

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 June 17, 2020
10

11 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article
12 6, a scheduled meeting of the Real Estate Commission was held June 17, 2020, at the
13 State of Alaska Atwood Building, 550 W. 7th Avenue, Ste 1550, via ZOOM, Anchorage,
14 Alaska.
15

16
17 **Wednesday, June 17, 2020**

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

19 Chairperson PeggyAnn McConnochie called the meeting to order at 9:03 a.m., at which
20 time a quorum was established.
21

22 Roll Call – 1(a)

23 Members present via Zoom

24 PeggyAnn McConnochie, Broker, 1st Judicial District, Chairperson
25 Margaret Nelson, Broker, Broker at Large, Vice Chairperson
26 Samuel Goldman, Broker, 3rd Judicial District
27 David Pruhs, Broker, 4th Judicial District
28 Cheryl Markwood, Broker, Broker at Large
29 Jaime Matthews, Public Member
30 Jesse Sumner, Public Member
31

32 Staff Present:

33 Shyla Consalo, Executive Administrator
34 Nancy Harris, Project Assistant
35 Sharon Walsh, Deputy Director of CBPL
36

37 Staff Present via ZOOM:

38 Autumn Roark, REC Investigator
39 Ryan Gill, Investigator – REC Probation Monitor
40 Amber Whaley, Senior Investigator
41 Rob Schmidt, Assistant Attorney General
42 Jun Maiquis, Regulation Specialist
43

44 Guests Present via ZOOM:

45 Errol Champion, Broker, Coldwell Banker Race Realty, Juneau
46 Gabe Stephan, Broker, Jack White Real Estate, Anchorage
47 Teresa Block, Salesperson, Jack White Real Estate, Anchorage
48 Anita Bates, Associate Broker, Berkshire Hathaway HomeServices Alaska Realty,
49 Anchorage
50 Kasia Giron, Associate Broker, Re/Max Dynamic Properties, Anchorage
51 Paddy Coan, Associate Broker, Keller Williams Realty – Alaska Group, Anchorage
52 Eric Bushnell, Broker, Lee Realty, Wasilla
53 Jerry Royse, Broker, Royse & Associates, Anchorage
54 Renae Miller, MARC Realty, Anchorage
55 Christine Nelson, Program Manager of Regulatory Services, Person VUE

56 Joel Norris, Business Development Manager, Person VUE

57
58 Approval of Agenda – 1(b)

59 Commission Members reviewed the meeting agenda.

60
61 **On a motion duly made by Mr. Pruhs, seconded by Ms. Markwood, it was**

62
63 **RESOLVED to approve the meeting agenda for June 17, 2020 as**
64 **amended.**

65
66 Ms. McConnochie asked for an additional item to be added to the agenda. Temporary
67 license request for The Ron Moore Company, added as agenda item 7(d).

68
69 **All in favor; Motion passed.**

70
71 Statements of Conflicts of Interest – 1(c)

72 There were no conflicts of interests.

73
74
75 Agenda Item 2 – Public Comments

76 Eric Bushnell, Broker with Lee Realty, gave public comment on an issue his company has
77 experienced that might warrant the Commission to look at the statutes and the regulations
78 concerning the independent contractor status. Mr. Bushnell explained that his company
79 experienced an audit from workman's comp insurance for some of the buildings the
80 ownership owns, as well as their company. The workman's comp company decided he
81 and his licensees, anybody doing property management, and anybody doing leasing is an
82 employee not an independent contractor. So, they found against him in the audit, and hit
83 him with a pretty big bill. They have worked it down, so it's not \$17,000 anymore; however,
84 workman's comp insurance is not backing off on saying that any of the leasing they do, as
85 part of the company business, is considered employment - they are considered
86 employees, not contractors. One of the things they've said is: "well, your business address
87 is not different than your company's business address; therefore, you are one in the same
88 and you are an employee." Mr. Bushnell has contested this through the workman's comp
89 channels with his insurance company, and they have said: "Nope, sorry, we don't agree."
90 Mr. Bushnell is taking that to the next level and will be contesting it with the insurance
91 commission in state. Mr. Bushnell wanted to bring it to the Commission's notice because
92 the independent contractor code changed just a couple of years ago, and he's not sure if
93 the Commission's statutes are in-line with it. He's talked to a lot of other licensees and
94 brokers, and many of them say, well, that's why we don't do property management, but
95 others aren't having issues. He's not sure if it's just a matter of time or if he just got lucky
96 with the right auditor.

97
98 Ms. McConnochie asked if Mr. Bushnell talked to the Alaska Association of Realtors and
99 the National Association of Realtors as to what's going on with this particular issue. Ms.
100 McConnochie also wanted to clarify if this just applied to property management and
101 leasing. Mr. Bushnell confirmed he did, and they stated the statutes and/or regulations
102 only pertain to sales of property, and do not pertain to property management or leasing.
103 That is the stance that they have taken, and he has not been able to convince them
104 otherwise. Ms. McConnochie asked if he spoke with the Anchorage Board of Realtors. Mr.
105 Bushnell stated he has not; however, he's talked to different members of the Boards, and
106 none of them have ever been in this position or have run up against anything like this.
107 Most take a clear stance that they're independent contractors. One thing Mr. Bushnell
108 knows is that there are property management firms in the state that operate with their

109 licensees as employees; and there are real estate companies that do that, which is
110 perfectly legit. If they are run as employees, they must carry workman's comp. In this
111 case, workman's comp insurance is singaling them out and saying: "no, you're, actually all
112 employees if you're doing this type of work." That was the concern for him.

113
114 Ms. McConnochie stated she sits on the Legal Action Committee with the National
115 Association of Realtors, and this is something that has come to the Legal Action
116 Committee. Ms. McConnochie suggested Mr. Bushnell get with Errol Champion, who is
117 part of the key working group for legislative issues, and talk to him about how he can bring
118 this information to the National Association of Realtors.

119
120 Ms. McConnochie thanked Mr. Bushnell for bringing the information to the Commission's
121 attention and asked if there were any more public comments. No one came forward and
122 the public comment period was closed.

123
124
125 **Agenda Item 3 - Approval of Meeting Minutes**

126 **March 24-25, 2020 Meeting Minutes – 3(a)**

127
128 **On a motion duly made by Ms. Markwood, seconded by Mr. Pruhs, it was**

129
130 **RESOLVED to approve the March 24-25, 2020 meeting minutes.**

131
132 **All in favor; Motion passed.**

133
134 **April 20, 2020 Meeting Minutes – 3(b)**

135
136 **On a motion duly made by Ms. Matthews, seconded by Mr. Sumner, it was**

137
138 **RESOLVED to approve the April 20, 2020 meeting minutes.**

139
140 **All in favor; Motion passed.**

141
142
143 **Agenda Item 5 – Committee Reports**

144 **Property Management Committee – 5(a)**

145 Ms. Nelson recognized Ms. Kassandra Taggart as the Chair of the Property Management
146 Committee and stated Ms. Taggart could not be at the meeting, so she was going to give
147 the for her. Ms. Nelson stated the Property Management Committee is very active and
148 they're very lucky to have some great people on the Committee, including a couple of
149 Commission Members.

150
151 Clarity on best practices on security deposit and management of client accounts – the
152 Committee is looking at three different best practice documents for reporting contracts and
153 disclosure and security deposits, dues deposits, and trust accounts. Those are currently in
154 draft form. Advocacy for education of all property and association management – the
155 Commission has approved the property management classes submitted for consideration,
156 and the Committee is now waiting for this to be updated on the website. The Committee is
157 currently working on an audit of property management and association regulations and is
158 doing research on what other states are doing and working through. The next Committee
159 meetings are scheduled for August 20th, October 29th, and January 21st. Ms. McConnochie
160 thanked Ms. Nelson for the report, and the excellent job the Committee is doing.

162 Ms. Consalo commented that Mr. Goldman expressed an interest in being a part of this
163 Committee, and asked if one of the current Commission Members appointed to the
164 Committee would be willing to relinquish their spot, so he could participate. Mr. Pruhs
165 stated he would give up his spot. The Commission Members now appointed to the
166 Property Management Committee will be Ms. Nelson, Ms. Markwood, and Mr. Goldman.
167

168
169 **Agenda Item 6 – Old Business**

170 **AREC Property Transfer Disclosure Form – 6(a)**

171 Mr. Pruhs stated he's started reaching out to other brokers and individuals, and has plans
172 to meet with additional brokers, real estate association members, and past Commission
173 Members over the next several weeks. He expects to receive his first round of notes from
174 the individuals he's already met with, sometime this week. Mr. Pruhs explained that the
175 average licensee has only seen this document two or three times, and it can get a little
176 confusing. Mr. Pruhs indicated they were going to reformat a lot of the information on the
177 first page. Then they are also going to add specific items, such as where to go for the
178 1978 lead-based paint; information regarding the buyer's responsibility to go to the sexual
179 offender website; and other notifications that are currently spread throughout the
180 document will now be located on the first page. Once he's met with everyone, he will
181 connect with Ms. Consalo to send out the notes to the Commission Members for their
182 input. Once everyone's input is received, Mr. Pruhs will work with Ms. Consalo to put
183 together a draft for everyone to review. Mr. Pruhs hopes to have two or three drafts of the
184 new form for the Commission to review at the September meeting. Ms. McConnochie
185 thanked Mr. Pruhs for his work on this, and looks forward to seeing the drafts at the
186 September meeting.
187

188
189 **Agenda Item 7 – New Business**

190 **2020 Annual Report – 7(a)**

191 Ms. McConnochie thanked the Commission Members and staff for all the hard work they
192 did in their March and April meetings, as that paved the way for the Commission to put
193 together a fantastic report for the legislature. Ms. McConnochie stated she was very proud
194 of the Strategic Plan the Commission put together, and the objectives they are already
195 accomplishing. There were no questions about the 2020 Annual Report.
196

197 **Election Worker Recruitment Effort – 7(b)**

198 Ms. McConnochie stated Commission Members and staff received an email from Director,
199 Sarah Chambers, that discussed how the Lt. Governor is requesting assistance from the
200 different Boards and Commissions on providing information to their licensees about
201 assisting during elections, working at the polls, and potentially awarding education credits
202 for their efforts. Ms. McConnochie asked Commission Members to provide their thoughts
203 and feedback on this topic.
204

205 Ms. Consalo explained she spoke with the Lt. Governor's Chief of Staff regarding how to
206 move forward with awarding the proposed 1.5 credit hours for completing the poll worker
207 training and volunteering to be a poll worker, and he stated they were willing to do
208 whatever the Commission needed. Ms. Consalo explained there were two ways the
209 Commission could approach this, should they decide to award education credits for this
210 service – the Commission could propose an emergency regulation change so a regulation
211 is in place in time for the August primary; or they could propose a normal regulation
212 change and accept completion certificates retroactively.
213

214 Ms. Markwood commented she thought this was a neat idea, as they are struggling to find
215 poll workers throughout the State this year. However, as much as she would like to see
216 licensees help the State and be of service through working the elections, real estate
217 education is an important thing for licensees and the public. Licensees need to have the
218 education to do the job the public needs them to do, so receiving education credits for
219 something that isn't real estate related and has no bearing on the education part of their
220 training is a little concerning. Ms. Markwood personally works for a polling station, and
221 understands how vital and important it is to find individuals to work those hours; however,
222 it goes completely against what they do as education for the real estate.

223
224 Ms. Nelson commented that she agreed with Ms. Markwood. At first, she thought the idea
225 was very unique; but not having gone through the program, she's not sure it's really
226 providing any service to the consumers. The Commission is here to help protect the
227 consumers, and Ms. Nelson thinks awarding education credits for serving on an election
228 board probably isn't the best way to help consumers. It would be nice to know that
229 procedure and provides for a well-rounded education for those that want to do it – there
230 also may not be a lot of people that would take advantage of this opportunity, so it might
231 be beneficial to help.

232
233 Mr. Sumner commented that he doesn't see a reason not to do it. It's a one-time thing this
234 year. Like Ms. Nelson stated, he doesn't think there's going to be a huge number of
235 licensees doing this. He doesn't think it's really going to be harmful.

236
237 Ms. Matthews commented she felt similar. She doesn't see the benefit from the
238 Commission perspective, but she's not opposed. She doesn't see it as a negative at all,
239 but she doesn't know that it's appropriate for the Commission to decide.

240
241 Mr. Goldman commented that he's of the same opinion that it doesn't really help the
242 consumer by giving credit hours for this; however, he doesn't think an hour and a half is a
243 make it or break it situation. He does see the benefit of filling this need, so he is in favor of
244 awarding the education credits.

245
246 Mr. Pruhs commented he was not in favor of awarding education credits for this. Mr. Pruhs
247 asked if the Commission gave credit hours for this are other Boards going to do the same.
248 Ms. Consalo stated the Lt. Governor's Office is reaching out and asking the same of all the
249 Boards and Commissions – some will be in favor and some will not. Mr. Pruhs stated he
250 understood; however, giving credit hours for something that they don't do, is not a
251 precedent he wants to set. Mr. Pruhs suggested soliciting additional help through the
252 professional associations. Mr. Pruhs further stated he would like to help, but he is opposed
253 to the credit hour aspect.

254
255 Ms. McConnochie commented she felt caught in the middle. She agrees this would be
256 taking away education credits that are supposed to help licensees protect the consumer
257 better; however, she does understand the issue in obtaining election poll workers. Ms.
258 McConnochie asked what the Commission thought about sending a memo to the Alaska
259 Association of Realtors that stated this wasn't something the Commission necessarily felt
260 they could authorize for licensees regarding education credits, but it is a great opportunity
261 for their members to volunteer. Ms. Nelson commented that maybe the Commission could
262 also send out an announcement through their ListServ to encourage all licensees to help
263 in this effort. And that would be the Commission's contribution to call attention to the need
264 for poll workers and a promote the opportunity for licensees to help their communities. Ms.
265 McConnochie thanked Ms. Nelson for her suggestion. Everyone was in agreeance to send
266 the information out in the next couple of ListServ announcements, and Mr. Champion

267 would assist in taking this information to the Alaska Association of Realtors for their
268 consideration.

269

270 Proposed Regulation Revisions for Major Regulation Project – 7(c)

271 Ms. McConnochie stated that her and Ms. Nelson have been looking at the regulations to
272 see what needs to be changed to modernize them. She also thanked Ms. Consalo for
273 going through the suggestions that were made and noting what was and wasn't possible
274 from the State's perspective. Ms. McConnochie asked that all the Commission Members
275 take time to read the document and provide feedback and comments before the proposed
276 changes go out for public comment. Ms. McConnochie read through the entire document,
277 noting the proposed changes that were crossed out and in bolded, red font.

278

279 Ms. Nelson asked about how the Commission would know if a licensee was disciplined by
280 any other real estate organization. Ms. Nelson commented that she doesn't believe the
281 Commission has access to that information, so she's unsure of how the Commission
282 would track it. Ms. Consalo explained that Ms. Nelson was correct, in that disciplinary
283 action from a professional association is not public. The only time the Commission really
284 hears about those disciplinary sanctions is if they're referring it to the Commission for
285 statutory or regulatory violations as well. The only way the Commission is going to be able
286 to catch these are from their disclosures on their initial and renewal applications. When
287 licensees renew their instructor application, the Commission can have a similar question
288 added to that application like they have on the regular license applications, where it asks:
289 "Since your last application, have you been disciplined by any state, regulatory, or
290 professional association..." Really that's what is being suggested to add to the instructor
291 application, so there is a method of being able to screen for those things. Ms. Consalo
292 further stated this suggestion was created due to concerns expressed by various licensees
293 in the industry about this specific issue.

294

295 Mr. Pruhs asked how the Commission would describe discipline – would it be a
296 suspension, fine, or even something as common as a letter in a file. Ms. Consalo clarified
297 that it would be the same as what's in the initial license and renewal applications. For the
298 Commission, discipline would be any paperwork received by a licensee that does not say
299 "non-disciplinary" on it. Ms. Consalo stated she wasn't sure if the other agencies had non-
300 disciplinary measures to hold their members accountable; however, they do assess fines
301 and that would be considered disciplinary. Ms. Consalo also stated she believed the
302 question listed out what types of actions would be considered disciplinary. Mr. Pruhs
303 stated that as long as the discipline was defined, he was in support of the recommended
304 change.

305

306 The Commission took a short break while waiting for their Pearson VUE guests to call in.

307

308 Break at 10:00 a.m.

309 Reconvened at 10:10 a.m.

310

311

312 Agenda Item 4 – Pearson VUE Update Re: Re-Opening of Test Centers

313 Christine Nelson and Joel Norris from Pearson VUE briefed the Commission on the status
314 of the re-opening of test centers in Alaska. Ms. Nelson stated test centers have re-opened,
315 with the exception of a couple centers they are waiting to receive hours from. Most testing
316 sites are operating at 50% capacity to ensure social distancing. They also advised the
317 third-party sites to follow the same process, but those sites make their own business
318 decisions as to what they are going to do. There have been some challenges across the

319 United States in total with testing, being that the test centers are at a reduced capacity, but
320 people are scheduled and testing, and the sites are re-opened.

321
322 Ms. McConnochie commented that not all the test centers were open and listed Juneau
323 and Fairbanks as two that she knew were not testing yet. Ms. Nelson stated she checked
324 the system prior to the meeting, and it indicated Juneau and Bethel were now open. Ms.
325 Nelson explained availability changes constantly, so even what she checked in the
326 morning can be different in the afternoon. Test centers are trying to extend hours -
327 sometimes things will be full, then people will cancel and things are open again. So, it's
328 best if candidates go online to schedule because it gives them the best opportunity to see
329 that availability versus calling their call center. Their call center hold times are longer than
330 normal given what's been going on.

331
332 Mr. Norris explained the terms they use internally to talk about whether or not a site is
333 open may be different than how they're approaching the issue here on the call. When they
334 say a site is open, they're saying the site has indicated that it is open for availability,
335 meaning the site is itself not closed. So, the extent to which it's open and the number of
336 days in which it's open between now and the end of the month, the next 30 days after that,
337 and then through the end of August is a very fluid situation. So, when they say open, to
338 Pearson VUE, that means the site is opening its doors for test reservations period versus
339 sites that had previously been closed. Both in Alaska, as well as across the country, many
340 of the third-party sites are at academic institutions, which have not re-opened. So, those
341 sites would be labeled as closed because they haven't opened for hours of operation yet.
342 Sites that are considered open, however, may not be open immediately or even in the next
343 week or even the next two to three weeks with available hours.

344
345 Ms. McConnochie acknowledged that many of the third-party testing locations in Alaska
346 are happening on university campuses, and university campuses throughout the state are
347 not equally open. She asked what Pearson VUE has done to try and find alternate contract
348 sites to try and accommodate the people throughout Alaska who would like to take the
349 test, but are not able to because the university system in their location hasn't opened yet.
350 Ms. Nelson stated a good example would be Fairbanks. The site in Fairbanks gave them
351 information on when they would re-open, but they still have not submitted hours. So,
352 Pearson VUE authorized another site in Fairbanks, which is available for scheduling. And
353 right now, that site has availability in July, beginning the 14th. Pearson VUE's channel
354 team is continuing to reach out to see if there are additional options to add to those
355 locations, if they haven't received hours. Ms. Nelson further explained that due to the
356 capacity limitations, their teams are working on obtaining additional staffing to extend the
357 hours at the different testing sites, where they can.

358
359 Mr. Norris explained that one of the agenda items they had coming into this meeting was
360 also to explain the process to apply to become a test site. The information is available on
361 the Pearson VUE website, and if there are sites the Commission knows of that may be
362 eligible to offer testing, outside of the bureaucracy of the academic institutions, to
363 supplement the other third-party sites then absolutely send them the information to apply.
364 As long as these sites can meet the minimum hardware and software requirements
365 become a test site, and can serve as a test site on specific days of the week. Test site
366 applicants must submit pictures of what the environment looks like; have dedicated
367 seating for the test takers behind closed doors, to have that quiet space in which to test;
368 have a check-in area separately outside of the room; and have an active monitor who
369 proctors the examination. Any site that can fulfill those requirements, as they're outlined on
370 the Pearson VUE website, can apply to become a test site. The test site will enter into a
371 contract with Pearson VUE, and will be reimbursed for the exams they deliver. The test

372 site will manage their own hours of operation, which is the portion of the process Pearson
373 VUE doesn't control, but it is a process that about 3,000 locations across the country have
374 taken advantage of. If the sites are not directly affiliated with a real estate company, real
375 estate agency, or real estate school, this is the application process is cut and dry. If the
376 sites are affiliated with a real estate company, real estate agency, or real estate school
377 and has the facilities to become a test site, Pearson VUE would need to enter into an
378 arrangement with the State. Pearson VUE would have to secure the State's permission to
379 open that location.

380

381 Ms. McConnochie asked how long the application and approval process takes. Mr. Norris
382 explained there's a dedicated Pearson VUE team that manages those applications, as well
383 as the software installation and the training. Under the current circumstances, these teams
384 are getting bombarded with requests, so the turnaround time can range anywhere from
385 two to four weeks. This turnaround time depends on three things. When a facility applies to
386 become a test site, there are three objectives that simultaneously need to be met all at
387 once. First, the site needs to be outfitted so it fulfills the technical requirements as laid out
388 in Pearson VUE's specifications. Second, the contractual agreement terms often require
389 modifications and back and forth communication to work those out. Third, the staff will
390 need to be trained. They will take an online test at their location to fulfill that obligation.
391 The length of time it takes test sites to fulfill those requirements, typically ranges anywhere
392 from two to four weeks. Mr. Norris stated that he and Ms. Nelson would send Ms. Consalo
393 the information on the test site application process, so that it can be sent to the
394 Commission Members to aid in the recruitment of potential new test sites in Alaska. Ms.
395 McConnochie thanked Mr. Norris and Ms. Nelson for their help in making this happen.

396

397

398 **Agenda Item 7 – New Business**

399 **Temporary License Request – 7(d)**

400 Ms. Consalo explained that the broker for The Ron Moore Company passed away on June
401 2, 2020. Personal representative, Marsha Lindeman, was appointed by the courts, and
402 she sent the Commission a letter with all of the court documents stating she wanted to
403 appoint Associate Broker, Rhonda Harvey, to be the Broker-in-Charge while they close-up
404 everything within that business. Ms. Harvey is an associate broker employed by The Ron
405 Moore Company.

406

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

408

409 **RESOLVED to approve the appointment of Rhonda Harvey as Broker-**
410 **in-Charge of The Ron Moore Company in order to secure proper**
411 **administration in concluding the affairs of the decedent broker's real**
412 **estate business.**

413

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

415

416

417 **Agenda Item 9 – Investigative Report**

418 **Statistical Report – 9(a)**

419 Autumn Roark, REC Investigator, presented the investigation statistics for the reporting
420 period of March 10, 2020 through June 4, 2020. There are 36 open matters and 8 matters
421 were closed from the last report.

422

423

424

425 Probation Report – 9(b)

426 Ryan Gill, REC Probation Monitor, presented the probation report to the Commission.
427 There are 3 licensees on probation, and 1 licensee released from probation since the last
428 report. One licensee on probation has signed and submitted a Voluntary Surrender for the
429 Commission's consideration. Everyone else on probation is in compliance.

430

431 Investigative Matters – 9(c)

432 **On a motion duly made by Ms. Nelson, seconded by Ms. Matthews, it was**

433

434 **RESOLVED to go into executive session in accordance with AS**
435 **44.62.310(c) for the purpose of discussing subjects that tend to**
436 **prejudice the reputation and character of any person.**

437

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

439

440 The Commission went into Executive Session at 11:00 a.m.

441

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

443

444 **RESOLVED to come out of Executive Session.**

445

446 The Commission came out of Executive Session at 11:08 a.m.

447

448 **On a motion duly made by Ms. Markwood, seconded by Ms. Matthews, it was**

449

450 **RESOLVED to accept the Consent Agreement in case #2019-001043**
451 **and Imposition of Civil Fine in case #2020-000139, regarding licensee**
452 **Carrie Butler.**

453

454 **Roll call vote: Ms. Markwood – yes, Ms. Nelson- yes, Ms. Matthews – yes, Mr.**
455 **Sumner – yes, Mr. Goldman – yes, and Ms. McConnochie – yes.**

456

457 **Motion passed.**

458

459 The Commission accepted the Consent Agreement in case #2019-00143 and the
460 Imposition of Civil Fine in case #2020-000139 for Carrie Butler.

461

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

463

464 **RESOLVED to move to accept the Voluntary Surrender in case**
465 **#s2019-000862 & 2020-000020, regarding licensee Stacy Hague.**

466

467 **Roll call vote: Ms. Markwood – yes, Ms. Nelson- yes, Mr. Goldman – yes, Ms.**
468 **Matthews – yes, Mr. Sumner – yes, and Ms. McConnochie – yes.**

469

470 **Motion passed.**

471

472 The Commission accepted the Voluntary Surrender in case #s2019-000862 & 2020-
473 000020 for Stacy Hague.

474

475

476

477

478 **Agenda Item 6 – Old Business**

479 **Update from Assistant Attorney General Rob Schmidt – 6(b)**

480 **Consumer Disclosure & Waiver of Right to be Represented Forms**

481 Rob Schmidt, Assistant Attorney General, provided the Commission with his legal opinion
482 on three topics the Commission requested clarification. First, the Waiver of Right to be
483 Represented form and the question of if it is possible for a consumer to waive the right of
484 making a good faith and continuous effort to accomplish the consumer's real estate
485 objective. Mr. Schmidt opined that AS 08.88.620(5) & (6) both allow the consumer to
486 waive this right in writing; therefore, the draft waiver of right to be represented may include
487 the verbiage that was presented. Mr. Schmidt stated this was not a conclusion that the
488 proposed draft is a good idea or a bad idea, or the better policy or the worst policy; but as
489 a legal matter, the statutes do allow that right to be waived.

490

491 Ms. Nelson thanked Mr. Schmidt for his review, and helping provide the Commission with
492 the clarity they needed to be able to move forward.

493

494 Ms. Markwood thanked Mr. Schmidt for his review, and asked if the draft forms provided to
495 him met the Commission's statutory guidelines. Mr. Schmidt acknowledge they did.

496

497 Mr. Schmidt proceeded to discuss the second topic, the Consumer Disclosure form and
498 the question of if the form meets the Commission's statutory requirements. Mr. Schmidt
499 opined that the draft form did satisfy the statutory requirements, but stated it would be up
500 to the Commission to determine if that was the preferred form.

501

502 Ms. Consalo stated she had a question because when she was looking through the
503 statutes regarding the Consumer Disclosure, AS 08.88.615(7) states: "before the licensee
504 provides specific assistance to the person, obtaining from the person a document signed
505 by the person that discloses the licensee's relationship with the person." Ms. Consalo
506 asked how the new form accomplished that. Mr. Schmidt thanked Ms. Consalo for pointing
507 that information out, and stated the new form would need to include an acknowledgement
508 designating the type of relationship being created.

509

510 Ms. Nelson commented that there's been a lot of debate and discussion on this topic;
511 however, real estate licensees have said to the Commission that they really want to see a
512 short and simpler form. Mr. Sumner previously pointed out builders use a similar format,
513 where they do acknowledge the relationship here.

514

515 Mr. Sumner commented that he didn't know that the relationship would need to be
516 identified in the consumer disclosures, and this form was just providing the appropriate
517 disclosure as required by statute. He didn't feel the relationship necessarily had to be
518 created in this document.

519

520 Ms. Nelson further commented that when licensees go into contract with a consumer,
521 there are check boxes where the relationship is further defined in the contract. This
522 disclosure states very clearly across the top that it is not a contract, but licensees do
523 specifically identify their relationship in the contracts.

524

525 Mr. Schmidt stated that when looking at the statute, the first word is "before" the licensee
526 provides specific assistance. Clearly, the statute is contemplating before you are providing
527 a specific assistance, a document would need to be signed that discloses the relationship
528 with the person. The second is that the statute says signs a document. It does not have to
529 be this document, it could be another document, but by the same token, licensees are
530 trying to make their constituents life easier by providing them a form that covers as much

531 ground as possible. So, there does need to be a signed document before specific
532 assistance is provided. Mr. Schmidt acknowledged the concerns expressed regarding
533 individuals not wanting to sign anything that defines a potential contractual relationship
534 upon first meeting, and is sympathetic to the notion that people don't want to sign anything
535 upon first meeting; however, the disclosure is not a contract and it does not obligate the
536 individual to buy anything, to work exclusively with any one person, or any other sort of
537 limiting language. At the end of the day, the statute says that before providing specific
538 assistance, a document must be signed by the person disclosing the nature of the
539 relationship.

540

541 Ms. McConnochie asked Mr. Schmidt if he would be able to define what specific
542 assistance is, so everyone is more aware of when specific assistance would start. Mr.
543 Schmidt stated he did not want to comment that on the record; however, he would rather
544 express his opinion in writing to better suit the public verses speaking extemporaneously.

545

546 Ms. Markwood commented that the consumer disclosure requirement has become
547 confusing on the property management side of things, especially with offices who have
548 implemented certain mandates or protocols due to COVID-19. Ms. McConnochie agreed
549 and acknowledged she feels there needs to be a different consumer disclosure for
550 property management.

551

552 Mr. Sumner asked if it could be stated somewhere on the consumer disclosure "I
553 understand I am receiving specific assistance unless otherwise agreed." Mr. Schmidt
554 confirmed that an individual signing a document with that type of statement would seem to
555 satisfy the statute; however, there would need to be a distinction on the type of
556 relationship, whether that is with or without representation.

557

558 Ms. Markwood asked if Mr. Schmidt had the current Consumer Disclosure and the draft
559 Consumer Disclosure, which he would prefer being used for the consumer. Mr. Schmidt
560 stated he would use the current Consumer Disclosure.

561

562 After further discussion amongst the Commission Members, it was agreed the
563 Commission would continue to use the current forms.

564

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

566

567 **RESOLVED to keep the current Consumer Disclosure and Waiver of**
568 **Right to be Represented forms as is, and take these items off the**
569 **Commission agenda.**

570

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

572

573 Recovering Recovery Fund Money from Non-Licensed Individuals

574 Mr. Schmidt proceeded to discuss the third topic, recouping Recovery Fund money from
575 former licensees. Mr. Schmidt opined that, at a bare minimum, the Commission would
576 have a right of recruitment as a matter of common law. Money that is paid on somebody
577 else's behalf, the Commission would have the right of recoupment against the person
578 whose behalf the money was paid. As a practical matter, it would come down to whether
579 or not the former licensee has assets or an insurance policy in place to fund that recovery;
580 however, there would be, at a very minimum of the common law, right of recovery to
581 recoup the money spent on behalf of another person.

582

583 Ms. Consalo asked if that would require the Commission to go through civil proceedings to
584 recoup money through that method. Mr. Schmidt confirmed it would. Ms. McConnochie
585 asked if the money the Commission would have to pay for a civil lawsuit would necessarily
586 cover the money the Commission lost. Mr. Schmidt acknowledge that is frequently the
587 issue. Mr. Schmidt commented that in other professions, bonds are required to cover
588 these sorts of issues; however, that is going down a path the Commission may or may not
589 want to explore.

590
591 Ms. Nelson asked Mr. Schmidt if it would be advisable to change the statute to allow for
592 the Commission to recoup Recovery Fund money from a former licensee. Mr. Schmidt
593 opined this is a case where the Commission is well-served to pick their battles, and if they
594 were going to look at changing the statutes, things like defining duties and what forms
595 would need to be signed at the beginning of a relationship, may be something to highlight
596 to the legislature; however, given there is already a common law right of recruitment, it
597 may be somewhat of a lower priority.

598
599 Ms. McConnochie thanked and expressed appreciation to Mr. Schmidt for his comments
600 on the three topics requested and the thoughtfulness in his responses.

601
602

Agenda Item 11 – Executive Administrator’s Report

Education Statistics – 11(a)

603
604 Ms. Harris presented the education report for June 17, 2020. She reported that as of June
605 9, 2020, there were 12 pre-licensing courses; 4 broker upgrade courses; 281 elective
606 courses; 22 designated courses; and 70 post-licensing courses approved, with a total of
607 389 courses approved. Ms. Harris stated after the instructor renewal period, there were 57
608 approved instructors. There were 149 approved instructors in the last report, and currently
609 57 have renewed.

610
611

612 Ms. Nelson commented that it’s amazing there are this many instructors, and expressed
613 appreciation and thanks to the instructors and the staff for the job well-done in keeping up
614 with the requirements and data tracking.

615

Licensing Statistics – 11(b)

616 Ms. Consalo presented the licensing report for June 17, 2020. She explained the previous
617 reports were being presented a little differently, and the numbers that were run reflected
618 numbers for the previous quarter. In order to keep the information as current as possible,
619 Ms. Consalo explained the reports are now being run from the last date the information
620 was pulled through the next date the information is pulled for the next meeting. Ms.
621 Consalo reported that as of June 9, 2020, there were 2,604 active licensees; 6 inactive
622 licensees; 385 lapsed licenses with only 1 of those for non-compliance of PLE; there were
623 175 transfers; 97 licensees who completed their PLE requirements; 6 license upgrades
624 from salesperson to associate broker; 7 license upgrades from salesperson to broker; 3
625 licensees on probation; 1 license was surrendered; and 1 license was revoked.

626
627

628 Ms. Consalo then presented the report for RISC E&O claims for their first quarter (Jan –
629 Mar). Total closed claims were \$3,000, and the total open claims were \$2,000, for a total
630 of \$5,000 in claims for the first quarter.

631

632 Ms. Markwood asked if there was only one claim for the \$3,000 negligence of hiring a
633 contractor, or if there were any further specifics on that claim. Ms. Consalo stated that
634 specifics about the claims are not provided; however, it is presumed there was only one
635 claim stemming from that, as there was only one claim number associated with the claim.

636 Recovery Fund Balance Report – 11(c)

637 The Commission reviewed the Recovery Fund Balance Report as presented.
638 Ms. Consalo presented the Recovery Fund report for the third quarter, ending March 31,
639 2020. The Commission received a total of \$138,460 for renewals/license fees processed
640 between January and March, leaving the current total fund balance at \$405,348. The
641 projected balance for the end of the fiscal year is \$381,655 with an average 2-year
642 licensing cycle fund balance of \$329,665.

643
644 Status of Change Re: Wet Signature to Digital – 11(d)

645 Ms. Consalo reported the change has been very well received in the industry. There has
646 been a lot of utilization of the digital signature allowance, and it has made things easier
647 and more efficient when having to obtain certain documents from licensees.

648
649
650 **Agenda Item 10 – Regulation Revisions Proposed for Adoption**

651 Emergency Regulation to be Made Permanent, 12 AAC 64.063(h) – 10(a)

652 Ms. McConnochie invited Jun Maiquis, Regulation Specialist, to provide background
653 information on the emergency regulation change that is proposed to be made permanent.
654 Mr. Maiquis stated there were two public comments on the change, which were just
655 clarifying questions. Mr. Maiquis explained the emergency regulation will expire August 18,
656 2020 unless the Commission decides to make the regulation change permanent.

657
658 Ms. Consalo clarified that this regulation change would only go into effect if the Governor
659 declared an emergency, and making this regulation permanent would prevent the
660 Commission from having to do another emergency regulation project to address this issue
661 in the event of any future declared emergencies.

662
663 **On a motion duly made by Ms. Nelson, seconded by Ms. Markwood, it was**

664
665 **RESOLVED to adopt, as public noticed, the emergency regulation to**
666 **be permanent.**

667
668 **Roll call vote: Ms. Nelson-yes, Ms. Markwood-yes, Mr. Goldman-yes, Ms.**
669 **Matthews-yes, Mr. Sumner-yes, Ms. McConnochie-yes.**

670
671 **Motion passed.**

672
673 Regulation Revisions, 12 AAC 64.440(f) – 10(b)

674 Ms. McConnochie invited Mr. Maiquis to provide background information on the regulation
675 change. Mr. Maiquis stated there was no public comment on this regulation change.

676
677 **On a motion duly made by Ms. Nelson, seconded by Ms. Matthews, it was**

678
679 **RESOLVED to adopt, as public noticed, the regulation change.**

680
681 **Roll call vote: Ms. Nelson-yes, Ms. Markwood-yes, Mr. Goldman-yes, Ms.**
682 **Matthews-yes, Mr. Sumner-yes, Ms. McConnochie-yes.**

683
684 **Motion passed.**

685
686 Regulation Revisions, 12 AAC 64.059(b)(1)(E) & (d)(1)(E) – 10(c)

687 Ms. McConnochie invited Mr. Maiquis to provide background information on the regulation
688 change. Mr. Maiquis stated there was one public comment indicating a preference to keep

689 the notary requirement on the applications.

690

691

On a motion duly made by Ms. Nelson, seconded by Ms. Matthews, it was

692

693

RESOLVED to adopt, as public noticed, the regulation change.

694

695

Roll call vote: Ms. Nelson-yes, Ms. Markwood-yes, Mr. Goldman-yes, Ms. Matthews-yes, Mr. Sumner-yes, Ms. McConnochie-yes.

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Motion passed.

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Lunch Break at 12:02 p.m.

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Reconvened at 1:02 p.m.

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Agenda Item 8 – Division Update

705

REC Revenues and Expenditures Report – 8(a)

706

Sharon Walsh, Deputy Director of the Division of Corporations, Business, and Professional Licensing, presented the Division Update.

707

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709

Ms. Walsh presented the report for the third quarter, ending March 31, 2020. She stated the current revenue was \$556,316. Expenditures totals were as follows: There was non-investigative expenditures of \$96,358 and investigative expenditures of \$73,372, for a total of \$169,730 in direct expenditures. There were indirect expenditures of \$141,395 (this includes internal administration, department, and statewide costs), leaving the total expenditures at \$311,125. There was a total surplus of \$1,027,346.

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Agenda Item 9 – Investigative Report

718

Fine Matrix Status – 9(d)

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Amber Whaley, Senior Investigator for Non-Healthcare Boards, explained the goal for the fine matrix is to update it, so the Commission can start using it as a tool when reviewing cases and trying to find consistent disciplinary sanctions. Ms. Whaley expressed that she's aware the matrix has been a topic in the past, and agrees it would be helpful to update the matrix so it can be used as a guide when reviewing cases in the future. Ms. Whaley explained that in order for investigations to update the matrix, they are going to need to pull current statistics for case precedents, so they can take a look at the most recent, trending violations and apply them to the document. As far as the status on pulling those case precedents, the Board is aware they lost their previous investigator and they do have a new investigator; however, she is currently very busy. So, they haven't had time to pull those statistics needed to really update the matrix. Ms. Whaley stated she is hoping to get this task hammered out in the next month or two. She doesn't think they need to start from scratch on it, but it could certainly use some updating. Once the information is updated, it would be presented to the Commission for review. Upon review & approval by the Commission, the matrix would then go to law for final review and approval before it can be implemented. Ms. Whaley further stated she would not recommend using the current matrix provided to her since the information is very dated. Ms. Whaley indicated she would have an update for the Commission by the next meeting in September.

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Assistance with Strategic Plan Objective #1 – 9(d)

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Objective #1 states: "With the agreement of the appropriate departments, upload informational videos done by appropriate personnel on: 1) how to file a complaint against a licensee and its process; and 2) if a complaint is filed against a license what the process is

740

741

742 for that license. Additionally, provide best practices white papers on various topics as
743 deemed appropriate on the website as approved by the Commission.”

744 Ms. Whaley explained the goal is to take what Ms. Consalo was providing to the public as
745 training about the investigative process, specific to the Real Estate Commission, and post
746 it online so anybody who has questions or wants further explanation about what
747 investigations does, can easily access that. Once they get the video properly vetted and
748 reviewed, it can be posted on the Commission website so anyone can view the
749 information. Ms. Whaley expressed this was an exciting project, and she's happy to be a
750 part of it.

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752

753 **Agenda Item 12 – Commission Member Comments and Questions**

754 Mr. Sumner stated it was good seeing everyone again and will see everyone in
755 September.

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757

Mr. Pruhs concurred with Mr. Sumner.

758
759

Ms. Markwood stated it was a great meeting, and thanked everyone for their hard work
and it's a pleasure to serve on the Commission with everyone.

760
761

762 Ms. Nelson stated it was great to see everybody, and she's glad everyone's doing well,
763 even though they're in the midst of very interesting times. She wanted to thank Ms.
764 McConnochie and the staff for the great work they've done - it really shows in the Board
765 packet.

766
767

Ms. Matthews stated she echoed the comments of the other Commission Members, and
appreciates all the updates and time spent on the meetings. She expressed appreciation
to Ms. McConnochie for running a very efficient meeting.

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769
770

771 Ms. McConnochie stated one of the things she and Ms. Nelson agreed to do was to look at
772 teams and team advertising. She hasn't completed it, but she'd like everyone to put it in
773 their memory bank, so it can be discussed more at the September meeting. She found it
774 very difficult to find a lot of definitions for what other licensing commissions are doing
775 regarding licensed assistants and licensed team members. On the other hand, there's a lot
776 of information out there dealing with what unlicensed activity is and how to prevent it. Most
777 of the information is in the form of brochures and pamphlets being published to make sure
778 people understand how to advertise properly. Ms. McConnochie thanked all the
779 Commission Members for their input and hard work. She also thanked the staff for helping
780 the Commission through the virtual meetings, and getting things done at an efficient rate
781 with as much ease as one can have. She hopes to see everyone in September.

782
783

784 **Agenda Item 13 – Adjournment**

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

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787

RESOLVED to adjourn.

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789

All in favor; Motion passed.

790
791

Meeting adjourned at 1:30 p.m.

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The next meeting will be held September 23, 2020 in Anchorage.

794

Real Estate Commission
Meeting Minutes
June 17, 2020
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Prepared and submitted by:
Real Estate Commission Staff

Approved:

PeggyAnn E.
McConnochie

Digitally signed by PeggyAnn E.
McConnochie
Date: 2020.09.23 16:09:17 -08'00'

PeggyAnn McConnochie
REC Chairperson
Alaska Real Estate Commission