



North Dakota Real Estate Commission Meeting Minutes – FINAL
10:30 a.m., Thursday, June 10, 2021 – in person or phone
1120 College Dr Ste 204, Bismarck, ND 58501

www.realestatend.org

Present: Sandra Meyer, chair; Steven Bitz, vice chair; members: Steven Link; Tate Cymbaluk, by phone, and Scott Breidenbach, by phone; Constance Hofland, special assistant attorney general; staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist. Members of the public also present in person and by phone.

1. Call to order. Chair Ms. Sandra Meyer called the meeting to order at 10:30 a.m.
2. Roll call and determination of quorum. Ms. Jeanne Prom, executive director, called the roll, with a quorum of all members present.
3. Review and approval of agenda. Mr. Steven Link moved to approve the agenda with the adjustment of the certificate of licensure discussion moved from additional business to the draft budget agenda item. Mr. Steven Bitz seconded. Motion carried by unanimous voice vote.
4. Review of financial reports – February to April 2021, audits. Mr. Rob Yost, CPA/auditor, shared the continuing education audit preliminary report and recommended that licensees with issues be audited again next year. Mr. Link moved that licensees with continuing education audit issues will be audited again the following year. Mr. Tate Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously. Mr. Scott Breidenbach requested the CE audit report include broker and licensee names, issue and response, and be sent to the commissioners. At its next meeting the commission will discuss the final report and will determine whether to initiate complaints for possible further discipline. Mr. Yost reported on completed trust account audits, which included one broker with recurring noncompliance. Mr. Link moved to approve the February to April 2021 financial reports. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
5. 2021-2022 draft budget and priorities, fee for Certificates of Licensure. Ms. Prom reviewed the draft budget which had no material increases and a less than 1% increase over the current fiscal year (FY) after removing capital improvements costs. Income and expenses were estimated based on a 3-year average. Operating revenue is up by 9.3% from 2020 to 2021. Expenses are up by \$45,274 due to program assistant costs, audit, rent for larger office space, technology changes and additional online forms, but current FY expenses are about 93% of budget for 11 months. The budget was developed with fees at current rates. After discussing a licensee request to lower the fees for the certificate of licensure fee, the commission agreed by consensus to leave all fees at current rates. Staff compensation increase of 3%/year is based on past 10 years of 3%/year. Biennial legislative guidelines for classified employees in state agencies is 1.5%

Members of the North Dakota Real Estate Commission are: Sandra Meyer, Chair; Steven Bitz, Vice Chair; members: Steven Link, Tate Cymbaluk, Scott Breidenbach. Special Assistant Attorney General: Constance Hofland. Staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist.

for year 1 and 2% in year 2. Staff are not classified. Retirement contribution rate of 12.26% of salaries was set by the legislature several years ago. Commission compensation is figured at the legislative daily rate of \$189, and commission must set its compensation at this annual budget meeting, according to the new license law changes. The special assistant attorney general requested hourly rate increase of 10%. Technology costs through the state IT department increased but are set for 2 years. Legal and advertising costs to promulgate rules are included in legal costs and are estimated at \$7,300. A new vendor to process credit card transactions reduced those expenses by an estimated \$3,000. No office audit will be conducted this next year.

Staff and commission completed all 2020-2021 priorities: 1) transferred paper forms to online services; 2) changed license law through the 2021 legislature, and began rules promulgation to be completed by May 2022; 3) tracked occupational licensing board studies and legislation; 4) attended virtual ARELLO conferences; 5) transferred all paper license files in 18 file cabinets to new online database; and 6) moved to new office space, hired new licensing specialist, updated all paper forms prior to transfer to online services, and set up daily digital transfer of Rice Insurance errors and omissions insurance policies directly to new database.

Staff completed 2020-2021 priorities by also: 1) digitizing all past complaint and subdivided land registration files; 2) completing second update of records retention schedule and disposing of 1,900 pounds of paper before the office relocation; 3) transitioning from 45-hour to 90-hour salesperson pre-licensure courses after reviewing and approving new 90-hour curriculum applications from 4 schools; 4) completion with outside auditor the 2-year office audit resulting in an unqualified opinion, meaning there was nothing materially wrong and no corrections were made.

Ms. Prom also reviewed major priorities completed in 2019-2020, including 1) the development, testing and use of a new licensee database; 2) the first update of the records retention schedule and accompanying records disposal of subdivided lands and cancelled license files; 3) development, testing and use of new online renewal system; 4) the review of administrative rules; and 5) the review of the statute.

2021-2022 priority major projects identified by staff are: 1) transfer to online-only processes for Online Services, replacing most paper forms; 2) Ongoing digitization of remaining paper files: revenue receipts, credit card reports, invoices, paid bills, past trust account audits; 3) Update office policies and procedures as time allows; 4) promulgate rules, which is a 3-5-month process.

Mr. Scott Breidenbach moved that the temporary program assistant position become a permanent position beginning July 1, 2021. Mr. Link seconded. Discussion: Permanent employees receive the full benefit package including paid leave. Health insurance costs for a permanent employee are \$1,428.76/month, an increase from the \$687.66/month cost for a temporary employee. Permanent employees receive the employer-paid retirement contribution of 12.26% of salary. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Link moved to adjust the 2021-2022 budget to include costs for the permanent program assistant. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Bitz moved to approve the special assistant attorney general request to increase legal hourly rate by 10% from \$200 to \$220. Mr. Link seconded. Roll call vote: ayes – Mr.

Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Bitz moved to increase staff salaries and wages by 3%. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Link moved to increase the commission compensation from \$50 to \$189, which is the daily compensation rate of a member of the legislative assembly beginning July 1, 2021. Mr. Breidenbach seconded. Discussion: The commission compensation rate increase takes effect when the statute updates take effect on August 1, 2021. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Breidenbach moved that paper forms be replaced by online services when those online services become available. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

Mr. Link moved to accept the budget with the approved changes. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.

6. Rules review. Ms. Prom reviewed the previously proposed rules changes, which were determined at prior commission meetings and/or now are required to align with statutory changes passed by the 2021 legislature. Changes were to modernize, clarify and assure consistency with the statutory changes. The commission agreed by consensus to the changes presented or adjusted. Some changes and clarifications included: 1) Changing the organization license application fee from \$200 to \$300. 2) Changing the pre-licensing education curriculum review fee from \$50 to an amount “not to exceed \$200.” 3) Pre-licensing education curriculum reviewed every 3 years, not every 2 years. 4) Removing the requirement that no more than 8 hours of continuing education can be taken in a day. 5) A pre-license education completion certificate is valid for 2 years. 6) Pre-licensure education is not needed for non-resident applicants, but non-resident applicants must take and pass the state license examination. 7) Continuing education requirement increased from 9 to 12 hours per year. 8) The fee to review continuing education courses clarified to be a fee “not to exceed \$100 per course.”

Ms. Connie Hofland, special assistant attorney general, distributed a memorandum from 2017 on 70-02-03-02.1(2) Advertising. Trade Name -- proposed amendment options. Ms. Prom shared draft rules on teams prepared by the commission-North Dakota Association of REALTORS® (NDAR) task force on teams. NDAR considered but did not make a final recommendation to the commission on the draft advertising and teams language. At their meeting next week, the NDAR board of directors will discuss the options for advertising language changes and team definitions and rules and may submit recommendations to Ms. Prom for commission consideration at the next meeting.

Ms. Prom and Ms. Hofland reviewed the administrative rulemaking timeline and process, which is outlined in NDCC 28-32.

The commission agreed by consensus to recess and reconvene and first review applications before the other remaining agenda items. Chair Meyer called a recess at 1:10 p.m. and reconvened the meeting at 1:30 p.m.

7. Bankruptcy as part of application consideration. Ms. Hofland reviewed information in her June 3, 2021 memo to the commission entitled “Discrimination based solely on bankruptcy

is prohibited by federal law.” The memo stated that “Courts have allowed consideration of future financial responsibility by governmental units but have ruled a denial of a license based solely because of person’s bankruptcy is illegal discrimination.” The commission discussed this. Felonies as part of application consideration. Ms. Hofland distributed a handout of *NDCC 43-23-08.1* and *NDCC 12-1-33-02.1*. *NDCC 43-23-08.1* Conviction not to bar licensure – Exceptions states “Conviction of an offense does not disqualify a person from licensure under this chapter unless the commission determines that the offense has a direct bearing upon a person’s ability to serve the public as a real estate broker or salesperson, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section *12.1-33-02.1*.” In (2.c.) of that section it is stated “Completion of a period of five years after the final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.” The commission’s policy is to review any applicant with a sexual assault or felony within the past 20 years. The commission discussed the statutes and policy. Mr. Bitz moved that the commission’s policy be that the commission will review license applicants with felonies within the past five years after final discharge or release and no subsequent conviction. Mr. Link seconded. Roll call vote: ayes – Mr. Cymbaluk, Mr. Bitz; nays – Mr. Breidenbach, Mr. Link, Ms. Meyer. Motion failed 2-3.

8. Review of applicants. See attachment for other actions on all license applications. Mr. Breidenbach moved that the commission receive credit reports from any applicant being reviewed by the commission if they have credit issues. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
9. Review of property condition disclosure form to comply with SB 2247. Ms. Hofland reviewed the property condition disclosure form updates to comply with SB 2247 passed by 2021 legislature. Mr. Cymbaluk moved to accept the disclosure form as presented. Mr. Link seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
10. Update from management.
 - A. Errors and omissions insurance update. Earlier this year, staff worked with Rice Insurance and Big Picture Software to set up daily automatic digital uploads directly into the new database. Uploads update the licensees who have errors and omissions insurance through Rice. This has been working well for several months and replaces a weekly system that was not automated nor directly uploaded into the database. Ms. Prom explained licensees with soon-to-be expiring errors and omissions insurance from a company that isn’t Rice are tracked by staff monthly to ensure all active licensees have the required insurance without interruption. Non-Rice policies that expire around renewal time can complicate renewals. Ms. Prom recommended the renewal process no longer require reporting and uploading of any errors and omissions insurance certificates for any individual or firm, as it duplicates the daily updates and tracking processes in place. Mr. Link moved that the annual license renewal process no longer include the requirement to upload the errors and omissions insurance certificate for any individual or firm. Mr. Bitz seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
 - B. Trust account waivers. Ms. Prom shared a list of firms with trust account waivers.

- C. Pre-licensing education. Earlier in this meeting during rules review, the commission discussed and agreed by consensus that non-resident applicants are not required to complete pre-licensing education.
11. Minutes – March 11 and April 16, 2021 meetings. Mr. Cymbaluk moved to approve the minutes from the March 11 and April 16, 2021 meetings as presented. Mr. Bitz seconded. Motion carried by unanimous voice vote.
 12. Any additional business and Certificate of Licensure fees. Ms. Prom read an email from a licensee about the \$50 fee for a certificate of licensure. The commission noted that this was discussed earlier in the meeting during the draft budget agenda item line item and that the certificate cost is a cost of maintaining a real estate license.
 13. Next meetings. The commission agreed by consensus meet at 10 a.m. or earlier on Thursdays, August 12 and October 14, 2021.
 14. Election of chair, vice chair, passing of gavel. Mr. Cymbaluk moved approve Mr. Bitz as chair and Mr. Link as vice chair for 2021-2022. Mr. Breidenbach seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
 15. Adjourn. Chair Meyer adjourned the meeting at 3:00 p.m. Chair Ms. Meyer passed the gavel to Mr. Bitz.
Attachment



North Dakota Real Estate Commission Meeting Minutes – FINAL
10:30 am, Thursday, June 10, 2021

www.realestatend.org

8. Review of applicants

NAME	LICENSE APPLICATIONS:	ACTION BY COMMISSION:
1) Chad Peterson – present by phone	salesperson	Mr. Cymbaluk moved to allow Mr. Chad Peterson to take the salesperson license examination. Mr. Bitz seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
2) Jody Forehand – present in person	salesperson	Mr. Cymbaluk moved that Mr. Jody Forehand’s application be reviewed again at a future meeting after the applicant provides 3 letters from individuals who are not employers, relatives or associated with the applicant’s motivational speaking, but who can attest to the applicant’s character. Mr. Link seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – none. Motion carried unanimously.
3) LaKysha Hunter – not present	salesperson	Mr. Link moved to allow Ms. LaKysha Hunter to take the salesperson license examination. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer; nays – Mr. Breidenbach. Motion carried 4-1.
4) Lori Henderson – present in person	broker	Mr. Breidenbach moved to allow Ms. Lori Henderson to take the broker license examination. Mr. Cymbaluk seconded. Roll call vote: ayes – Mr. Breidenbach, Mr. Cymbaluk, Mr. Link, Mr. Bitz, Ms. Meyer. Motion carried unanimously.