

April 16, 2008
8:00 AM
ND Real Estate Commission
State Capitol Building
Lewis & Clark Room
600 East Boulevard Ave.
Bismarck ND 58505

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

1. CALL MEETING TO ORDER. Chair Diane Louser called the meeting to order at 9:35 am after the completion of the hearing on Complaint 2007-06 Michael & Lori Long v. Kathy J. Feist. Roll call was taken.
2. ACTIONS TAKEN RELATING TO OTHER HEARINGS SCHEDULED FOR APRIL 16, 2008.
 - a. Complaint # 2007-09 Schatzke v. Luke Bothum. Special Assistant Attorney General Constance Hofland presented a proposed stipulated agreement signed by Mr. Bothum which resulted in the cancellation of the noticed hearing. Commissioner Sheridan recused herself of participating in the discussion or vote on this complaint. Mr. Bothum stipulated to attending a 6 hour real estate contract law continuing education course, a fine of \$750, and legal/investigative costs in the amount of \$550. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to approve the proposed stipulation as corrected. M/C
 - b. Complaint # 2007-05 Carter v. Jack Wadhawan. Special Assistant Attorney General Constance Hofland informed Commissioners that she is in negotiations with Mr. Wadhawan's attorney on a stipulated agreement.
 - c. Complaint # 2007-13 Jason C. Grosz v. Terry Braun. Special Assistant Attorney General Constance Hofland presented a proposed stipulated agreement signed by Mr. Braun. Mr. Braun stipulated to attending a 3 hour real estate continuing education course on buyer representation, a fine of \$500, and legal/investigative costs in the amount of \$800. Commissioner Sheridan moved, seconded by Commissioner Sheridan to approve the proposed stipulation as corrected. M/C

3. APPROVE MINUTES OF FEBRUARY 20, 2008 MEETING. Special Assistant Attorney General Constance Hofland stated that item #4(m) of the minutes should be corrected to read “Commissioner Sheridan moved, seconded by Commissioner Youngberg to have Ms. Hofland notify the Legislative Council of our request to include an amendment to N.D.C.C. § 43-23-17 to replace “any provisions of this chapter” with “section 43-23-05 or 43-23-14.1”. Item #5 should be corrected by removing the words “and set these for hearing.” Commissioner Youngberg moved, seconded by Commissioner Sheridan to approve the minutes of February 20, 2008 as corrected. M/C
4. APPROVE FINANCIAL REPORTS FOR FEBRUARY AND MARCH 2008. Executive Director Jergenson reviewed the financial reports for February and March. Commissioners asked that when the 2008/09 budget was prepared an account be added to set aside money for capital improvements. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to approve the financial reports for February and March 2008. M/C
5. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
 - a. Complaint #2007-13 Grosz v Terry Braun. This was dealt with in item #2(c) of these minutes.
 - b. Complaint #2007-12 NDREC v Nedberg. Ms. Hofland informed the Commissioners that the sheriff has been unable to serve the notice of complaint on Mr. Nedberg. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to continue to attempt to serve Mr. Nedberg by publication in the newspaper. M/C
 - c. Complaint #2008-01 Deitz v. Galstad & Erickson. Ms. Hofland reported that this complaint is under investigation.
 - d. Complaint #2008-02 NDREC v. Clyde Trautman. Ms. Hofland reported that this complaint is under investigation.
 - e. Complaint #2008-03 NDREC v. Linda Klebe. Ms. Hofland reported that this complaint is under investigation.
 - f. Complaint #2008-04 NDREC v. Fred Skoda. Ms. Hofland reported that she is still trying to serve notice of the complaint on Mr. Skoda.
 - g. Complaint #2008-05 NDREC v. Richard A. Ward. Ms. Hofland reported that the notice of complaint has been sent to Mr. Ward’s attorney however she has been notified that Mr. Dawson has asked to withdraw as counsel for Mr. Ward on his appeal to district court. Judge Gail Haggerty has been assigned to the appeal case.
 - h. Complaint #2008-06 NDREC v. Shawn Huber. Ms. Hofland reported that she is still trying to serve notice of the complaint on Mr. Huber.
 - i. Complaint #2008-07 NDREC v Jason Spiess. Ms. Hofland reported that she is waiting to receive the response from Mr. Spiess.
 - j. Letter sent to Department of Justice. Commissioners received a copy of the letter sent to the Department of Justice as discussed at a previous meeting.

- k. Criminal penalty request to Legislative Council. Commissioners reviewed the proposed bill draft from Legislative Council which by our request includes an amendment to N.D.C.C. § 43-23-17 which reads “43-23-14. Penalty. Any person violating ~~any of the provisions of this chapter~~ section 43-23-05 or 43-23-14.1 is guilty of an infraction.”
 - l. Letter to Public Service Commission (PSC). Ms. Hofland provided Commissioners with a copy of the letter she sent to the PSC as requested by the Commissioners at the February 20, 2008 meeting.
 - m. Memo on Axtman v. Chillemi. Ms. Hofland provided the Commissioners with a written summary of the Supreme Court’s decision of Axtman v. Chillemi as requested.
6. CORRESPONDENCE FROM JASON MENKE REGARDING LAND AUCTIONS. In a letter dated March 13, 2008 Mr. Jenke suggests that both the PSC and the Real Estate Commission consider legislation changing the requirement of an auctioneer’s license to do land auctions to requiring a real estate license. It is the consensus of the Commissioners to look at this issue for the next Legislative session.
At this time Commissioner Cymbaluk excused himself from the meeting.
7. Q&A REGARDING ADMINISTRATIVE RULE 70-02-03-02.1 ADVERTISING. Commissioners and staff reviewed a question and answer paper to be published regarding the amended advertising rule. Executive Director Jergenson and Ms Hofland were asked to work on the guidelines together and bring them to the next Commission meeting for final approval prior to publication.
Commissioner Cymbaluk rejoined the meeting.
8. CHANGES TO RECIPROCAL AGREEMENT WITH NEBRASKA. The Nebraska Real Estate Commission has notified us that their law regarding reciprocity will change effective July 18, 2008 at which time real estate license applicants applying for a reciprocal license will be required to take 3 clock hours of agency and Nebraska law prior to the issuance of a reciprocal license. Staff also noted that Tennessee has made inquiry regarding any changes in our reciprocal agreement with them. Commissioners asked staff to research reciprocal agreements and provide this information to the Commission for further discussion.
9. ARTICLE REGARDING “LISTINGS IN A DIVORCE SITUATION”. Executive Director Jergenson asked Commissioners if the facts in the article published in the Nebraska newsletter would also apply to North Dakota as it is a good article for a newsletter. Ms. Hofland will review the article to see if it complies with North Dakota law.
10. REVIEW 2008 RENEWALS WITH AFFIRMATIVE RESPONSES TO QUESTIONS REGARDING CRIMINAL CHARGES OR LAWSUITS. Commissioners reviewed a report of 2008 licensees who reported financial issues, felonies or misdemeanors on their 2008 license renewal form.

11. REVIEW APPLICATIONS FOR REAL ESTATE LICENSES.

- a. Commissioners reviewed the application of Sabrina A. Anderson for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Ms. Anderson to sit for the salesperson real estate examination. M/C
- b. Commissioners reviewed the application of Victor M. Borgheiinck for a reciprocal broker license. Commissioner Cymbaluk moved, seconded by Commissioner Youngberg to deny the application of Mr. Borgheiinck due to IRS liens and judgments on his application. M/C
- c. Commissioners reviewed the application of Barry A. Gruchow for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Mr. Gruchow to sit for the salesperson real estate examination. M/C
- d. Commissioners reviewed the application of Tracy L. Holsti for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to deny the application of Ms. Holsti until she provides proof to the Executive Director that the judgment is paid. M/C
- e. Commissioners reviewed the application of James R. Inman for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Inman to sit for the salesperson real estate examination. M/C
- f. Commissioners reviewed the application of Bobbi J. Isakson for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to table Ms. Isakson's application pending an explanation of the misdemeanor charge on her application. M/C
- g. Commissioners reviewed the application of Tab L. Thompson for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to deny the application of Mr. Thompson due to outstanding judgments and inconsistencies on his application. M/C

12. CORRESPONDENCE APPEALING CANCELLATION OF LICENSES FOR NON-RENEWAL.

Commissioners reviewed correspondence from Gregory L. Mikkelson, Michael S. Mikkelson, Troy M. Skjerseth, and Deborah M. Suksuskas each requesting that the cancellation of their real estate licenses due to failure to renew be reversed. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan that N.D.C.C. § 43-23-13.1 clearly states that licenses are cancelled without notice on March 1st if not renewed and the requests are denied. M/C

13. DISCUSS SENDING OUT A RFP FOR E & O INSURANCE FOR 2009.

Commissioner Sheridan moved, seconded by Commissioner Youngberg to send out an Errors & Omissions Insurance RFP requesting a response in 30 days. M/C

14. SPECIAL ATTORNEY GENERAL APPOINTMENTS.

Executive Director Jergenson informed Commissioners that she had been contacted by the Attorney General's Office to verify the attorneys who are assigned to the Real Estate Commission as special assistant attorney generals and that she removed Jerome Kettleison from the list.

15. 2008 LICENSE RENEWAL STATISTICS. Commissioners were provided with the license statistics for 2003 through 2008.
16. NSF CHECK RECEIVED FROM UPLAND REAL ESTATE GROUP FOR LICENSE FEES. Commissioners reviewed the explanation from Upland Real Estate Group and Wells Fargo regarding the NSF check. No action was taken.
17. REVIEW REQUESTS TO REGISTER KINGDOM TOWER @ DISNEY'S CONTEMPORARY RESORT AND THE INN AT GLACIER CANYON PHASE II. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve the subdivided land registration of Kingdom Tower @ Disney's Contemporary Resort. M/C Executive Director Jergenson noted that The Inn at Glacier Canyon was previously registered; therefore Phase II does not require an additional registration.
18. 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
19. COMMISSION GOALS. Commissioners reviewed a compiled list of goals that the Commission is striving to accomplish as well as those that have been attained.
20. OTHER BUSINESS:

Old business:

 - At the February 20, 2008 meeting of the Commission staff was asked to get additional information from the Jim Lund Team regarding the fact that they use a sign rider that says "Coming Soon". Commissioners accepted Mr. Lund's explanation.
 - It was discussed at the February 20, 2008 meeting of the Commission that designated brokers are becoming lax in completing the Broker Applicant Questionnaire. Administrative Rule 70-02-01-02(3) states that a broker must provide a response. Staff was instructed to revise the letter sent to the designated broker and include the Administrative Rule and a request to respond in 30 days.

a. (i.) Steven Stremick submitted information on a class that he instructs asking that it be accepted as continuing education. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to deny the approval of the continuing education as requested by Mr. Stremick. M/C

(ii) Clarification: If a licensee has been active 5 months and then goes inactive for a year do they need to complete the 15 hours post licensing before they can activate their license? Answer: Yes

(iii) Does a new licensee need to have completed the post licensing & the ce requirements for activation of an inactive license?
Administrative Rule 70-02-01-05(4) states: Applicable education requirements for the activation of a license shall consist of 8 hours for

- each year of inactive status not to exceed 16 hours. Commissioner Sheridan moved, seconded by Commissioner Schlosser that the 8 hours of continuing education required under activating an inactive license would not apply to this situation. Discussion. Motion and second were withdrawn. Commissioner Youngberg moved, seconded by Commissioner Sheridan that a licensee must complete the requirement of 15 hours post-licensing plus the 8 hours of continuing education as required by law to activate a license. M/C
- b. Commissioner Youngberg moved, seconded by Commissioner Sheridan to set a policy that the 60 hours of education required to take the real estate broker exam must have been completed at least 5 years prior to the application. M/C
 - c. Staff asked for clarification of the definition of “currently licensed”. The consensus was that currently licensed means active license.
 - d. Commissioner Cymbaluk informed the Commission that Grace Berger, Executive Director for the Montana Board of Realty has announced that she is running for ARELLO Treasurer. Executive Director Jergenson was asked to write a letter on behalf of the Commission supporting Grace Berger as Treasurer. It was noted that Gary Isom, Arkansas Deputy Executive Director, has announced that he is seeking the position of President Elect of ARELLO.
 - e. Commissioners discussed the date of the next Commission meeting. Staff will coordinate a date in early June.

There being no further business Chair Louser adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director