



North Dakota Real Estate Commission Meeting
10:00 a.m., Thursday, January 26, 2023
1120 College Dr Ste 204, Bismarck, ND

www.realestatend.org

Present in person or by Teams: Steven Link, chair; Tate Cymbaluk, vice chair; members: Scott Breidenbach, Sandra Meyer, Steven Bitz; David Phillips, special assistant attorney general; staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist. Members of the public also present in person and by Teams.

1. Call to order, roll call and determination of quorum, introductions. Chair Mr. Steven Link called the meeting to order at 10:00 a.m. Ms. Jeanne Prom, executive director, called the roll, with a quorum of all 5 members present. Chair Link introduced and welcomed David Phillips, special assistant attorney general, who replaced Connie Hofland. The staff and some members of the public in the room introduced themselves.
2. Review and approval of agenda. Mr. Tate Cymbaluk moved to approve the agenda as presented. Mr. Steven Bitz seconded. Motion carried by unanimous voice vote.
3. Review of applicants. See attachment for actions on all license applications. The commission agreed by consensus that the staff will include credit reports with application materials for all applicants needing commission review, even if the applicants do not have financial issues.
4. Update on complaints.
 - A. Ethics committee rules -- memo. Ms. Prom reviewed the memo, written by Ms. Connie Hofland, who was not at the meeting. Mr. David Phillips had also reviewed the memo and agreed with the analysis. The new ethics rules passed by the Legislative Rules Commission and enforced by the Ethics Commission apply to commissioners, as they are appointed officials, and also because actions on applicants and complaints are quasi-judicial proceedings. Commissioners need to continue to voluntarily, or on request, disclose potential conflicts of interest if they have 1) received a gift, or 2) have a significant financial interest in one of the parties or in the outcome, or 3) have a relationship in a private capacity with one of the parties in quasi-judicial proceeding before the commission. Commissioners must complete a Conflict of Interest Disclosure Form to disclose a conflict of interest. Copies of the completed form must be provided to the public official, the commission, and to the North Dakota Ethics Commission. If a commissioner has a question about a potential conflict of interest, they can consult with a neutral reviewer, which would be the other commissioners. Outside of a meeting, commissioners can consult with Mr. Phillips. Mr. Phillips stated that commissioners recused from a matter being discussed by the commission do not need to leave the meeting during the discussion but can voluntarily leave the meeting if they want. Ms. Prom will provide the realtors association with a copy of the memo.
 - B. 2022-10 – Darcy Goni v. Denver Gilbert. Mr. Cymbaluk moved to accept the request by Mr. Darcy Goni to withdraw the complaint against Mr. Denver Gilbert as presented. Mr. Bitz seconded. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.
5. Update from management.
 - A. 2022-2023 priorities. Ms. Prom provided an update on priorities.

Members of the North Dakota Real Estate Commission are: Steven Link, Chair; Tate Cymbaluk, vice chair; members: Scott Breidenbach, Sandra Meyer, and Steven Bitz. Special Assistant Attorney General: David Phillips. Staff: Jeanne Prom, executive director; Rob Yost, CPA/auditor; Cieana Schneider, licensing specialist.

B. Legislation.

The commission reviewed the latest versions and actions on HB 1188 (40-year contracts, passed House, now in Senate), HB 1190 (wholesaling, still in House committee, with potential amendments requiring disclosure), and 2 appraiser bills, HB 1106 (likely will not pass the House) and 1107 (mainly an appraiser board housekeeping bill with amendments on who can conduct evaluations and appraisal reviews). Only HB 1190 amends NDCC 43-23, the real estate license law. The commission previously submitted a letter of support to the House committee hearing 1190. The commission took no further action on the potential amendment to HB 1190.

C. Policies review. Ms. Prom explained the current staff practices on inactivating or cancelling a firm license. Staff inactivates a firm license with all other licenses in the firm if a firm has not provided staff with proof of ongoing errors and omissions insurance. Once the firm provides proof of insurance, the firm must transfer all of its licenses to active, including the firm license. This applies only to firms that do not purchase individual insurance through Rice Insurance and inactivating a firm license for lack of proof of insurance is rare. The only time staff cancel a firm license is when there is no designated broker, such as after the designated broker cancels the designated broker license without naming another broker as designated broker.

Mr. Breidenbach requested discussion on the practice of offering courtesy audits to new firms. Currently an audit is offered, but not required. Mr. Breidenbach reviewed commission minutes from several years ago and found that courtesy audits had been required of all new firms. Mr. Rob Yost, CPA/auditor, said it would be preferable if courtesy audits were required. Mr. Breidenbach moved that courtesy audits be mandatory for all new firms during the firm's first year. Mr. Cymbaluk seconded. Discussion: The first courtesy audit is to correct any mistakes and not to penalize. Mr. Yost conducts courtesy audits within 3-4 months of a new firm's licensing, and timing depends on how many transactions a firm completes in their first months. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.

Mr. Breidenbach briefly left the meeting by computer and rejoined by phone. Accepting continuing education from other states. Administrative rules require that the commission approve continuing education (CE) courses offered for resident licensees to meet CE requirements. Staff also accepts CE courses approved by other jurisdictions' real estate commissions. Mr. Cymbaluk moved that the commission accept continuing education credits for courses approved by other states' real estate commissions. Mr. Bitz seconded. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.

D. CE audit. Mr. Yost reported the CE audit was completed in real time during license renewals and all licensees audited complied by November 15, 2022, including 13 licensees who initially were not compliant.

E. Trust account waivers. The commission received a list of recent trust account waivers.

F. Trust account audits. Mr. Rob Yost reviewed recent trust account audits. Mr. Yost worked with brokers who were holding earnest money after it should have been forwarded to unclaimed property; or who needed to remove references to "RETA" from their trust account name.

G. License numbers. The commission reviewed and discussed recent license application and renewal numbers. When asked by Mr. Breidenbach, Mr. Yost reported that the lower license application numbers in 2022 compared to the 3 previous years have not

had an impact on the current budget. Renewals show more licensees renewing in 2022 than in previous years.

6. Financial reports – September through November 2022, CDs, office audit – preliminary report. Mr. Yost provided an oral update on the preliminary office audit. The audit found no areas of concern, except, as in past audits, this audit noted that office internal controls are limited due to number of staff. Mr. Yost asked if the commission wanted the auditors to present the audit in person at the next meeting. The commission decided by consensus that they did not need to hear from the auditors directly, and that Mr. Yost would provide the final audit report.

The commission discussed the financial reports from September through November 2022. Mr. Cymbaluk moved to approve the financial reports from September through November 2022. Ms. Meyer seconded. Motion carried by unanimous voice vote.

Mr. Yost reported that the commission must purchase certificates of deposit from federally insured banks located in North Dakota. The commission and Mr. Yost discussed the process to reinvest CDs. The commission directed Ms. Prom to research if there are state procurement requirements for investment of CEs.

Banks require official action documenting who can sign to deposit CDs. Mr. Cymbaluk moved that Commissioner Steven Bitz and Ms. Jeanne Prom be signatories for certificates of deposit. Ms. Meyer seconded. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.

7. Minutes – October 6, 2022 meeting and January 13, 2023 special meeting. Mr. Cymbaluk moved to approve the minutes as presented from the October 6, 2022 meeting and January 13, 2023 special meeting. Ms. Meyer seconded. Motion carried by unanimous voice vote.
8. Other – next meetings – March 9, and June 8, 2023. The commission agreed by consensus to move their next meeting from March 9 to 10 a.m., Thursday, March 16, 2023.

Adjourn. Mr. Cymbaluk moved to adjourn. Chair Link adjourned the meeting at 11:32 a.m.
Attachment



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3. Review of applicants

NAME and LICENSE APPLICATION:	ACTION BY COMMISSION:
A. Patricia Baca – salesperson – on phone	Mr. Breidenbach moved to allow Ms. Patricia Baca to take the salesperson examination. Mr. Cymbaluk seconded. The commission discussed the application with the applicant. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.
B. Marlon Stone – nonresident -- broker – in person	Mr. Breidenbach moved to allow Mr. Marlon Stone to take the broker examination, and once Mr. Stone has completed his probation, whether probation is shortened or not, staff can verify that Mr. Stone successfully completed probation and the state examination and issue the license. Ms. Meyer seconded. Discussion: Ms. Cieana Schneider asked and the commission clarified that Mr. Stone does not have to appear before the commission again, and that staff can issue his license after verifying that probation is complete and Mr. Stone passed the exam. Roll call vote: ayes – Mr. Bitz, Ms. Meyer, Mr. Breidenbach, Mr. Cymbaluk, Mr. Link; nays – none. Motion carried unanimously.