



REAL ESTATE

FALL

2012

NEWS & VIEWS

"Trade Name Registration"

(Reprinted from Spring 2009 newsletter)



Constance Hofland

Legal Counsel to the
North Dakota Real Estate Commission

This year many real estate licensees, who were using trade names, had not registered their trade name with the Secretary of State. The Commission sent letters to inform these licensees of the need to register a trade name, if one is used.

This article explains the need for trade name registration, the benefits of trade name registration, and just how easy and cheap it is to do.

If you use a trade name, you are required to register the trade name in North Dakota. This requirement applies to real estate licensees who are licensed in a name that is not the licensee's actual first and last name. This requirement also applies if you conduct business using a name that is not the official, actual name of your business entity, like a corporation or limited liability company. In this second situation, if you always use the entire name with the "Inc." or "LLC" you have to register the business entity with the Secretary of State, but you are not required to register a separate trade name, because you are not using a trade name, just the actual name. However, if you do use a shortened name of your business entity in trade, then you are required to register that trade name with the Secretary of State.

What was that again?

The trade name statute at N.D.C.C. § 47-25-01 defines the term "trade name" by explaining that a trade name is a name assumed to identify the business or activities of an individual or organization that is not (1) the true name of the organization using the business name (that is, not the exact corporate or limited liability company name) or (2) the first name and surname of each individual using the business name. Also, if a license to conduct business is required by the State of North Dakota, as it is for real estate salespersons and brokers, a name of an organization or association not otherwise registered with the Secretary of State requires registration as a trade name.

The trade name statute goes on to state that a "person or organization may not engage in business in this state under a trade name until the trade name is registered with the secretary of state." N.D.C.C. § 47-25-02. So, if you are using a trade name as defined, you are required to register it with the Secretary of State.

Why is registration required?

The registration protects the public by providing the public access to the name of the owner of the trade name. In this way, if someone from the public has an issue with an entity and only knows the trade name, it can find the owner's

name and contact information from the registration on the Secretary of State's website.

Also, by registering your trade name with the Secretary of State, you establish a public record of your trade name. Once your trade name is registered, no other business can file a name that is the same or deceptively similar to your trade name. In other words, you have an exclusive right to the registration of that name in North Dakota.

Also, you may institute a civil suit prohibiting any other person from using the name you have registered. However, I need to clarify, that just because you are the only one who can register the name and you have a right to sue to prohibit anybody else from using your trade name, the Secretary of State does not enforce your rights and will not go after someone who uses your trade name. You must enforce your rights.

The Secretary of State is a filing agency only and is not authorized to resolve legal disputes on trade name ownership. So, the Secretary of State will not let another entity register a trade name that is the same or deceptively similar to your registered trade name, but if someone is using your trade name, the Secretary of State will not go after them to make them stop, that is up to you and your attorney.

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TRUST ACCOUNT REMINDER

If you have unclaimed funds that have been in your trust account for three years you must, by law, file a report with the Unclaimed Property Division of the North Dakota State Land Department.

For more information and Holder Reporting Instructions and forms go to: www.land.state.nd.gov
Click on Unclaimed Property Division – then Business Owners/Local & State Government.

Questions?

Contact: Linda Fisher
Unclaimed Property Division
ND State Land Dept.
PO Box 5523
Bismarck, ND 58506-5523
Phone: 701-328-2800
Email: lfisher@nd.gov

North Dakota Real Estate Commission

200 E. Main Ave. Suite 204
PO Box 727
Bismarck, ND 58502-0727
Phone: 701-328-9749
Fax: 701-328-9750
Email: ndrealestatecom@nd.gov
Web site: www.realestatend.org

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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.

Commission Meetings Open to the Public

All Commission meetings are open to the public and that includes real estate licensees. Commissioners welcome and encourage attendance and observation by any licensee. Location, dates, and times can be found on the Commission's web site www.realestatend.org

REMINDER TO PRINCIPAL BROKERS

Principal brokers **MUST** register and renew **BEFORE** their broker associates and sales associates can be renewed.

reminder

INACTIVE LICENSEES:

Your inactive license must be renewed annually or it will be automatically cancelled March 1, 2013. This means you must either renew online or complete a 2013 renewal form and pay the appropriate fee.

There are no continuing education or Errors and Omissions insurance requirements to renew an inactive license.

EDUCATION INFORMATION

Continuing Education Requirements for 2013 License Renewal

Basic information:

Total ce needed:9 hours taken in 2012

Deadline:December 31, 2012 - Courses must be completed PRIOR to license renewal.

Courses to take:9 hours in approved elective courses

FAQs:

Q: In what time frame do courses have to be taken to count toward the 2013 renewal?

A: Courses taken between January 1, 2012 and December 31, 2012 meet the continuing education requirements to renew your license for 2013. Continuing education must be completed prior to completing your license renewal.

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 (2012) 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 continuing education in that state can be used to fulfill the 9 hours of continuing education for North Dakota.

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 2012 you are exempt from this CE cycle (2012).

HOWEVER, if you completed your 15 hours post licensing education in 2011 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

... Trade Name Registration continued

Also, the registration of the trade name with the Secretary of State provides protection of the trade name in North Dakota, but if a trade name is registered with the U.S. Patent and Trademark Office, the federal registration may supersede the protection afforded by state law.

One more thing on the enforcement of your trade name rights in a civil law suit, the trade name registration statutes provide for registration of trade names in North Dakota but do not provide the underlying substantive law protecting against infringement. That substantive law is based on common law.

How about some examples?

Ms. Iwana Sellhomes (yes, that is her real name), has a real estate salesperson's license in her actual first name and surname – Iwana Sellhomes. She does not have to register a trade name because she does not use a trade name, just her real name.

Now there is Mr. Ernest Money (I know, where did these parents get these names for these kids?), he is a broker for his company, Big

Beautiful Homes, Inc. Big Beautiful Homes, Inc. is incorporated in North Dakota and registered with the Secretary of State as a corporation. Ernest always, always, always uses the whole name "Big Beautiful Homes, Inc." of his business. Ernest does not have to register a trade name, because he only uses his actual corporate name, which already registered as a corporation with the Secretary of State, complete with the "Inc." -- not a trade name.

Ms. Iva Houseforyou is a broker for Nice Houses Real Estate, LLC, and uses the trade name "Nice Houses Real Estate" in her advertising and marketing. Iva needs to register the "Nice Houses Real Estate" trade name with the Secretary of State because she is using a name in trade that it is not the exact name of her LLC.

The good news is registering a trade name is easy at the Secretary of State website at www.nd.gov/sos. The website provides step-by-step instructions on how to fill out the form and provides helpful information on trade names. Also, further good news is it only costs \$25 to register your trade name and the registration is good for 5 years.

UNCLAIMED PROPERTY Questions & Answers

Provided by the ND State Land Department
701-328-2800

Real Estate Professionals:

You may already be aware of the requirement for businesses in North Dakota to file a report with the Unclaimed Property Division of the North Dakota State Land Department on an annual basis. For those of you who are regular filers – “thank you”. For those of you who still aren’t quite sure about the what’s, why’s and how’s of unclaimed property, we would like to take this opportunity to answer some common questions related to unclaimed property and the State’s filing requirements.

How does unclaimed property apply to me and my business?

The Unclaimed Property Act was adopted by the ND legislature in 1975 to provide the citizens of the State of North Dakota an avenue to become reunited with financial assets that are owed to them, but remain unclaimed. Unclaimed property in the real estate arena most often consists of unclaimed trust distributions or “earnest money” in situations where the rightful owner cannot be found or ownership cannot or has not been determined.

Please keep in mind that unclaimed property can also develop throughout your regular course of business. Things like uncashed payroll and vendor checks can be considered unclaimed property as well.

How long do I have before the potential unclaimed property becomes reportable to the state?

The ND Unclaimed Property Act has assigned dormancy periods to certain types of unclaimed property to help ensure that the property is truly abandoned or unclaimed and to give businesses some standard rules for reporting. All of our dormancy periods are listed at www.land.state.nd.us. The most common property types for Real Estate Professionals are uncashed checks (dormant at 2 years) and trust accounts (dormant at 3 years).

What is the reporting date?

The reporting date is November 1st each year. Our report year runs from July 1 to June 30 so we ask that you review your records each year around June 30 to identify any potential unclaimed property, to perform your due diligence (last effort to return the property to the rightful owner), and if no response, to file your report by November 1st.

How do I report? Is there a form?

The unclaimed property reporting packet can be found at our website at www.land.state.nd.us. The report is a pdf file that you print, fill out, and send to our office with one check for the total amount of the report made payable to the North Dakota Department of Trust Lands.

Please remember that the goal of our office is to get this property returned to the rightful owner. In order to do that, we need as much information about the owner of the property as possible. Full name, middle initial, last known address, and social security number are all very important to help us identify and refund the rightful owner. Any other details you have about the circumstances

surrounding the property can be helpful as well.

Please note: If the rightful owner has not yet been determined due to a dispute and the property has exceeded the dormancy period, please report the property to our office with all identifying information available for both parties. In cases involving dispute it is not uncommon for us to require both parties to participate in the claim process, unless one or the other parties can provide court documentation determining ownership.

What if I have no unclaimed property to report?

If you have determined that you have no unclaimed property to report for the year, please file a negative report with our office. This is a simple on-line submission that can be done on our website at www.state.land.nd.us. This will create a reporting history for your business and it lets our office know that you are aware of the law and you simply have nothing to report at this time.

In Memory

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

David A. Vigen
Fargo, ND

Clair A. Watne
Minot, ND

Jack R. Wavra
Grand Forks, ND

Renew **ONLINE**- it's so easy!

New this year: Broker Associate renewal forms

Online renewals open up November 1, 2012.

If you have renewed online in the past you will use the same email address and password to access your information. If there has been a change, you will need to call our office to have your email address and password changed before you can continue with the online renewal process.

If you have not previously renewed online you can create your account using these directions.

Follow These Easy Steps to Renew Your License Online:

1. Go to the Commission's web site at www.realestatend.org and click on "Online License Renewals".
2. This will take you to a screen to create your account OR to login with your user name & password from last year.
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 to print and keep for your records.
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 2013.

Deadline:

Remember: if you renew online, you must do so by **midnight December 31, 2012** 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 now renew the company license and their license in one transaction once they have created an account under their own name.

Transaction Fee:

A transaction fee will not be charged this year.

Payment Online:

Credit cards accepted: Discover, MasterCard & Visa



Renewal Fees

If submitted by December 31, 2012:

(Submitted means paid online by midnight December 31, 2012 or if submitted by mail, the postmark, not your postage meter mark, on your envelope is on or before December 31, 2012)

• Corporate/firm license fee	\$150.00
• Broker license fee	\$120.00
• Broker Associate 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, 2013:

(Submitted means paid online after midnight on December 31, 2012 or if submitted by mail, the postmark, not your postage meter mark, is on or after January 1, 2013) 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)
• Broker Associate license fee	\$170.00 (\$120 + \$50 late fee)
• Salesperson license fee	\$150.00 (\$100 + \$50 late fee)

If submitted on or after February 1, 2013:

(Submitted means paid online after midnight on January 31, 2013 or if submitted by mail, the postmark, not your postage meter mark, is on or after February 1, 2013) a \$100 late fee will be assessed.

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

Renewal Deadlines for 2013 Licenses

- December 31, 2012 – last day to renew without penalty
- January 1, 2013 – add \$50 late fee
- February 1, 2013 – add \$100 late fee
- March 1, 2013 – if not renewed license is automatically cancelled without notice

Renew by Mail

You will need to request a renewal form from your broker or go to our website 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, 2012 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.

RISC Rice Insurance Services Company, LLC

4211 Norbourne Blvd.
Louisville, KY 40207
Phone: 502-897-1876
Fax: 502-897-7174

Errors and Omissions Coverage Considerations If You Are Considering Inactivating Your License Or Retirement

Rice Insurance Services Company, LLC (RISC) administers real estate licensee errors and omissions (E&O) insurance policies issued by Continental Casualty Company in twelve states that require licensees to maintain such coverage. While the policies vary from state to state, it is uniformly important to maintain continuous coverage and to have coverage on the date a claim is made. As discussed further below, the policy or an extended reporting period (ERP) must be in effect when a claim is made for there to be coverage for the claim. If you are not renewing your RISC policy for any reason, including going inactive or retiring, you may want to consider purchasing an ERP endorsement (often called “tail coverage”) to protect against claims that arise after your policy’s expiration date. RISC offers ERP endorsements of one, two, and three years. These endorsements extend the policy’s reporting date, so that the policy applies to claims made during the ERP.

RISC’s policies, like most E&O policies, are claims-made and reported policies. Four dates are important in determining whether a claim will be covered under a claims-made and reported policy: (1) the policy’s retroactive date, (2) the date of the professional services giving rise to the claim, (3) the date the claim is made, and (4) the date the insured reports the claim to the insurance company.

RISC’s policies’ retroactive dates are established separately for each insured licensee. The retroactive date is the date the licensee first obtained and, from which, has continuously maintained E&O coverage. Any gap in coverage will terminate the previously-established retroactive date and the new retroactive date will be the date the licensee reestablishes coverage.

Coverage is considered under the policy in effect the date the claim is made. If a claim arises after the licensee’s policy expires and there is no ERP in effect, then there would be no applicable policy available to cover the claim. RISC’s policies only cover claims that relate to professional services provided on or after the retroactive date. That means for a claim to be covered, the insured must have coverage or an effective ERP on the date the claim is made, have had coverage on the date of the professional services, and have continuously maintained coverage between the date of the professional services and the

date of the claim. Further, the claim must be timely reported to the insurance company.

Example 1: Changing Careers

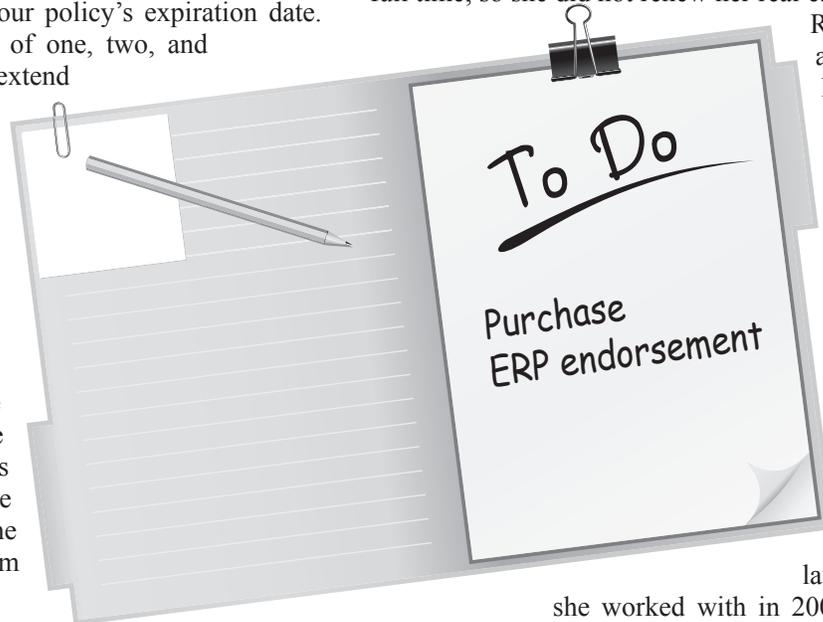
From March 12, 2002 to December 31, 2009, Ms. Salesperson worked in real estate and maintained continuous E&O coverage through RISC during that time. Her last E&O policy was a 2009 policy with effective dates of January 1, 2009 to January 1, 2010. For several years, Ms. Salesperson made extra money by selling pottery at art fairs. By 2009, Ms. Salesperson’s pottery was so popular she decided to do that full time, so she did not renew her real estate license in 2010.

RISC policies are only available to active licensees; thus, Ms. Salesperson was not eligible to purchase a 2010 RISC policy.

Example 1A: Ms. Salesperson was so busy with her pottery business that she did not consider her E&O coverage. On November 1, 2010, Ms. Salesperson was served with a lawsuit filed by a seller

she worked with in 2008. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy. Ms. Salesperson submitted the lawsuit to RISC and asked that a lawyer be hired to represent her. Ms. Salesperson was disappointed to learn there is no coverage for the claim, because it arose after her policy’s expiration date of January 1, 2010.

Example 1B: Instead of not considering E&O as in the previous example, Ms. Salesperson purchased a one-year ERP endorsement within ninety days after the expiration of her 2009 policy. The ERP endorsement extended the reporting period of her 2009 policy by one year to January 1, 2011. When Ms. Salesperson was served with the lawsuit on November 1, 2010, she timely submitted it to RISC. The claim was covered under Ms. Salesperson’s 2009 policy, because it arose within the ERP. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.



Example 2: Retirement

Mr. Broker worked in real estate from January 1, 1998 to December 31, 2010, during which time he maintained continuous E&O coverage through several carriers. Mr. Broker's last policy was a 2010 RISC policy with effective dates of January 1, 2010 to January 1, 2011. Mr. Broker retired on December 31, 2010 and deactivated his license. RISC policies are only available to active licensees; therefore, Mr. Broker was not eligible to purchase a 2011 RISC policy.

Example 2A: Mr. Broker thought there was no reason to worry about E&O coverage, since he retired from real estate. On October 1, 2012, Mr. Broker was served with a lawsuit filed by a client he worked with in November 2007. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy. Mr. Broker submitted the lawsuit to RISC. Unfortunately, there was no coverage for this claim, because Mr. Broker's policy expired on January 1, 2011, more than a year before the claim arose.

Example 2B: Instead of not worrying about E&O as in the previous example, assume Mr. Broker purchased a two-year

ERP endorsement within ninety days of the expiration of his 2010 policy. This endorsement extends the reporting period of Mr. Broker's 2010 policy to January 1, 2013, an additional two years after the policy's expiration date. Mr. Broker is then served with the lawsuit on October 1, 2012 and timely reports it to RISC. Because the claim arose within the ERP, it is covered under Mr. Broker's 2010 RISC policy. For purposes of this example, assume the lawsuit arose to a claim that would otherwise be covered under the policy.

Protect Yourself

Many E&O claims do not arise until years after the subject transaction. Accordingly, if you are inactivating your license for any reason, including retirement, you may be interested in purchasing an ERP endorsement.

Your insurance coverage is important. Please take the time to read and understand your policy's coverage provisions, conditions, and exclusions. To obtain sample copies of RISC's policies, visit our website, www.risceo.com, or call our administrative office at (800) 637-7319, extension 1.

It is not Continental Casualty Company's position to issue blanket coverage determinations based on hypothetical fact patterns or general concerns. Because it is impossible to know in advance how a specific claim would be presented, please accept this information only as general guidance regarding interpretation of the policies. When a claim is made, each coverage situation is evaluated on its own merits, based upon the facts and allegations. These allegations, when reviewed with the applicable policy's terms, conditions, and exclusions, determine the nature and extent of Continental Casualty Company's response. Therefore, Continental Casualty Company is not in a position to determine coverage prospectively. Additionally, this information does not, in any way, amend any policy. Continental Casualty Company believes the policies speak for themselves and specifically reserves all of its rights with respect to the policies, anything contained herein notwithstanding.

IMPORTANT Errors and Omissions Insurance Information

ALL RENEWING LICENSEES must review their errors and omissions insurance coverage. If your insurance expires on or before January 1, 2013, and you wish to remain on active status you must renew your error and omissions insurance and provide proof of insurance for 2013 when you renew your license. The insurance information packet will NOT be sent from the Commission but WILL BE mailed to all licensees' mailing address directly from Rice Insurance Services (RISC), the Commission's offered plan provider. As always, you are welcome to use the Commission offered plan or obtain your own equivalent coverage, but remember, if your insurance expires on or before January 1, 2013, you must renew your E & O coverage in order to keep your license on active status.

NDREC Renews Errors & Omissions Contract with RISC

We are pleased to announce that the Commission has approved a renewal of the group E&O insurance contract with Rice Insurance Services Company, LLC (RISC). The group carrier for the 2013 program is Continental Casualty Company, a member of the CNA Financial Corporation's group of insurance companies. The premium is \$182/year (a \$15 increase) per licensee. Information regarding the 2013 group program will be mailed to all licensees. The contract was renewed under the same terms and conditions as the previous year which are: \$100,000/\$500,000 limit, \$1000 damages deductible and \$1000 claims expenses deductible.

For more information, please visit RISC's website listed below or call their office directly:

RISC Insurance Services Company, LLC PO Box 6709 Louisville, KY 40206-0709

Phone: 502.897.1876 Toll free: 800.637.7319 Fax: 502.897.7174

www.risceo.com

North Dakota Real Estate Commission
P.O. Box 727
200 E. Main Ave. Suite 204
Bismarck, ND 58502-0727

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BISMARCK ND
Zip Code 58504

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