

August 25, 2010
8:30am CDT Conference Call
Bank of North Dakota
2nd Floor Conference/Training Room
1200 Memorial Highway
Bismarck ND

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

1. CALL MEETING TO ORDER. Chair Jerry Youngberg called the meeting to order and welcomed guests.
2. APPROVE MINUTES OF JUNE 15, 2010 MEETING. Commissioner Sheridan moved to approve the June 15, 2010 minutes as presented, seconded by Commissioner Schlosser. M/C
3. APPROVE JUNE AND JULY 2010 FINANCIAL REPORTS. Executive Director Jergenson went over the financial statement for June 2010, which is the end of the fiscal year, and July 2010. Jergenson noted that account #515: Retirement & Health Insurance is \$5.61 over the 2009/10 budgeted amount. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to accept the \$5.61 overage in account #515 Retirement & Health Insurance. M/C It was noted that 2009/10 expenses were approximately \$20,000 under budget making it unnecessary to draw funds from savings as was budgeted. Net income for fiscal year 2009/10 will be approximately \$10,800.00.
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND:
 - a. Review stipulated agreement: Complaint #2010-01 NDREC v James Smykowski. Special Assistant Attorney General Connie Hofland presented the terms of the proposed stipulated agreement in which Mr. Smykowski is to pay a fine in the amount of \$500.00, investigative/legal costs of \$790.00 (both within 30 days from date of Notice of Entry of the Order) and attend a 3 hour course on ethics within 90 days from the date of Notice of Entry of Order. Commissioner Cymbaluk moved, seconded by Commissioner Louser to approve the stipulated agreement as presented and the letter from Mr. Smykowski's attorney is to remain in his file. M/C Commissioner Sheridan moved, seconded by Commissioner Schlosser to set a policy that any trust account violation be re-audited in the succeeding year. M/C Ms Hofland suggested that

future stipulations contain the cost of the re-audit to be done in the succeeding year.

- b. Complaint #2010-02 NDREC v Robert Tubbs & Jan Hoge. Special Assistant Attorney General Connie Hofland presented the results of her investigation of this complaint. Ms Hofland discussed the fact that mobile homes are personal property not real property, therefore if there was a complaint for dishonesty or fraud then the Commission would have jurisdiction. Commissioner Sheridan moved, seconded by Commissioner Louser to accept the recommendation to dismiss the complaint. M/C
 - c. History of Complaints. In reviewing the history of complaints Ms Hofland noted that Complaint #2009-03 NDREC v Daniel L Ringuette and #2008-11 NDREC v Brian Gullickson are both still tabled.
 - d. Anonymous letters. Executive Director Jergenson presented an anonymous letter received in the Commission office regarding the activities of a licensee. The consensus was to have staff forward a copy of letters such as this to the designated broker so that they are aware of allegations regarding one of their licensees. Staff was asked to publish a reminder in the newsletter that without a written formal complaint the allegation cannot be investigated.
 - e. Executive Director Jergenson provided information regarding alleged unlicensed activity in North Dakota by Mitzi Bestall, the correspondence she had sent to Ms Bestall, and the response received from Ms Bestall. Commissioner Cymbaluk recused himself from discussion and voting. Commissioner Sheridan moved, seconded by Commissioner Louser to investigate the alleged unlicensed activity. M/C
 - f. Executive Director Jergenson discussed the information regarding alleged unlicensed activity by Affiliated Business Consultants, a Colorado firm. Commissioner Sheridan moved, seconded by Commissioner Schlosser to investigate the alleged unlicensed activity. M/C
 - g. Commissioners were informed that Linda Klebe has not completed the 3 hours of ethics course as stipulated.
 - h. Staff asked for clarification on whether or not a complaint can be filed against a North Dakota licensee regarding a transaction on a Minnesota property. Ms Hofland will research this.
5. VIRTUAL OFFICE WEBSITES (NEBRASKA SUMMER 2010 NEWSLETTER). Commissioners felt this would be a good article to publish in our newsletter with additional comments from legal counsel Ms Hofland.
 6. DEALING WITH ASSET MANAGERS SELLING HUD PROPERTIES AND AGENCY DISCLOSURE RULES IN NORTH DKAOTA (NEBRASKA SUMMER 2010 NEWSLETTER). Commissioners discussed the situation noted in the Nebraska newsletter article noting that buyers need to be informed and that the federal government will not sign disclosure documents. Commissioners asked to remind licensees via

an article in our newsletter to be aware of this and to take steps to insure that buyers are aware of agency relationships.

7. REVIEW PROPOSAL FROM TAO INTERACTIVE FOR PHASE II DEVELOPMENT OF DATABASE. Kevin Leier with TAO interactive, presented his bid for Phase II database development. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to accept the proposal from TAO interactive for the database development. M/C
8. TRUST ACCOUNT AUDIT FOR KENNETH BULIE/CANDO INSURANCE & REAL ESTATE WAS REJECTED JULY 13, 2010. Commissioners reviewed the trust account auditor report, Mr. Bulie's response and his proposal to mail in monthly reconciliations until the Commission is satisfied that he is managing his trust account correctly. It was the consensus of the Commission to continue to watch Mr. Bulie's handling of his trust account.
9. CONTINUING EDUCATION AUDIT: ANDREW HARDY. Staff provided Commissioners with a timeline of contacts made with Andrew Hardy to get his continuing education slips as requested for the ce audit. Mr. Hardy's broker, Aaron Greterman, had also been contacted. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to issue a complaint against Andrew Hardy and Aaron Greterman. M/C
10. 2010 REAL ESTATE LICENSE RENEWALS WERE REVISED REMOVING THE QUESTION RELATING TO TAX LIENS, ETC – WHAT IF A BROKER IS NOTIFIED THAT WAGES ARE TO BE GARNISHED FROM ONE OF THEIR LICENSEES? Commissioners agreed that no action should be taken to revise the 2011 renewal forms.
11. 2011 LEGISLATIVE ISSUES.
 - a. Remove exemption for auctioneers to sell real property at auction. It was decided to wait for a response to correspondence sent August 5, 2010 to the Public Service Commission.
 - b. Allow the Commission to levy a fine for continuing education non-compliance. Discussed with item 11(c).
 - c. Allow Commission to levy a fine for trust account non-compliance. Ms Hofland discussed the process as follows: Commission would issue a complaint. Included with the complaint would be an offer to stipulate (which would be non-negotiable) and information that the respondent had the right to refuse the stipulation and move through the investigative process and hearing. Ms Hofland and Executive Director Jergenson will compose an informal resolution policy and possible fines to be presented to the Commission for approval.
 - d. Facilitator. It was noted in discussion that a rewrite of agency law would probably be necessary to include a definition of facilitator and a facilitator's duties. Claus Lembke, North Dakota Association of REALTORS®,

stated that it is already allowed in the law and it is his organization's input that there was no need to add a definition to the law. Commissioner Schlosser commented that legislation would be giving a name to a process allowed now. Ms Hofland was asked to draft proposed legislation

- e. Subdivided Lands Act. NDCC § 43-23.1-05(3) removes the requirement of timeshares to register with the North Dakota Real Estate Commission. Ms Hofland stated that the sale of timeshares is overseen by the Department of Financial Institutions and she had a verbal opinion from the Attorney General's office which agreed with her opinion that the exemption does remove the obligation of registration. Commissioner Sheridan moved, seconded by Commissioner Cymbaluk to send a letter to those entities who have registered timeshares with the Commission stating that registration is no longer required as affirmed by opinion of the Attorney General effective August 2010 and it is their option to register or not. M/C
- f. Appraisal Board. Executive Director Jergenson stated that legislation will be proposed to make some changes to the Appraisal Board, none of which include putting it under our jurisdiction.
- g. Commissioners reviewed correspondence from the North Dakota Association of REALTORS® asking the Commission to consider mandatory broker and broker associate education.
- h. Claus Lembke, North Dakota Association of REALTORS®, discussed legislation his association was considering and proposed legislation they were going to watch.

12. REVIEW LICENSE APPLICATIONS.

- a. Commissioners reviewed the application of Katie A. Bjorge for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to table Ms. Bjorge's application to sit for the real estate exam until the outstanding judgment against her is cleared up and notification is provided to the Commission. M/C
- b. Commissioners reviewed the application of Cynthia M. DeVries for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. DeVries to sit for the salesperson real estate examination. M/C
- c. Commissioners reviewed the application of Hedy A. Nagel for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Sheridan to approve Ms. Nagel to sit for the salesperson real estate examination. M/C
- d. Commissioners reviewed the application of Kristina A. Nyvold for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to deny Ms. Nyvold's application due to items on her background check that did not appear on her application. M/C
- e. Commissioners reviewed the application of Christopher J. Plank for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve Mr. Plank to sit for the salesperson real estate examination. M/C

- f. Commissioners reviewed the application of Holly A. Smith for a salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to approve Ms. Smith to sit for the salesperson real estate examination. M/C
- g. Commissioners reviewed the application of Nicole M. Verdi for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Louser to approve Ms. Verdi to sit for the salesperson real estate examination. M/C
- h. Commissioners reviewed the application of William J Wiemann for a reciprocal salesperson license. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to table Mr. Wiemann's application for a reciprocal salesperson license until additional information regarding his background check is received and reviewed. M/C

Commissioners and staff will draft guidelines to be used by the Executive Director to approve applications that may not require the Commission's review and approval based on situations determined in the guidelines.

- 13. REVIEW REQUEST FROM SHIRLEY JONAS FOR EXTENSION TO COMPLETE 15 HOURS OF POST LICENSING EDUCATION. Commissioners reviewed a letter dated August 9, 2010 from Shirley Jonas requesting an extension to complete her 15 hours of post licensing education which she could not finish due to health reasons. Commissioner Cymbaluk moved, seconded by Commissioner Schlosser to approve Ms Jonas' request for a two month extension to complete her post licensing education. M/C Staff was directed to use their discretion in granting another extension if Ms Jonas is unable to complete her education as planned.
- 14. AMP MEETING OCTOBER 26-27, 2010. AMP (Applied Management Professionals) has scheduled a meeting October 26-27, 2010 to conduct examination item/problem reviews and will be extending an invitation to 3 individuals to represent North Dakota. Executive Director stated that North Dakota should be represented at this meeting and asked if she could be allowed to attend in the event the individuals invited could not. Commissioner Cymbaluk moved, seconded by Commissioner Sheridan to approve the Executive Director's attendance at the AMP meeting if needed. M/C
- 15. ADVERTISING Q&A REVISION. Commissioners approved the addition of item #8 to the advertising Q&A which reads:
Q. Do I need to include my company's contact information on giveaway items such as pens, pencils, etc.?
Yes, as the rule states: "**Advertising.** 1. Definition. As used in this section, the terms "advertise", "advertising", and "advertisement" include all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the internet, the world wide web, electronic mail, electronic bulletin board, or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages. Staff asked Commissioners if a builder places an open house ad in the newspaper for a property that is also listed with a real estate company do the licensees who are staffing the open house need to be disclosed in the ad? Consensus: yes, full disclosure is required in order to be in compliance with NDAC 70-02-03-02.1.

16. DISCUSS MANDATORY COURSE V. CE TOPICS FOR 2011. Commissioners discussed mandatory ce for 2011 and agreed that it would be best to remain consistent with previous years. Commissioner Schlosser moved, seconded by Commissioner Cymbaluk to require 3 hours in a mandatory topic for 2011. M/C Correspondence from the North Dakota Association of REALTORS® suggested fair housing/diversity training as a mandatory topic. Staff, with input from Jill Beck/NDAR, will provide suggested topics at the next commission meeting.
17. ARELLO® “THE TOP TEN QUESTIONS AND COMPLAINTS ON LICENSING EXAMS”. This white paper was provided to the Commissioners as an FYI.
18. DISTRICT 2 & 3 CONFERENCE REPORTS: COMMISSIONERS CYMBALUK & YOUNGBERG, EXECUTIVE DIRECTOR JERGENSON. Written reports were filed for review.
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. COMMISSION GOALS. The goals of the Commission were reviewed.
21. OTHER BUSINESS:
 - a. Staff informed the Commission that AMP (Applied Management Professionals), our real estate exam provider, has decided to not pursue the lowering of the number of questions on the real estate exam.
 - b. Staff cannot sign Commissioners up for ARELLO® list serves – each must sign up themselves.
 - c. It was the consensus of the Commissioners to approve the proposed ARELLO® bylaws change.
 - d. Commissioners were provided a copy of the Special Assistant Attorney General Report of Expenditures for informational purposes.

There being no further business Chair Youngberg adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director