

September 17, 2008
8:00 AM
ND Real Estate Commission
Grand International Inn
Maple Leaf Room
1505 N Broadway
Minot, ND

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

Guest: SD Real Estate Commissioner Paula Lewis

1. CALL MEETING TO ORDER. Chair Cymbaluk called the meeting to order and welcomed those in attendance. South Dakota Real Estate Commissioner Paula Lewis was introduced. Roll call was taken.
2. APPROVE MINUTES OF JUNE 11, 2008 MEETING. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the June 11, 2008 minutes as sent. M/C
3. APPROVE FINANCIAL REPORTS FOR JUNE AND JULY 2008. Executive Director Jergenson reviewed the financial reports for June and July. Commissioner Youngberg moved, seconded by Commissioner Schlosser to accept the June and July 2008 financial reports as presented. M/C Executive Director Jergenson informed the Commissioners that she was the only signatory on the Wells Fargo checking account and the CDs at Starion and American Bank Center. She suggested that at least one Commissioner should also be on the bank accounts and CDs. Commissioner Youngberg moved, seconded by Commissioner Louser to add Commissioner Schlosser as a signatory to the Wells Fargo account. M/C
4. LEGAL UPDATE: SPECIAL ASSISTANT ATTORNEY GENERAL CONNIE HOFLAND.
 - a. Complaint # 2008-08 Jeffrey A. Riepl v Sandra L. Retterath. Special Assistant Attorney General Constance Hofland presented the results of her investigation of this complaint. Commissioner Sheridan moved, seconded by Commissioner Louser to set this complaint for hearing. M/C
 - b. Complaints # 2008-09 & 2008-10 Keith D. Danks v Kenneth D Welter. Special Assistant Attorney General Constance Hofland presented the results of her investigation of these complaints together. Commissioner Youngberg moved, seconded by Commissioner Louser to set these complaints for hearing. M/C
 - c. Complaint # 2008-12 M/M Leon v Tamara F. Dronen. Commissioner Sheridan recused herself from this portion of the

meeting and left the room during the discussion of this complaint. Special Assistant Attorney General Constance Hofland presented the results of her investigation. Commissioner Schlosser moved, seconded by Commissioner Youngberg to dismiss this complaint. M/C

Commissioner Sheridan rejoined the meeting.

- d. Complaint # 2008-07 NDREC v. Jason Spiess. Special Assistant Attorney General Constance Hofland presented a proposed stipulated agreement signed by Mr. Spiess. Mr. Spiess stipulated to the surrender of his real estate license and its cancellation. Commissioner Youngberg moved, seconded by Commissioner Louser to approve the stipulated agreement as proposed. M/C
 - e. Special Assistant Attorney General Hofland reviewed the September 9, 2008 Attorney General opinion regarding emails with those present.
 - f. On August 28, 2008 Kathryn Grady-Thurston paid the \$500 fine assessed her on November 17, 2005.
 - g. At the June 11, 2008 Commission meeting, Commissioners requested Ms Hofland to investigate the audit report of John T. Schneider to see if a complaint should be filed. In her report Ms Hofland recommended that she work with the trust account auditor and compose a letter to Mr. Schneider regarding the issues in the audit, require a response with evidence of the corrections made and re-audit him again in a year. Commissioner Youngberg moved, seconded by Commissioner Sheridan to table action regarding filing a complaint until the next meeting. M/C
5. TRUST ACCOUNT AUDIT REPORT: HOMETOWN REALTY, INC. At the June 11, 2008 Commission meeting, Commissioners voted to table action on Complaint # 2008-03 NDREC v Linda Klebe until another trust account audit of Hometown Realty, Inc had been conducted. Commissioners reviewed the report dated July 17, 2008 by the trust account auditors of an audit conducted on June 24, 2008. The audit report stated that at the time of the June audit the trust account records were up to date and the files very orderly. Commissioner Sheridan moved, seconded by Commissioner Youngberg to accept the auditor's report and dismiss the complaint. M/C
 6. APPOINTED AGENCY TASK FORCE REPORT: COMMISSIONER SCHLOSSER. Commissioner Schlosser gave highlights of the Appointed Agency Task Force meeting as presented in the task force minutes dated April 16, 2008. As chair of the task force Commissioner Schlosser suggested that this task force meet at least one more time.
 7. STAFF REQUEST FOR CLARIFICATION OF ADMINISTRATIVE RULE 70-02-01-06(5). It was the consensus of the Commissioners that this administrative rule applies to non-resident applicants, once the applicant moves to ND this exemption no longer applies and they must apply for a license following the requirements of ND residents. There was discussion as to what determines residency in ND as there are many different guidelines: 30 days to vote, 3 months for a driver's license, 6 months to get a hunting license, etc. Commissioner Youngberg moved, seconded by Commissioner Sheridan that for real estate licensing purposes an applicant will be considered a resident after they reside in ND for 30 days. M/C
 8. ADVERTISING RULE Q&A. Staff presented 3 items for discussion
 - a. I am licensed at a branch office. Do I use the contact information for the branch office or for the real estate company's main office? Answer: You may use the branch office contact information.

- b. I have my real estate company name and contact information on the reverse side of my business card. Am I in compliance with the advertising rules? Yes, the intent of the rule is that the public knows who a licensee works for.
 - c. Commissioners reviewed an email staff received in response to a letter notifying the licensee and broker of a violation in their advertisement. The broker suggests that the ad is not a real estate ad but an ad seeking investment capital offering a 10% return to the investor. Special Assistant Attorney General Hofland noted that NDCC § 43-23-06.1 defines a real estate broker. She stated that when advertising is confusing to the public it falls under the jurisdiction of the Commission. It was the consensus of the Commission that Ms Hofland and Executive Director Jergenson provide a response to the broker on this issue.
9. REVIEW RFP FOR ERRORS AND OMISSIONS INSURANCE. The Commission sent out Requests for Proposals to 3 insurance providers. One provider did not respond and a second did not provide a bid because they did not feel that they could be competitive. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve RISC as our E&O insurance carrier. M/C The premium for 2009 will be \$152.
10. REVIEW CONTINUING EDUCATION AUDIT REPORT. Commissioners reviewed the results of the continuing education audit. Two licensees were found to be short hours. Commissioner Cymbaluk had understood that appraisal courses taken in another jurisdiction would be accepted. At this point Chair Cymbaluk turned the meeting over to Vice Chair Kris Sheridan. Staff clarified that courses taken in other jurisdictions are accepted as continuing education as long as they are approved by the real estate licensing body in that jurisdiction for real estate ce. The ND Appraisal Board submitted an email verifying that the course Commissioner Cymbaluk had taken in MT was the same course approved for ce in ND but with a different instructor. Commissioner Schlosser moved, seconded by Commissioner Louser to accept the USPAP course form Great Falls, MT as approved continuing education. M/C Chair Cymbaluk took over as Chair at this point. Clark Leach used 2 courses that he had used to activate his inactive license as courses to fulfill the ce requirements for 06/07. Commissioner Sheridan moved, seconded by Commissioner Schlosser to send a letter to both Mr. Leach and his broker stating that he has 30 days from the date of the letter to complete the 4 hours of education he is short and if verification is not received in the timeframe given the complaint process will begin. M/C
11. REVIEW REPORT REGARDING IMPROPERLY DATED CONTINUING EDUCATION SLIPS. Executive Director Jergenson submitted a chronological report of the situation as it unfolded in discovering that some online course ce slips had been backdated. It was the consensus of the Commission to discuss the possibility of assessing Career Web School an additional administrative fee for the processing problems at a later date.
12. REVIEW PROPOSALS FOR ONLINE LICENSE RENEWALS. Commissioners discussed the proposal for online license renewals received from Bpro. Executive Director Jergenson stated that a proposal had been requested from Inet Technology as well but not received. It was the consensus of the Commission to keep this item on the agenda and for staff to check into online license renewals used by other professional licensing boards in North Dakota.
13. REVIEW APPLICATIONS FOR SALESPERSON LICENSES.
 - a. Commissioners reviewed the application of Sandra R. Benz for a reciprocal salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Ms. Benz to be issued a reciprocal salesperson license. M/C

- b. Commissioners reviewed the application of Chad A. Gaynor for a salesperson license. Commissioner Louser moved, seconded by Commissioner Schlosser to approve Mr. Gaynor to sit for the salesperson real estate examination. M/C
 - c. Commissioners reviewed the application of Gwen M. Hoffman for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to deny the application of Ms. Hoffman due to the debt management issues shown in her application. M/C
 - d. Commissioners reviewed the application of Randi-Anne Jung for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve Ms. Jung to sit for the salesperson real estate examination. M/C
 - e. Commissioners reviewed the application of Derek J. Kainz for a salesperson license. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve Mr. Kainz to sit for the salesperson real estate examination. M/C
 - f. Commissioners reviewed the application of Justin P. Mertens for a salesperson license. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve Mr. Mertens to sit for the salesperson real estate examination. M/C
 - g. Commissioners reviewed the application of Steve G. Zutz for a salesperson license. Commissioner Schlosser moved, seconded by Commissioner Youngberg to approve Mr. Zutz to sit for the salesperson real estate examination. M/C
14. REVIEW CORRESPONDENCE FROM DIANA SCHROEDER. Diana Schroeder requested via email that the Commission waive the policy currently in place which states that pre-licensing education must be taken within two years of the application for a license and allow her to use the pre-licensing education she took in 2003. Commissioner Schlosser moved, seconded by Commissioner Sheridan to deny Ms. Schroeder's request. M/C
15. DISCUSS POSSIBLE 2009 LEGISLATIVE ISSUES. Executive Director Jergenson presented 4 items for discussion.
- a. The possibility of removing the exemption to holding a real estate license for auctioneers selling real property (NDCC § 43-23-07(3)). A draft letter to the Executive Director of the Public Service Commission was reviewed. Commissioner Louser moved, seconded by Commissioner Youngberg to send the letter to the Public Service Commission to begin discussion on this possible legislation. M/C
 - b. Create a statute of limitations to bring complaints against licensees. This has not been an issue therefore Commissioners took no action.
 - c. NDCC § 43-23-10 permits ND to enter into reciprocal agreements with other states but does not mention reciprocity with foreign countries. Should legislation be drafted to allow this? It was the consensus to table this until the reciprocity issues with other states is settled.
 - d. NDAR has asked if we would be pursuing legislation changing the continuing education requirements. Claus Lembke, Government Affairs Director for NDAR stated that a change in the ce hours was supported throughout their membership in North Dakota with the exception of Jamestown and that NDAR would carry the legislation with the support of the Commission. Commissioner Schlosser moved, seconded by Commissioner Youngberg to support NDAR in their attempt to legislatively remove the number and frequency of ce hours from statutory requirements and establish them through Administrative Rules. M/C

- On February 20, 2008 the Commission approved our involvement in legislation brought forth by the Attorney General's office relating to penalty provisions under occupational and professional licensing laws.
16. REVIEW REVISED PROOF FOR THE "BROKERS' RECORDS OF PROFESSIONAL ACTIVITY" GUIDELINES: COMMISSIONER SCHLOSSER. Commissioner Schlosser presented the current revision of the brochure and recommended that it be placed on the website and published in the newsletter. Commissioner Sheridan moved, seconded by Commissioner Youngberg to adopt the final revision of the brochure. M/C
 17. DISCUSS IMPLEMENTING THE USE OF CREDIT CARDS FOR FEES. Executive Director Jergenson presented options for receiving online payments for license renewals and credit card payments for fees in the office. Staff was asked to continue to research this.
 18. REVIEW COST PROPOSAL FOR NEW COMPUTER HARD DRIVE FOR ADMINISTRATIVE ASSISTANT STATION. Commissioners reviewed the quote received from the state. Staff noted that the computer to be replaced is 5 years old. Commissioner Youngberg moved, seconded by Commissioner Schlosser to approve the purchase as submitted. M/C
 19. REVIEW 2009 RENEWAL FORMS FOR POSSIBLE REVISION. Upon review it was determined to change the word "state" to "jurisdiction" in all appropriate places on the renewal forms.
 20. ARELLO DISTRICT CONFERENCE REPORTS: COMMISSIONERS CYMBALUK & YOUNGBERG AND EXECUTIVE DIRECTOR JERGENSON. Commissioner Cymbaluk noted that there was information on mortgage fraud and that we had formally endorsed Grace Berger from Montana as Treasurer for ARELLO. Commissioner Youngberg noted that the presentation by an appraiser called "My New Client – The FBI" was fascinating. Executive Director Jergenson filed a written report. Commissioner Sheridan suggested that in the future those attending ARELLO meetings file written reports.
 21. CONSIDER CO-HOSTING THE ARELLO DISTRICT 2 & 3 CONFERENCE IN 2012 WITH SOUTH DAKOTA. Executive Director Jergenson asked the Commission to consider co-hosting the 2012 conference with South Dakota. At this time no one has come forward from our district to host the conference that year and if the two states worked together sharing costs and staff it would be more feasible to do it. It was the consensus to offer this option to South Dakota.
 22. REVIEW FORM TO REQUEST A CERTIFICATE OF LICENSURE. Staff presented a form to be used when a licensee requests a certificate of licensure. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the use of this form. M/C
 23. AMP ADVISORY BOARD MEETING REPORT: PAT JERGENSON, EXECUTIVE DIRECTOR. A written report was filed.
 24. REVIEW REQUESTS FOR TRUST ACCOUNT WAIVERS. Commissioner Sheridan moved, seconded by Commissioner Schlosser to approve the requests for trust account waivers as attached to these minutes. M/C
 25. COMMISSION GOALS. Commissioners reviewed the list of goals and noted that providing the broker brochure is now completed.
 26. OTHER BUSINESS:
 - a. Old business: Rio Del Oro Subdivisions in Valencia County, New Mexico has notified the office that they do not wish to purchase a surety bond and have withdrawn their application for registration.

- b. Commissioners reviewed an application for registration submitted by Disney Vacation Development for the Villas at Disney Grand Californian Hotel. Commissioner Sheridan moved, seconded by Commissioner Youngberg to approve the registration of the Villas at the Disney Grand Californian Hotel. M/C
- c. Staff had received a request from a real estate firm to add the company history to our Online Directory and brought it to the Commission for discussion. Consensus was to not add the company history at this time.

There being no further business Chair Cymbaluk adjourned the meeting.

Respectfully submitted,

Patricia M. Jergenson
Executive Director