

September 26, 2005  
Doublewood Inn – Birch Room  
Fargo, ND  
10:00 AM

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

1. CALL TO ORDER. Chair Jerry Youngberg called the meeting to order and welcomed those present.
2. APPROVE MINUTES OF JUNE 30, 2005 AND JULY 22, 2005 MEETINGS. Commissioner Sheridan moved, seconded by Commissioner Louser to approve the minutes of the June 30, 2005 and July 22, 2005 Commission meetings as written. M/C
3. APPROVE FINANCIAL REPORTS FOR MAY, JUNE, JULY & AUGUST 2005. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to approve the financial reports as presented. M/C
4. REVIEW OF FORMAL COMPLAINTS PENDING BEFORE THE NORTH DAKOTA REAL ESTATE COMMISSION.  
Case# 2005-01 Steve and Cathy Winterquist v. Cheryl Whitty.  
Commissioners reviewed the formal complaint filed by Steve and Cathy Winterquist alleging that Cheryl Whitty made certain misrepresentations and failed to properly protect their interests when she purchased a house from Steve Winterquist, which she had listed, and when she represented them in the purchase of a new house as a buyer's agent. Mr. Reich recommended the complaint be set for a hearing. Commissioner Sheridan moved, seconded by Commissioner Schlosser to set a hearing. Commissioner Cymbaluk moved to amend the motion to include Tom McKinnon, broker of RE/MAX Realty 2000, in the complaint. Motion carried on the amendment. M/C on motion as amended.  
Case# 2005-02 Lucille F. Grueneich v. Valerie Gunther. Commissioners reviewed the formal complaint filed by Ms Grueneich alleging that Valerie Gunther failed to convey a purchase offer and failed to deposit an earnest money check, which caused the complainant to lose her opportunity to purchase certain property. Mr. Reich recommended the complaint be set for a hearing. Commissioner Louser moved, seconded by Commissioner Sheridan to set a hearing. M/C  
Case#2005-03 Craig and Yong-Nam Ereth v. Mike Assels. Commissioners reviewed the formal complaint filed by Craig and Yong-Nam Ereth alleging

that Mike Assels failed to disclose a known landscaping/erosion problem, misrepresented his role in addressing warranty issues, and failed to correct certain warranty issues raised after the purchase of a spec home. Mr. Reich recommended dismissal of the complaint, as it appears that there is not sufficient evidence to substantiate a claim that Mr. Assels misrepresented the condition of the property. Commissioner Louser abstained from participation on this issue. Commissioner Schlosser moved, seconded by Commissioner Sheridan to dismiss the complaint. M/C

Mr. Reich reviewed the proposed stipulated agreement as presented to Michael Puklich and the response from Mr. Puklich. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to offer a stipulated agreement to Mr. Puklich of a \$1000 fine, up to \$1000 in costs and the loss of his license. M/C

Mr. Reich reviewed the stipulated agreement involving Kathryn Grady-Thurston and recommended its approval. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve the stipulated agreement as presented. M/C

5. REBATES/INDUCEMENT QUESTIONS. The Commission office has received numerous questions regarding rebates and inducements. Mr. Reich has research the North Dakota license law statutes (in particular NDCC 43-23-05 & 43-23-11.1(1)) and the consensus was that the law does not clearly define rebates or inducements. A task force was established to further research the issue. Task Force members are Kris Sheridan/Chair, Diane Louser, Claus Lembke, and others to be appointed by the Chair of the task force.
6. ELECTRONIC FILES AND ELECTRONIC SIGNATURES IN REAL ESTATE TRANSACTIONS. Mr. Reich noted that electronic signatures and files are treated as the same as paper documents in NDCC 9-16. Staff was asked to research the requirements for state agencies to store documents electronically and to review the retention schedule.
7. DISCUSS LICENSING REQUIREMENTS FOR THE PROCURING OF HUNTING LEASES. Commissioners discussed whether or not a real estate license was a requirement in the procurement of hunting leases. The consensus was that a real estate license is needed.
8. AUDITOR REPORT. The trust account auditors report noted that 3 companies' audits resulted in situations that needed to be reported to the Commission. These were discussed in detail. The consensus of the Commission was to have staff send a letter to each broker notifying them that the issues have been brought to the attention of the Commission, cite the irregularities, set a timeframe in which to have the situation corrected, and schedule another audit.
9. REVIEW APPLICATIONS FOR BROKER LICENSE.
  - a. Commissioners reviewed the application of James J. Hariper for a broker's license. Mr. Hariper appeared before the Commission to address the results of the Applicant Inspection Questionnaire completed by his previous 2 brokers. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to deny Mr. Hariper's request at this time. M/C
  - b. Commissioners reviewed the application of Dyer B. McCabe for a reciprocal broker's license. Commissioner Sheridan moved, seconded by Commissioner Louser to deny Mr. McCabe's application due to the misdemeanor on his application. M/C

10. REVIEW APPLICATIONS FOR SALESPERSON LICENSE.

- a. Commissioners reviewed the application of Brandon C. Chisholm for a salesperson's license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to deny the application of Mr. Chisholm due to items on his application. M/C
- b. Commissioners reviewed the application of Daniel J. Cwikla for a salesperson's license. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Mr. Cwikla to sit for the real estate exam. M/C
- c. Commissioners reviewed the application of Steven W. Dahl for a salesperson's license. Commissioner Louser moved, seconded by Commissioner Sheridan to approve Mr. Dahl to sit for the real estate exam. M/C
- d. Commissioners reviewed the application of Jodi J. Deplazes for a salesperson's license. Commissioner Schlosser moved, seconded by Commissioner Louser to approve Ms. Deplazes to sit for the real estate exam. M/C
- e. Commissioners reviewed the application of William C. Hackett for a salesperson's license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Mr. Hackett to sit for the real estate exam. M/C
- f. Commissioners reviewed the application of Rory A. Hendrickson for a salesperson's license. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to approve Mr. Hendrickson sit for the real estate exam. M/C
- g. Commissioners reviewed the application of Kelly C. Parrett for a salesperson's license. Commissioner Louser moved, seconded by Commissioner Sheridan to approve Mr. Parrett to sit for the real estate exam. M/C
- h. Commissioners reviewed the application of Mike J. Probst for a salesperson's license. Commissioner Louser moved, seconded by Commissioner Schlosser to deny the application of Mr. Probst due to judgments he has against him. M/C
- i. Commissioners reviewed the application of Cindy L. Thomas for a salesperson's license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Thomas to sit for the real estate exam. M/C
- j. Commissioners reviewed the application of Kristopher A. Visness for a salesperson's license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Mr. Visness to sit for the real estate exam. M/C
- k. Commissioners reviewed the application of Neil Wadhawan for a salesperson's license. Commissioner Cymbaluk moved, seconded by Commissioner Louser to deny the application of Mr. Wadhawan due to items on his application. M/C

11. REQUEST FOR HEARING ON DENIED APPLICATIONS.

- a. Michael D. Cariveau appeared before the Commission to appeal the denial of his application to take the salesperson exam. Commissioner Sheridan moved, seconded by Commissioner Schlosser to deny Mr. Cariveau's appeal. M/C

12. REVIEW DOCUMENTATION PROVIDED BY TAMARA HENNESSY REGARDING SALESPERSON LICENSURE.

Ms Hennessy provided documentation as requested by the Commission regarding the resolution of her tax liabilities. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to issue a salesperson license to Ms Hennessy. M/C

13. REQUEST FROM SHEILA FROEHLICH REGARDING CANCELLATION OF SALESPERSON LICENSE. Ms Froehlich, in a letter received July 12, 2005, requested that the Commission consider allowing her to renew her inactive license for 2005. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to deny Ms Froehlich's request as licenses are cancelled by law if not renewed by March 1st of each year. M/C
14. REVIEW CORRESPONDENCE REGARDING LICENSURE FOR RICHARD STAUFFER. The Commission office received a letter from Gary Brenden regarding Richard Stauffer who at one time had been the broker for Mr. Brenden's real estate firm. Staff will notify Mr. Brenden that he may file a formal complaint against Mr. Stauffer regarding the issues he brought forward. Commissioners then reviewed correspondence received from Mr. Stauffer stating that Mr. Brenden had provided false residency information on his application for a North Dakota salesperson real estate license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to investigate this information and if the application of Mr. Brenden did contain false information to set a hearing. M/C
15. DETERMINE MANDATORY COURSE TOPICS FOR 2006/07 CONTINUING EDUCATION CYCLE. Commissioners discussed the topics for the mandatory courses in the next continuing education cycle which is 2006/07. Input was offered by Claus Lembke, NDAR and Jim Deibert, Arcanum Group who suggested that the courses be designed so that they can be provided by more than one presenter and that the Commission consider selecting the topics and number of hours required but not one specific course. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk that the mandatory courses for 2006/07 shall consist of a total of six (6) hours devoted to one or a combination of the following topics: agency law, fair housing, contracts/offers, and risk reduction. M/C
16. CORRESPONDENCE FROM JAMES DEIBERT. Mr. Deibert expressed his concerns with the course requirements for the additional 15 hours of pre-licensing education established by the Commission. The Commissioners felt that it was possible for portions of the courses to be a repeat of sorts of the original 30 hour block of pre-licensing education. Mr. Deibert's concerns were put to rest upon further discussion with the Commission.
17. DISCUSS IMPLEMENTATION OF LEGISLATION RELATING TO NEW EDUCATION REQUIREMENTS FOR SALESPERSON APPLICANTS. Effective January 1, 2006 applicants for a salesperson license will fall under the new law requiring an additional 15 hours of pre-licensing education and another 15 hours within the first year of licensure, applications received until December 31, 2005 fall under the old law.
18. NSF CHECK RECEIVED FOR APPLICATION FEE. Joshua Gross provided a letter of explanation regarding the NSF check for his license application and a letter from his financial institution. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to accept the explanation provided by Mr. Gross. M/C
19. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the requests for trust account waivers as attached to these minutes. M/C
20. REVIEW 2005 2<sup>ND</sup> QUARTER E&O REPORT. The 2<sup>nd</sup> quarter report from RISC was provided to the Commissioners for review.

21. REVIEW AGREEMENT WITH RICE INSURANCE SERVICES COMPANY, LLC TO PROVIDE E&O INSURANCE. Commissioner Cymbaluk moved, seconded by Commissioner Louser to renew the real estate errors and omissions insurance program with RISC through January 1, 2007. M/C

The Commission meeting recessed at 1:30 PM for the Rules Hearing. The Rules Hearing began at 1:30PM and was adjourned at 2:00 PM at which time the Commission meeting reconvened.

22. REVIEW AMP PASS/FAIL STATISTICS. Staff was asked to get an explanation of the statistics provided by AMP for the next meeting.
23. REVIEW CORRESPONDENCE FROM BILL HAMM. Mr. Hamm wrote to express his frustrations in taking the salesperson real estate examination.
24. MAILING LIST OF LICENSEES. Staff informed the Commission that in compliance with the open record laws the Commission office is allowed to charge .25 per page of a printed mailing list on labels, there is no charge to receive the list by email and if possible we must provide the record in the format requested.
25. 2005 COMMISSION GOALS. Two items will be added to the goals of the Commission; electronic storage of office records and minimum services guidelines.
26. OTHER BUSINESS:
  - a. The format for the licensee directory was discussed and an alphabetical list of licensees and their respective company will be added as a reference in the back of the directory.
  - b. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to shred documents such as credit reports in compliance with Federal and state law. M/C
  - c. Commissioners discussed the bid to audit the Commission's books and the cost of having an audit done every year versus every 2 years. Commissioner Sheridan moved, seconded by Commissioner Schlosser to hire Mahlum & Goodhart PC to audit the Commission's books every year at a cost of \$2000/year. M/C
  - d. Commissioners, staff, and legal counsel will review the minimum services portion of a course submitted for approval for continuing education.
  - e. A question was posed regarding which broker is responsible for verifying that a licensee is current with his/her continuing education if the licensee has transferred from one company to another during the 2 year education cycle. The broker who signs the renewal form is responsible, so if it is in the second year of the continuing education cycle it is the current broker's responsibility to verify that the licensee has the 16 hours as required by law to renew.
  - f. Staff noted that there have been several advertising violations lately in which the licensee does not publish the firm name and asked if more should be done then to send a letter requesting the advertisement to be corrected. Staff will keep the Commission informed regarding this. Numerous contacts have been made with a broker regarding the name change of the broker's company with no results. A letter will be sent to the broker citing a deadline to have the appropriate paperwork submitted.
  - g. A question was posed as to how to handle a check written directly to a buyer's agent from the seller who was represented by another real estate company. The check should be rewritten to the buyer agent's company and disclosed to all parties to the transaction.

- h. With the installation of the computerized data base mailings are now being sent to licensees at their business address. The Commission office received 3 requests to have this changed. It was the consensus of the Commission to leave the mailing as it is.
- i. The question was posed as to whether or not an examination will be required for the additional 15 hours of pre-licensing education that becomes effective January 1, 2006. This will be researched and clarified at the next meeting.

There being no further business Chair Youngberg adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson  
Secretary Treasurer