

November 18, 2009  
8:30am Central Time  
ND Real Estate Commission  
200 E Main Ave  
1<sup>st</sup> Floor Conference Room  
Bismarck ND 58501

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

1. CALL MEETING TO ORDER. Chair Kris Sheridan called the meeting to order. Commissioners Sheridan, Louser and Youngberg were present via conference call.
2. REVIEW FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR COMPLAINT# 2008-13 M/M TODD HAARSAGER V RODNEY BJORNSTAD AND DEVELOP FINDINGS OF FACT.  
Special Assistant Attorney General Hofland was not present for this portion of the meeting. Commissioners discussed the proposed Findings of Fact and Conclusions of Law and Order filed by both parties regarding this complaint. Commissioner Youngberg moved, seconded by Commissioner Schlosser to accept the recommended Findings of Fact and Conclusions of Law and Order as presented in Ms Hofland's brief upon review by Special Assistant Attorney General Doug Bahr. M/C  
Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to order the following sanctions against Mr. Bjornstad: place a permanent letter of reprimand in his file, issue a fine of \$2000, assess the investigative/legal costs, and complete, within 3 months of the date of the order, 3 hours of education in ethics and 3 hours of education in contracts. M/C
3. APPROVE MINUTES OF SEPTEMBER 15, 2009 MEETING.  
Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to accept the September 15, 2009 minutes. M/C
4. APPROVE FINANCIAL REPORTS FOR AUGUST, SEPTEMBER, & OCTOBER 2009. The financial statements for August, September and October 2009 were reviewed. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the August, September and October 2009 financial reports. M/C

5. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CHRIS EDISON.
  - a. Complaint #2009-05 Edwin K. Hafey v Wade Bachmeier, Eden Bachmeier, and Karen Fleck. Special Assistant Attorney General Chris Edison presented the results of his investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to dismiss this complaint. M/C
6. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
  - a. Stipulated agreement for Complaint #2009-08 Joan M. Sailer v Adam Fleck. Special Assistant Attorney General Hofland presented the proposed stipulated agreement with Adam Fleck. The terms of the stipulated agreement are: \$750 fine, \$770 investigative/legal fees, and 3 hours of continuing education on trust accounts. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to accept the proposed stipulated agreement changing the 3 hour education course on trust accounts to a 3 hour ethics course to be completed within 90 days from the signed order. M/C
  - b. Complaint #2009-06 M/M Crittenden v Lori Lingenfelter and Audrey Frisinger. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Youngberg moved, seconded by Commissioner Louser to dismiss this complaint. M/C (1 nay, Commissioner Cymbaluk)
  - c. Complaint #2009-13 Sheri A Gartner v Denise Ziegler. 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
  - d. Memo on comparison of laws on facilitators. Ms Hofland discussed the points made in her memo with the conclusion that there are more questions than answers. Commissioners decided to take some time to review the points in the memo and bring their suggestions for determining the duties, definition and examples of situations where a licensee would find themselves in a “facilitator” position to a future meeting. It was the consensus that this remain as an agenda item.
  - e. Memo on ND real estate license law and leasing wind. Ms Hofland discussed her research and finding that a real estate license is required to lease wind if it is a third party. Commissioners requested Ms Hofland write an article for the newsletter regarding this topic.
7. REVIEW 3<sup>RD</sup> DRAFT OF PROPOSED ADMINISTRATIVE RULES AMENDMENTS. Ms Hofland recommended to the Commission that 70-02-03-12 not be repealed but to amend 70-02-01-15(2)(c) to read: Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker’s commission or fee until the transaction

has been consummated or terminated. The earnest money contract shall include a separate written provision, **approved by all parties including the broker**, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys **are** retained as forfeiture payment. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to adopt the previously discussed amendments to the Administrative Rules, to not repeal 70-02-03-12 and to amend 70-02-01-15(2)(c) as specified in Ms Hofland's memo dated November 9, 2009. M/C Executive Director Jergenson will coordinate a date for an Administrative Rules Hearing to be held late January or early February.

8. REAL ESTATE LICENSEE NOT ACTING AS A LICENSEE WHEN SELLING MOBILE HOMES FOR A MOBILE HOME LISTING AND SALE COMPANY.

Executive Director Jergenson provided documentation brought to her attention in which a licensee sold a mobile home using MLS data bringing into question if the licensee had a fiduciary duty to the individual he sold a mobile home to. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to have legal counsel review the information and provide the Commission with her opinion. M/C

9. REVIEW APPEALS ON DENIED SALESPERSON APPLICATIONS.

- a. Timothy R. Hennessy joined the meeting via conference call to request the Commission allow him to take the salesperson examination but not issue him a salesperson real estate license until he provides documentation showing that his financial issues have been taken care of. Stefan Olafson, who was present at the meeting, spoke on behalf of Mr. Hennessy. Commissioner Youngberg moved, seconded by Commissioner Schlosser to have Ms Hofland draft a written agreement to be signed by Mr. Hennessy and Chair Sheridan stating that Mr. Hennessy will be permitted to take the salesperson real estate examination however a real estate license will not be issued to him until he has provided documentation showing that his financial situation has been resolved and he is to provide the documentation by June 1, 2010. M/C
- b. Dezarae S. Schroeder wrote the Commissioners appealing their decision to deny her application to take the salesperson real estate license examination. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to affirm the initial denial of Ms Schroeder's application. M/C

10. REVIEW LICENSE APPLICATIONS.

- a. Commissioners reviewed the application of Walter F. Duff for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to deny Mr. Duff's application due to unpaid child support. M/C
- b. Commissioners reviewed the application of Kyle S. Gregoire for a reciprocal salesperson license. Mr. Gregoire joined the meeting via conference call. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to grant a reciprocal license to Mr. Gregoire once documentation has been provided verifying that he has paid the outstanding obligation he has with the ND Office of State Tax Commissioner. M/C

- c. Commissioners reviewed the application of Trenton J. Kary for a salesperson license. Commissioners noted that Mr. Kary had not completed question #9 on his application and the background check showed misdemeanor charges Mr. Kary had not reported on his application. Commissioner Schlosser moved, seconded by Commissioner Youngberg to deny Mr. Kary's application. M/C
  - d. Commissioners reviewed the application of Joshua J. May for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Louser to approve Mr. May to sit for the salesperson real estate examination. M/C
  - e. Commissioners reviewed the application of Heather A. North for a salesperson license. Ms North joined the meeting via conference call. Commissioner Youngberg moved, seconded by Commissioner Louser to approve Ms. North to sit for the salesperson real estate examination. Motion failed.  
(1 aye/Commissioner Youngberg, 3 nay/Commissioners Cymbaluk, Schlosser & Louser)
  - f. Commissioners reviewed the application of Stefan "Oly" Olafson for a salesperson license. Mr. Olafson was present at the meeting to answer questions of the Commissioners. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Olafson to sit for the salesperson real estate examination. M/C
  - g. Commissioners reviewed the application of Megan A. Pierce for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Ms. Pierce to sit for the salesperson real estate examination. M/C
11. REQUEST FOR WAIVER TO TAKE BROKER LICENSE EXAMINATION RECEIVED FROM HEATHER L. JORGENSON. Commissioners reviewed the broker application and request to have the salesperson experience waived submitted by Heather L. Jorgenson. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny Ms Jorgenson's request to have the salesperson experience waived. M/C
12. CORRESPONDENCE FROM JOHN R CORBETT RECEIVED OCTOBER 15, 2009. Executive Director Jergenson stated that she wanted to keep the Commissioners informed of continued letters received from Mr. Corbett.
13. CORRESPONDENCE RECEIVED FROM ALABAMA REAL ESTATE COMMISSION REGARDING RECIPROCITY. Executive Director Jergenson noted that Alabama has had an unwritten reciprocal agreement nationwide. Effective October 1, 2009 that policy has been changed and they now require a non-resident licensee seeking licensure in Alabama to take a 6 hour course on Alabama law and pass the Alabama state portion of the examination.
14. REQUEST FOR CONTINUING EDUCATION EXTENSION. Naureen Metz has requested an extension to complete her continuing education due to health reasons. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to grant Ms Metz an extension for completion of her 08/09 continuing education until April 1, 2010. M/C

15. ONLINE LICENSE RENEWAL UPDATE. Executive Director Jergenson stated that in the 2 weeks that the online renewals have been “live” 155 licensees have renewed online.
16. ARELLO ANNUAL MEETING REPORT: COMMISSIONERS CYMBALUK & YOUNGBERG, EXECUTIVE DIRECTOR JERGENSON. Written reports were filed for review.
17. ARELLO DISTRICT 6 CONFERENCE REPORT AND EXPENSE REQUEST: COMMISSIONER YOUNGBERG. Commissioner Youngberg provided a written report of his attendance at the District 6 Conference as well as a request for reimbursement of expenses. Commissioner Schlosser stated that he had not used funds budgeted for him to attend ARELLO meetings and moved to approve payment of Commissioner Youngberg’s expense report. Motion was seconded by Commissioner Cymbaluk and carried.
18. COMMISSIONER YOUNGBERG REQUEST FOR SUPPORT IN SEEKING ARELLO NOMINATION. Commissioner Youngberg expressed his intention to run for the position of Treasurer of ARELLO. It was the consensus of the Commissioners to support Commissioner Youngberg in his goal to run for Treasurer of ARELLO.
19. AMP ADVISORY BOARD MEETING REPORT: EXECUTIVE DIRECTOR JERGENSON. A written report was filed.
20. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve the requests for trust account waivers as attached to these minutes. M/C
21. COMMISSION GOALS. It was noted that “Implement online license renewals” could now be checked off as completed.
22. OTHER BUSINESS:
  - a. Chad Wachter appeared before the Commission to express his concerns about builders and developers obtaining a waiver of the required 2 years of experience as a salesperson to become a real estate broker stating that in his experience the perspective of a builder is different than the perspective expected of a real estate licensee. A builder does not have experience in representing a third party something that is learned as a salesperson.
  - b. Rhonda Mahlum was present to discuss 2 memos she had prepared for the Commission regarding situations found while conducting trust account audits:
    - i. Agency disclosure issues were discovered while conducting an audit at Advantage Inc REALTORS®, an issue that has been noted to the broker at Advantage Inc. REALTORS® in past audits. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to have Special Assistant Attorney General Connie Hofland request a copy of the agency policy, written steps taken to insure that the policy is implemented, and a sampling of files not audited. M/C
    - ii. James Smykowski had been contacted regarding an onsite audit this fall, however he claimed that he was busy farming and only had 2 transactions. When he provided the requested documentation for an audit the paperwork

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showed that he had had 4 transactions. There have been numerous issues with past trust account audits that he has made no attempt to correct and is continually unresponsive when asked to provide information. Commissioner Youngberg moved, seconded by Commissioner Louser to file a complaint.  
M/C

There being no further business, Chair Sheridan adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson  
Executive Director