

NORTH DAKOTA REAL ESTATE COMMISSION

November 19, 2015

8:30 AM

Fort Totten Room

State Capitol

600 E Boulevard Ave

Bismarck ND 58501

Commission Members: Jerry Youngberg, Chair
Jerry Schlosser, Vice Chair
Diane Louser

Roger Cymbaluk
Kris Sheridan

A G E N D A

1. Call meeting to order.
2. Minutes of August 26, 2015 meeting.
3. Presentation of audit of the Commission's financial statements for fiscal year 2014/15: Rhonda Mahlum, Mahlum Goodhart PC
4. Financial reports for August and September 2015.
5. Legal Update: Special Assistant Attorney General Constance Hofland:
 - a. Complaint #2015-11 Sarita K. Bansal v Jagdish (Jack) Wadhawan
 - b. Complaint #2015-12 Michele L. Evert v Micha D. Thureen
 - c. Complaint #2015-13 NDREC v Olivia K. Wellenstein
 - d. Complaint #2015-14 NDREC v Bradley M. Haugen
 - e. Complaint #2015-15 NDREC v Nancy J. Allen
 - f. Complaint #2015-16 NDREC v William L. Daniel and Kyle W. Holwagner
6. Discuss proposed revised language to Administrative Rule 70-02-01-15(2)(d).
7. Review license applications:
 - a. Baker Jr., Larry D.
 - b. Langenstein, Jared L.
 - c. Ostlie, Shawn M.
 - d. Peterson, Eric C.
8. Appeal denial of salesperson license application by Barimore S. Maring.
9. Credit reports and background checks for non-US citizens who are applying for a real estate license.
10. How to handle background checks that are unable to be done through fingerprinting.
11. Acceptance of pre-licensing courses from other jurisdictions.
12. Review how other jurisdictions define "prominent" or "prominence" in their advertising rules.
13. Discuss minimum standards for errors and omission insurance. NDAC 70-02-05-03(2)
14. 2016 license renewal update.
15. ARELLO Annual Conference Reports: Commissioners Youngberg and Cymbaluk, Executive Director Jergenson
16. Review Commission priorities.
17. Review approved trust account waivers.
18. Other business.



North Dakota Real Estate Commission

1110 College Dr. Suite 207 • PO Box 727 • Bismarck, North Dakota 58502-0727

Phone 701-328-9749 • Fax 701-328-9750

ndrealestatecom@midconetwork.com

www.realestatend.org

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Members

Chair

Jerome C. Youngberg
Grand Forks

Vice Chair

Jerry Schlosser
Bismarck

Diane R. Louser
Minot

Roger M. Cymbaluk
Williston

Chris Sheridan
Fargo

Patricia M. Jergenson
Executive Director

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

1. CALL MEETING TO ORDER. Chair Youngberg called the meeting to order. Roll call was taken. Commissioners Youngberg, Sheridan, Louser, and Cymbaluk were present in person. Commissioner Schlosser was present by conference call.
2. MINUTES OF AUGUST 26, 2015 MEETING. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve the August 26, 2015 minutes as presented. M/C
3. PRESENTATION OF AUDIT OF THE COMMISSION'S FINANCIAL STATEMENTS FOR FISCAL YEAR 2014/15: RHONDA MAHLUM, MAHLUM GOODHART PC. Rhonda Mahlum presented the Commission's financial statements for the fiscal year July 2014 to June 2015. Ms. Mahlum gave the financial statements a clean opinion. Ms. Mahlum stated that the Commission could set a policy to only allow the maximum amount of money to be invested at each financial institution to make sure all investments are FDIC insured. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the audit report as presented. M/C Ms. Mahlum also gave Commissioners a report on what she is finding in the trust account audits. She has found that brokers who deposit their earnest money with a title company are not reconciling their accounts to the earnest money at the title company and noted that this will show up as a recurring issue on the trust account reports. It was the consensus that brokers are still responsible for tracking the earnest money even when they don't have a trust account and are depositing it with a title company. Commissioners asked staff to send a letter to all brokers reiterating the fact that it is the broker's responsibility to track the earnest money and they should get information from the title company each month to balance to their ledgers. Jill Beck, NDAR, asked for clarification on Administrative Rule 70-02-01-15(1)(a) wondering if it should be revised to include title company in the definition. Special Assistant Attorney General Connie Hofland will research this.

4. FINANCIAL REPORTS FOR AUGUST AND SEPTEMBER 2015. Executive Director Jergenson presented the financial report for August 2015. Executive Director Jergenson noted the overage of accounts #507 printing costs, #509 office equipment and maintenance, #519 auditing costs to date reflect last year's cost and will be adjusted by the auditors. Executive Director Jergenson presented the financial report September 2015. Executive Director Jergenson noted that income accounts #403 renewal fees – firm, #404 renewal fees – broker, and #405 renewal fees – salesperson were under budget because the license renewals did not come in as projected. Executive Director Jergenson noted the overages in accounts # 510 postage, #514 legal fees and investigation costs, and #525 office supplies. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve the August 2015 and September 2015 financial reports as presented. M/C Commissioner Sheridan moved, seconded by Commissioner Louser to set a policy that all investments made do not exceed the maximum FDIC limit at any financial institution. M/C
5. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONSTANCE HOFLAND:
 - a. Complaint #2015-11 Sarita K. Bansal v Jagdish (Jack) Wadhawan. Special Assistant Attorney General Connie Hofland presented her results of the investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to dismiss this complaint. M/C
 - b. Complaint #2015-12 Michele L. Evert v Micha D. Thureen. Special Assistant Attorney General Connie Hofland presented her results of the investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to accept the recommendation of counsel and dismiss this complaint. M/C
 - c. Complaint #2015-13 NDREC v Olivia K. Wellenstein. Special Assistant Attorney General Connie Hofland presented her results of the investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to dismiss this complaint. M/C
 - d. Complaint #2015-14 NDREC v Bradley M. Haugen. Special Assistant Attorney General Connie Hofland presented her results of the investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to set this complaint for a hearing with the option of a Stipulation and Settlement Agreement of \$300 in fines and attorney fees. M/C
 - e. Complaint #2015-15 NDREC v Nancy J. Allen. Special Assistant Attorney General Connie Hofland presented her results of the investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to set this complaint for a hearing with the option of a Stipulation and Settlement Agreement of \$1000 in fines and attorney fees and a letter of reprimand. M/C
 - f. Complaint #2015-16 NDREC v William L. Daniel and Kyle W Holwagner. Special Assistant Attorney General Connie Hofland presented the signed Stipulation and Settlement Agreements from both William Daniel and Kyle Holwagner. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the Stipulation and Settlement Agreements for both William Daniel and Kyle Holwagner in which each agrees to pay \$300 in fines and \$200 in legal and investigation costs as presented by Ms. Hofland. M/C

6. DISCUSS PROPOSED REVISED LANGUAGE TO ADMINISTRATIVE RULE 70-02-01-15(2)(d). Special Assistant Attorney General Connie Hofland presented the Commission with information about the meeting held at the Legislative Council with Representative Scott Louser, Jill Beck and Nancy Willis (NDAR), John Walstad (Legislative Council), Pat Jergenson (NDREC) and herself which led to the following agreed amended verbiage for ND Administrative Rule 70-02-01-15(2)(d) which was agreed upon by those in attendance at that meeting: *Section 70-02-01-15(2)(d) Abandoned deposits. Abandoned deposits in a broker's trust account are subject to the laws governing abandoned property as provided in chapter 47-30.1 of the North Dakota Century Code. A deposit that has remained unclaimed for more than three years after it became payable or distributable is presumed abandoned by chapter 47-30.1 and shall be reported and delivered to the administrator of the unclaimed property division as provided by chapter 47-30.1. Earnest money deposits are considered payable or distributable as of the closing date on the purchase agreement.* Ms. Hofland also clarified that even if the purchase agreement is cancelled the closing date can be used as the date to determine the three year timeframe. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the amended language and to clarify that if the purchase agreement is cancelled the closing date is still the effective date to determine when the three (3) year timeframe begins. M/C
7. REVIEW OF LICENSE APPLICATIONS:
 - a. Commissioners reviewed the application of Larry D. Baker Jr. for a salesperson license. Mr. Baker Jr. joined the meeting by conference call to discuss any questions the Commissioners might have. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Baker Jr. to sit for the salesperson license examination. M/C
 - b. Commissioners reviewed the application of Jared L. Langenstein for a salesperson license. Mr. Langenstein joined the meeting by conference call to discuss any questions the Commissioners might have. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Mr. Langenstein to sit for the salesperson license examination. M/C
 - c. Commissioners reviewed the application of Shawn Ostlie for a broker license. Mr. Ostlie joined the meeting by conference call to discuss any questions the Commissioners might have. Commissioner Cymbaluk moved, seconded by Commissioner Louser to deny Mr. Ostlie's application due to issues on his credit report. M/C
 - d. Commissioners reviewed the application of Eric C. Peterson for a non-resident salesperson license. Mr. Peterson joined the meeting in person to discuss any questions the Commissioners might have. Commissioner Sheridan seconded by Commissioner Louser to approve Mr. Peterson to sit for the state portion of the salesperson license examination. M/C
8. APPEAL DENIAL OF SALESPERSON LICENSE APPLICATION BY BARIMORE S. MARING. Barimore S. Maring's application for a salesperson license was reviewed at the October 27, 2015 Commission meeting. The Commission moved to deny Mr. Maring's application due to issues on his credit report. Mr. Maring provided documentation showing both judgements on his credit report have been paid. Commissioner Cymbaluk moved, seconded by Commission Louser to approve Mr. Maring to sit for the salesperson license examination. M/C

9. CREDIT REPORTS AND BACKGROUND CHECKS FOR NON-US CITIZENS WHO ARE APPLYING FOR A REAL ESTATE LICENSE. Staff presented information on new applicants applying for a license who are not or are becoming United States citizens. The consensus of the Commission is that a credit report and background report would need to be done in the United States and the country in which they live.
10. HOW TO HANDLE BACKGROUND CHECKS THAT ARE UNABLE TO BE DONE THROUGH FINGERPRINTING. Staff presented information on applicants applying for a license that are unable to complete a background report through fingerprinting. The consensus of the Commission is that applicants need to submit fingerprints two times before a name search request can be submitted.
11. ACCEPTANCE OF PRE-LICENSING COURSES FROM OTHER JURISDICTIONS. Commissioners reviewed information on pre-licensing courses from other jurisdictions. The consensus of the Commission is that North Dakota resident applicants need to take North Dakota approved pre-licensing courses.
12. REVIEW HOW OTHER JURISDICTIONS DEFINE "PROMINENT" OR "PROMINENCE" IN THEIR ADVERTISING RULES. Commissioners reviewed information on how other jurisdictions define "prominent" or "prominence" in their advertising rules and it was the consensus to leave 70-02-03-02.1(2) as is.
13. DISCUSS MINIMUM STANDARDS FOR ERRORS AND OMISSION INSURANCE. NDAC 70-02-05-03(2). Commissioners discussed raising the minimum annual aggregate of \$100,000 per agent and \$500,000 annual aggregate per agent. The Commission asked staffed to research what other states have as their mandatory E&O liability limits and to check with RISC to see if there have been any losses exceeding the coverage as it is now.
14. 2016 LICENSE RENEWAL UPDATE. Executive Director Jergenson presented the renewal update to the Commission. The feedback received from the brokers was that they like the new renewal deadline. RISC was able to keep up with processing E&O. The biggest problem for the brokers are the licensees that didn't complete their CE before November 15th. The consensus of the Commission is to file a complaint against the broker and the agent who failed to complete their CE before the November 15th deadline for violating license law. Staff was asked to provide a list to the Commission of those who did not get their CE done by November 15, 2015.
15. ARELLO ANNUAL CONFERENCE REPORTS: COMMISSIONERS YOUNGBERG AND CYMBALUK, EXECUTIVE DIRECTOR JERGENSEN. Commissioners Youngberg and Cymbaluk and Executive Director Jergenson filed written reports for the ARELLO annual conference.
16. REVIEW COMMISSION PRIORITIES. The Commission removed review fee structure, define prominent in the advertising rule, and scheduling meetings in advance. Commissioners added attending Commissioner College and review the agency statute to the Commission Priorities.
17. REVIEW APPROVED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the August 26, 2015 meeting. A list of those waivers are attached to these minutes. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to add to the Trust Account Waiver form a statement that the broker acknowledges and understands he/she is still responsible and is required to maintain records for all trust account funds no matter where they are deposited. M/C

18. OTHER BUSINESS.

- a. Chair Youngberg informed the Commission that the Fargo Forum printed the U.S. Supreme Court opinion in North Carolina State Board of Dental Examiners v FTC regarding cease and desist orders to unlicensed individuals.
- b. Executive Director Jergenson presented to the Commission a CE tracking tool for licensees, CE Broker. The Commission decided against using CE Broker because it's the licensees' responsibility to keep track of their CE hours.
- c. Executive Director Jergenson presented the new office lease to the Commission. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to renew the current office lease for the next three years at the current monthly lease rate.
M/C

There being no further business Chair Youngberg adjourned the meeting.

Respectfully submitted,



Amanda Renner
Administrative Assistant