



**North Dakota Real Estate Commission Meeting Minutes -- FINAL**  
**8:30 a.m., Thursday, August 22, 2024**  
**1120 College Dr Ste 204, Bismarck, ND**

[www.realestatend.org](http://www.realestatend.org)

Present: Scott Breidenbach, chair; members: Steven Bitz, Steven Link, and Tate Cymbaluk. Not present: Sandra Meyer, vice chair. Mr. Bitz and Mr. Link were present on Teams. Also present: David Phillips, special assistant attorney general; staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist. Members of the public also present.

1. Call to order, roll call and determination of quorum.

Chair Mr. Scott Breidenbach called the meeting to order at 8:30 a.m. Ms. Jeanne Prom, executive director, called the roll, with a quorum of 4 members present and Sandra Meyer, vice chair, not present.

2. Review and approval of agenda.

Mr. Tate Cymbaluk moved to approve the agenda as presented. Mr. Steven Bitz seconded. Motion carried by unanimous voice vote of those present.

3. Review of broker applicant – Jack Dwyer.

Ms. Cieana Schneider reviewed Mr. Jack Dwyer's application for a resident broker license, and his request for consideration of his experience as substantially equivalent to the required experience of 2 years as an active salesperson. Mr. Dwyer was present in person and answered questions and explained his experience, which the commission discussed. Mr. Bitz moved to waive the 2-year salesperson experience requirement and allow Mr. Jack Dwyer to take the broker examination. Mr. Steven Link seconded. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Link, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Ms. Meyer. Motion carried 4-0-1.

4. Update on complaints.

A. 2024-04 – Kent VanderVorste v. Amy Hullet.

Mr. David Phillips, special assistant attorney general, explained his investigation of 2024-04 – Kent VanderVorste v. Amy Hullet, and the commission discussed Mr. Phillips' recommendation to dismiss the complaint. Mr. Cymbaluk moved to accept the recommendation to dismiss 2024-04 – Kent VanderVorste v. Amy Hullet. Mr. Bitz seconded. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Mr. Link and Ms. Meyer. Motion carried 3-0-2. Mr. Link was briefly disconnected from Teams during the roll call vote and rejoined the meeting after the vote.

B. Attorney advice regarding wholesaling – draft letter and guidance.

Mr. Phillips reviewed the new law on wholesaling and a draft letter that the staff could send to unlicensed individuals who may be wholesaling, probably not knowing they now need a license. The letter explains the law requiring a license for wholesaling, disclosure requirements for wholesaling residential property which requires 2 agreements, a strong recommendation to disclose if wholesaling non-residential property to assure compliance with other areas of license law, the risk of a class B misdemeanor if acting as a real estate licensee without a license, and a link to the section of the commission website that explains how to apply for a license.

Mr. Phillips explained that commission's authority over individuals who are not licensed is limited to investigation only. The commission could forward the investigation to a State's Attorney for prosecution. Mr. Phillips explained that the draft letter was not a cease-and-desist order, as the commission does not have that specific statutory authority. Chair Breidenbach asked Mr. Phillips to explain how the commission could get authority to issue a cease-and-desist action for unlicensed activity. Mr. Phillips said the commission would need to ask the legislature to amend license law, and that the commissioners are real estate practitioners and in the best position to identify unlicensed activity and determine appropriate action. The commission expressed interest in amending license law to allow the commission to issue cease-and-desist orders, to better protect the consumer.

Chair Breidenbach directed Mr. Phillips and staff to draft amendments to license law to provide the commission the authority to order individuals to cease and desist unlicensed activity. The commission will review draft language at the next meeting, which is October 17, 2024.

The commission agreed by consensus to direct staff to send the letter to an unlicensed individual when that individual may be wholesaling.

Ms. Jill Beck, ND Association of Realtors (NDAR), suggested the commission consider drafting language to amend license law also to require disclosure of wholesaling for all real property including commercial and agriculture land. The commission and Mr. Phillips discussed this and the commission agreed by consensus that the wholesaling law should be amended to include all real property to clarify the law and make it comprehensive.

Ms. Prom reviewed the guidance document on wholesaling which would be posted on the commission website. The guidance includes the same information as in the letter, as well as a strong recommendation to disclose wholesaling of all real property to avoid potential violations of other disclosure laws and regulations, and suggested steps licensees and brokers may opt to take if they suspect unlicensed wholesaling. The commission directed staff to post the guidance on the website.

5. Update from management.

A. Policies/procedures – military/spouse.

The U.S. Department of Justice (DOJ) responded in detail to Mr. Phillips on questions staff and applicants had about the commission's policy, set on June 8, 2023, to implement the 2023 federal law enhancing professional license portability for active military members and their spouses (50 USC 4025a).

For a military member or spouse to qualify for expedited licensing under the law, the commission first must determine if military member or their spouse meets all of the following criteria: are moving to North Dakota on orders to military service, have used their professional licenses at some point in the immediate 2 years before the move, hold a license that is in good standing in every jurisdiction where licensed, and will follow the commission's standards of practice with annual renewal, discipline, and continuing education. In addition to waiving the criminal history and background checks, pre-license

education requirements and the national exam, the commission must also waive the application fee and requirement to take and pass the state exam.

The commission can require the licensed military/spouse to pay \$20 to the Education, Research and Recovery Fund, and if active, the licensee must obtain errors and omissions insurance and complete required continuing education. The licensees also must renew and pay the renewal fee every year.

Mr. Bitz asked and Mr. Phillips responded that the commission could not require a qualifying military/spouse applicant take a pre-licensure course. Mr. Phillips provided context that the DOJ views this federal statute as eliminating the requirement for pre-licensure education and other requirements, because the licensee is already licensed, has used the license at some time in the immediate past 2 years and the license is in good standing. Mr. Phillips is still talking with DOJ attorneys on the final website language, which may be changed slightly.

The DOJ reviewed the following language for a motion to update the commission's policy, and the information to be posted in a new "Military/Military Spouse" tab in the "How To Apply" section of the website.

Mr. Bitz moved to update the policy set by the commission on June 8, 2023 on 50 U.S.C. § 4025a., a 2023 amendment to the federal Servicemembers Civil Relief Act (SCRA). The North Dakota Real Estate Commission (NDREC) will recognize a real estate license (broker or salesperson) issued to a military service member or their spouse by an out-of-state licensing authority, as valid in North Dakota at a similar scope of practice as a license issued by the North Dakota Real Estate Commission, if the military service member or their spouse meet all 5 of the following criteria:

1. Have moved to North Dakota because of orders for military service;
2. Provide a copy of the military orders to the North Dakota Real Estate Commission (NDREC);
3. Have actively used the license at some point during the two years immediately preceding the move;
4. Remain in good standing with:
  - a. the licensing authority that issued the covered license; and
  - b. every other licensing authority that issued a license valid for a similar scope of practice and in the discipline (license level – broker or salesperson) applied for in North Dakota; and
5. Submit to the authority of the NDREC for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

If these five criteria are met, the NDREC will issue a North Dakota license to the military service member or their spouse at a similar scope of practice and in the discipline (license level – broker or salesperson) of the out-of-state license for the duration of military orders. The Commission's website and license application form will be updated to advise military service members and their spouses who qualify about the process they need to follow to submit the necessary information, documentation, and application. For military service members and their spouses who meet the five criteria, the North Dakota Real Estate

Commission will waive the application fee, credit check, background check, pre-licensure education, and state and national exams.

The applicant will still pay \$20 to the Education Research and Recovery Fund and obtain errors and omissions insurance before license activation. Once licensed in North Dakota, the licensee will complete annual continuing education if active, and must renew annually like any other North Dakota real estate licensee.

Mr. Cymbaluk seconded. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Link, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Ms. Meyer. Motion carried 4-0-1.

Policies/procedures – child support enforcement.

Ms. Prom reported that the commission is reporting licensee information to the ND Department of Health and Human Services and has added date-of-birth (DOB) and Social Security numbers (SSNs) in auto-populated fields on renewals, to comply with state law (NDCC 50-09-8.2(1)(g)(1)(d)). Ms. Kory Hagler updated DOB and SSNs in the database, and the commission continues to require DOB and SSNs on all applications, as part of the credit and criminal history background checks. The information assists the state Child Support Enforcement unit in locating parents who owe or may be owed child support.

B. Letters of interest in reciprocity.

Ms. Prom reported that both the South Dakota Real Estate Commission and the Montana Board of Realty Regulation responded to the commission's inquiry on interest in reciprocity. Both states indicated they did not desire to pursue reciprocal agreements with North Dakota at this time.

C. Labor & Commerce studies.

Labor Commissioner study – Labor Commissioner Mr. Nathan Svihovec is preparing a final report on his visits to all licensing boards and commissions, to be shared with all boards and the interim legislative Workforce Committee, who is meeting Oct. 7, 2024.

Commerce study – Ms. Prom reported that several years ago the legislature also authorized the Department of Commerce to study licensing boards and commissions. Ms. Prom reviewed the department's current survey covering 2022 and 2023, which included questions on license application and approval/denial numbers, license law, the licensing process, immigration/refugee status of applicants (not collected by the commission), military/spouse status, the commission's interest in sharing administrative services (NDREC indicated no interest in this.), and pandemic-related licensing processes (not applicable to NDREC). The commission agreed that the lack of digital fingerprinting in the state adds days to the criminal history review process, and it appears that the ND Highway Patrol only offers digital fingerprinting at their state office in Bismarck.

D. Potential legislation.

Ms. Prom noted that the commission previously decided that at its next meeting it will review draft language to amend license law to allow the commission to issue cease-and-desist orders on unlicensed activity, and to require disclosure when wholesaling any real property.

The commission reviewed a list of potential statute and rule changes suggested by licensees: license property managers, allow broker applicants to take the broker exam prior to completing the pre-licensure course (as salesperson applicants are allowed to do), and a rule change to eliminate the requirement that broker contact information be included on advertising.

Staff suggested replacing specific renewal dates in statute with language that the commission would set renewal timing. This general language would let the commission leave the renewal process as is, or make changes, including allowing ongoing, year-round renewals, in which a fraction of the total number of licensees renew every month. Ms. Prom said ongoing renewals would benefit the commission's consumer protection role, as staff could review all licensees' continuing education instead of auditing 15% each year. Ongoing renewals would also balance the workload and income across the year, creating efficiencies for licensing and accounting functions. The agency has adequate cash on hand and in reserve, so changing the cash flow would not impact the fiscal soundness of the agency.

Staff review of errors and omissions insurance is already separated from the renewal process, whether licensees have individual insurance covering the calendar year, or a firm policy which can expire any month of the year.

Continuing education also could be reviewed separately from the renewal process. Licensees must track their own CE, but the commission could opt to assist in CE tracking.

The commission, staff and Ms. Beck discussed ongoing renewals, noting that other licensing boards renew licenses year-round, and that amended license law language would not mandate certain dates, but would permit the commission to be flexible. Mr. Bitz moved to draft legislation that would give the commission flexibility to opt to change the renewal schedule and process. Mr. Cymbaluk seconded. Discussion: Staff and NDAR will check with other jurisdictions and licensing boards like the appraisers, on the benefits, efficiencies, and drawbacks of ongoing renewals, and how we would effectively justify this change to lawmakers. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Link, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Ms. Meyer. Motion carried 4-0-1.

The commission discussed allowing broker applicants to take the broker exam without a test code and prior to completing the pre-licensure course, but needing the pre-licensure course completed before the broker license is issued. This is the process for salesperson applicants. Mr. Bitz moved to have proposed legislation to allow broker applicants to sit for the exam prior to completing pre-licensure education, but the applicant must complete the pre-licensure education before licensure. Mr. Cymbaluk seconded. Discussion: This change would make the broker licensing process consistent with the process for salesperson. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Link, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Ms. Meyer. Motion carried 4-0-1.

The commission discussed the suggestion, but were not interested in pursuing legislation, to license property managers.

Ms. Prom reported that Labor Commission Mr. Svihovec stated in an email to her that that he anticipated draft legislation for licensing boards that might include requiring licensure within a certain number of days of receiving a complete application, funding for licensing software for boards who need assistance, some requirements for making some processes electronic to reduce mail time, as well as other requirements. The commission noted they already meet these possible requirements.

The commission discussed, but took no action on, a 2024-2025 priority to talk to legislators about the rising costs of agency audits. Current law allows an agency with less than \$200,000 in annual receipts to submit an annual report, not a full audit, to the state auditor. The commission's annual receipts exceed this threshold, and the commission has a \$24,100 contract for audit services for fiscal years ending June 30, 2023 through June 30, 2026. The commission anticipates future challenges in finding audit services, so increasing the \$200,000 threshold could address this concern.

Ms. Beck reported that NDAR will monitor legislation for foreign ownership of land and fair housing issues. NDAR task forces are looking into issues that may or may not become legislation, including creating a central depository for condominiums and Homeowners' Association documents (also a fair housing issue) and a deed notification system (possibly to deter vacant property scams), predatory mortgage fraud, and builder warranties. Members have also raised the issue of licensees who are also lending officers (which involves federal law). Ms. Beck thanked us for our good working relationship, and for having buyer agency, and Chair Breidenbach thanked the association for the same.

Later in the meeting while reviewing trust account audits, the commission discussed changing the rule that requires continuing education courses be a minimum of 2 hours.

E. 2024-2025 priorities.

Ms. Prom reported that staff updated the database to include several new fields to better track and search trust accounts and audits, and individual errors and omissions insurance not issued by Rice Insurance.

F. Trust account waivers.

Ms. Cieana Schneider provided a written report of recent trust account waivers.

G. Trust account audits.

Mr. Rob Yost continues to monitor many firms after audits that occurred over the past year-and-a-half. The commission discussed that it is a broker responsibility to know and apply adequate trust accounting practices such as tracking deposits/payments, keeping a general ledger, and account reconciliation. The commission agreed that Mr. Yost should not have to provide this basic education, and it may be helpful to have a 1-hour course available for brokers on trust accounting. Thus far, Mr. Yost and brokers have resolved issues before Mr. Yost would have recommended the commission take disciplinary action against any brokers due to consumer protection concerns.

The commission also discussed the process to change the current rule that states continuing education courses must be at least 2 hours. Mr. Bitz explained that this would require following the legislative rulemaking process with notices, hearings, and final approval by the legislative rules committee.

Mr. Cymbaluk moved to have staff research a 1-hour trust account management course. Mr. Bitz seconded. Discussion: Other jurisdictions and education providers may have a course, or we may be able to piggyback on another course. This information is part of the mandatory broker course this CE cycle. Ms. Beck expressed interest in the commission approving 1-hour courses. The commission will further discuss at the October 17, 2024 meeting. Roll call vote: ayes -- Mr. Cymbaluk, Mr. Link, Mr. Bitz, Mr. Breidenbach; nays – none; not present and not voting – Ms. Meyer. Motion carried 4-0-1.

H. License numbers.

The commission reviewed license numbers. 2024 salesperson applications are 24% below applications received by this time in 2023, but license numbers are slightly above this time last year. Ms. Candie Robinson created pie charts showing the percentage of licenses by type, active/inactive, and resident/reciprocal/nonresident.

I. NDREC meetings -- 2024-2025.

Chair Breidenbach said it is good to have in-person meetings but respects that commissioners have busy schedules and in-person participation is not always possible. Meetings begin at 8:30 a.m. on Thursdays -- October 17, 2024, and January 30, March 27, and May 8, 2025.

6. Financial reports -- 2023-2024.

Mr. Yost presented the financial reports and highlights for 2023-2024. Income from applications was below budget, but overall the commission has more cash on hand and in reserves than the previous fiscal year. The commission discussed applications, license, and renewal numbers and possible impact of the National Association of Realtors' lawsuit settlement. The agency audit of the 2023-2024 fiscal year will begin in December. Mr. Cymbaluk moved to approve the 2023-2024 financial reports as presented. Mr. Bitz seconded. Motion carried by unanimous voice vote of those members present. Chair Breidenbach thanked Mr. Yost for his work.

7. Minutes -- April 25, 2024.

Mr. Cymbaluk moved to approve minutes from the April 25, 2024 meeting as presented. Mr. Bitz seconded. Motion carried by unanimous voice vote of those members present.

8. Other.

The commission did not discuss any other business.

Adjourn.

Chair Breidenbach thanked everyone for participating and attending and adjourned the meeting at 10:14 a.m.