OFFICIAL PUBLICATION OF THE NORTH DAKOTA REAL ESTATE COMMISSION

REAL ESTATE NEWS & VIEWS

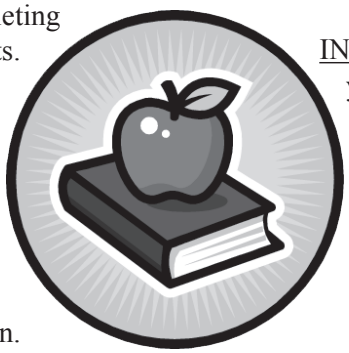
SUMMER 2010

Do You Know

What the CE Requirements are for License Renewal This Year??

Start Planning for Your 2011 Real Estate License Renewal and Get Your Continuing Education Done Now. Beginning 2010 – 9 Hours of CE is Required Annually.

While the opportunity to renew is not yet available, this article is to remind all licensees that license renewal is just around the corner and this is a good time to make sure that you have an idea of where you stand in completing your continuing education requirements. Licensees, with the exception of those newly licensed, are required to have completed 9 hours of continuing education by December 31, 2010. There is NOT a grace period for completing your education. If you do not have the required number of hours for an active license you will need to renew to inactive status until you have completed the required education.



Three of the 9 hours are mandatory. The mandatory course for 2010 is an agency course with emphasis on appointed agency. The Commission selected this course content based on a recommendation from the Appointed Agency Task Force. To date one classroom course has been approved "Agency in the 21st Century", course number MAN1011-017. The mandatory class is also available online, "ND Agency in the 21st Century", course number MAN1011-278.

IF YOU ARE NEWLY LICENSED: You must take 15 hours of continuing education within 1 year after initial licensure as a salesperson. It is your broker's responsibility to provide verification to the Commission office that the 15 hours have been completed.

INACTIVE LICENSE: You must still renew your license even if it is inactive however you are not required to complete the continuing education or carry E&O insurance. If you do not renew your inactive license it will be cancelled.

Commission Member Reappointed

Commissioner Roger Cymbaluk has been reappointed by Governor Hoeven to serve another 5 year term on the Commission. Commissioner Cymbaluk was originally appointed to the North Dakota Real Estate Commission in 1995.

Commissioner
Jerome Youngberg, Chair

Message from the Chair……..

Continuing Education Opportunity Or Oxymoron

Each year as you continue your career as a licensed real estate agent, along with the annual licensing fee and the E & O insurance, you must meet the continuing education requirements. **Effective this year (2010) 9 hours of continuing education is required annually. This is a change from previous years.**

These 9 hours consist of 3 hours of a ND Real Estate Commission approved Agency Course and 6 hours of any ND Real Estate Commission approved courses.

The opportunities include the benefit to you the licensee in knowledge and skills, the course providers, the delivery method and scheduling, all under your control.

There are a wide range of approved courses available. Go to www.realestatend.org and select the "Licensees" tab, then "Education", and finally "Approved Courses". There you will find all of the approved classroom and online courses for this continuing education cycle.

As a commission, we do not see complaints filed against licensees that are skilled and knowledgeable as they provide services to clients and customers.

If you have any questions, contact your broker and/or your ND REAL ESTATE COMMISSION by email, phone or regular mail.

Jerry Youngberg, Chair
ND Real Estate Commission

North Dakota Real Estate Commission

200 E. Main Ave. Suite 204
PO Box 727
Bismarck, ND 58502-0727
Phone: 701-328-9749
Fax: 701-328-9750
Email: ndrealestatecom@nd.gov
Web site: www.realestatend.org

Policy

Neither all nor any portion of the articles published herein shall be reproduced in any other publication unless specific reference is made to their original publication in the ND Real Estate News & Views.

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.

Q & A on Advertising Rule
North Dakota Administrative Code §70-02-03-02.1

1. *Is there a grace period for compliance?*
The commission recognizes getting all existing advertising into compliance will be an ongoing process as new advertising is ordered. However, the effective date of the new rule was April 1, 2008, and it is the responsibility of the designated broker and the licensee to make sure advertising is in compliance with the rule.

2. *Do I have to have my company name and contact information on my home answering machine or on my personal cell phone voice mail?*
Personal numbers are just that, personal. The company name and contact information are not required on the voice mail or answer machine greetings of your personal numbers.

3. *I use my "DID" (direct inward dial) number, that is, the company number that rings directly to my desk, on my advertising materials such as sign riders and written advertisements. Is this acceptable as a company number?*
No, it is not. The company contact information also must be on the advertisement. As the rule states, "advertising must include information on how the pubic can contact the real estate brokerage agency."

4. *We run our open house advertising in the MLS advertisement. Is the full company name and telephone number required if the advertisement is a part of the MLS open house advertisement?*
If an open house advertisement is part of the Board's or Association's MLS open house advertisement, the following guidelines apply:
   - The ad must contain the Board or Association name and contact information, such as telephone number and website address, and
   - Each individual open house advertisement must include the real estate company name as licensed.

5. *Can the contact information be the company's website or email address rather than the telephone number?*
The rule requires advertising include information on how the public can contact the real estate brokerage agency. The purpose is to provide the consumer with a workable means to contact the company, not just the salesperson. Contact information can be any of the following:
   - the company street address
   - the company telephone number
   - the company email address
   - the company website address

6. *How small is too small for the company name on an advertisement?*
The requirement is that the brokerage agency's trade name be **prominently displayed** on advertising. The company trade name, as licensed with the commission, must be easily read and apparent to the public as it views the advertisement.

7. *If I have my company contact information in my twitter profile do I also need to include it on every tweet?*
The intent of the advertising rule is to ensure that it is clear to the consumer who a licensee works for & how to contact that entity. If you have your information in your twitter profile & the consumer can easily access that information it is not necessary to put it on every tweet.

Revised 3/10

Sign on the Line

The Importance of Signed Disclosures and Agreements

By: Constance Hofland
Legal Counsel to the North Dakota Real Estate Commission

Recently, the auditors reported to the Commission that a number of audited files were missing signed agency disclosures and agency agreements. Also, the lack of disclosure, consent, and clear agreements is often at issue in complaints filed with the Commission. This article is to refresh your memory about the disclosures and agreements that are required, the importance of meeting these requirements, and the benefits of getting the parties to sign on the line.

This article is an overview of the requirements. Please refer to the actual statutes and regulations referenced for the specific requirements.

Statutes and regulations require certain things to be in writing and to be signed, key among these are listing agreements, buyer agency agreements, dual agency agreements, and agency disclosure. They are required by law, so that is reason enough to do it. But the reasons behind the legal requirement are even more compelling.

One thing that is common in the complaints filed with the commission is the lack of knowledge or understanding by the client or customer, now the complainant, of what the role of the real estate licensee was and what duties were owed -- or not owed -- to the client or customer.

Now of course, just signing a sheet of paper is not going to eliminate this lack of knowledge or understanding; however, if it is done deliberately, carefully and with the desire to educate, it may. Also, the fact that the signed disclosure and agreement are in the file may be reason enough for a potential complainant to decide against filing that complaint or lawsuit because they know the information was there, that they looked at it and even signed it. More importantly, if the parties read and understand the disclosures and agreements at the beginning of a transaction, conflicts and misunderstandings down the road can be eliminated.

This is a quick review of the requirements. To get you ready for your next audit, I will review the requirements in the order of the four applicable questions on the audit form.

Were Listing Agreements in writing and did they contain the price, commission to be paid, signatures of all parties concerned and a definite expiration date?

Section 70-02-03-04 of the North Dakota Administrative Code (N.D.A.C.) requires a written and signed listing agreement from the seller. This agreement must properly identify the listed property and contain all of the terms and conditions under which the property is to be sold – the price, the commission, signatures of all parties and definite expiration date. Also any "exclusive agency" listing or "exclusive right to sell" listing needs to be clearly indicated and a copy must be given to the seller at the time of selling.

Additionally, section 70-02-03-05 of N.D.A.C. requires that all listing contracts or sales contracts must state the amount of brokerage agreed, either as a specific amount or as a specific percentage.

Section 43-23-11.1(1) (n) of the North Dakota Century Code (N.D.C.C.) also provides that the failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal is grounds for disciplinary action.

Were all Buyer Agreements in writing and did they contain a definite expiration date, commission to be paid, and signatures of all parties concerned?

Before performing any act as a buyer's representative, a licensee is required to obtain a written and signed buyer's broker agreement which must include (1) a definite expiration date, (2) the amount of commission or other compensation, (3) a clear statement explaining the services to be provided to the buyer and the events or conditions that will entitle the licensee to a commission or other compensation, and (4) if dual agency applies, a separate dual agency disclosure statement. N.D.A.C. § 70-02-03-05.1.

Were general agency disclosure forms signed and dated by all consumers?

A licensee who represents any party to a real estate transaction must make an affirmative written disclosure identifying which party the licensee represents in the transaction. This disclosure must be made at the time of the first substantive contact and the disclosure must be in the form of a separate written document, offered to the party for signature. A copy of the disclosure form must be kept in the broker's file. N.D.A.C. § 70-02-03-15.1(2). This section of the administrative code also defines "first substantive contact" and describes the need to update the disclosure if representation by the licensee changes.

Subsection 70-02-03-15.1(7) provides the substance that needs to be included in disclosures for seller representation, buyer representation, and dual agency, as well as general disclosure of the duties owed. This fills almost a whole page of the rule book (page 54 of the 2010 edition), so I refer you to that page for the specifics. For example, subsection 70-02-03-15.1(7) (a) describes seller representation and subagency, clearly stating that "a listing

Continued on page 4

Continued from page 3

agent or subagent can assist the buyer but does not represent that party." It is important for customers, who are not represented by a buyer agent, to understand the limited nature of this assistance. By explaining this, you can eliminate the misunderstanding that the buyer is being represented and the disappointments that may result from that misunderstanding. Such disappointments, as we have seen, often lead to complaints being filed.

A statute also requires disclosure of agency relationships at N.D.C.C. § 43-23-12.1.

For appointed agency, the specific disclosure requirements are in subsection 70-02-03-17(2), N.D.A.C. In summary, this subsection requires a written signed disclosure that includes, at a minimum (1) name of appointed agent, (2) statement that the appointed agent will be the client's agent and will owe fiduciary duties, (3) statement that the agency may represent both seller and buyer, and (4) that a substitute agent may be appointed if the need arises.

Are appropriate buyer and seller agency disclosure forms (dual, appointed) used?

The specific required substance of the disclosure forms are in the statutes discussed above. Please refer to the statutes and administrative code for more detail for what is required for each type of agency.

For example, subsection 70-02-03-15.1 (7) (c), N.D.A.C. spells out what is required for the written disclosure for dual agency:

> 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.

In summary, getting and keeping signed agreements and disclosures is certainly a good idea so you have the needed evidence if a complaint or lawsuit is filed against you, but the real value -- same as the value of any written signed contract -- is that the expectations and roles are clarified so there will be no complaint or lawsuit.

New Chair and Vice Chair Elected

Jerry Youngberg *Jerry Schlosser*

Effective July 1, 2010 Jerry Youngberg, Grand Forks, officially took the position as Chair of the Real Estate Commission and Jerry Schlosser, Bismarck, began serving as Vice Chair. The two will serve in these leadership positions until June 30, 2011.

Tidbits of information

- ARE YOU HAVING YOUR COMMISSIONS PAID TO YOUR CORPORATION, LLC, OR LLP? Do you have that organization (such as those mentioned previously) licensed with the North Dakota Real Estate Commission? If not, then keep reading…. NDCC 43-23.05.1 states that in order to have commissions paid to an organization it must be licensed. The licensing of an organization of a salesperson or broker associate for the purpose of having commissions paid to that organization allows the licensee to participate in the benefits and advantages that such an arrangement has to offer. Application forms are available on our website (www.realestatend.org) under "Licensees" and then "Forms". Then select "Salesperson Corporate LLC License Application.
- COMMISSION MEETINGS ARE OPEN TO THE PUBLIC and that includes real estate licensees. Commissioners welcome and encourage licensees to attend meetings held by the Commission. Meeting dates, time & location can be found on the Commission's web site www.realestatend.org.
- CE REQUIREMENTS FOR 2010 HAVE CHANGED. Licensees must complete 9 hours annually (6 elective, 3 hrs mandatory agency course.)
- NEW LICENSEES: If you have completed your 15 hours of post licensing in 2010 you are exempt from this ce cycle (2010) HOWEVER, if you completed your 15 hours post licensing education in 2009 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

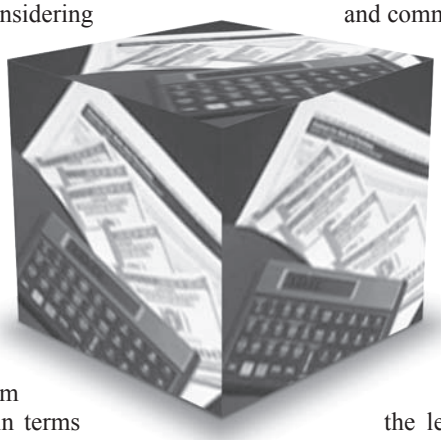
Disciplinary Actions Taken

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
Klebe, Linda M	2009-04	Stipulated	05/18/2010	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(e), (p), (v) & (w) (Failure to account for or to remit any moneys coming into the licensee's possession belonging to others, commingling funds, conduct which constitutes dishonesty or fraudulent conduct, & conduct that does not meet the generally accepted standards of expertise, care or professional ability expected of a broker) and 43-23-14.1 (handling of funds by brokers). ND Admin Code 70-02-01-15(1)(e) commingling prohibited and 70-02-01-15(2)(a) no payments of personal indebtedness of the broker shall be made from the separate account.	Stipulated to suspension of her broker's license for 1 year, $4000 fine ($1000/complaint), payment of $1850 legal/investigative costs both to be paid within 120 days of date of Notice of Entry of Order, attend 3 hrs of education on ethics within 90 days of the date of the Entry of Order (not to be used as part of her continuing education) and Ms Klebe is to provide verification from the ND Attorney General's office that she has complied with the terms of the Consent Order & Judgment in State v Home Town Realty, Inc. v Linda Klebe. These penalties & citing of violations are for Complaint #'s 2009-04, 2009-07, 2009-10, & 2009-11
Klebe, Linda M	2009-07	Stipulated	05/18/2010	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(e), (p), (v) & (w) (Failure to account for or to remit any moneys coming into the licensee's possession belonging to others, commingling funds, conduct which constitutes dishonesty or fraudulent conduct, & conduct that does not meet the generally accepted standards of expertise, care or professional ability expected of a broker) and 43-23-14.1 (handling of funds by brokers). ND Admin Code 70-02-01-15(1)(e) commingling prohibited and 70-02-01-15(2)(a) no payments of personal indebtedness of the broker shall be made from the separate account.	Stipulated to suspension of her broker's license for 1 year, $4000 fine ($1000/complaint), payment of $1850 legal/investigative costs both to be paid within 120 days of date of Notice of Entry of Order, attend 3 hrs of education on ethics within 90 days of the date of the Entry of Order (not to be used as part of her continuing education) and Ms Klebe is to provide verification from the ND Attorney General's office that she has complied with the terms of the Consent Order & Judgment in State v Home Town Realty, Inc. v Linda Klebe. These penalties & citing of violations are for Complaint #'s 2009-04, 2009-07, 2009-10, & 2009-11
Klebe, Linda M	2009-10	Stipulated	05/18/2010	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(e), (p), (v) & (w) (Failure to account for or to remit any moneys coming into the licensee's possession belonging to others, commingling funds, conduct which constitutes dishonesty or fraudulent conduct, & conduct that does not meet the generally accepted standards of expertise, care or professional ability expected of a broker) and 43-23-14.1 (handling of funds by brokers). ND Admin Code 70-02-01-15(1)(e) commingling prohibited and 70-02-01-15(2)(a) no payments of personal indebtedness of the broker shall be made from the separate account.	Stipulated to suspension of her broker's license for 1 year, $4000 fine ($1000/complaint), payment of $1850 legal/investigative costs both to be paid within 120 days of date of Notice of Entry of Order, attend 3 hrs of education on ethics within 90 days of the date of the Entry of Order (not to be used as part of her continuing education) and Ms Klebe is to provide verification from the ND Attorney General's office that she has complied with the terms of the Consent Order & Judgment in State v Home Town Realty, Inc. v Linda Klebe. These penalties & citing of violations are for Complaint #'s 2009-04, 2009-07, 2009-10, & 2009-11
Klebe, Linda M	2009-11	Stipulated	05/18/2010	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(e), (p), (v) & (w) (Failure to account for or to remit any moneys coming into the licensee's possession belonging to others, commingling funds, conduct which constitutes dishonesty or fraudulent conduct, & conduct that does not meet the generally accepted standards of expertise, care or professional ability expected of a broker) and 43-23-14.1 (handling of funds by brokers). ND Admin Code 70-02-01-15(1)(e) commingling prohibited and 70-02-01-15(2)(a) no payments of personal indebtedness of the broker shall be made from the separate account.	Stipulated to suspension of her broker's license for 1 year, $4000 fine ($1000/complaint), payment of $1850 legal/investigative costs both to be paid within 120 days of date of Notice of Entry of Order, attend 3 hrs of education on ethics within 90 days of the date of the Entry of Order (not to be used as part of her continuing education) and Ms Klebe is to provide verification from the ND Attorney General's office that she has complied with the terms of the Consent Order & Judgment in State v Home Town Realty, Inc. v Linda Klebe. These penalties & citing of violations are for Complaint #'s 2009-04, 2009-07, 2009-10, & 2009-11

Concerns Mount Over Private Transfer Fees

The debate over "private transfer fees" (PTFs) appears to be heating up. Several articles raising questions about the practice have recently been published in U.S. real estate-related news and business publications, industry organizations have called on federal agencies to clarify their stance on the issue and an increasing number of U.S state legislatures have enacted or are currently considering new laws that either prohibit or restrict the practice.



PTFs, also referred to as "private reconveyance fees" or "transfer fee covenants" are a relatively recent phenomenon in U.S. real estate transactions. Widely cited as having first surfaced in Texas and California, the fees usually arise from covenants "running with the land" that require a payment to be made every time title to a property passes to a new owner. Transfer fees that must be paid to the beneficiary of the covenant reportedly range from 0.5% to 1.5% of the purchase price and contain terms that ensure their existence for as long as 99 years. In some new housing developments, the fees have been created as a means of generating income for a variety of community benefits including improvement projects, procuring or preserving open space and habitat preservation. In another example, the fee was used to reach a monetary settlement with environmental groups that were initially opposed to a residential development in California. The developers funded the settlement by the imposition of a private transfer fee amounting to 1% of the future sale price of hundreds of affected homes. In other cases, transfer fee covenants are designed only to provide income streams for developers, investors and, sometimes, individual property owners.

The Debate Over Legal, Economic and Transactional Outcomes of PTFs

The legal debate over PTFs rest, in part, on intricate questions of whether such covenants constitute an impermissible attempt on the part of the covenantor to retain part of the conveyed fee simple estate and/or whether such fees create prohibited restraints on alienation, meaning the free right of subsequent owners to convey "fee simple" title to the property. No known, dispositive court decisions examine these issues in the context of PTFs and, until a few years ago, no state laws addressed the practice.

The debate over PTFs is also rooted in the unknown potential economic and other consequences of such arrangements. In February, the American Land Title Association (ALTA) issued a white paper entitled, *"Private Transfer Fee Covenants and Their Consequences for Real Property"*. The paper suggests that, while it is not yet clear how these covenants will ultimately affect consumers, there is a strong potential for negative outcomes. The paper suggests that, among other things, such arrangements may steal equity from consumers, cost consumers money, depress home prices and reduce transparency and exploit the complexity of real estate transactions. On the other hand, at least one company strongly favors the practice. New York-based Freehold Capital Partners markets a program that it says "... helps the owners of real estate projects apportion infrastructure and development costs in a fair and equitable way through the use of reconveyance fee financing." A press release issued in April, sourced to Freehold Capital, announced the publication of an article entitled, *"The Economics of Private Transfer Fee Covenants"* by land economist Dr. Tom McPeak. The author extols the benefits of PTFs as a win-win-win situation: "For developers, transfer fees help reduce the sales price of their properties, since all the infrastructure development costs do not need to be recouped from the initial sale...; for the homebuyer, market forces dictate that homes with transfer fee covenants will be cheaper to buy than those without such obligations...; and communities benefit because a portion of the income is typically dedicated....[to] support... non-profit community-based charitable organizations...".

There is also a concern that these kinds of arrangements are likely to cause ongoing transactional problems. Among those are title search difficulties in locating and identifying such arrangements in the covenants, conditions and restrictions (CC&Rs), appraisals that don't take such covenants into account, consumers who are not aware of the fees until closing, delayed or cancelled transactions and, ultimately, unmarketable titles arising from questions about the legality and enforceability of such arrangements.

ALTA's white paper urges consumers, policymakers, real estate professionals and other stakeholders to evaluate and assess the consequences of PTF covenants.

Federal Agencies Pressed to Clarify Position on PTFs

In March, the National Association of REALTORS® (NAR) and ALTA sent a joint letter to U.S. Federal Housing Commissioner David H. Stevens, asking the Department of Housing and Urban Development (HUD) to clarify its position prohibiting the use of private transfer fees for FHA-insured mortgages and to oppose private transfer fees for other mortgages, as well. In the letter, the two associations expressed their concerns that such fees will increase the cost of homeownership and that "...there is virtually no oversight on where or how proceeds can be spent, on how long a private transfer tax may be imposed, or on how the fees should be disclosed to home buyers." The groups say that at least one company is reportedly negotiating with institutional investors to "securitize" pools of transfer fees, which will essentially create bonds that can be sold on a secondary market, based on future cash flows. Both NAR and ALTA believe that these fees generate revenue for developers and investors but often provide no service for homebuyers.

According to NAR's *REALTOR® Mag* online publication, HUD responded in April by clarifying that such fees attached to FHA properties would be a violation of HUD regulations. NAR says that it is awaiting word from the U.S. Federal Housing Finance Agency (FHFA) for clarification of its position on the use of the fees for Fannie Mae, Freddie Mac and Federal Home Loan Bank mortgage purchases.

Current State Legislation

Nine U.S. jurisdictions (Florida, Missouri, Kansas, Oregon, Arizona, Iowa, Maryland, Utah and, most recently, Minnesota) have enacted laws that prohibit or restrict private transfer fees. In addition, Texas laws prohibit private transfer fees with respect to residential properties only, and California has enacted statutes that impose recordation and pre-closing disclosure requirements on the practice. At least a dozen other states are considering prohibitive or restrictive legislation.

Published with permission from ARELLO®

ARELLO® Fraud Alert: Earnest Money Scam Re-Emerges

A real estate scam involving fraudulent earnest money deposits has emerged in several ARELLO® jurisdictions. The scam, which is new in some jurisdictions and not-so-new in others, has been reported by several regulatory agencies and on real estate-related social networking sites, blogs and other media. Although largely anecdotal in nature, reports indicate that scammers are initiating real estate transactions, forwarding phony earnest money deposits and then finding ways to obtain a "refund" of the earnest money deposit that never really existed in the first place.

Like most fraud schemes, the earnest money scam has numerous variations, but some of the scenarios being unofficially reported lend themselves to a generalized hypothetical composite: A purported buyer from a country that is foreign to the targeted real estate broker locates real property on the internet using an online listing service. The "buyer" contacts the broker, usually by e-mail, offering to purchase the property. At some early stage in the transaction, the "buyer" may forward cleverly forged indentifying documents such as a passport, a travel itinerary (perhaps reflecting travel plans to be present to inspect the property and close the transaction) and bank statements showing false assets. In connection with the execution of the purchase contract, the buyer forwards a deposit using a forged or otherwise fraudulent financial device such as a very legitimate-looking check drafted on an account at a foreign bank or other financial entity. In order for the scheme to bear fruit, the amount of the deposit far exceeds the earnest money or other initial deposit that is required by the terms of the contract. After receipt, the check is deposited by the title company, attorney or by the real estate brokerage into its trust account.

Shortly after the deposit is submitted, the "buyer" or his/her representative reports that intervening events require that some or all of the earnest money deposit be returned. A "Fraud Alert" issued by the Oregon Department of Justice addresses a similar version of the scam directed at both real estate professionals and attorneys. In that example, a representative of the buyer, also purportedly from the foreign country, indicated that the deposited funds were sent out of the country without appropriate government authority and must be immediately returned to clear the country's governmental regulations and to avoid sanctions and penalties. Other reports indicate that a family emergency or some other compelling reason is cited for the requested refund, sometimes accompanied by instructions to forward the money to a third party. In any event, if the demand is made and acceded to before the fraudulent nature of the deposit check or other financial device is discovered, the refund is accomplished using existing "good funds" from the account into which the "deposit" was made.

Trenton Hogg, Executive Director of the Wyoming Real Estate Commission, recently alerted licensees in the state of a similar scam, saying that perpetrators are focusing on real estate agents and banks located in small towns, perhaps with the expectation that there may be less familiarity with foreign financial instruments and additional delays in the eventual discovery of the fraud.

The May issue of *The Register*, a publication of the Saskatchewan, Canada Real Estate Commission (SREC), also reported a similar "Fraudulent Deposit Cheque Scheme". According to the article, over the last twelve months the Commission became aware of at least a half dozen separate instances in which buyers delivered forged or counterfeit cheques in consideration of or for the completion of a contract of purchase and sale. According to SREC, the certified and/or forged cheque scam has circled throughout North America for a number of years and varies depending on the intended recipient. SREC is advising brokers that funds should not be released when excess payments are made until verification that the funds have cleared has been received through the applicable financial institution. Registrants and/or a brokerage's administrative staff are also encouraged to report such instances to their local police department for investigation.

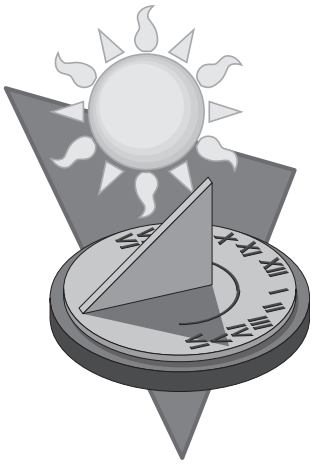
Also in May, the Real Estate Council of Ontario (RECO) posted a "Fraudulent Cheque Alert" on its website, advising that the Canadian law firm of Cassels, Brock and Blackwell, LLP had announced that it may have been victimized by a similar scheme. RECO's alert says that individuals have been contacting real estate and law offices and arranging to purchase properties without a face-to-face meeting. A bogus cheque arrives for an amount significantly higher than the deposit required with a note to send the excess funds to a furniture company to furnish the home.

Verifiable information on the number of such schemes that have been successful is not readily available. Anecdotal reports indicate that, while some brokers, title companies and lawyers have fallen victim to these scams, others have been able to detect the fraud prior to release of the deposited "funds".

As fraud perpetrators work to ensure that they are perceived as real buyers depositing good funds, legitimate international real estate transactions continue to increase, at least in the U.S. According to the National Association of REALTORS® (NAR), current economic factors are continuing to drive international interest in U.S. real estate. According to the association's *2010 Profile of International Home Buying Activity*, 28 percent of its member REALTORS® reported working with at least one international client in the past year, a significant increase from the 2009 statistic. Eighteen percent of all REALTORS® were estimated to have completed at least one sale involving a non-U.S. buyer, compared to 12 percent last year. International buyers came from 53 different countries around the world. The top four countries were Canada, Mexico, the United Kingdom and China/Hong Kong.

[This article is not intended to suggest or imply that any particular transaction, entity or financial device is, in fact, fraudulent in nature or to refer to any specific individual or practice.]

Reprinted with Permission from ARELLO®



EDUCATION CORNER

- The continuing education cycle for North Dakota licensees is 9 hours annually. Licensees must complete 9 hours of ce (3 of which are in a mandatory course) prior to renewing their licenses for 2011. Accepted ce must be taken between January 1, 2010 and December 31, 2010.
- The **mandatory course for 2010** is an agency course with emphasis on appointed agency. The Commission selected this course content based on a recommendation from the Appointed Agency Task Force. To date one classroom course has been approved "Agency in the 21st Century", course number MAN1011-017. The mandatory class is also available online, "ND Agency in the 21st Century", course number MAN1011-278.
- 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!
- *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.
- 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.
- 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

North Dakota Real Estate
News & Views is an
Official Publication of the
North Dakota Real Estate Commission
Editor.....Pat Jergenson

North Dakota Real Estate Commission
P.O. Box 727
200 E. Main Ave. Suite 204
Bismarck, ND 58502-0727