

September 15, 2009  
8:30am CDT  
ND Real Estate Commission  
200 E Main Ave Suite 204  
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

1. CALL MEETING TO ORDER. Chair Kris Sheridan called the meeting to order.
2. APPROVE MINUTES OF JUNE 11, 2009 AND JULY 30, 2009 MEETINGS. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the June 11, 2009 and July 30, 2009 minutes. M/C
3. APPROVE FINANCIAL REPORTS FOR MAY, JUNE, AND JULY 2009. Executive Director Jergenson reviewed the June 30, 2009 fiscal year end financial statements noting that all but two of the expense accounts were under budget. The financial statements for May and July 2009 were also reviewed. Commissioner Louser moved, seconded by Commissioner Cymbaluk to approve the May, June, and July 2009 financial reports. M/C
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CHRIS EDISON.
  - a. Complaint #2009-01 Vern J. Brenner v Patrick E. Rafferty. Special Assistant Attorney General Chris Edison joined the meeting by conference call to present the results of his investigation of this complaint. Special Assistant Attorney General Constance Hofland left the meeting room during this time. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to dismiss Complaint #2009-01. M/C
5. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
  - a. Stipulated agreements for Complaint #2008-17 Andra Miller v Leslie Riepl, Jack Neumann, and Susan Feland. Special Assistant Attorney General Hofland presented proposed stipulated agreements with Leslie Riepl, Jack Neumann, and Susan Feland. The terms of each stipulated agreement are: \$500 fine, \$630 (1/3 each) investigative/legal fees, and 3 hours of continuing education

on ethics. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to accept the proposed stipulated agreements with the understanding that the 3 hours of education is to be completed within this calendar year. M/C (1 nay, Commissioner Schlosser)

- b. Complaint #2009-03 NDREC v Daniel Ringuette. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Youngberg moved, seconded by Commissioner Schlosser to table this complaint until the situation clears for the consumer. M/C
- c. Complaint # 2009-08 Joan M. Sailer v Adam Fleck. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Louser moved, seconded by Commissioner Youngberg to set this complaint for a hearing. M/C
- d. Memorandum on June 29, 2009 letter from Todd Nedberg. Special Assistant Attorney General Connie Hofland discussed a letter she received from Todd Nedberg requesting the reinstatement of his license and the order rendered by the Commission in default. No action was taken.

Chair Kris Sheridan welcomed former Real Estate Commissioner Bob Willer who had joined the meeting.

6. APPOINTED AGENCY TASK FORCE REPORT: COMMISSIONER SCHLOSSER.

Commissioner Schlosser presented the following findings of the Appointed Agency Task Force:

- use of appointed agency is allowed by statute on a case by case basis or at the beginning of the agency relationship however it was the consensus of the task force that best practice would be to disclose appointed agency up front.
- Recommended that no changes be made to current statutes relating to appointed agency.
- Recommended the Commission undertake an education campaign to inform licensees of the proper use of appointed agency under the law. Suggested avenues for education were: white paper to be published in the newsletter, continuing education class, possible Q&A on the web site, and information on how to implement appointed agency.
- Special Assistant Attorney General Connie Hofland has written an article on teams and appointed agency which has been sent out to the task force to review. When the article is revised Ms Hofland will email it to the Commissioners for their review prior to publication.
- It was recommended by the task force to incorporate the term “facilitator/transaction broker” into Administrative Rule 70-02-03-15.1(1).
- In discussing a situation involving a consumer, who purchased a home from a licensee who owned the property and acted as a dual agent, the task force believes protection currently exists in the law for the consumer and avenues for the consumer to use if they feel harmed. Commissioner Schlosser volunteered to meet with the

individual who felt harmed to discuss in detail the provisions in the law that protect the consumer.

7. REVIEW 2<sup>ND</sup> DRAFT OF PROPOSED ADMINISTRATIVE RULE CHANGES.

Commissioners discussed proposed changes to Administrative Rules 70-02-03-12 and 70-02-01-15 regarding earnest money. Legal Counsel Hofland and Executive Director Jergenson were asked to rework these rules for Commissioners to review.

Commissioners then discussed the recommendation from the Appointed Agency Task Force to add the term facilitator or transaction broker to Administrative Rule 70-02-03-15.1. Consensus was that this needed more research and is to remain on the agenda.

8. REVIEW LICENSE APPLICATIONS.

- a. Commissioners reviewed the application of Tammy L. Chute for a salesperson license. Commissioner Louser moved, seconded by Commissioner Cymbaluk to deny Ms. Chute's application due to unsatisfied judgments. M/C
- b. Commissioners reviewed the application of Matthew J. Geinert for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Geinert to sit for the salesperson real estate examination. M/C
- c. Commissioners reviewed the application of Candy L. Harper for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Louser to approve Ms. Harper to sit for the salesperson real estate examination. M/C
- d. Commissioners reviewed the application of Heather K. Hart for a salesperson license. Commissioner Schlosser recused himself from discussion and voting on this applicant. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms. Hart to sit for the salesperson real estate examination. M/C
- e. Commissioners reviewed the application of Timothy R. Hennessey for a salesperson license and his request to be allowed to sit for the salesperson real estate examination but not have his license issued until his financial situation has been satisfied. Commissioner Louser moved, seconded by Commissioner Cymbaluk to deny Mr. Hennessey's application due to unsatisfied judgments and deny his request to sit for the examination. M/C
- f. Commissioner Youngberg moved, seconded by Commissioner Schlosser to deny John J. Iverson's application for a broker license due to it being incomplete. M/C Mr. Iverson's broker's license was cancelled for non-renewal; he will have to reapply as a salesperson in accordance with the law.
- g. Commissioners reviewed the application of Dezarae S. Schroeder for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to deny Ms. Schroeder's application due to her response regarding the misdemeanor on her application. M/C

- h. Commissioners reviewed the application of Daniel J. Soeby for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Soeby to sit for the salesperson real estate examination. M/C
  - i. Commissioners reviewed the application of Annie L. Sproule for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms. Sproule to sit for the salesperson real estate examination. M/C
  - j. Commissioners reviewed the application of Rick J. Stremick for a salesperson license. Commissioner Louser moved, seconded by Commissioner Youngberg to approve Mr. Stremick to sit for the salesperson real estate examination. M/C
9. CORRESPONDENCE FROM JOHN R. CORBETT. Executive Director Jergenson shared with the Commission the correspondence from John R. Corbett received June 24, 2009.
  10. REVIEW EDUCATION DOCUMENTATION SUBMITTED BY KARI R. WINNING. Ms. Winning provided, as requested by the Commission, proof of education she had completed to meet the education requirement for approval to take the real estate broker license examination. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to allow Ms Winning to sit for the broker examination. M/C
  11. SOUTH DAKOTA CHANGES IN RECIPROCAL AGREEMENT. Effective July 1, 2009 South Dakota will require non-resident license applicants to take the SD portion of the licensing examination. Non-residents renewing their SD licenses must provide a certificate of licensure with their renewal.
  12. ESTABLISH CONTINUING EDUCATION CYCLE, CONTINUING EDUCATION HOURS AND MANDATORY COURSES. Commissioner Schlosser moved, seconded by Commissioner Youngberg to require 9 continuing education hours annually beginning in 2010. M/C Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to set the 2010 mandatory course as 3 hours on the topic of appointed agency. M/C
  13. ONLINE LICENSE RENEWAL PROJECT. Executive Director Jergenson noted that the online renewal project was on schedule for Fall 2009. Commissioners were given a flow chart of the online renewal process and an update from TAO interactive on the development progress. Revising the renewal forms was discussed. Jergenson will revise the present forms and email to the Commissioners and legal counsel for approval.
  14. REVIEW FIRST AND SECOND QUARTER 2009 E&O INSURANCE CLAIMS REPORT. Commissioners were provided the errors and omissions insurance statistics from RISC for the first and second quarters of 2009. This report was provided for information purposes.
  15. ARELLO DISTRICT 2 & 3 CONFERENCE REPORT: COMMISSIONERS CYMBALUK & YOUNGBERG, EXECUTIVE DIRECTOR JERGENSEN. Commissioners Cymbaluk and Youngberg and Executive Director Jergenson filed written reports.

16. ARELLO INVESTIGATOR WORKSHOP REPORT: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND & EXECUTIVE DIRECTOR JERGENSON. Chair Kris Sheridan presented Special Assistant Attorney General Connie Hofland with the ARELLO Investigator Workshop Certificate of Completion. Ms Hofland thanked the Commission for sending her to the conference and said that it was a good experience. Executive Director Jergenson filed a written report.
17. TRUST ACCOUNT AUDIT UPDATE: RHONDA MAHLUM, MAHLUM & GOODHART.
  - a. Update: Ms Mahlum discussed agency issues found during audits. In audits conducted previously general agency disclosure forms were found to be missing 50% of the time, now it is 90%. She stated that they are finding that 75% of the offices are set up as appointed agency offices and then change to dual agency in the transactions. It was suggested that training on agency be continued. Trust account issues have gotten better – it is the agency issues that have gotten worse. In some areas licensees are using the purchase agreement as the buyer agent contract. Commissioners asked Ms Hofland to write an article for the newsletter regarding the need to have a signed listing contract from the seller and a signed buyer contract with the buyer noting that if the licensee comes before the Commission the law will not support the licensee if this has not been done.
  - b. Kenneth Bulie, Cando Insurance & Real Estate: Mr. Bulie has not complied with recommendations made by the trust account auditors in the past and continues to disregard them. It was the consensus of the Commissioners to have Ms Hofland write a letter to Mr. Bulie based on the report of the auditors and the findings of the trust account audit.
  - c. Keller Williams Roers Realty, Inc. follow-up audit: Auditors re-audited Keller Williams Roers Realty, Inc. on September 15, 2009 as stipulated. The audit was good.
18. ARELLO PROPOSED BYLAW AMENDMENT. Commissioners reviewed the proposed ARELLO bylaw change to add the United Arab Emirate of Ajman to ARELLO's District 6 and found no reason to oppose it.
19. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the requests for trust account waivers as attached to these minutes. M/C
20. COMMISSION GOALS. Commissioners reviewed the goals.
21. OTHER BUSINESS:
  - a. Is a real estate license required to lease wind towers? Staff will research this and report back to the Commission.
  - b. An email from Homes For Heroes asking if a licensee can give a commission concession to a buyer at closing was discussed. It would be disclosed on the HUD Settlement Statement. The consensus was that yes, this was appropriate.

- c. Staff had been asked if auditing a pre-licensing education course, without taking an examination, would be acceptable as pre-licensing education for a salesperson. Administrative Rule 70-02-02-12 establishes that an examination is required.
- d. Staff requested to purchase a conference call telephone and presented information on 3 conference call telephones. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to purchase a conference call telephone. M/C
- e. An application from Stefan Olafson had not been received prior to this meeting and could not be reviewed at this time.

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

Respectfully submitted,

Patricia M. Jergenson  
Executive Director