

STATE OF ALASKA
DEPARTMENT OF COMMERCE COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS BUSINESS PROFESSIONAL LICENSING
REAL ESTATE COMMISSION

MINUTES OF MEETING

SEPTEMBER 17, 2009

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate Commission was held September 17, 2009 at the Wedgewood Hotel, Garden Side Room, Fairbanks.

Thursday, September 17 2009

Call to Order - Item 1

Chairperson Brad Cole called the meeting to order at 9:15 a.m.

Members Present:

Brad Cole, Chair, Associate Broker, 3rd Judicial District
Nancy Davis, Education Liaison, Broker, 1st Judicial District
Barbara Dickson, Public Member
Gene DuVal, Associate Broker, 4th Judicial District
David B. Somers, Vice Chair, Broker at Large
Christine Swires, Associate Broker, Broker at Large

Staff Present:

Sharon Walsh, Executive Administrator

Staff Present Via Teleconference:

Nancy Harris, Project Assistant
Beata Smith, Licensing Examiner
Michelle Wall-Rood, Investigator
Cathy Mason, Administrative Officer II, Juneau

Guests Present:

Donald Joyner, Broker, Don Joyner & Associates, LLC
Debbie Murphy, Salesperson, Prudential Jack White/Vista RE
Duane Mathes, Associate Broker, Dynamic Properties
Peggy Ann McConnochie, Broker, Alaska Coastal Homes Consulting

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Approval of Agenda – Item 1(b)

On a motion made by Ms. Davis, seconded by Ms. Swires, and passed unanimously, it was

RESOLVED to accept the agenda as presented.

Commission Member L. Sherman's Resignation – Item 1(c)

Mr. Cole discussed with the Commission the letter of resignation received from Commission member F. Lee Sherman. Ms. Walsh read the letter into the record. Mr. Sherman regrets having to resign effective August 31, 2009. Mr. Cole indicated that this position should be filled as soon as possible and in time for the December meeting. If any of the members know of someone willing to serve as a public member have them contact the Boards & Commissions Director.

Mr. DuVal wanted to express his gratitude to Mr. Sherman and wishes him well. Mr. Cole stated that a letter would be sent and that everyone could sign it thanking Mr. Sherman for his contributions to the Real Estate Commission.

Approval of Minutes – Item 2

December 11-12, 2008- Item 2(a)

Mr. DuVal stated that he reviewed the December 2008 meeting minutes that were just emailed on the 14th of September for the Commission's approval at this meeting.

On a motion made by Mr. DuVal, seconded by Mr. Somers, and passed unanimously, it was

RESOLVED to accept the meeting minutes for December 11-12, 2008.

No Discussion. Motion passed.

March 12-13, 2009 – Item 2(b)

On a motion by made Ms. Davis, seconded by Ms. Swires, and passed unanimously, it was

RESOLVED to approve the March 12-13, 2009 meeting minutes.

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No Discussion. Motion passed.

June 3, 2009 Teleconference –Item 2(c)

On a motion made by Ms. Davis, seconded by Ms. Dickson, and passed unanimously, it was

RESOLVED to approve June 3, 2009 teleconference meeting minutes.

No Discussion. Motion passed.

June 18 & 19, 2009 – Item 2(d)

On a motion made by Ms. Davis, seconded by Ms. Dickson, and passed unanimously, it was

RESOLVED to approve the June 18 & 19, 2009 quarterly meeting minutes.

Mr. DuVal had a concern on page 3 of the meeting minutes. Mr. Cole pointed out that there is no page 2 and wanted to make sure everyone was aware that the pages are mismarked and that page three should be page two. Mr. Somers stated that for the record that the Commission is looking at the page identified as page three. Mr. DuVal stated that there is an attempt to summarize the accusations from Judge Kennedy. He has a real problem with the summary and thinks it should say Judge Kennedy reviewed with the Commission members the accusations of Henry S. Bartos case number 3000-04-012 attached. It shouldn't be a summary.

Mr. DuVal indicated that on page 7 through 11 it refers to adoption as modified but there is no attachment. We want to be sure it is indeed attached in the email.

Page 9 it refers to (12 AAC 64).570 what concerns me is (indiscernible)? And the use of the word "file" instead of financial records.

July 21, 2009 Teleconference – Item 2(e)

On a motion made by Ms. Davis, seconded by Ms. Swires, and passed unanimously, it was

RESOLVED to approve the July 21, 2009 teleconference meeting minutes as presented.

No Discussion. Motion passed.

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Mr. Cole commented that hopefully the Commission will not have such a big agenda for meeting minutes in the future but there were some issues that Ms. Walsh has corrected and we do not expect to see happen again. I appreciate the Commission's tolerance with this task for board approval.

Public Comment - Item 3

Ms. Walsh stated for the record that there is a tab 3(c) that will be handed out.

Regulation Project Written Comment - Item 3(a)

Commission members reviewed written comment from Mr. Schreck on 12 AAC 64.061(c).

Mr. Cole asked if anyone else gets the idea that Mr. Schreck misinterpreted the idea of what the Commission was proposing?

Mr. DuVal said that is 12 AAC 64.110.

Mr. Cole stated he believes his comments have to do with allowing out-of-state brokers to conduct business in the state of Alaska. But when he read his comments he got the impression he misunderstood. He's thinking we're allowing them to come in to do business but what we are trying to do is keep them out of the state to do business. Did anyone else get that feeling as well?

Mr. DuVal was concerned too about the way he was reading it. The regulation that he read doesn't refer to regulation 64.110 (indiscernible tape 337)?

Mr. Cole asked that Ms. Walsh send Mr. Schreck a note to let him know that the Commission appreciates the fact that he took the time to write the letter and indicate that he may have misinterpreted what our intentions were and that we are in fact trying to legislate to keep "out of state businesses" from operating in the state of Alaska.

Letter from Linda Sharp - Item 3(b)

Ms. Sharp feels we need to bring to bear another disclosure particularly about a conflict of interest for a particular situation where a licensee represents a builder. Does anyone have comments or thoughts about her proposal?

Ms. Swires' thought was that the builder's agent gets her out of it. I see this in Anchorage in the past. A lot of times buyers if they come to, it matters in a certain property because of an agent, if they find out that that agent isn't experienced enough they will go with the builder's agent because they know. I think they have

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gone with the builder's agent in the past. The client felt they would get better treatment that way. I think that's what this whole thing is about and I don't think it's anything we need to address or even get close to.

Mr. Cole stated that one of the things we need to keep in mind is that most of the general public is "woefully naïve" about the real estate process. People tell me that they went with the builder's agent/licensee because they thought they were going to get a deal on the price because they didn't have to pay the buyer's representative side of the commission, which is totally bogus and that's what buyers think.

Mr. Somers agreed and by this argument we'd also have to have a special form if a buyer representative has working for the buyer for multiple transactions 10 or 12 or so. It makes sense that it would go both ways. Disclosure of COI and Waiver of Right to be Represented are mixing up a bit. A lot of this that she wants us to do wouldn't be a regulation project anyway it's a statute.

Mr. DuVal believes that in the reply to this Realtor part of her interest is defined in 08.88.291.

Mr. Cole stated that from the REC's standpoint we recommend that staff write Linda Sharp a letter indicating that in our opinion her concerns are addressed in statute 08.88.291.

Letter from Carlton Smith is reviewed by Commission - Item 3(c)

Mr. Somers asked the question, if it was possible to have an official request from the State of Alaska to the people who are advertising online and can't show that they have a licensee in the state of Alaska or if they refuse to respond take it a step further and have the Attorney General write a letter or somebody write a letter to the site saying that you'll be sanctioned in some form or fashion because we believe that you are participating in illegal activity?

Mr. Cole asked to table this item until the Commission can speak with the investigator, Ms. Wall-Rood later on today.

Education Update - Item 4

Education Statistics - Item 4(a)

Nancy Harris presented the education statistics to the Commission via teleconference from Anchorage.

She reported that there were no new pre-licensing or broker upgrade courses submitted. There are 236 Elective Continuing Education courses currently approved, 48 Designated Continuing Education courses and 45 post-licensing courses. She also reported that currently there are 344 courses, 79 new courses and

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2 courses that were renewed and that there are 53 course sponsors and 102 instructors.

Ms. Davis asked for clarification on what is a sponsor?

Ms. Harris said that a sponsor could be an organization, an office or a person. Somebody who owns the course and different instructors can teach the course.

Mr. Cole commented that one of the things we are receiving today is a phone log showing the types of complaints the investigator, Ms. Wall-Rood is getting on a monthly basis. Should we compare that information to the courses being offered and approved to see if there is any area where there are voids, where we may need more courses, additional information that we can provide to our realtors/ licensees based on the types of complaints that we're getting-is that a reasonable request?

Mr. Cole requested that Ms. Harris make a comparison based on the information provided by Ms. Wall-Rood with the type of complaints that are being received and see where we may need more continuing education and have it available for the next meeting. Mr. Cole believes that it should come from the Commission to recommend new courses that should be brought online if we are seeing any voids.

Mr. Somers brought up an issue involving old business regarding education. At our last meeting there was an advertisement discussed that was put out by a certified instructor making false statements about the REC activities in order to boost his or her enrollment and asked if that was followed up on? As a Commissioner Mr. Somers was greatly concerned that a certified instructor would make false statements regarding the REC in order to boost their attendance. He was concerned about the veracity when we have to rely on and trust in them.

Ms. Walsh will send a letter out to the instructor to address this issue.

Mr. DuVal asked if any license had been suspended as a result of the trust account audits? Ms. Walsh responded with a no.

Ms. Swires asked that an update on the trust account audits be put in the next newsletter. Ms. Walsh said that would be done.

DCE topics for 2010-2012 -Item 4(b)

Ms. Harris asked the Commission to select the designated hours for the next licensing period, 2010 – 2012. The Commission was provided with a history on topics that have been designated in the past.

Mr. Cole asked if anyone on the Commission had any recommendations?

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Ms. Davis - Discussion on failure to present offers; concerned with how you can accuse someone who has failed to present offer(s). The only way it can be brought to the Commission is if the buyer talks to the seller and the seller says they never saw it.

Mr. Cole indicated that he uses the same practice as Mr. DuVal and that is to have the seller write "reject" across page one of the earnest money agreement and date it. And in many cases the other licensee wants that so they can release the earnest money to the person who made the other offer.

Ms. Davis asked if there is really a way to know if another licensee has not presented an offer?

Mr. Somers stated that there is no statutory mandate for this.

Mr. DuVal said that someone has to make an accusation.

Mr. Cole stated that we have to be careful here we can't regulate everything.

Ms. Davis said she just saw the number of calls into Ms. Wall-Rood on failure to present purchase offers.

Mr. DuVal stated that the only way you can deal with this is to have something that says, thank you for your offer. I have accepted another offer or I am considering another offer.

Mr. Somers asked if this was on our Best Practice list and suggested that it be put on there.

Mr. Cole noted that in July there were nine falsified applications and stated that they need to ask Ms. Wall-Rood about this.

Break – 10:00 a.m.

Reconvene – 10:13 a.m.

The Commission discussed Designated Continuing Education Courses for 2010-2012. The members chose to continue with Ethical Decision Making for this next renewal cycle. It was recommended that even though the same topics are recommended again that the course sponsors need to freshen up their content.

The new DCE topics for 2010-2012 are:

1 hour Ethical Decision Making and 1 hour of Risk Management (taught as one course)

2 hours of Licensing Relationships

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1 hour License Law and 1 hour Prohibited Conduct (taught as one course)
2 hours of Property Disclosure and Inspections

On a motion made by Mr. Somers, seconded by Ms. Swires, and passed unanimously, it was

RESOLVED to approve the Designated Continuing Education course topics for the 2010-2012 as discussed.

Veteran Exam/Crs. Owner Policy/Newsletter - Item 4(c)

Ms. Harris advised the Commission that she will post to REC web site information for Veterans who have taken the real estate exam and would like to obtain a voucher for reimbursement. She said if they knew of any veterans to let them know that this benefit was available.

Sponsor/Brokerage Question - Item 4(c)

Ms. Harris sought input from the Commission on who owns a course if one licensee submits a course while working at one brokerage and then moves to another office. Who is the owner of the course? Can both brokerages now offer the same course?

The Commission suggested that they were not interested so much in who owns the course but more concerned with the course content. Commission members discussed and believed that this was more of a proprietary issue and not a Commission issue. It has to do with a business relationship.

Instructor Certification expiration – Item 4(c).

Ms. Harris asked the Commission if they want the instructor certifications to expire? Currently, instructors who have been approved by the REC only have to renew their instructor status. It's now in front of the Commission because an instructor who was approved in 1997 was renewing his approval certification. Ms. Harris wanted the Commission to be aware that Instructor certifications do not expire and to allow them to consider some options. The Commission was referred to review 12 AAC 64.440(f). Mr. Somers suggested that there is a need for a regulation project to address the issue.

Web Renewal Update - Item 4(d)

Ms. Harris gave the Commission an update of the online renewal. She stated that the renewal is scheduled to be available online starting November 2, 2009. The renewal forms have been updated; there was a test run with the online renewal, some issues came up and it will be tested again before renewal for licensees begins. A change this year in online renewal is a confirmation page will be provided showing purchased items and the payment.

The Commission thanked Nancy for her Education Report.

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Break – 10:35 a.m.

Reconvene – 11:00 a.m.

Licensing Examiner Report – Item 5

Licensing Statistics – Item 5(a)

Ms. Smith presented her licensing statistics to the Commission. Ms. Smith informed the Commission that the statistical information in this report is from May 27, 2009 through August 31, 2009: New licensees 39; total active licensees 2331 with a 1/31/2010 expiration date; the total number of licenses (active and inactive) with an expiration date of 1/31/2010 are 2604. Broken down by license type there are: 483 Brokers; 400 Associate Brokers and 1443 Salespersons and 5 Limited. The number of inactive licenses are: 7 Brokers; 21 Associate Brokers and 115 Salespersons. 10 new offices opened within the state during this time.

The Chair asked Ms. Smith what action is taken when a license lapses. Ms. Smith explained that when a licensee's education expires she goes ahead and lapses their license (in the database) due to non-compliance with Post Licensing education (PLE) requirements. She went on to explain that if a Broker is lapsed she also closes their office when she changes the Broker's status to lapsed. Prior to doing this though she sends out a notice to the Broker and the licensee, about 1-2 months in advance to let them know of the PLE requirement due date.

Regulation Tracker – Item 5(b)

The regulation tracker was reviewed by the Commission with Ms. Smith. In particular, September 2008 Mr. DuVal asked about the month and year date –why is it there? Ms. Walsh explained that was more of a holding position because the regulations were up for adoption at this meeting. Mr. DuVal expressed his concern for splitting a regulation project into three parts. He would like for the Commission to be more vigilant in allowing a regulation project to be withdrawn into different parts. He cited regulation project 12 AAC 64.110(a) as an example of the three part regulation project.

Renewal Postcards 2010-12 – Item 5(c)

Ms. Smith reviewed the new Division procedures for renewal with the Commission. Licensees will now be notified of the renewal period through an informative postcard sent to their address on file with the Commission.

Public Comment Continued – Item 3

Public comment was received from Peggy Ann McConnochie with the Alaska Association of Realtors who had two issues to bring to the Commission's attention.

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First, she asked that content be added to the prelicensing education, but not requiring additional hours. There are 4 states that are doing this now and would like Ms. Walsh to find more information about this at the ARELLO conference in October. Business courtesy and business manners are the issues that these states are adding to the curriculum. Montana is the latest state that has added this to their course.

Secondly, the other issue is for the Commission to take a look at licensees in an inactive status. Ms. McConnochie believes there are huge holes with the inactive status category. She stated that if we are truly going to increase the protection of the public and increase the professional standards of a licensee that this is a huge hole that is being used and abused throughout the state. She provided the Commission with an example of a licensee who couldn't understand post-licensing because the licensee was only maintaining her license as a resume builder. She didn't want to practice and therefore, had little to no understanding of post-licensing education.

Chair Cole said that there is a steady increase in the inactive status category so obviously there is a concern.

The Commission recessed for lunch at 11:30
The Commission reconvened at 1:30 pm

Executive Administrator's Report, Item 6

Surety Fund Tracker Item 6(a)

Ms. Walsh provided the Commission with the Executive Administrator's report. The Commission reviewed the Surety Fund tracker for FY09 and FY10. Ms. Walsh indicated that she had not received the Surety Fund Balance Report from Cathy Mason in Juneau. Ms. Walsh would like for the Commission to consider charging a late-fee for renewal. The Board of Veterinary regulation language was provided as an example to the Commission. The Commission discussed and reviewed license status and fees versus actual costs of reinstating a licensee. The Commission considers imposing a fee. Discussion then centers on the Surety Fund fee and how it's established. It was thought that the surety fund fee was established in centralized licensing but then it was determined by a phone call to Jenny Strickler in Juneau at the Division that it is set by the Commission each renewal period and doesn't need to be in regulation.

Administrative Officer Report – Item 7

The Commission moved on to Item 11 after unable to contact Cathy Mason to address renewal fees for 2010-2012.

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Old Business, Item 11

Adoption of Regulations 12 AAC 64.061; 12 AAC 64.068; 12 AAC 64.111; 12 AAC 64.180 and 12 AAC 64.961 – Item 11(a)

The Commission discussed the public comment for the regulation project.

On a motion made by Mr. Somers, and seconded by Ms. Davis, it was

RESOLVED to adopt the regulation changes as presented on the agenda 12 AAC 64.061; 12 AAC 64.068; 12 AAC 64.111; 12 AAC 64.180 and 12 AAC 64.961. No further discussion.

Motion passed.

New Business, - Item 12

FY10 Goals and Objectives – Item 12(a)

The Commission discussed goals for the new year, 2010. The Commission had staff conduct trust account audits and is still working their way through 57 office audits. The Commission will see a compilation of findings in a report on what actions were taken; how many people were in compliance how many people were out of compliance. The other issue that continues to be of concern is the backlog of investigation cases. The Commission needs to continue to convey to consumer groups, licensee organizations, such as Realtors the role of the Commission is to establish rules and regulations that all licensees must follow and hopefully make the real estate industry better.

On a motion made by Mr. Cole, seconded by Ms. Davis, and passed unanimously, it was

RESOLVED to accept the goals & objectives for the Commission in FY10.

Motion passed.

Administrative Officer Report, Item 7

Discuss & Set Renewal Fees for 2010-12 – Item 7(a)

The Financial Report was addressed with Cathy Mason on teleconference from her office in Juneau. Discussion began with renewal fees. She explained that she recommended that the fees should be reduced due to the roll-forward amount which is about \$461,000 in excess. The goal is not to have it keep growing so Ms. Mason applied it to the fees and therefore the recommendation is to drop the renewal fee to

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\$275 per licensee plus the surety fund fee. The Commission did not have any questions for Ms. Mason.

On a motion made by Mr. Somers, seconded by Ms. Davis, and passed unanimously, it was

RESOLVED to adopt the new fee schedule.

The Commission discussed the spreadsheet and the setting of the surety fund fee. The Commission could not make a determination on the fee for the surety fund because the Surety Fund Balance Report would not be provided to the Commission until after October 2, 2009. The Commission decided to vote on setting the surety fund fee using the mail ballot.

Motion passed unanimously.

Investigation Report, Item 8

Statistics, Item 8(a)

Investigation Report was presented to the Commission by Michele Wall-Rood via teleconference. She reported for the period 5-23-09 to 8-26-2009 the Investigation Unit opened 11 cases and closed 9 cases. Currently there are 57 open cases. Litigation has been initiated in 2 cases and accusations are being prepared in 3 of the open cases. FY 09 statistics show that 68 cases were opened and closed 45 cases. In FY10 there are 7 open cases and closed 1 case. Mr. Cole indicated to Ms. Wall-Rood that the Commission briefly mentioned in setting the FY10 goals and objectives, how many of these cases could be closed in 2010. Mr. Cole asked Ms. Wall-Rood what does the Investigative Unit see as a timeframe in 2010 for getting anything in 2003; 2006; 2007 closed? Ms. Wall-Rood stated that the 2003 case is involved in litigation so that is why that case is still open. The other 2 cases from 2006 are gathering information. Sometimes cases are pended due to civil litigation. As far as the 2007 & 2008 cases most of those are not closed because we haven't had time to work them or we are gathering information. The cases tend to be prioritized by public safety risk. Mr. Cole told Ms. Wall-Rood that he would like to meet with the new Supervisor of the Investigation Unit, Brian Howes to address the concerns of the Commission. Mr. Cole asked Ms. Wall-Rood if the Commission could be of assistance in any way to help in the backlog of cases. Can they be assigned to someone else? In-house? Ms. Wall-Rood stated that this is a topic for discussion with the Supervisor when they meet and not at a Commission meeting, due to the internal policy and procedures.

Category of Complaints & Proposed Disciplinary Sanctions – Item 8(b)

The Commission reviewed the draft fine matrix (Category of Complaints & Proposed Disciplinary Sanctions) and discusses the various issues relating to the

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sanctions and how they were achieved. Ms. Wall-Rood indicated that other Boards and Commissions use this procedure and find it to be very helpful. The Commission decided to review the draft one more time before they adopt the fine matrix at the December meeting.

Consumer Pamphlet/ discuss page 2 – Item 8(c)

Ms. Wall-Rood discussed the issue she is seeing with the licensees completing the Consumer Pamphlet. Page two, which lists the type of representation the licensee will be providing to the consumer. She often sees that all the boxes are checked and is concerned that the licensees are not understanding their role. She thinks it's an education issue for the licensees. Mr. Cole explained the breakdown of the role that the licensee can provide the consumer. The explanation is whether it's my property that is listed or another licensees listed property or if it's just specific assistance. Mr. Cole further explained that at that time of the meeting it is explained to the consumer the different roles that he (the licensee) will possibly be entering into- depending on the property listing. But if it's a property that I or someone in my office is listed we've elected at that point to say any property we list and we show, we become neutral licensees. This relationship is clarified at the first meeting so that each time we go out to see property we don't have to sign a new document. Ms. Wall-Rood asked if it is standard practice to check more than one box on the Consumer Pamphlet? Mr. Cole said absolutely. Ms. Wall-Rood indicated to the Commission that checking neutral licensee and being represented on the same page is really confusing. Mr. Cole commented that it is not because it is also indicated on the Earnest Money Agreement how they are being represented. Mr. Somers asked Mr. Cole if all the boxes are checked up front but you don't want it on a different form when one of those situations is taking place? Mr. Cole said not when I sit down with them and explain the differences. We have them sign one document at one time. Mr. Somers stated that what he does is only represent the seller and may offer specific assistance. Mr. DuVal indicated that he puts extra clarification in there that it's listed by Gene DuVal then I'm neutral, if not, then I represent you. Mr. Cole stated that he only checks 3 boxes and not all 4. Ms. Davis agreed with Mr. Cole in the box checking. Mr. Somers discussed the legislative intent was to make sure the consumer knows the relationship that they are in with the licensee. Ms. Davis stated that she uses the form and usually marks two boxes and also provides a sheet showing which is a Davis Realty listing and which is someone else's listing, explaining her relationship duties as she shows each house. Mr. DuVal asked Ms. Wall-Rood to look at 08.88.615(6) (7) and (8). Ms. Wall-Rood tells the Commission that it appears to be an education issue and that there are not any standards and may be set by internal brokerage policy. Mr. Cole asked if all four boxes are checked then that's a problem. The purpose of the Consumer Pamphlet is to advise the client, prior to showing properties, but when we write the Earnest Money Agreement it is specifically pointed out what our representation and responsibilities are.

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Brokers licensed in other states practicing/listing Alaska properties - Item 8(d)
Commission members discussed the issue with Ms. Wall-Rood. Mr. Cole clarifies that an out of state licensee is trying to represent the buyer? Ms. Wall-Rood said yes. Mr. Somers stated that they can't do this, the brokers can get a referral fee and to work with them or offer to find them someone to work with. Mr. Cole asked if the complaints are about commercial or residential properties? Ms. Wall-Rood said they are about both. Ms. Walsh asks Ms. Wall-Rood if this was about the Carlton Smith letter to the Commission? Ms. Wall-Rood said it was similar information; calls like that, multiple times each week. Ms. Wall-Rood explained that 80% of the time on commercial property it just takes a call to the out-of-state broker and most of the time they have a local broker but that broker is not listed on the advertising. The issue then centers on co-brokering property in Alaska but marketing it in the other jurisdictions local market. A licensee from another jurisdiction/state advertising Alaska property for sale and the seller has hired an out of state broker to list the AK property-problem is that the public isn't being represented by an Alaska licensee. The AK licensee needs to have contact with the seller and establish a relationship to oversee the transaction because you can't do it as an unlicensed person. And no one is protected as far as our rules go. Mr. DuVal stated if they had a referral agreement in place and it's structured properly then I would say it's okay. But if it's not structured properly and an AK licensee aides somebody in another jurisdiction to break the law then we should probably come down on them. Mr. Somers concurred. You can't be co-listing it because it's not possible. It has to be a referral. Ms. Wall-Rood clarified what the Commission's intent was, property listed in Fairbanks you would do a referral if an out of state licensee calls you and has an out of state buyer that wants to buy your property, you would do a referral agreement. Mr. DuVal stated he would do a contract/agreement on my paperwork and we would agree on so much money and here's the signed agreement and I'll deal with the buyer. Ms. Wall-Rood said if she flips it around and you the AK licensee has a buyer and wants to buy property in another state then what? Mr. Cole said he would call up that broker in the other state and tell them they have an interested buyer and ask that broker if they are interested in a referral. The referral is when you the AK licensee call up the licensee or broker in the other state and ask if they would represent "my" buyer for a certain fee. That is how you create the referral agreement. Mr. DuVal said that if there is no licensing law in foreign countries then it's okay for us to list it.

Education Requirements for D. Joyner – Item 8(e)

Ms. Mandel addressed the Commission regarding the continuing education requirements of Donald Joyner's Memorandum of Agreement (MOA). Concern was over the completion of his education requirement in the MOA. The attorney for Mr. Joyner's asked for approval to take an ethics class. Ms. Mandel approved the course and course number. When Mr. Joyner turned in his course certificate to Ms. Mandel the course number was not the same as she had approved. Mr. Joyner's attorney indicated that they had inadvertently provided Ms. Mandel with the wrong course

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number. In order to make sure everything was above board Mr. Joyner was asked to turn in his course material from that class. What she received was course work for Ethical Decision Making and not Real Estate Disclosures. What was most disturbing to Ms. Mandel was Mr. Joyner's comments on the course material regarding derogatory comments about other licensees. What Ms. Mandel asked the Commission was whether or not Mr. Joyner has met the education requirements through the course work?

Move into Executive Session at 3:50pm
Move out of Executive session at 4:00pm

**On a motion made by Mr. Somers, seconded by Ms. Davis, it was
RESOLVED to approve Mr. Joyner's education course as submitted
to the Investigator, Margo Mandel and satisfying the MOA.**

Motion passed unanimously.

Break at 4:00 p.m.
Reconvened at 4:05 p.m.

Assistant AG Report, Item 9

Errors & Omissions Insurance Update – Item 9(a)

Dan Branch, Assistant Attorney General spoke with the Commission via teleconference. Mr. Branch updated the REC on the draft regulation project for Errors & Omission insurance. The draft is getting close to providing for public comment. One regulation that needs to be taken out of the draft regulation as it reads now, version dated 2/13/09 is 12 AAC 64.110(a). This is because E & O insurance regulation is now a Department issue and not a Commission issue. Therefore, 12 AAC 64.110(a) would need to go through the Divisions Regulation Specialist. Mr. Branch also brought up the issue of premium amounts set at \$200.00. Did the Commission have some thoughts on how much that should be? Mr. DuVal stated that the previous draft from March 2009 indicated an amount of \$200.00. Mr. Branch was wondering if that would be more in Alaska based on what other states charge. Mr. DuVal asked if a higher amount of \$250 would be acceptable. Mr. Branch said that we may get a better idea once the insurance companies take a look at the regulations when they go out for public comment. The Commission was in agreement for increasing the amount of the premium to \$250. Mr. Somers asked for clarification on the timing of the E & O regulations. The Department can't finalize it until after the effective date (March 1, 2010)? Mr. Branch indicated that was correct. The goal is to do as much as we can before adoption.

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New Business, Item 12 cont'd

Schedule of future Meeting Dates – Item 12(b)

The Commission members discussed the meeting dates for 2010.

March 17-18, 2010 - Juneau

June 17-18, 2010 - Fairbanks

September 9-10, 2010 - Anchorage

December 1-2, 2010 – Anchorage

Election of Officers - Item 12(c)

Brad Cole is nominated by Dave Somers as Chairperson. Dave Somers presides over election of Chair while vote of office is conducted.

On a nomination made by Ms. Davis, seconded by Ms. Swires, and unanimously agreed upon, it was

RESOLVED that Brad Cole continue as Chairperson of the Commission.

Mr. Somers hands back the gavel to Mr. Cole.

On a nomination made by Ms. Swires, seconded by Mr. Cole, and unanimously agreed upon, it was

RESOLVED that Nancy Davis be appointed as Education Liaison.

On a nomination made by Ms. Davis, seconded by Ms. Swires, and unanimously agreed upon, it was

RESOLVED that Dave Somers be appointed as Vice Chairperson of the Commission.

Remaining items yet to be addressed by the Commission are the review of the Surety Fund Balance Report and the setting of the Surety Fund fee for the next renewal cycle 2010 through 2012. A mail ballot will go out addressing this fee.

On a motion by Ms. Davis, seconded by Mr. Somers, it was

RESOLVED to adjourn the meeting.

Motion passed.

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Meeting adjourned at 5:30 p.m.

Prepared and submitted by Division Staff.

Approved:



Bradford Cole, Chairperson
Real Estate Commission

Date:

12/14/09