

March 27, 2014  
8:00 am  
Fort Totten Room  
State Capitol  
600 E Boulevard Ave  
Bismarck ND 58501

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

1. CALL MEETING TO ORDER. Chair Cymbaluk called the meeting to order. Roll call was taken and all Commissioners were present either in person or on conference call.
2. MINUTES OF JANUARY 15, 2014 MEETING. Executive Director Jergenson stated that the minutes from the January 15, 2014 meeting were not finished.
3. FINANCIAL REPORT. Executive Director Jergenson presented the financial report for February 2014 stating that the credit card receipts were not all entered at this time however the February bank statement from American BankCenter shows a balance of \$194,155.23 which shows the deposit of the credit card payments from online renewals. The remainder of the financial report shows that most expense accounts are behind budget except for the Admin Assist Salary which is the result of payout to Linda Hagen of her accumulated vacation and sick leave upon her retirement. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the February 2014 financial report as presented. M/C
4. TRUST ACCOUNT AUDIT FINDINGS. RHONDA MAHLUM/MAHLUM GOODHART PC.
  - a. Trust account audit findings.
    - Ms. Mahlum reported on recurring violations (timing of earnest money deposits) regarding the trust account of Michael J. Bullinger, broker of Cityscapes Development LLC. Commissioner Youngberg moved, seconded by Commissioner Schlosser to file a complaint against Mr. Bullinger for repeated trust account violations and offer the abbreviated process with a stipulated agreement. M/C
    - Ms. Mahlum reported on recurring violations (not using buyer customer or representation forms and not keeping the trust account ledger current) regarding the trust account of Kristi M. Carlson, broker of Results Realty, Inc. Commissioner Youngberg moved, seconded by Commissioner Louser to file a complaint against Ms. Carlson for repeated trust account violations and offer the abbreviated process with a stipulated agreement. M/C

5. DISCUSS PROCEDURES REQUIRED BY THE COMMISSION TO ENSURE EARNEST MONEY IS PROPERLY ACCOUNTED FOR WHEN IT IS HELD AT A TITLE/CLOSING COMPANY. Commissioners reviewed a memo provided by the trust account auditors to provide guidance to brokers in ensuring that earnest money they have turned over to a title/closing company is accounted for properly. There was discussion as to whether or not this would require a rule change or can it be used as a memo. More research needs to be done and information should be published in the newsletter. Ms. Mahlum will provide the Commission office with the form they give to companies to use to track earnest money held at a title company- staff will disseminate to Commissioners and Jill Beck/NDAR(as requested at meeting).
6. DISCUSS IF EARNEST/RESERVATION MONEY SHOULD BE DEPOSITED IN A BROKER'S TRUST ACCOUNT. (MONEY ACCEPTED TO RESERVE NEW CONSTRUCTION WHERE THERE IS NOT A LEGAL OR THE LOT OR HOME STYLE HAS NOT BEEN CHOSEN). Special Assistant Attorney General Connie Hofland will research and report back to the Commission.
7. APPEAL OF DENIED APPLICATIONS.
  - a. Shannon R. Barnum's application for a reciprocal broker license was denied at the December 10, 2013 Commission meeting due to items on her credit report. Ms. Barnum joined the meeting via conference call. Ms. Barnum has provided documentation showing that the items in collection have been paid. Commissioner Schlosser moved, seconded by Commissioner Sheridan to issue a reciprocal broker license to Ms. Barnum. M/C
  - b. Robert J. Schmitz and his attorney Zachary Pelham joined the Commission meeting in person to appeal the denial of Mr. Schmitz's salesperson license application at the December 10, 2013 Commission meeting. Commissioner Sheridan moved, seconded by Commissioner Louser to reaffirm the Commission's position to deny the salesperson real estate license application of Mr. Robert J. Schmitz. M/C (1 nay Commissioner Youngberg)
8. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND.
  - a. Complaint #2013-18 M/M Greer v James D. Huskey & Connie L. Baldwin. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Youngberg to set this complaint for a hearing. M/C
  - b. Complaint #2013-21 NDREC v Jenny Lende Clouse & Betsy Denis Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Jenny L. Lende in which Ms. Lende agrees to pay a fine of \$250 and \$170 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Louser moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C Special Assistant Attorney General Connie Hofland then presented the signed Stipulation and Settlement Agreement from Betsy Denis in which Ms. Denis agrees to pay a fine of \$250 and \$170 legal/investigative costs within 30 days of Notice of Entry of the Order. This stipulated agreement also includes Complaint #2013-21. Commissioner Youngberg moved, seconded by Commissioner Louser to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C

- c. Complaint #2013-21 NDREC v Jennifer L. Mansour & Betsy Denis Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Jennifer L. Mansour in which Ms. Mansour agrees to pay a fine of \$250 and \$170 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
- d. Complaint #2013-23 NDREC v Brian J. Huskey, Jeffrey M. Reiter, and Connie L. Baldwin. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreements from Brian J. Huskey, Jeffrey M. Reiter, and Connie L. Baldwin in which they each agree to pay a fine of \$250 and \$200 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the Stipulation and Settlement Agreements as presented by Ms. Hofland. M/C
- e. Complaint #2013-24 Kenneth L. Hartog v Brian J. Huskey and James D. Huskey Memorandum. Special Assistant Attorney General Connie Hofland asked to table this item until the next meeting.
- f. Complaint #2013-26 Tara L. Lacher v Kathy J. Feist. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Youngberg to dismiss the complaint filed against Ms. Feist. M/C
- g. Complaint #2013-27 Christi K. Enzminger v Kristi M. Carlson. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Schlosser moved, seconded by Commissioner Youngberg to dismiss the complaint filed against Ms. Carlson. M/C
- h. Complaint #2013-29 NDREC v Lester E. Lien Memorandum. Special Assistant Attorney General Connie Hofland noted that Mr. Lein has cancelled his broker license and recommended to table this complaint to be reactivated in the event Mr. Lein applies for a license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to dismiss the complaint filed against Mr. Lein. M/C
- i. Complaint #2013-30 NDREC v Norman T. Streifel Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Norman T. Streifel in which Mr. Streifel agrees to pay a fine of \$250 and \$280 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
- j. Complaint #2013-31 NDREC v Erik R. Hatch and Marc C. Johnson Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreements from Erik R. Hatch and Marc C. Johnson in which each agrees to pay a fine of \$300 and \$200 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve the Stipulation and Settlement Agreements as presented by Ms. Hofland. M/C

- k. Complaint #2013-32 NDREC v Chad M. Wachter and Patrick M. Koski Revised Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Chad M. Wachter in which Mr. Wachter proposes to pay a fine of \$1500 with \$1000 suspended for 1 year, if he does not have any additional violations he would not have to pay the remaining \$1000, the violation will not be published and after 1 year the complaint will be removed from his file. Commissioner Sheridan moved, seconded by Commissioner Youngberg to deny the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C Special Assistant Attorney General Connie Hofland then presented the signed Stipulation and Settlement Agreement from Patrick M. Koski in which Mr. Koski agrees to pay a fine of \$300 and \$200 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
  - l. Complaint #2013-34 NDREC v Ernest J. Gregoire. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Ernest J. Gregoire in which Mr. Gregoire agrees to pay a fine of \$250 and \$280 legal/investigative costs within 30 days of Notice of Entry of the Order. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
  - m. Update on unlicensed activity. Ms. Hofland stated that she had nothing to report at this time. Ms. Hofland was asked to research the possibility of increasing the unlicensed activity violation from an infraction to something stronger.
9. REVIEW LICENSE APPLICATIONS.
- a. Commissioners reviewed the application of Wayne J. Geiss for a reciprocal broker license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table Mr. Geiss's application until he provides further information regarding items on his credit report. M/C
  - b. Commissioners reviewed the application of Samuel P. Herzog for a reciprocal salesperson license. Commissioner Youngberg moved, seconded by Commissioner Sheridan to table Mr. Herzog's application until he provides further information regarding items on his credit report. M/C
  - c. Commissioners reviewed the application of Michael K. Houge for a reciprocal broker license. Mr. Houge joined the meeting by conference call to answer any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Sheridan to table Mr. Houge's application until his tax liens are resolved. Commissioner Sheridan moved to amend the motion, seconded by Commissioner Youngberg to table Mr. Houge's application pending receipt of additional information (letters of recommendation & copy of documented agreement to pay liens). M/C as amended.
  - d. Commissioners reviewed the application of Isaiah J. Johns for a reciprocal salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to deny the application of Mr. Johns due to items on his credit report. M/C
  - e. Commissioners reviewed the application of Terrance L. Johnson for a reciprocal salesperson license. Mr. Johnson joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Schlosser to table Mr. Johnson's application until he provides

- verification that the delinquencies and items in collection on his credit report are resolved/paid. M/C
- f. Commissioners reviewed the application of David W. Keller for a salesperson license. Mr. Keller joined the meeting in person to discuss any questions the Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Keller to sit for the salesperson license examination. M/C
  - g. Commissioners reviewed the application of Mark W. McDonald for a salesperson license. Mr. McDonald joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. McDonald to sit for the salesperson license examination. M/C
  - h. Commissioners reviewed the application of Aaron A. Mooney for a salesperson license. Mr. Mooney joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Mooney to sit for the salesperson license examination. M/C
  - i. Commissioners reviewed the application of Brianne N. Nelson for a salesperson license. Ms. Nelson joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms. Nelson to sit for the salesperson license examination. M/C
  - j. Commissioners reviewed the application of Robert S. Newberry for a salesperson license. Mr. Newberry joined the meeting in person to discuss any questions the Commissioners may have and provided documentation that the items in collection on his credit report have been paid in full. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Newberry to sit for the salesperson license examination. M/C
  - k. Executive Director Jergenson informed Commissioners that Andrea J. Nordling has withdrawn her application.
  - l. Commissioners reviewed the application of Dan G. Russ for a reciprocal salesperson license. Mr. Russ joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Sheridan to table Mr. Russ's application until he provides verification that the delinquencies on his credit report are removed. M/C
  - m. Commissioners reviewed the application of Joseph M. Scanlon for a salesperson license. Mr. Scanlon joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Youngberg moved, seconded by Commissioner Sheridan to table Mr. Scanlon's application until he provides verification that the collection in dispute on his credit report is resolved. M/C
  - n. Commissioners reviewed the application of Isaac J. Straus for a salesperson license. Mr. Straus joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Mr. Straus to sit for the salesperson license examination. M/C
  - o. Executive Director Jergenson informed Commissioners that Richard L. Vandermeer has withdrawn his application.
  - p. Commissioners reviewed the application of Abby F. Wick for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms. Wick to sit for the salesperson license examination. M/C

- q. Commissioners reviewed the application of Tahnee L. Young for a salesperson license. Ms. Young joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Young to sit for the salesperson license examination. M/C
10. REVIEW BROKER APPLICATION OF ROBERT R. KUDRNA. Commissioners reviewed the application of Robert R. Kudrna for a broker license. Both Mr. Kudrna and his broker stated that Mr. Kudrna spent between 10 & 15 hours a week in real estate which does not fit the criteria of full time. Mr. Kudrna sent an email stating that being a real estate salesperson for Luckow Real Estate is the only job he has had in the last 4 years and he considers it full time. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Kudrna to sit for the broker simulation examination. M/C
11. REVIEW REQUESTS FOR WAIVERS OF EXPERIENCE AND EDUCATION FOR BROKER LICENSE.
  - a. Commissioners reviewed the application of Craig C. Clum for a broker license. Mr. Clum has moved to North Dakota and previously held a broker license in Colorado. Mr. Clum appeared in person before the Commissioners to discuss his request for a waiver of the education and two years of experience as salesperson. Commissioner Sheridan moved, seconded by Commissioner Youngberg to grant a waiver of the two years of experience and require Mr. Clum to take the state portion of the real estate examination. M/C
  - b. Commissioners reviewed the application of Nickolas R. Leavy for a broker license. Mr. Leavy has moved to North Dakota and previously held a broker license in Minnesota. Mr. Leavy appeared in person before the Commissioners to discuss his request for a waiver of the education and two years of experience as salesperson. Commissioner Youngberg moved, seconded by Commissioner Schlosser to grant a waiver of the two years of experience and require Mr. Leavy to take the state portion of the real estate examination. M/C
  - c. Commissioners reviewed the application of Nici S. Meyer Clarkson for a broker license. Ms. Meyer Clarkson is a practicing attorney in North Dakota and previously held a North Dakota salesperson license. Ms. Meyer Clarkson appeared in person before the Commissioners to discuss her request for a waiver of the education and two years of experience as salesperson. Commissioner Schlosser moved, seconded by Commissioner Youngberg to grant a waiver of the two years of experience and require Ms. Meyer Clarkson to take the state portion of the real estate examination. M/C
12. NSF CHECKS.
  - a. Commissioners had received information in their meeting packets regarding the NSF check from Carol A. Raney and that she had not responded to staff's request for reimbursement. Executive Director Jergenson informed the Commissioners that Ms. Raney had emailed her on March 26, 2014 that the check was mailed on March 26, 2014.
  - b. Commissioners had received information in their meeting packets regarding the NSF check from Jeffrey D. Schubert and that he had not responded to staff's requests for reimbursement. Executive Director Jergenson will forward this to Special Assistant Attorney General Constance Hofland to determine if Mr. Schubert's license can be cancelled without notice or if a complaint needs to be filed.

13. DISCUSS FOLLOWING QUESTION: CAN AN UNLICENSED ASSISTANT TO A PROPERTY MANAGER WHO HAS A REAL ESTATE LICENSE SHOW A RENTAL PROPERTY TO PERSPECTIVE TENANTS OR IS IT A VIOLATION OF LICENSE LAW?  
Consensus was to refer this to Special Assistant Attorney General Constance Hofland for clarification.
14. SIMILAR COMPANY NAME: ND ADMINISTRATIVE RULE 70-02-01-13. In an email dated March 14, 2014 Steven Bitz asked the Commission if they would approve him using "Bitz Companies, LLC" stating that his father Vincent Bitz, whose sole proprietorship is licensed as "Bitz Realty" is ok with it. Commissioner Sheridan moved, seconded by Commissioner Youngberg that the names Bitz Companies, LLC and Bitz Realty are deceptively similar and therefore the use of Bitz Companies, LLC will not be allowed. M/C
15. DISCUSS LEGISLATIVE CHANGE TO SUBMISSION OF REAL ESTATE LICENSE RENEWAL. NDCC 43-23-13.1. Executive Director asked Commissioners to consider legislation to require renewal applications to be submitted by November 30<sup>th</sup> of each year in order for the renewals to be processed by December 31<sup>st</sup>. It was the consensus of the Commissioners to research this concept and move forward with it. It was also suggested by Commissioner Schlosser to review and update statutes regarding agency.
16. REAL ESTATE LICENSE EXAMINATION PASS/FAIL REPORT. Executive Director Jergenson provided the Commissioners with the real estate examination report for the last 6 months.
17. REVIEW APPROVED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the December 10, 2013 meeting. A list of those waivers is attached to these minutes.
18. SCHEDULE NEXT COMMISSION MEETING. Staff will send out an email to the Commissioners to set a date in late April or May 2014 for a Commission meeting.
19. COMMISSION GOALS. The goals of the Commission were reviewed.
20. TRAINING. Consensus was to add recommendation and support for Commissioners to attend the ARELLO® Commissioner College to the Commission's goals.
21. OTHER BUSINESS.
  - a. Staff is frequently receiving questions regarding firms going paperless and what are the requirements for record keeping. Questions being asked are: Do they need to keep the originals stored somewhere? If the auditors come to conduct a trust account audit and the internet is down what happens? Research on this will need to be done.
  - b. Commissioners discussed an email from Chris Edison regarding the possibility of requesting that he be appointed as an additional special assistant attorney general to the Commission. Consensus is to keep Mr. Edison's information on file in the event a second special assistant attorney general is needed.
  - c. Executive Director Jergenson stated that she has been working with Cooke Real Estate School to enhance the 60 hours of online broker education by adding more content using the *Real Estate Brokerage: A Management Guide* textbook. Commissioners looked at the contents of the textbook and agreed it would be an enhancement to the current 60 hour online broker education course.

There being no further business Chair Cymbaluk adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson  
Executive Director