

March 17, 2010
8:30am Central Time
Bank of North Dakota
2nd floor Conference/Training Room
1200 Memorial Highway
Bismarck ND

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

1. CALL MEETING TO ORDER. Chair Kris Sheridan called the meeting to order. Roll call was taken.
2. APPROVE MINUTES OF JANUARY 26, 2010 AND FEBRUARY 11, 2010. Commissioner Schlosser moved to approve the January 26, 2010 minutes, seconded by Commissioner Youngberg. M/C Commissioner Cymbaluk moved to approve the February 11, 2010 minutes, seconded by Commissioner Louser.
M/C
3. APPROVE FINANCIAL REPORTS. Executive Director Jergenson stated that the credit card charges for renewal fees had not been posted as of this meeting so there were no monthly financial reports to review. The total amount of renewals charged to credit cards to date was \$113,980.00 and the transaction fees charged to date were \$3789.30 or approximately 3%. The December 31, 2009 CD reports were provided in the Commissioners' packets.
4. REVIEW PLEDGE OF SECURITIES TO CD. Commissioners reviewed the pledge of securities from Starion Financial for the CD in the amount of \$52,830.75 that takes us over the \$250,000.00 FDIC insurance. Executive Director Jergenson recommended to cash in the CD that is under the repurchase agreement when it comes due in May and to move the money to another bank to remove the issue of having Starion Financial pledge securities against the overage amount.
5. AUDIT REVIEW: RHONDA MAHLUM, MAHLUM GOODHART PC. Ms Mahlum presented the annual audit and reported that the auditor's letter included with the audit included journal entries made by the auditors. The audit received a clean opinion which is the highest rating under government standards. Ms Mahlum also noted that the Commission should re-approve line items that go over budget and review the pledge of securities semi-annually. Commissioner Youngberg moved to approve the audit, seconded by Commissioner Schlosser.
M/C

6. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
 - a. through d.: Complaint #'s 2009-04 Mahmood Ebrahim v Linda M. Klebe, 2009-07 John W Mosby v Linda M. Klebe, 2009-10 Nicholas Titov v Linda M. Klebe and 2009-11 George J. Wynn. Special Assistant Attorney General Connie Hofland presented a proposed stipulated agreement with Ms Klebe for these 4 complaints. Commissioner Cymbaluk moved to accept the terms as recommended with one change, that the Attorney General's Office provide verification that Ms Klebe has complied with the terms of the Consent Order and Judgment in State v Home Town Realty, Inc. and Linda Klebe. Motion was seconded by Commissioner Louser. M/C
 - e. Review stipulated agreement: Complaint #2009-12 Shane/Joan Tangedahl v Sally J. Abernethy. Special Assistant Attorney General Connie Hofland presented the terms of the proposed stipulated agreement in which Ms. Abernethy is to pay a fine in the amount of \$200.00, investigative/legal costs of \$550.00 within 30 days from date of Notice of Entry of the Order and attend a 3 hour course on contracts entitled Real Estate Contracts 1(CE course # CE1011-001) within 90 days from the date of Notice of Entry of Order. Commissioner Cymbaluk recused himself from discussion and vote on this matter. Commissioner Schlosser moved, seconded by Commissioner Youngberg to accept the stipulated agreement as presented. M/C
 - f. Complaint #2009-14 Kenneth P. Dolan v Jack L. Wadhawan & Timothy L. Crary. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Louser to dismiss this complaint. M/C
 - g. Article on teams. Ms Hofland discussed the article she wrote regarding the use of teams in real estate and asked Commissioners for added input. She will also have Casey Chapman review it prior to publication in the newsletter.
7. REVIEW PROPOSALS FOR ONLINE MANDATORY CONTINUING EDUCATION COURSE GRANT. The Commission received proposals from McKissock LP, 360 Training and The CE Shop. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to accept the proposal from The CE Shop and award them a \$5000 grant from the Recovery Fund. M/C
8. DISCUSS ANNUAL AGGREGATE LIMIT FOR ERRORS AND OMISSIONS INSURANCE. A few of the larger real estate firms experienced problems acquiring errors and omissions insurance for 2010 due to the way North Dakota law is written requiring an annual aggregate limit of no less than \$500,000 coverage per licensee. Commissioners discussed the issue and took no action.
9. REVIEW LICENSE APPLICATIONS.
 - a. Commissioners reviewed the application of Ashley C. Davis for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to request Ms Ashley to provide 3 references from previous employers. M/C

- b. Commissioners reviewed the application of Mark T. Gagner for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Mr. Gagner's application due to items on his background check that did not appear on his application. M/C
 - c. Commissioners reviewed the application of Sherri L. Johnson for a salesperson license. Commissioner Louser recused herself from discussion and vote on this applicant. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Ms. Johnson to sit for the salesperson real estate examination. M/C
 - d. Commissioners reviewed the application of Kristi L. Krueger Roscoe for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms. Krueger Roscoe to sit for the salesperson real estate examination. M/C
 - e. Commissioners reviewed the application of Carl F. Lade for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve Mr. Lade to sit for the salesperson real estate examination. M/C
 - f. Commissioners reviewed the application of Carter C. Ruff for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to deny Mr. Ruff's application due to items on his background check that did not appear on his application. M/C
 - g. Commissioners reviewed the application of Brock J. Schlosser for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Mr. Schlosser's application due to items on his background check that did not appear on his application. M/C
 - h. Commissioners reviewed the application of Alish C. Thompson for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Louser to approve Ms. Thompson to sit for the salesperson real estate examination. M/C
 - i. Commissioners reviewed the application of Garrett P. Smith for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Mr. Smith's application due to items on his background check that did not appear on his application. M/C
10. REVIEW STATUS OF LICENSE APPLICATION OF RON LOCTAO. Executive Director Jergenson informed Commissioners that Mr. Loctao was informed in June of 2008 that the Commission had deferred action on his application for a salesperson license until he provided 3 letters of reference. As of March 2010 Mr. Loctao had provided 2 of the 3 requested references. Commissioner Youngberg moved, seconded by Commissioner Schlosser to deny Mr. Loctao's application due to his not fulfilling the request for letters of reference. M/C
11. NSF CHECK SUBMITTED BY ALLEN ERICKSON FOR 2010 LICENSE RENEWAL. Executive Director Jergenson reported that Mr. Allen Erickson's check for his salesperson license renewal was returned to the Commission office NSF, that

Mr. Erickson had been contacted by phone & letter, and had not provided the documentation as requested. Ms Jergenson asked the Commission to cancel the license since March 1st was the date of cancellation for non-renewal. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg that the letter from Mr. Erickson's bank was insufficient, that the letter originally sent to Mr. Erickson on February 22, 2010 be resent certified, and that Mr. Erickson submit the information as requested along with a cashier's check within 3 days of receipt of the certified letter or his license will be cancelled. M/C Staff was asked to call Mr. Erickson as well.

12. TRUST ACCOUNT AUDITS NOT IN COMPLIANCE. Executive Director Jergenson informed Commissioners that audits that were not in compliance at the time the agenda was sent out have now provided the requested documents.
13. LICENSE RENEWAL UPDATE. A chart of the license statistics had been included in the meeting packet for informational purposes. 2010 active license renewals were down 2% from 2009, inactive renewals increased by 16% and cancelled licenses also increased by 5%. Commissioners discussed the need to inform potential real estate license applicants that if there are items on the application that require credit or background checks the processing of the application will take longer and that the applicant may wish to submit the application prior to taking the pre-licensing courses. Staff will publish a notification in the newsletter and post to the web site.
14. REVIEW SUBDIVIDED LAND APPLICATIONS. Executive Director Jergenson asked Special Assistant Attorney General Connie Hofland how the amendment to NDCC § 43-23.1-05(3) passed by the Legislature in 2007 affected applications for registering subdivided lands such as the 2 presented at this meeting. In a memo dated March 16, 2010 Ms Hofland stated that the exemption does appear to exempt the registration of the vast majority of properties by exempting properties with improvements or contractual obligation to build improvements within two years. It was the consensus of the Commission to have Ms Hofland request an opinion from the Attorney General's office. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the registrations submitted by Marriott Vacation Club Destinations and for Ko Olina, a Disney Vacation Club Resort, submitted by Disney Vacation Development, Inc. M/C
15. DISCUSS DEFINITION OF FACILITATOR. Commissioner Schlosser provided Commissioners with a sample definition of facilitator for future consideration. The definition is as follows: Facilitator: a broker or salesperson who performs services for a buyer, seller, or both but does not represent either in a fiduciary capacity as a buyer's broker, seller's broker, or dual agent. The facilitator broker or salesperson must be fair and honest; must exercise due skill, care and diligence; must disclose material facts; must present all offers – all in keeping with North Dakota rules and regulations that govern licensees.
16. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the requests for trust account waivers as attached to these minutes. M/C

17. COMMISSION GOALS. Commissioners reviewed the goals. Commissioners suggested staff begin researching electronic storage of office records in order to work toward completing that goal.
18. OTHER BUSINESS:
 - a. Executive Director Jergenson provided Commissioners with a list of outstanding fines. Special Assistant Attorney General Connie Hofland noted that a judgment had been filed against Tana Becker in 2008. Commissioner Cymbaluk moved, seconded by Commissioner Louser to file against Todd Nedberg and Ken Welter in small claims court. M/C
 - b. Executive Director Jergenson provided Commissioners with a summary of comments from the evaluations of the “Agency in the 21st Century” mandatory course. Commissioners who had attended the course felt it was a very good class. The goal of the Commission was to have an emphasis on appointed agency within this course and asked Jill Beck, NDAR EVP who was present at the meeting, to share with the instructor the importance of having discussion on appointed agency continue throughout the 3 hour course.
 - c. Commissioners reviewed an email invitation to join the Facebook page of the North Dakota Real Estate Commission which in actuality is not the Commission’s Facebook page. It was determined that there was nothing that could be done.
 - d. Staff had been asked if the advertising rule meant that each twitter sent by a licensee had to have all of the contact information in it as that would be difficult since the number of characters is limited. It was determined that the Twitter account must have the contact information as required in the advertising rule but not each tweet. The important point is that the information provided has to be clear to the consumer and in the event a complaint is filed against the licensee they could be fined if found not in compliance. It is a benefit to the licensee to increase his/her business by letting the public know who the licensee works for.
 - e. Commissioners received a letter from Jim Deibert notifying the Commission that he will be retiring from teaching the pre-licensing course December 2010.
 - f. It was the consensus of those present to schedule the next meeting of the North Dakota Real Estate Commission dependent upon the agenda.

There being no further business Chair Sheridan adjourned the meeting.

Respectfully Submitted,

Patricia M. Jergenson
Executive Director