



REAL ESTATE

WINTER

2013

NEWS & VIEWS

“Even with an appointed Agency Policy, Sometimes Dual Agency is the Only Way”

Constance Hofland

Legal Counsel to the
North Dakota Real Estate Commission



The Commission recently got a question on dual agency from a broker of a smaller agency in North Dakota. This broker, himself, is a listing agent for some of the properties listed by his brokerage. The broker

was wondering if there is a way around dual agency if the buyer, represented by a salesperson under that broker, wants to buy the property that is listed by the broker himself.

In other words, the question was, “Is there a way to allow representation of the seller by the designated broker and representation of the buyer by another appointed agent, under that same broker, without having to kick in dual agency?”

I don't see a way around the dual agency designation in this situation. By rule, the appointed agent has a duty to the “designated broker” to keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction. Also, the appointed agent is required to notify the designated broker of any other activities that

might affect the responsibility of the designated broker. N.D.A.C. § 70-02-03-17 (3).

However, there is a provision for re-appointment of an appointed agent at N.D.A.C. § 70-02-03-17(2)(a)(4) if the appointed agent is not able to fulfill the terms of the agreement or by agreement between the designated broker and the client. So, if the designated broker is the appointed agent for the seller and an appointed agent under that designated broker represents a buyer who wants to buy the seller's property, then applying N.D.A.C. § 70-02-03-17(2)(a)(4), a designated broker supposedly could assign another appointed agent in the designated broker's place to represent the seller. However, with such a re-appointment, that now “un-appointed” agent, who is the designated broker for the brokerage, still owes that client all of the fiduciary duties. (See N.D.A.C. § 70-02-03-17(2)(a)(4)).

So I don't see how that designated broker can really be reassigned or “un-appointed”, given the continuing duties and the function the designated broker plays as a sounding board for the other appointed agents. If this did happen, I think the situation converts to dual agency because the designated broker can't “unknow” things and still has the job of being the point person for the appointed agents.

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:

- By mail send to: NDREC PO Box 727, Bismarck, ND 58502-0727
- Email: ndrealestatecom@midconetwork.com
- Fax: 701-328-9750

It's time to renew your real estate license (Active and inactive) for 2014.

Check inside for 2014 license renewal information!





We've moved !!!!!

*You can find us at:
1110 College Dr.
Suite 207
Bismarck, ND 58501*

North Dakota Real Estate Commission

1110 College Dr. Suite 207
PO Box 727
Bismarck, ND 58502-0727
Phone: 701-328-9749
Fax: 701-328-9750
Email: ndrealestatecom@nd.gov
Web site: www.realestatend.org

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Policy

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

reminder

INACTIVE LICENSEES:

Your inactive license must be renewed annually or it will be automatically cancelled March 1, 2014. This means you must either renew online or complete a 2014 renewal form and pay the appropriate fee.

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



REMINDER TO PRINCIPAL BROKERS

Principal brokers **MUST** register and renew **BEFORE** their broker associates and sales associates can be renewed.

EDUCATION INFORMATION

Continuing Education Requirements for 2014 License Renewal

Basic information:

Total ce needed:9 hours taken in 2013

Deadline:December 31, 2013 - Courses must be completed PRIOR to license renewal.

Courses to take:9 hours in approved *elective courses*

FAQs:

Q: In what time frame do courses have to be taken to count toward the 2014 renewal?

A: Courses taken between January 1, 2013 and December 31, 2013 meet the continuing education requirements to renew your license for 2014. **Continuing education must be completed prior to completing your license renewal.**

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 (2013) 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 continuing education in that state can be used to fulfill the 9 hours of continuing education for North Dakota.

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 2013 you are exempt from this CE cycle (2013).

HOWEVER, if you completed your 15 hours post licensing education in 2012 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

In Memory

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

Hans T. Aakre
Fargo, ND

Richard P. Bernardy
Larimore, ND

Evonne D. Choukalos
Bismarck, ND

Charles J. Fischer
Long Lake, SD

Donald Haberman
Minot, ND

Nila Heinle
Bismarck, ND

Terry L. Robinson
Bismarck, ND

New Law Impacts Flood Insurance Policies

By Rick Clayburgh, President and CEO
North Dakota Bankers Association
rick@ndba.com

With the record spring rainfall here in the Dakotas, it is important to be aware of recently passed federal legislation that is expected to have a big impact on flood insurance. The Biggert-Waters Flood Insurance Reform Act of 2012 was signed into law July 6, 2012. In addition to reauthorizing the National Flood Insurance Program through September 30, 2017, the bill brings several substantive changes to the program, including several that alter the way premium rates are calculated.

The law requires that increased flood insurance premiums be phased in and existing premium subsidies be phased out. As a result, property owners in “Special Flood Hazard Areas” may see more expensive insurance rates—in some cases significantly more—than what they are currently paying. The new premiums will reflect the true flood risk of homes and businesses. Premiums have the potential to increase by as much as 25 percent per year for the next four years until full-risk rates are reached.

It is important that property owners repairing and rebuilding structures after storms understand these changes so they can make sound and informed decisions about whether they want to place additional resources in an impacted area, and so they can understand the financial implications of doing so. These include not only questions of rebuilding destroyed homes but repairing them, too. For example, should I replace a damaged water-heater in my basement or should I consider moving it upstairs?

Flood insurance premiums are calculated based on Federal Emergency Management Agency maps and the minimum building requirements for the region. An owner whose home or business is built in compliance with those minimum building requirements, or exceeds those standards, will be at an advantage. Their premiums may still go up but will be lower than those for homes that do not meet the minimum requirements. If you’re rebuilding after a flood, it is important to consult FEMA maps prior to construction. Building in compliance with base flood elevation standards could protect your financial future.

Here are four things to expect from the Biggert-Waters Flood Insurance Reform Act:

1. Automatic increases: Policy rates for primary residences are automatically subject to increases if there has been change in ownership, a lapse in coverage, a change in flood risk according to new FEMA flood maps, or substantial damage or improvement to a building.
2. Diminishing discounts: Existing subsidies for second homes, rental homes, businesses or repetitive loss properties are eliminated. “Grandfather” clauses will also be eliminated, meaning all rates will be based on the building’s compliance with current flood zone recommendations, not the standards when the building was first built.
3. Updated flood zone maps: FEMA is redrawing flood zone maps across the country. That means buildings that weren’t in a flood zone before might be in one now, or in a higher-risk zone. These zones determine minimum building requirements and whether you meet these minimums determines what your insurance will cost.
4. Higher annual increases: In the past, annual premium increases were limited to 10 percent; that limit is now 20 percent.

FEMA offers three programs to reduce your risk and help you save money on flood insurance. To see if you qualify, visit www.fema.gov. For more details on the Biggert-Waters Flood Insurance Reform Act, visit www.nhama.info/nhama-biggert-article/ or call the National Flood Insurance Program Help Center at 1-800-427-4661.

You can also visit the following FEMA websites for more information:

www.ready.gov/floods;
www.fema.gov/region-vi/national-flood-insurance-program-reform-frequently-asked-questions; or www.floodsmart.gov/floodsmart/pdfs/fema_flood_brochure.pdf

Reprinted with permission from Rick Clayburgh, North Dakota Bankers Association



To assist a broker who is considering operating a real estate brokerage or one who is looking for ways to improve their current office policy, the Association of Real Estate Officials (ARELLO®) has created “A Broker’s Guide to Creating a Policy and Procedure Manual”. ARELLO® prepared this resource as a basic template that can be modified by brokers to fit the particular set of policies, laws and rules in their respective jurisdictions. Brokers are encouraged to seek legal counsel in the development of their specific company policies and procedures. To view and/or download your copy go to our website www.realestatend.org and click on the “Resource Library” tab, there you will find it under “Guidelines”. We think you will agree that this is an excellent resource.

Renew ONLINE

Online renewals open up November 1, 2013.

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.

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

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 using these directions.

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 that your license has been renewed for 2014.
8. Non-resident and reciprocal licensees will be notified that your license has been renewed for 2014 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 **December 31, 2013**, 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, 2013:

(Submitted means paid online by midnight December 31, 2013 or if submitted by mail, the postmark, not your postage meter mark, on your envelope is on or before December 31, 2013)

- 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

If submitted on or after January 1, 2014:

(Submitted means paid online after midnight on December 31, 2013 or if submitted by mail, the postmark, not your postage meter mark, is on or after January 1, 2014) 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 February 1, 2014:

(Submitted means paid online after midnight on January 31, 2014 or if submitted by mail, the postmark, not your postage meter mark, is on or after February 1, 2014) a \$100 late fee will be assessed.

- Corporate/firm license fee \$250.00
($\$150 + \100 late fee)
- Broker license fee \$220.00
($\$120 + \100 late fee)
- Broker Associate license fee \$220.00
($\$120 + \100 late fee)
- Salesperson license fee \$200.00
($\$100 + \100 late fee)

Renewal Deadlines for 2014 Licenses

- December 31, 2013 – last day to renew without penalty
- January 1, 2014 – add \$50 late fee
- February 1, 2014 – add \$100 late fee
- March 1, 2014 – 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 December 31, 2013 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.

Warning: Do Not Submit Your Renewal Before You Have Completed Your CE

Since 2008 licensees have been required to certify on their renewal form that they have completed the continuing education hours as required by statute. In addition the designated broker certifies that he/she has also reviewed the licensee's continuing education and that said licensee is in compliance. The Commission staff has noticed that some licensees sign the renewal form certifying that they have completed the required continuing education (ce) when in fact, they have not, and that some designated brokers have signed the renewal form without determining whether the licensee has actually completed the ce.

It is important to remember that it is the responsibility of both the licensee and designated broker to ensure that the renewal form is true and complete, including the completion of ce. If a renewal is submitted and it is later determined that the ce course requirements had not been completed when the renewal was submitted, the renewal application would be considered a false application. This could have serious ramifications for the licensee.

The Designated broker is required to certify that each renewing licensee in their firm has met all continuing education (ce) requirements for renewing the license. The Designated Broker may not/should not certify that a licensee is in compliance with the ce requirements until the licensee has actually completed the ce hours.

The Commission and staff appreciate the diligence of designated brokers in ensuring that the licensees engaged with their brokerage have completed the ce requirements prior to license renewal. Remember the days each licensee was required to attach copies of their ce certificates to their renewal form? Aren't you glad those days are gone??

NDREC Renews Errors & Omissions Contract with RISC

We are pleased to announce that the Commission has named Rice Insurance Services Company, LLC (RISC) as the group insurance carrier. The group carrier for the 2014 program is Continental Casualty Company, a member of the CNA Financial Corporation's group of insurance companies. The premium is \$187/year per licensee. Information regarding the 2014 group program will be mailed to all licensees. The contract was renewed under the following terms and conditions: \$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

Court Cases of Interest

Written Agency Contract Requirement

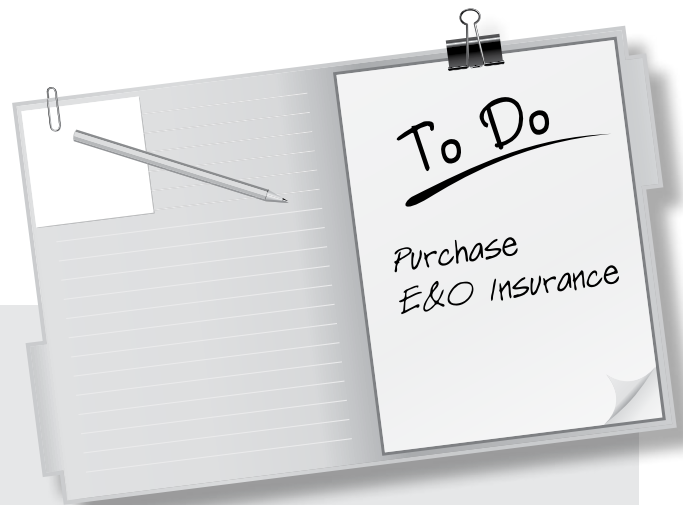
Foley v. S.D.R.E.C., 598 N.W.2d 217 (1999)
Supreme Court of South Dakota

Facts: Foley, a licensed broker, apparently listed a commercial property belonging to Dr. Sabow. He then handled a series of unrelated transactions in which Sabow was both buyer and seller. Ultimately, Sabow became dissatisfied with Foley and filed a complaint against him with the South Dakota Real Estate Commission. The Commission fined Foley and put him on probation for a number of offenses including dealing with Sabow in bad faith, making misrepresentations and purporting to act as Sabow's buyer agent without a written buyer agency agreement. Foley appealed and his case eventually reached the South Dakota Supreme Court.

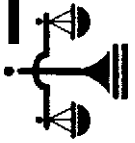
Issue: Foley contended that the Commission did not have "clear and convincing" evidence of a violation before it because his testimony conflicted with Sabow's. Foley said he sent Sabow a buyer agency agreement and Sabow wouldn't sign it. Sabow denied this. Foley also asserted his authority under the listing agreement gave him authority to act as Sabow's buyer agent in an exchange.

Held: The Supreme Court upheld the Commission's decision saying that although "clear and convincing" evidence is more than the "preponderance" standard used in civil cases, it still allows the agency to resolve credibility issues between witnesses with conflicting stories. The court agreed with the Commission that South Dakota's written buyer agency requirement required a real written buyer agency agreement, not merely implied authority from a listing contract.

Continued page 11



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#	HearingType	Order Date	Violation	Penalty
Bachmeier, Eden "Edie" K	2013-05	Stipulated	05/22/2013	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), NDCC 43-23-14.1 and ND Administrative Code section 70-02-01-15(3). Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to reconcile trust account liabilities on a monthly basis.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order & shall submit bank statement, bank reconciliation & vendor balance summary report by the 15th of each month for 12 months starting the month immediately following the date of the Notice of Entry of Order as proof of implementing a procedure to balance liabilities to reconciled cash each month.
Becker, Lavata L	2013-11	Stipulated	06/21/2013	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 70-02-03-04, 70-02-03-05.1, 70-02-03-15.1 & 70-02-03-15.2. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to consistently use general agency disclosure forms and buyer agreement forms.	Stipulated to a \$250 fine and payment of \$280 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 her continuing education).
Bleth, Gary L	2013-09	Stipulated	06/21/2013	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 70-02-03-15.1 & 70-02-03-15.2. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to consistently use general agency disclosure forms and buyer agreement forms.	Stipulated to a \$250 fine and payment of \$280 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).
Chaussee, William A	2013-10	Stipulated	05/22/2013	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), NDCC 43-23-14.1 and ND Administrative Code section 70-02-01-15(3). Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failing to reconcile trust account liabilities on a monthly basis.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order & shall submit bank statement, bank reconciliation & vendor balance summary report by the 15th of each month for 12 months starting the month immediately following the date of the Notice of Entry of Order as proof of implementing a procedure to balance liabilities to reconciled cash each month. Respondent shall take 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).
Crary, Timothy L	2012-19	Stipulated	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(e), (p), (t) & (w) and ND Administrative Code section 70-02-01-15. Respondent may have violated the rules and regulations based on evidence of repeated possible violations in the last three audits of twelve trust liabilities that were over 3 years old and repeated violations in the last four audits of failures to deposit earnest money funds in the trust account within the required time.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.

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#	HearingType	Order Date	Violation	Penalty
Frenzel, Joe J	2013-07	Stipulated	05/22/2013	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p), (q), & (w), subsection NDCC 43-23-12.1(1) and ND Administrative Code sections 70-02-03-15.1 & 70-02-03-15.2. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to consistently complete general agency disclosure forms and buyer agency forms.	Stipulated to a \$250 fine and payment of \$280 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).
Haake, Laurel J	2012-15	Stipulated	12/20/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p), (t) & (w), subsection NDCC 43-23-12.1(1) and ND Administrative Code section 70-02-03-15.1. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to deposit earnest money funds in the time frame required and failure to consistently use general agency and buyer agency forms.	Stipulated to a \$250 fine and payment of \$280 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 her continuing education).
Henderson, Lori L	2012-07	Stipulated	08/23/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(i) by offering real property for sale without the knowledge or consent of the owner or owner's authorized agent or on any terms other than those authorized by the owner or agent.	Stipulated to a \$500 fine and payment of \$750 investigative/legal fees both to be paid within 30 days of issuance of order.
Jiskra, Jean A	2012-17	Stipulated	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(e), (p), & (w) and 43-23-14.1 and ND Administrative Code sections 70-02-01-15 and 70-02-03-12. Respondent may have violated the rules and regulations based on evidence of repeated possible violations in the last three audits of three trust liabilities that were over 3 years old.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.
Kuenzel, Derrick M	2012-18	Stipulated	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(e), (p), & (w) and ND Administrative Code section 70-02-01-15(3). Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failing to prepare bank reconciliations with detail of trust liabilities in the prior two audits and which had not been addressed at the time of the 2012 audit, or by August 16, 2012 the date required by the Commission.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.
Louser, Scott C	2011-07	Formal	07/12/2012	Found in violation of NDCC 43-23-11.1(w). Louser did not meet the generally accepted standard of practice expected of real estate brokers by not timely clearing the nine old liabilities out of the trust account and turning them over to unclaimed property after repeat notice from the auditors.	Letter of reprimand was issued and will remain permanently in Mr. Louser's file.

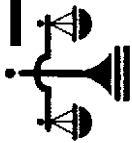
Disciplinary Actions Taken



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Name	Complaint#	HearingType	Order Date	Violation	Penalty
Nelson, Dennis G	2012-11	Stipulated	12/20/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(b),(h),(p), (v), (i) & (w), subsection NDCC 43-23-12.1(1) and ND Administrative Code sections 70-02-03-04, 70-02-03-05 & 70-02-03-15.1(7)(c). Respondent may have violated the rules and regulations based on evidence Nelson failed to include all terms & conditions of the commission to be paid in the listing agreement, he claimed the sellers would not pay the buyer broker commission; may have breached duties he owed to the sellers; may have failed to produce all documents and records as requested by the Commission and may have failed to meet the generally accepted standards of expertise, care or professional ability expected of a real estate broker.	Stipulated to a \$250 fine and payment of \$1200 investigative/legal fees both to be paid within 30 days of issuance of order.
Pierce, Don P	2013-06	Stipulated	05/22/2013	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 70-02-03-15.1, & 70-02-03-15.2. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to use buyer agency forms.	Stipulated to a \$280 fine and payment of \$280 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).
Ritterman, Kevin C	2012-23	Stipulated	12/20/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), NDCC 43-23-12.1 and ND Administrative Code section 70-02-03-15.1. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to use buyer representation and general agency disclosure forms for every residential transaction.	Stipulated to a \$280 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.
Schmidt, Bob P	2013-08	Stipulated	05/22/2013	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 & 70-02-03-15.2. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to consistently use buyer agreement forms.	Stipulated to a \$250 fine and payment of \$280 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).
Sims, Michael G	2012-22	stipulated	05/22/2013	Respondent's conduct may have constituted violations of NDCC 43-23-12. Respondent may have violated the statute by not providing the Commission with an accurate address for his firm.	Stipulated to a \$250 fine and payment of \$600 investigative/legal fees both to be paid within 30 days of issuance of order.
Steinle, Norman D	2012-21	Stipulated	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), 43-23-12.1 and ND Administrative Code section 70-02-03-15.1. Respondent may have violated the rules and regulations based on evidence of repeated possible violations in the last three audits of failing to use buyer representation and general agency disclosure forms for every home transaction.	Stipulated to a \$280 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.

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#	HearingType	Order Date	Violation	Penalty
Tranby, Orville G	2012-16	None	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code section 70-02-01-15 including subsections 70-02-01-15(3) (e) & (f). Respondent may have violated the rules and regulations based on evidence of repeated findings of failure to keep individual ledger sheets showing receipts and disbursements as they may affect a single transaction and failure to reconcile trust account bank statement monthly as required..	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.
Voegele, Jerome G	2013-04	Stipulated	06/21/2013	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p) & (w), NDCC 43-23-12.1(1) and ND Administrative Code sections 70-02-03-04, 70-02-03-15.1 & 70-02-03-17. Respondent may have violated the rules and regulations based on evidence of repeated possible violations of failure to accurately & consistently complete forms including (1) failing to consistently have general agency forms signed by the seller or buyer, (2) indicating appointed agency on forms but failing to include appointed agency in policy and (3) failure to properly complete the agency disclosure line on the purchase agreement.	Stipulated to a \$250 fine and payment of \$280 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).
Vollmer, Leann R	2012-20	Stipulated	10/17/2012	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(p), (t) & (w) and ND Administrative Code section 70-02-01-15. Respondent may have violated the rules and regulations based on evidence of repeated possible violations in the last four audits of failure to deposit earnest money funds in the time frame required.	Stipulated to a \$250 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.

Number of Records: 20

Dual Agent's Fiduciary Duty

New Jersey Real Estate Comm'n v. Petridis, 2011 N.J. Super. Unpub. LEXIS 2741 (2011), New Jersey (2011)
Superior Court of New Jersey, Appellate Division

Facts: Petridis was a licensed salesperson and Steadman was his broker supervisor. Osprey, Inc., a builder/ developer, signed a listing agreement with Petridis' firm to market lots within Osprey's subdivision. The listing agreement allowed dual agency. Petridis acted as dual agent for a \$444,000 contract between Osprey and Vizzi, one of Petridis' repeat clients. While that contract was pending, Petridis was approached by another buyer, Kedar. All of the constructed Osprey homes were under contract and Kedar did not want to wait for a house to be constructed. Petridis did not inform Osprey of Kedar's interest in buying a home. He instead brokered a \$575,000 contract between Kedar and Vizzi for the same house already pending contract, again acting as dual agent. The contract did not note that Vizzi did not yet own the property. Petridis consulted with Steadman and they determined that they had no duty to disclose Kedar's interest to Osprey. Upon discovery, Petridis' firm's managing partner filed a complaint with the NJREC. After a hearing, the REC suspended both their licenses, concluding Petridis made substantial misrepresentations, Steadman had failed to properly supervise Petridis, and both had engaged in conduct demonstrating unworthiness and bad faith, among other violations of license law. Both brokers appealed the REC's Order.

Issue: Whether a dual agent had a fiduciary duty to inform the seller about an interested buyer.

Held: Affirmed. A provision in the listing agreement that the broker did not have to present offers to the seller for a property already under contract did not negate the brokers' fiduciary duty to disclose all material facts and it was material to Osprey that a buyer was interested in buying a home in its subdivision.

Fraud

Jim's Plumbing & Heating v. Salvaggio, 2012 Me. Super. LEXIS 9 (2012), Maine (2012)
Superior Court of Maine

Facts: Bedford Falls obtained loans from HLIB to purchase a property in hopes to develop the property into a small business complex. Salvaggio, sole member and officer of Bedford Falls, approached Michaud, the owner of Jim's Plumbing & Heating, to perform the plumbing and HVAC work for the entire property in phases. Bedford Falls spent most of the loan money completing phase one, owing Jim's Plumbing \$52,000 and knowing that the total plumbing and HVAC work would cost \$100,000. Bedford Falls would need an additional \$350,000 to complete the whole project. Salvaggio got a letter from HLIB saying he was in the process of getting additional financing, when in fact he was not. Michaud continued working. Salvaggio convinced Michaud to take over the banquet center with a \$3,000 monthly lease and to renovate it, and in return Salvaggio agreed to lease the banquet center back from Michaud for \$4,000 a month once he had his additional financing. Bedford Falls leased the banquet center to Michaud, who drew on a personal home equity line of credit to make rental and renovation payments. Salvaggio elicited additional funds from Michaud. Michaud also signed a release letting Salvaggio and Bedford Falls out of all liability for everything he owed to Michaud. Salvaggio told Michaud he needed to sign the release to get paid when the financing came. Michaud finally brought suit against Salvaggio and Bedford Falls for breach of contract, quantum meruit, fraud, piercing the corporate veil, and a mechanics lien claim against Home Loan.

Issue: Whether the actions of Salvaggio constituted breach of contract, fraud, and piercing of the corporate veil. Whether Michaud could recover under quantum meruit and a mechanics lien claim.

Held: The court ruled in favor of Michaud. They found by clear and

convincing evidence that Salvaggio made misrepresentations to Michaud and that he fraudulently induced Michaud in several instances. The court held that Salvaggio, through Bedford Falls and personally, owed Michaud and his companies for all the work they did including all the rent they paid and all the other monies he fraudulently induced from him. Michaud was even awarded punitive damages because of Salvaggio's malicious behavior. Also, Home Loan was held liable on the mechanics lien claim because through its actions of monitoring the property it consented to the work that Michaud's companies were doing.

Actual Knowledge

New Jersey Real Estate Commission v. Piemontese, 2011 N.J. Super. Unpub. LEXIS 1222 (2011)
Superior Court of New Jersey, Appellate Division

Facts: The New Jersey Real Estate Commission revoked Piemontese's broker license for ten years and fined her \$25,000. Among other things, the commission found that Piemontese told a buyer that the home she was buying could be used as a two-family dwelling and that the lower level could be occupied. In fact, two-family use of the property was not permitted and that because of the proximity of the house to a watercourse, the lower level was not approved for habitation. Piemontese appealed.

Issue: Whether Piemontese could be found guilty for making an affirmative misrepresentation of fact when there was no evidence showing that she knew the house could not be used as she had described it.

Held: Affirmed (remanded on other grounds). The court held that under New Jersey's licensing statutes, a broker can be disciplined for making an affirmative misrepresentation of fact even in the absence of evidence showing that the misrepresentation was willful or that the broker actually knew the truth about the property.



Commission

Ferguson Advisors, LLC v. Malherbe, 2012 Okla. Civ. App. 33 (2012), Oklahoma (2012)
Court of Civil Appeals of Oklahoma

Facts: Malherbe hired Ferguson Advisors to sell an apartment complex that he owned through his LLC. Ferguson found a buyer for the complex and was to receive a 5% commission on the \$875,000 deal. The buyer paid \$50,000 of the purchase price at closing, and Malherbe financed the balance himself. Because of this arrangement, Ferguson agreed to accept a partial commission payment at closing, on condition that the remaining \$13,755.82 would be remitted when the balance of the purchase price was paid in full to Malherbe. The buyer never paid the balance of the purchase price, and instead deeded the property back to Malherbe in lieu of foreclosure. Ferguson filed suit against Malherbe for the remaining \$13,755.82. The court granted Ferguson's motion for summary judgment for payment of the commission. Malherbe appealed.

Issue: Whether, as a matter of law, Ferguson's agreement to defer payment of a portion of its commission defeated its entitlement to that portion of the commission.

Held: Reversed and remanded. The qualifying conditions of the deferred payment agreement were not met; therefore, as a matter of law, summary judgment in Ferguson's favor was not proper.

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