

**Real Estate Commission  
Meeting**

**December 18, 2019**

**Atwood Building  
550 W 7th Avenue  
Ste 1236**

**Anchorage**

**Roll Call – December 18, 2019**

**PeggyAnn McConnochie**

**Margaret Nelson**

**Cheryl Markwood**

**David Pruhs**

**Jerry Royse**

**Jaime Matthews**

**Jesse Sumner**

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT  
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

*Tentative Meeting Agenda*  
**December 18, 2019**

**REAL ESTATE COMMISSION**  
**Atwood Building**  
**550 W. 7<sup>th</sup> Ave. Ste 1236**  
**Anchorage, AK**

**ZOOM Info: Join ZOOM meeting: <https://zoom.us/j/170842231>,  
Meeting ID: 170 842 231, Call-In: +1 669 900 6833**

***Note: there will be a break for lunch from 12 until 1.  
Director Chambers will give her report at 1:00 pm.***

**Wednesday, December 18, 2019**

- 9:00 a.m. 1. Call to Order McConnochie
- a) Roll Call
  - b) Approval of Agenda
  - c) Statements of Conflicts of Interest
- 9:15 a.m. 2. Oral Comments (per scoping project) & Public Comments (on all other items)  
(Consumer Disclosure and Waiver of Right to be Represented --scoping project)  
**\*each individual will have a time limit of up to 3 minutes to comment**
3. Approval of Meeting Minutes
- a) September 25, 2019
4. Committee Reports
- a) Property Management Committee Nelson
  - b) Education Committee Royse
5. Old Business
- a) Potential Changes to Consumer Disclosure & Waiver of Rights forms after oral and written comments have been received
  - b) Notarized Signature regulations –  
12 AAC 64.059 (b)(1)(E) and 12 AAC 64.059 (d)(1)(E)
6. New Business Harris
- a) Fine Matrix – background and status
  - b) PearsonVue contract and overall pass rates
  - c) AK Real Estate Commission Property Transfer Form
  - d) Consideration of forming a Communications Committee

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- 1:00 pm*      *7. Division Update*      *Sara Chambers, Director of CBPL*  
*REC Revenues and Expenditures Report*
8. Investigative Report
- a. Statistical Report      Consalo
  - b. Probation Report      Medina
9. Executive Administrator's Report      Harris
- a. Licensing and Education Statistics
  - b. Recovery Fund Balance Report
10. 2020 Proposed Meeting Dates:
- March 25, 2020
  - June 24, 2020
  - September 23, 2020 – in person meeting
  - December 16, 2020
11. Texas Real Estate Commission (TREC) Regulation Reform
12. Commission member comments and questions
13. Adjournment

*Please report any Ethics violations to Nancy Harris.*

**Next Meeting: TBD (March 25, 2020)**

# Statements of Conflict of Interest

# Oral Comments & Public Comments



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

**Department of Commerce, Community,  
and Economic Development**

DIVISION OF CORPORATIONS, BUSINESS AND  
PROFESSIONAL LICENSING  
Juneau Office

P.O. Box 110806  
Juneau, AK 99811-0806  
Main: 907.465.2550  
Toll free fax: 907.465.2974

**Alaska Real Estate Commission  
Notice of Public Scoping for Possible Updates and Revisions to  
AREC Regulations Under Administrative Order 266**

**12 AAC 64.118 and 12 AAC 64.119**

The Alaska Real Estate Commission (Commission) is reviewing its regulations to determine whether to update or revise the current requirements and forms, the Consumer Disclosure and the Waiver of Right to be Represented, that the Commission adopts by reference.

The Commission last revised and adopted the Consumer Disclosure and the Waiver of Right to be Represented forms in February 2015. To view the current forms, please go to:  
<https://www.commerce.alaska.gov/web/portals/5/pub/AREC-ConsumerDisclosure&WaiverOfRightToBeRepresented-02-2015.pdf>.

**12 AAC 64.118. CONSUMER DISCLOSURE.** Before a real estate licensee provides specific assistance to a person, or when entering into a contract with the person to provide specific assistance, the real estate licensee shall provide the person with a copy of the commission's *Alaska Real Estate Commission Consumer Disclosure*, dated February 2015, and adopted by reference.

**12 AAC 64.119. WAIVER OF RIGHT TO BE REPRESENTED.** A written consent that a neutral licensee obtains under AS 08.88.610 must be provided on the commission's form entitled *Alaska Real Estate Commission Waiver of Right to Be Represented*, dated February 2015, and adopted by reference.

The purpose of this notice is to ask the licensees, public, and other interested parties for ideas and suggestions for possible updates or revisions to these regulations and forms *before* the Commission undertakes the task of drafting any specific proposed revisions to these regulations and forms. These ideas and suggestions can be as broad or as narrow, or as general or specific as a submitter may wish, but they should pertain only to the two sections cited above.

The Commission is not currently proposing any specific changes at this time. There are no draft regulations to review. If the Commission does draft any new proposed regulations or amendments related to these two sections, those proposed revisions will be noticed, and made available for public review and comment under the Administrative Procedure Act AS 44.62.

This notice and the input it solicits is intended to assist the Commission in gathering information before it begins the formal process of drafting any proposed changes to its existing regulatory framework related to the Consumer Disclosure and the Waiver of Right to be Represented forms.

Written comments, suggestions, and other input must be received no later than 4:30 p.m. on December 13, 2019. Please send all submissions by mail or email to:

Jun Maiquis, Regulations Specialist  
Division of Corporations, Business and Professional Licensing  
Department of Commerce, Community, and Economic Development  
P.O. Box 110806  
Juneau, AK 99811-0801  
[RegulationsAndPublicComment@alaska.gov](mailto:RegulationsAndPublicComment@alaska.gov)

Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system at <http://notice.alaska.gov/196155>, and using the “comment” link.

Oral comments may also be given at a hearing to be held on December 18, 2019, at the Atwood Building, 550 West 7th Avenue, Suite 1236, Anchorage, AK. The hearing will begin at 9:15 a.m. and will end when those who have called in or signed up before 9:15 a.m. to give oral testimony have had the opportunity to comment. If you wish to give your comments via telephone, please call 1-800-315-6338 access code 25803. The chair of the Commission may limit each participant’s length of oral testimony, determined by the chair before the hearing begins, to allow enough time for all those who have called in or signed up and timely registered to give testimony.

The division reserves the right to waive technical defects in this publication. The division complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aides, services or special modifications to participate in this scoping request may contact the above address or email.

Publish date: November 18, 2019





# ALASKA REAL ESTATE COMMISSION CONSUMER DISCLOSURE

This Consumer Disclosure, as required by law, provides you with an outline of the duties of a real estate licensee (licensee). This document is not a contract. By signing this document you are simply acknowledging that you have read the information herein provided and understand the relationship between you, as a consumer, and a licensee. (AS 08.88.600 – 08.88.695)

There are different types of relationships between a consumer and a licensee. Following is a list of such relationships created by law:

## Specific Assistance

The licensee does not represent you. Rather the licensee is simply responding to your request for information. And, the licensee may "represent" another party in the transaction while providing you with specific assistance.

***Unless you and the licensee agree otherwise, information you provide the licensee is not confidential.***

Duties **owed** to a consumer by a licensee providing specific assistance include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property; and
- e. Timely accounting of all money and property received by a licensee.

## Representation

The licensee represents only one consumer unless otherwise agreed to in writing by all consumers in a transaction.

Duties **owed** by a licensee when representing a consumer include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally take actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to a consumer;
- d. Advising a consumer to seek independent expert advice if a matter is outside the expertise of a licensee;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Making a good faith and continuous effort to accomplish a consumer's real estate objective(s).

## Neutral Licensee

A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction but does not "represent" either consumer. A neutral licensee must, prior to providing specific assistance to such consumers, secure a Waiver of Right to be Represented (form 08-4212) signed by both consumers.

Duties **owed** by a neutral licensee include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally taking actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- d. If a matter is outside the expertise of a licensee, advise a consumer to seek independent expert advice;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property if different than what a consumer has offered or accepted for a property.

If authorized by the consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist consumers in reaching an agreement.

## Designated Licensee

In a real estate company, a broker may designate one licensee to represent or provide specific assistance to a consumer and another licensee in the same office to represent or provide specific assistance to another consumer in the same transaction.

**ACKNOWLEDGEMENT:**

I/We, \_\_\_\_\_ have read the information provided in this Alaska Real Estate  
*(print consumer's name(s))*  
Consumer Disclosure and understand the different types of relationships I/we may have with a real estate licensee. I/We  
understand that \_\_\_\_\_ of \_\_\_\_\_  
*(licensee name)* *(brokerage name)*  
will be working with me/us under the relationship(s) selected below.

**(Initial)**

- \_\_\_\_\_ **Specific assistance without representation.**
- \_\_\_\_\_ **Representing the Seller/Lessor only.** (may provide specific assistance to Buyer/Lessee)
- \_\_\_\_\_ **Representing the Buyer/Lessee only.** (may provide specific assistance to Seller/Lessor)
- \_\_\_\_\_ **Neutral Licensee.** (must attach Waiver of Right to be Represented, form 08-4212)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Licensee)*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Consumer)*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Consumer)*

**THIS CONSUMER DISCLOSURE IS NOT A CONTRACT**



# ALASKA REAL ESTATE COMMISSION WAIVER OF RIGHT TO BE REPRESENTED

## About This Form:

Occasionally, a licensee is "representing" a consumer (buyer or lessee) that has interest in acquiring a property where another consumer (seller or lessor) is also "represented" by the same licensee. Prior to showing the property, the licensee must obtain written approval from both consumers to change their working relationship from representation to providing specific assistance in a neutral capacity. AS 08.88.610

In Alaska, real estate licensees are **required by law** to provide this document, prior to providing specific assistance to the parties, in conjunction with the Alaska Real Estate Consumer Disclosure (form 08-4145), outlining the duties of a real estate licensee when acting in a neutral capacity.

Duties of a Neutral Licensee: A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction.

Duties **owed** by a neutral licensee include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property;
- e. Timely accounting of all money and property received by a licensee;
- f. Not intentionally taking actions which are adverse or detrimental to a consumer;
- g. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- h. Advising a consumer to seek independent expert counsel if a matter is outside the expertise of a licensee;
- i. Not disclosing consumer confidential information during or after representation without the written consent of the consumer unless required by law; and
- j. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Real Estate Licensee Date

\_\_\_\_\_  
Real Estate Company

If authorized by consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist them in reaching an agreement.

## Additional Authorization:

I hereby authorize the "neutral" licensee to engage in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:

- Analyzing, providing information, and reporting on the merits of the transaction to each consumer;
- Discussing the price, terms, or conditions that each consumer would or should offer or accept; or
- Suggesting compromises in the consumer's respective bargaining positions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Approval of Meeting Minutes

1  
2 STATE OF ALASKA  
3 DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT  
4 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING  
5

6 **REAL ESTATE COMMISSION**  
7 **MEETING MINUTES**  
8

9 **September 25, 2019**  
10

11 “These draft minutes were prepared by the staff of the Division of Corporations,  
12 Business and Professional Licensing. They have not been reviewed or approved  
13 by the Commission.” By authority of AS 08.01.070(2), and in compliance with the  
14 provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate  
15 Commission was held September 25, 2019, at the State of Alaska Atwood Building  
16 ACC 106, 550 W. 7<sup>th</sup> Avenue, Anchorage, Alaska.  
17

18 **September 25, 2019**

19 **Agenda Item 1 - Call to Order**

20 Chairperson PeggyAnn McConnochie called the meeting to order at 10:30 a.m. at  
21 which time a quorum was established.  
22

23 **Roll Call – 1(a)**

24 **Members present:**

25 PeggyAnn McConnochie, 1<sup>st</sup> Judicial District, Chairperson  
26 Margaret Nelson, Broker, Broker at Large, Vice Chairperson  
27 Jamie Matthews, Public Member  
28 Cheryl Markwood, Broker at Large  
29 David Pruhs, Broker, 4<sup>th</sup> Judicial District  
30 Jerry Royse, Broker, 3<sup>rd</sup> Judicial District, Education Liaison  
31 Jesse Sumner, Public Member  
32

33 **Staff Present:**

34 Sharon Walsh, Executive Administrator  
35 Nancy Harris, Project Assistant  
36 Shyla Consalo, Investigator for REC  
37 Greg Francois, Chief Investigator, CBPL  
38 Sara Chambers, Director of CBPL  
39

40 **Guests Present:**

41 Larry Imm, Salesperson, Jack White Real Estate, Anchorage  
42 Errol Champion, Liaison for AAR, Juneau  
43 Lonnie Logan, Associate Broker, Herrington and Company, Anchorage  
44 Kassandra Taggart, Broker, Real Property Management Last Frontier, Anchorage  
45 Irina V. Sklipilova, Hoffman & Associates  
46 Paddy Coan, Associate Broker, Keller Williams Realty, Anchorage  
47 Jerod McClure, Salesperson, Northern Trust Real Estate, Anchorage  
48 Anita Bates, Associate Broker, Dwell Realty, Anchorage  
49 Marilyn Pokupec, Herrington and Company, Anchorage  
50 Renea Miller, Broker, Marc Realty, LLC, Anchorage-  
51 Marianne Murry, Executive Administrator, Board of Nursing

52 Deborah Brollini, Public attendee, via teleconference

53

54 Approval of Agenda-1(b)

55 Commission members reviewed the meeting agenda.

56

57 **On a motion duly made by Ms. Markwood, seconded by Mr. Sumner, it**  
58 **was,**

59

60 **RESOLVED to approve the meeting agenda for September 25,**  
61 **2019 as amended.**

62

63 Ms. Nelson asked about the discussion of Right Touch Regulations.

64

65 Ms. Harris said that will be covered under Division Update, agenda item number 3.

66

67 Ms. Nelson asked Ms. Walsh for clarification on the two different times for public  
68 comments; regular public comments and public comments on proposed  
69 regulations. In the Boards and Commission packet it states that our agenda is  
70 supposed to have two areas of public comments, one on non-regulatory items and  
71 one on regulatory items. Does the REC deviate from this as opposed to what the  
72 guide is outlining? Can the public give oral comments on the proposed regulations  
73 at this meeting and why not?

74

75 Ms. Walsh said that this is up to the Commission when they proposed regulations.  
76 The Commission sends to the regulation specialist in Juneau that you want both  
77 written and oral comments. if that is not indicated at the time the regulation is  
78 proposed there will only be written comments. She said she believed that when the  
79 last Commission proposed regulations they only indicated written comments. They  
80 did not indicate oral comments or both. Going forward, when this Commission  
81 proposes regulations you can indicate if you want oral or written comments or both  
82 and then at the next meeting you will be allowed to receive comments according to  
83 what you indicated at them time you propose those regulations.

84

85 Ms. Nelson asked that if someone wanted to give oral testimony isn't it in the  
86 public's best interest to accept oral testimony if they wanted to and not restrict it?

87

88 Ms. Walsh said no, not after the public comment closed. If the Commission did not  
89 indicate oral comment when the public notice was sent out then you could not  
90 allow oral comment at the meeting only written comments. The type of comment  
91 the Commission indicated when the regulation was proposed it what will comments  
92 will be allowable.

93

94 Ms. Nelson asked if once a decision has been made by the prior Commission we  
95 are bound by that and nobody can give oral comment today?

96

97 Ms. Walsh said no you cannot but you can withdraw the regulation project and  
98 then open it up for another 30 days and indicate what type of comments you will  
99 accept, oral or written comments or both.

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Mr. Pruhs asked if there was a time limit on oral testimony?

Ms. Walsh said it is up to the Commission.

Mr. Royse asked when the Commission is looking at a regulation project and indicates what type of comments we will accept, do we do this on a per regulation basis or can we do a unilateral blanket on what this Commission will accept?

Ms. Walsh said it would be a per regulation project because when it is public noticed, the public need to know their options.

Ms. Markwood asked if that meant the Commission would need to schedule another meeting for public comments?

Ms. Walsh said that would be up to the Commission.

Mr. Royse asked that some additional items be added to the agenda. Clean up regulations, added as agenda item 7(e), fine matrix, added as agenda item 7(f), and add conversation regarding December meeting date, added as agenda item 7(g).

**All in favor; Motion to passed.**

Statements of Conflicts of Interest-1(c)

Mr. Sumner, Ms. Nelson and Ms. Matthews had no conflict of interest to disclose.

Mr. Royse stated that one of the proposed regulations with the movement to approve designated continuing education for 4 years as opposed to 2 years, as a training provider he has a conflict of interest with that.

Ms. Markwood said she had no conflicts of interest to disclose. However, she wanted to acknowledge that there is currently property management revision of regulations on the agenda under old business and she has a property management company, therefore there are may be regulations that may be a conflict of interest in the future.

Mr. Pruhs said there is a conflict of interest as a trainer with the proposed regulation as Mr. Royse has indicated but he believes that the Commission member would need to recuse themselves from the vote at that time.

Ms. McConnochie said she is also an education director not only in Alaska but also the lower 48 and other countries.

Ms. McConnochie asked if there was any interest for those who do education to recuse themselves from the discussion on the designated education?

148 No comments were heard.

149

150

151 **Agenda Item 2 – Public Comments**

152 Ms. Harris read into the record an email received from licensee Hugh Wade  
153 regarding continuing education.

154

155 Sharon,

156

157 I'm a big believer in ongoing professional education and I also think that the  
158 mandatory courses are unnecessary in a lot of ways and for a lot of reasons.

159

160 Basically, I don't learn a lot and feel like, after 13 or so years in the business with  
161 no real complaints, I know what a contract is, what is legal and isn't, and how to  
162 conduct real estate business in an ethical, efficient way that adds value for my  
163 clients.

164

165 Taking those required classes could be replaced with taking more substantial  
166 classes, if allowed.

167

168 If a person wanted to try and get it so that, say, after 10 years as a real estate  
169 practitioner, if a broker had no complaints, and the mandatory classes could be  
170 waived as long as the broker took elective classes from any of a number of quality  
171 organizations (NAR, CCIM, IREM, NAIOP, etc.), how would you advise I raise this  
172 issue with the Commission? What would be the most likely route to getting it  
173 approved? Any advice you have would be great, and would be great to discuss on  
174 the phone, no need for a formal written response.

175

176 Hugh

177

178 Hugh J. Wade, CCIM  
179 Spire Commercial

180

181 There were no other public comments.

182

183

184 **Agenda Item 3 – Division Update**

185 Sara Chambers, Director of the Division of Corporations, Business and  
186 Professional License provided Board member training to the Commission  
187 members.

188

189 Break at 12:50 p.m.

190 Reconvened at 1:00 p.m.

191

192 Ms. Chambers presented Right Touch Regulation training to the Commission  
193 members.

194

195



196 **Agenda Item 4 - Approval of Meeting Minutes**

197 May 23, 2019 meeting minutes.

198  
199  
200 **On a motion duly made by Ms. Nelson seconded by Mr. Royse, it was,**

201  
202 **RESOLVED to approve the May 23, 2019 meeting minutes.**

203  
204 Ms. Nelson had some corrections. On page one under Roll Call it indicates Ms.  
205 Nelson attended the meeting via teleconferenced but she attended in person, page  
206 3, Ms. Harp's group meets once a week not month, page 11- there is a question  
207 from Mr. Pruhs regarding teams that needs to be addressed at the next meeting,  
208 Page 12 there is confusion of which Commission members were reviewing, it was  
209 Ms. Nelson and Mr. Pruhs looking at Property Management regulations and Ms.  
210 Nelson and Mr. Royse looking at Consumer Disclosure and Waiver of Right to be  
211 Represented and Ms. Nelson and Mr. Pruhs will be looking at the Property  
212 Transfer form for the December meeting.

213  
214 Mr. Royse had a few changes. Page 6, there was a motion on who was working on  
215 disclosure, line 246, motion for Ms. Nelson and Mr. Royse to work on Disclosure  
216 and AREC form, and page 11, line 487- it is a 2 day train the trainer not a 3 day.

217  
218  
219 All in favor. Motion passed.

220  
221  
222 July 24, 2019 teleconference meeting minutes

223  
224 **On a motion duly made by Mr. Royse, seconded by Ms. Markwood, it**  
225 **was,**

226  
227 **RESOLVED to approve the July 24, 2019 meeting minutes.**

228  
229 Ms. Matthews asked that the meeting date be confirmed if it was either July  
230 24, 2019 or July 25, 2019 per the agenda. The meeting was on July 24,  
231 2019.

232  
233 **All in favor. Motion passed.**

234  
235  
236 **Agenda Item 5 – Investigative Report**

237 Statistical Report – 5(a)

238 REC Investigator, Shyla Consalo, presented the investigation statistics for the  
239 reporting period of 05/09/19 through 09/09/19. There are 34 opened matters, 37  
240 matters were closed from the last report. A total of 19 matters remain open and  
241 ongoing or under active investigation or pending litigation. At this present time  
242 there in only one case pending litigation.

243

244 Probation Report – 5(c)

245 Investigator, Shyla Consalo, presented the probation report to the Commission on  
246 the behalf of Ms. Medina. Ms. Consalo stated that there six individuals currently on  
247 probation being monitored. Two individuals were released from probation. All are in  
248 compliance with their agreements except Mr. Sheldon and Ms. Collison. Mr.  
249 Sheldon did complete his CE hours and is on track to be released from probation  
250 on his probation release date next November. Ms. Collison was offered a license  
251 surrender, which she is considering. Her probation was on hold because her  
252 license lapsed.

253

254 Investigative Process -Clarification & Questions – 5(a)

255 Ms. Consalo gave the Commission a quick review of the investigative process.

256

257 Commission members directed questions to Ms. Consalo regarding that process.

258

259 Agenda Item 6 – Old Business

260 Changes to AREC Consumer Disclosure & Waiver of Rights form-6(a)

261 Mr. Royse said he has secret information from people of what they thought about  
262 of the new draft form and asked the Commission what they wanted him to do with  
263 it?

264

265 **On a motion duly made by Mr. Royse, seconded by Mr. Pruhs, it was,**

266

267 **RESOLVED to postpone discussion of the current draft form,**  
268 **AREC Consumer Disclosure and Waiver of Right to be**  
269 **Represented until the December meeting.**

270

271 **All opposed. Motion failed.**

272

273

274

275 **On a motion duly made by Mr. Royse, seconded by Mr. Pruhs, it was,**

276

277 **RESOLVED to distribute, to the Commission, the 2 pages of**  
278 **feedback Mr. Royse received from the industry answering the**  
279 **question “How do you like the new form?” (new draft form of the**  
280 **AREC Consumer Disclosure and Waiver of Right to be**  
281 **Represented).**

282

283 **All in favor. Motion passed.**

284

285

286 Commission members discussed the Consumer Disclosure and Waiver of Right to  
287 be Represented.

288

289

290 **On a motion duly made by Mr. Pruhs, seconded by Mr. Royse, it was,**

291

292                   **RESOLVED to put the draft forms of the Consumer Disclosure**  
293                   **and Wavier of Right to be Represented as presented by Ms.**  
294                   **Nelson and Mr. Royse out for public comment.**  
295

296  
297 Ms. Chambers spoke to the Commission about a Scoping Notice that is a  
298 preliminary notice, similar to a regulation project, to get comments and feedback  
299 from the public and then look at those comments and put out a regulation project.  
300

301  
302                   **On a motion duly made by Mr. Pruhs, seconded by Mr. Royse, it was,**  
303

304                   **RESOLVED to amend the previous motion to put forms out as a**  
305                   **scoping project to be processed for 30 days for written and oral**  
306                   **comments.**  
307

308                   **All in favor. Motion passed.**  
309

310  
311 Commission members voted on the original motion.  
312

313                   **All in favor. Motion passed.**  
314

315  
316 Property Management revised regulations-6(b)  
317 Ms. Nelson said she did not have anything at this time regarding property  
318 management regulations. She said that as a committee they did have a really  
319 good session with the investigator with help from a licensee that practices property  
320 management to clarify some of the problems regarding security deposits. One of  
321 the things that came out of this discussion was that security deposit issues are not  
322 necessarily just contractual but there can also be violations of statutes and  
323 regulations on how trust accounts are handled.  
324

325 Ms. Nelson asked that Ms. Markwood, and her role as a property manager, to join  
326 this committee and perhaps have a public work session to look at the property  
327 management regulations.  
328

329 The Chair asked Ms. Nelson, Mr. Pruhs and Ms. Markwood to work on the property  
330 management regulation revisions as a public work session and bring back to the  
331 next meeting in December.  
332

333 The Commission members were in agreement.  
334

335 The property management meeting will be public noticed and Ms. Nelson will work  
336 with Ms. Harris to get that noticed.  
337

338 Proposed Regulations-6(c)  
339

340           **On a motion duly made by Ms. Nelson, seconded by Mr. Pruhs, it was,**  
341  
342                   **RESOLVED to divide the question starting with Errors and**  
343                   **Omissions Insurance regulations being one set and the**  
344                   **regulations regarding course certification being the second set.**

345  
346           **All in favor; Motion passed.**  
347

348   12 AAC 64.02.530- Standards of Equivalent Coverage  
349

350           **On a motion duly made by Mr. Royse, seconded by Ms. Markwood, it**  
351           **was,**

352  
353                   **RESOLVED to recommend the Department adopt regulation 12**  
354                   **AAC 02.530 as proposed.**

355  
356           **All in favor; Motion passed.**  
357

358  
359   12 AAC 64.420 – Application for Course Certification  
360

361           **On a motion duly made by Mr. Pruhs, seconded by Mr. Sumner, it was,**

362  
363                   **RESOLVED to adopt regulation 12 AAC 64.420 as proposed.**

364  
365           **All opposed; Motion failed.**  
366

367  
368   12 AAC 64.440 – Instructor Approval  
369

370           **On a motion duly made by Mr. Royse, seconded by Mr. Pruhs, it was,**

371  
372                   **RESOLVED to adopt regulation 12 AAC 64.440 as proposed.**

373  
374           **All opposed; Motion failed.**  
375

376  
377   12 AAC 64.460 – Withdrawal or Denial of Instructor Approval  
378

379           **On a motion duly made by Mr. Royse, seconded by Ms. Markwood, it**  
380           **was,**

381  
382                   **RESOLVED to adopt regulation 12 AAC 64.460 as proposed.**

383  
384           **All opposed; Motion failed.**  
385

386  
387   12 AAC 02.360- Real Estate Commission - Fees

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**On a motion duly made by Mr. Royse, seconded by Ms. Markwood, it was,**

**RESOLVED to recommend the Department adopt regulation 12 AAC 02.360 as proposed.**

**All in favor; Motion passed.**

12 AAC 64.073 – Recovery Fund Fee

**On a motion duly made by Mr. Royse, seconded by Ms. Nelson, it was,**

**RESOLVED to adopt regulation 12 AAC 64.073 as proposed.**

**All in favor. Motion passed.**

3:38 p.m. Commission members recessed for break

3:48 p.m. Commission members reconvened

**Agenda Item 7 – New Business**

**Recovery Fund Claims – Owens and Ostendorf – 7(a)**

**On a motion duly made by Ms. Nelson, seconded by Mr. Royse, it was,**

**RESOLVED with the provision of AS 44.62.310(c) to go into executive session for the purpose of discussing matters which by law, municipal charter or ordinance are required to be confidential.**

**All in favor. Motion passed.**

In executive session at 3:50 pm

**On a motion duly made by Mr. Royse, seconded by Ms. Matthews, it was,**

**RESOLVED to come out of executive session.**

**All in favor; Motion passed.**

Out of executive session at 3:59 p.m.

436           **On a motion duly made by Ms. Nelson, seconded by Mr. Pruhs, it was,**  
437  
438                   **RESOLVED that the Real Estate Commission pay out of the**  
439                   **recovery fund the claims before us, to Laura Owens and Todd**  
440                   **Ostendorf the amount of \$12,400 each.**

441  
442           **All in favor. Motion passed.**

443  
444  
445           DCE Survey Results/presentation/select DCE topics/hours for 2020-2022 – 7(b)  
446           Commission members discussed the results of the DCE survey and DCE topics for  
447           2020-2022.

448  
449  
450           **On a motion duly made by Mr. Royse, seconded by Ms. Nelson, it was,**  
451  
452                   **RESOLVED to have 4 - 2 hour courses; 2 hours - Broker**  
453                   **Supervision/Management, 2 hours - Ethics, 2 hours - Prohibited**  
454                   **Conduct and 2 hours - Advertising and Social Media.**

455  
456           **All in favor. Motion passed.**

457  
458  
459           Online Application – Salesperson by Exam – outreach – 7(c)  
460           Ms. Harris spoke about the Salesperson by Exam online application that is now  
461           available. She said she is aware that applicants are required to mail in the Notary  
462           Signature Page is problematic and will work on the revision of the regulation with  
463           the Commission to make that change.

464  
465           E & O -RISC Report – 7(d)  
466           Ms. Harris presented the E & O RISC Report to the Commission. The report  
467           provided was for the Second Quarter 2019 and Fourth Quarter 2019. She said this  
468           is the first report because before there were no claims. There is currently one  
469           claim.

470  
471           Clean up Regulations – 7(e)  
472           Mr. Royse presented regulations 12 AAC 64.059(d)(1)(B) and (d)(5) that need to  
473           be cleaned up.

474  
475           Ms. Markwood recommended looking at the clean-up regulations Mr. Royse  
476           presented when the Commission reviews the real estate regulations for their  
477           effectiveness as a group as mandated by the Governor.

478  
479           The Commission agreed to go through/work on the regulation workbook  
480           individually and review the real estate regulations. Then have a 2-hour publicly  
481           noticed ZOOM work session in February 2020, prior to first meeting of the year,  
482           and review and discuss the real estate regulations as a group with a possible  
483           second meeting.

484

485 Fine Matrix – 7(f)

486 Mr. Royse spoke to the Commission regarding the Fine Matrix adopted by the  
487 Commission February 26, 2010. He said he would like to revisit it.

488

489 **On a motion duly made by Ms. Markwood, seconded by Ms. Nelson, it**  
490 **was,**

491

492 **RESOLVED to postponed discussion on the Fine Matrix until the**  
493 **December meeting.**

494

495 **All in favor. Motion passed.**

496

497

498 Conversation of December meeting date – 7(g)

499

500 **On a motion duly made by Mr. Royse, seconded by Ms. Nelson, it was,**

501

502 **RESOLVED to move the December 11, 2019 meeting to**  
503 **December 18, 2019.**

504

505 **All in favor. Motion passed.**

506

507

508 **Agenda Item 8 – Executive Administrator’s Report**

509 Licensing and Education Report – 8(a)

510 The Commission reviewed the Licensing and Education Report as presented.  
511 There were no comments or questions.

512

513 Status of processing applications

514 Ms. Harris stated that Ms. Nelson had a question regarding the status of  
515 processing of applications.

516

517 Ms. Nelson said Ms. Chambers’ presentation answered her question with the  
518 standards that are in place with the Division and that is what she was looking for.

519

520 Recovery Fund Balance Report – 8(b)

521 The Commission reviewed the Recovery Fund Balance Report as presented.

522

523 Mr. Royse stated he had an observation that the Commission should be putting the  
524 budget items for personnel where they belong in the cost of running the  
525 Commission and not hiding it in the Recovery Fund.

526

527 ARELLO Conference Report – 8(c)

528 Ms. Harris gave her ARELLO conference report to the Commission. She said  
529 some of the highlights were: there is a national regulation reform movement, virtual  
530 offices-a lot of jurisdictions are reducing requirements for a brick or mortar  
531 requirement, and advertising of teams is a big issue. She said it was a great

532 conference and she appreciates the opportunity to attend. She also said that there  
533 is also a Commissioner College that looked very interesting if one the  
534 Commissioners would like to attend.

535  
536

537 **Agenda Item 9 – Discuss and Adopt Job Descriptions for Vice-Chair and**  
538 **Education Liaison**

539 **Job Description for Chair provided**

540 The Commission members reviewed the job descriptions recommended for the  
541 Chair, Vice Chair and Education Liaison.

542

543 **Vice-Chair and Education Liaison job descriptions for discussion and adoption**

544 Mr. Royse stated some ideals for Education Liaison job description.

545

546 Ms. Nelson asked what the Chair what her intention were for the job descriptions,  
547 for general knowledge or are we going to vote.

548

549 The Chair stated her intention is to discuss and adopt job descriptions or if there  
550 are any changes to the job descriptions now is the time to do that.

551

552 Ms. Nelson said that on page 38 of the Board and Commission Board Training  
553 guide there is already a description for Chair.

554

555 **Role of the Chair in Board and Commission Meetings**

556 Board and commission members, staff, and the public look to the chairperson to  
557 provide leadership during the meeting. The chair should understand the issues  
558 before the board or commission, know and understand the philosophies of the  
559 fellow members of the board or commission, and be able to bring the board or  
560 commission to decisions on difficult or complicated issues. The chairperson should  
561 be able to do all of the following effectively:

562

563 **Run a Meeting:** The chair is responsible for running an orderly meeting and  
564 conducting public business in a fair and timely manner. Everyone looks to the  
565 chairperson for leadership. The chair grants or denies members, staff, and the  
566 public the floor to speak.

567

568 **Maintain Order:** The chairperson should not allow cheering, hissing, booing, or  
569 other demonstrations from the audience. Nor should he or she permit board or  
570 commission members to become rude, confrontational, or argumentative with one  
571 another or the audience. Members should not cut off one another or staff when  
572 they are speaking, nor monopolize the floor when granted by the chair.

573

574 **Keep Business Moving:** It is the chairperson's job to keep business moving by  
575 bringing matters to a vote.

576

577 **Manage Public Testimony:** By using a sign-up list, the chairperson will know who  
578 wants to speak on items before the board or commission. If a large number of  
579 people wish to speak to the chairperson should set a time limit per speaker



580 (usually three minutes). Rambling, irrelevant testimony should be discouraged, as  
581 should commentary from the public during board deliberation of an issue.

582

583 **Maintain Relevance:** Discussion between board or commission members and  
584 members of the public who are testifying should be limited to fact gathering that  
585 helps the board or commission make informed decisions.

586

587 **Use Parliamentary Procedure:** The chairperson needs to know enough  
588 parliamentary procedure to run the meeting. Someone else may serve as the  
589 parliamentarian, but the chairperson must have a working knowledge of  
590 parliamentary procedure.

591

592 **Tie Things Together:** The chairperson should have the ability to take into account  
593 public testimony, board or commission deliberations, and an understanding of the  
594 issues at hand when guiding the board or commission toward a decision.

595

596 **Implement Approved Actions:** The chairperson should have the ability to create  
597 an action plan and follow through with staff or other entities on the actions decided  
598 at the meeting.

599

600 **Uphold the Law:** The chairperson should guide the board to prevent decisions  
601 that are contrary to law or legal advice. The chairperson should minimize the  
602 board's exposure to legal risk and seek its attorney's advice through staff as the  
603 need becomes apparent, checking the agenda to schedule the attorney's presence  
604 or tabling votes until the next meeting if needed. The chairperson may recess the  
605 meeting for a few minutes to confer with the board executive or division  
606 management regarding securing an attorney during a board meeting.

607

608

609 **On a motion duly made by Mr. Royse, seconded by Mr. Pruhs, it was,**

610

611 **RESOLVED to establish an education committee to address**  
612 **curriculum for broker and salesperson pre and post licensing**  
613 **education.**

614

615 **All in favor. Motion passed.**

616

617

618 **On a motion duly made by Ms. Nelson, seconded by Mr. Pruhs, it was,**

619

620 **RESOLVED that the position descriptions be approved.**

621

622

623 **On a motion duly made by Ms. Nelson, seconded by Ms. Markwood, it**  
624 **was,**

625

626                   **RESOLVED that the role of the Chair position description be the**  
627                   **one as outlined on page 38 of the State Board and Commission**  
628                   **Member Guide.**

629  
630                   **All in favor. Motion passed.**

631  
632  
633                   Commission members voted on the original motion to approve the position  
634                   descriptions.

635  
636                   **All in favor. Motion passed.**

637  
638  
639                   **Agenda Item 10 – Elections for Vice Chairman & Educational Liaison**  
640                   **Election of Education Liaison**

641  
642                   **On a motion duly made by Ms. Markwood, seconded by Ms. Matthews,**  
643                   **it was,**

644  
645                   **RESOLVED to nominate Mr. Royse as Education Liaison.**

646  
647                   **All in favor. Motion passed.**

648  
649  
650                   **Election of Vice-Chair**

651  
652                   **On a motion duly made by Mr. Royse, seconded by Ms. Markwood, it**  
653                   **was,**

654  
655                   **RESOLVED to nominate Ms. Nelson as Vice-Chair.**

656  
657                   **All in favor. Motion passed.**

658  
659  
660                   **Agenda Item 11 – Commission Members Comments**

661                   Ms. Markwood said this meeting was very productive. She said she was very  
662                   concerned that the Commission was not going to get through the agenda. She  
663                   said she was very happy to see that the Commission was able to address all  
664                   issues. The training provided by Director Chambers was very informative. She is  
665                   looking forward to working with everyone in the work session in regards to the  
666                   regulation review. She said there is an undertone in this Commission. She knows  
667                   the Commission is still new and she is getting used to how everything works. She  
668                   appreciates the ability to work closely with all members and have good  
669                   communications skills and get along as we work through this because we are here  
670                   to represent the public. She said she sees the position as a real estate commission  
671                   member as an honorable position and she wants to do the very best that she can  
672                   and she respects everyone who has been appointed in these positions. She wants  
673                   the Commission to remember that they are here for the public and the Governor.

674

675 Mr. Pruhs stated that Ms. Chambers said the Commission should look their goals  
676 strategically and that is what he is trying to do. He said with property management  
677 he believes a lot of the issues are with education. Can we have a property  
678 management endorsement on the license from our education hours we already  
679 require? Two years down the road think about our licensing education criteria.  
680 Think about having a licensing endorsement if you practice property management.  
681 If you want to be a broker for property management, the broker and the licensee  
682 who is signing contracts should have a property management endorsement. Also,  
683 in education, should we have specific hours for a broker and associate broker?  
684 What education must a broker/associate broker have? His final thought was to  
685 have one of the Commission meetings meet in Juneau. He said the Commission  
686 has issues that come up and we should be talking to the legislators. Have the one  
687 in person meeting in Juneau.

688

689 Mr. Royse said that many years ago the Commission meeting coincided with the  
690 Realtor convention and met in Juneau and he said there is a value in that. He also  
691 spoke about 18 years ago the Commission considered endorsing different areas of  
692 specialization but it came down to restriction of trade. He said the Commission  
693 needs to do a better job with brokers. We need to get some team training. Another  
694 thing the Commission should be doing relative to some of the other problems, like  
695 property management, would be to do white papers and best practices in these  
696 areas. There could be a tool to get that information out there. Mr. Royse said  
697 another outreach would be to do some best practices in terms of correcting some  
698 of these mistakes that are out there. Another issue that the Commission should be  
699 looking into in unlicensed activity. Zillow and out of state entities are coming into  
700 the state and misrepresenting what they do and we do not do a great job in this  
701 area for consumer protection. Also, someone should attend those get rich  
702 seminars that are giving wrong information and start looking at unlicensed activity  
703 because of the nature of the way this industry is evolving. Everything to remote  
704 brokerages and start addressing what the issues are and some of this out of state  
705 intrusion of licensed entities. He said all consumers lose and we should look at this  
706 for next year.

707

708 Ms. Matthews wanted to thank Director Chambers on the excellent training and the  
709 very good feedback. She also wanted to thank staff as well. She said as a public  
710 member it is really nice to receive all the background that was provided and the  
711 availability to ask questions, she really appreciates it. She said the Commission is  
712 very fortunate to have staff as well as Shyla. Shyla has made great progress on  
713 the claims and seeing that consistency is definitely good. She said thank you and  
714 she looks forward to diving into the regulations.

715

716 Ms. Nelson said one of the key things the Commission said they were going to do  
717 this cycle was teams. She wanted to remind staff to give the Commission a  
718 number of the current teams that Mr. Pruhs has asked for from the last meeting,  
719 not that you have any numbers but to give what you have. She said at some point  
720 the Commission will have to address the E & O Insurance issue. She said there  
721 were a number of non-realtors, despite the realtors being in favor, that were not in

722 favor of E & O. She thinks the numbers are really showing that it is not a good use  
723 of money. Maybe there will be a burst of claims that are going out but spending  
724 close to \$8,000 of money going out of state and we are only paying \$2,000 out in  
725 claims? That company is doing well. We could use that money for education or to  
726 reimburse the recovery fund. She said that Nancy needs more support from a  
727 Committee, specifically for communication, which was not covered at this meeting.  
728 She also encouraged the Commission to support and push for digital notary which  
729 will make a big difference for the real estate industry and thanked the Commission  
730 for a great meeting.

731

732 Mr. Sumner also wanted to thank Ms. Chambers for the training today. He said he  
733 also looks forward to reviewing the regulations in 2020.

734

735 Ms. Chambers made the Commission members aware of the regulation  
736 questionnaire that is required to be completed by Commission members when  
737 there is a proposed regulation so we can provide this to the public. Ms. Chambers  
738 thanked the Commission members for their time and if they have any questions  
739 regarding their responsibilities or staff's responsibilities, just send her an email any  
740 time.

741

742 Ms. McConnochie thanked Ms. Walsh, and Ms. Harris for their hard work. She also  
743 thanked Ms. Chambers for the huge amount of time she took out of her schedule  
744 to give the Commission training. She said she believed that it was important to  
745 receive the information from Ms. Chambers on how the Commission should work.  
746 She stated that the Commission needs to figure out a way to work together. She is  
747 not the enemy. She said we need to relax a little but also understand we are here  
748 for 2 major purposes. One, to protect the public and two, to give good information  
749 to licensees so they can make good decisions with correct information. She would  
750 like the next meeting to work a bit smoother and looks forward to seeing everybody  
751 on December 18, 2019.

752

753

754 **On a motion duly made by Mr. Pruhs, seconded by Mr. Royse, it was,**

755

756 **RESOLVED to adjourn.**

757

758 **All in favor. Motion passed.**

759

760

761 Meeting adjourned at 4:51 p.m.

762

763 The next meeting will be held December 18, 2019 in Anchorage.

764

765

766

Prepared and submitted by:  
Real Estate Commission Staff

767

768

769

Approved:

770  
771  
772  
773  
774  
775

---

REC Chairperson  
Alaska Real Estate Commission

Date: \_\_\_\_\_

DRAFT

# Committee Reports

# Property Management Committee

# Education Committee



# Old Business



# ALASKA REAL ESTATE COMMISSION CONSUMER DISCLOSURE

This Consumer Disclosure, as required by law, provides you with an outline of the duties of a real estate licensee (licensee). This document is not a contract. By signing this document you are simply acknowledging that you have read the information herein provided and understand the relationship between you, as a consumer, and a licensee. (AS 08.88.600 – 08.88.695)

There are different types of relationships between a consumer and a licensee. Following is a list of such relationships created by law:

## Specific Assistance

The licensee does not represent you. Rather the licensee is simply responding to your request for information. And, the licensee may "represent" another party in the transaction while providing you with specific assistance.

***Unless you and the licensee agree otherwise, information you provide the licensee is not confidential.***

Duties **owed** to a consumer by a licensee providing specific assistance include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property; and
- e. Timely accounting of all money and property received by a licensee.

## Representation

The licensee represents only one consumer unless otherwise agreed to in writing by all consumers in a transaction.

Duties **owed** by a licensee when representing a consumer include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally take actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to a consumer;
- d. Advising a consumer to seek independent expert advice if a matter is outside the expertise of a licensee;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Making a good faith and continuous effort to accomplish a consumer's real estate objective(s).

## Neutral Licensee

A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction but does not "represent" either consumer. A neutral licensee must, prior to providing specific assistance to such consumers, secure a Waiver of Right to be Represented (form 08-4212) signed by both consumers.

Duties **owed** by a neutral licensee include:

- a. Duties owed by a licensee providing specific assistance as described above;
- b. Not intentionally taking actions which are adverse or detrimental to a consumer;
- c. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- d. If a matter is outside the expertise of a licensee, advise a consumer to seek independent expert advice;
- e. Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- f. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property if different than what a consumer has offered or accepted for a property.

If authorized by the consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist consumers in reaching an agreement.

## Designated Licensee

In a real estate company, a broker may designate one licensee to represent or provide specific assistance to a consumer and another licensee in the same office to represent or provide specific assistance to another consumer in the same transaction.

**ACKNOWLEDGEMENT:**

I/We, \_\_\_\_\_ have read the information provided in this Alaska Real Estate  
*(print consumer's name(s))*  
Consumer Disclosure and understand the different types of relationships I/we may have with a real estate licensee. I/We  
understand that \_\_\_\_\_ of \_\_\_\_\_  
*(licensee name)* *(brokerage name)*  
will be working with me/us under the relationship(s) selected below.

**(Initial)**

- \_\_\_\_\_ **Specific assistance without representation.**
- \_\_\_\_\_ **Representing the Seller/Lessor only.** (may provide specific assistance to Buyer/Lessee)
- \_\_\_\_\_ **Representing the Buyer/Lessee only.** (may provide specific assistance to Seller/Lessor)
- \_\_\_\_\_ **Neutral Licensee.** (must attach Waiver of Right to be Represented, form 08-4212)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Licensee)*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Consumer)*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
*(Consumer)*

**THIS CONSUMER DISCLOSURE IS NOT A CONTRACT**



# ALASKA REAL ESTATE COMMISSION WAIVER OF RIGHT TO BE REPRESENTED

About This Form:

Occasionally, a licensee is "representing" a consumer (buyer or lessee) that has interest in acquiring a property where another consumer (seller or lessor) is also "represented" by the same licensee. Prior to showing the property, the licensee must obtain written approval from both consumers to change their working relationship from representation to providing specific assistance in a neutral capacity. AS 08.88.610

In Alaska, real estate licensees are **required by law** to provide this document, prior to providing specific assistance to the parties, in conjunction with the Alaska Real Estate Consumer Disclosure (form 08-4145), outlining the duties of a real estate licensee when acting in a neutral capacity.

Duties of a Neutral Licensee: A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction.

Duties **owed** by a neutral licensee include:

- a. Exercise of reasonable skill and care;
- b. Honest and good faith dealing;
- c. Timely presentation of all written communications;
- d. Disclosing all material information known by a licensee regarding the physical condition of a property;
- e. Timely accounting of all money and property received by a licensee;
- f. Not intentionally taking actions which are adverse or detrimental to a consumer;
- g. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- h. Advising a consumer to seek independent expert counsel if a matter is outside the expertise of a licensee;
- i. Not disclosing consumer confidential information during or after representation without the written consent of the consumer unless required by law; and
- j. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property.

\_\_\_\_\_ Date \_\_\_\_\_ Date

Real Estate Licensee \_\_\_\_\_ Date Real Estate Company \_\_\_\_\_

If authorized by consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist them in reaching an agreement.

Additional Authorization:

I hereby authorize the "neutral" licensee to engage in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:

- Analyzing, providing information, and reporting on the merits of the transaction to each consumer;
- Discussing the price, terms, or conditions that each consumer would or should offer or accept; or
- Suggesting compromises in the consumer's respective bargaining positions.

\_\_\_\_\_ Date \_\_\_\_\_ Date



# THIS IS NOT A CONTRACT

## ALASKA REAL ESTATE COMMISSION

### CONSUMER DISCLOSURE

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#### Specific Assistance

The licensee does not represent you. Rather the licensee is simply responding to your request for information. And, the licensee may "represent" another party in the transaction while providing you with specific assistance.

**Unless you and the licensee agree otherwise, information you provide the licensee is not confidential**

Duties **owed** to a consumer by a licensee providing specific assistance include:

- Exercise of reasonable skill and care;
- Honest and good faith dealing;
- Timely presentation of all written communications;
- Disclosing all material information known by a licensee regarding the physical condition of a property; and
- Timely accounting of all money and property received by a licensee.

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#### Representation

The licensee represents only one consumer unless otherwise agreed to by all consumers in a transaction.

Duties **owed** by a licensee when representing a consumer include:

- Duties owed by a licensee providing specific assistance as described above;
- Not intentionally take actions which are adverse or detrimental to a consumer;
- Timely disclosure of conflicts of interest to a consumer;
- Advising a consumer to seek independent expert advice if a matter is outside the expertise of a licensee;
- Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- Making a good faith and continuous effort to accomplish a consumer's real estate objective(s).

#### Neutral Licensee

A neutral licensee is a licensee that provides specific assistance to both consumers in a real estate transaction but does not "represent" either consumer. A neutral licensee must, prior to providing specific assistance to such consumers, secure a Waiver of Right to be Represented (form 08-4212) signed by both consumers.

Duties **owed** by a neutral licensee include:

- Duties owed by a licensee providing specific assistance as described above;
- Not intentionally taking actions which are adverse or detrimental to a consumer;
- Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
- If a matter is outside the expertise of a licensee, advise a consumer to seek independent expert advice;
- Not disclosing consumer confidential information during or after representation without written consent of the consumer unless required by law; and
- Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property if different than what a consumer has offered or accepted for a property.

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If authorized by the consumers, the neutral licensee may analyze and provide information on the merits of a property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest compromise solutions to assist consumers in reaching an agreement.

#### Designated Licensee

In a real estate company, a broker may designate one licensee to represent or provide specific assistance to a consumer and another licensee in the same office to represent or provide specific assistance to another consumer in the same transaction.

#### ACKNOWLEDGEMENT:

I/We, \_\_\_\_\_ have read the information provided in this Alaska Real Estate  
(print consumer's name(s))

Consumer Disclosure and understand the different types of relationships I/we may have with a real estate licensee.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Consumer) (Consumer)

Form Provided by: \_\_\_\_\_ Brokerage \_\_\_\_\_ Licensee \_\_\_\_\_



# ALASKA REAL ESTATE COMMISSION WAIVER OF RIGHT TO BE REPRESENTED

### About This Form:

Occasionally, a licensee is "representing" a consumer (buyer or lessee) that has an interest in acquiring a property where another consumer (seller or lessor) is also "represented" by the same licensee. By statute, when this occurs the consumer must agree to allow the licensee to act in a "Neutral" capacity and sign a Waiver of Right to be Represented as outlined below, or the Licensee may reduce the level of service provided to the consumer to Specific Assistance as detailed below.

In Alaska, real estate licensees are required by law to provide this document and obtain your signature acknowledging your receipt and consent, prior to providing specific assistance, in conjunction with the Alaska Real Estate Consumer Disclosure (form 08-4145), outlining the duties of a real estate licensee when acting in a Neutral Licensee capacity.

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### Duties of Specific Assistance

1. Exercise of reasonable skill and care;
2. Honest and good faith dealing;
3. Timely presentation of all written communications;
4. Disclosing all material information known by a licensee regarding the physical condition of a property;
5. Timely accounting of all money and property received by a licensee;

### Additional Duties owed when offering Representation or by a Neutral Licensee include:

1. Not intentionally taking actions which are adverse or detrimental to a consumer;
2. Timely disclosure of conflicts of interest to both consumers for whom the licensee is providing specific assistance;
3. Advising a consumer to seek independent expert counsel if a matter is outside the expertise of a licensee;
4. Not disclosing consumer confidential information during or after representation without the written consent of the consumer unless required by law; and
5. Not disclosing the terms or the amount of money a consumer is willing to pay or accept for a property if different than what the consumer has offered or accepted for a property.

## Waiver of Right to be Represented

### Releases the Licensee from the statutory requirement to offer the following Duties:

1. Making a good faith and continuous effort to accomplish a consumer's real estate objective(s)

_____	Date	_____	Date
_____	Date	_____	Date
<b>Real Estate Licensee</b>	<b>Date</b>	<b>Real Estate Company</b>	<b>Date</b>

If authorized by consumers, the neutral licensee may analyze and provide information regarding the property or transaction, discuss price terms and conditions that might be offered or accepted, and suggest ways to assist them in reaching an agreement.

### Additional Authorization:

I hereby authorize the "neutral" licensee to engage in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:

- Analyzing, providing information and reporting on the merits of the transaction to each consumer;
- Discussing the price, terms, or conditions that each consumer would or should offer or accept; or
- Suggesting compromises in the consumer's respective bargaining positions.

_____	Date	_____	Date
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**12 AAC 64.059. REVIEW OF LICENSE APPLICATIONS.** (a) An applicant who meets the requirements on the relevant checklist set out in this section has demonstrated the necessary qualifications for the license applied for. An applicant who does not meet the requirements on that checklist or whose responses on the form for application do not clearly show that the applicant is qualified to receive a license will not be issued a license unless the commission further reviews the application and determines that the applicant meets the qualifications in AS 08.88 and this chapter for that license.

(b) The following checklist is established by the commission for review of an application for a salesperson license; a salesperson license will be issued to an applicant who

(1) submits a completed form for application under this chapter, including

(A) the applicant's name, mailing address, and telephone number;

(B) the applicant's date of birth that shows the applicant is at least 19 years old;

(C) the applicant's employing broker's name, current and active license number, business name, telephone number, mailing address, and signature;

(D) "no" answers to all questions on the form dealing with felony indictments or convictions and license actions; and

**(E) the applicant's notarized signature certifying that the information on the form is true and correct to the best of the applicant's knowledge;**

(2) has passed the examination for real estate salespersons;

(3) files the completed form for application with the division within six months of passing the examination for real estate salespersons as calculated under 12 AAC 64.060(e);

(4) submits a preclicensing education certificate or a transcript from a college or university registrar verifying 40 hours of preclicensing education approved by the commission;

(5) pays the application and initial license fees established in 12 AAC 02.360; and

(6) pays the recovery fund fee established in 12 AAC 64.073.

(c) The following checklist is established by the commission for reviewing an application for a salesperson license by endorsement; a salesperson license by endorsement will be issued to an applicant who

(1) meets the requirements in (b)(1), (b)(5), and (b)(6) of this section;

(2) has passed the state law portion of the examination for real estate salespersons;

(3) files the completed form for application with the division within six months of passing the state law portion of the examination for real estate salespersons as calculated under 12 AAC 64.060(e);

(4) provides a license history from the licensing authorities in all other states in which the applicant holds a real estate license that shows the applicant meets the requirements in 12 AAC 64.061(c) for a valid and active license;

(5) submits documentation that the applicant met education requirements that covered the topics and hours listed in 12 AAC 64.063(c)(1) - (c)(6) and (c)(8) to obtain a license in another jurisdiction; and

(6) submits evidence of completing six contact hours of course work on Alaska real estate license law as required in 12 AAC 64.063(c)(7).

(d) The following checklist is established by the commission for reviewing an application for an associate broker license; an associate broker license will be issued to an applicant who

(1) submits a completed form for application, including

(A) the applicant's name, mailing address, and telephone number;

(B) the applicant's date of birth that shows the applicant is at least 21 years old;

(C) the applicant's employing broker's name, current and active license number, business name, telephone number, mailing address, and signature;

(D) "no" answers to all questions on the form dealing with felony indictments or convictions and license actions; and

**(E) the applicant's notarized signature certifying that the information on the form is true and correct to the best of the applicant's knowledge;**

(2) has passed the examination for real estate brokers;

(3) files the completed application with the division within six months of passing the real estate broker examination as calculated under 12 AAC 64.060(e);

(4) submits a broker training education certificate or a transcript from a college or university registrar verifying 30 hours of broker training education approved by the commission;

(5) submits a statement, signed by the brokers who employed the applicant, verifying that the applicant has at least 24 months of active and continuous experience as a real estate licensee within the 36 months before the date of application for an associate broker license; and

(6) pays the transfer of license fee established in 12 AAC 02.360.



- (e) The following checklist is established by the commission for review of an application for a broker license; a broker license will be issued to an applicant who
- (1) meets the requirements of (d)(1) - (d)(5) of this section or is currently licensed in the state as an associate broker;
  - (2) submits a completed office registration form that includes the information required in 12 AAC 64.110(e); and
  - (3) pays the office registration fee and transfer of license fee established in 12 AAC 02.360.
- (f) The following checklist is established by the commission for review of an application for an associate broker license by endorsement. An associate broker license by endorsement will be issued to an applicant who
- (1) meets the requirements in (d)(1) of this section;
  - (2) has passed the state law portion of the examination for real estate brokers;
  - (3) files the completed form for application with the division within six months of passing the state law portion of the examination for real estate brokers as calculated under 12 AAC 64.060(e);
  - (4) provides a license history from the licensing authorities in all other states in which the applicant holds a real estate license that shows the applicant meets the requirements in 12 AAC 64.061(c) for a valid and active license;
  - (5) submits documentation that the applicant met education requirements that covered the topics and hours listed in 12 AAC 64.063(b) to obtain a broker or associate broker license in another jurisdiction;
  - (6) submits documentation that the applicant has completed six contact hours of course work on Alaska real estate license law and Alaska landlord tenant law as required in 12 AAC 64.063(c);
  - (7) pays the application and initial license fees established in 12 AAC 02.360; and
  - (8) pays the recovery fund fee established in 12 AAC 64.073.
- (g) The following checklist is established by the commission for review of an application for a broker license by endorsement. A broker license by endorsement will be issued to an applicant who
- (1) meets the requirements of (f) of this section;
  - (2) submits a completed office registration form that includes the information required in 12 AAC 64.110(e); and
  - (3) pays the office registration fee established in 12 AAC 02.360.
- (h) Notwithstanding the requirements of (b) – (g) of this section, a license will not be issued to an applicant whose license history on the application form is incomplete or shows a license disciplinary action or investigation taken or pending. Applications showing a disciplinary action or investigation shall be referred to the commission for further review.



# New Business

**From:** [Francois, Greg A \(CED\)](#)  
**To:** [Harris, Nancy A \(CED\)](#)  
**Cc:** [Whaley, Amber L \(CED\)](#); [Lipker, Sonia L \(CED\)](#)  
**Subject:** FW: Fine Matrix  
**Date:** Wednesday, December 4, 2019 8:30:19 AM  
**Attachments:** [Fine Matrix.pdf](#)

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Good Morning Nancy,

Yes there are several Boards, NUR, MED, GUI that use matrix's. The Boards use this as a guide in order to assign discipline. Investigations only gives advice (when asked) for the formulation of the matrix but the Board itself votes on the record to either adopt or reject a matrix. The Guide Board has posted their matrix on the public website.

When an investigator presents a case to a Board member for review, they will include 3-5 case precedents from past cases with similar fact patterns. I would recommend that you visit with Lisa & Mariann at the Nursing Board to get an idea of how their Board works with the Matrix since they also are relatively new.

Having a guideline that the Board can refer to in assigning discipline shows consistency. If any Board member goes outside of the normal case precedents they have to explain their reasoning in accordance AS 08.01.075. Disciplinary Powers of boards Section (f) states "(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction."

The Board can also seek the advice and input from the Dept of Law. They are the ones who will be representing the Division at a hearing, etc.

Let us know if anything further is needed

Greg

Greg Francois  
Chief Investigator  
DCCED/CBPL  
550 W. 7<sup>th</sup> Ave Suite 1500  
Anchorage, Alaska 99501  
Ph: 907-269-7901  
Email: [greg.francois@alaska.gov](mailto:greg.francois@alaska.gov)

Any guidance provided by this electronic communication is not a binding legal opinion, ruling, or interpretation that may be relied upon, but merely guidance concerning existing statutes and regulations. There may be other unique or undisclosed

facts, circumstances, and information that may have changed any guidance provided in this communication.

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**From:** Harris, Nancy A (CED) <nancy.harris@alaska.gov>  
**Sent:** Wednesday, December 4, 2019 7:51 AM  
**To:** Whaley, Amber L (CED) <amber.whaley@alaska.gov>  
**Cc:** Francois, Greg A (CED) <greg.francois@alaska.gov>  
**Subject:** Fine Matrix

Amber,

The REC created a Fine Matrix a number of years ago although it has not been used as far as I am aware. Some of the new Commission members would like to revisit the fine matrix for the REC and start using it.

My question to you is how many other boards have created a fine matrix and use it as a guideline for investigations for fines?

Of the boards that do use a fine matrix, how long have those been in use and has it been a useful tool for the investigators and the board members?

Thank you,

Nancy Harris  
Acting Executive Administrator  
Real Estate Commission  
(907) 269-8168

# CATEGORY OF COMPLAINTS AND DISCIPLINARY SANCTIONS

CATEGORY	TYPE OF LICENSE AFFECTED	DESCRIPTION OF ACTIVITY	AUTHORITY	DISCIPLINARY SANCTIONS
Advertisement Violations	Broker Associate Broker Salesperson	Failure to include brokerage name in any form of advertisement	AS 08.88.071; AS 08.88.401; 12 AAC 64.130(8)	<ul style="list-style-type: none"> <li>• \$500 Fine</li> <li>• 3 hours of Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Trust Accounts	Broker Associate Broker Salesperson	All money provided to the brokerage for a real estate transaction must be deposited in or mailed to the appropriate trust account within 5 days	AS 08.88.351; 12 AAC 64.200	<ul style="list-style-type: none"> <li>• \$2000 Fine</li> <li>• 6 hours of Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Trust Accounts	Broker	Failure to keep proper trust account ledgers	AS 08.88.351; 12 AAC 64.220	<ul style="list-style-type: none"> <li>• \$3000 Fine</li> <li>• 6 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Trust Accounts	Broker	Prohibited trust account activity	AS 08.88.071; AS 08.88.351; 12 AAC 64.250	<ul style="list-style-type: none"> <li>• \$5000 Fine,</li> <li>• 12 hours of Education</li> <li>• Formal Reprimand</li> <li>• License Suspension</li> <li>• Probation</li> </ul>
Disclosure of Compensation	Broker Associate Broker Salesperson	Failure to properly disclose compensation paid to another licensee in a real estate transaction	AS 08.88.071; AS 08.88.351; AS 08.88.655; 12 AAC 64.940	<ul style="list-style-type: none"> <li>• \$1000 Fine</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Absence of Residential Real Property Transfer Disclosure Statement or Waiver	Broker Associate Broker Salesperson	Failure to have the form completed or a signed waiver of disclosure	AS 08.88.071; 12 AAC 64.930	<ul style="list-style-type: none"> <li>• \$2500 Fine</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>

CATEGORY	TYPE OF LICENSE AFFECTED	DESCRIPTION OF ACTIVITY	AUTHORITY	DISCIPLINARY SANCTIONS
Unlicensed Practice (Licensee & Unlicensed person):	Broker Associate Broker Salesperson	For performing activities per AS 08.88.161 and 12 AAC 64.140 without a real estate license  If a person engages or offers to engage in an activity for which a license is required under AS 08.88.161 without being licensed	AS 08.88.161; 12 AAC 64.140 (broker)	<ul style="list-style-type: none"> <li>• \$1000 fine for each incident;</li> <li>• Fine may be increased per incident dependent upon nature and severity of unlicensed activity</li> </ul> <p><u>Proposed Sanctions</u> (Broker):</p> <ul style="list-style-type: none"> <li>• \$5000 Fine</li> <li>• Formal Reprimand</li> <li>• Probation,</li> <li>• 12 Hours Education</li> </ul> <p><u>Proposed Sanctions</u> (Salesperson):</p> <ul style="list-style-type: none"> <li>• \$3500 Fine</li> <li>• Formal Reprimand</li> <li>• Probation</li> <li>• 3 Hours Education</li> </ul>
Real Estate Office Violations	Broker	<ul style="list-style-type: none"> <li>• Failure to display broker and salesperson licenses</li> <li>• Failure to register the office with the real estate commission</li> <li>• Failure to comply with proper signage requirements</li> <li>• Office name violation</li> </ul>	AS 08.88.291; AS 08.88.321; 12 AAC 64.110; 12 AAC 64.112; 12 AAC 64.115	<ul style="list-style-type: none"> <li>• \$1500-5000 Fine</li> <li>• 6-9 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Real Estate Office Violations	Broker Associate Broker Salesperson	Operating an unauthorized branch office	AS 08.88.311; AS 08.88.321; 12 AAC 64.110; 12 AAC 64.112	<ul style="list-style-type: none"> <li>• \$5000 Fine - Broker/AB</li> <li>• \$3000 Fine - Salesperson</li> <li>• 6 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>

<b>CATEGORY</b>	<b>TYPE OF LICENSE AFFECTED</b>	<b>DESCRIPTION OF ACTIVITY</b>	<b>AUTHORITY</b>	<b>DISCIPLINARY SANCTIONS</b>
Licensing	Broker Associate Broker Salesperson	<ul style="list-style-type: none"> <li>• Failing to notify the REC before changing office address and location</li> <li>• Failing to notify the REC with a current mailing address, and if active, the address of the broker employing the licensee</li> </ul>	AS 08.88.291 (b)(c); AS 08.88.291; AS 08.88.301; AAC 64.115	<ul style="list-style-type: none"> <li>• \$1000 Fine</li> <li>• 3 Hours Education</li> </ul>
Licensing	Broker Associate Broker Salesperson	Falsification of an application	AS 08.88.401; 12 AAC 64.160	May result in license denial if new applicant; <u>Renewal application:</u> <ul style="list-style-type: none"> <li>• \$2000 Fine</li> <li>• 6 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Listing or Management Contracts	Broker Associate Broker Salesperson	<ul style="list-style-type: none"> <li>• Failing to keep a complete record for three years for all real estate transactions</li> <li>• Failure to provide upon request to any principal in a transaction an accounting for all money or other property collected or held in a transaction</li> </ul>	AS 08.88.351; AS 08.88.341	<ul style="list-style-type: none"> <li>• \$3000 Fine each incident</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Listing or Management Contracts	Broker Associate Broker Salesperson	Listing property without a RE contract	AS 08.88.351	<ul style="list-style-type: none"> <li>• \$5000 Fine each incident</li> <li>• 6 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
AREC Pamphlet	Broker Associate Broker Salesperson	Providing real estate services without first obtaining proper signatures on the AREC Pamphlet	AS 08.88.600; AS 08.88.610	<ul style="list-style-type: none"> <li>• \$1000 Fine</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Property Management	Broker Associate Broker Salesperson	Improper property management activity by a licensee	AS 08.88.331; AS 08.88.351; 12 AAC 64.550; 12 AAC 64.570	<ul style="list-style-type: none"> <li>• \$1000 Fine each incident</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>

<b>CATEGORY</b>	<b>TYPE OF LICENSE AFFECTED</b>	<b>DESCRIPTION OF ACTIVITY</b>	<b>AUTHORITY</b>	<b>DISCIPLINARY SANCTIONS</b>
Supervision	Broker Associate Broker	Supervision Violations	AS 08.88.071; 12 AAC 64.125	<ul style="list-style-type: none"> <li>• \$5000 Fine</li> <li>• 12 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Disclosure	Broker Associate Broker Salesperson	Failure to disclose licensee status and name of the broker or brokerage to all parties in a real estate transaction	AS 08.88.071; 12 AAC 64.130 (9)	<ul style="list-style-type: none"> <li>• \$2000 Fine</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Submitting an offer	Broker	Failure to submit an offer	AS 08.88.071; AS 08.88.401; 12 AAC 64.130 (13)	<ul style="list-style-type: none"> <li>• \$2500 Fine</li> <li>• 6 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Misrepresentation Fraud	Broker Associate Broker Salesperson	Usually this type of conduct is variable and not succinct	AS 08.88.600 Series	<ul style="list-style-type: none"> <li>• Sanctions imposed include suspensions and revocations. These cases are usually litigated</li> </ul>
Conflict of Interest	Broker Associate Broker Salesperson	Failure to disclose a conflict of interest	AS 08.88.391	<ul style="list-style-type: none"> <li>• \$2000 Fine each incident</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Probation</li> </ul>
Continuing Education	Salesperson Broker	Failure to obtain continuing education	AS 08.88.171; 12 AAC 64.064	<ul style="list-style-type: none"> <li>• \$2500 Fine</li> <li>• Plus an additional fine of \$50 for each continuing education credit hour lacking</li> <li>• 3 Hours Education</li> <li>• Formal Reprimand</li> <li>• Continuing education audit for the next two renewal periods</li> </ul>

# PearsonVue Contract and Overall Pass Rates





# State of Alaska Residential Real Property Transfer Disclosure Statement

Prepared in compliance with Alaska Statute (AS) 34.70.010 - 34.70.200

## General Information

AS 34.70.010 requires that before the Transferee/Buyer (hereafter referred to as **Buyer**) of an interest in residential real property makes a written offer, the Transferor/Seller (hereafter referred to as **Seller**) must deliver a completed written disclosure form. This disclosure statement is in compliance with AS 34.70.010. It concerns the residential real property\* located in the \_\_\_\_\_ Recording District, \_\_\_\_\_ Judicial District, State of Alaska.

Legal Description: \_\_\_\_\_

Property Address/City/Other: \_\_\_\_\_

\* Residential real property means any single family dwelling, or two single family dwelling units under one roof, or any individual unit in a multi-unit structure or common interest ownership community whose primary purpose is to provide housing. AS 34.70.200(2) and (3).

**AS 34.70.020 provides that if a disclosure statement or material amendment is delivered to the transferee after the transferee has made a written offer, the transferee may terminate the offer by delivering a written notice of termination to the transferor or the transferor's licensee within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.**

**AS 34.70.040(b) provides that if an item that must be completed in the disclosure statement is unknown or is unavailable to the Seller, and if the Seller or Seller's agent has made a reasonable effort to ascertain the information, the Seller may make an approximation based on the best information available to the Seller or Seller's agent. It must be reasonable, clearly labeled as an approximation, and not used to avoid the disclosure requirements of AS 34.70.010 – AS 34.70.200.**

All disclosures made in this statement are required to be made in good faith (AS 34.70.060). The Seller is required to disclose defects or other conditions in the real property or the real property interest being transferred. To comply, disclosure need not include a search of the public records, nor does it require a professional inspection of the property.

If the information supplied in this disclosure statement becomes inaccurate as a result of an act or agreement after the disclosure statement is delivered to the Buyer, the Seller is required to deliver an amendment to the disclosure statement to the Buyer. An addendum/amendment form for that purpose may be attached to this disclosure statement.

Upon delivery to a buyer, any inspection/reports generated by a purchase agreement of this property automatically becomes an addendum/amendment to the property disclosure.

**Exemption for First Sale:** Under AS 34.70.120, the first transfer of an interest in residential real property that has never been occupied is exempt from the requirement for the Seller to complete the Disclosure Statement.

**Waiver by Agreement:** Under AS 34.70.110, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Seller and Buyer agree in writing. Signing this waiver does not affect other obligations for disclosure.

**Violation or Failure to Comply:** A person who negligently violates or fails to perform a duty required by AS 34.70.010 - AS 34.70.200 is liable to the Buyer for actual damages suffered by the Buyer as a result of the violation or failure. If the person willfully violates or fails to perform a duty required by AS 34.70.010 -AS 34.70.200, the Seller is liable to the Buyer for up to three times the actual damages. In addition to the damages, a court may also award the Buyer costs and attorney fees to the extent allowed under the rules of court.

Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_ Property Address \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_

## Seller's Information Regarding Property

### Property Type (check one):

- Single Family     Zero Lot Line/Town House     Condominium     Townhome/PUD  
 Duplex (Including Single Family with an Apartment)  
 Other (please specify) \_\_\_\_\_

Do you currently occupy the property?  Yes     No    If Yes, how long? \_\_\_\_\_

If not a current occupant, have you ever occupied the property?  Yes     No    If so, when? \_\_\_\_\_

Year Property Built: \_\_\_\_\_. If property was built prior to 1978, or if Seller has any knowledge of lead-based paint, Seller must complete Disclosure of Information and Acknowledgment of Lead-based Paint and/or Lead-based Paint Hazards in accordance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X) and provide Buyer with the "Protect Your Family From Lead in Your Home" pamphlet. The pamphlet can be found on the Internet at <http://www.epa.gov/lead/leadprot.htm>.

Construction Overview:  Wood Frame     Manufactured     Modular     Other: \_\_\_\_\_

Foundation:  Masonry Block     Poured Concrete     Piling     Treated Wood     Other: \_\_\_\_\_

Name of original builder (if known): \_\_\_\_\_

### Property Features:

**Check** all items that are **built-in** and will remain with the property. **Also . . .**

**Circle** those checked items that have known defects or malfunctions. **Also . . .**

**Describe** the defect or malfunction on the Addendum/Amendment(s) To The Disclosure Statement.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Cooktop                     | <input type="checkbox"/> Wood Stove(s) # of _____   | <input type="checkbox"/> T.V. Antenna                                       |
| <input type="checkbox"/> Oven(s) # of _____          | <input type="checkbox"/> Jetted Tub   | <input type="checkbox"/> Satellite Dish                                     |
| <input type="checkbox"/> Rods & Blinds               | <input type="checkbox"/> Hot Tub <input type="checkbox"/> Cover   | <input type="checkbox"/> Window Screens                                     |
| <input type="checkbox"/> Microwave(s) # of _____     | <input type="checkbox"/> Steam Shower Room  | <input type="checkbox"/> Security System                                    |
| <input type="checkbox"/> Dishwasher                  | <input type="checkbox"/> Water Softener   | <input type="checkbox"/> Smoke Detector(s) # of _____                       |
| <input type="checkbox"/> Trash Compactor             | <input type="checkbox"/> Water Filtering System   | <input type="checkbox"/> CO Detectors # of _____                            |
| <input type="checkbox"/> Garbage Disposal            | <input type="checkbox"/> Greenhouse <input type="checkbox"/> Attached <input type="checkbox"/> Detached | <input type="checkbox"/> Fire Alarms  |
| <input type="checkbox"/> Instant Hot Water Dispenser | <input type="checkbox"/> Ventilating System   | <input type="checkbox"/> Auto Garage Door Opener(s)<br># of Opener(s) _____ |
| <input type="checkbox"/> Central Vacuum Installed    | <input type="checkbox"/> Heating System   | <input type="checkbox"/> Built-In Refrigerator                              |
| <input type="checkbox"/> Intercom                    | <input type="checkbox"/> Storage Shed(s) # of _____   | <input type="checkbox"/> Other _____  |
| <input type="checkbox"/> Paddle Fan(s) # of _____    | <input type="checkbox"/> Built-In Barbecue  |   |

Comments: \_\_\_\_\_

### Structural Components:

**Check** only those items that have known defects, malfunctions, or have had major repairs performed within the last five years.

**Also . . . Describe** the defect, malfunction, or repair on the Addendum/Amendment(s) To The Disclosure Statement.

- |   |   |   |  |   |
|---|---|---|--|---|
| <input type="checkbox"/> Fences/Gates     | <input type="checkbox"/> Rain Gutters   | <input type="checkbox"/> Insulation                 | <input type="checkbox"/> Electrical Systems    | <input type="checkbox"/> Electronic Air Cleaner |
| <input type="checkbox"/> Driveways        | <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Woodstove(s)<br># of _____ | <input type="checkbox"/> Sewage Systems        | <input type="checkbox"/> Heat Recovery          |
| <input type="checkbox"/> Private Walkways | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fireplace(s)<br># of _____ | <input type="checkbox"/> Water Supply          | <input type="checkbox"/> Ventilator System      |
| <input type="checkbox"/> Retaining Walls  | <input type="checkbox"/> Floors         | <input type="checkbox"/> Gas Starter                | <input type="checkbox"/> Garage                | <input type="checkbox"/> Swimming Pool          |
| <input type="checkbox"/> Foundation       | <input type="checkbox"/> Ceilings       | <input type="checkbox"/> Chimneys                   | <input type="checkbox"/> Garage Floor Drain    | <input type="checkbox"/> Mechanical             |
| <input type="checkbox"/> Crawl Space      | <input type="checkbox"/> Doors          | <input type="checkbox"/> Plumbing Systems           | <input type="checkbox"/> Carport               | <input type="checkbox"/> Filtration             |
| <input type="checkbox"/> Roof             | <input type="checkbox"/> Windows        | <input type="checkbox"/> Heating Systems            | <input type="checkbox"/> Washer/Dryer Hook-ups | <input type="checkbox"/> Pool Cover             |
| <input type="checkbox"/> Patio/Decking    | <input type="checkbox"/> Skylights      | <input type="checkbox"/> Solar Panels               | <input type="checkbox"/> Humidifier            | <input type="checkbox"/> Hot Water Heater       |
| <input type="checkbox"/> Slabs            | <input type="checkbox"/> Venting        | <input type="checkbox"/> Wind Generators            | <input type="checkbox"/> Air Conditioner       |   |

Other items not covered above? \_\_\_\_\_

Comments: \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / Date \_\_\_\_\_ Property Address \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ / Date \_\_\_\_\_

**Documentation: Check** the documents for the subject property that the seller has available for review:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Engineer/Property/Home Inspection Report(s) | <input type="checkbox"/> Written Agreements with Adjacent Property Owners | <input type="checkbox"/> Party Wall Agreement        |
| <input type="checkbox"/> Title Information                           | <input type="checkbox"/> Energy Rating Certificate or PUR-101             | <input type="checkbox"/> Lease/Rental Agreement      |
| <input type="checkbox"/> As-Built Survey                             | <input type="checkbox"/> Resale Certificate                               | <input type="checkbox"/> Soils Test                  |
| <input type="checkbox"/> Certificate of Occupancy or PUR-102         | <input type="checkbox"/> Water Rights Certificate                         | <input type="checkbox"/> Well Log and Water Tests    |
| <input type="checkbox"/> Deed Restrictions                           | <input type="checkbox"/> Subdivision Covenants/Restrictions               | <input type="checkbox"/> Hazardous Materials Test(s) |
| <input type="checkbox"/> Other _____                                 |   | <input type="checkbox"/> Other _____                 |

**Additional Information:**

Supply information for the following items:

To the best of your knowledge, has the property been inspected by an engineer/home inspector in the last 5 years?..... Yes  No

➤ **Drainage:**

- ◆ Are you aware of ever having any water in the crawl space, basement, or lower level?.....
- If Yes, how has the problem been resolved?  
 Sump Pump(s)    Curtain Drain    Rain Gutter/Extension    Other \_\_\_\_\_  
 When was problem resolved? \_\_\_\_\_  
 Location of each sump pump: \_\_\_\_\_
- ◆ To where does the water drain after it leaves the sump pump? \_\_\_\_\_  
 If gutters, where do downspouts discharge? \_\_\_\_\_
- ◆ Is there a floor drain in the structure, including garage?.....
- If Yes, where is it located and where does it drain to? \_\_\_\_\_

➤ **Roof or Other Leakage:**

- Type:  Asphalt/Composition Shingle    Cedar Shake    Built-up    Metal    Other \_\_\_\_\_  
 Age: \_\_\_\_\_ years. Location of attic access? \_\_\_\_\_
- ◆ Are you aware of any ice damming on the roof? .....
  - If Yes, provide location. \_\_\_\_\_
  - ◆ Are you aware of any water leaking into the home? i.e., windows, lights, fireplace, etc. ....
  - If Yes, provide location. \_\_\_\_\_

➤ **Fireplace and/or Woodstove:** Date chimney(s) last cleaned? \_\_\_\_\_ Who cleaned? \_\_\_\_\_

➤ **Heating System(s):**

- Mark all types that apply:  Hot Water Baseboard    Forced Air    Radiant Heat    Electrical Heat  
 Wood Stove    Other \_\_\_\_\_
- Age: \_\_\_\_\_ years. Last Cleaned: \_\_\_\_\_ Last Inspected: \_\_\_\_\_
- Source:  Natural Gas    Electric    Propane Tank leased or owned? \_\_\_\_\_  Wood    Coal  
 Oil with \_\_\_\_\_ gallon storage which is  Buried    Above Ground    Other \_\_\_\_\_
- Age of Tank? \_\_\_\_\_ years.

➤ **Hot Water Heater:**

Age: \_\_\_\_\_ years. Capacity: \_\_\_\_\_ gallons. Type:  Gas    Electric    Other \_\_\_\_\_

➤ **Water Supply:**

Type:  Public    Private    Community    Cistern/Water Tank   If Cistern/Water Tank: \_\_\_\_\_ Size  
 Other \_\_\_\_\_

If Private: Well Depth: \_\_\_\_\_ feet. Flow Rate: \_\_\_\_\_ gallons per minute. Date Tested: \_\_\_\_\_.

- ◆ Have you had any problems with your water supply?.....
- ◆ Has the water supply been tested in the past 12 months?.....
- If Yes, attach all documentation from all tests.
- ◆ Are you aware of any contaminants in your water supply, to include but not limited to E-coli, nitrates, heavy metals, arsenic or other contaminants? .....
- ◆ Has the well failed while you have owned the property?.....
- ◆ Have you ever had a well pump problem or failure?.....
- ◆ Do you supply water to, or receive water from others?.....
- If Yes, is there a recorded agreement?.....
- ◆ Do you have a water rights certificate for this property?.....

**Additional Information (Continued):**

➤ **Sewer System:** Yes No

Type:  Public  Private  Community  Other \_\_\_\_\_

- ◆ Does your sewer system have a lift station/lift pump? .....
- If Private:  Septic Tank  Holding Tank  Other: \_\_\_\_\_
- Drainfield System:  Bed  Trench  Mound  Pit  Crib  Other \_\_\_\_\_
- Innovative Sewer System:  Intermittent Sand Filter  Biocycle  Recirculating Upflow Filter
- Secondary sewer treatment plant  Other \_\_\_\_\_

- ◆ Has the sewer system failed while you owned the property? .....

If Yes, explain: \_\_\_\_\_  
Age of sewer system: \_\_\_\_\_ Location: \_\_\_\_\_

- ◆ Have you had any work maintenance or inspections done on the sewer system during your ownership? .....

If Yes, explain: \_\_\_\_\_  
Approval/Certification source (and date if known): \_\_\_\_\_

- ◆ Are you aware of any abandoned sewer systems, leachfields, cribs, etc. on the property? .....

➤ **Freeze-ups:**

- ◆ Have you had any frozen water lines, sewer lines, drains, or heating systems? .....

If yes, please explain. \_\_\_\_\_

- ◆ Are there any heat tapes, heat lamps, or other freeze prevention devices? .....

Location, and explain use. \_\_\_\_\_

➤ **Average Annual Utility Costs:**

Gas	\$ _____	Company/Source: _____
Electric	\$ _____	Company/Source: _____
Oil	\$ _____/Gallons: _____	Company/Source: _____
Propane	\$ _____	Company/Source: _____
Wood	\$ _____	Company/Source: _____
Coal	\$ _____	Company/Source: _____
Water	\$ _____	Company/Source: _____
Sewer	\$ _____	Company/Source: _____
Refuse	\$ _____	Company/Source: _____
Other	\$ _____	Company/Source: _____

To the best of your knowledge, are you aware of any of the following conditions with respect to the subject property? If answer is "Yes," indicate the relevant item number and explain the condition on the Addendum/Amendment(s) to the Disclosure Statement.

➤ **Title:** Yes No

1. Do you know of any existing, pending, or potential legal action(s) concerning the property? .....
2. Do you know of any street or utility improvements planned that will affect the property? .....
3. Road maintenance provided by? \_\_\_\_\_
4. Is the property currently rented or leased? .....
- If Yes, expiration date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_
5. Is there a homeowner's association (HOA) for the property? .....
- If Yes, HOA name: \_\_\_\_\_ HOA Telephone: \_\_\_\_\_
- Mandatory  Voluntary  Inactive Monthly Dues Amount: \$ \_\_\_\_\_ per \_\_\_\_\_
- Are there any levied or pending assessments? .....
- Who is responsible for issuing the resale certificate?
- Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

➤ **Setbacks/Restrictions:**

6. Have you been notified of any proposed zoning changes for the property? .....
7. Are you aware of features of the property shared in common with adjoining property owners, such as walls, fences, and driveways, whose use or responsibility for maintenance may affect the property? .....
8. Are there subdivision conditions, covenants, or restrictions? .....
9. Are you aware of any violations of building codes, zoning, setback requirements, subdivision covenants, borough, or city restrictions on this property? .....
10. Are you aware of any nonconforming uses of this property? .....

Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_ Property Address \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_

**Additional Information (Continued):**

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| 11. Are you aware of any deed, or other private restrictions on the use of the property?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Are you aware of any variances being applied for, or granted, on this property? .....     | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Are you aware of any easements on the property? .....                                     | <input type="checkbox"/> | <input type="checkbox"/> |

➤ **Encroachments:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 14. Does anything on your property encroach (extend) onto your neighbor's property? ..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Does anything on your neighbor's property encroach onto your property? .....          | <input type="checkbox"/> | <input type="checkbox"/> |

➤ **Environmental Concerns:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 16. Are you aware of any substances, materials, or products that may be an environmental hazard such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, contaminated soil, water or by-products from the production of methamphetamines on the subject property? ..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 16a. Are you aware of any mildew or mold issues affecting this property? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Are you aware of any underground storage tanks on this property, other than previously referenced fuel or septic tanks? Number of tanks: _____ .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Are you aware if the property is in an avalanche zone/mudslide area?.....   | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Are you aware if the property has flooded? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| Flood zone designation: _____   |                          |                          |
| 20. Are you aware of any erosion/erosion zone or accretion affecting this property?.....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. Are you aware of any damage to the property or any of the structures from flood, landslide, avalanche, high winds, fire, earthquake, or other natural causes? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. Have you ever filed an insurance claim for any environmental damage to the property? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. Are you aware of a waste disposal site or a gravel pit within a one-mile radius of the property?.....   | <input type="checkbox"/> | <input type="checkbox"/> |

➤ **Soil Stability:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 24. Are you aware of any debris burial or filling on any portion of the property?.....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 25. Are you aware of any permafrost or other soil problems which have caused settling, slippage, sliding, or heaving that affect the improvements of the property?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. Are you aware of any drainage, or grading problems that affect this property?.....  | <input type="checkbox"/> | <input type="checkbox"/> |

➤ **Construction, Improvements/Remodel:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 27. Have you remodeled, made any room additions, structural modifications, or improvements? .....               | <input type="checkbox"/> | <input type="checkbox"/> |
| If Yes, please describe. Was the work performed with necessary permits in compliance with building codes? ..... |                          |                          |
| Was a final inspection performed, if applicable?.....   | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. Has a fire ever occurred in the structure?.....   | <input type="checkbox"/> | <input type="checkbox"/> |

➤ **Pest Control or Wood Destroying Organisms:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 29. Are you aware of any termites, ants, insects, squirrels, vermin, rodents, etc. in the structure? .....                    | <input type="checkbox"/> | <input type="checkbox"/> |
| a. If Yes, what type? _____   |                          |                          |
| b. If Yes, where? _____   |                          |                          |
| 30. Has there been damage in the past resulting from termites, ants, insects, squirrels, rodents, etc. in the structure?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| a. If Yes, when? _____  |                          |                          |
| b. If Yes, what type? _____   |                          |                          |
| c. If Yes, where? _____   |                          |                          |
| d. If Yes, describe what was done to resolve the problem: _____   |                          |                          |

➤ **Other:**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 31. Are you aware of any murder or suicide having occurred on the property within the preceding 3 years?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. Are you aware of any human burial sites on the property?.....   | <input type="checkbox"/> | <input type="checkbox"/> |

**Additional Information (Continued):**

Yes      No

**33. Noise**

a. Are you aware of any noise sources that may affect the property, including airplanes, trains, dogs, traffic, race tracks, neighbors, etc? .....      

b. If Yes, explain: \_\_\_\_\_  
\_\_\_\_\_

**34. Pets**

a. Have there been any pets/animals in the house? .....      

b. If Yes, what kind? \_\_\_\_\_

I / We have completed this disclosure statement according to AS 34.70.010 - AS 34.70.200 and these instructions, and the statements are made in good faith and are true and correct to the best of my/our knowledge as of the date signed. I/We authorize any licensees involved or participating in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer of the property or interest in the property.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

**Buyer's Notice and Receipt of Copy**

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska, Department of Public Safety Internet site: [www.dps.state.ak.us](http://www.dps.state.ak.us).

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

The Buyer is urged to inspect the property carefully and to have the property inspected by an expert. Buyer understands that there are aspects of the property of which the Seller may not have knowledge and that this disclosure statement does not encompass those aspects. Buyer also acknowledges that he/she has read and received a signed copy of this statement from the Seller or any licensee involved or participating in this transaction.

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Seller's Initials      Date

\_\_\_\_\_  
Property Address

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Buyer's Initials      Date





# State of Alaska Residential Real Property Transfer Disclosure Statement

## Exemption For First Sale

Prepared in compliance with Alaska Statute (AS) 34.70.010 - 34.70.200

Legal Description: \_\_\_\_\_

Property Address/City: \_\_\_\_\_

Under AS 34.70.120, the first transfer of an interest in residential real property that has never been occupied is exempt from the requirement for the Seller to complete the Disclosure Statement.

Buyer may wish to obtain inspections of the property and seek other professional advice.



**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska, Department of Public Safety Internet site: [www.dps.state.ak.us](http://www.dps.state.ak.us).



**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.



I certify that this is the first transfer of an interest in the property identified above and that the property has not been occupied before this transfer of interest.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / Date \_\_\_\_\_

Property Address \_\_\_\_\_

Buyer's Initials \_\_\_\_\_ / Date \_\_\_\_\_





# State of Alaska Residential Real Property Transfer Disclosure Statement

## Waiver By Agreement

AS 34.70.110

Prepared in compliance with Alaska Statute (AS) 34.70.010 - 34.70.200

Legal Description: \_\_\_\_\_

Property Address/City: \_\_\_\_\_

Under AS 34.70.110, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Seller and Buyer agree in writing.

Parties may wish to obtain professional advice and/or inspection of the property.

**It is recommended that the buyer read the complete State of Alaska Residential Real Property Transfer Disclosure Statement.**



**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska, Department of Public Safety Internet site: [www.dps.state.ak.us](http://www.dps.state.ak.us).



**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.



By law, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Transferor (Seller) and the Transferee (Buyer) agree in writing. If both parties agree to waive the requirement to complete this disclosure statement, please sign below.

**Signing this waiver does not affect other obligations for disclosure.**

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Seller's Initials      Date

\_\_\_\_\_  
Property Address

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Buyer's Initials      Date

# Consideration of forming a Communication Committee

# Division Update

Department of Commerce Community, and Economic Development  
Corporations, Business and Professional Licensing  
Schedule of Revenues and Expenditures

Real Estate Commission	FY 14	FY 15	Biennium	FY 16	FY 17	Biennium	FY 18	FY 19	Biennium
<b>Revenue</b>									
Revenue from License Fees	\$ 1,139,844	\$ 322,870	\$ 1,462,714	\$ 1,086,258	\$ 297,161	\$ 1,383,419	\$ 766,875	\$ 282,453	\$ 1,049,328
Allowable Third Party Reimbursements	-	-	-	-	-	-	-	-	-
<b>TOTAL REVENUE</b>	<b>\$ 1,139,844</b>	<b>\$ 322,870</b>	<b>\$ 1,462,714</b>	<b>\$ 1,086,258</b>	<b>\$ 297,161</b>	<b>\$ 1,383,419</b>	<b>\$ 766,875</b>	<b>\$ 282,453</b>	<b>\$ 1,049,328</b>
<b>Expenditures</b>									
Non Investigation Expenditures									
1000 - Personal Services	179,769	121,773	301,543	137,073	118,908	255,981	115,076	120,856	235,932
2000 - Travel	12,096	13,013	25,109	12,781	6,803	19,584	15,632	5,036	20,668
3000 - Services	24,221	20,404	44,624	26,599	14,085	40,684	13,683	9,813	23,496
4000 - Commodities	925	600	1,525	1,229	34	1,263	649	-	649
5000 - Capital Outlay	-	-	-	-	-	-	-	-	-
Total Non-Investigation Expenditures	217,011	155,790	372,801	177,682	139,830	317,512	145,040	135,705	280,745
Investigation Expenditures									
1000-Personal Services	118,045	94,399	212,443	91,700	90,606	182,306	51,422	83,598	135,020
2000 - Travel	-	-	-	-	-	-	-	-	-
3023 - Expert Witness	4,651	2,400	7,051	-	4,922	4,922	-	-	-
3088 - Inter-Agency Legal	59,300	57,113	116,413	43,639	45,154	88,793	646	530	1,176
3094 - Inter-Agency Hearing/Mediation	6,956	18,825	25,781	6,929	19,603	26,532	-	3,689	3,689
3000 - Services other	-	-	-	-	-	-	-	958	958
4000 - Commodities	-	-	-	-	-	-	-	-	-
Total Investigation Expenditures	188,951	172,737	361,688	142,268	160,285	302,553	52,068	88,775	140,843
<b>Total Direct Expenditures</b>	<b>405,962</b>	<b>328,527</b>	<b>734,489</b>	<b>319,950</b>	<b>300,115</b>	<b>620,065</b>	<b>197,108</b>	<b>224,480</b>	<b>421,588</b>
Indirect Expenditures									
Internal Administrative Costs	85,845	61,048	146,893	95,730	87,001	182,731	108,746	110,362	219,108
Departmental Costs	55,495	68,943	124,438	54,735	58,811	113,546	53,154	57,353	110,507
Statewide Costs	38,787	39,391	78,178	20,226	23,348	43,574	18,608	20,811	39,419
<b>Total Indirect Expenditures</b>	<b>180,127</b>	<b>169,382</b>	<b>349,509</b>	<b>170,691</b>	<b>169,160</b>	<b>339,851</b>	<b>180,508</b>	<b>188,526</b>	<b>369,034</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 586,089</b>	<b>\$ 497,909</b>	<b>\$ 1,083,998</b>	<b>\$ 490,641</b>	<b>\$ 469,275</b>	<b>\$ 959,916</b>	<b>\$ 377,616</b>	<b>\$ 413,006</b>	<b>\$ 790,622</b>
<b>Cumulative Surplus (Deficit)</b>									
Beginning Cumulative Surplus (Deficit)	\$ (278,770)	\$ 274,985		\$ 99,946	\$ 695,563		\$ 523,449	\$ 912,708	
Annual Increase/(Decrease)	553,755	(175,039)		595,617	(172,114)		389,259	(130,553)	
Ending Cumulative Surplus (Deficit)	\$ 274,985	\$ 99,946		\$ 695,563	\$ 523,449		\$ 912,708	782,155	
							* No fee changes needed		
<b>Statistical Information</b>									
Number of Licensees	2,761	3,001		3,066	3,558		4,129	4,041	
<b>Additional information:</b>									
<ul style="list-style-type: none"> <li>• Fee analysis required if the cumulative is less than zero; fee analysis recommended when the cumulative is less than current year expenditures; no fee increases needed if cumulative is over the current year expenses *</li> <li>• Most recent fee change: Fee reduction FY20</li> <li>• Annual license fee analysis will include consideration of other factors such as board and licensee input, potential investigation load, court cases, multiple license and fee types under one program, and program changes per AS 08.01.065.</li> </ul>									

Department of Commerce Community, and Economic Development  
Corporations, Business and Professional Licensing  
Schedule of Revenues and Expenditures

Appropriation	(All)
AL Sub Unit	(All)
PL Task Code	REC1

Sum of Budgetary Expenditures Object Name (Ex)	Object Type Name (Ex)			Grand Total
	1000 - Personal Services	2000 - Travel	3000 - Services	
1011 - Regular Compensation	112,459.93			112,459.93
1021 - Allowances to Employees	45.09			45.09
1023 - Leave Taken	17,688.32			17,688.32
1028 - Alaska Supplemental Benefit	8,054.04			8,054.04
1029 - Public Employee's Retirement System Defined Benefits	17,289.74			17,289.74
1030 - Public Employee's Retirement System Defined Contribution	2,758.76			2,758.76
1034 - Public Employee's Retirement System Defined Cont Health Reim	1,779.46			1,779.46
1035 - Public Employee's Retirement Sys Defined Cont Retiree Medical	492.55			492.55
1037 - Public Employee's Retirement Sys Defined Benefit Unfnd Liab	6,507.96			6,507.96
1039 - Unemployment Insurance	231.63			231.63
1040 - Group Health Insurance	30,225.82			30,225.82
1041 - Basic Life and Travel	43.98			43.98
1042 - Worker's Compensation Insurance	1,168.36			1,168.36
1047 - Leave Cash In Employer Charge	3,026.76			3,026.76
1048 - Terminal Leave Employer Charge	1,769.35			1,769.35
1053 - Medicare Tax	1,790.91			1,790.91
1069 - SU Business Leave Bank Contributions	8.83			8.83
1077 - ASEA Legal Trust	69.35			69.35
1079 - ASEA Injury Leave Usage	1.32			1.32
1080 - SU Legal Trst	22.03			22.03
1970 - Personal Services Transfer	(979.15)			(979.15)
2001 - In-State Employee Surface Transportation		-		-
2002 - In-State Employee Lodging		-		-
2003 - In-State Employee Meals and Incidentals		-		-
2005 - In-State Non-Employee Airfare		944.07		944.07
2007 - In-State Non-Employee Lodging		1,136.36		1,136.36
2008 - In-State Non-Employee Meals and Incidentals		750.00		750.00
2009 - In-State Non-Employee Taxable Per Diem		96.00		96.00
2010 - In-State Non-Employee Non-Taxable Reimbursement		125.82		125.82
2012 - Out-State Employee Airfare		869.88		869.88
2013 - Out-State Employee Surface Transportation		53.06		53.06
2014 - Out-State Employee Lodging		879.68		879.68
2015 - Out-State Employee Meals and Incidentals		181.00		181.00
3000 - Training/Conferences			630.00	630.00
3002 - Memberships			784.00	784.00
3035 - Long Distance			40.11	40.11
3036 - Local/Equipment Charges			254.54	254.54
3044 - Courier			96.35	96.35
3045 - Postage			1,391.45	1,391.45
3046 - Advertising			541.92	541.92
3050 - Disposal			-	-
3057 - Structure, Infrastructure and Land - Rentals/Leases			860.56	860.56
3069 - Commission Sales			133.00	133.00
3088 - Inter-Agency Legal			6,031.86	6,031.86
3094 - Inter-Agency Hearing/Mediation			4,128.70	4,128.70
3970 - Contractual Transfer			97.00	97.00
<b>Grand Total</b>	<b>204,455.04</b>	<b>5,035.87</b>	<b>14,989.49</b>	<b>224,480.40</b>

Department of Commerce Community, and Economic Development  
Corporations, Business and Professional Licensing

Real Estate Commission  
Schedule of Revenues and Expenditures

Real Estate Commission	FY 14	FY 15	Biennium	FY 16	FY 17	Biennium	FY 18	FY 19	Biennium	FY 20 1st QTR
<b>Revenue</b>										
Revenue from License Fees	\$ 1,139,844	\$ 322,870	\$ 1,462,714	\$ 1,086,258	\$ 297,161	\$ 1,383,419	\$ 766,875	\$ 282,453	\$ 1,049,328	\$ 49,715
Allowable Third Party Reimbursements	-	-	-	-	-	-	-	-	-	\$ -
<b>TOTAL REVENUE</b>	<b>\$ 1,139,844</b>	<b>\$ 322,870</b>	<b>\$ 1,462,714</b>	<b>\$ 1,086,258</b>	<b>\$ 297,161</b>	<b>\$ 1,383,419</b>	<b>\$ 766,875</b>	<b>\$ 282,453</b>	<b>\$ 1,049,328</b>	<b>\$ 49,715</b>
<b>Expenditures</b>										
Non Investigation Expenditures										
1000 - Personal Services	179,769	121,773	301,543	137,073	118,908	255,981	115,076	120,856	235,932	14,991
2000 - Travel	12,096	13,013	25,109	12,781	6,803	19,584	15,632	5,036	20,668	32
3000 - Services	24,221	20,404	44,624	26,599	14,085	40,684	13,683	9,813	23,496	2,944
4000 - Commodities	925	600	1,525	1,229	34	1,263	649	-	649	-
5000 - Capital Outlay	-	-	-	-	-	-	-	-	-	-
Total Non-Investigation Expenditures	217,011	155,790	372,801	177,682	139,830	317,512	145,040	135,705	280,745	17,967
Investigation Expenditures										
1000-Personal Services	118,045	94,399	212,443	91,700	90,606	182,306	51,422	83,598	135,020	18,089
2000 - Travel	-	-	-	-	-	-	-	-	-	-
3023 - Expert Witness	4,651	2,400	7,051	-	4,922	4,922	-	-	-	-
3088 - Inter-Agency Legal	59,300	57,113	116,413	43,639	45,154	88,793	646	530	1,176	-
3094 - Inter-Agency Hearing/Mediation	6,956	18,825	25,781	6,929	19,603	26,532	-	3,689	3,689	-
3000 - Services other	-	-	-	-	-	-	-	958	958	518
4000 - Commodities	-	-	-	-	-	-	-	-	-	-
Total Investigation Expenditures	188,951	172,737	361,688	142,268	160,285	302,553	52,068	88,775	140,843	18,607
<b>Total Direct Expenditures</b>	<b>405,962</b>	<b>328,527</b>	<b>734,489</b>	<b>319,950</b>	<b>300,115</b>	<b>620,065</b>	<b>197,108</b>	<b>224,480</b>	<b>421,588</b>	<b>36,574</b>
Indirect Expenditures										
Internal Administrative Costs	85,845	61,048	146,893	95,730	87,001	182,731	108,746	110,362	219,108	27,591
Departmental Costs	55,495	68,943	124,438	54,735	58,811	113,546	53,154	57,353	110,507	14,338
Statewide Costs	38,787	39,391	78,178	20,226	23,348	43,574	18,608	20,811	39,419	5,203
<b>Total Indirect Expenditures</b>	<b>180,127</b>	<b>169,382</b>	<b>349,509</b>	<b>170,691</b>	<b>169,160</b>	<b>339,851</b>	<b>180,508</b>	<b>188,526</b>	<b>369,034</b>	<b>47,132</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 586,089</b>	<b>\$ 497,909</b>	<b>\$ 1,083,998</b>	<b>\$ 490,641</b>	<b>\$ 469,275</b>	<b>\$ 959,916</b>	<b>\$ 377,616</b>	<b>\$ 413,006</b>	<b>\$ 790,622</b>	<b>\$ 83,706</b>
<b>Cumulative Surplus (Deficit)</b>										
Beginning Cumulative Surplus (Deficit)	\$ (278,770)	\$ 274,985		\$ 99,946	\$ 695,563		\$ 523,449	\$ 912,708		\$ 782,155
Annual Increase/(Decrease)	553,755	(175,039)		595,617	(172,114)		389,259	(130,553)		(33,991)
Ending Cumulative Surplus (Deficit)	\$ 274,985	\$ 99,946		\$ 695,563	\$ 523,449		\$ 912,708	\$ 782,155		\$ 748,164
										*
<b>Statistical Information</b>										
Number of Licensees	2,761	3,001		3,066	3,558		4,129	4,041		-

**Additional information:**

- Fee analysis required if the cumulative is less than zero; fee analysis recommended when the cumulative is less than current year expenditures; no fee increases needed if cumulative is over the current year expenses \*
- Most recent fee change: Fee reduction FY20
- Annual license fee analysis will include consideration of other factors such as board and licensee input, potential investigation load, court cases, multiple license and fee types under one program, and program changes per AS 08.01.065.

Appropriation	(All)
AL Sub Unit	(All)
PL Task Code	REC1

Sum of Expenditures Object Name (Ex)	Object Type Name (Ex)			Grand Total
	1000 - Personal Services	2000 - Travel	3000 - Services	
1011 - Regular Compensation	18,796.56			18,796.56
1021 - Allowances to Employees	2.46			2.46
1023 - Leave Taken	2,461.31			2,461.31
1028 - Alaska Supplemental Benefit	1,305.33			1,305.33
1029 - Public Employee's Retirement System Defined Benefits	1,622.31			1,622.31
1030 - Public Employee's Retirement System Defined Contribution	730.18			730.18
1034 - Public Employee's Retirement System Defined Cont Health Reim	454.03			454.03
1035 - Public Employee's Retirement Sys Defined Cont Retiree Medical	183.19			183.19
1037 - Public Employee's Retirement Sys Defined Benefit Unfnd Liab	1,686.95			1,686.95
1039 - Unemployment Insurance	66.66			66.66
1040 - Group Health Insurance	4,493.15			4,493.15
1041 - Basic Life and Travel	6.49			6.49
1042 - Worker's Compensation Insurance	183.17			183.17
1047 - Leave Cash In Employer Charge	491.08			491.08
1048 - Terminal Leave Employer Charge	269.80			269.80
1053 - Medicare Tax	290.31			290.31
1077 - ASEA Legal Trust	22.32			22.32
1079 - ASEA Injury Leave Usage	4.76			4.76
1080 - SU Legal Trst	9.57			9.57
2009 - In-State Non-Employee Taxable Per Diem		32.00		32.00
3000 - Training/Conferences			450.00	450.00
3002 - Memberships			780.00	780.00
3046 - Advertising			2,070.60	2,070.60
3057 - Structure, Infrastructure and Land - Rentals/Leases			162.81	162.81
3094 - Inter-Agency Hearing/Mediation			-	-
<b>Grand Total</b>	<b>33,079.63</b>	<b>32.00</b>	<b>3,463.41</b>	<b>36,575.04</b>

# Investigative Report





**MEMORANDUM**

DATE: November 18, 2019  
TO: Alaska Real Estate Commission  
THRU: Amber Whaley, Senior Investigator *AW*  
FROM: Shyla Consalo, Investigator *SC*

SUBJECT: Real Estate Commission Investigative Report for December 18, 2019 Meeting

The following information was compiled as an investigative report to the Commission for the period from September 10, 2019 through November 18, 2019. Including cases, complaints, and intake matters, since the last report, the Division opened **thirty-six (36)** matters and closed **twenty-one (21)** matters, a total of **twenty-three (23)** matters remain on-going and under active investigation or are pending litigation (*as indicated by italics*).

Matters opened by the Paralegal in Juneau, regarding continuing education audits and license action resulting from those matters are not covered in this report.

<b>CASE#</b>	<b>OPENED</b>	<b>ALLEGED VIOLATION</b>	<b>PROFESSION</b>
2016-000807	06/21/2016	<i>Fraud or Misrepresentation</i>	<i>Broker</i>
2016-000949	07/14/2016	<i>Misrepresentation</i>	<i>Broker</i>
2017-000602	05/31/2017	<i>Violation of Licensing Regulation</i>	<i>Broker</i>
2018-001085	09/21/2018	<i>Fraud or Misrepresentation</i>	<i>Salesperson</i>
2018-001122	07/30/2018	<i>Violation of Licensing Regulation</i>	<i>Broker</i>
2018-001411	12/21/2018	<i>Violation of Licensing Regulation</i>	<i>Broker</i>
2019-000209	02/22/2019	<i>Violation of Licensing Regulation</i>	<i>Salesperson</i>
2019-000210	02/22/2019	<i>Supervision</i>	<i>Broker</i>
2019-000211	02/22/2019	<i>Unlicensed Practice or Activity</i>	
2019-000403	04/17/2019	<i>Fraud or Misrepresentation</i>	<i>Salesperson</i>
2019-000421	04/24/2019	<i>Fraud or Misrepresentation</i>	<i>Salesperson</i>
2019-001043	09/24/2019	<i>Advertising</i>	<i>Salesperson</i>
2019-001070	09/30/2019	<i>Fraud or Misrepresentation</i>	<i>Broker</i>
2019-001086	10/02/2019	<i>Violation of Licensing Regulation</i>	<i>Salesperson</i>
2019-001087	10/02/2019	<i>Supervision</i>	<i>Broker</i>
2019-001255	10/30/2019	<i>Supervision</i>	<i>Broker</i>
2019-001256	10/30/2019	<i>Violation of Licensing Regulation</i>	<i>Salesperson</i>
2019-001259	10/30/2019	<i>Violation of Licensing Regulation</i>	<i>Broker</i>

<b>CASE#</b>	<b>OPENED</b>	<b>ALLEGED VIOLATION</b>	<b>PROFESSION</b>
2019-001263	10/31/2019	Unlicensed Practice or Activity	
2019-001287	11/12/2019	Violation of Licensing Regulation	Broker
2019-001288	11/13/2019	Criminal Action – No Conviction	Salesperson
2019-001290	11/14/2019	Advertising	Salesperson
2019-001300	11/18/2019	Violation of Licensing Regulation	Salesperson

**OPEN CASES: TOTAL = 23**

*\*\* Indicates a matter with license action before the Board for consideration at this meeting.*

**INVESTIGATIVE ACTIONS CLOSED SINCE LAST MEETING:**

<b>CASE#</b>	<b>CLOSED</b>	<b>VIOLATION</b>	<b>CLOSURE TYPE</b>
2019-000588	10/15/2019	Supervision	Advisement Letter
2019-000747	10/07/2018	Unlicensed Practice or Activity	No Action – No Violation
2019-000856	09/23/2019	Misrepresentation	Incomplete Complaint
2019-000857	10/03/2019	Unethical Conduct	No Action – No Jurisdiction
2019-000941	10/07/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-000943	10/07/2019	Unlicensed Practice or Activity	Incomplete Complaint
2019-000944	10/07/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-000945	10/07/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001012	11/06/2019	Misrepresentation	No Action – No Jurisdiction
2019-001014	10/28/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001015	10/28/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001016	10/28/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001020	10/28/2019	Advertising	Incomplete Complaint
2019-001021	10/28/2019	Supervision	Incomplete Complaint
2019-001069	10/31/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001119	11/15/2019	Unlicensed Practice or Activity	No Action – No Jurisdiction
2019-001121	11/12/2019	Violation of Licensing Regulation	Incomplete Complaint
2019-001190	10/14/2019	Compliance Inspection	Compliance
2019-001194	10/14/2019	Compliance Inspection	Compliance
2019-001195	10/14/2019	Compliance Inspection	Compliance
2019-001196	10/14/2019	Compliance Inspection	Compliance

**CLOSED CASES: TOTAL = 21**

**END OF REPORT**



**PROBATION REPORT**

**DATE:** November 22, 2019  
**TO:** Alaska Real Estate Commission  
**THRU:** Amber Whaley, Senior Investigator *AW*  
**FROM:** Ryan Gill, Probation Monitor *RG*  
**SUBJECT:** Probation Report for the December 18, 2019 Commission Meeting

The following is a complete list of individuals on probation for this Commission. There are currently **six (6)** individuals being monitored on probation. Since the last probation report, **zero (0)** individuals were released from probation. All individuals are in compliance with their agreements, except as noted below.

<u><b>NAME</b></u>	<u><b>CASE NUMBER</b></u>	<u><b>PROBATION START</b></u>	<u><b>PROBATION END</b></u>
Finis Shelden	2016-001317	11/08/2017	11/08/2020
*Sara Collison	2016-001418	12/05/2016	HOLD
*Elizabeth Hairston	2018-001303	10/30/2018	HOLD
Katherine Uei	2019-000368	03/27/2019	03/27/2020
Stacy Hague	2019-000862	07/24/2019	07/24/2020
Frank Zellers	2019-000873	07/24/2019	01/24/2021

**Special Notes:**

**\*Sara Collison:** License lapsed January 31, 2018. Collison has been unable to find a sponsoring broker and until her license is reinstated, her probation cannot be completed. A Surrender of

License offer was mailed on September 12, 2019, confirmed delivered on September 20, 2019. Attempts to make contact have been unsuccessful.

**\*Elizabeth Hairston:** Moved to Colorado on June 14, 2019. Failed to report absence from State in excess of 30 days and failed to update State of new address/employment. Provided proof of completion for CEs. Has no intention of returning to Alaska and has agreed to surrender license. Letter mailed November 21, 2019.

**END OF REPORT**

# Executive Administrator's Report

LICENSING REPORT  
December 18, 2019

New Licensees July 1, 2019 through September 20, 2019: 65
Total Number of <u>Active</u> Licensees with 1/31/2020 exp: 2768
Total Number of Licensees with 1/31/2020 exp: *3027

ACTIVE: 1/31/20 exp	May	Sept	Dec
Broker	411	418	423
Associate Broker	398	397	391
Salesperson	1918	1957	1954
<b>Total Active:</b>	<b>2727</b>	<b>2772</b>	<b>2768</b>

INACTIVE: 1/31/20 exp	May	Sept	Dec
Broker	1	1	1
Associate Broker	6	5	6
Salesperson	42	52	54
<b>Total Inactive:</b>	<b>49</b>	<b>58</b>	<b>61</b>

LAPSED: NON COMPLIANCE OF PLE w/ exp date of 1/31/20			
	May	Sept	Dec
Broker	0	0	0
Associate Broker	0	0	0
Salesperson	7	12	11
<b>Total:</b>	<b>7</b>	<b>12</b>	<b>11</b>

In this reporting period	May	Sept	Dec
Revoked	0	0	0
Surrendered	0	0	0

CURRENTLY	May	Sept	Dec
License Returned	101	152	159
Probation License	4	6	4
Suspended	0	0	0

Transfers: 118 (July - Sept 2019)

Not Included in the Counts:

PLE Completed	62	55	76
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LAPSED: 1/31/18 exp date	May	Sept	Dec
Broker	47	47	46
Associate Broker	45	45	45
Salesperson	394	392	388
Community Assoc Mgmt	2	2	2
<b>Total Lapsed:</b>	<b>488</b>	<b>486</b>	<b>481</b>

INACTIVE with exp 1/31/18	May	Sept	Dec
Broker	4	4	3
Associate Broker	3	3	2
Salesperson	76	75	17
<b>Total Inactive:</b>	<b>83</b>	<b>82</b>	<b>22</b>

Upgrades -July thru Sept 2019

S - AB = 3

S - B = 2

Endorsements

S = 6

A = 1

B = 0

\*includes licensees that are active, inactive, lic rtnd, probation, suspension, surrender, lapsed (PLE), and revoked, all with 1/31/2020 expiration date

## **EDUCATION REPORT**

**December 18, 2019**

(as of 12/2/19)

<b><u>Course Type</u></b>	<b><u>Currently Approved</u></b>
Pre-Licensing (SPL)	9
Broker Upgrade Pre-Licensing (BPL)	4
Elective Continuing Education (ECE)	387
Designated Continuing Education (DCE)	54
Post Licensing Education (PLE)	70
	<b>Total: 524</b>
<b><u>Instructor</u></b>	
Permanent	140
New instructor - Anchorage	6
Temporary Instructor	0

**Statement of Net Positions  
Real Estate Recovery Funds  
December 2, 2019**

	Actuals					Projected	
	For the Fiscal Year Ending June 30, 2015	For the Fiscal Year Ending June 30, 2016	For the Fiscal Year Ending June 30, 2017	For the Fiscal Year Ending June 30, 2018	For the Fiscal Year Ending June 30, 2019	For the Fiscal Year Ending June 30, 2020	For the Fiscal Year Ending June 30, 2021
<b>ASSETS</b>							
Cash and Investments	\$ 454,264	\$ 465,770	\$ 392,207	\$ 394,514	\$ 277,675	\$ 255,182	\$ 138,343
Total Assets	<u>454,264</u>	<u>465,770</u>	<u>392,207</u>	<u>394,514</u>	<u>277,675</u>	<u>255,182</u>	<u>138,343</u>
<b>LIABILITIES</b>							
Accounts Payable and Accrued Liabilities	7,211	(30)	1,517	(10,691)	11,230	6,729	11,230
Total Liabilities	<u>7,211</u>	<u>(30)</u>	<u>1,517</u>	<u>(10,691)</u>	<u>11,230</u>	<u>6,729</u>	<u>11,230</u>
<b>FUND BALANCES</b>							
Reserved for Education and Claims	447,053	465,800	390,691	405,205	266,445	248,453	127,113
Total Fund Balance	<u>447,053</u>	<u>465,800</u>	<u>390,691</u>	<u>405,205</u>	<u>266,445</u>	<u>248,453</u>	<u>127,113</u>
Total Liabilities and Fund Balances	<u>\$ 454,264</u>	<u>\$ 465,770</u>	<u>\$ 392,207</u>	<u>\$ 394,514</u>	<u>\$ 277,675</u>	<u>\$ 255,182</u>	<u>\$ 138,343</u>
Average 2 year licensing cycle fund balance:		Average of 6/30/15 & 6/30/16 <u>\$ 460,017</u>	Average of 6/30/16 & 6/30/17 <u>\$ 428,988</u>	Average of 6/30/17 & 6/30/18 <u>\$ 393,361</u>	Average of 6/30/18 & 6/30/19 <u>\$ 336,095</u>	Average of 6/30/19 & 6/30/20 <u>\$ 266,429</u>	Average of 6/30/20 & 6/30/21 <u>\$ 196,763</u>

Note: Per the State Comprehensive Annual Financial Report the State "funds are reported using modified accrual accounting which measures cash and other financial assets that can be readily converted to cash".

Note: The total Liabilities is year to date  
For FY21 Liabilities projected using FY19



**Statement of Revenues, Expenditures, and Changes in Fund Balances**  
**Real Estate Recovery Fund**  
**Actual for Years Ended June 30, 2015 through December 2, 2019**  
**and**  
**Projected for Fiscal Years Ending June 30, 2020 and June 30, 2021**

	Actuals									Projected	
	For the Fiscal Year Ended 6/30/15	For the Fiscal Year Ended 6/30/16	For the Fiscal Year Ended 6/30/17	For the Fiscal Year Ended 6/30/18	For the Fiscal Year Ended 6/30/19	For the Quarter Ended 9/30/19	Report thru 12/2/19	For the Quarter Ended 3/31/20	For the Quarter Ended 6/30/20	For the Fiscal Year Ended 6/30/20	For the Fiscal Year Ended 6/30/21
<b>REVENUES</b>											
Licenses and Permits	38,425	\$ 126,910	38,370	133,550	29,465	6,840	18,210			(1) 133,550	(1) 29,465
Interest and Investment Income	2,164	2,533	3,178	4,230	9,964	1,258	940			(2) 4,230	(2) 9,964
<b>TOTAL REVENUES</b>	<b>40,589</b>	<b>129,443</b>	<b>41,548</b>	<b>137,780</b>	<b>39,429</b>	<b>8,098</b>	<b>19,150</b>	<b>-</b>	<b>-</b>	<b>137,780</b>	<b>39,429</b>
<b>EXPENDITURES</b>											
Personal Services	113,145	112,763	115,097	134,846	126,366	26,801	2,287	-	-	(3) 134,846	(3) 126,366
Travel	0	-	-	-	-	-	-	-	-	-	-
Commodities	0	89	-	617	-	-	-	-	-	617	-
Services - Non-claims	732	5,085	13	10	5,000	-	-	-	-	10	5,000
Services - Claims & Associated Legal costs	0	-	-	-	24,902	-	24,800	-	-	24,800	24,902
<b>TOTAL EXPENDITURES</b>	<b>113,877</b>	<b>117,937</b>	<b>115,110</b>	<b>135,473</b>	<b>156,268</b>	<b>26,801</b>	<b>27,087</b>	<b>-</b>	<b>-</b>	<b>160,273</b>	<b>156,268</b>
Excess (Deficiency) Revenues Over Expenditures	(73,288)	11,505	(73,562)	2,307	(116,839)	(18,703)	(7,937)	-	-	(22,493)	(116,839)
Other Financing Sources (Uses)	-	-	-	-	-	-	-	-	-	-	-
Net Change in Fund Balances	(73,288)	11,505	(73,562)	2,307	(116,839)	(18,703)	(7,937)	-	-	(22,493)	(116,839)
Fund Balances - Beginning of Year	527,552	454,264	465,770	392,207	394,514	277,675	258,972	-	-	277,675	255,182
Fund Balances - End of Year	454,264	\$ 465,770	\$ 392,207	\$ 394,514	\$ 277,675	258,972	251,035	0	0	\$ 255,182	\$ 138,343

(1) For FY21, licenses and permits revenue projected to be the same as FY19.

(2) Projecting through FY20 based on FY18 rate of earnings.

For FY20, the annual personal services costs are projected for the Executive Administrator to spend 10% and the Project Assistant to spend

(3) 100% of their time on Real Estate Recovery Fund related tasks.

**Statement of Cash Flows**  
**Real Estate Recovery Fund**  
**December 2, 2019**

	Actuals					Projected	
	For the Fiscal Year Ended 6/30/15	For the Fiscal Year Ended 6/30/16	For the Fiscal Year Ended 6/30/17	For the Fiscal Year Ended 6/30/18	For the Fiscal Year Ended 6/30/19	For the Fiscal Year Ended 6/30/20	For the Fiscal Year Ended 6/30/21
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>							
Receipts for Licenses & Permits	\$ 38,425	\$ 126,910	\$ 38,370 <sup>(1)</sup>	\$ 133,550 <sup>(1)</sup>	\$ 29,465 <sup>(1)</sup>	\$ 133,550	\$ 29,465
Payments to Employees	(113,145)	(112,763)	(115,097) <sup>(2)</sup>	(134,846) <sup>(2)</sup>	(126,366) <sup>(2)</sup>	(134,846)	(126,366)
Payments for Services/Claims	-	-	-	- <sup>(3)</sup>	(24,902) <sup>(3)</sup>	(24,800)	(24,902)
Other Payments	(732)	(5,174)	(13)	(627)	(5,000)	(627)	(5,000)
Net Cash Provided (Used) by Operating Activities	(75,452)	8,973	(76,740)	(1,923)	(126,803)	(26,723)	(126,803)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>							
Interest and Dividends on Investments	2,164	2,533	3,178 <sup>(3)</sup>	4,230 <sup>(3)</sup>	9,964 <sup>(3)</sup>	4,230	9,964
Net Cash Provided (Used) by Investing Activities	2,164	2,533	3,178	4,230	9,964	4,230	9,964
Net Increase (Decrease) in Cash	(73,288)	11,505	(73,562)	2,307	(116,839)	(22,493)	(116,839)
Cash and Cash Equivalents - Beginning of Year	527,552	454,264	465,770	392,207	394,514	277,675	255,182
Cash and Cash Equivalents - End of Year	\$ 454,264	\$ 465,770	\$ 392,207	\$ 394,514	\$ 277,675	\$ 255,182	\$ 138,343

(1) For FY21, licenses and permits revenue projected to be the same as FY19.

(2) Projecting through FY20 based on FY18 rate of earnings.

(3) For FY20, the annual personal services costs are projected for the Executive Administrator to spend 10% and the Project Assistant to spend 100% of their time on Real Estate Recovery Fund related tasks.

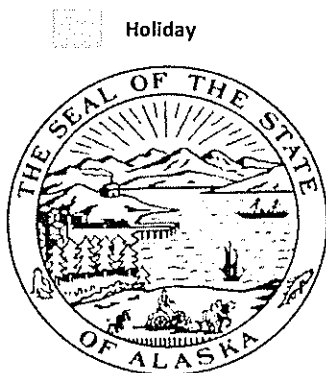
# Future Meeting Dates

# STATE OF ALASKA 2020

## State Holidays

Date	Holiday
01/01	New Year's Day
01/20	MLK Jr.'s Birthday
02/17	Presidents' Day
03/30	Seward's Day
05/25	Memorial Day
07/04	Independence Day (observed 7/3)
09/07	Labor Day
10/18	Alaska Day (observed 10/19)
11/11	Veterans' Day
11/26	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.



State calendar maintained by the  
Division of Finance,  
Department of Administration  
<http://doa.alaska.gov/calendars.html>  
Revised 10/31/2019

# HOLIDAY CALENDAR

## JANUARY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## FEBRUARY

S	M	T	W	T	F	S
						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

## MARCH

S	M	T	W	T	F	S
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## APRIL

S	M	T	W	T	F	S
			1	2	3	4
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19	20	21	22	23	24	25
26	27	28	29	30		

## MAY

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24	25	26	27	28	29	30
31						

## JUNE

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	1	2	3	4	5	6
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21	22	23	24	25	26	27
28	29	30				

## JULY

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			1	2	3	4
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19	20	21	22	23	24	25
26	27	28	29	30	31	

## AUGUST

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## SEPTEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

## OCTOBER

S	M	T	W	T	F	S
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4	5	6	7	8	9	10
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

## NOVEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

## DECEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

# Texas REC Regulation Reform Information

**From:** [Chambers, Sara C \(CED\)](#)  
**To:** [Walsh, Sharon J \(CED\)](#)  
**Cc:** [Harris, Nancy A \(CED\)](#)  
**Subject:** RE: Gov. Greg Abbott reduces state licensing requirements and cuts fees  
**Date:** Friday, November 29, 2019 10:23:25 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Great! Hopefully he is sharing some of their REC strategies with the listserv. Is action on this topic on their agenda for December?

Sara Chambers  
*Division Director*

**Alaska Division of Corporations, Business and Professional Licensing**  
*Inspiring public confidence through balanced regulation of competent professional and business services*

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P.O. Box 110806, Juneau, AK 99811-0806  
[commerce.alaska.gov/web/cbpl](http://commerce.alaska.gov/web/cbpl)  
Phone: (907) 465-2144  
FAX: (907) 465-2974

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**From:** Walsh, Sharon J (CED) <sharon.walsh@alaska.gov>  
**Sent:** Wednesday, November 27, 2019 12:13 PM  
**To:** Chambers, Sara C (CED) <sara.chambers@alaska.gov>  
**Subject:** FW: Gov. Greg Abbott reduces state licensing requirements and cuts fees

Sara:  
FYI...

Here is some news from the Texas REC EA, Doug Oldmixon. He's a great guy and we've had a good relationship from ARELLO interactions. He is retiring soon.

Looks like there are more states besides PA and UT, moving towards a "right touch" concept for occupational licensing reform.

Sharon

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**From:** [arelloadministrators@listserve.arello.org](mailto:arelloadministrators@listserve.arello.org) <[arelloadministrators@listserve.arello.org](mailto:arelloadministrators@listserve.arello.org)> **On Behalf Of** Douglas Oldmixon  
**Sent:** Friday, November 22, 2019 1:44 PM  
**To:** 'arelloadministrators@listserve.arello.org' <[arelloadministrators@listserve.arello.org](mailto:arelloadministrators@listserve.arello.org)>  
**Cc:** Chelsea Buchholtz <[Chelsea.Buchholtz@trec.texas.gov](mailto:Chelsea.Buchholtz@trec.texas.gov)>  
**Subject:** FW: Gov. Greg Abbott reduces state licensing requirements and cuts fees

Fellow Administrators –

The deregulatory impulse is gathering momentum and I wanted to share with you the influences we are experiencing in Texas, as I am sure many of you are also encountering in your jurisdictions. Because our agency just completed our Sunset review in 2019, we are implementing a variety of measures that achieve some of the same goals as the Governor's letter directs. Once our Commissioners and Board members approve the official agency response, I will share those as well. I have some additional ideas on a path toward increased license portability that I will also share more broadly soon. I hope your upcoming holidays are filled with hope and joy! Doug

PS. In case you had not heard, our current General Counsel Chelsea Buchholtz will become Executive Director effective 1 Jan 20. You may have met her at the Annual Meeting in September. I will be around to help with a smooth transition through at least the end of March.

## GOV. GREG ABBOTT ORDERS REDUCTION OF LICENSING REGULATIONS AND CUTTING OF FEES

Gov. Greg Abbott has ordered state agencies to review and overhaul their licensing requirements, with an eye toward providing Texans “the opportunity to earn a living free from unnecessary state intrusion.” And he wants to see their plans to roll this out by Dec. 1, [reports the Tribune’s Emma Platoff](#). Read Platoff’s full article [here](#). *See the text of the full letter from Gov Abbott included below.*

In a letter, Abbott said he wants to trim licensing regulations, reduce fees and educational requirements for certain professions, and, “where appropriate,” remove licensing barriers for individuals with criminal records. Several state agencies confirmed they received the letter and are preparing their responses. The governor’s office declined to comment further on the letter.

**Why does this matter?** The fees associated with occupational licenses annually generate tens of millions of dollars in revenue for the state. Some of those dollars flow back to the agencies that levy the fees, for overhead and other operational costs, while much of the money is fed into the state’s general revenue fund, where it can be directed to other efforts.

**Excessive fees?** Occupational licenses are intended to guarantee a minimum level of experience for practitioners to protect consumer safety. Some conservatives argue that some of the state’s educational requirements and fees are excessive and present unreasonable barriers for would-be practitioners. Abbott ordered agencies to reduce license application fees to 75% or less of the national average for comparable occupations.

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Sent to [douglas.oldmixon@trec.texas.gov](mailto:douglas.oldmixon@trec.texas.gov). To contact the Texas Tribune, visit [texastribune.org/contact](http://texastribune.org/contact).

An article on [occupational licensing in Texas](#) is related to the Governor’s letter. The Texas Real Estate Commission is mentioned in a chart.

## Occupational Licensing in Texas: How Much Is Too Much?

In the November edition of *Fiscal Notes*, released recently, the Comptroller’s office looks at [occupational licensing in Texas](#). Despite the state’s reputation for business friendliness, some of Texas’ licensing requirements have been seen as unnecessarily burdensome, leading the Legislature to abolish many license types and ease requirements for others.

In this issue, we also take a look at the [expanding world of government transparency](#) — the move toward offering free access, via the internet, to federal, state and local government data that can be highly valuable both to private businesses and communities. Companies are mining such data for key insights into consumer behavior, while local governments use the data to develop strategies for economic development, fine-tune regulatory systems and further many other public purposes.

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GOVERNOR GREG ABBOTT

October 8, 2019

Dear State Agency Heads:

Reforming Texas's occupational-licensing rules must be a priority for all state leaders. Sensible licensing rules, when necessary, can protect the public from legitimate harm, but overbroad rules stymie innovation, raise consumer prices, and limit economic opportunity. Overly burdensome licensing rules also discourage individuals from pursuing professions or prevent the unemployed — or former inmates who have paid their debt to society — from building a better life.

I commend legislators for their efforts to roll back onerous licensing rules this past session, and I was proud to sign legislation that will significantly ease those burdens on our citizens. But every Texan deserves the opportunity to earn a living free from unnecessary state intrusion, and there is more work to be done to eliminate barriers to work in Texas.

Today I ask you, as leaders of our state agencies, to take all appropriate actions under existing statutory authority to help Texans in this important effort. Executive branch agencies that issue and administer occupational licenses should act administratively to reduce unnecessary and burdensome licensing regulations that hurt workers and consumers, including by:

- Assessing whether existing licensing regulations help or hinder Texans' right to earn a living;
- Identifying less-restrictive alternatives to licensure, such as bonding, insurance, registration, or certification;
- Identifying other jurisdictions with licensing requirements that are substantially equivalent to Texas's licensing requirements, as required by last session's Senate Bill 1200;
- Recognizing substantially equivalent out-of-state occupational licenses for people who are in good standing in all states where they are licensed; and
- Accepting professional experience as a substitute for licensure in cases where a person moves to Texas from a state that does not license his or her occupation.

In addition, executive branch agencies should reduce fees and burdensome educational requirements whenever possible, including by:

- Developing and implementing plans to reduce license application fees to 75% or less of the national average for equivalent or comparable occupations;<sup>1</sup>

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<sup>1</sup> All licensing agencies, including self-directed and semi-independent agencies, should provide the Office of the Governor with a list of those fees and their amounts; show what percentage of generated fees go to the General Revenue Fund as opposed to their costs of operations; and, if fees were to be reduced, explain the impact.



State Agency Heads  
October 8, 2019  
Page 2

- Reducing excessive educational and work experience requirements, absent compelling evidence that doing so would not adequately protect the public interest;
- Considering reductions in licensure and examination fees for Texas residents who are eligible for certain public assistance programs; and
- Expanding the acceptance of online continuing education credits for residents who cannot attend continuing education classes in person.

Finally, executive branch agencies should remove barriers to licenses for people with criminal records where appropriate, including by:

- Rather than relying on blanket exclusions for people with criminal records, publishing lists of specific criminal offenses that disqualify applicants from obtaining or maintaining an occupational license, or at least limiting the exclusion to only those offenses that directly relate to the duties and responsibilities of the occupation; and
- Exempting arrests that did not result in conviction or placement on deferred adjudication community supervision for the purposes of determining a person's fitness for a licensed occupation, consistent with last session's Senate Bill 1217.

Executive branch agencies should review their occupational-licensing rules and identify which of these administrative actions will be pursued, and report their findings to the Office of the Governor by no later than December 1, 2019.

Thank you for your cooperation with this initiative and for your continued service to the State. Easing licensing regulations will stay true to the Texas Constitution's protection for economic liberty and will ensure that Texas remains a pro-growth, pro-opportunity, and freedom-loving state.

Sincerely,



Greg Abbott  
Governor

GA:shk



**TREC Commissioners**

November 27, 2019

R. Scott Kesner  
Chair

Bob Leonard  
Vice Chair

T.J. Turner  
Secretary

Jason Hartgraves

Jan Fite Miller

Barbara Russell

Rayito Stephens

DeLora Wilkinson

Micheal Williams

Douglas E. Oldmixon  
Executive Director

The Honorable Greg Abbott, Governor  
Office of the Governor  
State Insurance Building  
1100 San Jacinto  
Austin, Texas 78701

Dear Governor Abbott,

We received your October 8, 2019 letter regarding reforming Texas' occupational-licensing rules. The Texas Real Estate Commission (TREC or the Commission) shares your commitment to balancing the appropriate level of regulation necessary to safeguard the public from harm, while also facilitating economic growth and opportunity across Texas.

Over the past five years, the total number of license holders that TREC oversees has increased approximately 20% to 197,151 in August 2019. TREC licenses real estate sales agents, brokers (individuals and business entities), inspectors, and residential service companies and registers time-share plans and easement or right-of-way (ERW) agents and businesses. Sales agents and brokers operate under a fiduciary obligation and must act in the best interest of a client in a real estate transaction. Inspectors are licensed to perform an inspection on real property as part of a sale/purchase transaction. Residential service companies are more commonly referred to as "home warranty companies;" they sell service contracts for a certain period to maintain, repair, or replace aspects of a residential property. The registration of a time-share requires the developer to register the timeshare plan before selling a timeshare interest in Texas. And an ERW is a person or entity who negotiates easements on behalf of a company, government agency, or property owner.

All licenses and registrations within TREC's jurisdiction have responsibilities that the Texas Legislature has deemed to require regulation. The Commission is committed to examining whether current laws, rules, and practices are implementing regulations in the least restrictive means consistent with adequate protection of Texas consumers. Commissioners, with the support of staff, have renewed their

ongoing examination process to identify recommendations that can be pursued immediately and have incorporated additional ideas into the ongoing strategic planning for TREC. To that end, after thorough review of our occupational-licensing rules and a robust discussion among your appointed policy-makers, please find the following report of our findings.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Scott Kesner". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

R. Scott Kesner, Chair  
Texas Real Estate Commission

## Reduce Unnecessary and Burdensome Licensing Regulations

Act administratively to consider actions that include the following:

- Assessing whether existing licensing regulations help or hinder Texans' right to earn a living
- Identifying less-restrictive alternatives to licensure, such as bonding, insurance, registration, or certification
- Identifying other jurisdictions with licensing requirements that are substantially equivalent to Texas's licensing requirements, as required by last session's Senate Bill 1200
- Recognizing substantially equivalent out-of-state occupational licenses for people who are in good standing in all states where they are licensed
- Accepting professional experience as a substitute for licensure in cases where a person moved to Texas from a state that does not license his or her occupation

TREC recently implemented several initiatives through the rule-making process that reduce licensing regulations in keeping with the Commission's sunset bill enacted by the Legislature during the 86<sup>th</sup> Texas Legislative Session. Those initiatives include:

- TREC has eliminated branch office licenses effective September 1, 2019. Removing the requirements for a separate license certificate for each branch office maintained by a broker or brokerage advances the goal to streamline and simplify licensing requirements.
- TREC has eliminated the Texas residency requirement for license holders under TREC's jurisdiction. The elimination of the residency requirement removes a barrier to entry into the real estate field.
- TREC eliminated the requirement for a separate license for education instructors. As of September 1, 2019, it is the responsibility of individual education providers to ensure the use of qualified instructors. Qualifications for instructors are outlined in TREC rules. Additionally, as an alternative to individual instructor licensing, TREC has established an audit program for education providers and courses as a less restrictive means to ensure education providers are utilizing qualified instructors and adhering to requirements for course content and delivery. TREC adopted rules on November 19, 2019, to conform to the recently passed legislation. TREC's Education Standards Advisory Committee (ESAC) continues to review education rules and processes to identify and recommend changes to reduce or eliminate additional barriers or burdensome licensing regulations applicable to education providers licensed by TREC.
- TREC is currently considering proposed rules to significantly streamline and reduce the qualifying education requirements for inspectors. Currently, there are three inspector license types: apprentice, real estate and professional. The more experienced license types (real estate and professional) can be attained through two methods: a traditional apprenticeship pathway that requires experience, education and sponsorship; or a substitute experience pathway that substitutes additional education and fieldwork for the experience traditionally required under the apprentice pathway. By rule, TREC seeks to reduce the total hours of coursework required for the substitute professional path, the most utilized path for licensure, to be more in line with other states' requirements. The proposed rules would reduce the overall hours to become a professional inspector using the substitute path by 200 hours, from 394 to 194. The proposed

rules would also eliminate the previous requirement for repetitive coursework. TREC postponed the adoption of these simplified rules to allow time for review by the Office of the Governor's newly created Regulatory Compliance Division. The Commission expects to receive approval from the Regulatory Compliance Division in time to consider these proposed rules for adoption at its next meeting in February 2020. Once adopted, TREC expects a four to six-month implementation period to allow sufficient time for education providers to respond to the changes.

In addition to these administrative actions taken by the Commission as a result of sunset review, TREC is considering more ways to eliminate or reduce barriers as part of its strategic planning process in 2020. These efforts, described more fully below, will require statutory changes and include the following:

- Elimination and repeal of the Inspector Recovery Fund. This fund is intended to compensate consumers who have obtained civil judgments against inspectors who lack the financial ability to respond to those judgments. However, there have been very few claims made on the fund in recent years primarily due to the requirement since 2007 for inspectors to carry errors and omissions insurance for the protection of their customers. Elimination of this redundant safeguard and returning the funds to inspectors who paid into the fund is a fair way to reduce a financial and regulatory burden and the associated staff costs to administer it.
- Increase potential license portability. Currently TREC may waive the license application and examination fees and issue a license on an expedited basis to an applicant who is a military service member, military veteran, or military spouse who holds a certificate or license issued by a state or territory other than Texas that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas. 22 Tex. Admin. Code §535.51(c). TREC may also allow an applicant to demonstrate competency through passage of examinations in other jurisdictions, education, experience, letters of good standing, and letters of recommendation. These considerations of substantial equivalency and demonstrated competency are conducted on a case-by-case basis. Expansion of opportunities for license portability for people moving to Texas could remove unnecessary barriers.

The Commission has less authority to accommodate applicants from non-military backgrounds. Certain coursework may be waived on a case-by-case basis if an applicant has already completed similar coursework, and the national examination requirement may be waived if the applicant holds an active equivalent license in another state and passed the same accredited examination to obtain that license.

The challenge for real estate sales agents and brokers from other jurisdictions is that the education and experience requirements for licensure in Texas exceed the requirements in most, if not all, jurisdictions. The Commission also does not currently have the authority to establish standards for determining the extent to which professional experience could be recognized and credited as equivalent to required education.

Pursuant to SB 1200 passed by the 86<sup>th</sup> Texas Legislature, TREC is conducting a study to identify other jurisdictions with licensing requirements that are substantially equivalent to Texas's for all license types. Once this study concludes, the Commission will use the results to examine whether the current Texas

requirements are the least restrictive mechanisms for licensing, while protecting the consumers of regulated services in this state. Based on this study, TREC will consider as part of its strategic plan, seeking legislative changes to expand license portability.

## **Reduce Licensing Application Fees and Reduce Excessive Education Requirements:**

Do so whenever possible, including by:

- Developing and implementing plans to reduce license application fees to 75% or less of the national average for equivalent or comparable occupations
- Reducing excessive educational and work experience requirements, absent compelling evidence that doing so would not adequately protect the public interest
- Considering reductions in licensure and examination fees for Texas residents who are eligible for certain public assistance programs
- Expanding the acceptance of online continuing education credits for residents who cannot attend continuing education classes in person

TREC has lowered fees several times in the last five years, including in March and November of 2019. Specifically, in response to Sunset Advisory Commission's management directive to limit fund growth and provide straightforward fee setting, the Commission adopted rules on November 19, 2019 to reduce and simplify license fees. The new fee rules will go into effect January 1, 2020. These include eliminating fees to maintain online sponsorship relationships, paper processing fees, fees to create certificates, and fees associated with changing license holder information.

Additionally, TREC is working to expand and improve the ability of license holders to self-serve and conduct business with TREC more easily and seamlessly on their phones and other electronic devices. TREC is confident that these improvements will reduce administrative costs and allow further reduction and simplification of licensing fees. TREC has already created an online application progress tracker for real estate sales agents and brokers and is working to implement similar online capabilities for all license types. TREC is also working on technology improvements to display online in real time those continuing education requirements needed by each license holder to renew their license and to allow license holders the ability to upload supporting documents directly with an online application instead of sending those documents separately via email.

TREC is also researching license application fees charged by other states to determine where TREC fees are in relation to other states. Similarly, TREC is examining the most effective mechanism to reduce or eliminate fees for Texas residents who are eligible for public assistance. Once this research is complete, TREC will evaluate possible reductions or waivers of license application fees as part of its strategic planning process in 2020.

As part of its strategic planning, TREC will continue to examine whether the education requirements for sales agents and brokers strike the appropriate balance between consumer protection and limited

regulation. Currently, to become a broker, an applicant must complete 900 hours of education, including 300 hours of qualifying education and 600 hours of “related” education, as well as meet minimum experience requirements. There is likely an opportunity to reduce total education hours and also substitute some portion with years of active experience as a license holder. By more closely examining these requirements, TREC seeks to eliminate any redundancies. The suggested adjustments to current education standards, however, would require a statutory change.

As part of its strategic planning, TREC will also consider whether it is prudent to reduce fees related to the registration of ERWs and potentially substitute a requirement for bonding and/or certification. TREC has registered ERWs since September 1, 1997. While the statute identifies this function as a registry, TREC is authorized to adopt rules, fingerprint applicants, conduct investigations and take disciplinary action regarding registrants, similar to TREC’s authority over license holders. While TREC receives fees for each initial registration and renewal period, virtually no consumer complaints are filed. This is likely because of the detailed processes required when federal funds are connected to negotiations of this type, and in major cases legal counsel often represents the parties. As such, reducing the related fees and substituting a requirement for bonding and/or certification may provide adequate protection for consumers. This, too, would require statutory changes.

Because Texas contains vast rural areas, TREC has always been a leader in accepting quality distance education. Several years ago, TREC identified and reviewed a decline in the standards for continuing education (CE) courses offered through distance education. As a result, recommendations were proposed and adopted by rule to enhance the standards for design and delivery of online CE courses and courses offered through distance education to improve accountability. Most recently, ESAC has recommended additional changes to streamline and standardize the requirements for online courses and distance education to be more similar to classroom courses. TREC will consider these recommendations at a future Commission meeting.

## **Remove Barriers for People with Criminal Records**

- Publish lists of specific criminal offenses that disqualify applicants from obtaining or maintaining an occupational license, or at least limiting the exclusion to only those offenses that directly relate to the duties and responsibilities of the occupation
- Exempting arrests that did not result in conviction or placement on deferred adjudication community supervision for the purposes of determining a person’s fitness for a licensed occupation, consistent with last session’s Senate Bill 1217

By rule, TREC has previously identified those offenses for which a conviction or a deferred adjudication deemed a conviction under Occupations Code §53.021 are directly related to the duties and responsibilities of a real estate broker, real estate sales agent, easement or right-of-way agent, professional inspector, real estate inspector, or apprentice inspector. See 22 Tex. Admin. Code §541.1(a). TREC has made clear that these specific offenses tend to demonstrate the person’s inability to represent the interest of another with honesty, trustworthiness, and integrity. An arrest that did not result in a

person's conviction or placement on deferred adjudication or community supervision is not considered by TREC.

In response to the legislative changes enacted in HB 1342, TREC reviewed the specific criminal offenses it previously deemed to directly relate to the duties and responsibilities of its license holders. At its meeting on November 19, 2019, TREC proposed amendments that narrow the list of criminal offenses that will be considered for inspectors and easements or right-of-way agents to exclude felony driving while intoxicated and driving under the influence offenses and makes clear that TREC does not consider an arrest that did not result in a conviction or placement on deferred adjudication or community supervision. The criminal history of all license holders, however, remains an important consideration, particularly since certain occupational licenses issued by TREC provide license holders with the ability to enter residential properties with or without the presence of clients or customers; the opportunity to drive such persons in their personal vehicle; access to a client's financial and personally identifiable information including bank account and social security numbers; and allow license holders to represent clients in one of the largest financial investments many consumers will make in their lifetime. For these reasons, the Commission carefully reviews the criminal history of all applicants and license holders to the full extent authorized by law in Chapter 53, Occupations Code, to ensure the appropriate protection of consumers.

As required by law, TREC also offers a pre-license fitness determination as an opportunity for potential applicants to inquire about whether their criminal history would meet TREC's qualifications for licensure. This determination costs \$50, and provides a low-cost opportunity for a potential applicant to inquire as to the likelihood of licensure based on criminal history or other prohibitive activity (e.g., unpaid civil judgments, discipline taken against another professional or occupational license, or instances of unlicensed real estate activity). If TREC were authorized by law to accept the fingerprints of a potential applicant prior to filing a license application, this pre-license fitness determination would precisely mirror the process required after an application is filed, reducing duplication and saving the potential applicant both time and money by avoiding the cost of taking classes only to be deemed ineligible for a license. This would require a legislative change.

## **Conclusion**

The Commission is committed to examining whether current laws, rules, and practices are implementing regulations in the least restrictive means consistent with adequate protection of Texas consumers. The thorough review of TREC's occupational-licensing rules and a robust discussion among appointed policy-makers has been a worthy exercise that will shape the Commission's direction for the future.



# Commission Members Comments & Questions

Adjournment

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# BOUNDARIES

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*The Association of Real Estate License Law Officials Monthly eMagazine for Leaders in Real Estate Regulation*

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## ARELLO 2020 Committee and Taskforce Chairs Named

ARELLO's member-driven tradition and strong volunteer spirit support the association's mission in many ways, not the least of which is the continuing willingness of our members to commit their time, energy, and expertise to serve on ARELLO committees. ARELLO committees undertake discussions, projects, programs, and initiatives that address timely issues affecting real estate regulation, as well as association operations. In accordance with the *ARELLO Policies and Procedures*, 2020 ARELLO President Nedka Dineva (WV) has appointed the following committee chairs and President-Elect Marcia Franks (TN) has appointed the vice chairs. Listings are in the order of chair(s), then vice chair(s):

**Commissioner Resource Committee:** Scott Breidenbach (ND), Janet Thoren (NC); **Education Certification Committee:** Ryan Adair (AL), Amber Nutt (KS); **Examination Accreditation Committee:** Corean Hamlin (NC), Kenneth Johnson (GA); **Fair Housing Committee:** Mike Gamblin (ID), Ulani Prater Gulstone (DC); **Finance Committee:** Brad Chisholm (NS), Monica Rut (NE); **Governance Review Committee:** Miriam Baer (NC), Eric Wisner (KS); **Information Technology and Communications Committee:** Erik Wisner (KS), Nicole Novotny Smith (WY);

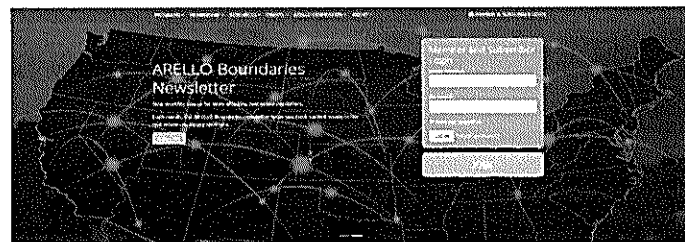


Association of Real Estate License Law Officials  
*Leaders in Real Estate Regulation*

**Investigator/Auditor Resource Committee:** Heather Garrett (AR), Wendy Alkire (KS); **Law and Regulation Committee:** Co-Chairs Charlie Moody (NC) and Kim Wells (OH), John Rinehart (SC); **Membership Committee:** Craig Coffee (GA), Mitchell Bird (ID); **Nominating Committee:** Teresa Hoffman (AL), Anne Petit (OH); **Program Committee:** Co-Chairs Monica Rut (NE) and Heather Casdorff (WV), Co-Vice Chairs Paul Brower (GA) and Sandra O'Connor (NC); **Timeshare Committee:** Sherry Kueffler (OK), Greg Lemon (NE); **License Portability Task Force:** Co-Chairs Miriam Baer (NC) and Anne Petit (OH); **Promoting Judicious Real Estate Practices Task Force:** Teresa Hoffman (AL).

*Congratulations to the 2020 chairs and vice chairs and "Many Thanks" to those who served as leaders and members of our 2019 committees!*

Coming Soon:  
The Newly  
Redesigned  
ARELLO Website!



Attention Members! Your ARELLO staff has been hard at work refreshing the design of the [arello.org](http://arello.org) website, in order to enhance your ARELLO member experience! The website is your gateway to the wide array of resources, services, programs, events and other information that are valued by ARELLO members. Soon, you'll notice numerous improvements, including:

- A more modern look and feel, including richer graphics and a new color scheme;
- Improved performance and reduced loading times;
- Improved usability on mobile devices such as smartphones and tablets;
- A more concise and intuitive menu structure; and
- A new global site search feature.

The new and improved [arello.org](http://arello.org) is expected to launch before the end of the year. Stay tuned!

## ARELLO-NAR Meeting Focuses On Issues of Mutual Interest



**R**epresentatives of ARELLO and the National Associations of Realtors® (NAR) met on Sunday, November 10th during the 2019 REALTORS® Conference and Expo in San Francisco, California. The two associations hold periodic liaison meetings to discuss issues of shared interest and concern, and the robust agenda for the recent gathering featured current issues impacting today's real estate industry.

After introductory comments by Charlie Lee, NAR Associate Counsel, Legal Affairs, ARELLO President Anne Petit presented an update on the association's current activities, events and initiatives. Presentations and discussions during the meeting also included:

- Dr. Jessica Lutz, NAR Vice President, Demographics and Behavioral Insights, discussed low home inventories across the U.S. and their impact on both first time homebuyers and those looking to downsize. Dr. Lutz' presentation focused on numerous other dynamics affecting homeownership.
- Joshua Sharfman, CTO, California Association of Realtors®, provided an understanding of blockchain technology and its advantages. The presentation clarified the increasing relevance of blockchain to the industry and real property transactions and records, its relationship to "smart contracts," and potential applications in other areas such as fractional ownership.
- Rene Galicia, NAR Director of MLS Engagement,

discussed "hot topics" in the Multiple Listing Service (MLS) world such as the adoption of NAR's Clear Participation Policy (see article below), off-MLS listings, MLS-of-choice waivers, commercial partnerships, and others.

- NAR Senior Policy Representative Austin Perez discussed the current status of the federal National Flood Insurance Program (NFIP), pending reform legislation, and the anticipated next extension of the program.

- Fredrik Heller, NAR Director, Member Support, discussed the "Centennial of Real Estate License Laws in the U.S." 2019 marks the centennial of the enactment of U.S. real estate license laws. Mr. Heller traced their development and history, identified precursors to modern regulatory programs, and noted the formation of ARELLO in 1930.

- Charlie Lee provided an overview of the class action lawsuits challenging the MLS commission structure (See, [November 2019 Boundaries](#), "Update: Antitrust Challenge to MLS Commission Structure Survives Early Dismissal Motion"). He also discussed highlights of the ARELLO Annual Conference in September, including presentations and discussions about criminal conviction-based licensing reform legislation, the legalization of marijuana, and roundtable discussions on teams and advertising, fair housing, affordable housing, and other issues. Mr. Lee noted that NAR provided two speakers for the ARELLO Annual Conference this year.

ARELLO-NAR liaison meetings are open to ARELLO members, Realtors® and other interested parties attending annual NAR events at which the meeting is usually held.



## ARELLO, NAR Meet With Mexico Real Estate Industry Representatives



*Pictured from left to right: Ana Aguilar; Richard Miranda; Marcia Franks; Nedka Dineva; Roberto Barrios; Anne Petit; Nick Rhoad; Miriam Baer; Cristina Velarde and Bethsy Sachs*

During the recent 2019 REALTORS® Conference and Expo in San Francisco, California, the ARELLO leadership team and National Association of Realtors® representatives met with a delegation of real estate leaders from Mexico and the Asociación Mexicana de Profesionales Inmobiliarios (AMPI). AMPI has existed nationwide since 1956 and promotes a Code of Ethics for real estate professionals such as salespersons, appraisers, consultants, and financing advisors. Only 14 out of 32 Mexican states have some form of industry regulation in place. The meeting focused on learning about the goal of the Mexico real estate industry to become a formally recognized and regulated profession. The ARELLO leaders at the meeting provided information about how to develop an effective framework for real estate industry regulation and welcomed continued conversation, meetings, and membership in ARELLO.

## ARELLO Leaders Address MLS Issues

Also during the recent REALTORS® Conference & Expo, ARELLO President Anne M. Petit, President-Elect Marcia Franks, Past President Miriam Baer and Senior District Vice-President MiChell Bird participated in a panel discussion hosted by the National Association of Realtors® (NAR) MLS Executives Committee. The discussion allowed Realtor® association executives, MLS board members, and staff to hear how the real estate license laws of different jurisdictions affect MLS-related issues. The panel was moderated by Rene Galicia, NAR Staff Liaison to the Committee, who posed questions ranging from how regulators' enforcement actions may cross over into and/or impact MLS boards, to broker supervision issues. Attendees learned that the Idaho Real Estate Commission has a mechanism through which licensee status information is provided to MLS boards. As explained by MiChell Bird, who is also the Executive Director

of the Idaho Real Estate Commission, the mechanism provides MLS boards with information they use to ensure that only active Realtor® licensees have access to MLS data.



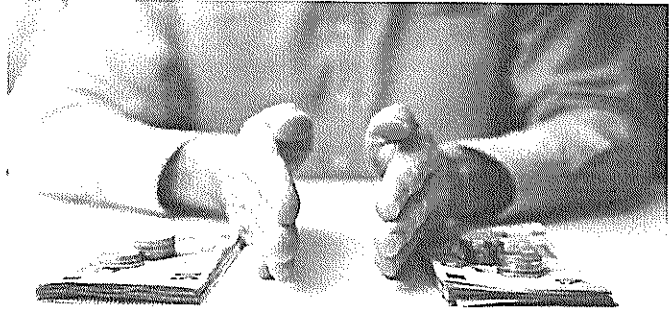
## ARELLO Reaches Out to Indiana Real Estate Commission

Issues and challenges facing real estate industry regulators and the support that ARELLO can provide to its members were on the menu during a recent luncheon meeting between Indiana Real Estate Commissioner H. James Litten and ARELLO CEO Nick Rhoad. Mr. Litten has served as an Indiana Real Estate Commissioner since 1991 and said, "As a Real Estate Commissioner for over 25 years, I can attest that ARELLO provides invaluable resources and value to help jurisdictions make regulation better. It has also helped make me a better commissioner." Nick Rhoad added, "Like many of ARELLO's members, Commissioners like Jim allow your association to grow and prosper through their countless hours of dedication and volunteerism."

*The unwavering commitment of ARELLO members who are dedicated to "giving back" to their states, provinces and communities allows jurisdictions to be on the leading edge of improving governmental regulation, programs, and services. Thank you, Jim, and to all of you who volunteer your time!*



## Consumer Advocacy Group Pans “Hidden” Real Estate Broker Commissions



The real estate industry is rife with “old sayings” and adages; one of which is that “everything in real estate is negotiable,” including commissions. However, the Consumer Federation of America (CFA), an association of non-profit consumer organizations, recently issued a research report finding that the lack of industry transparency about residential brokerage commission rates contributes to consumer misunderstandings, inhibits price negotiation, and reduces competition.

The report, “*Hidden Real Estate Commissions: Consumer Costs and Improved Transparency*,” observes that most consumer service companies provide easy access to price information on the Internet, by telephone, or in person. But, the report concludes, “This is not the case for an estimated \$100 billion in real estate commissions that are charged home sellers each year.” According to the CFA press release announcing the report, “traditional” real estate brokerages and their agents do not advertise commission rates, include commission information on their websites, or provide full information about commission levels during general telephone inquiries. And, “In conversations with a prospective home seller, in response to a query about seller costs, [they] usually do not quickly provide information about commission levels (though eventually, nearly all did).” The report reveals that, as a result of this “opaqueness,” real estate agents feel little pressure to reduce the substantial commissions that sellers pay. The report also states that sellers who ask about commission levels are told by listing agents that buyer agents are less likely to show a home if a buyer agent commission (“split”) is not offered or is below the “typical local level (usually 2.5% or 3%).” The report also reveals that a large majority (73 percent) of interviewed agents will not negotiate their commission unless they themselves find the buyer for the property, which supports earlier research concluding that “commission levels are highly uniform in most local markets.”

*“[T]he industry restricts the ability of buyers to learn what portion of the commission (‘splits’) their buyer agents receive.”*

According to the report, the brokerage industry also “restricts the ability of buyers to learn what portion of the commission (‘splits’) their buyer agents receive.” Buyers who ask about commissions are told that sellers pay them, and don’t inquire further, and “nearly all” Multiple Listing Services (MLSs) restrict public access to information about buyer agent commission splits. According to the report, these factors disadvantage buyers because, if they “were able to negotiate down the commission split, sellers would be more willing to lower the sale price of the home (without a loss of net income).” And, the dearth of commission split information

renders buyers vulnerable to being steered away from “low-commission properties.”

Stephen Brobeck, CFA Senior Fellow and author of the report, says that “The reluctance of traditional real estate agents and firms to provide information about commission levels helps explain why there is so little price competition in the industry. It also helps explain why most consumers, even recent home buyers and sellers, do not know that nearly all commissions range between five and six percent.”

The author submits that that home sellers and buyers would benefit by asking more questions about commission levels and their negotiability, and being shown homes with lower commission splits. Also, consumer groups, journalists, and other third parties should provide more information about those issues. Mr. Brobeck also suggests that the U.S. Department of Justice (DOJ) should “continue investigating the lack of price competition related to commission splits and then require remedial action”; citing an *Inman News* article reporting on a Civil Investigative Demand relating to MLS practices that was issued by the DOJ to data aggregator Corelogic in April. The report also commends the recent decision of NWMLS in the Pacific Northwest to allow its members to publish buyer-side commissions offered by sellers [For more information about the NWMLS action, see the [October 2019 edition](#) of *Boundaries*].

The recent commission study is just one of several CFA initiatives that have focused on consumer aspects of the real estate industry and its regulation. In 2006, the CFA issued press releases arguing for increased independence in real estate industry regulation, and questioning industry member participation on real estate licensing boards and commissions. A January 2019 CFA report also authored by Mr. Brobeck, *The Agency Mess*, concludes that many buyers and sellers do not understand whose interests their real estate agents represent, in part blaming ineffective agency/brokerage relationship disclosure laws and inadequate efforts by state regulators to enforce them. The CFA is also working on a follow-up report, “Why Required Real Estate Agent Disclosures About Representation Fail and How They Can Be Improved,” and is conducting research on “the transparency of services provided by individual agents.”



## New York Adjusts “Core” CE Requirements, Drops “Grandfathering” Provision



Each year, dozens of legislative and rulemaking adjustments to real estate education requirements are promulgated in ARELLO member jurisdictions as a means of strengthening licensee competency and protecting consumers. The most recent example, [New York Assembly Bill A6082](#), expands the scope of the current “core” continuing education (CE) course content requirement, and repeals the state’s long-standing CE “grandfathering” provision.

The legislative summary for A6082 observes, “Mandatory continuing education courses provide licensed real estate professionals with updated knowledge on changes in their field.” Consequently, New York’s real estate license laws currently require all brokers, associate brokers, and salespersons to complete 22.5 hours of continuing education in the two-year period immediately preceding each license renewal. As part of that requirement, licensees must attend specified “core” courses that include at least three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property, and at least one hour of instruction relating to the law of agency; except that real estate salespersons must complete two hours of agency-related instruction during their the initial two-year licensing cycle. The remaining CE hours must be completed in courses approved by the New York Department of State as to method, content, and supervision; which approval may be withdrawn if it is determined that courses are not being conducted properly.

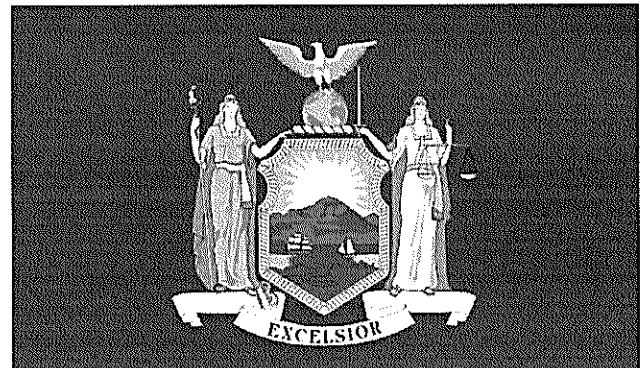
A6082 expands the existing “core” CE course requirement by adding at least two and one-half hours of instruction pertaining to ethical business practices, and at least one hour of instruction pertaining to “recent legal matters governing

the practice of real estate brokers and salespersons in New York which may include statutes, laws, regulations, rules, codes, department of state opinions and decisions, and court decisions.” The legislative record explains, “Ensuring that all real estate licensees receive professional education and development regarding high ethical standards and new laws, regulations, and court decisions which apply to their profession will benefit both licensees and New York’s residents.”

A6082 will also eliminate the state’s long-standing grandfathering provision, which currently states that the CE requirements “shall not apply to any licensed real estate broker who is engaged full time in the real estate business and who has been licensed ... prior to [July 1, 2008] for at least fifteen consecutive years immediately preceding such renewal.” According to the legislative record, “Given ongoing changes in the real estate profession, increasing the number of mandatory core instruction hours and requiring all licensees to complete these hours will help improve the level of quality and expertise among real estate professionals.”

Though perhaps not as prevalent as they once were, CE grandfathering provisions still exist among real estate regulatory jurisdictions. According to the [ARELLO Online Digest](#) of real estate license laws and current issues (2019 Digest Survey), eight responding ARELLO member jurisdictions provide a CE exemption based on age, experience, or a combination both. In addition, earlier this year the New Jersey Department of Banking and Insurance/Real Estate Commission issued [Bulletin No. 19-04](#), which implements previously enacted legislation providing an exemption for real estate brokers and broker-salespersons who have been licensed for 40 years or more. The bulletin provides guidance on how to qualify and apply for the CE exemption, pending promulgation of rules by the Commission.

New York A6082 was signed into law in October 2019 and will take effect July 1, 2021.



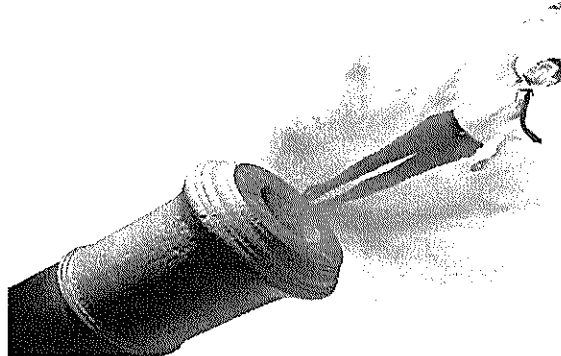


## A “Shot Across the Bow” of Conviction-Based Rental Policies

**R**esidential rental property owners and their managers and agents may take note of the recent “precedent-setting” settlement of a “landmark” fair housing lawsuit that involved an alleged “blanket ban” policy against renting apartments to persons with criminal records.

The lawsuit was filed in a federal district court by The Fortune Society, a not-for-profit New York organization that supports successful community reentry, and provides housing and other services, for “previously incarcerated persons.” The organization alleged that the owners and managers of a large apartment complex in Far Rockaway, Queens, New York enforced a “blanket ban” policy of automatically excluding persons with criminal conviction records from renting or living in the apartments.\* The lawsuit rested, in part, on the premise that the policy had an unlawful “disparate impact” on protected classes of persons, and thus constituted a prohibited pattern or practice of illegal discrimination on the basis of race and color in violation of the federal Fair Housing Act [(FHA) 42 U.S.C. §§ 3601, et seq.] and related New York laws. Among other things, the Fortune Society alleged that the blanket ban was applied regardless of the nature of the conviction, lapse of time since the conviction, evidence of rehabilitation, or other factors related to any actual safety threat posed by potential tenants with criminal histories.

In its press release, the Fortune Society said, “At \$1,187,500, the settlement is one of the largest, if not the largest, ever obtained in a criminal record housing discrimination case” and makes “a strong warning about the potential cost to landlords of blanket discrimination based on [criminal] records.” The organization also said that a July federal district ruling in the case, on cross motions for summary judgment filed by the parties, affirmed its right to proceed to trial with its FHA “disparate impact” claim. The



Fortune Society also says that the ruling provided a “road map” showing how demographic and other statistics can be used to prove the prohibited disparate impacts of blanket criminal conviction-based rental bans. Fortune Society President and CEO JoAnne Page added, “This settlement fires a warning shot across the bow of any landlord in America who blanketly [sic] refuses to rent apartments to people with criminal justice involvement.”

*“This case has been closely followed by advocates and the real estate industry around the country.” -JoAnne Page, CEO, The Fortune Society*

Notably, the Department of Housing and Urban development (HUD) issued a [2016 guidance document](#) warning landlords, property managers and other housing providers against making arbitrary and overbroad criminal history-based housing decisions that may result in FHA liability. Although having a criminal record is not a protected FHA characteristic, HUD states that members of protected classes such as “African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.” The HUD guidance explains the analysis that will be

applied to HUD-generated criminal history-based discrimination actions and how disparate impact methods of proof (e.g., statistical data about housing, applicants, census demographics, crime, etc.) may be used to pursue FHA claims in such cases. However, HUD recently issued proposed rules that would significantly alter its current standards for establishing FHA liability where a challenged policy or practice is neutral “on its face” or unintentional, but nonetheless has a prohibited disparate impact/discriminatory effect. [See, [September 2019 Boundaries](#), “HUD Proposes Significant Changes to Fair Housing ‘Disparate Impact’ Rules”].

The Fortune Society says that its lawsuit, which was filed in October 2014, was one of the first to make civil rights claims based on private landlords’ blanket criminal history policies, which have become increasingly common due to the increased accessibility of inexpensive background checks via the Internet. Ms. Page said, “This case has been closely followed by advocates and the real estate industry around the country. Landlords will take notice of its deterrent effect. Many will look more closely at whether they have policies that comport with the law, and they will be concerned about the exposure for costly litigation.”

[\*Since the case settled, the plaintiff’s factual and legal allegations were not tried or proven and the defendants reportedly made no admissions of liability.]



## Texas Court Takes Deep Look at “As-Is” Clauses

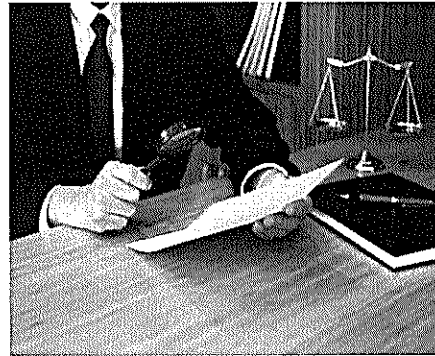
Texas Court of Appeals recently enforced a purported “As-Is” clause in a real estate purchase contract to defeat a buyer’s allegations that real estate agents should be held liable for failure to disclose material defects in the subject property. Statutory and common law standards differ among jurisdictions, of course, but in reaching its decision the Texas court took a close look at some of the common legal issues and concepts that can arise in such cases.

The case, *Grove v. Franke*, involved a 1930’s log home in Texas. The required Seller’s Disclosure Notice did not note any such problems, but an inspection of the home by potential buyers allegedly revealed wood rot or wood destroying insects (WDI). After the potential buyers terminated their contract, the seller had some logs in the home replaced and was advised by the contractor that additional logs would need to be replaced “in due time.” Grove then contracted to purchase the property and was apparently provided with the same Seller’s Disclosure Notice. Grove’s inspector found no problems with the logs in the home, but apparently did not know how to properly test them for wood rot. A separate termite inspection identified no active WDI. The contract provided that “Buyer accepts the Property in its present condition.” After the closing, Grove experienced problems with the property.\* He sued the seller on various grounds, and the real estate agents for “statutory fraud in a real estate transaction.” The agents moved for summary judgment, which was granted by the trial court. Grove appealed, raising arguments relating only to the agents’ alleged liability for undisclosed wood rot and WDI damage to the home. The appellate court ruling addresses several generally accepted principles that apply to “As-Is” clauses, as interpreted by Texas courts.

What is an “As-Is” clause? A buyer who

agrees to an “As-Is” clause assumes the responsibility of assessing the property’s value and condition, and the risk that the property is worth less than the price paid. An enforceable “As-Is” clause negates a buyer’s purported reliance (a required element) on an alleged misrepresentation or nondisclosure. Therefore, the “As-Is” clause in Grove’s contract defeated his claims against the agents

What if the contract doesn’t specifically say “As-Is”? While Grove’s contract did



not contain the term “As-Is,” language stating that the buyer accepts the property in its “present condition” constitutes an “As-Is” clause.\*\*

When is an “As-Is” clause enforceable?

The enforceability of an “As-Is” clause depends on the nature of the transaction and the totality of the circumstances. The clause in Grove’s contract was enforceable because: (1) It was an important part of the basis of the bargain and not incidental or boilerplate. It was one of two options in the contract, the other being to accept the “present condition” of the property but require the seller to make repairs.\*\* (2) There was no dispute that the parties were sophisticated, of relatively equal bargaining position, and represented by real estate agents. (3) The contract was freely negotiable and, in fact, the parties negotiated a price reduction. (4) The transaction was conducted at “arm’s length.”

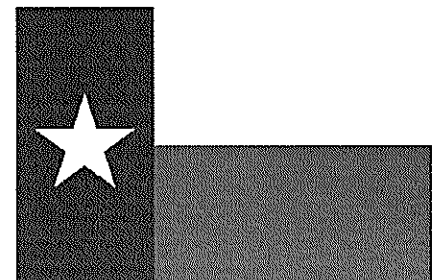
When are “As-Is” clauses unenforceable? An “As-Is” clause is

unenforceable if a seller impairs a buyer’s ability to inspect a property or condition, or a buyer is fraudulently induced to sign a purchase contract. Grove’s reliance on an inexperienced inspector cannot be held against the agents. Also, Grove failed to show that the agents made a false material representation, in part because ...

A broker generally cannot be held liable for omissions or misrepresentations on a Seller’s Disclosure Notice Like many jurisdictions, Texas real property laws require sellers to provide buyers with a Seller’s Disclosure Notice form that includes specified information about a property and its condition [Tex. Prop. Code §5.008]. Sellers, not their agents, are required to complete the form. The agents did not complete or make any representations on the form, and cannot be held liable unless they had reason to believe the disclosures were false or inaccurate. There was no showing that the agents knew or had reason to believe that the seller’s disclosures were allegedly false, saw the previous potential buyers’ inspection reports revealing wood rot or WDI, or saw the Seller’s Disclosure Notice.

The court thus held that the trial court properly granted the agents’ motion for summary judgment.

[*Grove v. Franke*, 2019 Tex. App. LEXIS 9165. \*The recited facts are derived from the published opinion. \*\*The current Texas Real Estate Commission “One To Four Family Residential Contract (Resale)” form presents similar options but uses and defines the term “As-Is.”]



## Washington Court: License Law Exemption for Unlicensed Compensation Is Not Continuous

**A** Washington appellate court recently ruled that a real estate license law exemption for real property buyers, sellers, and their employees, which applies when compensation agreements for unlicensed brokerage services are reached, does not continue after the alleged employment relationship ends. The court also ruled that the services for which compensation was claimed did not satisfy the applicable, limited statutory property management exemption.

The case, Seelig v. 308 Fourth Ave. S. Joint Venture, involved the plaintiff and other individuals who formed a Joint Venture to purchase a large apartment project in Seattle, Washington. The Joint Venture partnership agreement stated that the plaintiff would manage the apartments. In 2004, the plaintiff conveyed his ownership interest in the Joint Venture to others, but continued as its manager until September 2011. The Joint Venture sold the apartment project in 2012. As summarized by the appellate decision, the plaintiff agreed that he received compensation for management services "during his tenure with the property." However, he claimed that he was owed a "bonus" in connection with the sale of the apartments and additional compensation for unpaid management services. The trial court granted summary judgment dismissing the claims.\* The plaintiff appealed.

Like most real estate license laws, the Revised Code of Washington (RCW) prohibits engaging in acts requiring a real estate license, or suing for compensation for providing such services, without a license [RCW §§18.85.331, 18.85.011(17)(b)]. The plaintiff did not hold a real estate license, but argued on appeal that summary judgment should not have been rendered against his claims. He asserted that the trial court should have heard evidence on the question of whether he was an employee of the Joint Venture under RCW §18.85.151(1), which exempts from the real estate license requirement "Any person who purchases or disposes of property ... and their employees." He argued that "[I]f [he] was an employee of the Joint Venture at the time the Joint Venture promised to pay him management compensation and a bonus when the [apartments were] sold, then he was exempt from the licensing requirement."

The Court of Appeals of Washington disagreed, ruling that the plaintiff's status as an employee of the Joint Venture when the supposed agreement for compensation was made is not relevant. The court held, "The statute exempts people who buy or sell real property and their employees; it does not provide a continuing exemption for a person who may have been an employee when a compensation agreement



was made but stops being an employee before any sale occurs ...." The court reasoned that even if he "ever was an employee of Joint Venture," the plaintiff agreed that he was not an employee when the Joint Venture sold the property. Therefore, the license law exemption for persons or their employees who "purchase or dispose of property" did not apply and the plaintiff could not claim the alleged bonus because he was not licensed at the relevant time.

The appellate court also rejected the plaintiff's argument that his compensation claim for management services fell "squarely" within RCW §18.85.151(13), which provides a license law exemption for "limited" property management activities. Those specified, limited activities include delivering or receiving leases, applications, security deposits or rental payments; showing rental units or executing leases

*"The plaintiff could not claim the alleged bonus because he was not licensed at the relevant time."*

under the direct instruction of the owner or designated or managing broker; providing certain information about a rental unit to prospective tenants; or assisting in the performance of property management functions by carrying out administrative, clerical, financial, or maintenance tasks. However, the plaintiff admitted that the tasks for which he sought compensation included negotiating and facilitating the sale of the apartments, negotiating leasing, advertising and consulting with potential buyers, marketing the property, ensuring compliance with federal regulations, resolving legal complaints, and preparing tax returns. He also admitted that his "primary role was that of the Joint Venture's chief executive officer (CEO) and chief financial officer (CFO)." The appellate court concluded that the plaintiff's activities went beyond the limited statutory property management exemption, and thus required a license that the plaintiff did not hold.

[Seelig v. 308 Fourth Ave. S. Joint Venture, 2019 Wash. App. LEXIS 2750. \*The recited facts are derived from the appellate decision.]





## Follow Up: NAR Restricts MLS Pocket Listings, “Coming Soon” Advertising

The National Association of Realtors® (NAR) Board of Directors recently adopted a new Multiple Listing Service (MLS) “Clear Cooperation Policy” that places significant restrictions on sometimes controversial “pocket listing” and related “coming soon” advertising practices by listing real estate agents.

For many years, residential real estate industry stakeholders have debated the relative merits of pocket listings and their close cousin, “coming soon” advertising. “Pocket listings” [also called “private,” “quiet,” or “off-market” listings] involve for-sale residential properties that are withheld from NAR-controlled MLS systems and instead marketed by real estate licensees to their existing clients and contacts, through informal networks and/or via Internet-based MLS alternatives [e.g., [www.thepls.com](http://www.thepls.com), [www.homeqt.com](http://www.homeqt.com), etc.]. “Coming soon” advertising is used to “pre-market” a property that is being readied for showings and sale, but is not yet available [More articles about these marketing approaches and their perceived merits and drawbacks can be accessed by ARELLO members through the [Online Resource Archive](#), search terms “pocket listing” and “coming soon.”-Ed.].

In response to continuing questions about these practices and their treatment by regional MLS systems,

NAR’s Board of Directors recently approved a new “Clear Cooperation Policy” amendment to NAR’s *Handbook on Multiple Listing Policy*. The new “MLS Statement 8.0” provides, “Within 24 hours of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.”

The new policy does not specifically refer to “pocket listings,” but Frequently Asked Questions posted by NAR explain that the 24-hour rule applies to any “private listing networks” that include brokers or licensees other than those affiliated with the listing brokerage. However, MLS Statement 8.0 permits “office exclusive” listings, which involve direct promotion of a listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between those licensees and their clients. Similarly, MLS Statement 8.0 will apply to “coming soon” listings that have been displayed or advertised to the public. However, according to the Frequently Asked Questions, regional MLSs “may enact ‘coming soon’ rules providing for delays and restrictions on

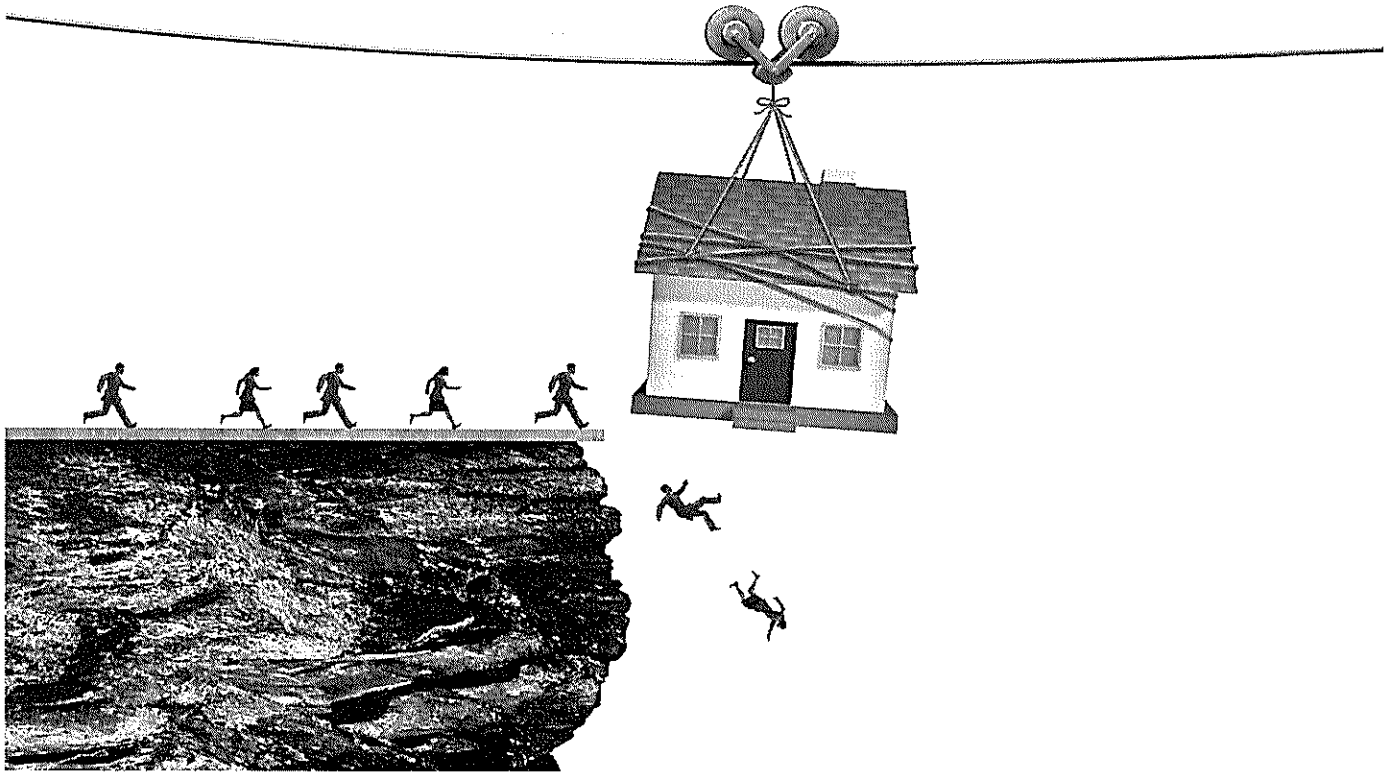
showings during a ‘coming soon’ status period.” And, local rules may provide for different “listing turn-in times” unless the listing is marketed to the public, in which case the mandatory 24-hour requirement of Policy Statement 8.0 will go into effect. NAR says that the most common versions of such local rules “do not allow for showings of the listing until its status is changed to active, and any showings of the listing would immediately trigger that status change.” The new rule also “does not necessarily require that listing to be included in an MLS’s IDX display, if the seller has opted out of all Internet display. Per MLS rules, participants can work with their listing clients to determine an appropriate marketing plan, taking into account the client’s needs and full disclosure of the benefits to market exposure.”

NAR says that effective distribution of listing information and cooperation among MLS participants by quickly posting listings to the MLS is pro-competitive and pro-consumer, and that the new policy will bolster and advance those positive impacts. NAR also points out that several MLSs already have similar policies in place. The “Clear Cooperation Policy” Statement 8.0 is effective from January 1, 2020 with local implementation required by May 1, 2020.

For more publicly posted NAR information, [please click here](#).



# Timeshare Scams Just Keep Ticking



**T**he recent announcement from the U.S. Federal Trade Commission (FTC) regarding nearly \$2.7 million in refunds that are being issued to 8,088 consumers serves as a timely reminder that, despite years of warnings from state and federal agencies, industry associations, and consumer groups, timeshare owners are still falling for resale scams.

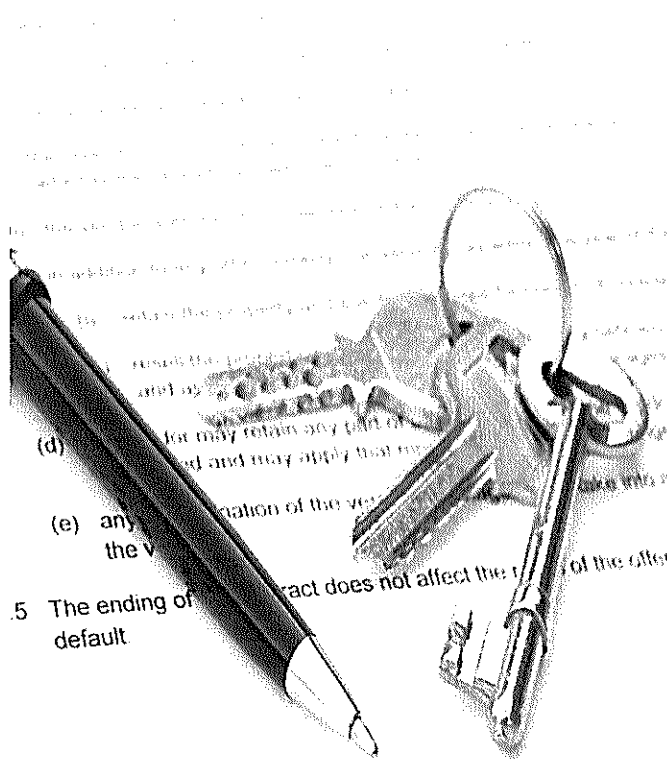
Like other schemes aimed at unwary consumers, timeshare resale scams have many variations. Generally, perpetrators contact timeshare unit/interest owners and falsely represent that they have a willing buyer or tenant for the unit. The pitches often fall on the willing ears of consumers who are desperate to sell their units, get out of timeshare loan payments, and eliminate burdensome, ongoing contractual maintenance fees. To convince owners to pay upfront fees, scammers often falsely promise that the transaction can be completed quickly. Other variations include deceptive promises of a full return on the owner's principal investment, often with a substantial profit. Also, scammers sometimes

falsely represent that they are licensed real estate brokers, impersonate legitimate real estate licensees, or claim non-existent affiliation with respected industry associations such as the American Resort Development Association (ARDA). Of course, victims eventually learn that the representations and promises are false and that assurances of "guaranteed" refunds are worthless and/or depend on the payment of more fees.

*"The pitches often fall on the willing ears of consumers who are desperate to sell their units..."*

The FTC that says that the recent consumer refunds arose from its 2016 federal district court complaint alleging that Florida-based business entities and other defendants contacted timeshare owners and "falsely claimed that they had a buyer or renter ready to buy or rent their properties for a specified price. In other instances, the defendants made false promises to sell the timeshares quickly, sometimes within a specified time period." The FTC also alleged that the defendants "charged property owners up to \$2,500-and sometimes more-in advance but failed to deliver on their promise" and, among other

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THE SELLER

THE PURCHASER

WITNESSES

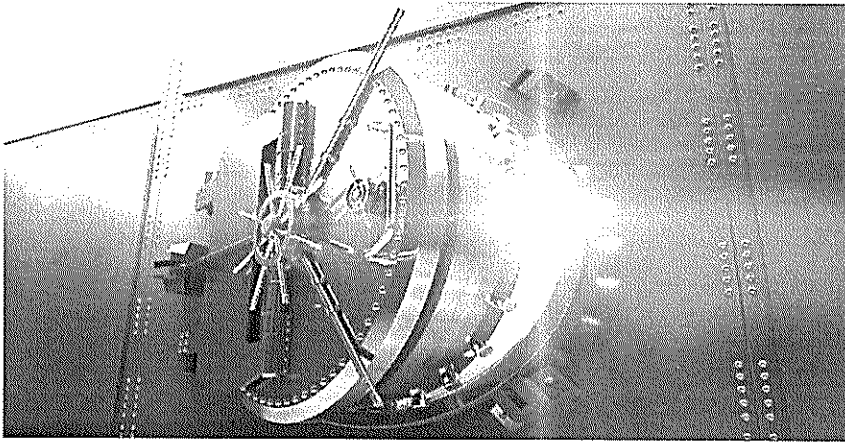
misrepresentations, "often convinced [owners] to pay for additional purported closing costs or other fees." Also, "[c]onsumers' requests for refunds were typically denied or ignored, according to the [FTC] complaint." The case resulted in an agreed court order that permanently bans specified defendants from timeshare resale services and telemarketing, and "requires them to surrender assets including homes, vehicles, a Rolex watch, silver coins, and a diamond ring, which are being used to provide refunds to defrauded consumers." As is common in such cases, the affected defendants neither admitted nor denied the allegations in the FTC complaint.

Over the years, information and resources about timeshare resale and related scams have been issued by numerous governmental entities, consumer groups, and industry stakeholders. For example, the FTC provides a wealth of information about buying and reselling timeshares. Consumer alerts about timeshare resale scams and related licensee impersonation schemes, and how to avoid them, have been issued by numerous ARELLO member jurisdictions. Recent examples include alerts issued by the New Mexico Real Estate Commission and the Missouri Real Estate Commission, and an Oregon Real Estate News-Journal article published by the Oregon Real Estate Agency. ARDA, the Washington, DC-based trade association representing the vacation ownership and resort development industries (timeshares), includes a Resort Owner's Coalition (ARDA-ROC) that has long maintained a robust online Timeshare Resale Center and Resale Guidelines that provide helpful information about resale transactions, options for consumers, avoiding scams, and locating reputable timeshare resellers. ARDA has also launched a Coalition for Responsible Exit, whose website walks consumers through important steps associated with cancelling, changing, or exiting a timeshare.

In addition, some states have enacted consumer-oriented legislation imposing timeshare resale requirements involving matters such as written contract terms and requirements, fees charged to consumers, escrow fund handling and dispute resolution, and identifying actionable unfair trade practices [e.g., See July 2017 Boundaries, "South Carolina Enacts New Timeshare Resale Consumer Protections"].

Nonetheless, timeshare resale and related scams have been going on for many years and it appears that some timeshare owners are still falling for them. To help educate and protect consumers, the ARELLO Timeshare Committee has taken on an ambitious project to launch a media campaign addressing the widening spread of these schemes. Funding for the project is being provided by the ARELLO Foundation and ARDA.





## HUD, DOJ Lure Big Banks Back to FHA Lending With Eased Enforcement Process

**A** Memorandum of Understanding recently signed by the U.S. Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) will ease False Claims Act enforcement of Federal Housing Administration (FHA)-insured mortgage lending violations, as a means of enticing big banks and other lenders to reenter the FHA mortgage marketplace.

The False Claims Act [(FCA) 31 U.S.C. §§3729-3733] was enacted in 1863 by the U.S. Congress in response to concerns that fraudulent contractors were being paid for providing substandard military equipment and supplies to the Union Army. Over the years, the statute has been amended many times and has been the subject of hundreds of judicial interpretations. Generally, in the context of the recent HUD/DOJ Memorandum of Understanding (MOU), the FCA imposes substantial monetary penalties for submitting, or making a false record or statement material to, a "false or fraudulent claim for payment or approval" to the U.S. government.

The FCA has been enforced over the years in a broad range of circumstances, including alleged violations of FHA mortgage insurance requirements. FHA insurance encourages the availability of mortgage loans to lower-income and first-time homebuyers on advantageous terms, by protecting lenders against default losses. Participating lenders are required to certify compliance with intricate

FHA loan origination, processing, underwriting and other rules that are designed to ensure borrowers' ability to make their mortgage payments and to protect the viability of FHA mortgage insurance programs.

The DOJ is primarily responsible for FCA enforcement of FHA mortgage insurance requirements and, over the years, has collected billions of dollars from lenders in cases involving non-eligible loan originations, submission of false regulatory compliance certifications, and other violations. However, the DOJ and HUD have more recently taken the view that FCA enforcement has been too aggressive, and that lender concerns over "uncertain and unanticipated FCA liability for regulatory defects" has led many "well-capitalized" lenders (*i.e.*, big banks) and credit unions "to largely withdraw from FHA lending." HUD's press release announcing the MOU states, "This has dramatically shifted FHA's lender base during the last decade. Today, depository institutions originate less than 14 percent of FHA-insured mortgages, down significantly from approximately 45 percent in 2010."

To boost lender participation, the HUD/DOJ MOU clarifies that FHA mortgage insurance requirements "will be enforced primarily through HUD's administrative proceedings ...." Violations will be referred to and evaluated by HUD's Mortgage Review Board (MRB); a statutory body that is empowered to take administrative action against FHA-

approved lenders who knowingly and materially violate HUD/FHA program statutes, regulations and handbook requirements. Where the MRB finds that violations rise to an unacceptable level under the MOU standards, it may refer the matter to the DOJ for potential FCA action. The MOU recognizes that, among other elements of proof, the FCA requires a "material" violation of HUD requirements. DOJ attorneys will solicit HUD's views to determine whether the required FCA elements can be established. The MOU also describes how the agencies will cooperate during the investigative, litigation, and settlement phases of FCA cases referred to the DOJ by third parties, such as *qui tam*\* cases.

Secretary Ben Carson said that the MOU fulfills an important element of HUD's recently issued [housing reform plan](#) and makes it clear that all responsible lenders should participate in FHA mortgage programs. National Association of Realtors® President John Smaby commended the MOU and said that it will help more consumers access low downpayment loans and ensure that a wider range of financial institutions will offer FHA-backed loans.

[\**Qui tam* in this context refers to an FCA action commenced by a third-party "whistleblower," known as a "relator," who can benefit from the recovery of wrongfully paid government funds either directly or through DOJ intervention in the action].



