

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

March 7, 2012

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 March 7, 2012, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, March 7, 2012

Call to Order

Chairman Bradford Cole called the meeting to order at 9:07 a.m. at which time a quorum was established.

Roll Call, Agenda Item 1(a)

Members present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairperson
Nancy Davis, Broker, 1st Judicial District, Vice-Chairperson
Marianne Burke, Public Member
Anita Bates, Broker at Large, Education Liaison
Stacy Risner, Associate Broker, 4th Judicial District

Members absent:

Christina Swires, Associate Broker, Broker at Large
Charlene Flyum, Public Member

Staff Present:

Nancy Harris, Project Assistant
Beata Smith, Licensing Examiner
Michele Wall-Rood, Investigator

Guests Present:

David Somers, Broker, Somers & Associates Realtors, Inc
Diane Greger, Associate Broker, Distinctive Properties
Denny Wood, Associate Broker, Keller Williams Realty – Alaska Group

Guests Present via telephone:

Peggy Ann McConnochie, Broker, Alaska Coastal Homes

Agenda Item 1b

Approval of Agenda

The Commission members reviewed and discussed the meeting agenda as presented. Ms. Harris had an addition to the meeting agenda, Tab 8b, Imposition of Civil Fine. Ms. Burke also had an addition to the meeting agenda, Tab 8c Comments of Files Review. The Commission members reviewed the order of the revised agenda.

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

RESOLVED to approve the meeting agenda as revised.

All in favor; Motion passed.

Agenda Item 2a

Approval of Minutes

December 7, 2011

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

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

RESOLVED to approve December 7, 2011 meeting minutes.

All in favor; Motion passed.

Ms. Burke stated that she thought it was inappropriate for the Commission to receive public comments on an open investigation. Mr. Cole said he would look into this for clarification. Michele Wall-Rood, Investigator for the Real Estate Commission, said that the position of the Division was not to allow complainants to public comment with an open investigation.

Ms. Burke asked if the Commission had received any answers from Mr. Habeger in reference to what was discussed at the December 7, 2011 meeting regarding costs and expenditures. Mr. Cole said no, not that he is aware of. Mr. Cole stated that the Commission would like to get those answers from Mr. Habeger.

Agenda Item 2b

January 26, 2012 Teleconference

Commission members reviewed the January 26, 2012 teleconference meeting minutes as presented.

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

RESOLVED to approve January 26, 2012 teleconference meeting minutes.

All in favor; Motion passed.

Agenda Item 3a

Public Comment

Peggy Ann McConnochie

Ms. McConnochie thanked the Commission for the opportunity to present information during the public testimony. Ms. McConnochie had some concerns that the current

designated education topics were so similar from the prior two licensing periods that licensees will lose interest in the courses being taught and would not pay attention in class. She said a couple of years ago she and Mr. Wood came to the Commission and presented their recommendations for specific content/guidelines under each DCE topic for clarification for the instructors/sponsors. Ms. McConnochie had a recommendation for the Commission to consider again because the designated topics are so similar. She said she had asked a number of top educators in other jurisdictions as to what they were seeing being taught for designated courses in their areas. Their consensus was ethics and law changes/new issues on the market. She said that there was a way to put an area of emphasis under ethics and case law that would work with the current topics. Ms. McConnochie's recommendation was that the topics be written and taught in one 3 hour segment (2 hours of Licensing Relationships and 1 hour in Customer Client Services) with the area of emphasis in Ethics and one 5 hour segment (2 hours in Risk Management & Real Estate License Law, 2 hours in Property Disclosures & Inspections and 1 hour in Contracts) with the area of emphasis as Case Law. This would at the same time meet the requirements that the Commission set up in October of last year. Ms. McConnochie said that if we provide this information to those who are currently creating courses then they could write these courses to meet the requirements. This way, licensees in Alaska will be able to take designated education which will provide them with the skills and knowledge to deal with real estate ethically and to keep themselves and their clients out of court.

The Commission members discussed Ms. McConnochie's recommendation and agreed that the designated hours could not be changed at this time but asked if they, Ms. McConnochie and Mr. Wood, would be proactive for next year when they would have to determine the new designated hours. Both Ms. McConnochie and Mr. Wood said that they would be more than willing to provide ideas from the prospective side of the educators in Alaska and what course topics could be used as designated hours. Ms. Bates suggested planning this for the June 2013 meeting. She asked that staff remember to put this on the agenda for the June 2013 meeting.

Ms. Bates asked if the Commission members had received the list of objectives that was sent to Sharon Walsh by email? She asked if this could be sent to all the instructors because it goes into detail as to what the Commission had in mind when we were talking about the DCE classes. She said that this information is important to instructors to have and it gives a broader perspective on what we talked about and the courses we would like to see developed.

Ms. Davis asked that Ms. McConnochie's report be accepted and send her report to all instructors as a supplemental to the list of objectives and explain that these are other topics that could be included in their 2 hour DCE segments as well as topics to be discussed for the June 2013 meeting.

Diane Greger

Diane Greger, an Associate Broker with Distinctive Properties, spoke to the Commission regarding education courses. She said that she realizes that a majority of real estate

licensees are Realtors® but that she would like to see more emphasis on the state statutes with regards to education courses because that is what governs real estate licensees.

Mr. Cole said that her comment was noted and that the Commission's position is not to represent Realtors® but to represent licensees and they have taken great care to do that. He said that the Commission deals with regulations and legislation that deals with licensees and not Realtors®. He also stated that it's good to look at the National Association of Realtors as an example. They are an organization that is on top of the real estate industry's current needs and issues and that should be considered. Mr. Cole thanked Ms. Greger for sharing her thoughts.

Ms. Harris informed the Commission that Ms. Greger had another concern regarding the State "Visitor" website that individuals can look up to "find a Home." The link that is provided takes them to "Find a Realtor" which then takes them to the Alaska Association of Realtors website and this was her concern. Ms. Harris let Ms. Greger know that this can be changed so that it will allow a search for all real estate licensees and not just Realtors®.

Agenda Item 10b

HB 267/SB 158 AAR (Alaska Association of Realtors) Legislative

Mr. Somers, updated the Commission members on HB 267. Mr. Somers said that HB 267 has gone through the House and passed. It went over to the Senate side, however, there was a small change; and it was sent back to Labor and Commerce for review. The first part of HB 267 dealt with a clarification that would give the Real Estate Commission the ability to appoint someone to oversee a brokerage if it was found that the broker was stealing from the trust account. The second part of the bill deals with License Assistants. This section clarifies how a license assistant operates and complies with the rest of the laws that are already in effect. The last part of the bill deals with contributions from a licensee to a charitable organization. At the present time, commissions can only go to licensees. This bill will allow licensees to give part of their commission to a non-profit organization and to advertise their intention to do so. Ms. Burke stated that this has nothing to do with the bill and it is not the Commission's responsibility but should be noted that if the licensees file their income tax properly, there are very strict rules on how it must be done to meet IRS deductibility requirements. Ms. Somers mentioned another bill he was watching, SB 104, which deals with manufactured homes, which should pass this year. He said this may be of interest to the investigators because this will define when a manufactured home becomes and stops being real property.

Ms. Burke asked Mr. Somers if he knew about SB 157. Mr. Somers said that he did and that this bill if passed would give the insurance carriers the ability to cancel insurance when a home is abandoned.

Agenda Item 3

Public Comment

Deborah Murphy

Mr. Cole read a letter received by an e-mail from Deborah Murphy for the Commissions

consideration. Ms. Murphy upgraded her real estate license from salesperson to an associate broker. She did not complete her post-licensing education (PLE) by the deadline, and thought that if she did not complete it she would be downgraded to a salesperson. A broker can downgrade to an associate broker, but an associate broker cannot down grade to a salesperson. Ms. Risner stated that it's the licensee's responsibility and they should pay the reinstatement fee. Ms. Smith stated that when a licensee upgrades from a Salesperson to an Associate Broker or Broker, or a new applicant is licensed she sends out a letter stating that within the first 12 months the licensee must complete 30 hours of PLE, turn in the certificate(s), Affidavit of PLE and an appropriate fee. Also, 60 – 90 days before the PLE is to be completed, she sends out a reminder letter to the licensee regarding their PLE.

Mr. Cole asked Ms. Smith to provide the Commission with the letters that were sent out to Ms. Murphy and to table this until after lunch.

Agenda Item 4a
Education Report
Education Statistics

Ms. Harris presented the education statistics to the Commission. As of February 16, 2012 there are currently 6 Pre-Licensing courses, 134 Elective Continuing Education courses, 19 Designated Continuing Education courses. There are currently 363 approved courses, 57 sponsors, 101 currently approved/permanent instructors Pre- Licensing, Broker Upgrade and Post-Licensing education courses showed no change from the last reporting period.

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

RESOLVED to accept the Education Statistics as presented.

All in favor; Motion passed.

Agenda Item 5a
Executive Report
Recovery Fund Balance Report

Ms. Burke discussed with the Commission members the Recovery Fund Balance Report. Ms. Burke had questions regarding the Statement of Revenue Expenditures and changes in fund balances. Under the projected for the quarter ending 3/31/2012, it indicates a \$17,069 in projected claims, however, to Ms. Burke's knowledge there were no claims before the Commission. Since there were no claims, there should not be any expenditure. Ms. Burke would like to know what these numbers are based on and to be sure that the accounting for this fund is cleared with the Commission. Mr. Cole stated to Ms. Harris to notify Ms. Walsh, that the Commission members want a definite explanation for the \$17,069. Ms. Burke would also like an explanation for the claims for the year ended 6/30/2010. She said that we do know that from March 1 forward, there should be no changes because those would be surety fund claims and not recovery fund. Ms. Burke stated that the \$125 Recovery Fund fee was based on the information given by Juneau accounting staff, however, the information that was given to the Commission members was grossly wrong.

Ms. Davis asked if there is any way that the Commission can get this information out to the licensees that we are going to have the recovery balance that we were supposed to. Mr. Cole stated that he hopes that Alaska Association of Realtors and the local Boards would pick this information up from the meeting minutes and disseminate to the membership, so they understand what has happened through the diligence of the people on the Commission and through the work that was been done to bring out the truth about the cost and the allocation that's been corrected. Ms. Burke stated that no one should make any changes to this except for the Commission members according to the law. The point is that the Commission still does not have the information they need.

Ms. Bates had two questions regarding the recovery fund report. One, she said that the real estate licensees just completed a licensing renewal period and down under foot note (1) of the first page of the recovery fund report it says, "projecting FY12 revenue based on 80% of active licensees renewing at \$125" and that amount comes to what they are showing at FY end 6/30/212 as \$247,100. If we renewed by the end of January shouldn't that show under the 3/31/2012 first quarter income? Mr. Cole said that what they are projecting is the additional 3% increase for FY2013 through FY2015.

Ms. Bates second question was based on the previous discussion on coding for instructor and course application/renewal fees, where does that revenue show up on this report?

Ms. Burke said this is the recovery fund report and this is where we should see those fees. She said it should be broken down and shown here as revenue but does not see it on this report.

Agenda Item 5b

REC Schedule Revenue & Expenditure Report

The Commission members reviewed and discussed the revenue & expenditure report as presented.

The Commission recessed for break at 10:40 a.m.

The Commission reconvened from break at 10:58 a.m.

Agenda Item 7a

Licensing Report

Licensing Statistics

Ms. Smith presented the licensing report for the period of November 18, 2011 through February 15, 2012. There were 51 new licensees with an expiration date of 1/31/2014. Total number of licensees with an expiration date of 1/31/2014 was 2055. 2037 active licensees, 34 lapsed licensees, 12 inactive licensees, and 1 licensee that broke contact with broker. There were 33 licensees that completed their post-licensing education. Since the last licensing report, there were 10 new main offices that opened. Three of those offices were in Anchorage, 1 in Soldotna, 1 in Kasilof, 2 in Juneau, 1 in Willow, 1 in Eagle River, and 1 in Wasilla.

Agenda 7b

Regulation Tracker

The Commission members reviewed the regulation tracker as presented.

Agenda Item 7c

2012 – 2014 Renewal Update

Ms. Smith presented the Commission members with the 2012 – 2014 renewal update.

Hard Copy

- Salesperson = 149
- Associate Broker = 57
- Broker = 75

Online

- Salesperson = 1023
- Associate Broker = 302
- Broker = 361

Reinstatement

- Salesperson = 6
- Associate Broker = 0
- Broker = 4

Mr. Cole asked for a clarification between the licensing examiners report and the renewal update. Ms. Smith will review the total number of licensees and the number of licensees who have renewed and will provide that information to the Commission members.

Agenda Item 7d

Applications with 'yes' answer, Jason Benson

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

RESOLVED to go into an executive session Per AS 44.62.310(c)(2) to discuss new applications with yes answers.

All in favor; Motion passed.

Into Executive session 11:13 a.m.

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

RESOLVED to come out of the executive session.

All in favor; Motion passed.

Out of Executive session 11:20 a.m.

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

RESOLVED to deny Justin Benson's application for licensing.

All in favor; Motion passed.

A letter will be mailed out to Mr. Benson with details of the next step in the process.

Mr. Cole requested that for the future if there is a mail ballot vote not approved, that staff notify the Commission members with the results of the vote.

Agenda Item 10a

New Business

12 AAC 64.940(d) and 12 AAC 64.130(4)(B)

Ms. Bates discussed with the Commission members 12 AAC 64.940(d) and 12 AAC 64.130(4)(B). She said there is a conflict between these two regulations. Ms. Bates suggested to eliminate section (B) from 12 AAC 64.130(4)(B) to correct the conflict.

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

RESOLVED to amend 12 AAC 64.130(4), to remove item 'B' "The receipt and agreement to purchase."

All in favor; Motion passed.

Agenda Item 8c

Report Review Files

Ms. Burke discussed the investigative files she has reviewed. She has reviewed a lot of complaints involving trust accounts in management companies and she has some global comments based on her review. Investigators should only act on a complaint they are presented with. Some of these cases should not take as long to be completed as they do. Ms. Burke stated that in one particular case, there was no basis for a violation based on the complaint. Ms. Burke wanted the Commission to consider a second license for property management or consider continuing education on trust accounting.

Agenda Item 10c

Transactional Brokerage Statute

Ms. Bates briefly discussed the Transactional Brokerage Statute with the Commission members and suggested to table this until the June meeting.

The Transitional Brokerage Statute Issue was tabled until the June 7-8, 2012 meeting.

The Commission recessed for lunch at 11:51 a.m.

The Commission reconvened from lunch at 12:56 p.m.

Agenda Item 7a

OAH

Case #11-0393-REC

Administrative Law Judge II, Rebecca Pauli introduced herself to the Commission

members and was available for questions regarding Case #11-0393-REC.

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

RESOLVED to go into an executive session per AS 44.62.310(c)(2) to discuss Case #11-0393-REC.

All in favor; Motion passed.

Into Executive session 12:58 p.m.

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

RESOLVED to come out of the executive session.

All in favor; Motion passed.

Out of Executive session 1:10 p.m.

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

RESOLVED to accept the Consent Agreement for Jeffrey G. Bailey, Case #11-0393-REC.

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 November 10, 2011 through February 6, 2012. There were 75 new opened cases, 59 closed cases and a total of 156 opened cases. There are 31 cases in intake status, 26 cases in complaint status, 4 cases in probation status and 95 cases are open investigation. At present, litigation has been initiated in one open investigation.

Agenda Item 8b

Imposition of Civil Fine

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

RESOLVED to go into an executive session Per AS 44.62.310(c)(2) to discuss Imposition of Civil Fine.

All in favor; Motion passed.

Into Executive session 1:25 p.m.

**On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was
RESOLVED to come out of the executive session.**

All in favor; Motion passed.

Out of Executive session 1:39 p.m.

Case #2011-000-617

**On a motion duly made by Ms. Davis, seconded by Ms. Bates, it was
RESOLVED to accept the Imposition of Civil Fine for Katherine
Mincks, Case #2011-000-617.**

All in favor; Motion passed.

Case #2011-000-618

**On a motion duly made by Ms. Davis, seconded by Ms. Bates, it was
RESOLVED to accept the Imposition of Civil Fine for Robert
Broadhurst, Case #2011-000-618.**

All in favor; Motion passed.

Agenda Item 3 (con't)

Public Comment

Deborah Murphy

Ms. Smith provided the Commission members with the letters mailed out to Ms. Murphy as requested by Mr. Cole. Ms. Bates suggested that, the letter which is a reminder letter sent out to the licensee regarding their PLE, is to add a paragraph and to include the reinstatement fee. The Commission members decided to waive the \$500 licensing fee and only have Ms. Murphy pay the \$250 reinstatement fee.

**On a motion duly made by Ms. Davis, seconded by Ms. Bates, it was
RESOLVED to waive the \$500 licensing fee.**

There was further discussion. Ms. Risner stated that she felt leery of waiving the fee of \$500 because of the precedent that it's going to set.

Mr. Cole stated that based on what Ms. Harris and her supervisor have researched they found no justification for the \$750 fee and this is the Commission's interpretation.

All in favor; Motion passed.

Agenda Item 9a

Old Business

Recovery Fund Regulations

Ms. Burke stated that both Ms. Walsh and herself went through and had no problems with Dan Branch's suggestions, except for the absolute essential notifying of the intent to pursue the course toward an eventual claim against the recovery fund. Ms. Burke's recommendation is that the Commission adopt the recovery fund regulations including the claim information letter (1st document) and the form that notifies the Commission of a potential future liability.

Commission members reviewed and discussed the Recovery Fund regulations.

- 12 AAC 64.059(b)(6) is amended to read:
(6) pays the **recovery** [SURETY] fund fee established on 12 AAC 64.073
- 12 AAC 64.059(f)(7) is amended to read:
(7) pays the **recovery** [SURETY] fund fee established in 12 AAC 64.073
- 12 AAC 64.060(a)(3) is amended to read:
(3) the **recovery** [SURETY] fund fee established in 12 AAC 64.073; and
- 12 AAC 64.064(b)(3)(C) is amended to read:
(C) **recovery** [SURETY] fund;
- The lead in language of 12 AAC 64.064(c)(1) is amended to read:
(1) **recovery** [SURETY] fund, trust account, and general accounts: seven contact hours covering
- 12 AAC 64.064(c)(1)(A) is amended to read:
(A) **recovery** [SURETY] fund issues, including case studies on misrepresentation, conversion of trust fund, fraud, and deceit;
- 12 AAC 64.071(b)(3) is amended to read:
(2) the **recovery** [SURETY] fund established in 12 AAC 64.073; and
- 12 AAC 64.071(f) is amended to read:
(f) A licensee may be inactive for an entire licensing period and reactivate without paying the **recovery** [SURETY] fund fee established in 12 AAC 64.073 if the licensee's inactive license dates coincide exactly with the dates of a biennial licensing period.
- 12 AAC 64.130(8) **this regulation was withdrawn from this project in**

December 2011, see December meeting minutes page 8-9 of 13)

- 12 AAC 64.280 is amended to read:
12 AAC 64.280 **Scope. The provisions of** 12 AAC 64.280 – 12 AAC 64.325 govern the procedures relating to claims for reimbursement from the real estate **recovery** [SURETY] fund [AND FOR HEARINGS] under AS 08.88.450 – AS 08.88.495
- 12 AAC 64.285 **Claims.**
Notification to the Real Estate Commission of intent to file a request for payment from the Recovery Fund.

(a) **Claimant shall file with the Real Estate Commission a notification to pursue a claim from the Recovery Fund through the court judgment, arbitration award or settlement agreement.**

Claims for **payment** [REIMBURSEMENT] from the real estate **recovery** [SURETY] fund must

- (1) be submitted on a form provided by the commission;
 - (2) be for a loss suffered in real estate transaction by the claimant as a result of fraud, **an intentional tort** [MISREPRESENTATION], deceit, [OR] the conversion of trust funds **or the conversion of community association accounts** by an involved licensee;
 - (3) include all the information required by AS 08.88.460(a) and by the claim form itself;
 - (4) **be accompanied by the documents required by AS 08.88.460(a)(3)(B) & (C);** and
 - (5) [(4)] be executed under penalty of unsworn falsification.
- 12 AAC 64.290(b) is repealed
(b) **Repealed**
 - 12 AAC 64.290(c) is amended to read:
(c) The commission will mail all documents in (a) [AND (b)] of this section by certified mail, return receipt requested.
 - 12 AAC 64.305 is repealed.
12 AAC 64.305 **Hearings.** Repealed
 - 12 AAC 64.310 is repealed and readopted to read:
12 AAC 64.310 **Role of involved licensee. (a)** The commission shall send a notice of a claim to an involved licensee under 12 AAC 64.290.
(b) The real estate broker supervising an involved licensee at the time the claim is filed, will be notified by the commission that an involved licensee is a named party in a claim filed under AS 08.88.460.

- 12 AAC 64.320 is repealed:
12 AAC 64.320 **Motion for reconsideration.** Repealed

- 12 AAC 64.325 is revised.

Findings and conclusions.

- (a) After consideration of a claim, the commission will make written findings and conclusions in accordance with the provisions of AS 08.88.465.
- (b) The claimant may not receive payment of a claim unless the commission finds that
 - (1) the claimant filed a claim that complies with 12 AAC 64.285 within the time limit provided by AS 08.88.460;
 - (2) the court judgment, arbitration award or settlement agreement with a licensee submitted by the claimant is no longer subject to appeal and establishes that the claimant suffered a loss in the manner described in AS 08.88.460(a);
 - (3) the claimant used due diligence to collect the amount due under the court judgment, arbitration award, or settlement agreement and that the amount due is uncollectable using reasonable efforts.
- (c) The commission will furnish a copy of its findings and conclusions to the
 - (1) claimant;
 - (2) claimant's legal representative, if applicable;
 - (3) all licensees named in claim;
 - (4) the licensee's legal representative, if applicable;
 - (5) real estate broker supervising an involved licensee at the time the commission makes its written findings and conclusions, if applicable.
- (d) if interest is ordered to be paid on a claim of less than \$15,000, the interest will be calculated from the date of loss until the date of payment of the claim. Total payment from the fund may not exceed \$15,000 per transaction, whether principal or a combination of principal and interest.
- (e) when the commission awards payment of a claim from the real estate recovery fund, the following information will be added to the license file of each licensee named in the findings and conclusions as responsible for the loss:
 - (1) a copy of the findings and conclusions and the order adopted by the commission; and
 - (2) proof of payment from the real estate recovery fund to the claimant.
- (f) When, as a result of the commission's findings and conclusions, the commission suspends a licensee's license, the commission will require proof of reimbursement of the real estate recovery fund by the licensee or an agreement between the licensee and the commission on the terms and conditions for reimbursing the real estate recovery fund under AS 08.88.071(b) before reinstating the license. The proof of reimbursement or agreement for reimbursement will be added to the licensee's license file.

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

RESOLVED to accept the revised Recovery Fund regulations as follows: 12 AAC 64.059(b)(6), 12 AAC 64.059(f)(7), 12 AAC 64.060(a)(3), 12 AAC 64.064(B)(3)(C), 12 AAC 64.064(c)(1), 12 AAC 64.064(c)(1)(A), 12 AAC 64.071(b)(3), 12 AAC 64.071(f), 12AAC 64.130(8), 12 AAC 64.280, 12 AAC 64.290(b), 12 AAC 64.290(c), 12 AAC 64.305, 12 AAC 64.310, and 12 AAC 64.320. Retract regulation 12 AAC 64.130(8) from this motion.

All in favor; Motion passed.

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

RESOLVED to accept the revised language as proposed by Assistant Attorney General, Dan Branch: 12 AAC 64.285 and 12 AAC 64.325.

All in favor; Motion passed.

Ms. Bates made a suggestion that on the cover letter of the Alaska Real Estate Commission Recovery Fund Claim Payment form, third paragraph, third sentence it now reads: “the award from the recovery fund and is **“not”** longer subject to appeal. Ms. Bates asked if that could be changed to “is **no** longer subject to appeal.” She also suggested to insert **“Claimant must”** in front of “submit an affidavit describing the efforts to collect...” Staff let Ms. Bates know that they would make that change.

Agenda Item 9b
E & O Insurance Regulations

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

RESOLVED to withdraw the E & O regulation project #JU2010201077 because it has reached the staleness period as of January 22, 2011.

All in favor; Motion passed

New E & O regulations project to read:

- **12 AAC 64.600. Insurance required.** An applicant for issuance of a license on active status, a licensee renewing a license, or **a licensee with an inactive or suspended** license activating a license must submit proof of errors and omission insurance coverage through the group plan obtained by the commission under AS 08.88.172(d) or through certification of equivalent coverage.
- **12 AAC 64.610. Time for filing certification of equivalent coverage.** A licensee wishing to comply with AS 08.88.172 by obtaining equivalent coverage under AS 08.88.172(c)(2) must file a certification of **insurance showing** equivalent coverage with the commission. A licensee wishing to replace coverage **under provided by** the

master insurance policy provided by the commission under AS 08.88.172(c)(1) or independent equivalent coverage with another policy shall file a certification of equivalent coverage with the commission by 5 p.m. on the date of **cancellation** ~~expiration~~ of coverage **under** ~~of~~ the master insurance policy. If the certification is not filed as required by this section, the commission shall **suspend the license** ~~place the license on inactive status~~.

- **12 AAC 64.620. Nonpayment of premium.** If a licensee's insurance company or group plan notifies the commission that a licensee has not paid a premium, the commission shall **suspend** ~~place~~ any license required under AS 08.88.161 held by that licensee ~~on inactive status~~ as of the date of termination of coverage.
- **12 AAC 64.630. Surrender of license for failure to provide proof of insurance.** When a licensee receives a notice of **license suspension** ~~being placed on inactive status~~ for failure to provide proof of insurance, the licensee shall immediately surrender any license ~~required~~ under AS 08.88.161 to the commission.
- **12 AAC 64.640. Proof of insurance required to activate license.** A licensee whose license has been **suspended** ~~placed on inactive status~~ for failure to provide proof of errors and omissions insurance may not conduct any activities for which a license is required until proof of obtaining **a certificate of** ~~such~~ insurance has been provided to the commission and the license has been activated. ~~The license shall be considered active as of the effective date of the insurance.~~
- **12 AAC 64.650. Authenticity of coverage.** A licensee may not willfully or knowingly cause or allow a certificate of coverage, **or an affidavit certifying that the insured licensee has the financial resources to pay the higher deductible or self insured retention** to be filed with the commission that is false, fraudulent, or misleading.

Ms. Burke asked the questions when does the RFP go out for bid upon the completion of the Departments or Divisions regulations? Ms. Harris said that she would look into this and get back with the Commission.

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

**RESOLVED to open a new project for E & O Insurance regulation.
Chapter 64, 12 AAC 64.600 through 12 AAC 64.650.**

All in favor; Motion passed

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

RESOLVED to submit the proposed language to the Department for review and approval for the proposed regulation for Article 10, Errors & Omission Insurance, Section 600 through 650.

All in favor; Motion passed

Ms. Bates asked if anyone was interested in initiating legislation for a statutory change that would require real estate licensees that come under investigation and are found guilty be responsibility to pay the cost of the hearing and investigation.

Mr. Cole said that was certainly worth discussion with the understanding that it would need to be put into motion at the September meeting but no later than the December meeting and have Dave Somers in that discussion. Also, Mr. Cole asked that staff check with ARELLO to look at other jurisdictions that already have this requirement.

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

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 3:24 p.m.

The Commission adjourned until the next regular scheduled meeting on June 6 - 7, 2012 in Anchorage.

Prepared and submitted by Beata Smith.

Approved: _____

Bradford Cole
Bradford Cole, Chairman
Alaska Real Estate Commission

Date: 3/26/12