

November 2, 2006
8:30 AM
ND Real Estate Commission
1st Floor Conference Room
200 E Main Ave
Bismarck, ND

Present: Jerry Schlosser/Chair, Diane Louser/Vice Chair, Roger Cymbaluk/Member,
Kris Sheridan/Member, Jerry Youngberg /Member, Patricia M.
Jergenson/Secretary Treasurer

1. CALL MEETING TO ORDER. Chair Jerry Schlosser called the meeting to order and guests were welcomed.
2. APPROVE MINUTES OF SEPTEMBER 13, 2006. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the minutes of September 13, 2006 with the correction to item #14 as presented. M/C Staff provided information on three items requiring action in the minutes. Item #9: Commissioners received a preliminary report on reciprocal agreements relating to pre-licensing education from Montana, Wyoming and South Dakota. Item #10: Commissioners were provided with the results of a survey conducted by ARELLO regarding personal assistants. Staff was instructed to provide Mr. Dan Ringuette with a copy of the survey. Item #13: Staff presented a revised "Inactive Status Request" form for review. Consensus was to proceed to put this form into use.
3. APPROVE FINANCIAL REPORT FOR SEPTEMBER 2006. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the financial report for September 2006. M/C
4. REVIEW OF 2005/06 AUDIT: MAHLUM & GOODHART PC. Lynnell Ussatis and Rhonda Mahlum of Mahlum & Goodhart PC presented the 2005/06 annual audit report noting that the audit came back with a clean opinion. Commissioner Sheridan moved, seconded by Commissioner Youngberg to accept the audit as presented. M/C
5. DISCUSS DRAFT OF THE TRUST ACCOUNT MANUAL AND RELATED ISSUES. Rhonda Mahlum and Lyne11 Ussatis participated in the discussion of the draft of the trust account manual. It was noted that there are 2 discrepancies regarding trust account requirements between statute and administrative rule. The first one is regarding the timeframe in which earnest money is to be deposited. NDCC 43-23-11.1(t) says that the salesperson has 24 hours from the time they receive the earnest money to turn the earnest money over to the broker and that the broker must deposit the

earnest money within 24 hours of receiving it from the salesperson. Administrative Rule 70-02-01-15 states that the earnest money must be deposited within 24 hours of its receipt. Commissioner Sheridan moved, seconded by Commissioner Youngberg to revise Administrative Rule 70-02-01-15 to reflect what the statute says, to require that there be a final acceptance date on the purchase agreement, and clarification that banking days are Monday through Friday and define holidays as banking holidays. M/C The second discrepancy is regarding requirements for brokers to have closing statements from both sides of the transaction in their file. NDCC43-23-11.1 and Administrative Rule 70-02-03-07 both state that the broker keep copies of the closing statements for the buyer and seller in their file however, due to changes in confidentiality laws this is not always possible. It was the consensus of the Commissioners to amend the statute and administrative rule to bring it in line with current business practice. With the second round of trust account audits starting Commissioners were asked how to proceed if it is found that the broker had not implemented the recommended/requested changes from the first audit. Commissioners asked the auditors to write up reports on audits in which recommended changes have not been completed for their review. Commissioners were asked if any further action was needed regarding the trust account audit of Monte Kjos, a Fargo broker. Auditors notified the Commission that even though Mr. Kjos has a trust account waiver for North Dakota, he has a trust account in Minnesota in order to fulfill the requirements of his licensure in Minnesota and South Dakota. It was the consensus of the Commission that there was no further action necessary.

6. LEGAL UPDATE.

Secretary Treasurer Jergenson informed the Commission of the efforts by Clair Watne to complete the items that were out of compliance in his trust account audit since he had been informed that a formal complaint was pending and that based on those efforts a formal complaint had not as yet been filed. Commissioner Sheridan moved, seconded by Commissioner Youngberg to withdraw the complaint against Clair Watne. M/C

a. (i) Complaint# 2006-03 Doug, Stan & Reed Opland v. Sheldon Gudmunson.

Commissioners Louser and Sheridan abstained from discussion and any motion made regarding this complaint. Special Assistant Attorney General Jerry Kettleon and his assistant Jeff Ubben presented the results of the investigation of formal Complaint# 2006-03. Mr. Kettleon's conclusion is that there appears to be sufficient evidence to move this complaint to hearing citing possible violations of NDCC 43-23-11.1(w), 70-02-03-15, and 70-02-03-09. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to proceed to formal hearing on Complaint# 2006-03, to include Todd Fettig, who was the broker of record at the time, in the complaint and have Mr. Kettleon research whether or not there is a statute of limitations. M/C

b. (ii) Complaint# 2006-05 Jesse Lugo v. Susan S. Jacobson. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint to the Commissioners. Mr. Lugo alleged that Susan Jacobson acted unethically in her representation of Mr. Lugo in the purchase of a multi-family commercial property. Ms. Hofland recommended dismissal of this complaint as there is insufficient evidence of potential violations of applicable statutes and regulations. Commissioner

Sheridan moved, seconded by Commissioner Louser to dismiss the complaint against Susan S. Jacobson. M/C
(iii, iv, v) Complaint #2006-08 M/M Devins v. Sharon Bredemeier, Complaint #2006-17 M/M Devins v. James Dunavan, and Complaint #2006-18 M/M Devins v. Cheryl Tupa. Ms. Hofland presented the facts involving these three complaints noting that all three complaints arise out of the same transaction. She also noted that Mr. Devins has since passed away and that Mrs. Devins wishes to continue with the complaint process. The Devins' allege that Sharon Brademeier committed fraud, misrepresentation, negligent misrepresentation and incompetence as their buyer agent. Commissioner Cymbaluk moved, seconded by Commissioner to accept the recommendation of Ms Hofland and proceed to hearing on Complaint# 2006-08 Devins v. Brademeier. M/C In Complaint #2006-18 Devins v Tupa the Devins' allege that Cheryl Tupa committed fraudulent misrepresentation and failed to disclose material defects. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to follow the recommendation of legal counsel and dismiss the complaint against Cheryl Tupa. M/C In Complaint #2006-17 Devins v. Dunavan the Devins' allege that James Dunavan committed fraudulent misrepresentation and failed to disclose material facts. Commissioner Cymbaluk moved, seconded by Commissioner Louser to table action on this complaint pending the hearing on Complaint #2006-08. M/C

Ms Hofland also informed the Commission that a letter has been written to the Attorney General's office regarding the ability of the Commission to require both state and national background checks.

7. APPEARANCES REGARDING REQUEST FOR HEARING ON DENIED APPLICATIONS.

- a. Ryan J. Thayer provided letters of reference which were requested by the Commission at their meeting on April 13, 2006 when Mr. Thayer appealed their decision to deny his salesperson license application. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to stand by their original decision to deny the application of Mr. Thayer. M/C
- b. Cory J. Theuninck did not appear at this meeting. His application will be cancelled.
- c. Orville G. Tranby appeared before the Commission regarding the denial of his request for a waiver of the two years full time experience as a salesperson so that he could be approved to take the broker examination. Commissioner Youngberg moved, seconded by Commissioner Sheridan to permit Mr. Tranby to sit for his broker examination. M/C
- d. Angela M. Wentz did not appear at this meeting. Her application will be cancelled.
- e. Carole L. Gulland had been asked by the Commission to provide verification of her state of residence prior to the approval of her application for a salesperson license at their meeting on September 19, 2006. Commissioners reviewed the information Ms. Gulland provided. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve the reciprocal salesperson license for Ms. Gulland. M/C

8. REVIEW APPLICATIONS FOR SALESPERSON LICENSES.

- a. Commissioners reviewed the application of Chery A. Bourdeau for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Bourdeau to sit for the salesperson real estate examination. M/C
- b. Commissioners reviewed the application of Amy M. Dauphinais for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms. Dauphinais to sit for the salesperson real estate examination. M/C
- c. Commissioners reviewed the application of Michelle R. Lysne for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Lysne to sit for the salesperson real estate examination. M/C
- d. Commissioners reviewed the application of Anita J. Ramberg-Pease for a salesperson license. Commissioner Louser moved, seconded by Commissioner Sheridan to approve Ms. Ramberg-Pease to sit for the salesperson real estate examination. M/C
- e. Commissioners reviewed the application of Stephanie B. Vaagene for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Ms. Vaagene to sit for the salesperson real estate examination. M/C
- f. Commissioners reviewed the application of Thomas J. Vogel for a salesperson license. Commissioner Louser moved, seconded by Commissioner Sheridan to request Mr. Vogel provide evidence of satisfaction that the lien has been taken care of. M/C
- g. Commissioners reviewed the application of Stephen J. Woeller for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny the application of Mr. Woeller due to the number of items that appear in collection on his credit report. M/C

9. REVIEW REQUESTS FOR WAIVER REGARDING BROKER APPLICATIONS.

- a. Michael J. Bullinger requested a waiver of the experience as a salesperson requirement and that he would be allowed to take the broker examination upon completion of the required education based on his years of business experience. Commissioner Sheridan abstained from participation in the discussion and vote. Commissioner Cymbaluk moved, seconded by Commissioner Louser to waive the requirement of 2 years of experience as a salesperson, that Mr. Bullinger take the required education for licensing, and if a check of Mr. Bullinger's accounting license is clear he is approved to take the broker examination. M/C
- b. Kenneth B. Bulie requested a waiver of the experience as a salesperson requirement and that he would be allowed to take the broker examination upon completion of the required education based on his years of experience as an attorney. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve Mr. Bulie to sit for the broker examination if a check of Mr. Bulie's law and insurance licenses is clear. M/C

10. REVIEW ASSIST 2 SELL WEB SITE ADVERTISING. Secretary Treasurer Jergenson had received a call asking that the Commission review the web site of Assist 2 Sell to discuss the claims made regarding seller savings. The Commission noted that there is a disclaimer on the web page.

11. REVIEW 359HOME.COM WEB SITE ADVERTISING. Secretary Treasurer Jergenson received several calls regarding the web site www.359home.com. Commissioners reviewed material from the web site. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table this item for further review by legal counsel and the Commission. M/C
12. DISCUSS EDUCATION REQUIREMENTS FOR NEW LICENSEES GOING INACTIVE IMMEDIATELY UPON PASSING THE LICENSE EXAMINATION. Consensus of those present is that the 12 month timeframe for the 15 hours of post licensing does not start until the date the license is issued on an active status.
13. DISCUSS INFORMATION FROM RISC REGARDING ERRORS AND OMISSION INSURANCE PREMIUM. RISC has contacted the Commission with concerns that they may not be able to provide E&O insurance with a \$125 premium as set in North Dakota statute past 2007. The need for this to be addressed during this Legislative session was discussed. Jill Beck, Assistant EVP for NDAR, stated that NDAR would carry this legislation this session.
14. REVIEW SUBDIVIDED LAND APPLICATIONS. Commissioners reviewed the applications for subdivided land registration from Disney's Animal Kingdom Villas and The Inn at Glacier Canyon. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the registrations of Disney's Animal Kingdom Villas and The Inn at Glacier Canyon upon proof that each have a \$25,000 bond. M/C
15. DISCUSS LICENSEE NAME ON LICENSE – LEGAL NAME OR D/B/A ACCEPTABLE? Administrative Rule 70-02-03-02.1 states "all advertising by a real estate salesperson must be advertised only under the exact name of the licensee as licensed." Secretary Treasurer Jergenson has been in contact with Jill Stenberg who has been advertising under the name Jill Duemeland. Commissioners request a letter from Ms Stenberg's legal counsel showing how "doing business as" is not in violation of the Administrative Rule.
16. DISCUSS DRAFT OF BROKER'S RECORD OF PROFESSIONAL REAL ESTATE ACTIVITY BROCHURE. After some discussion it was the consensus of the Commission to table this for review at a future Commission meeting.
17. RESPONSE FROM LORMAN EDUCATION SERVICES REGARDING TELECONFERENCE SEMINARS. The Commission had asked Lorman Education Services to provide information on how they would verify that an attendee was participating in a teleconference seminar. Commissioner Sheridan moved, seconded by Commissioner Louser to deny the approval of seminars by teleconference. M/C
18. ARELLO ANNUAL CONFERENCE UPDATE. Secretary Treasurer Jergenson filed a report giving the Commission an update of the ARELLO conference. Commissioners Schlosser, Cymbaluk, and Youngberg shared their insights. Commissioner Schlosser received a Certificate of Completion for the Commissioner College and Commissioner Cymbaluk and Secretary Treasurer Jergenson received certificates of participation.
19. AMP ADVISORY BOARD UPDATE. Secretary Treasurer Jergenson participated in this meeting to work on the development of additional questions for the simulation broker examination.
20. UPDATE ON WEB SITE. The web site address for the ND Real Estate Commission is www.realestatend.org. Commissioners saw a sample of the opening web page that is being developed.

21. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the requests for trust account waivers as attached to these minutes. M/C
22. ALLOCATE FUNDS FOR COMMISSIONER YOUNGBERG TO ATTEND ARELLO BOARD OF DIRECTORS MEETING JANUARY 5 & 6, 2007 IN SAN DIEGO, CA. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Commissioner Youngberg's participation in the ARELLO Board of Directors meeting January 5 & 6, 2007 in San Diego, CA with funds to be allocated from the Commissioner's Salary & Expenses portion of the budget. M/C
23. ARELLO INVESTIGATOR/ATTORNEY WORKSHOP. Secretary Treasurer Jergenson notified the Commission that Special Assistant Attorney General Connie Hofland would not be able to attend the ARELLO Investigator/Attorney seminar this year but would appreciate the opportunity to attend in the future.
24. COMMISSION GOALS. Commissioners reviewed the goals they had established and decided to remove those goals that have been completed from the list.
25. OTHER BUSINESS:
 - a. Commissioners were informed of a letter received in the Commission office from the Secretary of State regarding a complaint against a home inspector and the need for licensees to be careful not to recommend a professional but rather to provide a list and let the consumer make the choice. It was suggested that this would be a good topic for an article in the newsletter.
 - b. The Commission will submit an agency bill this Legislative session to deal with some housekeeping items; revision of the salesperson organization statute to include teams, spouses, and broker associates, revise the statute regarding closing statements, and change the Secretary Treasurer title to Executive Director.
 - c. A complaint was forwarded to the Commission office from the Attorney General's office regarding a situation in Grand Forks. Secretary Treasurer Jergenson also stated that she had received a couple of calls from other parties regarding this same situation but no one has filed a complaint. It was recommended to send a letter to these parties explaining the complaint process, including the forms, stating that they may have a complaint and to carbon copy the Secretary of State and Attorney General.

There being no further business, Commissioner Sheridan moved to adjourn, seconded by Commissioner Youngberg. M/C

Respectfully submitted,

Patricia M. Jergenson
Secretary Treasurer