

April 22, 2009  
8:00 am CDT  
ND Real Estate Commission  
1<sup>st</sup> floor Conference Room  
200 E Main Ave  
Bismarck ND 58501

Present: Roger Cymbaluk/Chair, Kris Sheridan/Vice Chair,  
Jerry Youngberg /Member, Jerry Schlosser/Member, Diane  
Louser/Member, Patricia M. Jergenson/Executive Director, Constance  
Hofland/Special Assistant Attorney General

1. CALL MEETING TO ORDER. Chair Roger Cymbaluk called the meeting to order at 8:00am. Roll call was taken. It was noted that Commissioner Youngberg would be joining the meeting via conference call.
2. APPROVE MINUTES OF MARCH 25, 2009 MEETING. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the minutes from March 25, 2009. M/C
3. APPROVE FINANCIAL REPORT FOR MARCH 2009. Commissioners discussed the retained earnings on the balance sheet and the need to execute judgments against those licensees who have not paid fines/fees levied against them (Tana Becker and Richard Ward). Commissioner Youngberg joined the meeting at 8:15am by conference call. Commissioner Schlosser moved, seconded by Commissioner Louser to approve the financial report. M/C
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
  - a. Complaint #2008-16 Don & Lorna Lambourn v Steve Link and Jim Sabe. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Schlosser moved, seconded by Commissioner Sheridan to dismiss this complaint. M/C It was noted that this situation is a good example of why auctioneers should be licensed as real estate agents due to the confusion to the consumer.
  - b. Complaint #2008-18 Nathan & Carrie Lorenz v Mark Tweten. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Youngberg to set this complaint for a hearing. M/C

- c. Letter regarding attorney's fee. Special Assistant Attorney General Connie Hofland requested a \$15/hr increase in the fee charged to the Commission for her services. Commissioner Louser moved, seconded by Commissioner Sheridan to accept the fee increase as proposed by Special Assistant Attorney General Connie Hofland. M/C The fee increase will become effective July 1, 2009.
5. CORRESPONDENCE FROM WILSON SONSINI GOODRICH & ROSATI DATED APRIL 13, 2009. Mr. Melnyk, on behalf of Wilson Sonsini Goodrich & Rosati, requests the Commission provide a legal opinion on a program described in the letter. Commissioner Sheridan moved, seconded by Commissioner Schlosser to have staff respond to Mr. Melnyk that if they wanted to submit documentation for Special Assistant Attorney General Connie Hofland to review it will be reviewed at their expense. M/C
6. SUBDIVIDED LAND REGISTRATION REQUESTS.
  - a. Points based timesharing. In an email dated February 26, 2009 Darin Kirby requested confirmation that a non-specific multi-site timeshare plan offered by Diamond Resorts did not require registration in ND under the Subdivided Lands Act. Special Assistant Attorney General Connie Hofland will respond that it may fall under the exemption in the Subdivided Lands Act but that she is providing the statute and not rendering a legal opinion. She will copy her response to the Commissioners.
  - b. Summer Bay Resorts Crown Club, LLC. In a letter dated December 18, 2008 Mr. Anthony Polvino requested written confirmation that the offering and/or sale in ND of the Crown Club plan and timeshare interests offered by Summer Bay Resorts Crown Club did not require registration in ND under the Subdivided Lands Act. Special Assistant Attorney General Connie Hofland will respond that it may fall under the exemption in the Subdivided Lands Act but that she is providing the statute and not rendering a legal opinion. She will copy her response to the Commissioners.
7. REVIEW ADDITIONAL INFORMATION FROM SCOTT ZUKOWSKI REGARDING HIS SALESPERSON LICENSE APPLICATION. Commissioners reviewed information provided by Mr. Zukowski as requested as well as a letter of reference from his employer. Commissioner Sheridan moved, seconded by Commissioner Louser to allow Mr. Zukowski to sit for the salesperson real estate examination. M/C
8. REVIEW APPLICATIONS FOR SALESPERSON LICENSES.
  - a. Commissioners reviewed the application of John R. Corbett for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to deny Mr. Corbett's application due to inconsistencies regarding misdemeanors on his application and background check. M/C
  - b. Commissioner Louser recused herself from discussion and vote on this applicant. Commissioners reviewed the application of Sherri L. Johnson for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Sheridan to deny Ms. Johnson's application due to unsatisfied judgments. M/C

- c. Commissioners reviewed the application of Kim M. Korynta for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to deny Ms. Korynta's application due to inconsistencies regarding misdemeanors on her application and background check. M/C
  - d. Commissioners reviewed the application of Joshua J. Bergrud for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Bergrud to sit for the salesperson real estate examination. M/C
9. APPEARANCE BY MICHAEL G. KRAMER REGARDING HIS TABLED SALESPERSON LICENSE APPLICATION. Michael Kramer appeared before the Commission to clear up concerns regarding the consent agreement he had entered in to with the ND Securities Department. Kelly W. Mathais, ND Securities Department investigator, called in to provide an explanation of Mr. Kramer's circumstances and Mr. Kramer's willingness to come forward and aid in the investigation. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Kramer to take the salesperson license examination pending the receipt of a letter from Mr. Mathias regarding Mr. Kramer. M/C Commissioners commended Mr. Kramer on standing up and taking responsibility.
  10. DISCUSS ONLINE COURSE USE OF "TIMERS". Executive Director Jergenson noted that ARELLO has now added information to their certification form verifying whether or not there is a clock hour enforcement mechanism present on online courses. Clock hour enforcement requires a student to spend an appropriate amount of time in each section of the online course and will only allow the student to move forward once they have spent that amount of time on the section. The question for discussion at the upcoming ARELLO meeting will be if a student is required to sit in a classroom setting for 50 minutes (classroom hour), should online students have to do the same. Staff will bring back information on this discussion to the Commission.
  11. APPEARANCE BY SUE FELAND AND JACK NEUMANN REGARDING LATE FEES ASSESSED TO OAKTREE LLP, REALTORS. Mr. Neumann and Ms. Feland appeared before the Commission to appeal the assessed late fees. Staff recapped the events leading up to the late fee assessment. No additional information was provided by Mr. Neumann or Ms. Feland. It was the consensus of the Commissioners that the decision made at the March 25, 2009 meeting stands.
  12. REVIEW CONTRACT PROPOSAL FROM AMP. Executive Director Jergenson stated that after giving thought to the timeline required in sending out an RFP to license examination providers, the possibility of rewriting exam questions, and all that comes with changing providers it would be more prudent to renew the contract with AMP for 3 years. At the March 25<sup>th</sup> meeting Commissioners moved to renew the AMP contract for 1 year. Commissioner Schlosser moved, seconded by Commissioner Sheridan to accept the AMP contract as presented for 3 years and give Executive Director Jergenson authority to sign the contract. M/C

13. APPOINTED AGENCY TASK FORCE UPDATE: COMMISSIONER SCHLOSSER. Commissioner Schlosser gave Commissioners an update on the task force and let them know that it is still alive. Commissioner Schlosser stated that he has discovered the following: there is no shortage of stories dealing with agency which makes it difficult to have a clear path to follow, rules and laws need clarification and possible change, it is difficult to find a convenient time for full committee meetings – may have to schedule meetings as a teleconference, a small group met to develop bullet points, and the possibility of articles in the newsletter covering one issue at a time may help educate.
14. DISCUSS CORRESPONDENCE FROM STATE OF NEW YORK REGARDING RECIPROCITY. It was the consensus of the Commissioners to not pursue reciprocity with New York.
15. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan moved, seconded by Commissioner Louser to approve trust account waivers for David A. Dreiling, Russel L. Johnson, Linda M. Klebe, and Travis J. Schweitzer. M/C
16. COMMISSION GOALS. Commissioners added the review of appointed agency statute and rules to the list of goals.
17. OTHER BUSINESS.
  - a. Jill Beck, NDAR EVP, was asked if she had any feedback regarding the Commissioner's correspondence to the Bismarck-Mandan Board of Realtors. Jill has not been in the office very much so she hasn't received any.
  - b. Commissioners discussed an email received from FMAAR which asked: Tom McKinnon has several agents working for him and all of the company's listings and sales are reported under his name. Therefore his volume exceeds any one person. To be truthful in advertising, should he be advertising as a "Team", not "ND's #1 Agent for the Last Ten Years"? Commissioners determined that they could not make a decision based on this inquiry. A formal complaint would need to be filed to determine if there is a violation.
  - c. Chris Edison, Storslee Law Firm, has agreed to seek appointment from the ND Attorney General as conflict counsel for the Commission. He requested the same current hourly fee as Ms Hofland and the same increase as Ms Hofland beginning July 1, 2009 (the new fiscal year). Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Edison as counsel at the fee requested. M/C
  - d. Town & Country Realty, LLC has registered the trade name of T & C Realty because sometimes their newspaper ads, in particular the open house ads, read T&C Realty and they want to be in compliance with the advertising rule. The name is registered as "AKA" (also known as). The license for the firm is issued as Town & Country Realty, LLC. Can Town & Country Realty, LLC use the names interchangeably? Staff was directed to find out if there was a way to do this within statute and to see how to handle this in the data base.

Commissioner Cymbaluk adjourned the meeting at 10am.

Respectfully submitted,

Patricia M. Jergenson  
Executive Director