

May 20, 2014
8:00 am
Missouri River 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.
2. MINUTES OF JANUARY 15, 2014 AND MARCH 27, 2014 MEETINGS. Executive Director Jergenson stated that the minutes from the March 27, 2014 meeting were not finished. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the January 15, 2014 minutes as presented. M/C
3. FINANCIAL REPORTS. Executive Director Jergenson presented the financial reports for November 2013 through April 2014. Commissioner Youngberg moved, seconded by Commissioner Louser to approve the November 2013 through April 2014 financial reports as presented. M/C
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND.
 - a. Complaint #2013-14 NDREC v Teresa Halvorson Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Teresa Halvorson in which Ms. Halvorson agrees to pay a fine of \$250 and \$170 legal/investigative costs within 30 days of Notice of Entry of the Order and that a letter of reprimand will become a permanent part of Ms. Halvorson's file. Ms. Halvorson's attorney, Levi Andrist/Vogel Law Firm was present at this meeting. Commissioner Louser moved, seconded by Commissioner Schlosser to approve the Stipulation and Settlement Agreement as presented by Ms. Hofland. M/C
 - b. Complaint #2013-18 Michael and Chettie Greer v Connie L. Baldwin and James D. Huskey. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreements from Connie L. Baldwin and James D. Huskey in which each licensee agrees to pay a fine of \$500 and \$800 legal/investigative costs within 30 days of Notice of Entry of the Order and attend a three hour course on agency within 90 days from the date of Notice of Entry of the Order. Said course is not to be used toward the regular required hours of continuing education for this reporting period. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the Stipulation and Settlement Agreements as presented by Ms. Hofland. M/C

- c. Complaint #2013-24 Kenneth L. Hartog v Brian J. Huskey and James D. Huskey. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Youngberg moved, seconded by Commissioner Schlosser to set this complaint for a hearing. M/C
- d. Complaint #2013-28 Aaron C. Herington v Tamie J. Dunn, Forest B. Walker, and Todd W. Fetting. Special Assistant Attorney General Connie Hofland informed the Commission that the parties involved in this complaint are currently involved in a civil lawsuit and recommended to table the complaint until the civil suit is completed as has been the practice of the Commission in the past. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table this complaint until the litigation is completed. M/C
- e. Complaint #2013-32 NDREC v Chad A. Wachter Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Chad A. Wachter in which Mr. Wachter 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 Agreement as presented by Ms. Hofland. M/C
- f. Complaint #2014-01 Dr. Ashraf Gerges, MD v Diana L. Zietz. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Schlosser moved, seconded by Commissioner Youngberg to dismiss this complaint. M/C
- g. Complaint #2014-02 NDREC v Michael Bullinger. Special Assistant Attorney General Connie Hofland presented the results of her investigation regarding this complaint. Ms. Hofland stated that she did not find enough evidence to establish a violation of license law and recommended the Commission withdraw the motion to issue a complaint against Mr. Bullinger. Rhonda Mahlum, trust account auditor for the Commission, was present and participated in the discussion. Commissioner Sheridan moved, seconded by Commissioner Louser to dismiss this complaint and initiate a new investigation regarding Mr. Bullinger's actions regarding due diligence and protection of the client in the transaction noted in the auditor's report. M/C
- h. Complaint #2014-03 NDREC v Kristi M. Carlson Stipulation. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreement from Kristi M. Carlson in which Ms. Carlson agrees to pay a fine of \$300 and \$280 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
- i. Memo: possible need administrative rule concerning money deposited with a title company. Ms. Hofland discussed her memo regarding possible legislation to clarify the responsibilities of a broker to oversee earnest money funds that have been deposited directly with the title company. In her opinion the current rules provide protection of the public by keeping the broker responsible for any money of others accepted by the broker and requiring documentation and accounting of that money. Therefore, if a broker deposits money with a title company but did not keep appropriate documentation or record of that deposit, the broker would be in violation of administrative rules as they are currently written.
- j. Memo: regarding purchase agreements with no identified land description but money paid to seller to reserve. Ms. Hofland states in her memo: "If the agreement, whether it is an option to purchase or a reservation to purchase a property from a builder, identifies real property sufficient to ascertain what real estate is the subject of the agreement, it is a real estate contract even if the property description is not a proper legal description with a specific lot number. There is a requirement for the legal description to be in a specific form on a deed for recording, but I am not aware of a requirement for a specific form of the legal description in

an agreement between two parties. However, the description has to be adequate to identify the subject matter of the agreement. If the real estate licensee is representing the buyer and the agreement does not describe a specific property sufficiently to be identified, the licensee may be breaching a duty of diligence to the client. That is, by letting the client commit money to buy or reserve something that is not adequately described to be identifiable, the licensee may be breaching the duty to the client. If the property is described sufficiently to be identified then the agreement is covered by real estate license law because even as an option or a reservation, it is an interest in real estate.”

- k. Update on unlicensed activity. Ms. Hofland stated that in North Dakota real estate license law unlicensed activity is an infraction whereas other licensing boards cite unlicensed activity as either a Class A Misdemeanor (maximum \$3000 fine and/or maximum 1 year in jail) or a Class B Misdemeanor (maximum fine \$1500 and/or 30 days in jail). It was the consensus that changes should be made legislatively to give the Commission more authority to deal with unlicensed activity.
 - l. Proposed hourly rate increase. Ms. Hofland requested an increase of her hourly rate to \$160/hour. Commissioner Louser moved, seconded by Commissioner Sheridan to approve an hourly rate of \$160/hour for Ms. Hofland’s services. M/C The possibility of hiring a part-time investigator was also discussed with Ms. Hofland.
5. REVIEW LICENSE APPLICATIONS:
- a. Commissioners reviewed the application of Dawn M. Clooten for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms. Clooten to sit for the salesperson license examination. M/C (4 ayes, 1 nay Commissioner Schlosser)
 - b. Commissioners reviewed the application of David C. Donner for a salesperson license. Mr. Donner joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Donner to sit for the salesperson license examination. M/C
 - c. Commissioners reviewed the application of Pat N. Egan for a salesperson license. Mr. Egan joined the meeting by conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Louser to deny Mr. Egan’s application until his credit report shows no further collections. M/C
 - d. Commissioners reviewed the application of Caitlan E. Foley for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms. Foley to sit for the salesperson license examination. M/C
 - e. Commissioners reviewed the application of Krystine L. Heifort/Williams for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Louser to deny Ms. Heifort/William’s application until the collections are removed from her credit report. M/C
 - f. Commissioners reviewed the application of Kathie J. Holoien for a salesperson license. Ms. Holoien joined the meeting in person to discuss any questions the Commissioners may have. Commissioner Louser moved, seconded by Commissioner Youngberg to table Ms. Holoien’s application pending additional information regarding her tax lien. 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)
 - g. Commissioners reviewed the application of David J. Jones for a salesperson license. Mr. Jones joined the meeting via conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Louser to table approval of Mr. Jones’ application pending verification that the collections on his credit report are paid is provided to staff. M/C

- h. Commissioners reviewed the application of Joseph R. Kachuroi for a non-resident broker license. Mr. Kachuroi joined the meeting in person to discuss any questions the Commissioners may have regarding his credit report. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table approval of Mr. Kachuroi's application pending verification that the tax liens on his credit report have been paid is provided to staff. M/C
- i. Commissioners reviewed the application of Amy M. Holm Lindquist for a salesperson license. Commissioner Louser moved, seconded by Commissioner Schlosser to approve Ms. Holm Lindquist to sit for the salesperson license examination. M/C
- j. Commissioners reviewed the application of Gary L. Moon for a salesperson license. Mr. Moon joined the meeting in person to discuss any questions the Commission may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Moon to sit for the salesperson license examination. M/C
- k. Commissioners reviewed the application of Dietta D. Phillips for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Phillips to sit for the salesperson license examination. M/C
- l. Commissioners reviewed the application of James P. Rentfrow for a salesperson license. Mr. Rentfrow joined the meeting in person to discuss any questions the Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to table Mr. Rentfrow's application until he provides verification that the delinquent United Account on his credit report is paid and documentation that an agreement is in place for payment of his student loans to the Commission. M/C
- m. Commissioners reviewed the application of Nikki R. Ritter for a salesperson license. Ms. Ritter joined the meeting via conference call to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table Ms. Ritter's application pending verification that the collections on her credit report are paid is provided to staff. M/C
- n. Commissioners reviewed the application of Robert J. Schmitz for a salesperson license. Mr. Schmitz and his attorney, Zachary Pelham joined the meeting in person to discuss their proposal for issuing a real estate license to Mr. Schmitz. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Schmitz's application for a salesperson real estate license. Commissioner Schlosser amended the motion to add pending a binding agreement signed by Mr. Schmitz with the following stipulations as proposed by Mr. Schmitz and his attorney: he must attend an ethics course, stay with the broker he is licensed under unless he is given express permission by the Commission to transfer to another broker, allow the Commission full access to any information the Commission may request of him, and allow quarterly credit reports. Commissioner Youngberg accepted the amendment to the motion. Motion failed. (Aye: Commissioners Schlosser and Youngberg Nay: Commissioners Sheridan, Louser, Cymbaluk.)
- o. Commissioners reviewed the application of Casie A. Solis for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Solis to sit for the salesperson license examination. M/C
- p. Commissioners reviewed the application of Brent P. Swensen for a salesperson license. Mr. Swensen joined the meeting in person to discuss any questions the Commissioners may have. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table approval of Mr. Swensen's application pending verification that the collections on his credit report are paid is provided to staff. M/C

6. REVIEW REQUEST FOR WAIVER OF EXPERIENCE FOR A BROKER LICENSE FROM BRANDON C. CULVER. Commissioner Louser recused herself from discussion and voting on this agenda item. Brandon C. Culver 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 to obtain his broker license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to deny Mr. Culver's request for a waiver of the two year experience as a salesperson prior to taking the broker examination. M/C
7. APPEAL OF DENIED APPLICATION OF ISIAIAH J. JOHNS. Mr. John's application for a reciprocal salesperson license was denied at the March 27, 2014 Commission meeting due to items on his credit report. Mr. Johns joined the meeting via conference call to appeal the Commission's decision to deny. Commissioner Schlosser moved, seconded by Commissioner Sheridan to reaffirm the denial of Mr. Johns salesperson license application. M/C
8. REVIEW TABLED APPLICATION OF MICHAEL K. HOUGE. Mr. Houge's application for a reciprocal broker license was reviewed at the March 27, 2014 Commission meeting. The Commission moved to table Mr. Houge's application until he provided three letters of reference and a copy of the documented agreement he has entered into to pay off the tax liens that appeared on his credit report. Mr. Houge provided the documents as requested by the Commission and joined the Commission meeting in person to answer any questions the Commissioners may have. Commissioner Schlosser moved, seconded by Commissioner Youngberg to accept Mr. Houge's application and approved issuing him a reciprocal broker license. M/C
9. REVIEW REQUEST FOR EXTENSION OF TIME TO TAKE THE REAL ESTATE EXAMINATION SUBMITTED BY CRAIG CLUM. Executive Director Jergenson presented Mr. Clum's request for an additional two months to take the real estate examination in which he gave his reasons for not being able to meet the 4 month timeframe as stated in administrative rule. Commissioner Sheridan moved, seconded by Commissioner Youngberg to deny Mr. Clum's request. M/C
10. ADVERTISING BY LICENSEES.
 - a. Executive Director Jergenson showed Commissioners the Bismarck-Mandan Real Estate Magazine in which she had tabbed numerous advertising violations. She stated that the brokers of the companies whose ads were in violation would be receiving letters notifying them of the violation.
 - b. Commissioners discussed a flyer sent out by Eric Hatch and requested staff to send a letter to Mr. Hatch's broker informing her that the flyer had been sent anonymously to the Commission office.
 - c. Commissioner Sheridan recused herself from discussion and voting on this agenda item. Executive Director Jergenson provided information pertaining to Jeffrey L. Hagel, a salesperson with RE/MAX Professionals and his broker, Bruce A. Fuhrman who were advertising ND properties under the firm RE/MAX Signature Properties which is not licensed in North Dakota. Both licensees have Minnesota real estate licenses issued under the firm RE/MAX Signature Properties and ND licenses issued under the firm RE/MAX Professionals. Commissioner Youngberg moved, seconded by Commissioner Louser to file a complaint against Jeffrey L. Hagel and his broker Bruce H. Fuhrman. M/C
 - d. Commissioners were provided the revised Q & A on Advertising Rule.
11. REVIEW SPREADSHEET OF VIOLATIONS AND CORRESPONDING FINES BY STATE. Staff provided Commissioners with the results of their research into fine structures in other jurisdictions.
12. DISCUSS PURCHASE OF TABLETS/LAPTOPS. Staff provided the Commissioners with information on different types of laptop computers and tablets for purchase for use by the Commission, Executive Director and Special Assistant Attorney General. Commissioner Sheridan moved, seconded by Commissioner Louser to purchase laptop computers for use by the Commissioners, Executive Director and Special Assistant Attorney General. M/C

13. CE AUDIT REPORT. Commissioners were provided a report of the 2013 continuing education audit. All licensees audited were in compliance at the time of this report.
14. 2014 LICENSE RENEWAL STATISTICS. Commissioners were provided a copy of the license renewal statistics.
15. REVIEW REVISED APPLICANT INSPECTION FORM. The Applicant Inspection form has been revised and is now called the "*Broker License Applicant Assessment*" form.
16. DISCUSS ONLINE BROKER EDUCATION COURSE CONTENT. The Cooke School of Real Estate provided an outline on property management for the Commission to consider as part of the content for the 60 hour online broker course. It was the consensus that this should not be part of the 60 hour broker education online course.
17. REVIEW APPROVED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the March 27, 2014 meeting. A list of those waivers is attached to these minutes.
18. COMMISSION GOALS. The goals of the Commission were reviewed.
19. SCHEDULE NEXT COMMISSION MEETING. Staff will send out an email to the Commissioners to verify that June 24, 2014 is open on their calendars for a Commission meeting.
20. TRAINING. No training session was held due to the length of the meeting.

There being no further business the meeting was adjourned by Chair Cymbaluk.

Respectfully submitted,

Patricia M. Jergenson
Executive Director