

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

REAL ESTATE COMMISSION  
MEETING MINUTES

December 7, 2011

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 December 7, 2011, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7<sup>th</sup> Avenue, Anchorage, Alaska.

Wednesday, December 7, 2011

Agenda Item 1a

Call to Order

Chairman Bradford Cole called the meeting to order at 9:00 a.m. at which time a quorum was established.

Roll Call

Members present:

Brad Cole, Associate Broker, 3<sup>rd</sup> Judicial District  
Christina Swires, Associate Broker, Broker at Large  
Nancy Davis, Broker, 1<sup>st</sup> Judicial District  
Marianne Burke, Public Member  
Anita Bates, Broker at Large  
Charlene Flyum, Public Member  
Stacy Risner, Associate Broker, 4<sup>th</sup> Judicial District

Staff Present:

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner

Guests Present:

Nancy Harris, Project Assistant Real Estate Commission  
Michele Wall-Rood, Investigator, Division of Corporations, Business & Professional Licensing  
Margo Mandel, Investigator, Division of Corporations, Business & Professional Licensing  
David Somers, Broker, Somers & Associates, Inc.  
Barbara Bachmeier, Public  
William Wuestenfeld, Attorney at Sandberg Wuestenfeld and Corey  
Robert Auth, Assistant Attorney General, Department of Law  
Christopher Kennedy, Administrative Law Judge, Office of Administrative Hearings  
Susan Winton, Senior Investigator III, Division of Corporations, Business & Professional Licensing

Alvin Kennedy, Investigator III, Division of Corporations, Business & Professional Licensing

Terry Thurbon, Chief Administrative Law Judge  
Don Habeger, Director Corporation, Business and Professional Licensing

Guests Present via telephone:

Dan Branch, Assistant Attorney General, Department of Law

**Agenda Item 1b**

**Approval of Agenda**

The Commission Members reviewed and discussed the meeting agenda as presented.

**On a motion duly made by Ms. Burke, seconded by Ms. Swires, it was,**

**RESOLVED to approve the meeting agenda as presented.**

**All in favor; Motion passed.**

**Agenda Item 1c**

**Welcome New Commission Member - Stacy Risner**

Chairman Cole welcomed new Commission member Stacy Risner of Fairbanks.

**Agenda Item 2a**

**Approval of Meeting Minutes**

**September 7, 2011**

Commission members reviewed the September 7, 2011 meeting minutes as presented.

**On a motion duly made by Ms. Davis, seconded by Ms. Bates, it was,**

**RESOLVED to approve the September 7, 2011 meeting minutes.**

**All in favor; Motion passed.**

Ms. Risner had a question regarding Agenda Item 9a, FY 12 Goals and Objectives from the September 7, 2011 meeting minutes. Top of page 6, it states "All in favor; Motion passed" There was no 1<sup>st</sup> and 2<sup>nd</sup> to this motion.

**On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,**

**RESOLVED that by consensus the Commission Members did intend for the motion to pass which addressed that the Commission will make sure that resources are available to maintain effective operational structures in order to meet the statutory regulations of the licensees.**

**All in favor; Motion passed.**

**Agenda Item 2b**

October 26, 2011 Teleconference

On a motion duly made by Ms. Davis, seconded by Ms. Bates, it was,

**RESOLVED to approve the October 26, 2011 teleconference meeting minutes.**

All in favor; Motion passed.

**Agenda Item 2c**

October 28, 2011

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,

**RESOLVED to approve the October 28, 2011 meeting minutes.**

All in favor; Motion passed.

**Agenda Item 4a**

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of November 18<sup>th</sup>, 2011 there are currently 9 Pre-Licensing courses, 291 Elective Continuing Education courses, 56 Designated Continuing Education courses. There are currently 363 approved courses, 57 sponsors, 102 currently approved/permanent instructors Pre- Licensing, Broker Upgrade and Post-Licensing education courses stayed the same from the last reporting period.

**Agenda Item 4b**

Proposed Regulation 12 AAC 64.500(n)

Ms. Harris discussed with the Commission Members the proposed regulation 12 AAC 64.500(n). There were a couple of minor changes to the regulation for more clarification. First sentence of the regulation "online, or that is required to earn a professional designation" and last sentence "or".

On a motion duly made by Ms. Davis, seconded by Ms. Flyum, it was,

**RESOLVED to move forward with the proposed regulation 12 AAC 64.500(n).**

There was further discussion regarding proposed regulation 12 AAC 64.500(n). Ms. Risner suggested to delete "online" in first sentence and change the second sentence to "but not less than."

On a motion duly made by Ms. Davis, seconded by Ms. Flyum, it was,

**RESOLVED** to move forward with the proposed regulation 12 AAC 64.500(n) as revised. To read (n) Notwithstanding the provisions of 12 AAC 64.420 – 12 AAC 64.450, a licensee who has taken a course offered outside of this state, or that is required to earn a professional designation, by a nationally recognized real estate education provider during a licensing period that has not otherwise been certified under 12 AAC 64.410 and 12 AAC 64.420 may apply to the commission under this subsection for continuing education credit under this section for the licensee's attendance at that course. To be considered for approval by the commission, within 60 days after completing the course but not less than 60 days before the end of the licensing period, the licensee must submit to the department.

All in favor; Motion passed.

#### Agenda Item 4c

##### Review Education Topics

Ms. Davis reviewed education topics with the Commission Members for their reconsideration. Ms. Davis suggested that the two 4 hour courses dealing with Ethics should be broken down into segments. The Commission Members decided to discuss the education topics at the March 2012 Real Estate meeting.

#### Agenda Item 3

##### Public Comments

Barbara Bachmeier introduced herself to the Commission and indicated that she filed a complaint. Mr. Cole thanked Ms. Bachmeier.

Don Habeger, Director of Corporation, Business and Professional Licensing discussed with the Commission Members the renewal fee increase. The renewal fee has increased by \$100, bringing it from \$275 to \$375 in addition to the \$125 Recovery Fund fee. Mr. Habeger stated that it was a robust discussion and it was given very careful consideration on how to move forward. In the end it was an opportunity to look at the whole fee structure for not only this Commission but other boards. "Not only has this Commission faced the gyration of costs that are sometimes predictable based on other department influences. The high end of this, after doing a little bit of analysis, was approximately \$110,000 of legal time for a particular case. There will be a robust discussion in front of the legislature based on earlier discussions, partly because of the real estate Commission fee suggestion. The Governor's office is in the deliberative process regarding this issue." At this time Mr. Habeger did not have any more specifics because it is a brand new issue. Mr. Habeger stated that it would be very prudent of the Division to ask outside expertise to come in to look at the activity and determine how much time is put into work. The contract will be completed in about 120 days, and through that there will be an analysis processed that is a little bit more sound. Mr. Cole asked if the information would be available at the March 2012 meeting. Mr. Habeger stated that it would be available more towards the June 2012 meeting.

Ms. Davis stated that Mr. Habeger mentioned that this was a new issue to him and his staff, however, it is not a new issue to the Commission because they have been trying for years to get enough financial information to make this work. The Commission members have been trying to get information for balancing the budget and figuring out what's in the surety fund and what's in the recovery fund. What is the procedure for discussing with the Executive Director or the Chair prior to publishing a fee? It seems a little unfair to not even have the Executive Administrator or the Chair know what the fee is. Mr. Habeger stated that statute requires for him to communicate with the professions through the boards prior to fee setting. Given the transition time that we had going on, what the old regime was doing to what the new regime is trying to accomplish, he took a calculative risk and the calculated risk was dealing with figuring out what that was as the process was ongoing. Mr. Habeger had to make a decision to what the law says and how he essentially predicted the costs and how the licensees would cover the costs.

Ms. Burke said that she was delighted that the experts will come in and look at the costs, however, she would like to ask if these experts would have full knowledge of the law that dictates what all of us can and cannot do. Reason being is that the recovery fund is the result of the administration not knowing that the surety fund was the recovery fund and that the law said what you could or could not allocate to it. Mr. Habeger stated that the team that was chosen has done a number of cost allocation projects for the state and they are very cognizant of the hierarchy of law that dictates what we can or cannot do. There are a number of costs that go into an administrative pool that we cannot assign specifically to any one profession. Mr. Habeger said that this is going in the right direction but it still needs additional tweaking.

Ms. Flyum had a question regarding how this whole thing would actually work. The Division has a requirement which is to capture the actual cost that the profession has from that profession through the renewal fees. Reducing it, will that become a deficit for the next two years and will it get picked up with the next licensing renewal? Mr. Habeger stated that he believes that the truth of the matter is that based on 08.01.065 which is a mandate to cover the cost of the program which is what he was basing his decision at that time on.

Mr. Cole thanked Mr. Habeger for taking the time out of his busy schedule and speaking with the Commission Members.

David Somers, Broker, Somers & Associates, Inc. addressed the Commission members with the legislation that is being worked on. Some issues that the legislature is working on are

- Temporary Assignment for Brokers
- Real Estate professional pay commission to charities and be able to advertise.
- Landlord and Tenant Act in number of areas
- Lien law for commercial real estate
- Paying a licensed assistant within the same office

Mr. Cole thanked Mr. Somers for coming and speaking with the Commission members.

Ms. Walsh shared an e-mail from William Jacques, Broker at Keller Williams Realty – Alaska Group regarding the renewal period with the Commission Members. Mr. Jacques stated that it has come to his attention that renewals have not started yet because the cost has not been determined. He cannot do HUD transactions since they request a copy of his newly renewed license. Ms. Bates stated that with the HUD expiration date it's based on the time it has been issued. Mr. Cole asked Ms. Walsh to place a call to Mr. Jacques and ask him what the specific issue is and then go from there.

#### **Agenda Item 7a**

##### **Licensing Statistics**

Ms. Smith presented the licensing report for the period of August 22 through November 18, 2011. There were 40 new licensees with expiration date of 1/31/2012 and 1/31/2014. Total number of licensees with an expiration date of 1/31/2012 and 1/31/2014 was 2489, there are 2251 active licensees, 32 lapsed licensees, 105 inactive licensees, and 93 licensees that broke contact with broker and 38 licensees completed their post-licensing education. Since the last licensing report there were 3 main offices that opened. All locations were in Anchorage.

The Commission recessed for break at 10:31 a.m.  
The Commission reconvened from break at 10:36 a.m.

#### **Agenda Item 5**

##### **Procedure Review/Training**

Terry Thurbon, Chief Administrative Law Judge of OAH, addressed the Commission Members with procedures of cases and how it works. Administrative Law Judge or the Hearing Officer both have the same ethical obligations. The Commission members act like a jury and they are the ones that make the decisions. Administrative Law Judge hears the case on the Commissions behalf and provides the information to the Commission in a proposed decision. When Commission members go into an executive session everyone has to leave the room except for the Commission members acting as the jury and the Administrative Law Judge who is presenting the case. Ms. Thurbon suggested for Ms. Walsh to send the recording of the meeting to her staff and they can transcribe it and make it a Power Point.

#### **Agenda Item 6a**

##### **Keating and Griebel, Case #3000-09-011 & #3004-08-003**

**On a motion duly made by Ms. Burke, seconded by Ms. Davis, it was,**

**RESOLVED to move into executive session to discuss Keating and Griebel, Case #3000-09-011 & #3004-08-003.**

**All in favor; Motion passed.**

Into executive session at 11:13 a.m.

**On a motion duly made by Ms. Swires, seconded by Ms. Bates, it was,**

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

**All in favor; Motion passed.**

Out of executive session at 1:06 p.m.

Robert Auth, Assistant Attorney General, Department of Law representing the Division of Corporations, Business and Professional Licensing, discussed his argument with the Commission members. The Divisions point of view agrees with the Administrative Law Judge that there was a violation of 12 AAC 64.130(14) failing to disclose a known material defect in a structure. The home was sold without any disclosure of the fact that the steel frame of a trailer had been incorporated in its structure. The Division alleges that the broker and salesperson ought to have made sure that the condition was disclosed to the buyer, also one of the respondents improperly failed to disclose a lawsuit that arose from the same transaction.

William Wuestenfeld, Attorney at Sandberg Wuestenfeld and Corey representing David Keating and Kelly Griebel. Mr. Wuestenfeld asked the Commission members to modify the recommended sanctions and to remove the suspensions.

Kelly Griebel

- Civil fine of \$2000 with \$1000 suspended (\$1000 paid within 90 days of adoption of the Decision and Order)(Remaining \$1000 will be due within 30 days of any determination that Ms. Griebel has failed to comply with a term of her probation)
- Letter of reprimand
- In addition to continuing education within 1 year of adoption of the Decision and Order. Ms. Griebel must complete no less than 9 hours of education dealing with ethics for real estate professionals that includes significant instruction on the topic of disclosure requirements in real estate transactions
- License be placed on probation for 1 year from the effective date of the Decision and Order

David Keating

- Civil fine of \$4000 with \$1000 suspended (\$3000 paid within 90 days of adoption of the Decision and Order)(Remaining \$1000 will be due within 30 days of any determination that Mr. Keating has failed to comply with a term of his probation)
- Letter of reprimand
- In addition to continuing education within 1 year of adoption of the Decision and Order. Mr. Keating must complete no less than 12 hours of education dealing with ethics for real estate professionals that includes significant instruction on the topic of disclosure requirements in real estate transactions and compliance with licensing requirements
- License be placed on probation for 2 years from the effective date of the Decision and

Order

On a motion duly made by Ms. Bates, seconded by Ms. Davis, it was,

**RESOLVED to move into executive session to discuss claims in case  
#3000-09-011 & #3004-08-003.**

**All in favor; Motion passed.**

Into executive session at 1:34 p.m.

On a motion duly made by Ms. Bates, seconded by Ms. Davis, it was,

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

**All in favor; Motion passed.**

Out of executive session at 2:03 p.m.

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,

**RESOLVED to adopt the Decision and Order as final under the  
authority of AS 44.64.060(e)(1) the judicial review of this Decision  
may be obtained by filing an appeal in the Alaska Superior Court.**

**All in favor; Motion passed.**

Ms. Burke voted in opposition to the motion.

The Commission recessed for break at 2:05 p.m.

The Commission reconvened from break at 2:17 p.m.

**Agenda Item 9a**

**March meeting date**

The Commission members discussed the meeting date for March 2012.

The date has been set as follows:

March 7, 2012

**Agenda Item 8a**

**Consent Agreement Arthur Clark**

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,



**RESOLVED to move into executive session.**

**All in favor; Motion passed.**

Into executive session at 2:25 p.m.

**On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,**

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

**All in favor; Motion passed.**

Out of executive session at 2:45 p.m.

**On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was,**

**RESOLVED to approve the Consent Agreement in the matter of  
Arthur Clark, Case #2010-000887**

**All in favor; Motion passed.**

**Agenda Item 6d**

**New Applicant Deborah Casello**

Ms. Casello answered 'yes' to fitness question #2. Her license in California was suspended due to her not completing the Continuing Education requirements.

**On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was**

**RESOLVED to approve Deborah Casello's application.**

**All in favor; Motion passed.**

**Agenda Item 9d**

**Regulation Project Clarification – 12 AAC 64.325**

Dan Branch, Assistant Attorney General, Department of Law discussed, with Commission members regulation 12 AAC 64.325. Mr. Branch had couple of concerns on the proposed amendment to 12 AAC 64.325(1) which would appear to require that claims on the recovery fund be submitted to the Commission at the time the claim is filed with the court. This would create a conflict with AS 08.88.460(a)(2), which requires the claimant to submit with the claim, a copy of the judgment/arbitration award/settlement. 12 AAC 64.325 as amended would have the Commission consider whether the underlying judgment establishes that the licensee violated laws or regulations. Ms. Burke stated that the recovery fund has total different requirements of the Real Estate Commission. We must manage this fund directly so that statutory requirements are met. In order to do this we need to have prospective information. Ms. Burke asked that when a claim is filed, the Commission should know how

many claims are filed because the Commission cannot budget and manage forward without any information. Also, when a claim is filed with the court to e-mail the Commission to notify them that this is a potential future claim. Not to take any action, it is just for budgetary purposes. Mr. Branch stated that the claim itself has to be submitted to the Commission at the time the claim is filed with the court. Ms. Walsh stated that what the Commission is trying to do is account for potential liability with the fund. Ms. Burke asked if by adding a sentence stating that at the time the individual files a claim with the court, that they notify the Commission of their intent to pursue a claim, this should not sound like re-noticing. Mr. Cole stated that the Commission members will look at the regulation and get back to Mr. Branch with any changes or additions to the regulation.

#### **Agenda Item 10a**

##### **Presentation of Imposition of Civil Fine**

Susan Winton and Alvin Kennedy, Investigators, Division of Corporations, Business & Professional Licensing, addressed the Commission members regarding the Imposition of Civil Fine without censure or reprimand. It provides for another level of enforcement between fine, reprimand, possible probation and other conditions or limitations of licensure and taking no action. This is not applicable for convictions, fraud, or inability to practice competently or safely.

**On a motion duly made by Ms. Swires, seconded by Ms. Bates, it was**

**RESOLVED to adopt the Imposition of Civil Fine, not applicable for conviction fraud or inability to practice competently or safely. Not applicable for violations where action is revocation.**

**All in favor; Motion passed.**

#### **Agenda Item 8a**

##### **Investigator's Report**

##### **Statistical Report**

Ms. Wall-Rood presented the Commission with the statistical report for the period of August 23 through November 9, 2011. There were 18 new opened cases, 54 closed cases and there are a total of 139 cases that are opened. There are 15 cases in intake status, 16 cases in complaint status and 108 cases are open investigation. At present, litigation has been initiated in 3 open investigations. During FY 2012 there were 24 cases opened and 55 cases closed.

##### **Leslie Ray Young vs. Commissioner of Commerce, Community, and Economic Development et al**

Ms. Wall-Rood addressed the Leslie Ray Young vs. Commerce case. Ms. Young is an out of state licensee that was advertising and selling properties in Alaska. A Cease and Desist Order was sent out to Ms. Young and she has appealed it. It went through an Administrative Hearing process and judicial appeal was conducted. Ms. Young's appeal of the Final Decision was Granted In Part and Denied In Part. The Court finds that the ALJ

erred in failing to request briefing from the parties on the issue whether Young did or attempted to “assist in the negotiation of a transaction.” Young should have been afforded an opportunity to brief this issue in closing arguments. On reconsideration, the ALJ should also address the language used in the Final Decision, “becoming embroiled in,” which pertains to “assisting in negotiating.” If necessary, the ALJ should consider whether the language is sufficiently clear so as to not be unconstitutionally vague. This matter is remanded to the Office of Administrative Hearings for further consideration.

#### **Agenda Item 7c**

##### **Legal Names on Licenses**

The Commission members discussed the legal names on licenses. Ms. Wall-Rood stated that the Division sought a legal opinion and that the license has to be in the licensee’s legal name otherwise it’s a violation of the law, however a licensee may advertise and practice in any name.

#### **Agenda Item 9b**

##### **E & O Regulation Project**

The Commission members reviewed the E & O Regulation Project. Ms. Walsh and Ms. Burke will work on the regulations and e-mail the draft to rest of the Commission members with any changes or additions.

#### **Agenda Item 9c**

##### **Regulation Project 12 AAC 64.990(f) – withdrawn per Attorney General**

Ms. Walsh stated the reason why the regulation project was withdrawn is because the way it was worded and the way it was public noticed it was confusing and it didn’t capture the essence of what was stated.

#### **Agenda Item 10b**

##### **Goals and Objectives for REC**

Commission members reviewed and discussed the Goals and Objectives for the Real Estate Commission. Ms. Walsh stated that we are still hoping for transparency as far as the revenue and expenditure reports go. Ms. Burke suggested adding to the first paragraph of the Goals and Objectives that the Commission intends to gain more control of the financial activities. Mr. Cole stated that we need to be careful about the Goals and Objectives from the stand point, that it has to be attainable, be something that we have control over and it has to be measureable.

#### **Agenda Item 10d**

##### **Division Refund Policy**

Ms. Walsh addressed the Commission members with an e-mail received from Don Habeger regarding the Division’s Refund Policy which states that the refunding fee to clientele seems to have cropped up more than a few times. Ms. Bates suggested adding a service or processing fee that is non-refundable on the application.

**Agenda Item 11b**

**Schedule of Revenue and Expenditure**

Ms. Walsh reviewed and discussed the Schedule of Revenue and Expenditure report with the Commission members. Ms. Burke stated that the investigative services that were moved out of the recovery fund, what were investigators working on? There are still some unanswered questions that the Commission members are looking for.

**Agenda Item 11d**

**FY12 Revenue & Expenditure Projections**

Ms. Walsh reviewed the revenue & expenditure projections from Mr. Habeger with the Commission members.

**Agenda Item 11e**

**Letter to Representative Costello from Deputy Commissioner Curtis Thayer**

The Commission members reviewed the letter from Deputy Commissioner Curtis Thayer.

**Agenda Item 10c**

**E & O Regulation Project**

The Commission members reviewed the E & O Regulation Project. Ms. Burke stated that the language was provided to make sure that the equivalent coverage issue was addressed. Ms. Burke stated that on page 5 from the E & O Regulations, regulation 12 AAC 02.530(1) should have additional information included.

**Agenda Item 7b**

**Regulation Tracker**

The Commission members reviewed the regulation tracker as presented.

**On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was**

**RESOLVED to adjourn the meeting.**

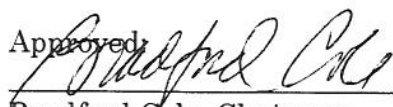
**All in favor; Motion passed.**

Meeting adjourned at 4:32 p.m.

The Commission adjourned until the next regular scheduled meeting on March 7, 2012 in Anchorage.

Prepared and submitted by Beata Smith.

Approved:

  
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Bradford Cole, Chairman  
Alaska Real Estate Commission

Date: 3/7/12