



North Dakota Real Estate Commission Meeting Minutes – FINAL

10:00 a.m., January 13, 2022

1120 College Dr Ste 204, Bismarck, ND 58501

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Present: Steven Bitz, chair; Steven Link, vice chair; members: Tate Cymbaluk (by phone), Sandra Meyer (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. Commissioner Scott Breidenbach was not present due to an air travel delay.

1. Call to order, roll call and determination of quorum. Chair Mr. Steven Bitz called the meeting to order at 10:00 a.m. Ms. Jeanne Prom, executive director, called the roll, with a quorum of 4 of 5 members present.
2. Review and approval of agenda. Mr. Tate Cymbaluk moved to approve the agenda as presented. Mr. Steven Link seconded. Motion carried by voice vote with one member absent and not voting.
3. Review of applicants. See attachment for actions on all license applications.
4. Update on complaints.
 - A. 2021-04 – Leann Sucrow v. Shawn Ostlie and Aruna Hagen. Mr. Cymbaluk moved to dismiss 2021-04. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.

The commission agreed by consensus to consider 2021-05 individually, but because the stipulation and settlement agreements for 2021 -06, -07, -08, -09 and -10 are the same, the commission would consider those 5 complaints in the same motion as the stipulation language and terms to pay a fine and actual costs in those complaints are the same.
 - B. 2021-05 – NDREC v. Leslie Roos – stipulation and settlement agreement. Mr. Cymbaluk moved to accept the stipulation and settlement agreement for 2021-05. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
 - C. 2021-06 – NDREC v. Michael Galt – stipulation and settlement agreement.
 - D. 2021-07 – NDREC v. Michelle Powers and Marisa Holman – stipulation and settlement agreement.
 - E. 2021-08 – NDREC v. Andrew Gudajtes and Terry Longtin – stipulation and settlement agreement.
 - F. 2021-09 – NDREC v. Tracy Braaten and Cassandra Braaten – stipulation and settlement agreement.
 - G. 2021-10 – NDREC v. Jeanine Larson and Maureen Bartelt – stipulation and settlement agreement.

Mr. Link moved to approve the stipulation and settlement agreements for 2021 -06, -07, -08, -09, and -10. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr.

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

Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.

- H. 2021-12 – Trisha Issendorf v. Kevin Kasprick, Gloria Palm Connor and David Noah. Mr. Cymbaluk moved to dismiss 2021-12. Ms. Sandra Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
 - I. Pending complaint update. The commission agreed by consensus with Ms. Constance Hofland’s recommendation that the commission consider filing a complaint against inactive licensee Mr. Flint Forsberg after court proceedings are further along.
 - J. Letter from complainant of dismissed case – 2021-02 -- Radermacher v. Turner. Ms. Hofland will respond in writing to Mr. Radermacher, explaining that the commission read and discussed his letter, but that Mr. Radermacher did not raise any additional issues or facts in his letter that would indicate a possible violation of license law by Ms. Turner.
 - K. Request for information from respondent in settled cases – 2018-16 and 2019-01. The commission directed Ms. Prom to request of the respondent, Ms. Tasheena Greaves, the following to determine if Ms. Greaves is sufficiently rehabilitated, as explained in the Order Approving Stipulation and Settlement Agreement for combined cases 2018-16 and 2019-01: documentation of actions required in the Order plus any information on criminal background charges and convictions similar to those questions on the annual license renewals and the license applications, and letters of reference.
5. Administrative Rules – update.
Ms. Hofland reviewed all comments received in the public hearing December 8, 2021 and during the following 20-day comment period which ended December 28, 2021. The commissioners considered all comments. Ms. Hofland reviewed each comment received in the public hearing or in writing.

Comment 1:

Mr. Josh Boschee, broker for Real Broker, LLC, commented on the proposed change to NDAC 70-02-03-02.1 on advertising. Mr. Boschee questioned the Commission’s rationale for deciding to move forward with changes, specifically subsection 2 as it relates to advertising of teams. Mr. Boschee stated it was his prior understanding, from reaching out to the Commission in May, that no changes would be made. However, he did comment that he was told that the Commission may make changes and to keep an eye out for that. Mr. Boschee’s specific comment was to ask the Commission to void subsection 2 concerning the size of the brokerage versus team name because Mr. Boschee did not think there was any threat to the general public, as long as the brokerage name was there. Boschee commented that the good work of the Commission and its website makes it easy to identify the brokerage. As an alternative, if the Commission did not void the subsection 2 amendment, Mr. Boschee asked for a significant delay in implementation of the new requirements, maybe even after the first of 2023. Mr. Boschee’s reason is the economic impact of having to change signs and other advertising to meet the new requirements and time needed to educate licensees.

Consideration and response from Commission:

The Commission considered Mr. Boschee's comments, submitted both orally at the hearing and in writing, and determined that there was sufficient reason for protection of the public and support for keeping the added advertising requirements concerning size and visibility of brokerage tradename in comparison to team or other licensee name. However, the Commission had previously been concerned about the timing of enforcement of this additional requirement on advertising and had discussed delaying enforcement. In order to provide transparency on how the enforcement would be delayed the Commission passed the addition of a sentence at the end of NDAC 70-02-03-02.1(2) specifically delaying any disciplinary action based on a violation of the additional size and visibility requirement until after January 1, 2023, as suggested by Boschee.

Mr. Link moved the commission amend the proposed administrative rules language in NDAC 70-02-03-02.1(2) by adding this sentence to the end of subsection (2): Discipline of licensees based on failure to meet this size and visibility requirement will be delayed until January 1, 2023. Mr. Cymbaluk seconded. Discussion: The commission discussed the policy passed at its August 12, 2021 meeting. The policy allowed a grace period of up to 24 months from the effective date of the final administrative rules for licensees to comply with the advertising rules changes. Mr. Link amended his motion to include vacating this policy. Mr. Cymbaluk amended his second of the original motion to include this language. The amended motion is: Mr. Link moved the commission vacate the policy passed at its August 12, 2021 meeting allowing a grace period of up to 24 months from the effective date of the final administrative rules for licensees to comply with the advertising rules changes, and amend the proposed administrative rules language in NDAC 70-02-03-02.1(2) by adding this sentence to the end of subsection (2): Discipline of licensees based on failure to meet this size and visibility requirement will be delayed until January 1, 2023. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.

Comment 2:

Mr. Patricia Schlosser, broker, Century 21 Morrison Realty, addressed the same amendment to NDAC 70-02-03-02.1, saying she disagreed with Mr. Boschee. She said she does see confusion in the public concerning brokerages and teams, and that teams sometimes look like they are the brokerages. Ms. Schlosser said she likes the proposed changes and the added language and thinks it will provide clarity to the public.

Consideration and response from Commission:

The Commission considered this comment and did keep the size and visibility requirement and additional language on teams that Ms. Schlosser supported.

Comment 3:

Ms. Jill Beck, CEO for the North Dakota Association of Realtors, testified in favor of the changes to the administrative rules. She stated that NDAR has been a part of the amendment process for the last two years, had a task force that attended the Commission meetings and offered lots of suggestions and comments as the amendments were being made. Ms. Beck added that she sent the final version of the amendments to the board of directors and executive committee, and they were in support of the changes.

Consideration and response from Commission:

The Commission considered this comment and support of the amendments as proposed, and approved the proposed amendments, with the 1 change as noted under Comment 1.

Comment 4:

Ms. Gloria Palm Connor, broker, Beyond Realty, commented on 70-02-04-02 on continuing education credits required. She commented that when the required hours were changed from 9 to 12 hours, she thought there was going to be some requirement for brokers to have 3 hours of broker level continuing education, and her recommendation is to require broker level continuing education for the additional 3 credits.

Consideration and response from Commission:

The Commission considered this comment and determined that the Commission, the way the rule and the statutes are currently written, has the authority to require broker level education and did not see a need for further amendment to the proposed rule.

The Commission's consideration and responses to the written comments are reported below.

Commission's consideration and response to written comment 1:

Mr. Aaron Nissen wrote that he liked the updates and hoped they are enforced. He had seen confusion with team and brokerages. He had a concern about use of the word "realty" in email addresses. The Commission reviewed and considered these comments and determined the proposed rules addressed the concerns.

Commission's consideration and response to written comment 2:

Ms. Kristie Kelsch's written comments concerning duties, supervision, teams, and definition of teams. The Commission reviewed and considered these written comments and determined that concerns were met, that the team definition was adequate, and the definition location and format was appropriate for the administrative rules.

Commission's consideration and response to written comment 3:

Mr. Joshua Boschee followed up his oral comments with written comments. The Commission considered the concerns and responded by adding a sentence to 70-02-03-02.1(2) to delay disciplinary action based on the additional requirements until January 1, 2023.

Ms. Hofland reviewed the next steps in the administrative rules process. The final proposed rule changes, takings assessment and fiscal note will be submitted to the Office of Attorney General. The Attorney General Opinion will take several weeks to review the proposed rule changes and issue an opinion. The commission will then file final documents with the Legislative Council. The Legislative Council will place the rules review on the agenda of a future Administrative Rules Committee meeting for final passage.

6. Update from management.
 - A. Recordings retention. Mr. Cymbaluk moved that the commission dispose of the audio recordings of the commission meetings after the commission approves the minutes from that meeting. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
 - B. 2021-2022 priorities. Ms. Prom reported on progress with priorities, including the administrative rules process.
 - C. Renewals – CE audit and reporting. For the next year’s budget, Ms. Prom will research the cost of building into the current Big Picture Online Services and database the ability for licensees to upload CE certificates and for brokers and staff to review the CE certificates. The commission agreed by consensus to table further discussion on CE audits, as Mr. Breidenbach had not yet joined the meeting. After discussing the other updates from management, the commission again discussed CE audits with Mr. Rob Yost present. Mr. Breidenbach had not joined the meeting at this time. The commission directed Ms. Prom and Mr. Yost to begin the CE audits. Staff are to tell licensees who are potentially out of compliance to correct issues as issues are identified. Also, staff will tell licensees that staff will report all issues, corrected or not, to the commission at a future commission meeting, and at that time, the commission may consider disciplinary action. The continuing education audits will begin in February.
 - D. Paper applications. The commission decided by consensus that applications and non-renewal transactions available through Online Services are to be submitted online, with possibly the rare exception.
 - E. Trust account waivers. Ms. Prom shared a list of firms issued trust account waivers since the last meeting.
 - F. 2021-2022 priorities. Ms. Prom shared the updated 2021-2022 priorities.
 - G. License numbers. Ms. Prom shared number of licensees, license application numbers and test pass rates.
7. Financial reports – audits, September, October and November 2021. Mr. Yost reviewed 5 trust account audits requiring corrective action. Viking Insurance and Realty added “trust account” to the title of their bank account, to resolve their issue. Dakota Country Realty, in their first audit, resolved issues with co-mingling of funds, and ledgers and reconciliations that were not in line with guidelines. Cahill Realty Appraisal LLC’s first audit found that “trust account” was not in title of account, and this was resolved. Mike Nelson Realty had missing documentation or proper signatures, and Mr. Yost is conducting additional transaction reviews to determine if this is a recurring issue, as Mr. Nelson had limited transactions in the review period. With Rorvig Realty’s, Mr. Yost is obtaining additional records to determine if current and past audit issues with timing of earnest money deposits have been corrected. The commission directed Mr. Yost to work with brokers to correct trust account issues as they arise, and report all issues and resolutions at the next commission meeting for potential consideration of disciplinary action. The commission took no action on the 5 trust account audits reported at this meeting, citing first audits as educational opportunities and the other audits requiring additional review by Mr. Yost. Mr. Link moved to accept the financial reports as presented. Mr. Cymbaluk seconded. Motion carried by voice vote with one commissioner absent and not voting.

8. Minutes – October 14, 2021 meeting. Mr. Cymbaluk moved to approve the minutes from the October 14, 2021 meeting as presented. Mr. Link seconded. Motion carried by voice vote with one commissioner absent and not voting.
9. Other business – The next meeting is March 10, 2022.
10. Adjourn. Chair Bitz adjourned the meeting at 11:55 a.m.

Attachment



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3. Review of applicants

NAME and LICENSE APPLICATIONS:	ACTION BY COMMISSION:
A. Elizabeth Henderson – broker – reciprocal (MN) – on phone	Mr. Cymbaluk moved to approve the application for Ms. Elizabeth Henderson. Mr. Link seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
B. Richard Engen – salesperson – on phone	Ms. Meyer moved to table the application until the commission could speak with Mr. Engen, who had not yet joined the meeting. Mr. Cymbaluk seconded. The commission discussed the application while waiting for the applicant to join by phone but did not take a vote on this motion. The commission decided to act on the next agenda item before Mr. Engen joined the meeting by phone. Once Mr. Engen joined the meeting the commission continued to review Mr. Engen’s application. Ms. Meyer withdrew her motion to table the application, and Mr. Cymbaluk withdrew his second of that motion. Mr. Link moved to allow Mr. Richard Engen to take the salesperson examination. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
C. Lane Huber – broker – present in person	Mr. Link moved to waive the two-year salesperson experience requirement for Mr. Lane Huber. Mr. Cymbaluk seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.
D. Amanda Leishman – salesperson – not on phone or present	Mr. Link moved to table Ms. Amanda Leishman’s salesperson application until there is additional documentation of on 2 credit accounts with past-due balances. Ms. Meyer seconded. Roll call vote: ayes – Ms. Meyer, Mr. Cymbaluk, Mr. Link, Mr. Bitz; nays – none; absent and not voting – Mr. Breidenbach. Motion carried 4-0-1.