

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

**MINUTES OF MEETING
SEPTEMBER 12 – 13, 2007**

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 12 – 13, 2007, at the Alyeska Prince Hotel, Bering Conference Room, Girdwood, Alaska.

Wednesday, September 12, 2007

Agenda Item 1

Call to Order

Chairperson Gene DuVal called the meeting to order at 9:08 a.m.

Roll Call

Members present constituting a quorum:

David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District,
Chairman
Rita Wilson, Associate Broker, Broker at Large
F. Lee Sherman, Public Member
Tim Worthen, Public Member
Roger Stone, Broker, 1st Judicial District
Brad Cole, Broker, 3rd Judicial District

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner
Nancy Harris, Project Assistant
Margo Mandel, Investigator

Guests present:

Kirk Maynard, Broker
Susan Beckner, Dynamic Properties
Clifford Penn, Dynamic Properties
Diann Hursh, Hursh & Associates
Dette Owen, Dynamic Properties
Jan Rednall, Dynamic Properties
Barb Huntley, Prudential Jack White/Vista Real Estate
Jean E. Brown, Prudential Jack White/Vista Real Estate

Guests Present via teleconference:

Chris Wyatt, Administrative Manager
Jenna Conley, Assistant Attorney General

Introduction of new licensing examiner,

Nancy Harris introduced new licensing examiner Beata Smith to the Commission.

Approval of Agenda

The Commission members reviewed the revised agenda.

**On a motion duly made by Somers,
seconded by Wilson, it was**

**RESOLVED to approve the revised
agenda.**

All in favor. Motion passed.

Agenda Item 2

Approval of Minutes

June 14-15, 2007

Commission members reviewed the June 14-15, 2007 meeting minutes.

**On a motion duly made by Sherman,
seconded by Wilson, it was**

**RESOLVED to approve the June 14-
15, 2007 meeting minutes as
presented.**

All in favor. Motion passed.

July 12, 2007 – Teleconference

Commission members reviewed the July 12, 2007 teleconference meeting minutes as presented.

**On a motion duly made by Wilson, seconded
by Cole, it was**

**RESOLVED to approve the minutes
as presented.**

All in favor. Motion passed.

12 AAC 64.570 Review with the Department of Law

The Assistant General Attorney Jenna Conley discussed the regulation 12 AAC 64.570 with the Commission members for clarification and intent.

12 AAC 64.570

Jenna Conley:

Adds section 570. Does 08.88 does is apply to the whole chapter?

Gene DuVal:

Yes.

Jenna Conley:

Section A and B exempt licensee from accounting and keeping records.

Roger Stone:

No it doesn't.

Gene DuVal:

No because another broker or licensee becomes responsible for doing Property Management part. So duty is being passed on to another broker or licensee who is doing the Property Management.

Jenna Conley:

So the intent of this amendment is for someone to keep the records just not the licensee who has sole ownership?

Gene DuVal:

Right, in that event the licensee, owner broker, is not required, if they employ another broker, like Property Management to do the accounting.

Jenna Conley:

Our understanding of it and the way it reads is it exempts a licensee who has sole ownership of any rental property from keeping any records or account and that's in violation of 88.351 and .615.

Gene DuVal:

I'm not reading that Jenna.

Jenna Conley:

That was not your intention. Your intention, in stating it correctly, is for another property manager or broker to keep the same records that would be normally kept? They're just not going to be kept by the licensee who owns the property.

Gene DuVal:

That's correct.

Jenna Conley:

Ok, well then hopefully we can work around that. Another question is... What purpose under 88.081, that the Commission is allowed to pass regulation to carry out the purposes that the chapter 88 and I guess what would be the purpose of this amendment? Is it to make things easier for licensee who's the sole owner or I guess what's the purpose of the regulation?

Gene DuVal:

The purpose would be... and any Commission members after I state please give your opinion too. If I own say 10 rentals, they would belong to me. The broker that I may be employed by doesn't do property management. They're not charging me to property manage these properties and so it becomes very cumbersome with our own 3 rentals or 10 or a 100. If all my transactions now need to be run through my broker, who may not want them or may not be doing property management, or who may tell me "If you're running this transaction through me, I'm going to charge you 10%". So it becomes very cumbersome and also in real life that is not happening. So we're trying to make this work so it's not cumbersome, so it complies within title 8, but that also makes sense to the licensees.

Rita Wilson:

Our intent was to try to bring licensees into compliance of reporting to their broker and being very specific what they need to provide to their broker. A copy of the lease, the AREC pamphlet, any changes in the lease, security deposits, and so forth. So it was really the intent to spell it out so it was not ambiguous on what they need to provide their broker.

Jenna Conley:

Ok. In, so it regards to records or files, those would just be kept by another broker, possibly?

Gene DuVal:

By a property manager.

Roger Stone:

The current regulation, as I understand it, requires that security deposits on pre paid rents would be deposited in a trust account with the licensees broker and that the broker maintain a file, a copy of the lease.

David Somers:

It gives no purpose to have those records kept in two different locations.

Gene DuVal:

The property manager would be the one receiving the monthly records for rents and so on. That would be more proper for the property manager to really be the one who keeps the records.

Jenna Conley:

Ok, with section B, you stated in addition to the duty that line of AS 08.88.615(a)(1),(2),(4),(5) and line (b)(2), is it your intention not to have the rest of that section apply, like 3, 6, 7?

Gene DuVal:

Let's refer to it. Do you think it should apply?

Jenna Conley:

Our question is...the whole chapter 08.88.615 applies to this regulation because the chapter applies to the administrative code. I agree one of those applies to this regulation. It looks like you guys have isolated the certain numbered sections, like 1 and 2, that you feel apply directly to this situation with property management.

Gene DuVal:

So you think we should...may read it in addition to dues is required under AS 08.88 period?

Jenna Conley:

Just to spell it out which specific duties apply in addition to the general ones.

Gene DuVal:

I can see that, we can stop at 88 period.

Jena Conley:

Under subsection B, the number 3, under compliant with 12 AAC 64.560 – Landlord/Tenant Act, did you intend for this amendment only apply to residential property?

Gene DuVal:

No.

Jenna Conley:

Ok, because the landlord/tenant act is uniform residential landlord/tenant act. So if you intend for it to apply to commercial property as well then we will need to play with that language to see what we could do there.

Gene DuVal:

So this should maybe say, comply with 12 AAC etc. if applicable.

Jenna Conley:

Ok, we can take care of that. The commercial as well. My next question, if you want to find residential or commercial, you just don't want to highlight on residential. So, I can work with the legislative attorney. The final question that I have is under subsection D. The Commission may under AS 08.88.071, the disciplinary sanction for violating this section and claim may be filed by a private person, under 08.88.460. 460 is the Real Estate Surety Fund. My question is... What do you mean by a private person?

Roger Stone:

Just take the word private out.

Jenna Conley:

Basically the surety fund, that applies to licensees and brokers as well?

Gene DuVal:

It could work either way.

Roger Stone:

A claim may be filed by a person. Maybe it should read under AS 88.088, etc.

Jenna Conley:

That's all the questions that I have. Does the Commission have any questions for me?

Gene DuVal:

No. Except for the time frame. What are you seeing for the time frame for this to go back and forth and make it to the Lieutenant Governor?

Jenna Conley

The public notice for this regulation occurred April of 2007, so you have until April of 2008, we have plenty of time. However, if this is something you would like to kind of get it moving, I don't know if this is something you vote on these regular meetings or if you need to call on a special meeting to review to change the proposed changes.

Gene DuVal:

This one is time of the essence. Any questions for Ms. Conley?
Thank you. Have a great day.

Jenna Conley:
Thank you.

Agenda Item 3

Investigators Report

Ms. Mandel presented her statistical report for the period of May 22, 2007 through August 22, 2007 to the Commission.

The commission members reviewed and discussed Ms. Mandel's report as presented.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to accept the investigator's report.

All in favor. Motion passed.

Ms. Mandel requested to poll the Commission members for approval to issue a subpoena to request the trust account statement from a bank instead of directly from the licensee.

Worthen – yes, Stone – yes, Sherman – yes, DuVal – yes, Somers – yes, Cole – yes, Wilson – yes.

Agenda Item 4

Public Comment

Commission members reviewed and discussed an e-mail and photos received from Frankie Barker an Environmental Planner with the Mat-Su Borough in Palmer.

Commission members agreed that a future regulation project would be needed to make changes to the residential property disclosure form.

Commission directed staff to respond to Ms. Barkers e-mail and follow up at the December meeting.

Agenda Item 5

Licensing Examiner's Report

Statistical Report

Ms. Smith presented her statistical report for the period of July through August 2007.

On a motion duly made by Stone, seconded by Somers, it was RESOLVED to accept the licensing examiner's report as presented.

All in favor. Motion passed.

Licensing Issue – J. Banfield

Ms. Harris presented the salesperson application for Ms. Banfield to the Commission for their consideration. Ms. Banfield answered "no" to all the personal screening questions. However Ms. Banfield's license history from California showed her license has been suspended for continuing education noncompliance.

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to approve the salesperson application Ms. Julie Banfield.

All in favor. Motion passed.

Agenda Item 7

Executive Administrator's Report

Mail ballot Elizabeth Boisvert

Commission members reviewed and discussed the mail ballot for Elizabeth Boisvert regarding her principal occupation preceding her Alaska application.

Kirk Maynard, Broker of Coldwell Banker Gold Country provided supporting evidence regarding Ms. Boisvert's application.

On a motion duly made by Somers, seconded by Worthen, it was

RESOLVED to approve Ms. Boisvert application as presented.

All in favor. Motion passed.

Agenda Item 6

Regulation Proposals

Regulation Tracker

Commission members reviewed and discussed the regulation tracker. The Commission directed staff to create a regulation binder that would show each regulation on the tracker for reference at future meetings.

The Commission recessed for a break at 10:15 a.m.
The Commission reconvened from break at 10:31 a.m.

12 AAC 64.430(3)(b) Correspondence Courses

Commission members reviewed and discussed regulation 12 AAC 64.430(3)(b) regarding correspondence courses.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve regulation 12 AAC. 64.430(3)(b) to read:

All courses taken by correspondence must include an examination or, a project activity, to be turned into the course sponsor for grading. The project activity must be submitted along with the course material to the real estate commission for prior approval.

All in favor. Motion passed.

12 AAC 64.010(d)(e) Examination

Commission members reviewed and discussed regulation 12 AAC 64.010(d)(e) regarding licensure examinations.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve regulation 12 AAC 64.010(d)(e) to be read:

An applicant for licensure shall pass a written examination, both parts of the exam, general and state, must be taken at the same time and approved by the Commission before applying for a license as a real estate broker, associate real estate broker, or real estate salesperson.

All in favor. Motion passed.

12 AAC 64.435 Online Courses

Commission members reviewed and discussed a new section to include 12 AAC 64.435 regarding online courses.

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to approve regulation 12 AAC 64.435 to be read:

- (a) To be approved by the Commission to meet the continuing education requirements of 12 AAC 64.400 thru 470. The primary purpose of an online course must be directly related to the topics in 12 AAC 64.500.**

All in favor. Motion passed.

12 AAC 64.063(c)(1)-(8) Minimum Education Requirements for Licensure

Commission members reviewed and discussed regulation 12 AAC 64.063(c) regarding minimum education requirements for licensure.

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to approve regulation 12 AAC 64.063(c)(1)-(8) to be read:

To meet the real estate education requirements for licensure under AS 08.88.171(c), an applicant for an initial real estate license shall document completion of the following topics and hours (increasing from 20 to 40 hours)

- (1) licensee relationships, disclosure, and conflict of interest – 6 contact hours
- (2) forms of ownership – 4 contact hours
- (3) property law, public and private rights and limitations – 4 contact hours
- (4) forms of conveyances and recording of documents – 4 contact hours
- (5) contracts and transaction documents – 8 contact hours
- (6) financing instruments and accounting principles - 6 contact hours
- (7) Alaska real estate license law and Alaska landlord tenant law – 6 contact hours and
- (8) Federal fair housing and RESPA laws – 2 contact hours

All in favor. Motion passed.

12 AAC 64.126 Supervision of Licensees in Remote Areas

Commission members reviewed and discussed regulation 12 AAC 64.126 regarding supervision of licensees in Remote areas.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to approve regulation 12 AAC 64.126 to be Repealed:

All in favor. Motion passed.

12 AAC 64.580 Licensee Who Perform Community Association Management

Commission members reviewed and discussed regulation 12 AAC 64.580 regarding licensees who perform community association management.

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to approve regulation 12 AAC 64.580 as amended:

12 AAC 64.580. Licensee who perform community association management:

(a) Notwithstanding the requirements in AS 08.88.615(a)(1), (2), (5), (b)(2), and (c), a licensee engaged in community association management must also

(1) comply with AS 08.88.341 and include:

(a) service provided;

(b) fees charged;

(c) timeframe – the duration of the relationship between the licensee and the entity to comply with AS 08.88.660;

(d) the consumer pamphlet for community association management as provided for in 12 AAC 64.118 as an attachment;

(2) comply with local and federal laws;

- (3) disclose any conflict of interest as outlined in
AS 08.88.391;
- (4) collect funds to comply with 12 AAC 64.180 -
12 AAC 64. 271;
- (5) provide the resale certificate within 10 days of written request per AS 34.510 – AS 34.08.700.

(b) The commission may, under AS 08.88.071, impose a disciplinary sanction for violation of this section, and a claim may be filed under AS 08.88.460 if the violation constituted fraud, misrepresentation or deceit and the person suffered a loss as a result of the violation.

All in favor. Motion passed.

Commission members reviewed and discussed HB 205 to revise the personal fitness questions on the real estate applications and renewals.

Agenda Item 7

Surety Fund Report

Ms. Walsh presented the Surety Fund Report to the Commission.

Commission members reviewed and discussed the Surety Fund Report.

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to accept the Surety Fund Report as presented.

All in favor. Motion passed.

Chair excuses David Somers from the meeting until 1:30pm.

E-mail from I. Morin, Tatitlek Mgmt., Inc

Commission members discussed unlicensed practice and reviewed the exceptions statute AS 08.88.900(9) as related to the e-mail from Tatitlek Mgmt., Inc.

Commission directed staff to respond to I. Morin informing her that Tatitlek would need to be licensed under a broker's

supervision and the broker must have access to the trust account(s).

Commission members discussed the difference between vocation and incidental activities. Members concluded that they would need to define vocation through regulation.

The Commission recessed for lunch at 12:16pm.
The Commission reconvened from lunch at 1:34pm.

Sunset Audit Report

Commission members reviewed and discussed the completed Sunset Audit Report.

The Commission members move to executive session at 1:52pm.
The Commission members reconvened from executive session at 2:24pm.

Surety Fund Balance Report

Ms. Wyatt presented the Surety Fund Balance Report to the Commission.

Commission members reviewed and discussed the Surety Fund Balance Report as presented.

On a motion duly made by Stone, seconded by Somers, it was

RESOLVED to accept the Surety Fund Balance Report as presented.

All in favor. Motion passes.

Revenue and Expenditure Report and Renewal Fee for 2008-2010

Ms. Wyatt does not recommend an increase in renewal fees.

The Commission members reviewed and discussed the new renewal fees. It was recommended that the licensing, surety fund, and licensing renewal fees would stay the same.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to accept the renewal fees as presented.

All in favor. Motion passes.

Agenda Item 8 **Train the Trainer Course**

Commission members reviewed Ms. Spodek's course Train the Trainer.

On a motion duly made by Somers, seconded by Sherman, it was

RESOLVED to accept the Train the Trainer Course as presented.

All in favor. Motion passes.

Retro-active CE Approval – BOMA

Commission members reviewed and discussed the e-mail from Ken Bauer requesting retro-active approval for a BOMA seminar.

On a motion duly made by Stone, seconded by Worthen, it was

RESOLVED to retroactively approve the BOMA course for continuing education credit.

All opposed. Motion denied.

The Commission members go to break at 3:19pm.

The Commission members reconvened from break at 3:30pm.

The Commission moves to executive session to discuss agenda item 7(e) McGregor Surety Fund Claim at 3:31pm.

The Commission reconvenes from executive session at 3:39pm.

On a motion duly made by Stone, seconded by Wilson, it was

RESOLVED to file a lawsuit to collect the amount owed on the Sheryl McGregor matter and request a summary judgment.

All in favor. Motion passes.

12 AAC 64.064 Education Requirements After Initial License
Ms. Harris read the proposed regulation 12 AAC 64.064 to confirm the correct changes increasing the hours from 20 to 30.

On a motion duly made by Somers, seconded by Wilson, it was

RESOLVED to approve regulation 12 AAC 64.064 as amended:

After initial licensure as a salesperson, to meet the real estate education requirements of AS 08.88.095 and this section, the salesperson must complete the following course modules:

- (1) contracts and agreements: nine contact hours covering
 - (A) purchase and sale agreements;
 - (B) addendum and amendments;
 - (C) counteroffers;
 - (D) contingencies;
 - (E) multiple offers;
 - (F) back up offers;
 - (G) differences between residential, land and commercial transactions; and
 - (H) personal service agreements;
 - (I) Negotiation and Counseling;
- (2) property management: three contact hours (no change in hours)
 - (A) landlord tenant act;
 - (B) rental, lease, and occupancy of residential and commercial properties;
 - (C) associations;
 - (D) cooperatives;
 - (E) personal service agreements, management agreements and lease listing agreements and
 - (F) security deposit statements
- (3) license law; three contact hours covering
 - (A) consumer pamphlet and waiver;
 - (B) ethics;
 - (C) surety fund;
- (4) paperwork and risk management; six contact hours covering
 - (A) mandatory and area specific property disclosure;
 - (B) environmental issues
 - (C) zoning;
 - (D) covenants, conditions and restrictions
 - (E) title reports;
 - (F) resale certificates and public offering

- statements;
- (G) home inspections and repair negotiations
- (H) surveys;
- (I) record keeping;
- (5) evaluation and pricing: four contact hours covering
 - (A) competitive market analysis and appraisals and
 - (B) showing property;
 - (C) Marketing Buyers and Sellers
- (6) financing to closing: five contact hours covering
 - (A) the importance and differences of pre-approval letters and pre-qualifications, good faith estimates and loan types, including Internet lending programs;
 - (B) review of settlement statements, security deposits transfers, rent prorations, seller net proceeds and variations in loan costs;
 - (C) the closing process; and
 - (D) good funds law.
 - (E) Predatory Lending Practices

All in favor. Motion passes.

Elections of Officers

Nomination of Chair.

Mr. Sherman nominates Gene DuVal to remain as Chairperson.

On a motion duly made by Sherman, seconded by Stone, it was

RESOLVED for Gene DuVal to remain as Chair person.

All in favor. Motion passes.

Nomination of Vice Chair

Ms. Wilson and Mr. Cole nominate David Somers to remain as Vice Chair.

On a motion duly made by Wilson, seconded by Cole, it was

RESOLVED for David Somers to remain as Vice Chair.

All in favor. Motion passes.

Nomination of Education Liaison

Ms. Wilson and Mr. DuVal nominate Roger Stone as the Commissions Education Liaison.

On a motion duly made by Wilson, seconded by DuVal, it was

RESOLVED for Roger Stone serve as the Commission's Education Liaison.

All in favor. Motion passes.

Agenda Item 12 Commission members reviewed and discussed an example of the new license certificate showing a PLE expiration date.

HB205: New Fitness Questions

Commission members reviewed and discussed HB205 and the real estate applications to make the necessary changes regarding the personal fitness questions 1 thru 5.

On a motion duly made by Stone, seconded by Cole, it was

RESOLVED to add "fraud" after the word extortion in question #1.

All in favor. Motion passes.

The Commission agreed that there would be a future regulation project to define "other crimes" from HB205.

**Agenda Item 6
Cont.**

12 AAC 64.059(b)(4)

Commission members reviewed and discussed regulation 12 AAC 64.059(b)(4) regarding an increase in pre-licensing education hours from 20 to 40.

On a motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.059(b)(4) as amended:

RESOLVED for David Somers to remain as Vice Chair.

All in favor. Motion passes.

Nomination of Education Liaison

Ms. Wilson and Mr. DuVal nominate Roger Stone as the Commissions Education Liaison.

On a motion duly made by Wilson, seconded by DuVal, it was

RESOLVED for Roger Stone serve as the Commission's Education Liaison.

All in favor. Motion passes.

Agenda Item 12 Commission members reviewed and discussed an example of the new license certificate showing a PLE expiration date.

HB205: New Fitness Questions

Commission members reviewed and discussed HB205 and the real estate applications to make the necessary changes regarding the personal fitness questions 1 thru 5.

On a motion duly made by Stone, seconded by Cole, it was

RESOLVED to add "fraud" after the word extortion in question #1.

All in favor. Motion passes.

The Commission agreed that there would be a future regulation project to define "other crimes" from HB205.

**Agenda Item 6
Cont.**

12 AAC 64.059(b)(4)

Commission members reviewed and discussed regulation 12 AAC 64.059(b)(4) regarding an increase in pre-licensing education hours from 20 to 40.

On a motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.059(b)(4) as amended:

Submits a pre-licensing education certificate or a transcript from a college or university registrar verifying 40 hours of pre-licensing education approved by the commission.

All in favor. Motion passes.

Agenda Item 12(d) Old Business

Adoption of Regulation Project 993-08-0029

Commission members reviewed and discussed regulations 12 AAC 64.059(d)(5), 12 AAC 64.063(a), 12 AAC 64.075(b), 12 AAC 64.115, 12 AAC 64.420, 12 AAC 64.440(c), 12 AAC 64.440(d), 12 AAC 64.440(f), 12 AAC 64.990(b) for adoption.

12 AAC 64.059(d)(5) Review of License Applications

Motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.059(d)(5) as amended.

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

All in favor. Motion passes.

12 AAC 64.063(a) Minimum Education Requirements for Licensure

Motion duly made by Stone, seconded by Wilson, it was

RESOLVED to approve regulation 12 AAC 64.063(a) as amended.

(3) meet the education requirements of AS 08.88.091(d); this education requirement may not be used for continuing education credit.

All in favor. Motion passes.

12 AAC 64.075(b)Employment and Transfer

Motion duly made by Stone, seconded by Sherman, it was

RESOLVED to approve regulation 12 AAC 64.075(b) as amended.

(b) When a licensee transfers from one broker to another, the terminating broker shall sign and date the front of the license certificate, provide a copy to the licensee, and return the original to the commission **within 5 business days of the request of the licensee to transfer.** The licensees shall provide the new employing broker with a copy of the signed license certificate and provide the commission with a completed application for licensee transfer and the fees established in 12 AAC 02.360. The commission will mail an amended license certificate directly to the new employing broker.

All in favor. Motion passes.

12 AAC 64.115 Minimum Requirements for Maintaining an Office

Motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.115 as amended.

(3) meet the requirements of 12 AAC 64.110

All in favor. Motion passes.

12 AAC 64.420 Application for Course Certification

Motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.420 as amended.

(g) A licensee may retroactively apply for certification and credit for a course offered outside of this state by a nationally recognized real estate education provider. The application must include all materials provided as part of the

class, materials promoting or describing the class, evidence that the real estate education provider is nationally recognized, and proof of attendance including time in instruction. Application for certification and credit must be made within 30 days of completion of the class and at least 60 days prior to the end of the licensing period. The instructor or instructors for the course will not be required to apply for instructor approval under 12 AAC 64.440 or 12 AAC 64.450.

All in favor. Motion passes.

12 AAC 64.440(c) Instructor Approval

Motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 64.440(c) as amended.

(c) To be approved as an instructor, an applicant must have [AT LEAST 30 CONTACT HOURS OF] experience teaching or training adults, and at least one of the following:

All in favor. Motion passes.

12 AAC 64.440(d) Instructor Approval

Motion duly made by Stone, seconded by Cole, it was

RESOLVED to approve regulation 12 AAC 43.440(d) as amended.

(d) Successful completion of an instructor workshop sponsored by the Association of Real Estate Law Officials (ARELLO), the National Association of Realtors (REEA), the International Right of Way Association (IRWA), the Community Association Institute (CAI), or other national organization determined to be comparable by the commission, or its designee, may be substituted for [30 CONTACT HOURS OF] teaching experience or training required in (c) of this section.

All in favor. Motion passes.

12AAC 64.440(f) Instructor Approval

**Motion duly made by Stone, seconded by Wilson,
it was**

**RESOLVED to approve regulation 12 AAC
64.440(f) as amended.**

(f) An instructor approval expires on April 1 of years ending in 0 and 5. An instructor approved from January 1 through March 31 of a year ending in 0 and 5 will not expire until April 1 of the next year that ends in 0 and 5. An instructor may apply for recertification by submitting

- (1) a completed application;
- (2) the fees required in 12 AAC 02.360; and
- (3) evidence of completion during the previous licensing period of

- (A) at least two hours of continuing education in each topic area for which the instructor is applying for recertification;
- (B) teaching a course within the prior approval period in the topic area for which the instructor is applying for recertification,; or
- (C) practical experience in the topic area during the renewal period.

All in favor. Motion passes.

12 AAC 64.990(b) Definitions

**Motion duly made by Stone, seconded by Cole, it
was**

**RESOLVED to approve regulation 12 AAC
64.990(b) as amended.**

(7) "public official" means an appointed or elected state or municipality officer or a state or municipality employee but does not include a subcontractor.

All in favor. Motion passes.

Motion duly made by Stone, seconded Sherman, it was

RESOLVED to reconsider 12 AAC 64.440(f) and table until tomorrow September 13, 2007.

All in favor. Motion passes.

The Commission recessed at 4:55pm until September 13, 2007 at 9:00am.

Thursday, September 14, 2007

Agenda Item 9

Call To Order

Chairman Gene DuVal called the meeting to order at 9:02 a.m.

Roll Call

Members present constituting a quorum, were:

David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District, Chairman
Rita Wilson, Associate Broker, Broker at Large
F. Lee Sherman, Public Member
Roger Stone, Broker, 1st Judicial District
Brad Cole, Broker, 3rd Judicial District
Tim Worthen, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner
Nancy Harris, Project Assistant

Guests Present via teleconference:

Chris Wyatt, Administrative Manager, Corporations, Business and Professional Licensing.
Gail Horetski, Assistant Attorney General
Andrew M. Hemenway, Administrative Law Judge
James Stanley, Administrative Law Judge

Guests Present:

Russell Joyce, Lee Realty
Raye Krueger, Alyeska Title
Peggy Ann McConnochie, Alaska Coastal Homes
Terrie Barrus, ERA Gallery Homes
Dale Bagley, Redoubt Realty

Linda Cardoza, Prudential Jack White/Vista Real Estate
Derek Matthews, Stewart Title
Janelle Pfleiger, RE/MAX Properties
Stacey Risner, Greater Fairbanks Board of Realtors
Christopher Kennedy, Deputy Chief Administrative Law Judge
DeAnn Gleason, Personal Service Realty
Mark White, Ron Moore Co.
Perry Underwood, Coldwell Banker Best Properties
Art Clark, Real Estate Brokers of Alaska
Carole Winton, Taku Real Estate
Jean Kay, Double Eagle Real Estate & Investments, Ltd.
Uli Johnson, Double Eagle Real Estate & Investments, Ltd.
Paddy Coan, Prudential Jack White/Vista Real Estate
Mary Ann Rawe,
Ruth Ann Barndt,
Naomi Louvier, Prudential Jack White/Vista Real Estate

**Agenda Item 12
Cont.**

Old Business

Reconsideration of Regulation 12 AAC 64.440(f)

Commission members reviewed and discussed regulation 12 AAC 64.440(f) for changes.

**Motion duly made by Somers, seconded by Stone,
it was**

RESOLVED to be repealed and amended to read:

(f) An instructor approval expires on April 1 of years ending in 0 and 5. An instructor approved from January 1 through March 31 of a year ending in 0 and 5 will not expire until April 1 of the next year that ends in 0 and 5. An instructor may apply for recertification by submitting

- (1) a completed application;
 - (2) the fees required in 12 AAC 02.360;
- and

(3) evidence of completion during the previous licensing period of

(A) at least two hours of continuing education in each topic area for which the instructor is applying for recertification;

(B) teaching a course in the topic area for which the instructor is applying for recertification; or

(C) practical experience in the topic area

All in favor. Motion Passed.

Public Comment

There was no public comment.

Agenda Item 9

Surety Fund Case

Dyer vs. Harvey S-21-004

Deputy Chief Administrative Law Judge Kennedy had a concern about Ms. Horetski being present. Chairperson DuVal requested her presence for legal advice to the Commission.

Deputy Chief Administrative Law Judge Kennedy explains the case to the Commission members.

Gail Horetski speaks to the Commission members regarding the statute of limitations on the Dyer vs. Harvey case.

**Motion duly made by Stone, seconded by Somers,
it was**

**RESOLVED to accept the reconsideration
Surety Fund Case Dyer vs. Harvey S-21-004.**

All in favor. Motion passes.

The Commission members go to break at 10:25 a.m.
The Commission members reconvened from break at 10:49 a.m.

Agenda Item 11

Division of Insurance Bulletin B 07-03

**Discussion with Jeffrey Troutt, Division of Insurance Deputy
Director**

Jeffrey Troutt:

Bulletin does not say you can't negotiate, also, either a buyer or seller has to pay for owners cost. Very clearly the way the system is set up, in RESPA and state laws, clients rarely have little expertise, what we are concerned about is the issue of pressuring a buyer to pick/choose a particular company isn't just the ordered prelim. There's other issues that we haven't taken action on but are concerned. The Bulletin is not directed towards Real Estate agents; you can call up and order a title prelim. If you don't have a buyer and you haven't violated the Bulletin because it's not directed at you. If a title insurance licensee produces it, it's directed at them. On the other hand if someone says to a title licensee, like a Real Estate licensee

says to a title insurance licensee. I'm not going to use you unless you pay me 10% of the premiums back. That's an issue where we do have jurisdiction. Where I think the Commission and anyone else would agree it's a violation of this insurance code and we have jurisdiction to take action against that licensee. Having said that, I would let people ask questions, take shots at me.

Questions from the Commission members:

Brad Cole:

Q. Did you just say that as a real estate licensee, I can give a call and open up a preliminary title report at any time?

Jeffrey Troutt:

A. You can call us, we're directed at licensees. The licensees can't take it. They are suppose to tell you if there's a liar we can't take it.

Brad Cole:

Q. So you're saying that that can't be done?

Jeffrey Troutt:

A. I guess I'm saying we wouldn't take action against you, the real estate agent. We probably would against the title licensee.
Roger Stone:

Q. If I called the title company and I ordered a listing report for lack of better term. As long as the heading on that report doesn't say preliminary commitment to title insurance, there's no violation in there. All I'm doing is buying a report.

Jeffrey Troutt:

A. That is correct. If they are not agreeing to insure the property under certain conditions. As you know the preliminary title insurance basically says under these circumstances we will issue a title of policy and insurance on this property, to this particular person. The answer is yes, if they give you that information, yes we do require them to charge. I think the word we use was a reasonable fee, we would probably, because there's work involved. So if there's no buyer we do require them to charge some reasonable fee for that but if there's a concern about property and you wouldn't pay the 150 to 250 or whatever it is they are charging. The information you are getting in the prelim, you are free to do that.

Roger Stone:

Q. Why is there fee that they charge for that report, even fall

under the purview of Commission when all they are doing is only providing the report? If they are only providing the report and there's nothing to do with the insurance.

Jeffrey Troutt:

A. We have an obligation to regulate the.....two things. One is there's a rebating aspect. Are we giving basically giving something for free that they are giving you and that.....

Roger Stone:

Q. That's their business decision, and that's not something you can report.

Jeffrey Troutt:

A. The way we would view it is, we would see it as something that makes you far more likely to use them, as a title insurer or to recommend them. And that and the consequence, like if they gave you the information for free. It would be an inducement to you. The other concern we have is we are charged with regulating the solvency, and insuring the solvency of title insurance. I would be concerned because the prelims are very labor intensive and I would be concerned if they weren't charging something for that. Eventually it could impact the solvency of the corporation.

Roger Stone:

Q. I guess my final part of that same question is, is there case law that supports that interpretation?

Jeffrey Troutt:

A. No. I don't think it's a value of case law. In Alaska I don't think so, there not a whole lot of case law in Alaska on this.

Rita Wilson:

Q. If it were business practice that all of the title companies provided preliminary title reports without charging a fee how would that be an inducement?

Jeffrey Troutt:

A. We require them to charge a dollar fee and then precisely the same reason I articulated to Mr. Stone...(inaudible) to Mr. Stone was that we needed to make sure that they are getting paid for something that they do.

Rita Wilson:

Q. Regarding the solvency of the title insurance companies are we to the point that if they don't charge, if the sellers don't pay the \$250 cancellation fee or if we don't or if we don't have a

litigation report charge that the title companies are going to be insolvent, are we to that point?

Jeffrey Troutt:

A. No, no. We are not to that point. I have the advantage and disadvantage of having run a title company for few years before I did this. There are a lot of times when the title insurance company, it's difficult charge to collect because if the deal falls through, it's kind of tough to tell your best customer that they need to pop up \$250. I recognize that but on the other hand, long before I came to this division they made a determination and I think an appropriate one that if they going to put that kind of work that they put into just a prelim and I have an idea of the amount of time and effort that takes for the things you get paid for.

Tim Worthen:

Q. The way that I understand what the Division of Insurance is doing is they're telling the title companies a fee they have to charge. They regulate rates. Is that what goes on, am I understanding that perfectly? If you make them charge the \$250 fee up front, then when they get a title policy, then there's the other standard fee, whatever that is. 750 or whatever, so that will add 250 to the overall transaction that someone has to pay. So I as a consumer pay 250 by your fault. Extra for the transaction that wasn't there on the past. Is that the way I understand?

Jeffrey Troutt:

A. If a property report and I call it an abstract report because the title insurance companies don't like that phrase but I call it property report. If that's been issued before you as a buyer, it should have already been produced and paid for before you enter into an earnest money agreement. And as far as what they charge, we haven't tried to direct them just, some reasonable fee and my limited inquiry to what people are charging right now is that it's a range of amounts.

Tim Worthen:

Q. So you don't regulate rates?

Jeffrey Troutt:

A. We approve rates. What happens is when a title company changes either their title insurance rates or their escrow rates, they send them to us and we examine them to see if they are discriminatory or too high, too low, or just discriminatory and then we approve them. Most of the time, it's just title insurance itself those rates rarely change, everybody charges

the same. There has been a little bit of change in escrow rates, people also do escrow filings. What people have been doing, they're not required but we ask them and they have been sending us informational filings, just to let us know what they're charging.

Tim Worthen:

Q. So if this has been paid in advance so you said you didn't control who pays for title insurance whether it's the buyer or seller. That's just a negotiated time in a contract but, I as a buyer want to come in and I say, "Sure I'll pay for that or if I pay for that it's going to be an additional title policy and that 250 will just be additional dollars on the transaction to consumer, the seller, a buyer, or anybody.

Jeffrey Troutt:

A. If I can explain it. Since the bulletin applies to information that's reduced for this buyer. If you walk in and buy Commissioners Stone house, just walk there and make him an offer and he says "Great, I'll take it and I'll move out." There's no point in buying any kind of property report for you can go straight to getting a prelim. Or Mr. Stone is reasonably satisfied that he doesn't have any serious problems, title issues, he's not going issue any kind of report. If he is to go to a title company and say "I'm going to be selling the house, I want the information. I want basically a title report or abstract or whatever you want to call it. So that I can deal with things. I know there is some fraud in the estate, that require whatever. Sorry to use you, this is all fictional. So if he does that he pays right up front. And even before you come along and make an offer. If you make an offer then, the title company produces preliminary commitment for title insurance and it says that on the \$250 bill which usually is paid in closing. If the deal does falls through then someone has to pay that \$250. But if the deal doesn't fall through just that amount is part of the premium that you are paying. So you're not paying anything, you the buyer would not be paying any extra. So if the property report costs...and Commissioner Stone may raise the price of his house \$150.

Tim Worthen:

Q. It appears to me that the basic industry generally orders some report up front to just get a feel for the title because that makes sense if you're ready to put your market on the end. I as a buyer, so I'm the buyer, now and I'm looking at property now and your directive says "Don't go out and get preliminary. So I as a buyer have nothing to look at so I make an offer on a place and then there's all sorts of bad things sitting on a title because

you kind of said pay \$250 now. Increase, inflate the sale, a cost to somebody out there, just think of the consumer. Somebody pays the \$250 whether it's the seller, buyer and extra and then now I also as a buyer don't have a good prelim some report to look at so I can get into a deal that may take another 3 months to close cause there is garbage attached to the title where there is another clean deal out there where I thought there was a clean report. I would rather buy that one than this one, so I as a consumer don't have information, and information is always the best thing to make decisions on which place to offer on so that's another place that's hurting the consumer and then my question to you is... How many complaints from consumers that were having insurance issues, because the preliminary reports aren't insurance. They're just a report until insurance is issued later. And from the industry consumers, in general. How many complaints do we have and do we have a real problem here?

Jeffrey Troutt:

A. We have lots of complaints of people saying "I wanted to buy this house and I was told I have to use this company or I'm going to have to pay the \$250." We had a lot. That was one of the reasons for the concern. I know it does add \$150 to \$250, whatever a title company is going to charge for the report. I recognize that, it's an expense and I'm not trying to make more money for title companies. Basically we are trying to reconcile practice that we found was pretty consumerous, trying to stop that but at the same time make way for the legitimate means people can have times to look at things and figure out where their title is.

Tim Worthen:

Q. And hurting the consumer is which action?

Jeffrey Troutt:

A. Doing something that produces, that provides an inducement to use a particular title company or sort of economically coercive, I think hurts consumers cause it's going to reduce the competition among the title companies. The principle we operate on is the title companies competing. Of complicating on the basis of service and so everybody recognizes consumer generally know very little about who's good and who's not. But the real estate professionals, real estate licensees, lenders tend to have a little bit of expertise. So anything that coheres basically coheres it, drives competition toward one person because they used a particular person and sometimes there are times where there are relationships between the real estate licensee and the title

company. Either financial relationships or others that provide that inducement to use that title insurance company that aren't necessarily based on the quality of service they get.

Gene DuVal:

Q. The concern Mr. Worthen has is the concern I have, is, we're adding the \$250 to the transaction in some cases, some people now will not order prelim. Call it litigation report, open title, preliminary title, insurance, it's all the same. Just what you call it. And now some people who don't want to spend \$250. They will not order it, as we get into a market that is weaker and more complicated. We have more properties with title flaws. And I see no benefit to the consumer, to our clients to not take that little step. At the tail end, if it doesn't close, somebody has to pay. The buyer, the sellers, the licensee, the bank. Somebody has to pay it, but to say upfront, that insurance company you can't apply it at the tail end if it closes. Then just apply it at the same time as if you had a buyer. I'm not seeing any great service to the public by doing that. If you can clarify to me there what the great service to the public is.

Jeffrey Troutt:

A. What the benefit I see to the public and, I recognize if you want the information that's contained in preliminary commitment title insurance, that yes, it's going to add to the cost of the transaction. That's going to be the most expensive part. Lots of people charge lots of money for stuff, but I recognize that and if there were ways of doing it without doing that, you know, I think we would have. But the impact on, that we've found on competition in terms of recommending property, recommending title insurers based on their service and in terms of facilitating buyer choice, to us it was a policy call, to us it was worth imposing a small burden in order to eliminate what we found, was sometimes coercive anti-competitive practice.

Roger Stone:

Q. Let me paraphrase what you said just to make this crystal clear. You're saying that if the listing agent orders a listing report prior to the timing of the earnest money agreement or purchase agreement is executed, there's \$250 fee or whatever the fee before that specific title company that cannot be later applied for the purchase of a title policy.

Jeffrey Troutt:

A. Correct

Roger Stone:

Q. However, if I was an agent, list the property, do not get a listing report, take an offer on that property, submit my earnest money agreement than the title company after my buyer or my financial institution. Whoever I'm working with has chosen the title company. They can then provide me with the preliminary title report and instantly incur what they refer to as what they agreed to was \$250 cancellation fee. And then that can be included at closing as part of the title insurance policy premium. Do I understand that correctly?

Jeffrey Troutt:

A. Yes.

Roger Stone:

Q. So the key that you're focusing on here is anything done prior to the time that you have an agreement.

Jeffrey Troutt:

A. Correct. It's basically insuring someone that doesn't exist. If they didn't have a buyer then there's no basis for policy, nobody to insure.

Roger Stone:

Q. So what you're getting is once the decision is made to close a title company in the process of constructing a purchase agreement, there's no inducement after that. The inducement occurs if the title prelim was ordered ahead of time and at the time the earnest money agreement was written up. The buyer is told that well if you use this title company you can get your \$250 back.

Jeffrey Troutt:

A. Can you repeat that? I didn't understand.

Roger Stone:

Q. If I as a listing agent have ordered this \$250 report prior to the time of the listing, superior of the time of agreement and then I write a purchase agreement on that property, and if in the process of writing that purchase agreement, I tell that consumer that we've already gotten the title report for X, Y, Z title company. That \$250 is already there and will be included as part of your premium if you use this company otherwise if you choose another title company, you maybe or someone maybe liable to pay this \$250 extra. And that's the inducement that you're looking at. The title report is already out there.

Jeffrey Troutt:

A. That's correct.

Rita Wilson:

Q. Just to clarify a couple of things. When you said that there have been complaints about negotiations, shall we say over the title company. Isn't that clearly a negotiation in the contract? On one side they may consider an inducement of some type, but that's clearly a negotiation.

Jeffrey Troutt:

A. If there's a fee out there, a \$250 cancellation fee and then the buyer is told if he chooses a different title company, and I think we all agree that the buyer has a right to choose the title company. Sometimes through persuasion or further means and choose someone recommended by a selling agent. That's not a problem. But if they are told up front that there's a \$250 cancellation fee then unless they use this title company X, you have to pay that. That's an inducement.

Rita Wilson:

Q. Typically I wouldn't be surprised how many cases that you have of that verses the licensee representing the buyer and seller negotiating who they get the best business practice from, which title company? Would you object to that?

Jeffrey Troutt:

A. If you're the listing agent, and you're negotiating with a buying agent over what title company gets used, and you're both forcefully arguing. As long as you not trying to tell buyer you going to have to pay extra money. I don't have a problem with that. Obviously the real facts, that specific and there is a point. You just can't put a gun to somebody's head and say "You will use this title company X." I would consider you not pulling the trigger an inducement.

Rita Wilson:

Q. So we clearly will be able to negotiate?

Jeffrey Troutt:

A. Yes.

Gene DuVal:

Q. Mr. Troutt, can I interrupt you? I was just trying to document the statement you just said. The buyer always chooses the title company. So I referred to U.S. code. I referred to the RESPA regulations. I didn't find anything under states statutes or regulation that dictates the buyer always chooses a title company. Is there anything that I missed in the state statutes?

Jeffrey Troutt:

A. I don't know if there's anything said directly in any RESPA or it's more of a principle. I think you will find it in commentaries. Commentaries is justice. It doesn't say directly, that's sort of defensible.

Gene DuVal:

Q. I found it in U.S. code under RESPA the buyer chooses where they purchase the title company, the title insurance. The key word is always purchase. So as I'm finding what's documented what the law is, if the buyer can choose where they purchase the title company but if the other party's purchasing it. I don't see any laws saying that the buyer can purchase it's a form of negotiation but is not the law. The law is the buyer may choose where they purchase. I don't think we're all in agreement.

Jeffrey Troutt:

A. Yes. I think we may be saying the same thing but in different ways.

Gene DuVal:

Q. Nope, completely different. If we say the buyer always chooses, the seller may be paying for the title insurance the buyer chooses. What I'm finding in the law is the buyer chooses if they're buying it. But, if the sellers buying it that's not what the law says.

Jeffrey Troutt:

A. Perhaps another way of stating the fees and I believe the law does want title insurance to be purchased at a place that's acceptable to the buyer. And it may not be the buyer's first choice, but it needs to be something that the buyer agrees to. And the fact is, if people feel that strongly there's no going to be a deal, there's not going to be a deal anyway.

Gene DuVal:

Q. It's all negotiable there. The way we do it.

Jeffrey Troutt:

A. Right. I agree to that. The concept is, if the person covered by the title insurance company is the buyer, so we do want to make sure the buyer is not choosing a title company as we sell to some inducement or other illegal kick back or rebate or anything like that. The buyer ultimately, if there's a problem, the buyer ultimately is the one that's going to be left standing there with nobody but his or her title insurance company.

Gene DuVal:

Q. That's where you exist to regulate them to make sure anyone will break in the state of Alaska, it's sold and then, it's offering a good product. And then it brings us even to the issue of the relocation company's and H.U.D that when they have a property they list, they open title. So how are you going to reconcile that with what we're doing?

Jeffrey Troutt:

A. Usually with those contracts, there's a provision that says if it doesn't sell within X number of days, then we the relocation company will buy it, the property.

Rita Wilson:

Q. At least my interpretation that insurance doesn't occur until closing.

Jeffrey Troutt:

A. Well between closing, what happens is you have basically a legally binding contract that's issued immediately when prelim is issued. As soon as the title company produces that prelim. This is the condition that is going to insure it. So they are bound.

Rita Wilson:

Q. Aren't there changes during title report if the price changes? If someone is substituted?

Jeffrey Troutt:

A. Sure..... If...You mean are there changes?

Rita Wilson:

Q. So then the title report's changes?

Jeffrey Troutt:

A. There can be changes in the amount. Yes, and if there's a change in the selling price. Yes, they're are going to reissue, immediately reissue a prelim for that or they'll correct it. And also at closing, obviously the existing leads and things like, that are going to be taken off the final policy, but there is immediately from the moment of the issue of the prelim a binding commitment on behalf of the title insurance to insure the property. But the difficulty we have.....

Rita Wilson:

Q. Subject to the removal of any clouds on the title.

Jeffrey Troutt:

A. There are exceptions,

Rita Wilson:

Q. Ok. What if and in your words, if the seller raised the price of the house 250 to cover the...let's call it litigation report that's paid upfront, and then the buyer pays the purchase price for the house. They just paid for the extra price?

Jeffrey Troutt:

A. Yes.

Rita Wilson:

Q. So have you helped the public?

Jeffrey Troutt:

A. I can't do anything about that, unless you want us to try to regulate the cost of housing.

Rita Wilson:

Well I think that you're trying to regulate the cost of housing.

Gene DuVal:

Q. Well, what you could do is not charge us the extra extraneous \$250, that we see no benefit from it. Prosecute when there's kick backs. Prosecute when there's inducement, but why introduce the extra \$250? Somebody that breaks the law hit them hard. Otherwise just let it...it benefits the public to open title.

Rita Wilson:

As we've been doing for years.

Dave Somers:

Q. I was listening to this with the Commissioner's. As an active broker over here... As a Commissioner, I'm trying to sit through this and see what will happen if there is a case that is brought to us and that's where my main concerns are. I haven't said anything that will change anything but that we've done in the past. So I'm really comfortable with that. On the inducement and the coercion, I still...I haven't quite got my hands wrapped around how you separate out the order of a title preliminary verses the relo company. For Fannie and Freddie that used to have (indiscernible) assume they're still doing that with the national contracts. I know that there is really no difference on the coercion end of it, the word that you use. So I can't find the justification on that issue.

Jeffrey Troutt:

A. Well with Fannie and Freddie, I don't know. I would be happy to learn more if you would tell me about it. I'm not familiar with what they do. On the "relo" companies there is a buyer. That's a position, there is a buyer. The "relo" companies will purchase that property if it doesn't go to waste.

Dave Somers:

Q. I understand that but I still see a coercion factor and that's one of the overriding themes here. Just can't get rid of it in my mind. Just a side comment, I can see where on the closing statements there's going to be questions. Respondent policy, ALTA policy sellers reimbursement for litigation report.

Jeffrey Troutt:

A. Actually our bulletin said you can't do that.

Gene DuVal:

We're going to have one more question from Rita.

Rita Wilson:

I'm sorry, I forgot what it was.

Gene DuVal:

We need those prelims; I couldn't dream of listing, I have a 100 listings at any one time, I couldn't dream of listing a property without prelim.

Jeffrey Troutt:

I'll certainly take all of what everyone said under advisement. I'm not promising one thing or another.

Gene DuVal:

Keep it in mind.

Jeffrey Troutt:

I'll keep it in mind.

Gene DuVal:

We need those things as a service to the public. If a transaction unravels later because of clouds and flaws it doesn't do any good to anybody.

David Somers:

I didn't want to beat the exception idea to death it's just that I want to make sure that I understand as a Commissioner while

that is directed to your licensees our investigator could take a complaint at some point in time regarding this issue through Freddie Mac/Fannie Mae and involve us. And an investigation could be opened up based on what you're saying. That's, why I'd really like to see it get fixed soon. I don't think we abhor the idea of a \$250 fee. What we really like is easy fixes to things. I think that's why this room is taking on this idea. It's a wonderful idea, its an easy fix especially a temporary fix.

Tim Worthen:

Going back strictly to the consumer, since I'm not a licensee, it appears to me that the issuance of Bulletin 07-003 to the title industry, is detrimental to the consumer. The whole purpose of forming the Division of Insurance, the whole purpose of forming the Real Estate Commission, is to protect consumers. I don't believe in a lot of government agencies and a lot of bureaucracy but you're protecting consumers and I think that's a good idea. If you as the Division of Insurance protect the consumer you're keeping all the title companies whole, so not having one of them go under protect the public, not letting licensees take advantage and steer and stuff I can see protecting the public but I can see forcing another \$250 on a transaction. Therefore a lot of transactions won't have a preliminary report done. Therefore, the buyers will be sitting out there without information and information is how I invest in the stock market, how I invest in Real Estate and your with your bulletin forcing a lack of information to be in the market place. Therefore, it's damaging the consumer and I've always thought as a Commission we should always vote for best practice for the realtor community. I think we should advise the community. I think we should advise the community of the Real Estate industry that they should order some preliminary type report because I think that is in the best interest of the consumer. I very much think this is not the right direction, don't have any recommendations particularly but I just don't like the direction.

Jeffrey Troutt:

I appreciate that. Our mission at the Division of Insurance ultimately does come down to consumer protection. Even if you're insuring the solvency of insurance companies it's because you want them there to make it and pay claims or in the case of title insurance there is competition there and they're able to provide services. I'm definitely an anti-government type. I personally never want to regulate someone else's activity without a compelling reason to do so. I'm keenly aware of it and I see it different than you but I respect and appreciate your opinion.

RESOLVED to accept Judge Hemenway's option #1 in the case of Rowley vs. Shaw the claim is denied.

All in favor. Motion passes.

**Agenda Item 12
Cont.**

Old Business

Commission members spoke with Assistant Attorney General Gail Horetski regarding the letter received from Davis Wright and Tremain on behalf of their client with Eklutna, Inc. Commission members felt that the exemption does not apply because this is not incidental. There should be a licensee working under a broker.

**Agenda Item 9
Cont.**

Surety Fund Case

Davis vs. Feeken S-27-009

The Chair Mr. DuVal, moved to enter into Executive Session according to AS 44.62.310 to discuss Surety Fund Case S-27-009.

Commission members went into Executive session at 1:05 p.m.
Commission members out of Executive session at 1:15 p.m.

**Motion duly made by Stone, seconded by Somers,
it was**

**RESOLVED to adopt Surety Fund Case
Davis vs. Feeken.**

All in favor. Motion passes.

The Commission members agreed to review and discuss regulations, vocational and incidental disclosure issues at the next meeting.

Recovery Fund

Commission members reviewed and discussed the information regarding other states recovery fund amounts.

Commission members reviewed proposed regulation 12 AAC 64.115 and 12 AAC 64.110 regarding branch offices and the intent.

Agenda Item 12

Old Business

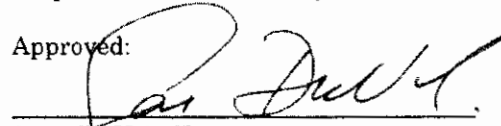
Commission member agreed to review and discuss the Eklutna issue at the next meeting.

Next meeting is December 13 & December 14, 2007 in Anchorage.

Meeting adjourned at 1:27 p.m.

Prepared and submitted by Division Staff,

Approved:



Gene DuVal, Chairperson
Alaska Real Estate Commission

Date: March 9, 2009