

June 24, 2014  
8:00 am  
North Dakota Real Estate Commission  
1110 College Dr  
Conference Room Suite 209  
Bismarck ND

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 and Mitch Armstrong/ Special Assistant Attorney General

1. CALL MEETING TO ORDER. Chair Cymbaluk called the meeting to order. Roll call was taken and all Commissioners were present either in person (Commissioners Cymbaluk, Schlosser) or on conference call (Commissioners Louser, Sheridan, and Youngberg).
2. APPROVE MINUTES OF MARCH 27, 2014 AND MAY 20, 2014 MEETINGS. Commissioner Schlosser moved, seconded by Commissioner Louser to approve the March 27, 2014 minutes. M/C Executive Director Jergenson stated that the May 20, 2014 minutes were not available.
3. PRESENTATION OF INVESTIGATION OF COMPLAINT #2013-25  
M/M WILLIAM STEMM V MILES W. GRADIN AND GERALD J. SCHLOSSER:  
SPECIAL ASSISTANT ATTORNEY GENERAL MITCH ARMSTRONG. Commissioner Schlosser excused himself from the meeting and left the room. Special Assistant Attorney General Mitch Armstrong presented the findings of his investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Louser to dismiss Complaint #2013-25. M/C Commissioner Schlosser rejoined the meeting.
4. MAY 2014 FINANCIAL REPORT. Executive Director Jergenson presented the financial report for May 2014. Director Jergenson noted that the following expense accounts will be over budget this year and provided explanations why: #529 Contracted Services, #510 Postage, #519 Auditing Costs, #525 Office Supplies, and #531 Credit Card Fees. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the overages in account numbers 529, 510, 519, 525, and 531. M/C Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the May financial report. M/C
5. APPROVE PAYMENT FOR COMPUTERS. Executive Director Jergenson informed the Commission that the purchase of the laptop computers was put on her personal credit card as the Commission's card has a limit and could not be used for the online purchase. She requested permission to have a check issued to her for payment. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the payment to Jergenson for the purchase of the laptop computers. M/C
6. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND.
  - a. Unlicensed activity update:
    - Analysis of power of licensing boards' memo: Special Assistant Attorney General Connie Hofland discussed her findings of the legislative authority other ND licensing boards have regarding unlicensed activity.
    - Analysis of penalties for unlicensed activity memo: Ms. Hofland also presented the penalties other ND licensing boards can assess for unlicensed activity.

It the Commission's duty to protect the public and therefore the consensus was to go forward with legislation to increase the penalty for unlicensed activity. It was suggested to research the appraisal regulations regarding unlicensed activity as well as Nebraska's statute and provide this information at the next meeting.

- b. Ms. Hofland informed the Commission that Complaint #2013-01 Anthony G. Boeren v Michael H. Blazek was tabled March 3, 2013 because the complainant and respondent were involved in a the civil lawsuit and that lawsuit is still pending. She recommended the Commission open the complaint to investigation. Commissioner Youngberg moved, seconded by Commissioner Schlosser to move Complaint # 2013-01 off the table and continue investigation. M/C
7. REVIEW LICENSE APPLICATIONS:
- a. Commissioners reviewed the application of Donna R. Lail for a salesperson license. Commissioner Louser moved, seconded by Commissioner Schlosser to approve Ms. Lail to sit for the salesperson license examination. M/C
  - b. Commissioners reviewed the application of Skyler M. Massie for a non-resident salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Massie to sit for the state portion of the real estate license examination. M/C
  - c. Commissioners reviewed the application of Rashel L. Shirley for a salesperson license. Ms. Shirley joined the meeting in person to discuss any questions the Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to table Ms. Shirley's application until her credit report is cleaned up. M/C (Commission policy is to table applications for 1 year from the date of notice – if the applicant has not completed the requirements within that timeframe the application will automatically be cancelled)
  - d. Commissioners reviewed the application of Ashley L. Smestad for a salesperson license. Ms. Smestad joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Smestad to sit for the salesperson license examination. M/C
  - e. Commissioners reviewed the application of Christopher J Tolbert for a salesperson license. Mr. Tolbert joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Louser to table Mr. Tolbert's application until he provides verification to staff that the items on his credit report are either paid or that he has entered into a payment plan. M/C
  - f. Commissioners reviewed the application of Joshua C. Travis for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to deny the application of Mr. Travis due to items on his credit report. M/C
  - g. Commissioners reviewed the application of William P. Conmy for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Conmy to sit for the salesperson license examination. M/C
  - h. Commissioners reviewed the application of Johnny A. Ward for a non-resident broker license. Mr. Ward joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Ward to sit for the non-resident sate portion of the real estate examination pending verification that the collections in dispute on his credit report are resolved and documentation has been provided to staff. M/C
8. REVIEW TABLED APPLICATIONS:
- a. Ms. Holoien's application for a salesperson license was reviewed at the May 20, 2014 Commission meeting. The Commission moved to table Ms. Holoien's application until she provided additional information regarding the tax lien she stated had been filed against her. Ms. Holoien provided the requested information and joined the meeting via conference call to answer any other questions Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Ms. Holoien to sit for the salesperson license examination. M/C

- b. Mr. Rentfrow's application for a salesperson license was reviewed at the May 20, 2014 Commission meeting. The Commission moved to table Mr. Rentfrow's application until he provided documentation that the delinquent United Account was paid and a copy of the documented agreement to pay his student loans that are delinquent, past due and in collection. Mr. Rentfrow provided the requested information and joined the meeting via conference call to answer any other questions Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Rentfrow to sit for the salesperson license examination. M/C
9. REVIEW REQUEST FOR WAIVER OF EXPERIENCE FOR BROKER LICENSE FROM JEFFREY L. EDWARDS. Jeffrey L. Edwards joined the meeting in person to discuss with the Commission the reasons he should be granted a waiver from the two year requirement as an active salesperson needed to become a broker. Mr. Edwards stated that because he has held a Florida real estate license for over 14 years and a North Dakota salesperson license since September 2013 he should be allowed to take the broker examination. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Mr. Edwards request for a waiver of the two years of experience, accept his broker education from Florida and allow him to sit for the broker examination. M/C
10. DISCUSS UNPAID FINES. Executive Director Jergenson informed the Commission that Jenny L. Lende Clouse had not paid the fine assessed to her in the stipulated agreement for Complaint #2013-21 within the 30 day timeframe ( due by May 17, 2014) nor had she responded to a letter from staff dated June 2, 2014 requesting payment prior to this meeting. Ms. Lende Clouse's broker was also copied on that letter. Ms. Lende Clouse called the Commission office on June 23, 2014 stating that she would be sending the check. Commissioner Sheridan moved, seconded by Commissioner Louser to file a complaint against Ms. Lende Clouse and her broker Jeffrey Shipley. M/C
11. REVIEW PROPOSED NDREC COMPUTER POLICY. Administrative Assistant Sheree Raynes joined the meeting to participate in the discussion regarding the proposed computer policy and to tell the Commissioners about the training they will receive with the laptop computers. It was the consensus of the Commission to accept the NDREC Computer Policy as drafted.
12. PROPOSAL FROM MAHLUM GOODHART PC TO CONDUCT ANNUAL AUDIT. Commissioners reviewed the proposals submitted by Mahlum Goodhart, PC to conduct the annual audit of the Commission's financial statements and the two year contract to conduct the trust account audits. Commissioner Sheridan moved, seconded by Commissioner Louser to approve both of the proposals. M/C
13. DISCUSS 2014/15 PROPOSED BUDGET. The 2014/15 proposed budget was reviewed in detail by Executive Director Jergenson. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the July 1, 2014 through June 30, 2015 budget as presented. M/C Executive Director Jergenson was asked to provide Amanda's report on the pre-licensing course she took at the next meeting and to check into possibly emailing the newsletter to licensees.
14. ELECTION OF 2014/15 CHAIR AND VICE CHAIR. Commissioner Louser nominated Commissioner Kris Sheridan for Chair and Commissioner Jerry Youngberg for Vice Chair for the fiscal year July 1, 2014 through June 30, 2015. Motion was seconded by Commissioner Schlosser. M/C
15. APPEAL OF DENIED APPLICATION BY ROBERT J. SCHMITZ. Robert J. Schmitz and his attorney Zachary Pelham both appeared before the Commission to appeal the denial of Mr. Schmitz's real estate salesperson license. Special Assistant Attorney General Connie Hofland summarized the denial of Mr. Schmitz's application and the documentation she has since received and used in her research from the ND Insurance Department. Mr. Pelham stated that Mr. Schmitz never received a copy of the affidavit signed by Mr. Pittman until Ms. Hofland provided it to them and that said document was not filed in any proceeding. Mr. Pelham requested the record show that he objects to the consideration of the Affidavit of Joe Dale Pittman. Mr. Pelham stated that Mr. Schmitz was due a fair hearing, that this is not a relevant document, that it is unsubstantiated 3<sup>rd</sup> party information. Ms. Hofland stated that this is an informal hearing and that rules of evidence do not apply. Ms. Hofland disagrees with Mr. Pelham that this evidence is irrelevant, it is the Commission's duty to search out documents that are relevant to the situation. Hofland pointed out that the informal hearing is allowed by law and that the legislature has given the Commission the power and the duty to both investigate and to make determinations. Hofland added that ND cases have determined that this combination of duties, given by the legislature to boards, meets fairness and due process requirements.

Ms. Hofland recommended that the Commission table the appeal of the denial of Mr. Schmitz real estate license application to allow Mr. Schmitz and his attorney, Mr. Pelham time to review the affidavit of Mr. Pittman. Mr. Pelham objected as to the manner in which this hearing was conducted stating that the Commission is the gatekeeper of the evidence and also makes the decision. He stated that it should be an administrative law judge who rules on procedural and legal questions, therefore his client is not getting a fair hearing. Commission Youngberg moved, seconded by Commissioner Louser to table the appeal until further information is made available to all parties. M/C

16. DISCUSS 2015 MANDATORY CONTINUING EDUCATION TOPICS. Executive Director Jergenson suggested that it would be helpful to course providers if they knew soon what the mandatory topic for 2015 would be. Professionalism and safety are the buzz words right now. No action was taken.
17. DISTRICT 2 AND 3 CONFERENCE REPORTS: COMMISSIONERS YOUNGBERG AND CYMBALUK, EXECUTIVE DIRECTOR JERGENSON. Commissioner Cymbaluk gave a verbal report. Written reports were filed by Commissioner Youngberg and Executive Director Jergenson.
18. CORRESPONDENCE FROM THE NATIONAL ASSOCIATION OF EXCLUSIVE BUYER AGENTS. Each Commissioner and Commission staff received the letter from the National Association of Exclusive Buyer Agents. Chair Cymbaluk sent a response. No additional action was taken.
19. REVIEW APPROVED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the May 22, 2014 meeting. A list of those waivers is attached to these minutes.
20. SCHEDULE NEXT COMMISSION MEETING. Staff will send out an email to the Commissioners to set a date for a Commission meeting in late August or possibly in September close to the REALTOR® Convention.
21. COMMISSION GOALS. The goals of the Commission were reviewed.
22. OTHER BUSINESS.
  - Executive Director Jergenson asked the Commission for their opinion on what items should be requested from a license applicant to prove their state of residence. She provided examples of what some applicants are using as their residence address: hotel addresses, pizza parlor, and UPS store. Some applicants also claim that they live in both states, have voted in both states and tell the staff to tell them which one they should pick. It is the consensus of the Commission for the staff to request the type of documentation they are comfortable with and if the applicant is unhappy they can appear before the Commission.

Chair Cymbaluk stated that this is the last time he will Chair a Commission meeting.

There being no further business Chair Cymbaluk adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson  
Executive Director