



## North Dakota Real Estate Commission

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March 14, 2012

### Members

Administrative Rules Committee  
North Dakota Legislative Council  
State Capitol Building  
600 East Boulevard Ave  
Bismarck, ND 58505-0360

#### Chair

Jerry Schlosser  
Bismarck

#### Vice Chair

Diane R. Louser  
Minot

Dear Committee Members:

Roger M. Cymbaluk  
Williston

Our agency is solely responsible for the administration of the North Dakota Real Estate License Law and Administrative Code governing the conduct of real estate licensees. The commission does not receive any federal or state funding to maintain our agency.

Kris Sheridan  
Fargo

Jerome C. Youngberg  
Grand Forks

Four of the rule changes adopted by the North Dakota Real Estate Commission are the result of statutory changes made by the 2011 Legislative Assembly.

Patricia M. Jergenson  
Executive Director

43-23-12.1 of the North Dakota Century Code was amended to clarify the duties owed to clients in an agency relationship and a non-agency relationship with a customer. Section 70-02-03-15.1(7)(a),(b)and(d) on pages 9-11 and Section 70-02-03-15.2 on pages 11-12 were adopted in accordance with this statute.

Section 70-02-03-15.1(e) was amended to reflect the wording in the 4 other revised sections of this rule.

The North Dakota Real Estate Commission in exercising its rule making authority used the following procedure:

Advance notice of the rules hearing was published in the Fall 2011 issue of the **North Dakota Real Estate News and Views**, the official publication of the North Dakota Real Estate Commission which is mailed to each licensee in the state of North Dakota and to those licensees who hold a reciprocal or non-resident license in our state.

Notice was served upon the public through publication of the hearing notice in each of the state's county newspapers through the North Dakota Newspaper Association. All notices were published and mailed in advance of the date of hearing as required by statute.

A public hearing was held on December 7, 2011 at 1:00 PM, central time in the Peace Garden Room here at the Capitol. Jill Beck, CEO for the North Dakota Association of REALTORS®, and Casey Chapman, legal counsel for the North Dakota Association of REALTORS®, were in attendance at the hearing. Both spoke in favor of the proposed rule changes and the new section. The Commission did not receive any written comments.

The approximate cost for legal fees involving research, preparation, and appearance at the public hearing was \$2800.00. The cost for printing and mailing the notice to all licensees was \$1656.19. The publication in the local newspapers was \$1648.90, for an approximate total of \$6105.09. The rules hearing was held on the same day as a scheduled meeting of the real estate commission, consequently the costs for meals, lodging, travel and per diem for the Commissioners were not charged to the rules hearing.

No regulatory analysis was required or issued as per NDCC Section 28-32-08.

No economic impact statement was required per NDCC Section 28-32-08.1.

No constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

### **EXPLANATION OF RULES**

Section 70-02-03-15.1(7)(a) is located on page 9. The amendment to this rule is a direct reflection of the revised statute NDCC 42-23-12.1(6) and pertains to the requirement of a licensee to disclose to a seller who is represented by that licensee that the licensee's brokerage firm may represent two or more sellers offering competing real property for sale without breaching the duties owed to the seller client.

Section 70-02-03-15.1(7)(b) is located on pages 9-10. The amendment to this rule is a direct reflection of the revised statute NDCC 42-23-12.1(5) and states that in the event the licensee represents two or more buyers who desire to make an offer on the same real property, the licensee must disclose that a competing offer has been submitted by another buyer client of that licensee without disclosing the terms of the offer.

Section 70-02-03-15.1(7)(d) is located on pages 10-11. The amendment to this rule is a direct reflection of the revised statute NDCC 42-23-12.1(3) & (4) which clarifies that unless otherwise agreed in writing, licensees are not obligated to a client, customer, or other person to discover defects, verify ownership or verify the accuracy of representations made by any person other than the brokerage firm and licensees involved in the transaction.

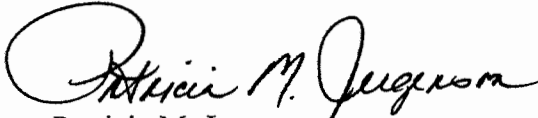
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Section 70-02-03-15.1(7)(e) is located on page 11. The wording of this rule was revised to be in concert with the rule changes I just noted.

Section 70-02-03-15.2 is located on page 11. The amendment to this rule is a direct reflection of the revised statute NDCC 42-23-12.1(2) and defines a non-agency relationship and requires disclosure to the customer that the duties owed to a customer are limited and what those limited duties are.

Please let us know if we can be of any further assistance regarding any questions or concerns.

Thank you for your time and consideration,

A handwritten signature in black ink, reading "Patricia M. Jergenson". The signature is fluid and cursive, with a large initial "P" and "J".

Patricia M. Jergenson  
Executive Director