



REAL ESTATE

SPRING

2015

NEWS & VIEWS

NORTH DAKOTA REAL ESTATE COMMISSION SCHEDULES RULES HEARING

A public hearing to receive comments on proposed rules changes is scheduled for 9:00 am CDT, Thursday, May 7, 2015 in the Leadership Hall Room 201, Bank of North Dakota 1200 Memorial Highway, Bismarck, North Dakota

The purpose of the proposed rules and amendments is to comply with changes in statute resulting from HB1074 enacted during the most recent legislative session relating to the application deadline for renewal of a real estate license and to update and clarify certain provisions pertaining to non-resident licensure, trust accounts, continuing education, and out of state commission splits.

Written comments may be submitted to the North Dakota Real Estate Commission, PO Box 727, Bismarck, ND 58502-0727 until May 18, 2015. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Real Estate Commission at the above address or call 701-328-9749 at least 10 days prior to the public hearing.

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

70-02-01-04. Renewal of license. All licenses expire on December thirty-first of each year. Persons desiring to continue in business must make proper application for renewal on or before ~~January first~~ November fifteenth of each year in order for the respective license to be renewed on a timely basis for the following license period. Failing to do this subjects such persons to loss of the right to charge a commission and also prosecution for doing business without a license after December 31st. Any person whose license has been canceled for failure to renew the person's license when due must comply with all the requirements of a new applicant to regain a license.

General Authority: NDCC 43-23-11.1(3)

Law Implemented: NDCC 43-23-13(4)

nonresident broker shall furnish proof of maintaining an active place of business by submitting information deemed necessary by the commission. A North Dakota firm license shall be obtained if the company is a partnership, corporation, limited liability company, or association.

4. North Dakota will not recognize the licensee from another state for a reciprocal license unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.

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70-02-01-06. Nonresident brokers and salespersons.

1. Any person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota. A designated broker shall obtain a nonresident license before an associate broker or salesperson licensed under the designated broker can be issued a nonresident license.

2. An applicant for nonresident broker's or salesperson's license shall hold a currently valid broker's or salesperson's license in the state of the applicant's domicile and that state shall certify that the applicant is in good standing and no complaints are pending.

3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's residence. The

Don't miss important information in this newsletter about:

1. Administrative Rules Hearing.
2. Proposed changes to the Administrative Rules that affect you.
3. New license renewal deadline.
4. Change in continuing education requirement.
5. Change in license application process.

North Dakota Real Estate Commission

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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/

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5. An applicant currently licensed in a non-reciprocal state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in North Dakota.

History: Amended effective May 1, 1986; January 1, 1992; April 1, 2008.

General Authority: NDCC 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-10

70-02-01-15. Trust account requirements—Handling of funds—Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.

a. Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.

b. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".

c. Notification. Each broker shall notify the commission of the

name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.

d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.

e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

f. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.

g. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the

purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.

h. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.

i. Interest-bearing accounts. All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.

a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.

b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.

c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.

d. Abandoned deposits. Any deposits in a broker's trust account that remain unclaimed for three years and are deemed abandoned by chapter 47-30.1 of the North Dakota Century Code shall be reported and delivered by the broker to the administrator of the state abandoned property office as required by chapter 47-30.1 of the North Dakota Century Code.

3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:

a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.

b. Bank statements. Monthly bank statements are to be retained and kept on file.

c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".

d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

(1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.

(2) For disbursements, the journal must include the date, the payee, and the amount.

(3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.

(4) A running balance must be shown after each entry (receipt or disbursement).

e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as

between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.

f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.

g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010.

General Authority: NDCC 43-23-14.1, 43-23.4-06(2)

Law Implemented: NDCC 43-23-11.1(1)

70-02-02-10. Classroom hour. A classroom hour in a course shall be defined as fifty minutes of lecture in classroom attendance or the equivalent materials through correspondence in a school approved by the department of public instruction. No more than 8 hours of instruction can be taken in one day.

General Authority: NDCC 43-23-08(6)

Law Implemented: NDCC 43-23-08

70-02-03-03. Commission split—Out of state. A licensed broker in this state may divide or share a real estate commission with a licensed broker in another state, ~~where if~~ the latter broker does not carry on any of the negotiations in this state, ~~and where similar privileges are extended by the other state to licensed brokers in this state.~~ either by physically entering the state or by communicating with the broker electronically or through other media.

General Authority: NDCC 43-23-11.1(1)

Law Implemented: NDCC 43-23-11.1(1)

70-02-04-02. Hours required. To qualify for the renewal of a real estate license, each broker or salesperson must complete nine hours of continuing education in approved courses every continuing education period. The continuing education period is ~~one calendar year~~ twelve months preceding the renewal application deadline date. The commission may require that a portion or all of the continuing education hours must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.

5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993; December 1, 1999; July 1, 2010.

General Authority: NDCC 28-32-02, 43-23-08(6)

Law Implemented: NDCC 43-23-08.2

70-02-04-14. Maximum hours of accreditation per day. The commission will allow a maximum of eight hours of accreditation per day: for pre-licensing, post-licensing and continuing education.

History: Effective August 1, 1981.

General Authority: NDCC 43-23-08.2

Law Implemented: NDCC 43-23-08.2

LICENSE APPLICATION PROCESS REVISED BEGINNING APRIL 1, 2015

Effective April 1, 2015 any applicant for licensure with the North Dakota Real Estate Commission or a licensee whose licensure is subject to investigation by the Commission shall be subject to a statewide and nationwide criminal history record check.

This will extend the license application process somewhat. There are at least 3 parties that can affect the process: the applicant, the Bureau of Criminal Investigation, and the Commission. We believe that the following steps will help to make the process as smooth as possible:

- Obtain an application packet from either our office or online at www.realestatend.org.

- Submit the application and a Personal Authorization for Criminal Record Inquiry form to our office complete in every detail with payment of the appropriate license fee plus \$8.00 for a credit report.

- A fingerprinting kit will then be sent to the applicant. Be sure to follow the instructions in the kit.

- The applicant should pursue the fingerprint process as soon as possible to avoid delays. Applicant MUST return the fingerprint cards and the fee of \$42.75 payable to BCI to our office. Once we receive the fingerprint cards & fee we turn them over to BCI: be aware that once the fingerprint cards are sent to BCI it takes an average of 2 to 3 weeks for the criminal reports to be received in the Commission office.

- While waiting for the report, provide everything else required for a complete application including course completion certificate, etc. For those seeking reciprocal or non-resident licenses submit certificates of licensure from any state in which you currently hold or have held a real estate license.

- When the criminal background report is received in the Commission office the applicant will receive notification/letter indicating:

- ◊ Approval to take the appropriate licensing examination, or

- ◊ The application is incomplete and listing the items remaining to complete the application, or

- ◊ The application must go before the Commission at their next scheduled meeting.

- To have a license issued upon successfully completing the examination, applicants must provide documentation listed on their letter of approval.

Please remember that applications are considered current for 90 days from the date on the application. Therefore it is in the applicant's best interest to pursue the fingerprinting process immediately upon receiving the fingerprint kit from the Commission.

Real Estate Licensees – Statistics and Trends

Renewals	2015	2010	5 Yr Change
Active Brokers/ Assoc Brokers	654	557	+ 97
Active Salespeople	1291	1185	+106
Inactive Brokers	40	55	- 15
Inactive Salespeople	214	223	- 9
Totals	2199	2020	+ 179

Update: Pennsylvania Supreme Court Rejects Duty to Disclose “Psychological Impacts”

(Reprinted with permission from ARELLO® Boundaries, the real estate regulation news publication of the Association of Real Estate License Law Officials. Although this is a Pennsylvania case, this is an interesting case involving disclosure requirements of stigmatized property in a state with similar disclosure requirements to North Dakota.)

The Pennsylvania Supreme Court has brought an unsuccessful end to a home buyer's 5½-year legal struggle against sellers and real estate agents who did not disclose that the subject property was the site of a previous murder-suicide. In the absence of a state statute addressing the situation, the state's highest court ruled that disclosure of non-material information that may “stigmatize” or “psychologically impact” a property is not required.

As reported in previous editions of Boundaries, the circumstances underlying the protracted litigation in Milliken v. Jacono began when the original owner allegedly committed murder-suicide at the subject property. The Jaconos purchased the property from the owner's estate, renovated it and listed it for sale. The Jaconos and their listing agents each sought and received information from various sources indicating that disclosure of the previous events at the property was not required. The listing agents suggested disclosure “just to get it out there”, but the Jaconos declined. Milliken purchased the property from the Jaconos and received a completed Seller's Property Disclosure Statement pursuant to Pennsylvania's Real Estate Seller Disclosure Law (RESDL). The RESDL establishes a seller's duty to disclose known “material defects” (problems that “would have a significant adverse impact on the value of the property” or involving “unreasonable risk to people in the property”) on a form generated by the Pennsylvania State Real Estate Commission. The RESDL and the Commission form require disclosures regarding numerous specific property conditions, but do not address factors that might “psychologically impact” a property, such as a murder or suicide.

After the transaction closed, Milliken learned about the deaths at the property and sued the sellers and real estate agents alleging fraud, misrepresentation and violation of state consumer protection laws. She asserted that she would not have purchased the property if she had known about the prior events which, according to two appraisals, lowered the value of the property between

10 and 15 percent. The trial court granted summary judgment in favor of the sellers and agents, ruling that the murder-suicide was not a “material fact” that required disclosure.

Milliken appealed to the Pennsylvania Superior Court, which overturned the trial court ruling. The court noted that the disclosure form generated by the agents and provided to Milliken covered topics “beyond the basic requirements of the [RESDL]” and called for the disclosure of material defects “not disclosed elsewhere on this form”. The Superior Court concluded that, under the circumstances, a jury should have been allowed to determine whether the murder-suicide was a “material defect” that required disclosure. However, the court thereafter granted reargument of the case, withdrew its decision and instead ruled that a murder occurring on a property involves its reputation, not its physical structure, and thus the RESDL did not require disclosure of such “psychological damage”.

Milliken then appealed to the Pennsylvania Supreme Court, which affirmed the lower court decision(s). The Supreme Court refused to accept the proposition that a psychological stigma constitutes a “material defect”, regardless of its potential impact on a home’s value. The court said that any such judicially-crafted standard would be impossible to consistently apply and also would place an unmanageable burden on sellers; a “slippery slope” that the court was unwilling to descend. The court also noted, “If there is to be a newly created duty to disclose psychological stigma, it should only be imposed with clear definition by the legislature after careful consideration of all aspects and ramifications of the issue.” [*Milliken v. Jacono et al.*, 2014 Pa. LEXIS 1770]

About 28 U.S. jurisdictions have enacted laws that address the disclosure of “stigmatized” or “psychological impacted” property information such as previous HIV/AIDS occupants, murders, suicides and felonies. Most of those limit or eliminate the duty of sellers and/or their agents to disclose such information. Some, however, such as South Dakota Codified Laws section 43-4-44, mandates disclosure of a homicide, suicide or other felony committed against the property or a person on the property within the preceding 12 months. Still others, such as Georgia’s O.C.G. section 44-1-16, have been interpreted to require disclosure of information such as prior homicides or suicides if the buyer asks, but not if the question implicates state or federal fair housing laws. And some states, such as Massachusetts, have enacted laws that include “alleged parapsychological or supernatural phenomenon” as matters that do not require disclosure.

Title Company Marketing Service Agreements Draw \$200,000 RESPA Penalty

A recent enforcement action announced by the Consumer Financial Protection Bureau (CFPB) serves as a timely reminder of federal Real Estate Settlement Procedures Act (RESPA) provisions that govern the business relationships, and marketing services agreements in particular, between “settlement service providers” including real estate licensees.

Among those provisions, RESPA section 8(a) prohibits giving or accepting a “fee, kickback, or thing of value” pursuant to an agreement or understanding to refer business related to real estate settlement services for a federally-related mortgage loan [12 U.S.C. section 2607(a)]. Covered services include, but are not limited to, those provided by title companies, attorneys, surveyors, appraisers, real estate agents/brokers, mortgage loan originators and others.

In the real estate industry, marketing services agreements (MSAs) are sometimes executed to create a business relationship in which a real estate brokerage agrees to market or promote the services of a title or mortgage company, for example, which pays a marketing fee to the brokerage. In general, such agreements are not necessarily unlawful. However, any “fee, kickback or thing of value” that is given or accepted for the referral of settlement service business violates RESPA and can have serious consequences; such as cases in which MSAs are used to circumvent RESPA through payments to real estate brokers that are disguised as advertising or marketing fees.

In its recent announcement, the CFPB said that Michigan-based Lighthouse Title will pay a \$200,000 civil monetary penalty for illegal “quid pro quo” agreements. The CFPB found that the company entered into MSAs with various companies, including real estate brokers, with the understanding that the companies would refer mortgage closing and title insurance business. According to the CFPB, the agreements

made it appear that payments would be based on marketing services the companies would provide to Lighthouse. However, the CFPB said, “...Lighthouse actually set the fees it would pay under the MSAs, in part, by considering the number of referrals it received or expected to receive from each company.” The CFPB also found that “The companies on average referred significantly more business to Lighthouse when they had MSAs than when they did not.” Pursuant to a stipulated consent agreement, the company agreed to pay the civil penalty, but neither admitted nor denied the CFPB findings.

The CFPB’s announcement and consent order do not specifically identify the MSA terms, or the services provided by real estate agents and/or others, that allegedly violated RESPA. However, the order notes that repeated payments “connected in any way with the volume or value of the business referred” are evidence of a prohibited referral agreement. Also, “If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not exempt.” And, “A fair market value... is based only on the value of the goods or services in and of themselves and cannot include any consideration of the value of any referrals of [settlement service] business...” [citations omitted].

In addition to the civil penalty, the company must refrain from entering into future MSAs to provide any “thing of value” to any person who is in a position to refer RESPA-covered mortgage settlement service business, in exchange for advertising or endorsing the company’s services; except mass advertising provided by a non-settlement service provider.

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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
Becker, Lavata L	2014-11	Stipulated	02/23/2015	Respondent is the broker and responsible for advertising by licensees licensed with her brokerage. Alleged violations by licensees licensed under Respondent 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 follow the advertising rules by 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.
Boschee, Shane A	2014-10	Stipulated	10/15/2014	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(3) & (4). Respondent may have violated the rules and regulations based on evidence of failure to follow the advertising rules by failing to display contact information of his company 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.
Carney, Charles I	2014-13	Stipulated	10/20/2014	On September 15, 2014 respondent plead guilty to one count of Felony A theft and one count of Felony C theft in East Central District Court, Cass County, Fargo, ND. The respondent's conduct is actionable pursuant to NDCC 43-23-11.1(1)(f).	Respondent agreed to the suspension of his real estate license for three years or until his probation is complete and the theft convictions are reduced from felonies to misdemeanors. Respondent also agreed that his license will be reinstated at that time only upon determination by the Commission that the respondent is sufficiently rehabilitated and fit to serve the public as a real estate salesperson.
Huskey, Brian J	2013-24	Stipulated	10/15/2014	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1) (p) & (w) and NDCC 43-23-12.1(1). The Complaint alleges that the respondent breached his duty of diligence, loyalty, obedience, reasonable care, disclosure or accounting; and conduct not the meeting generally accepted standards of expertise, care and professional ability expected of real estate brokers and salespersons in the management of property owned by the complainant..	Stipulated to a \$500 fine and payment of \$540 investigative/legal fees both to be paid within 30 days of issuance of order & 3 hours of education on ethics to be taken within 90 days of issuance of the order (not to be used as part of his continuing education).
Huskey, James D	2013-24	Stipulated	10/15/2014	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1) (p) & (w) and NDCC 43-23-12.1(1). The Complaint alleges that the respondent breached his duty of diligence, loyalty, obedience, reasonable care, disclosure or accounting; and conduct not the meeting generally accepted standards of expertise, care and professional ability expected of real estate brokers and salespersons in the management of property owned by the complainant..	Stipulated to a \$500 fine and payment of \$540 investigative/legal fees both to be paid within 30 days of issuance of order & 3 hours of education on ethics to be taken within 90 days of issuance of the order (not to be used as part of his continuing education).

Name	Complaint#	HearingType	Order Date	Violation	Penalty
Johnson, Robert P	2014-10	Stipulated	10/15/2014	Respondent is the broker and responsible for advertising of licensees licensed with his brokerage. Alleged violations by a licensee licensed under Respondent may have constituted violations of NDCC 43-23-11.1(1)(p) & (w) and ND Administrative Code subsections 70-02-03-02.1(3) & (4). Respondent may have violated the rules and regulations based on evidence of failure of respondent to supervise licensee's advertisement which failed to provide contact information of licensee's company in the advertisement.	Stipulated to a \$300 fine and payment of \$200 investigative/legal fees both to be paid within 30 days of issuance of order.
Kern, Les F	2014-11	Stipulated	02/23/2015	Respondent 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 follow the advertising rules by 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.
Vollmer, Leann R	2014-14	Stipulated	02/23/2015	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 of failure to deposit earnest money funds in the time frame required.	Stipulated to a \$500 fine and payment of \$280 investigative/legal fees both to be paid within 30 days of issuance of order.



Virtual Currency

By Craig Boyack, Chief Investigator
Idaho Real Estate Commission

Virtual currency is an internet form of money, and it's gaining a foothold in our society. They come with names like Peercoin, Litecoin, and the big player, Bitcoin. Virtual currency has been called everything from the next evolution in commerce to the newest Ponzi scheme. The fact is there are risks to using virtual currencies.

These currencies do not exist physically. They are not backed by any government, and are not insured by the FDIC or any other entity. There have been many hacking type thefts, and one large provider has gone bankrupt.

Virtual currencies are extremely volatile. Five hundred "coins" might be worth \$500 on the day they are acquired. They may be worth \$5000 or nothing a week later.

From a real estate standpoint, they would certainly qualify as goodwill. This means they can be used as consideration in a contract. The Internal Revenue Service recently decided they are personal property. Personal property can also be used as consideration on a contract. While virtual currencies do not qualify as earnest money, they may be used as another form of consideration.

The license law does not allow for any kind of account that would qualify as a broker's trust account for virtual currencies. This means brokers cannot handle virtual currencies for their clientele. When using an attorney or escrow holder, brokers must address the possibility of a change in value. What happens when the "coins" drop in value prior to closing, what if they increase in value? All terms and conditions must be included in the Purchase and Sale Agreement.

Consumers are allowed to make bad decisions. It's the licensee's job to make sure they make an informed decision. Virtual currencies come with genuine risk. It is the licensee's responsibility to discuss these risks with the consumers. Prudent licensees will put the discussions in writing.

Don't put your consumer in the position of arguing who gets the increase in value when the "coins" go up. Put it in writing before this happens. Don't be the licensee who allowed a client to sell her house for 300,000 virtual coins, only to learn they're worth \$500 after the property closes.

The Idaho Real Estate Commission does not recommend the use of virtual currency in any real estate transaction. We recognize only that it may be possible to use "coins" in a transaction.

Please note: The North Dakota Real Estate Commission does not recommend the use of virtual currency in real estate transactions.

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Broker's Duty to Supervise Salesperson "Brooks No Compromise"

A California appellate court recently upheld the state Real Estate Commissioner's order revoking a real estate broker's individual and corporate licenses for failing to reasonably supervise an employed salesperson. In doing so, the court affirmed the proposition that the state's licensing laws require reasonable supervision of all of a salesperson's licensed activities, not just those that can be proven to benefit the employing licensee.

According to the appellate decision in *Diaz v. Real Estate Commissioner*, the broker was the designated corporate officer for his licensed entity, The Diaz Group, Inc. (DGI). In 2008, salesperson Munoz became licensed as an agent under Diaz' license and initially worked at a DGI office. In August 2008 Munoz began working at the office of American National Group (ANG), a foreclosure avoidance and loan modification company, where he "...processed loan modifications and helped people buy and sell homes for ANG." ANG's officer/director, a relative of Munoz, was a licensed real estate salesperson but not a broker. Neither ANG nor its employees held real estate licenses. In November 2008 and March 2009, respectively, DGI and Diaz obtained branch licenses for the ANG office location.

California's real estate licensing laws authorize licensees to solicit and negotiate defined real estate transactions, including mortgage loans. Licensees can perform loan modification work but, if advanced fees are to be charged, must first obtain a "No Objection Letter" from the California Department of Real Estate (now known as the Bureau of Real Estate). The Department issued such a letter to DGI in April 2009.

After public complaints were received about ANG's collection of advance fees, the Department conducted an investigation and filed an administrative accusation alleging, among other things, that DGI and Diaz failed to properly supervise Munoz. An administrative law judge (ALJ) found reasonable grounds to discipline Diaz and DGI for failure to supervise Munoz while he worked at DGI's branch office, which was also ANG's office. The Real Estate Commissioner adopted the ALJ's proposed decision and issued an order revoking Diaz's and DGI's licenses, but allowing Diaz to later apply for a salesperson's license subject to conditions.

A state trial court dismissed Diaz's and DGI's petition to reverse the disciplinary order, ruling that they violated the real estate licensing laws by failing to exercise reasonable supervision over Munoz while he worked at ANG. Among other factors, the court found that Diaz and DGI failed to keep track, and in some cases were unaware, of Munoz's ANG transactions; merely accepted Munoz's word that he had "no activity going on" without inquiring further, which amounted to "willful blindness"; allowed Munoz to operate

at the discretion of ANG's owner, instead of Diaz; and failed to establish the supervision policies, rules and procedures required by the state licensing laws. The court also ruled that Munoz' failure to reveal his activities did not absolve Diaz and DGI of their statutory supervisory duties.

Diaz and DGI appealed to the Court of Appeal of California on numerous grounds. With respect to supervision, they pointed to California Business and Professions Code (BPC), section 10159.2(a), which establishes the responsibility of the designated officer of a licensed corporate real estate broker to supervise and control all activities conducted on behalf of the corporation, including those of salespersons [emphasis added]. Diaz and DGI asserted that, while at ANG, Munoz engaged in transactions solely for the benefit of ANG and without their knowledge, thus the statute could not support disciplinary action against them.

The court rejected the argument, noting that under the licensing laws and applicable case precedents "...brokers and salesmen belong in distinctly different categories and... the broker, because of his superior knowledge, experience and proven stability is authorized to deal with the public, contract with its members and collect money from them; the salesman, on the other hand, is strictly the agent of the broker. He cannot contract in his own name..., nor accept compensation from any person other than the broker under whom he is licensed...". The court thus concluded that BPC section 10159.2 "brooks no compromise" and that Diaz was responsible for supervising all of Munoz's licensed activities, regardless of which entity benefitted from the purported conduct.

The Court reasoned that its interpretation of section 10159.2(a) served to ensure proper supervision and protect the public, and concluded that to rule otherwise would allow employed salespersons to engage in unsupervised licensed activity by the "simple artifice" of saying that the activity was not on the broker's behalf; a consequence that would be untenable because "...with no such fixed responsibility, the statutory purpose would be frustrated." [Citations omitted.]

[*Diaz, et al. v. Real Estate Commissioner, et al.*] 2014 Cal. App. Unpub. LEXIS 7517. Note: this decision was not selected for publication in official reports. See, California Rules of Court, Rule 8.1115.]

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Non-renewals for 2015

These licensees did not renew their real estate licenses as of March 1, 2015. Any license not renewed by March 1st of each year is cancelled. If your name appears on this list in error please contact the North Dakota Real Estate Commission office immediately.

Brokers

Name	City, State
Alexander, Goriana D	Elmhurst, IL
Alkire, Richard D	Redfield, SD
Basile, Mike A	Bozeman, MT
Bilotta, Vincent Paul	Arden Hills, MN
Boucher, April R	Brandon, SD
Coauette, Sherry L	Crookston, MN
Cocchirarella, Mario J	Woodbury, MN
Corwin, Carolyn G	Fargo, ND
Crouch, Richard E	Glendive, MT
Gambee, Edwin E	Minot, ND
Gehrke, Judith R	Fargo, ND
Gray, Gregory E	Crystal, MN
Holcomb, Clinton M	Buffalo, NY
Kruse, Jacob C	Sandstone, MN
McQuarrie, Gerald B	Provo, UT
Morgan, Elizabeth A	Centennial, CO
Morgan, William E	South Jordan, UT
Peterson, Mary S	Cambridge, MN
Sadusky, Gaylerd A	Storm Lake, IA
Schooff, David P	Mankato, MN
Seale, Charlotte A	Chestertown, MD
Silverman, Ronald M	Glad Valley, SD
Smiley, Lawrence P	Eden Prairie, MN
Trimble, Emmitt D	Anchor Point, AK
Vermeer, Lee A	Omaha, NE
Weingarten, Charles P	Grand Forks, ND
Wheelihan, John P	Ellendale, ND
Wutzke, Lawrence J	Jamestown, ND
Zimmermann, Henry	Hettinger, ND

Broker Associates

Name	City, State
Anderson, Kimberly M	Fargo, ND
Conley, Christopher J	Bismarck, ND

Dallman, Dale E	Minot, ND
Hurt, Muriel E	South Heart, ND
Meidinger, Donna M	Jamestown, ND
Moser, Jeffrey E	Mandan, ND
Nei, Paul T	Prior Lake, MN
Neumann, Jack J	Bismarck, ND
Radtke, Karen E	Glyndon, MN
Ringelman, Jennie L	Menoken, ND
Rolle, Milton E	Minot, ND
Schwinden, Morris J	Fargo, ND
Wilson, Lewis J	Fargo, ND

Salespersons

Name	City, State
Andersen, Katherine J	Jamestown, ND
Anderson, M. "Shirley" S	Grand Forks, ND
Baasch, Michael W	Fargo, ND
Bahn, Noreen P	Bottineau, ND
Bailey, Renee L	Dickinson, ND
Bang, Morris J	Mandan, ND
Barber, William G	Watford City, ND
Behm, Amynda M	Minot, ND
Bergen, Jennifer G	Moorhead, MN
Berglund, Donna R	Fargo, ND
Brasel, Elizabeth V	Fargo, ND
Brodsho, Bruce A	Harwood, ND
Broe, Curtis L	Towner, ND
Brooks, Judith "Judy" K	Surrey, ND
Brouse, James M	Detroit Lakes, MN
Brown, Linda H	St. Joseph, MN
Bushaw, Sharon M	Crookston, MN
Butenhoff, Becky J	Moorhead, MN
Casper, Jonathan D	Fargo, ND
Cave, Deborah R	Bismarck, ND
Dahl, Marlene K	Bismarck, ND
Damle, Rohinee J	Henderson, NV
Dennis, Austin R	Moorhead, MN

Salespersons

Name	City, State		
Dondoneau, Matthieu S	West Fargo, ND	Nelson, Kaye M	Fargo, ND
Dosch, Jacob P	Valley City, ND	Nelson, Phyllis E	Emerado, ND
Dryburgh, Sarah L	Fosston, MN	Novotny, Kristin L	Detroit Lakes, MN
Effertz, Neil M	Bismarck, ND	Nyberg, Rebecca A	Grand Forks, ND
Erdman, Zachery E	West Fargo, ND	Opperude, Norma D	Minot, ND
Erickson, Dana R	Grand Forks, ND	Orr, Troy C	Jamestown, ND
Fettig, Alicia L	Killdeer, ND	Orth, Ruben J	Dickinson, ND
Flemmer, Nancy L	Bismarck, ND	Perreault, Melissa A	Crookston, MN
Folden, Arvid G	Fergus Falls, MN	Potter, Louise S	Grand Forks, ND
Goetzfridt, Larry P	Bismarck, ND	Reyerson, SuLin E	Fargo, ND
Gordon, Annette L	Grand Forks, ND	Rude, Karina N	East Grand Forks, MN
Gradin, Miles W	Bismarck, ND	Rutten, Jacqueline J	Minot, ND
Greischar, Jeff G	Fairmont, MN	Ryan, Catherine M	East Grand Forks, MN
Grilley, Donna L	Minot, ND	Salgat, William E	Fergus Falls, MN
Gross, Allen J	Fargo, ND	Sauer, Steve C	Fargo, ND
Hager, Peter A	Devils Lake, ND	Sayler, John J	Bismarck, ND
Hand, James G	Moorhead, MN	Schable, Paul P	Bismarck, ND
Hanson, Dorothy A	Fargo, ND	Schlosser, Brock J	Minot, ND
Henry, Philip M	Oxbow, ND	Schnaible, Trina J	Bismarck, ND
Hulbert, Denise M	Moorhead, MN	Schuh, Rosemary P	Milltown, WI
Isaak, M. "James" J	Bismarck, ND	Seibel, Valerie L	Harvey, ND
Jacobs, Deborah L	Fargo, ND	Skjold, Gwendolyn	Grand Forks, ND
Johnson, Lori M	Grand Forks, ND	Slade, Sabra L	Bozeman, MT
Jorgenson, Jeremy M	Glenwood, MN	Smith, Breanna R	Bismarck, ND
Julian, Laurie A	Jamestown, ND	Smith, Jason W	Devils Lake, ND
Kirk, Joan K	Moorhead, MN	Smith, Mahlon I	West Fargo, ND
Kraft, Brian D	Bismarck, ND	Splonskowski, Leo A	Ulen, MN
Krank, Belle L	Gladstone, ND	Stegman, Rodney W	Grand Forks, ND
Krebs, Kenneth L	Moorhead, MN	Storhoff, Allan P	Fargo, ND
Krebs, Pamela R	Moorhead, MN	Strom, Nicholas A	Groton, SD
Krotz, Ruth A	Fairfield Bay, AR	Swanson, Joel D	Fargo, ND
Litzinger, Julie M	Grand Forks, ND	Sway, Amanda M	Omaha, NE
Lund, Chester P	Williston, ND	Thiesen, Jeffery H	Kalispell, MT
Maasjo, Gladys I	Valley City, ND	Tjon, Curtis W	Fargo, ND
Madrigal, Daniel E	St. Paul, MN	Trapp, Howard H	Valley City, ND
Magstadt, Kenneth L	Mandan, ND	Wagner, Tanya R	Fargo, ND
Mangino, Ernest M	Grand Forks, ND	Wagoner, Cynthia D	Sutton, ND
Martin, Michelle A	Bainbridge Island, WA	Wanzek, Sandra K	Brinsmade, ND
Miller, Jacqueline K	Dickinson, ND	Weed, Connie K	Fargo, ND
Millette, Thomas G	Moorhead, MN	Weinstein, Richard L	Fargo, ND
		Welder, Sonja K	Bismarck, ND
		Wick, Chad M	Fargo, ND

Salespersons

Name	City, State
Wolff, Shane C	Golden Valley, ND
Wood, Joseph M	Grand Forks, ND
Zuroff, Kimberly L	Fargo, ND

Commission Office Closings

The North Dakota Real Estate Commission office will be closed in observance of the following holidays:

Memorial Day, May 25, 2015

Fourth of July, July 3, 2015

Industry Gears Up for New RESPA-TILA Disclosures, Are Real Estate Licensees Ready?

(Reprinted with permission from ARELLO® Boundaries, the real estate regulation news publication of the Association of Real Estate License Law Officials)

Effective August 1, 2015 new mortgage Loan Estimate and Closing Disclosure forms promulgated by the Consumer Financial Protection Bureau (CFPB) will become mandatory in most U.S. real estate mortgage transactions. Mortgage lenders and other settlement service providers have been gearing-up business processes and technologies to be ready for the looming implementation date and, hopefully, real estate licensees are becoming acquainted with the new forms and resulting changes to transaction processes.

As mandated by the Dodd-Frank Act of 2010, the CFPB has integrated the federally-mandated disclosures that consumers currently receive in most real estate transactions involving a mortgage. The CFPB's new "Loan Estimate" form redesigns and integrates the current "early" Truth in Lending Act (TILA) disclosure and the Real Estate Settlement Procedures Act (RESPA) "Good Faith Estimate" form. The new "Closing Disclosure" replaces the final, corrected TILA disclosure and the RESPA HUD-1 Settlement Statement.

Briefly, and very generally, creditors will be required to complete the Loan Estimate containing a good faith estimate of credit costs and transaction terms in accordance with intricate new rules regarding content, calculations, variation tolerances and the like. The form must be delivered or placed in the mail no later than the third "business day" after receiving the consumer's "application", and no later than the seventh business day before the transaction's "consummation"; which terms are specifically defined for purposes of the Loan Estimate.

Of particular note for real estate licensees is the new waiting period that will apply to the Closing Disclosure form; failure to comply with which may delay closings, at best. Creditors will be required to complete the new Closing Disclosure stating the actual terms and costs of the transaction and ensure that it is received by the consumer no more than three "business days" before "consummation". For purposes of the Closing Disclosure, a "business day" excludes only Sundays and the legal holidays specified in the rule (which differs from a Loan Estimate "business day"). "Consummation" means the point when a consumer becomes contractually obligated on the

mortgage transaction, which depends on state laws and may not coincide with the scheduled real estate transaction settlement/closing date. Importantly, the new rules also define the point at which the Closing Disclosure will be considered received by the consumer. If provided in person, it will be considered received on the day it is provided. If mailed or delivered electronically, it will be considered received three business days thereafter. Under certain circumstances, creditors will be permitted to rely on evidence that the Closing Disclosure was actually received on an earlier date. Delivery of the closing statement may be delegated to a settlement agent, but creditors will retain the risk of noncompliance.

Among other aspects of the new forms, real estate licensees also should be aware that the CFPB's implementing rules address last-minute changes. If, for example, the annual percentage rate becomes inaccurate, the loan product changes or a prepayment penalty is added, a corrected Closing Disclosure must be provided and a new three-day waiting period prior to consummation of the mortgage transaction will apply. Other types of changes may be corrected at or before consummation, but may require lender approval, and a limited number of changes can be made after consummation. Consumers will be permitted to waive certain deadlines only in the case of a narrowly defined "bona-fide emergency".

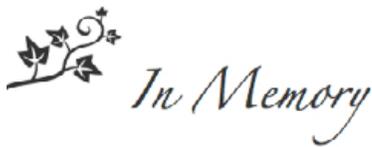
Clearly, the new disclosures and their 1880 pages of implementing regulations have prompted major changes to mortgage transaction processes, and real estate licensees are being urged to become familiar with the new forms and timelines. For example, National Association of REALTORS® (NAR) Government Affairs representative Ken Tripeta recently said that REALTORS® should maintain tight communications with settlement service providers and help their clients and customers to avoid closing complications that can be caused by last-minute changes, by "hav[ing] their ducks in a row" well prior to closing.

Extensive explanatory materials regarding the forms and rules are available through the CFPB website.

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

Norris O. Braaten	Hankinson, ND	Hilary D. Ryan	East Grand Forks, MN
Richard J. Kluzak	Naperville, IL	Sandra McLachlan	Bismarck, ND
	formerly Fargo, ND	Fred Vollmer	Bismarck, ND



NEWS FLASH



Beginning this year – with the approval of the proposed Administrative Rules - the continuing education cycle will be from November 16th of each year to November 15th of the following year. License renewals will be due on November 15th of each year.

The new continuing education deadline will be here before you know it. Do not wait until the last minute! You will need to complete 9 hours of continuing education by November 15, 2015 to renew your license for 2016. 6 hours are elective and 3 hours of mandatory continuing education in personal safety.

If you do not have your ce completed why not sign up for a class today?

All approved courses (classroom and online) can be found on our website
www.realestatend.org.