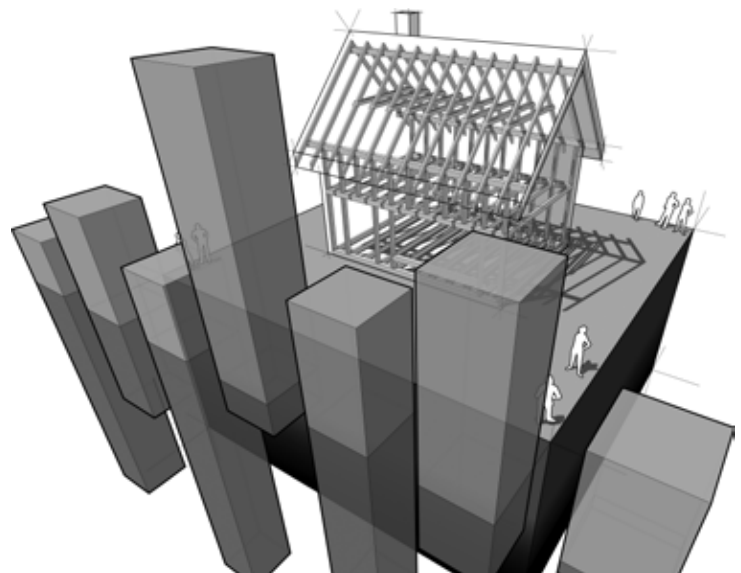
...Or Closing Costs: Closing Corp., a “leading provider of real estate closing cost data and technology...”, released a survey revealing that about two-thirds of “millennials” (ages 18-34) who plan to buy a home are unaware of residential real estate closing costs. According to the survey of over 1,000 adults, 66 percent of millennials were “not very” or “not at all” aware of closing costs. Nearly 60 percent learned about closing costs from realtors [sic] followed by individual research, lenders, escrow entities and others. Industry market research often focuses on millennials (though the term is not used uniformly) because, as described by Closing Corp CEO Brian Benson, “... they are the largest generation so far in U.S. history, and their longstanding impact on the real estate market and economy is going to be huge. Their buying behaviors are much different than previous generations, and of particular concern to the industry is that they are waiting longer to buy their first homes. This study emphasizes the need to better educate [m]illennials, and really all consumers in general, on the real estate closing process.” [Source: ClosingCorp]

What Do Consumers Want? According to “technology-powered” real estate brokerage company Redfin, they want

“...change in real estate”. The web-based company, which offers buyer-side rebates where allowed, conducted a survey of 1,000 recent home buyers and sellers. Sixty-nine percent said they were open to alternatives to traditional real estate agents. Fifty-seven percent said that the technology their agent uses is important, compared to 31 percent who said, “The only thing that matters is the quality of the agent.” According to a **Redfin Blog** post by Alex Starace, responsiveness is the trait most sought by buyers, while sellers favor agents with “experience selling homes like mine”. Forty-nine percent of sellers and 67 percent of buyers had no major complaints about their agents and, of those submitting feedback, the most common responses were that consumers wanted their agents to “fight harder” for them. Nineteen percent of sellers thought their agents “could have done better with online marketing” and 16 percent of buyers wanted their agent to “be an adviser”.

Closing Delays: A recent NAR *Economists’ Outlook* Blog reported that 64 percent of real estate contracts between February and April 2015 closed on time, 26 percent were delayed and 10 percent were terminated. NAR’s May **REALTORS Confidence Index** survey of 1,539 randomly selected REALTORS® reflects that 60 percent also reported that their last contract had some type of issue: 12 percent financing, eight percent inspection and seven percent appraisal. Closing statistics are of particular interest to the industry, especially considering the looming October 3, 2015 implementation date for the Consumer Financial Protection Bureau’s (CFPB) Loan Application and Closing Disclosure forms. Many in the industry are predicting that mandatory disclosure delivery rules may delay large numbers of closings, but the CFPB has suggested that the potential for significant closing delays is being overestimated.

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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.

Name	Complaint#	Hearing Type	Order Date	Violation	Penalty
Bohrer, Michael T	2014-15	Stipulated	04/27/2015	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code subsections 70-02-03-02.1, (2), (3), & (4). Respondents Doerr and Michela may have violated advertising rules by failing to display contact information of their broker on advertisements and by failing to prominently display the trade name of the brokerage on advertisements, and respondent Bohrer is the broker and is responsible for oversight of licensee advertising.	Stipulated to a \$300 fine and payment of \$200 investigative/legal fees both to be paid within 30 days of issuance of order.
Clouse, Jenny L	2014-06	Stipulated	04/27/2015	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(a) & (w). Respondent may have violated license law by failing to pay the agreed settlement amount in the time frame required in the agreement.	Stipulated to a \$300 fine and payment of \$250 investigative/legal fees both to be paid within 30 days of issuance of order.
Doerr, Lori J	2014-15	None	04/27/2015	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code subsections 70-02-03-02.1, (2), (3), & (4). Respondent may have violated the rules and regulations based on evidence of failure to display contact information of her broker on advertisements and failing to prominently display the trade name of the brokerage on advertisements.	Stipulated to a \$300 fine and payment of \$200 investigative/legal fees both to be paid within 30 days of issuance of order.
Fuhrman, Bruce A	2014-04	Stipulated	04/27/2015	Respondents' conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code section 70-02-03-02.1(2) & (4), and sections 70-02-01-10 & 70-02-01-11. The complaint alleged that respondents Hagel & Fuhrman advertised ND properties using the name RE/MAX Signature Properties which is not the brokerage's trade name entity licensed with the ND Real Estate Commission; respondents advertised with no mention of the registered broker company trade name RE/MAX Professionals; and respondent Hagel listed properties for sale with Hagel as the listing agent before Hagel's ND license was transferred to RE/MAX Professionals.	Stipulated to a \$300 fine and payment of \$250 investigative/legal fees both to be paid within 30 days of issuance of order.
Hagel, Jeffrey L	2014-04	Stipulated	04/27/2015	Respondents' conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code section 70-02-03-02.1(2) & (4), and sections 70-02-01-10 & 70-02-01-11. The complaint alleged that respondents Hagel & Fuhrman advertised ND properties using the name RE/MAX Signature Properties which is not the brokerage's trade name entity licensed with the ND Real Estate Commission; respondents advertised with no mention of the registered broker company trade name RE/MAX Professionals; and respondent Hagel listed properties for sale with Hagel as the listing agent before Hagel's ND license was transferred to RE/MAX Professionals.	Stipulated to a \$300 fine and payment of \$250 investigative/legal fees both to be paid within 30 days of issuance of order.

Name	Complaint#	Hearing Type	Order Date	Violation	Penalty
Michela, James D	2014-15	Stipulated	04/27/2015	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code subsections 70-02-03-02.1, (2), (3), & (4). Respondent may have violated the rules and regulations based on evidence of failure to display contact information of his broker on advertisements and failing to prominently display the trade name of the brokerage on advertisements.	Stipulated to a \$300 fine and payment of \$200 investigative/legal fees both to be paid within 30 days of issuance of order.
Schmidt, Bob P	2105-05	Stipulated	05/21/2015	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), subsection NDCC 43-23-12.1(1) and ND Administrative Code sections 70-02-03-05.1, 70-02-03-15.1 & 70-02-03-15.2. Respondent is the broker for a brokerage with repeat findings of failure to consistently use & retain the required buyer representation agreements, customer forms or written disclosures of non-agency agreements.	Stipulated to a \$300 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.
Trautmann, Clyde W	2015-03	Stipulated	04/27/2015	Respondent's conduct may have constituted violations of NDCC 43-23-05 & 43-23-11.1(1)(p) & (w) and ND Administrative Code section 70-02-03-02.1(2), (3), & (4). Respondent may have violated real estate license law by allowing an unlicensed individual to advertise real estate for sale, by failing to display contact information of the brokerage on advertisements, & by failing to prominently display the trade name of the brokerage on advertisements. Respondent is the broker for Keller Williams Roers and is responsible for oversight of advertising.	Stipulated to a \$300 fine and payment of \$200 investigative/legal fees both to be paid within 30 days of issuance of order.

REMINDER TO INACTIVE LICENSEES:

Your inactive license must be renewed annually or it will be automatically cancelled March 1, 2015. This means you must either renew online or complete a 2016 renewal form and pay the appropriate fee by November 15, 2015. Late fees will be assessed after November 15, 2015.

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



REMINDER TO DESIGNATED BROKERS:

Designated brokers **MUST** renew their license and that of their firm **BEFORE** their broker associates and sales associates can be processed as renewed.

To Renew ONLINE

Online renewals begin September 1, 2015 and MUST be completed by November 15, 2015.

ATTENTION Non-resident and reciprocal licensees: Non-resident & reciprocal licensees must submit a current (less than 30 days old) Certificate of Licensure with the renewal.

- Upload with your online renewal
- Email: ndrealestatecom@midconetwork.com
- Fax: 701-328-9750
- To submit by mail send to: NDREC PO Box 727, Bismarck, ND 58502-0727

If you have renewed online in the past you will use the same email address and password to access your information.

If there has been a change, you will need to call our office to have your email address and password changed before you can continue with the online renewal process.

If you have not previously renewed online you can create your account.

Follow These Easy Steps to Renew Your License Online:

1. Go to the Commission's web site at 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".

5. The Payment page gives you the renewal fee and payment options. You will then select the method of payment: Discover, MasterCard or Visa. Upon completion of payment, there will be a confirmation page to print and keep for your records.

6. 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.

7. 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 by email that your license has been renewed for 2016.

8. Non-resident and reciprocal licensees will be notified that your license has been renewed for 2016 once all of the above has been completed AND a current certificate of licensure has been received in our office.

Deadline:

Remember: if you renew online, you must do so by **midnight November 15, 2015**, 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 renew the company license and their license in one transaction once they have created an account under their own name.

Payment Online:

Credit cards accepted: Discover, MasterCard & Visa

Renewal Fees

When submitted by November 15, 2015:

(Submitted means paid online by midnight November 15, 2015 or if submitted by mail, the postmark, not your postage meter mark, on your envelope is on or before November 15, 2015)

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

Payment Online:

Credit cards accepted: Discover, MasterCard & Visa

If submitted on or after November 16, 2015:

(Submitted means paid online after midnight on November 16, 2015 or if submitted by mail, the postmark, not your postage meter mark, is on or after November 16, 2015) 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)
- Broker Associate license fee \$170.00 (\$120 + \$50 late fee)
- Salesperson license fee \$150.00 (\$100 + \$50 late fee)

If submitted on or after December 1, 2015: late fee is \$100 per license

If submitted on or after January 1, 2016: late fee is \$150 per license

If submitted on or after February 1, 2016: late fee is \$200 per license

If submitted on or after March 1, 2016: not accepted - license is cancelled

NEW Renewal Deadlines for 2016 Licenses

- November 15, 2015 – last day to renew without penalty
 - November 16, 2015: add \$50 late fee
 - December 1, 2015 – add \$100 late fee
 - January 1, 2016 – add \$150 late fee
 - February 1, 2016 – add \$200 late fee
- March 1, 2016 – if not renewed license is automatically cancelled without notice

Renew by Mail

- You will need to request a renewal form from your broker or go to our website www.realestatend.org and download a form.
 - **Make sure ALL questions are answered on your renewal form.**
- Submit your renewal form, signed by your broker, with proof of Errors and Omissions insurance, and the appropriate fee.
 - Have your renewal postmarked by November 15, 2015 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.

RENEW ONLINE AT
www.realestatend.org

IMPORTANT Errors and Omissions Insurance Information

ALL RENEWING LICENSEES must submit a Certificate of Coverage for their errors and omissions insurance coverage with their license renewal.

For those with E&O Insurance through RISC:

The errors and omissions insurance premium for 2016 will be \$187.00. (No increase)

If your insurance expires on or before January 1, 2016, and you wish to remain on active status you must renew your error and omissions insurance and provide proof of insurance for 2016 by November 15, 2015 when you renew your license.

The insurance information packet will NOT be sent from the Commission but WILL BE mailed to all licensees' mailing address directly from Rice Insurance Services (RISC), the Commission's offered plan provider.

As always, you are welcome to use the Commission offered plan or obtain your own equivalent coverage. Just remember that you MUST have errors and omissions insurance coverage to maintain an active real estate license.

Attention non-resident and reciprocal licensees!!

Non-resident & reciprocal licensees must submit a current (less than 30 days old) Certificate of Licensure with their renewal. Your ND license will NOT be renewed until we have received the Certificate of Licensure and proof of E&O insurance.

These may be submitted to our office in several ways:

- Upload with your online renewal
- By mail send to: NDREC PO Box 727, Bismarck, ND 58502-0727
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California Supreme Court to Consider Scope of Dual Agency

The California Supreme Court is poised to decide the scope of dual agency relationships in the state and the question of whether a listing salesperson in a residential real estate transaction owes a fiduciary duty to a buyer, even if the buyer is working with a different salesperson from the same firm.

The case of Horiike v. Coldwell Banker [225 Cal. App. 4th 427, 169 Cal. Rptr. 3d 891, 2014 Cal. App. LEXIS 318] involves a brokerage company in California, one of its salespersons who listed a property for sale, and another of its salespersons who worked with the purchaser and plaintiff, Horiike. Horiike worked only with the selling salesperson, except at one showing of the property during which the listing salesperson gave Horiike a flier stating that the property had 15,000 square feet of living area. During the course of the transaction, Horiike signed a statutorily required disclosure form describing the state's three possible real estate agency relationships (seller agency, buyer agency and dual agency) and the duties attributable to each. A part of the form explains that a seller's agent acting under a listing agreement "...acts as an agent for the seller only and has a fiduciary duty in dealings with the seller." Horiike and the seller both signed a confirmation of real estate agency relationships form, also required by the statutes, which identified Coldwell Banker as the dual agent in the transaction.

After the transaction closed, Horiike apparently discovered that the property contained less square footage than represented. He sued, alleging among other claims that Coldwell Banker and the listing salesperson breached their fiduciary duties. During a jury trial, the judge granted nonsuit [dismissal] of the breach of fiduciary duty claim against the listing salesperson, finding that he owed no fiduciary duties to the buyer, and also instructed the jury that Coldwell Banker had no fiduciary liability based on the listing salesperson's acts. The jury returned a verdict in favor of the defendants on the remaining claims, and judgment was entered in their favor.

Horiike appealed to the Court of Appeal of California, which reversed the judgment and remanded the case for a new trial. The appellate court ruled that, "When a broker is the dual agent of both the buyer and the seller in a real property transaction, the salespersons acting under the broker have the same fiduciary duty to the buyer and the seller as the broker." Thus, the court found, when one salesperson obtains a listing and represents the seller, and another salesperson employed

by the same broker represents the buyer, they both act as employees of the same broker and the broker becomes a dual agent representing both parties. The court also noted that, "Salespersons commonly believe that there is no dual representation if one salesperson represents one party to the transaction and another salesperson employed by the same broker represents another party to the transaction. The real estate industry has sought to establish salespersons as 'independent contractors' for tax purposes..., and this concept has enhanced the misunderstanding of salespersons that they can deal independently in the transaction even though they are negotiating with a different salesperson employed by the same broker who is representing the other party to the transaction" [Citation omitted].

The court concluded that the jury should have been allowed to consider whether or not the listing salesperson, as a dual agent, breached his fiduciary duties to the buyer. The court pointed to evidence indicating that the salesperson knew from a previous failed transaction that the square footage had been reflected differently in different documents; advised the unsuccessful purchasers to have the square footage verified (but did not so advise Horiike); and, after the previous transaction failed, changed the MLS listing to reflect that the square footage required explanation. The appellate court thus found that a trier of fact could conclude that the listing salesperson breached his duties by failing to communicate what he knew.

In their petition for review by the California Supreme Court, which has been granted, the defendant brokerage company and the listing salesperson make several arguments, including the assertion that the Court of Appeal ruling "up-ends" settled agency law principles and longstanding practices inside California and elsewhere to the effect that when the buyer and seller have hired their own salespersons it is their common brokerage company, not the individual salespersons, that owes fiduciary duties to both parties.

The case has garnered widespread industry attention and *amicus curiae* ("Friend of the Court") briefs have been filed by numerous brokerage firms, industry associations and other stakeholders.

[Horiike v. Coldwell Banker Residential Brokerage Co., 2015 Cal. LEXIS 2782 (S.Ct. No. 21873400).]

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