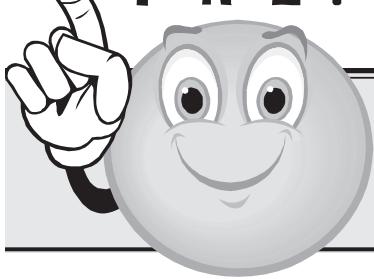




# REAL ESTATE

FALL

2010

**Don't  
FORGET!**

## NEWS & VIEWS

**IT'S TIME TO RENEW YOUR REAL ESTATE LICENSE  
FOR 2011. CHECK INSIDE FOR 2011 LICENSE  
RENEWAL INFORMATION!**

### **"FLOPPING", "DUAL DEEDING", OR "SIMULTANEOUS CLOSING"**

By Commissioner Diane Louser

Real estate regulators across the country are being faced with new challenges as a result of the increase in delinquencies in home mortgages.

One growing problem involved "flopping" of homes. It is being referred to as "dual deeding" or "simultaneous closing." Companies are apparently being set up for the purpose of searching for vacant properties around the country, finding buyers for those properties, utilizing an individual to negotiate with the bank for the purchase of the property through a short sale, and immediately selling it to the pre-arranged buyer, resulting in a considerable profit to the company and a loss to the bank.

In many instances the vacant property is anti-staged by the company. The home is deliberately damaged by removal of appliances, fixtures, doors, etc. Some have gone to the extent of allowing animals in the home, resulting in soiled floors and damage to the interior. It was reported that in one state, faucets were turned on and water left running throughout the home, causing flooding to the property and resulting in a large reduction in price by the lender. Generally, however, the destruction is cosmetic so that once pictures are taken for the bank, and appraisals are completed (often by appraisers who are selected from a pool and who may not



*Commissioner Diane Louser*

be familiar with local markets), there is a reduced value established, a short sale is completed, and the property is immediately rehabilitated and cleaned for the new buyer.

Some lenders are requiring all offers to be written and presented by licensed real estate agents in short sale situations. In instances where the banks require disclosure of resales of homes that have again been sold after a short sale, these transactions are coming to light more rapidly. When a licensee is involved, it is likely the agent and broker will have complaints filed against them by the lender who was damaged in the transaction and may be investigated for bank fraud. If the transaction involves

an unlicensed individual, that person can be subject to cease and desist orders and criminal investigations. However, many of the companies and individuals involved in these short sale transactions are moving quickly from state to state, making it expensive and time consuming for authorities to track them down.

Bank fraud is on the rise and is becoming a big business. Because of the effect of these types of short sales not only on lenders but on the housing market and economy as a whole, it is likely we will be seeing more investigations, complaints, and litigation in this area in the days and months ahead.

# North Dakota E&O Group Program – Premium Increase for 2011

The 2011 annual premium for the North Dakota group Errors and Omissions insurance program is \$167. This represents a slight increase over the 2010 premium. This premium represents the middle range of the annual group premium in the states with mandatory insurance programs.

Rice Insurance Services Company, LLC (RISC) is the administrator for twelve of the thirteen states that currently have contracts for mandated programs. Premiums for group programs in other mandatory states range from \$272 in New Mexico to \$97 for one year of coverage in Rhode Island. The group price is established for each state based on an actuarial determination of the amount of premium needed to cover the expected losses for that state's licensees. Continental Casualty Company, a member of the CNA group of insurance companies, ("CNA") is the insurance carrier for the group program. CNA's management and actuaries have reviewed the loss history for the North Dakota program. The losses indicate that a slight increase above the previous \$152 per licensee premium amount is necessary for 2011.

CNA has been the insurance carrier for the North Dakota program since 2003. There are typically between 800 – 900 licensees insured annually (some licensees join mid-year and pay pro-rated premiums). In order for an insurance program to be successful, enough premium needs to be collected to pay the legal expense and damages for the claims plus cover the costs associated with the administration of the program including the handling of claims and other related costs. Ideally, the insurance carrier expects a slight profit (at least for some of the program years).

There were 34 claims reported for the group policy year 2009 (28 of the 2009 claims were related claims involving property management). The incurred amount (amounts paid and reserved for claims) for policy year 2009 is currently over \$140,000. This does not include any administrative costs associated with the program. There are 28 open claims for this period, so this amount is expected to increase over time. In addition, the incurred amount for policy years 2006 and 2007 are currently over \$100,000. There are still open claims for these periods, so the incurred amounts for these years are also likely to increase. While claims are still open for a given policy year, it is impossible to know if the premium collected for those policy periods will be sufficient to cover legal expenses and damages and other costs associated with the program. The expected development of claims indicated from the historical loss experience show that a higher premium amount is necessary for the 2011 policy period.

We are pleased that the group rate for the program remains reasonably priced and coverage is at an affordable level for North Dakota licensees. The annual group premium is less than the premium in six of the other thirteen mandated states. The comparatively small size of the North Dakota group makes it more difficult to spread the losses across the group population. However, the insurance carrier has been willing to view this group program along with the other mandated group programs we currently provide in order to help justify the reduced rate.

The cost of an error or omission claim typically involves hiring an attorney to defend the allegations. This can cost several thousand dollars for legal fees, even if there is no liability. In the event there is an error or omission or liability is found, the damages can be significant. The availability of insurance provides legal defense and damages for covered claims.

Group insurance programs in mandatory states are designed to make insurance available for every licensee. These programs are also designed to bring down the cost of errors and omissions insurance for the individual. A group policy means lower premiums and lower deductibles for the real estate licensees than what is typically available to the licensee on the open market. It means that there is an established insurance market for each licensee offering guaranteed-issue insurance coverage which cannot be cancelled by the insurance provider. The group policy allows for lower administrative costs and the higher participation level obtained by the group programs permits an economy of scale which results in lower costs for the licensees. If an insurance company does not have sufficient market share it cannot afford to offer the reduced rates available with a group program. The group program makes insurance affordable and available at a fixed price to all active licensees.

*This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. Only the policy can provide the actual terms, coverages, amounts, conditions and exclusions. This program is only available in North Dakota.*

## North Dakota

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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because we feel they will be of interest to our readers.

# 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
Smykowksi, James	2010-01	Stipulated	09/01/2010	Respondent's conduct may have constituted violations of NDCC 43-23-11.1(1)(e), (b), & (w), 43-23-12.1, 43-23-14.1 and ND Administrative Code 70-02-01-15. Respondent may have violated the rules and regulations by failing to keep proper records documenting the deposit of funds as prescribed by the rules & regulations; by failing to properly document his relationship between the real estate brokerage firm & the person for whom the real estate brokerage firm performs the services intended; & by failing to maintain adequate books, records, contracts & other necessary documents so that the adequacy of the funds received may be determined at any time.	Stipulated to a \$500 fine, payment of \$790 investigative/legal fees both to be paid within 30 days of issuance of order & 3 hours of education on ethics/agency to be taken within 90 days of issuance of the order (not to be used as part of his continuing education).

## Tidbits of information

- NEW LICENSE LAW BOOKS WERE MAILED TO ALL ACTIVE AND INACTIVE LICENSEES IN JULY. If you did not receive a copy you may download it from our web site or contact our office and we will mail you a copy.
- ANONYMOUS LETTERS AND COMPLAINTS CANNOT BE ACTED UPON BY OUR OFFICE. If you feel someone or something should be investigated by us you need to provide your name as well as the information.
- ARE YOU HAVING YOUR COMMISSIONS PAID TO YOUR CORPORATION, LLC, OR LLP? Do you have that organization (such as those mentioned previously) licensed with the North Dakota Real Estate Commission? If not, then keep reading....NDCC 43-23-05.1 states that in order to have commissions paid to an organization it must be licensed. The licensing of an organization of a salesperson or broker associate for the purpose of having commissions paid to that organization allows the licensee to participate in the benefits and advantages that such an arrangement has to offer. Application forms are available on our website ([www.realestatend.org](http://realestatend.org)) under "Licensees" and then "Forms". Then select "Salesperson Corporate LLC License Application".
- COMMISSION MEETINGS ARE OPEN TO THE PUBLIC and that includes real estate licensees. Commissioners welcome and encourage licensees to attend meetings held by the Commission. Meeting dates, time & location can be found on the Commission's web site [www.realestatend.org](http://www.realestatend.org).

# RENEW ONLINE

it's so easy!

**Last year over 50% of our licensees renewed online**

We are really hoping that licensees will renew online, however we have provided your broker with a paper renewal form in the event you prefer not to renew online. These forms may also be downloaded from our website. We hope that you will share your comments about your online experience with us so that we can work to provide an even better renewal experience in the future. Upon completion of your online renewal you will receive a confirmation that you can print for your files and be assured that you have paid your fee and renewed your license.

#### Follow These Easy Steps to Renew Your License Online:

1. Go to the Commission's web site at [www.realestatend.org](http://www.realestatend.org) and click on "Online License Renewals Available Now".
2. This will take you to a screen to create your account or to login with your user name & password if you have already created an account.
3. Once you have created your account you will be able to begin the process of renewing your license.
4. Once you have completed your renewal form, click "Continue" – this will take you to the Billing Information page. Verify your payment information then click "Continue to Payment". Enter your credit card information and click "Pay". Your renewal will then be placed in a pending state until the completion of continuing education hours has been verified by your broker & we have received proof of errors and omissions insurance.
5. The Payment page gives you the renewal fee and payment options. You will then select the method



of payment: Discover, Master Card or Visa. Upon completion of payment, there will be a confirmation page that you can print and keep for your records. You will also receive an email verification.

6. Once your broker has certified completion of your continuing education and we have received certification of E&O insurance coverage from you, you will be notified that your license has been renewed for 2010.

#### Deadline:

Remember: if you renew online, you must do so by **midnight December 31, 2010** to avoid a late fee. Hint: Do not rely on your computer clock if you are renewing close to midnight.

#### Renewing Company License Online:

Designated brokers may renew the company license once they have created their account under their own name.

#### Payment Online:

Credit cards accepted: Discover, MasterCard & Visa



## FIRST IT WAS DON'T TEXT WHILE DRIVING. WHAT'S NEXT? DON'T TEXT IN CLASS.....

Our office was recently informed that licensees attending classroom continuing education courses have had to be reminded numerous times to turn off their phones, blackberrys', etc. There are licensees who are spending more time texting & using their blackberrys than listening to the instructor. Recent studies have shown that when a person is multitasking their brain is really switching back & forth from one task to the other. Ever tried sending writing an email and talking on the phone at the same time? For the most part humans can only focus on one thing at a time. Add to that the fact that this behavior is not only very rude to the instructor and those attending the class, but also very unprofessional. How would you feel if your clients/customers sat in front of you and texted while you were doing a listing presentation or presenting an offer? Please give more consideration to the instructors and to those around you.

# RENEW BY MAIL

- You will need to request a renewal form from your broker or go to our website [www.realestatend.org](http://www.realestatend.org) and download a form.
- Submit your renewal form, signed by your broker, with proof of Errors and Omissions insurance, and the appropriate fee.
- Have your renewal postmarked by December 31, 2010 to avoid any late fees.
- Make sure your check is in the correct amount.
- If you need to notify us of a change of address or name change you must do so on a Change of address or name form and submit that separately – NOT on the renewal form.

# RENEW FEES



#### If submitted

#### by December 31, 2010:

(Submitted means paid online by midnight December 31, 2010 or if submitted by mail, the postmark, not your postage meter mark, on your envelope is on or before December 31, 2010)

- Corporate/firm license fee ..... \$150.00
- Broker license fee ..... \$120.00
- Salesperson license fee ..... \$100.00
- Duplicate license fee ..... \$ 10.00
- Branch office fee ..... \$ 10.00

#### If submitted on or after January 1, 2011:

(Submitted means paid online after midnight on December 31, 2010 or if submitted by mail, the postmark, not your postage meter mark, is on or after January 1, 2011) a \$50 late fee will be assessed to the license renewal fee.

- Corporate/firm license fee ..... \$200.00  
(\$150 + \$50 late fee)
- Broker license fee ..... \$170.00  
(\$120 + \$50 late fee)
- Salesperson license fee ..... \$150.00  
(\$100 + \$50 late fee)

#### If submitted on or after February 1, 2011:

(Submitted means paid online after midnight on January 31, 2011 or if submitted by mail, the postmark, not your postage meter mark, is on or after February 1, 2011) a \$100 late fee will be assessed.

- Corporate/firm license fee ..... \$250.00  
(\$150 + \$100 late fee)
- Broker license fee ..... \$220.00  
(\$120 + \$100 late fee)
- Salesperson license fee ..... \$200.00  
(\$100 + \$100 late fee)

# RENEW DEADLINES

## for 2010 Licences

- December 31, 2010 – last day to renew without penalty
- January 1, 2011 – add \$50 late fee
- February 1, 2011 – add \$100 late fee
- March 1, 2011 – if not renewed license is automatically cancelled without notice



## ***Education Information***

### **Continuing Education Requirements for 2011 License Renewal**

#### **Basic information:**

**Total ce needed:** 9 hours taken in 2010

**Deadline:** December 31, 2010 - Courses must be completed prior to license renewal.

**Courses to take:** 3 hours mandatory Agency course  
6 hours in approved elective courses

#### **FAQs:**

Q: In what time frame do courses have to be taken to count toward the 2011 renewal?

A: Courses taken between January 1, 2010 and December 31, 2010 meet the continuing education requirements to renew your license for 2011.

Q: Do my certificates of course completion have to be sent to the Commission office?

A: No.

Q: What do I do with the certificates of completion?

A: Keep them in case of a Commission audit in the future.

Q: If I took CE hours during this current CE cycle (2010) to **activate** my license, can I use those hours as part of the 9 hrs required to renew my license for this CE cycle?

A: No.

Q: What if I took some courses in another state?

A: Courses taken in another state that have been approved for real estate CE can be used to satisfy the 6 hours of elective courses.

Q: Can I take a mandatory course online?

A: Yes, be sure the course number begins with "MAN".

Q: What if I don't know how many CE hours I have taken?

A: CE certificates are not kept at the Commission office. Licensees are expected to maintain their own records. If you do not have a CE certificate contact the course provider for a duplicate copy.

Q: I am a new licensee. What CE hours do I need?

A: If you have completed your 15 hours of post licensing in 2010 you are exempt from this CE cycle (2010). **HOWEVER**, if you completed your 15 hours post licensing education in 2009 you will need to comply with the CE requirements of this CE cycle. If you are not sure about your situation call our office. 701-328-9749

## **EDUCATION CORNER**

- The continuing education cycle for North Dakota licensees is 9 hours annually. Licensees must complete 9 hours of ce (3 of which are in a mandatory course) prior to renewing their licenses for 2011. Accepted ce must be taken between January 1, 2010 and December 31, 2010.
- The **mandatory course for 2010** is an agency course with emphasis on appointed agency. The Commission selected this course content based on a recommendation from the Appointed Agency Task Force. To date one classroom course has been approved "Agency in the 21<sup>st</sup> Century", course number MAN1011-017. The mandatory class is also available online, "ND Agency in the 21st Century", course number MAN1011-278.
- For a list of approved online and classroom courses go to our web site [www.realestatend.org](http://www.realestatend.org) click on "Licensees", then "Education", and finally "Approved Courses". It's easy!
- Does it Count?* is a question often asked by licensees who have taken courses that are not approved by the ND Real Estate Commission, typically these are courses taken in another state. If the course taken in another state has been approved by that state's real estate licensing board for real estate continuing education it will be accepted in North Dakota. **This only applies to elective courses. Please note: ND is not allowed by law to accept a ce course for less than 2 hours. Courses must be whole classroom hours. A course taken in another jurisdiction for 3.75 hours will be accepted in ND for 3 hours. No rounding up.**
- CE Instructors: If you wish to receive ce credit for courses you teach, please notify our office in writing as to which course you taught (include course number), the date taught, and that you wish to receive ce credit for the course. Be sure to sign the notice. We will send you a ce slip with the appropriate credit to you for your records. NDAC § 70-02-04-16.
- ONLINE CE: For those who take their ce online – please carefully read the directions on receiving your ce slip. Printing out your completion notice does not constitute a ce slip and cannot be submitted as proof of continuing education

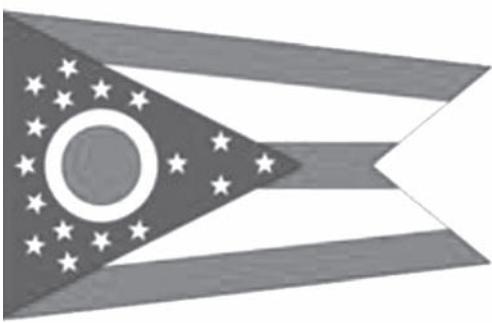


### *In Memory*

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

Robert J. Maxon.....Grand Forks, ND  
David K. Cusey.....Moorhead, MN

## OHIO BROKER'S LICENSE REVOKED OVER DISCLOSED, BUT UNEXPLAINED, FEE



the Ohio Real  
ssion's decision  
to revoke the  
cense of a real  
te broker who  
nted a purchaser  
arranged a  
tantial fee to be  
aid by the seller,  
but breached  
luciary duties by

failing to adequately explain to his client that the fee reflected an amount by which the seller would have been willing to reduce the purchase price.

According to the appellate decision in *Randolph v. Ohio Division of Real Estate*, former real estate broker Kevin P. Randolph represented Sherri Myrick in the purchase of several properties. Myrick also entered into an agreement with Rudolph for the management of the rental properties to be acquired. Rudolph showed Myrick a single family residence on East 22nd Avenue in Columbus, Ohio, which Myrick purchased for \$64,000. In connection with the transaction, Myrick signed a "Disclosure of Investor Fee/Real Estate Bonus" stating that the Seller was to pay an investor fee of \$18,400 to Randolph upon closing of the transaction. Myrick apparently signed the disclosure but had no recollection of doing so.

Myrick filed a complaint with the Ohio Division of Real Estate, which conducted an investigation and issued formal charges based on several aspects of Rudolph's dealings with Myrick. With regard to the 22nd Avenue transaction, the Ohio Real Estate Commission (the "Commission") alleged that, among other things, Randolph failed to disclose material facts regarding the asking price for the East 22nd property, relative to the fee that Myrick arranged to collect from the seller. The allegation was based, in part, on the statutory fiduciary duty of a licensee to "...disclose to the client any material facts of the transaction of which the licensee is aware or should be aware in the exercise of reasonable skill and care and that are not confidential..." .

During the subsequent administrative hearing, Myrick testified that if she had known about the bonus, she would have offered less based on the fact that the seller was obviously willing to take less for the property. The seller stated in an affidavit that he would have sold the property for (US) \$35,000 to \$ 45,000. An administrative hearing officer found that Rudolph violated the licensing law in several particulars but, as to the 22nd Avenue property, found that the Commission did not prove that Rudolph either "knew or should have known" that the seller would have accepted a lesser purchase price. The Ohio Real Estate Commission ("Commission") then convened a review hearing at which Rudolph and Myrick provided additional testimony. The Commission ultimately accepted some of the hearing officer's findings and conclusions, but also found that Rudolph violated his fiduciary duties to Myrick during the 22nd Avenue transaction. The Commission based this finding on the seller's affidavit and Rudolph's own testimony to the Commission, during which he stated:

"COMMISSIONER FROEHLICH: Did you explain to her that [the seller] was willing to take \$18,400 less for the property basically by paying [you] a bonus?"

[RUDOLPH]: I didn't know he was willing to take \$18,400 less.

COMMISSIONER FROEHLICH: If he's paying a \$18,400 bonus to you, isn't he netting less for that property?

[RUDOLPH]: Obviously, he's netting less but I didn't know he was willing to take less. He have [sic] never told me that.

COMMISSIONER FROEHLICH: He told you he was going to [pay you a bonus of] \$18,400 on [a] \$64,000 sale.

[RUDOLPH]: Yes sir. The only thing -

COMMISSIONER FROEHLICH: Does that mean he would net less?

[RUDOLPH]: That means he would net less, yes."

After the review hearing, the Commission imposed various disciplinary sanctions including revocation. Rudolph appealed the agency's order to a trial-level court, which affirmed the Commission's decision. Rudolph then appealed to the Ohio Court of Appeals, which also affirmed the Commission's decision. With respect to the 22nd Avenue transaction, the Court of Appeals noted that, even though Rudolph provided a disclosure form to his client that identified the bonus, Myrick testified that he never told her about the bonus and that she did not recall signing the disclosure form. The Court said, "Needless to say, appellant did not have a meaningful discussion with his client regarding the fact that he was keeping roughly one-third of the \$64,000 purchase price. On a typical transaction of this nature, the real estate broker would keep six percent or \$3,840. Given the substantial discrepancy between the ordinary broker's commission and the amount appellant received from this transaction, it was incumbent upon him to do more than to simply include the bonus amount on some disclosure form and get his client to sign off on it without fully explaining what it means. What appellant did is akin to a doctor getting a patient to consent to a particularly risky procedure without fully disclosing the risks involved."

The Court also noted that the Ohio's statutes identifying the fiduciary duties of a real estate broker to a client are not inclusive or exhaustive, but rather state that "[T]he licensee shall be a fiduciary of the client and shall use the licensee's best efforts to further the interest of the client *including, but not limited to* [performing the duties enumerated in the statute]" (Emphasis added.) The Court ruled that, "So the fact that there is no provision in [the Ohio statute] that requires brokers to get 'informed consent' for certain types of bonuses, does not excuse conduct that common sense should tell you is unethical at the very least."

The court also upheld the Commission's decision on other grounds, such as Rudolph's conduct while managing the subject properties. The Court further declined to disturb the Commission's disciplinary sanction on the premise that, once an administrative agency finds a violation, the penalty is within the province of the agency to determine.

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THE OPPORTUNITY OF THE NEW YEAR  
THE BEAUTY OF THE SEASON,  
THE TRADITION OF FRIENDSHIP,

C E L E B R A T E - - -



Commissioners & Staff

From the North Dakota Real Estate