

September 20, 2011
8:30am CDT
North Dakota Real Estate Commission
200 E Main Ave
1st floor Conference Room
Bismarck ND

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

1. CALL MEEETING TO ORDER. Chair Schlosser called the meeting to order and welcomed guests.
2. APPROVE MINUTES OF JUNE 16, 2011 MEETING. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk to approve the minutes as presented. M/C Commissioners discussed item 16(a) regarding the good funds legislation and its affect, if any, on the existing statues/rules on the handling of earnest money. The example discussed was as follows: earnest money is deposited with the title company 3 days prior to closing but the transaction does not close – is there a violation by the broker? Comments were that the transfer of the earnest money to the title company should be addressed in the purchase agreement. Special Assistant Attorney General Hofland will write a memo for the next meeting which could possibly be used as a newsletter article.
3. APPROVE JUNE, JULY AND AUGUST 2011 FINANCIAL REPORTS. Commissioner Youngberg moved, seconded by Commissioner Louser to approve all financial reports as presented. Commissioners received a copy of the approved 2011/12 budget.
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
 - a. Complaint #2011-03 Lori W Whistler v Jack L Wadhawan. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Youngberg to dismiss this complaint. M/C
 - b. Complaint #2011-04 Michael & Susan Kish v Barbara A Grande and David M Kinsky. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to dismiss this complaint. M/C
 - c. Complaint #2010-11 NDREC v Affiliated Business Consultants. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. She reported that Affiliated Business Consultants is an advertising and marketing company for businesses for sale by owner – they do not broker the sale of the business and we do not

have jurisdiction over this activity. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to not proceed with the prosecution of this complaint due to the lack of jurisdiction. M/C

- d. Attorney receiving commission when representing himself in a sale. Special Assistant Attorney General Connie Hofland presented information on a request for clarification from attorney Tim Lervick regarding the payment of a commission to be paid to him in a real estate purchase in which he represented himself. Ms Hofland stated that she is gathering more information from the State Bar on the definition of "usual course of business". Commissioners directed Ms Hofland to provide a response to Mr. Lervick based on the 3rd paragraph of her memo.

5. TRUST ACCOUNT AUDIT FINDINGS.

- a. Ms Mahlum reported on repeat trust account findings regarding the trust account of Alison Schumann, broker for Century 21 Heritage Realty. Ms Schumann is the broker of record for the latest audit however the repeat findings were also noted in 3 previous audits under a different broker. It was the consensus of the Commissioners that a change in the designated broker does not remove the current broker from the responsibility for the trust account. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to file a complaint against Ms Schumann offering the abbreviated process with a stipulated agreement. M/C
- b. Ms Mahlum reported on repeat trust account findings regarding the trust account of Calvin Klewin, broker for Calhoun Land & Cattle. Commissioner Sheridan moved, seconded by Commissioner Youngberg to file a complaint against Mr. Klewin offering the abbreviated process with a stipulated agreement. M/C
- c. Ms Mahlum reported on repeat trust account findings regarding the trust account of Scott Louser, broker for Prudential Preferred Properties. Commissioner Louser recused herself from discussion and any action on this item. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to file a complaint against Mr. Louser offering the abbreviated process with a stipulated agreement. M/C
- d. Ms Mahlum asked the Commission if they should continue to pursue auditing Daniel Ringuette's trust account. Ms. Hofland noted that there is a tabled complaint regarding this issue. Ms Hofland and Ms Mahlum will keep in contact regarding the issue.
- e. Staff was asked to research education possibilities relating to trust accounts.

6. REVIEW CONCERNS SUBMITTED REGARDING HOMES FOR HEROES PROGRAM.

Commissioners reviewed documentation provided regarding a transaction which included the Homes for Heroes program and addressed the question regarding disclosure. It was noted that the commission is reported on the HUD 1 and the commission is paid to the client in the transaction therefore there is not a problem with disclosure.

7. REVIEW DRAFT OF PROPOSED ADMINISTRATIVE RULES. Special Assistant Attorney General Connie Hofland presented the proposed amendments to the Administrative Rules noting how the administrative rules mirror the legislative changes to NDCC § 43-23-12.1. It was agreed to remove proposed 70-02-03-15.1(10) and change 70-02-03-15.1(7)(e) to read: "It must be explained that a ~~no~~ licensee must deal fairly with any party to a real estate transaction, regardless of whether the party is represented by that licensee." Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the proposed administrative rules with the changes made at this meeting. M/C

8. REVIEW TABLED LICENSE APPLICATIONS.

- a. Charlie A Harrison appeared before the Commission to discuss the action taken by the Commission at their June 16, 2011 meeting regarding his application for a salesperson license. Mr. Harrison provided letters of reference and discussed his financial situation. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to allow Mr. Harrison to sit for the salesperson license examination. M/C
- b. Timothy J Conover provided a written explanation as to why he did not include information regarding misdemeanor charges on his application. Commissioner Sheridan moved, seconded by Commissioner Louser to allow Mr. Conover to sit for the salesperson license examination. M/C
- c. Amanda A Senger provided letters of reference as requested by the Commission and a new credit report was reviewed. Commissioner Sheridan moved, seconded by Commissioner Youngberg to allow Ms. Senger to sit for the salesperson license examination. M/C

9. REVIEW SALESPERSON LICENSE APPLICATIONS.

- a. Commissioners reviewed the application of Jenna K. Aanden for a reciprocal salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Ms Aanden's application for a reciprocal salesperson license. M/C
- b. Commissioners reviewed the application of Molly E. Green for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms Green to sit for the salesperson real estate license examination. M/C
- c. Commissioners reviewed the application of James S. Griffith for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve Mr. Griffith to sit for the salesperson real estate license examination. M/C
- d. Commissioners reviewed the application of Robert L. Heiser for a reciprocal salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to request that Mr. Heiser provide evidence that his tax liens are paid to the Commission office after which his reciprocal license will be issued. M/C
- e. Commissioners reviewed the application of Heather (Sherman) Kurtz for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to table Ms Kurtz's application until she provides 2 letters of reference (1 from her employer, 1 from an unrelated person). M/C
- f. Commissioners reviewed the application of Anne M. McDonagh for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve Ms McDonagh to sit for the salesperson real estate license examination. M/C
- g. Commissioners reviewed the application of Tatiana Martushev for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms Martushev to sit for the salesperson real estate license examination. M/C
- h. Commissioners reviewed the application of Megan A. Pierce for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Ms Pierce to sit for the salesperson real estate license examination. M/C

10. REVIEW REQUEST FOR WAIVER FOR BROKER LICENSE FROM LEO M. WAKEFIELD.

Mr. Wakefield submitted his application for a broker license along with a request to have the 2 years of fulltime experience as a salesperson waived and a partial waiver of the 60 hours of education required to take the broker license examination. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to waive the 2 years of salesperson experience and require Mr. Wakefield to take the 60 hours of broker education, the broker examination, and the state portion of the salesperson examination. M/C

11. DISCUSS 2011 MANDATORY COURSE EVALUATIONS. Commissioners reviewed evaluations from 2 classroom mandatory courses given by different instructors. A common thread in the evaluations is that this is an entry level course and is too basic. Commissioners discussed the need to establish guidelines for the mandatory topic and possibly requiring a test for the mandatory course.
12. DISCUSS 2012 MANDATORY COURSE TOPIC. Commissioner Youngberg moved, seconded by Commissioner Cymbaluk that all 9 hours of continuing education for 2012 be elective. M/C
13. INTERNET ACCESS FEE CHARGED BY STATE OF NORTH DAKOTA. Executive Director Jergenson informed the Commissioners that the State of North Dakota ITD department was now charging \$292 per month for internet access which is a large increase from previous months. This will have an effect on the technology account in the budget. Staff has researched other internet service providers. It was the consensus of the Commission that staff move forward on making a change in the internet service provider.
14. DATABASE DEVELOPMENT UPDATE AND DISCUSSION. Executive Director Jergenson gave a brief update on the progress of the data base development. Programmer Kevin Leier suggested that the database should be in place before changing any processes for printing of real estate licenses. Commissioners were asked for direction on any additions to the online directory and which license issue date should be retained (in the past when a salesperson received a broker license the date the broker license was issued was used as a date of issuance). It was determined to leave the format of the online directory as it currently is and to retain the first issuance date of a license in the file.
15. NSF CHECKS. Executive Director Jergenson informed Commissioners of 2 NSF checks written to the Commission. Notification has been sent to both Ms Keen and Mr. Lewandowski and neither has responded.
16. RISC 2ND QUARTER CLAIMS REPORT. RISC (Rice Insurance Services Company) provided the Commission with the 2nd quarter errors and omissions insurance claims report for informational purposes.
17. APPROVAL OF RISC 2012 ERRORS AND OMISSIONS INSURANCE PROGRAM. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to accept the RISC E&O renewal proposal for 2012. M/C
18. EMAIL RECEIVED FROM CHRIS EDISON. In an email dated July 13, 2011 Mr. Edison informed the Commission that he has accepted an in-house counsel position and therefore can no longer serve as our Special Assistant Attorney General.
19. EMAIL FROM SENATOR JUDY LEE. Executive Director Jergenson shared with Commissioners the response received from Senator Judy Lee regarding her inquiry of the payment of referral fees to inactive licensees.
20. ARELLO® DISTRICT 2 & 3 CONFERENCE REPORTS: COMMISSIONERS CYMBALUK & YOUNGBERG AND EXECUTIVE DIRECTOR JERGENSON. Written reports were filed.
21. 2012 ARELLO® DISTRICT 2 & 3 CONFERENCE COHOSTED BY SOUTH DAKOTA & NORTH DAKOTA REAL ESTATE COMMISSIONS. Commissioners received a copy of the flyer for the conference we are co-hosting with the SD Real Estate Commission June 5-7, 2012. Executive Director Jergenson noted that soliciting of sponsors has begun and Commissioner Youngberg will be helping with that. To date the ND Association of REALTORS® has pledged \$2500 and the SD Association of REALTORS® has pledged \$3000.
22. AMP ADVISORY BOARD MEETING REPORT: EXECUTIVE DIRECTOR JERGENSON. Ms Jergenson submitted a written report and also shared with the Commissioners her reason for attending the meeting via conference call rather than in person.
23. REVIEW GRANTED TRUST ACCOUNT WAIVERS. Commissioners received a report of trust account waivers granted since the June 2011 meeting. A list of those waivers is attached to these minutes.

24. COMMISSION GOALS. The consensus of the Commission was to revise the goals established by the Commission to show that the “review appointed agency” goal has been accomplished and to change the verbiage of the last goal to read “Review requirements for license printing and display.
25. OTHER BUSINESS:
* the advertising of property on Craig’s List was discussed using the following scenario: a limited services listing agreement is in place and the seller places an ad on Craig’s List using the MLS#. Question: should the licensee’s name and contact information also appear on the ad? Consensus was yes and that the listing agent should be monitoring his/her client’s advertising.

There being no further business Chair Schlosser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director