

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

MINUTES OF TELECONFERENCE

June 3, 2009

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Real Estate Commission was held June 3, 2009, at the Atwood Building, Room 1950, Anchorage, Alaska.

Wednesday, June 3, 2009

Agenda Item 1

Call to Order

Chairman Brad Cole called the meeting to order at 10:00 a.m. at which time quorum was established.

Roll Call

Members present via teleconference, were:

Brad Cole, Broker, 3rd Judicial, Chairman
Gene DuVal, Associate Broker, 4th Judicial District
F. Lee Sherman, Public Member
Barbara Dickson, Public Member
David B. Somers, Broker at Large, Vice Chairman
Nancy Davis, Broker at Large, 1st Judicial
Chris Swires, Associate Broker/Broker at Large

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner

Guests present via teleconference:

Linda Hall, Director, Division of Insurance
Jun Maiquis, Regulation Specialist, Division of Corporations, Business and Professional Licensing

Agenda Item 2

Errors & Omission Insurance Proposed Regulations

Chairman Cole stated that the purpose of this meeting is to talk about where we are with E & O insurance regulations because the language from HB357 put us in a bind and our start date is next March (2010) The intent is to ask Mr. Branch about our status. Chairperson Cole asked the Commission if they had any questions or changes regarding the Errors & Omissions insurance that was provided by Jun Maiquis, Regulation Specialist in the draft dated 2/3/2009. Mr. Maiquis stated that he thought Mr. Branch may have a revised version of the draft that was provided to the Commission at the March meeting. However, no one at the meeting today has seen any revisions to the draft. Mr. DuVal stated that we should wait to see if this is the case before the Commission begins to make any changes.

The Commission continues to wait for Mr. Branch to show up for today's meeting before proceeding with further discussion. No one has

heard from him. A couple of calls were placed to his office without answer.

Mr. DuVal asked if the intent is to collaborate with the Department on writing these regulations. Ms. Walsh affirmed that is how it will proceed as the Department has the authority and not the Commission.

Mr. Somers stated that it is the Commission's best hope that we get it out for public comment and go through all the processes at which point we still won't make the effective date but once everything else is ready then the Department steps back in and finalizes their process, which puts us at 30 to 60 days beyond the effective date before any of these policies will go out.

Ms. Hall asked, when you get the bid, is it the expectation that you'll know how many people are interested? Or are you just going to put the bid out with the requirements of the policy and the limits and various kinds of things? She stated that she thinks 90 days isn't unreasonable to get a bid back. It shouldn't be that difficult of a process.

Mr. Somers stated that if we are allowed to go through part of the process I am hoping the insurance companies will know what we're going to be putting out later on. I think they will have a good idea what will go to them.

Mr. DuVal stated that it appears that Mr. Branch is not showing up and has some questions about the draft regulations that can be directed to Ms. Hall.

The Commission members are concerned with getting the Errors & Omissions Insurance regulation project completed and request a proposal for a bid. Ms. Hall stated to the Commission that this wouldn't be difficult to process and 90 days is plenty of time to get the bid back. Commission members wanted to hear the feed back from Mr. Branch, Assistant Attorney General, on these draft regulations. However, Mr. Branch was not available during the teleconference.

Mr. DuVal had few a questions regarding the E & O Insurance regulation project.

Page 2: 12 AAC 64.605(4) an extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provisions for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;

Mr. DuVal asked if 90 days is a long enough period for the proposed regulations. Ms. Hall stated that 90 days is longer then needed.

Page 3: 12 AAC 64.610(2) out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;

Mr. DuVal asked Ms. Hall to define #2. Ms. Hall stated that by not providing contractual liability the insurance will not insure contractual responsibilities.

Page 4: 12 AAC 64.610(10) from any violations of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of July 1, 1994, as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes; or

Ms. Hall stated that the point of the professional liability policy is to deal with professional errors in real estate transactions and not under anything with the Securities Act. Ms. Hall said we should ask Mr.Branch this question.

Page 5: 12 AAC 64.625(last paragraph)A responsible broker may comply with this requirement by certifying coverages of a minimum of two hundred dollars per occurrence and one million dollars aggregate, if all licensee associated with the broker are covered.

Mr. DuVal asked, would one million aggregate be enough for a big brokerage? Ms. Hall stated that it is the policy call of the Commission to determine what you want to have to be equivalent to the Commission policy and what you think is adequate without going overboard for these requirements.

Mr. Somers stated those are the numbers we already approved.

Page 7: 12 AAC 64.665 changing method of adjustment from Producer to Consumer

Page 8: 12 AAC 64.690(6) 'retroactive date' mean the date which is the starting date for prior acts coverage, this date is based on the effective date of the first errors and omissions coverage insuring the named insured on a claims-made basis and since which time the insured has been continuously insured;

Mr. DuVal asked to define claims made basis. Ms. Hall stated that claims-made policy has to be recorded during the policy period or extended reporting period, when changing to a different company, to make sure your retroactive date stays the same.

Ms. Hall provides an example: You have this purchase this group policy on March 1, 2010 now it's 2013. Your policy in 2013 should show a retroactive date of March 1, 2010 as that's the first time you had E & O coverage on a claims-made basis. She said any claim that occurred and is reported, is covered. She went on to explain the term claims-made policy is when both the claim takes place and is reported during the policy period or an extended reporting period. It's the time at which, it's called a trigger date, when coverage is actually triggered. If it's an insurance

policy it's when the occurrence happened and on a claims-made policy, which all professional liability policies are, not just real estate, it's when the claim is reported. That is why this retroactive date is important for prior coverage and continuous coverage.

Ms. Hall stated that the Commission would want to have prior acts coverage in the policy.

Mr. DuVal asked Ms. Hall, if a claim is made after March 1, 2010 would the new policy cover that claim?

Ms. Hall responded that you would want to make sure it picks up that retroactive date because you would have to buy prior acts coverage for your policy when you change to a different company and you don't want to incur that extra expense.

Mr. DuVal had a follow up question, so we want to buy prior acts coverage?

Ms. Hall stated that you want them (insurance company providing group E & O) to pick up your prior acts coverage and maintain your current retroactive date.

Page 9: 12 AAC 64.990(E) shall collect premiums, maintain records, and report the names of those insured and claims experience, date of claim, amount of claim, amount paid, nature of claim, claims information on annual or bi-annual basis;

Mr. DuVal stated that under this regulation, the insurance company would need to report to the Real Estate Commission any claim that is made against a licensee whether the claim is in violation or not. Ms. Hall stated that she thinks that was the intent. What you report and how public this is, would be a legal question for Mr. Branch. We talked about knowing the names of anyone who has a claim. We need to have the Department of Law's input on this. There might be a way to limit who sees the claims.

Mr. Somers stated that perhaps it could be limited to the Executive Administrator and have it not go out to the public in a FOIA request.

Mr. Cole asked Ms. Walsh to research this with Mr. Branch.

Ms. Hall stated that the Division of Insurance has statutory language that keeps things confidential, for instance, investigations are kept confidential. You don't want to do something that injures someone's reputation.

The Commission thanked Ms. Hall for her wisdom and guidance in this process.

Mr. Cole stated that he and Ms. Walsh would contact Mr. Branch and talk to him about the questions that were raised today. If need be we would schedule another meeting.

**On a motion duly made by DuVal, seconded by
Davis, it was**

RESOLVED to adjourn the meeting

All in favor. Motion passes.

Meeting adjourned at 10:40 a.m.

Prepared and submitted by Beata Smith.

Approved:



Brad Cole, Chairperson
Real Estate Commission

Date:


