

February 20, 2008  
8:00 AM  
ND Real Estate Commission  
State Capitol Building  
Fort Union Room  
600 East Boulevard Ave.  
Bismarck ND 58505

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

1. CALL MEETING TO ORDER. Chair Diane Louser called the meeting to order. Roll call was taken.
2. APPROVE MINUTES OF NOVEMBER 7, 2007, DECEMBER 28, 2007 AND JANUARY 3, 2008 MEETINGS. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve the minutes of the November, December and January meetings as presented. M/C
3. APPROVE FINANCIAL REPORTS FOR OCTOBER, NOVEMBER, DECEMBER 2007 AND JANUARY 2008. Executive Director Jergenson reviewed the financial reports for the last 4 months. Commissioners asked that the report "Profit & Loss Budget v. Actual" for the fiscal year be included in the financial reports and that the financial reports be emailed to the Commissioners the months in which we do not have a Commission meeting. Copies of said financial reports would not need to be included in the Commission meeting packet if they had been emailed to the Commissioners. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the October, November, December 2007 and the January 2008 financial reports as presented. M/C
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
  - a. Complaint # 2007-05 Carter v. Wadhawan has been set for a hearing.
  - b. Complaint # 2007-06 M/M Long v. Kathy Feist has been set for a hearing.
  - c. Complaint # 2007-09 Schatzke v. Bothum. Commissioner Sheridan recused herself from discussion and vote on this complaint. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Schlosser moved, seconded by Commissioner Youngberg to set this complaint for a hearing. M/C (Commissioner Sheridan abstained)

- d. Complaint #2007-12 NDREC v. Nedberg (refusing service). Ms. Hofland informed the Commission that Mr. Nedberg has refused to accept the complaint served on him by registered mail. Ms. Hofland will have the complaint served on him personally by the sheriff.
- e. Complaint # 2007-13 Grosz v. Braun. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Cymbaluk moved to dismiss the complaint. The motion died for lack of a second. Commissioner Youngberg moved, seconded by Commissioner Sheridan to set this complaint for a hearing. M/C (1 nay Commissioner Cymbaluk).
- f. Complaint # 2006-02 Lauer v. Feist (tabled in litigation). This complaint remains tabled as the parties are in civil litigation.
- g. Complaint # 2006-15 Greenberg v. Ward (tabled in litigation). This complaint remains tabled as the parties are in civil litigation.
- h. Complaint # 2007-02 Lunde v. Loberg (tabled in litigation). This complaint remains tabled as the parties are in civil litigation. Trial date has been set for December 2008.
- i. Discussion of NAR article "Salesperson Cannot Represent Competing Purchasers." The Montana Supreme Court, in a 4 to 3 vote, ruled that Montana license law does not allow a buyer's representative to represent competing bidders for the same property. Ms. Hofland noted that N.D.C.C. § 43-23-12.1 would apply and that the ND Administrative Rules address disclosure. There has not been a civil case to determine how ND law would apply to this situation.
- j. Unpaid fines. Ms. Hofland described two processes that could be used to collect the unpaid fines due from Tana Becker (\$5000) and Kathryn Grady-Thurston (\$500). The Commission could file a collection action in district court to have a judgment levied (the cost would be from \$500 to \$1000) or file in small claims court. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan for Ms Hofland and Pat Jergenson to work together and proceed to file in small claims court and if that does not work to proceed with filing a collection action. M/C
- k. Auctioneers. Commissioners reviewed a memo received from Bill Binek, counsel to the Public Service Commission (PSC), regarding licensing requirements for auctions and the jurisdiction the PSC has over auctioneers. It was noted that many states require a real estate license to auction real property. Ms Hofland was asked to write an article in the newsletter on auctioning real property, exemptions for auctioneers and when a real estate license is required. Ms. Hofland was also asked to send a letter to the PSC stating that the ND Real Estate Commission is in agreement with the findings in the memo from Bill Binek and to also notify the Auctioneers Association of the Real Estate Commission's stance on this issue. The Commission will work in concert with the PSC to consider legislatively removing the exemption in real estate license law for auctioneers.

- l. Department of Justice correspondence. The Department of Justice contacted Ms. Hofland and requested a letter from the Commission stating our position on inducements. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to authorize Chair Diane Louser to sign a letter to the Department of Justice stating the Commission's position. M/C
  - m. Occupational & Professional Licensing and Criminal Penalties information request from the Legislative Council. The Legislative Council has asked agencies and boards if they want to change the portion of the law concerning criminal penalties, if so the Legislative Council will take suggested changes from the agencies and boards to be presented as one bill at the next Legislative session. Commissioner Sheridan moved, seconded by Commissioner Youngberg to have Ms. Hofland notify the Legislative Council of our request to include an amendment to N.D.C.C. § 43-23-05 and N.D.C.C. § 43-23-14.1 to change it to include the statement "is guilty of an infraction". M/C
  - n. Ms. Hofland informed the Commission that Richard A. Ward has appealed the decision of his hearing to District Court. In all likelihood one of the parties will appeal the District Court's decision to the Supreme Court. The status of Mr. Ward's license remains revoked unless he asks for a stay.
  - o. Ms. Hofland briefed the Commissioners on the Supreme Court ruling involving Main & Company, Inc. The Supreme Court case was about piercing the corporate veil. Ms Hofland will provide Commissioners a memo with her summary of this case. Staff provided Commissioners with excerpts of 2004 and 2005 minutes in which this situation was discussed.
5. BROKERS NON-COMPLIANT WITH TRUST ACCOUNT AUDITS. Ms. Hofland informed the Commissioners that a real estate license renewal cannot be refused for non-compliance without a hearing. Commissioners reviewed a list of 4 brokers who are not in compliance with their trust account audits. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to file complaints against Clyde Trautman, Linda Klebe, Fred Skoda, and Richard Ward for non-compliance with their trust accounts and set these for hearing. M/C
6. REVIEW 2008 RENEWALS OF BRIAN GULLICKSON, SHAWN HUBER, AND JASON SPIESS. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to have a background check done in Minnesota on Brian S. Gullickson due to possible false information on his application/renewal. M/C Background checks in North Dakota had been done on all three licensees. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to begin an investigation in to the false information on the license renewals of Shawn A. Huber and Jason A. Spiess and file a complaint. M/C Staff noted that even though Richard A. Ward's broker license had been revoked Mr. Ward sent in a renewal form and fee for his license. Ms. Hofland will return the check to Mr. Ward through his attorney.

7. REVIEW ATTORNEY GENERAL OPEN RECORDS AND MEETINGS OPINION DATED DECEMBER 5, 2007. This opinion was provided to the Commissioners for their information.
8. FINGERPRINTING PROCESS UPDATE. Executive Director Jergenson provided the Commissioners with an overview of the process to institute the nationwide fingerprinting process in the North Dakota real estate license application process.
9. CONTINUING EDUCATION AUDITS. Executive Director Jergenson stated that the Commission has 2 options available to conduct continuing education (ce) audits: Mahlum & Goodhart PC have stated that they could conduct ce audits at the same time they are doing trust account audits and will be submitting a proposal to do so with their next trust account audit proposal or we have the ability to conduct random ce audits using our licensee database. It was the consensus of the Commission to table action on conducting the ce audits until a bid from Mahlum & Goodhart PC has been received. If a licensee is found to have falsely stated on his/her license renewal that they have completed all of the required ce the complaint process would kick in.
10. REVIEW AND ADOPT ORDER REGARDING COSTS IN NDREC V. RICHARD WARD. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the Order Regarding Costs which assesses Mr. Ward costs incurred by the Commission in the investigation and prosecution of the complaint in the amount of \$6,431.91. M/C
11. REVIEW LICENSE APPLICATION FOR EDNA B. STENSETH. Commissioners reviewed correspondence from Sally McCravey, Sales Manager for Coldwell Banker First Realty-Encore stating her efforts and that of Ms. Stenseth to get documentation from the Fargo Municipal Court that the misdemeanor on her application has been expunged from her record as she stated. They were unable to get that verification and requested that the Commission grant Ms. Stenseth a reciprocal salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to allow Ms. Stenseth's application to be processed. M/C
12. REVIEW APPLICATIONS FOR SALESPERSON LICENSES.
  - a. Commissioners reviewed the application of Trisha L. Duvall for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Ms. Duvall to sit for the salesperson real estate examination. M/C
  - b. Commissioners reviewed the application of Jeffrey A. Halland for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Halland to sit for the salesperson real estate examination. M/C
  - c. Commissioners reviewed the application of Kathryn J. Helgaas for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Helgaas to sit for the salesperson real estate examination. M/C
  - d. Commissioners reviewed the application of Claudia J. Luick for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to approve Ms. Luick to sit for the salesperson real estate examination. M/C

- e. Commissioners reviewed the application of Courtney R. Miller for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to deny Ms. Miller's application due to the fact that she is in the process of filing for bankruptcy. M/C
  - f. Commissioners reviewed the application of Kristi M. Morales for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Ms. Morales to sit for the salesperson real estate examination. M/C
  - g. Commissioners reviewed the application of Tracy K. Pierce for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Ms. Pierce's application until the remaining payments on her Chapter 13 bankruptcy have been made. M/C
  - h. Commissioners reviewed the application of Charlie F. Ricketts for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Mr. Ricketts' application due to a continued pattern of behavior shown on his application and background check. M/C
  - i. Commissioners reviewed the application of Richard S. Rothing for a reciprocal broker license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Rothing's application for a reciprocal broker license. M/C
  - j. Commissioners reviewed the application of Mary R. Shelkey for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve Ms. Shelkey to sit for the salesperson real estate examination. M/C
  - k. Commissioners reviewed the application of Amber R. Thomas for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Ms. Thomas to sit for the salesperson real estate examination. M/C
13. REVIEW REQUESTS TO REGISTER ORANGE LAKE COUNTRY CLUB VILLAS IV AND VILLAS @ REGAL PALMS. Commissioner Schlosser moved, seconded by Commissioner Youngberg to accept the subdivided land registrations of Orange Lake Country Club Villas IV and Villas @ Regal Palms. M/C
14. REVIEW PROPOSED "GUIDELINES FOR DEVELOPING A COMPANY POLICY ON AGENCY." Commissioners reviewed the proposed guidelines and recommended that a reference to the Administrative Rule regarding the requirement for a policy on agency be included. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to use these guidelines. M/C
15. DISCUSS MISCELLANEOUS CORRESPONDENCE RECEIVED IN COMMISSION OFFICE. Executive Director Jergenson brought several items to the Commission for discussion:
- Question: is earnest money to be deposited 24 hours after receipt or after acceptance? Law states 24 hours after receipt. Consensus was that the earnest money is to be deposited within 24 hours of receipt of the earnest money unless otherwise specified in the purchase agreement.
  - Photos of advertising mediums used by the Jim Lund Team had been sent to the Commission with a letter asking that the Commission address these advertising practices. Close up photos had been provided by the

Jim Lund team and everything was in line with the advertising regulation except for the sign rider that states “Coming Soon”. Staff was asked to check further into this and report back to the Commission.

- Claus stated that NDAR has asked their attorney for an opinion on our attorney’s interpretation of statute regarding inducements and that this will be brought before NDAR’s Political Affairs Committee.
- Several copies of a letter from a member of the public that had been sent to real estate agents seeking to purchase homes for resale and willing to pay a commission of \$2000 was reviewed. There is nothing wrong with this approach as long as the commission is paid through the broker.
- The Chief of Police of Cando contacted the Commission office to voice his concern over homes in his area being sold on eBay to unsuspecting buyers. The person selling the home on eBay was the owner of the home and therefore not within our jurisdiction.

16. ND EXAM STATISTICS FOR FISCAL YEAR 7/1/06 TO 6/30/07. Commissioners reviewed the statistics provided by AMP. Staff was requested to ask for a comparison of exam statistics. An explanation was also requested as to why the applicants cannot be told the questions they got wrong on the exam – it is to insure the integrity of the exam. Exams are intended to test for competency. Larry Fabrey will be contacted for an explanation to be provided to the Commissioners.
17. E&O STATS USED FOR ARELLO DIGEST FROM JANUARY 1, 2007 THROUGH SEPTEMBER 30, 2007. Commissioners reviewed the statistics as provided.
18. REVIEW FOURTH QUARTER E&O INSURANCE CLAIMS REPORT FROM RISC. RISC provided the Commission with the 4<sup>th</sup> quarter of 2007 report on E & O insurance claims.
19. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the requests for trust account waivers as attached to these minutes. M/C
20. OTHER BUSINESS.
  - a. 2008 renewals – all but approximately 50 renewals have been processed – we are waiting for things like signatures or E&O certification or other items needed to complete the renewal form. There are about 40% of the checks to be processed yet. Licenses are cancelled according to law March 1<sup>st</sup> and Commissioners will be given a report of the license renewal numbers at the next meeting.
  - b. a meeting date for the Appointed Agency Task Force was discussed. It was suggested to try to schedule the hearings and the Appointed Agency Task Force meeting in conjunction with the NDAR spring meetings.
  - c. Executive Director Jergenson will appear before the Administrative Rules Committee on March 12, 2008 to answer any questions the Committee may have about our changes to the Administrative Rules.
  - d. Commissioners Cymbaluk & Youngberg and Executive Director Jergenson attended the Leadership Training meeting in January in their roles as Director, Committee chair & Committee Vice Chair. Commissioner Youngberg has been appointed to lead the ARELLO Global Membership Task Force.

- e. In late January Executive Director Jergenson attended the Advisory Board meeting for PSI's revision of their real estate licensing examination where they worked on the topics to be included in the exams and how many questions for each topic.
- f. Jergenson noted that with the recent law and rules changes she is currently reviewing the state portion of our real estate examination. Once the approval of the Administrative Rules is effective we will begin the change over to the broker simulation exams.
- g. There have been a couple of more occurrences where the broker of record does not return or does not answer all the questions on the "Applicant Inspection Questionnaire" sent when a salesperson applies for a broker license. Consensus was to send the letter requesting completion of the questionnaire if not returned and there is nothing derogatory on the application staff is to go ahead and process the application.
- h. Executive Director Jergenson informed the Commission that letters had been sent to Ruth Denny and Todd Fettig as requested.

Commissioner Sheridan moved to adjourn, seconded by Commissioner Youngberg. M/C

Respectfully submitted,

Patricia M. Jergenson  
Executive Director