

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

June 16, 2021

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 June 16, 2021, at the State of Alaska Atwood Building, 550 W. 7th Avenue, Suite 1550, via Zoom, Anchorage, Alaska.

Wednesday, June 16, 2021

Agenda Item 1 - Call to Order

Chairperson Cheryl Markwood called the meeting to order at 9:05 a.m., at which time a quorum was established.

Roll Call – 1(a)

Members Present via Zoom

Cheryl Markwood, Broker, Broker at Large, Chairperson
Elizabeth Schok, Associate Broker, 4th Judicial District
Traci Heaton, Associate Broker, 1st Judicial District
Jaime Matthews, Public Member, Vice Chairperson
Jesse Sumner, Public Member

Elizabeth Schok and Jesse Sumner entered the meeting after roll call.

Staff Present:

Shyla Consalo, Executive Administrator
Sharon Walsh, CBPL Deputy Director
Erika Prieksat, Senior Investigator
Michele Hearn, REC Probation Monitor

Staff Present via Zoom:

Jun Maiquis, Regulation Specialist

Guests Present via Zoom:

Chad Stigen, Associate Broker, Berkshire Hathaway HomeServices Alaska Realty, Palmer
Errol Champion, Broker, Coldwell Banker Race Realty, Juneau
Kassandra Taggart, Broker, Real Property Management Last Frontier, Anchorage
Devon Thomas, Broker, Signature Real Estate Alaska, Wasilla
Mae Hayes, Associate Broker, Signature Real Estate Alaska – Mat-Su Realty & Appraisal, Wasilla
Frank Zellers, Broker, Real Broker, Eagle River

Approval of Agenda – 1(b)

Commission Members reviewed the meeting agenda.

Ms. Markwood noted there would be a minor change to the agenda regarding the order of business in agenda item 7. Ms. Markwood indicated agenda item 7(a) and 7(b) would be swapped.

56 **On a motion duly made by Ms. Matthews, seconded by Ms. Heaton, it was**

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58 **RESOLVED to approve the meeting agenda for June 16, 2021, as**
59 **amended.**

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61 **All in favor; Motion passed**

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63 Statements of Conflicts of Interest – 1(c)

64 There were no conflicts of interests.

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67 **Agenda Item 2 – Public Comments**

68 Mae Hayes, Associate Broker with Signature Real Estate Alaska – Mat-Su Realty &
69 Appraisal and licensed real estate appraiser serving on the Board of Appraisers, gave
70 public comment on an issue she has seen in the industry regarding real estate licensees
71 excluding appraisers in their contracts without just cause to do so. Ms. Hayes explained
72 it's especially problematic in smaller areas, where there are already a limited number of
73 appraisers that can even complete an appraisal for that area. Ms. Hayes wanted to know if
74 there was anything the Commission could do to inform/educate licensees that this is not
75 good practice if the only reason these appraisers are being excluded is because previous
76 appraisals have not come in at or above sale prices.

77
78 Ms. Markwood stated that was an interesting topic, and asked if any of the Commission
79 members had any insight to provide. Ms. Heaton stated she has never seen an appraiser
80 being excluded in a contract. She has seen inspection addendums where certain home
81 inspectors were crossed off, but nothing like that for appraisers. She explained she had a
82 situation a couple of years ago where a seller wanted to exclude an appraiser because
83 values were all over the place, and the lender indicated that the seller/licensee did not
84 have the right to exclude appraisers. The lender further stated that if there was sufficient
85 documentation and reasoning to support excluding an appraiser, the lender could do that
86 on their end. Ms. Heaton stated that if licensees are excluding appraisers in their
87 contracts, she is not seeing it in the Southeast area. Ms. Matthews stated she doesn't
88 have the experience from the industry side of things; however, she doesn't think this is
89 something that licensees should be able to do. Ms. Matthews further stated this issue is
90 something that should be addressed through best practices, as she isn't sure there is
91 anything within the Commission's statutes and regulations to address the problem.

92
93 Ms. Hayes stated she's just looking to advise brokers that this isn't a good practice. She's
94 not looking to change anything or take away someone's right to exclude an appraiser;
95 however, when it's being used as a method to get a specific appraiser, that's when there's
96 an issue. Ms. Hayes then brought up appraisers through the VA, and that there are only a
97 handful of approved VA appraisers. If a licensee excluded appraisers for a VA loan, it
98 significantly limits who can do that appraisal. Ms. Hayes explained that a lot of times
99 lenders won't allow licensees to exclude appraisers; however, because there's not
100 anything stating they can't exclude appraisers, sometimes that method works. Ms. Hayes
101 stated she is collaborating with an approved appraiser instructor and real estate instructor
102 on developing a course that explains to licensees how appraisals work. Ms. Hayes feels
103 the lack of understanding and education on this topic may be a part of why this issue is
104 occurring. Ms. Hayes believes that if licensees understood how a value opinion was put
105 together, maybe there would be less turmoil between the two industries. Ms. Hayes
106 mentioned that there are around 400 approved classes for licensees to take for continuing
107 education credits, and only one mentioned the word appraisal in the title. Less than ten of
108 the courses had any information on how mortgages work. There were a ton of courses on
109 titles and easements – and while this information is important, Ms. Hayes feels it's more

important for the consumer that licensees are educated on and understand the history of mortgages and why it's important to keep appraisals healthy. Ms. Hayes would like to see more classes offered regarding this topic, and would love to see a course like this be considered as a designated course verses an elective course.

Ms. Heaton commented that it might be beneficial for Ms. Hayes to put together a presentation on this topic to present at the Realtors Annual Convention. Ms. Consalo also informed Ms. Hayes that the local Realtor Associations is another good avenue to present this information, as they often ask for guest speakers to come to their meetings to provide information and training.

Ms. Markwood thanked Ms. Hayes for bringing this information to the Commission's attention, and explained that even though the Commission may not jurisdictionally be able to do anything about the problem, it's something that should be on the Commission's radar and addressed through education. Ms. Markwood agreed with Ms. Hayes regarding new licensee training, and the topics of mortgage history and appraisals not being taught, and there being a need in the industry for that. Ms. Markwood encouraged Ms. Hayes to continue working on the education course, and come back to the Commission to provide updates on her progress.

Errol Champion commented on the issue Ms. Hayes brought up, and stated in 2005/2006, the Consumer Financial Protection Board developed the new settlement statement and all the criteria that mortgages and lenders must follow for appraisals. It's federal regulation on how lenders and mortgage brokers secure appraisals. Mr. Champion expressed that he's appalled if licensees are excluding appraisers in a contract because they would be in violation of federal regulations.

Ms. Markwood asked if there were any more public comments. No one came forward and the public comment period was closed.

Agenda Item 3 - Approval of Meeting Minutes
March 17, 2021 Meeting Minutes – 3(a)

On a motion duly made by Ms. Matthews, seconded by Ms. Heaton, it was

RESOLVED to approve the March 17, 2021 meeting minutes.

All in favor; Motion passed.

Agenda Item 4 – Investigative Report
Probation Report – 4(a)

Michele Hearn, REC Probation Monitor, presented the probation report to the Commission. There is 1 licensee on probation. The licensee on probation is currently in compliance, and is due to be released from probation on June 17, 2021.

Statistical Report – 4(b)

Erika Prieksat, Senior Investigator, presented the investigation statistics for the reporting period of March 3, 2021 through June 2, 2021. There are 33 open matters and 15 matters were closed from the last report.

Ms. Markwood stated it was her understanding that the Commission lost their designated investigator, and asked Investigator Prieksat if that was accurate. Investigator Prieksat

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acknowledged that was correct, and stated they are actively recruiting for a new investigator for the Commission. Currently, she is overseeing some real estate cases, and the other cases have been disbursed to other investigators. She explained they are working the cases as quickly as they can, and moving cases forward accordingly. Ms. Markwood thanked Investigator Prieksat for the explanation, and just wanted to ensure new cases coming in weren't being held back.

Investigative Training – 4(c)

Investigator Prieksat provided the Commission members with training on the investigative process.

Ms. Heaton asked what information does the licensee get when they receive a Notice of Complaint – do they know who filed the complaint or have the specifics of the complaint? Investigator Prieksat explained the identity of the complainant is generally not released, but a summary of the complaint is included in the notice. In order to get an appropriate response from the licensee, they need to know what the complaint is about. An investigator also typically contacts the licensee for a follow-up interview in addition to the Notice of Complaint.

Frank Zellers, Broker with Real Broker, asked if the presentation was able to be shared, stating it was a great slideshow. Investigator Prieksat indicated the information is public, so it can be shared. Ms. Consalo informed Mr. Zellers that the slides are posted on the Commission website in the meeting packet for today, and he could access the information there.

The second half of the training regarding Board member reviews was not releasable to the public, and was required to be conducted in Executive Session.

On a motion duly made by Ms. Matthews, seconded by Ms. Schok, it was

RESOLVED to go into Executive Session per AS 44.62.310(c), for the purpose of discussing matters which by law, municipal charter, or ordinance are required to be confidential.

All in favor; Motion passed.

The Commission went into Executive Session at 9:43 a.m.

On a motion duly made by Ms. Matthews, seconded by Mr. Sumner, it was

RESOLVED to come out of Executive Session.

The Commission came out of Executive Session at 10:03 a.m.

Break at 10:04 a.m.

Reconvene at 10:15 a.m.

Agenda Item 5 – Division Update

REC Revenues and Expenditures Report – 5(a)

Sharon Walsh, Deputy Director of the Division of Corporations, Business, and Professional Licensing, presented the Division Update.

Ms. Walsh presented the report for the third quarter of 2021, ending March 31, 2021. She stated the current revenue was \$249,280. Expenditures totals were as follows: There were non-investigative expenditures of \$83,398 and investigative expenditures of \$109,322, for a total of \$192,720 in direct expenditures. There were indirect expenditures of \$125,384 (this includes internal administration, department, and statewide costs), leaving the total expenditures at \$318,104. There was a total surplus of \$978,238.

New Board Member Training – 5(b)

Ms. Walsh provided the Commission members with new Board member training. Ms. Walsh indicated she would be doing an overview of the main topics that are important for Board members to know, and there would be a more in-depth training in the fall with Director Sara Chambers and all Board members, as there has been a change in personnel for many Boards. Ms. Walsh discussed the fundamental concepts of transparency, discretion, and fairness; what constitutes a meeting/the Open Meetings Act; ex-parte' communication; executive session; confidentiality; the regulation process; conflicts of interest; and voting.

Ms. Markwood asked for some clarity on the Open Meetings Act regarding the discussion of Board business outside of a meeting with another Commission member. She wanted to know if it was acceptable to collaborate with another Commission member on a project when it hasn't been deliberated at a publicly noticed meeting yet. Ms. Walsh clarified that was okay, as long as the collaboration is with less than three Commission members. Anything that requires collaboration with three or more Commission members, should be sent to Commission staff for distribution, or there must be a publicly noticed meeting.

Ms. Heaton asked for some clarity on ex-parte' communication and if someone approaches her for advice on a complaint. She stated that in the short amount of time she's been on the Commission, it seems these situations have come up a few times, and she wanted assistance on how to proceed in those situations. Ms. Walsh explained that if there's a potential it could come before the Commission for consideration or deliberation – and 90% of the time there's potential – then she needs to just state that because she is now a voting member of the Commission, she is not able to engage in the conversation and refer that individual to either Commission staff or the Investigations team.

Agenda Item 6 – Committee Reports

Property Management Committee – 6(a)

Ms. Taggart, Chair of the Property Management Committee, stated the Committee was looking for two approvals from the Commission. Ms. Taggart presented the following documents to the Commission for approval:

1. Best Practice: Security Deposits, Dues Deposits, Pre-Paid Rents & Reserves
2. Mission Statement & 2021 Priorities

Ms. Markwood commented that she attended the last Committee meeting, and it was a very informative and productive meeting. Ms. Markwood explained that this Committee provides an opportunity for individuals involved or interested in the property management side of real estate to get together, collaborate, and talk about issues the industry is having and how to address them. Ms. Markwood thanked Ms. Taggart for her continued hard work on this Committee.

272 **On a motion duly made by Ms. Heaton, seconded by Mr. Sumner, it was**
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274 **RESOLVED to adopt the Property Management Committee's best**
275 **practices for security deposits, dues deposits, pre-paid rents &**
276 **reserves to be published on the REC website, as presented.**
277

278 **All in favor; Motion passed.**
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280 **On a motion duly made by Ms. Heaton, seconded by Ms. Matthews, it was**
281

282 **RESOLVED to adopt the Property Management Committee's Mission**
283 **Statement & 2021 Priorities to be published on the REC website, as**
284 **presented.**
285

286 **All in favor; Motion passed.**
287

288 Ms. Markwood asked if the Committee's next meeting date had been decided. Ms.
289 Consalo stated the next Committee meeting is scheduled for the third Thursday in
290 October, which she believes is October 21, 2021. Ms. Consalo also reminded the
291 Commission members that only two Commission members can attend the Committee
292 meeting, and Ms. Heaton is the designated Committee Liaison, so they need to be aware
293 of the possibility of not being able to attend if too many Commission members express
294 interest in attending. Ms. Markwood advised that if any of the Commission members were
295 interested in attending a Committee meeting, to reach out to Commission staff in advance,
296 so it can be worked out who can and cannot attend, before the day of the meeting.
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299 **Agenda Item 7 – Old Business**

300 **Regulation Revisions – Consider Comments/Adoption – 7(a)**

301 Mr. Maiquis explained that the proposed regulations that were approved to go out for
302 public comment at the Commission's last meeting received questions/comments from two
303 licensees, one of which was addressed by Ms. Consalo. Mr. Maiquis stated the proposed
304 regulations were now ready for deliberation and action.
305

306 Ms. Consalo explained the specific regulation that would need an amendment based on
307 the public comment received, and being unable to email an original document. Ms.
308 Consalo also stated the Commission could make an additional amendment to that same
309 regulation to add the acceptance of signing the license either digitally or non-digitally,
310 based on another public comment received. Ms. Consalo explained the Commission did
311 already vote to accept digital signatures on Commission paperwork, as a generally policy,
312 at the beginning of the COVID-19 disaster declaration, so adding that language wasn't
313 particularly necessary, but it has been added in other areas of the regulations that address
314 signatures. There was some discussion on the topic, but it was ultimately decided to just
315 make the one amendment. Ms. Consalo asked if there were any questions about the
316 responses she provided regarding the other questions received via public comment. There
317 were no additional comments or questions from the Commission members on the
318 regulation revisions.
319

320 **On a motion duly made by Ms. Schok, seconded by Ms. Matthews, it was**
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322 **RESOLVED to adopt, in consideration of public comment received**
323 **and as public noticed, the proposed regulation changes for 12 AAC**
324 **64.010, .040, .059, .060, .071, .077, .130, .135, .140, .430, .440, and .990.**
325

Roll call vote: Ms. Schok – yes, Ms. Heaton – yes, Ms. Matthews – yes, Mr. Sumner – yes, and Ms. Markwood – yes.

Motion passed.

On a motion duly made by Ms. Matthews, seconded by Mr. Sumner, it was

RESOLVED to amend, in consideration of public comment received, the regulation change for 12 AAC 64.075 by removing the words “the original” from the proposed language.

Roll call vote: Ms. Schok – yes, Ms. Heaton – yes, Ms. Matthews – yes, Mr. Sumner – yes, and Ms. Markwood – yes.

Motion passed.

On a motion duly made by Ms. Matthews, seconded by Mr. Sumner, it was

RESOLVED to adopt, in consideration of public comment received and as amended, the proposed regulation change for 12 AAC 64.075.

Roll call vote: Ms. Schok – yes, Ms. Heaton – yes, Ms. Matthews – yes, Mr. Sumner – yes, and Ms. Markwood – yes.

Motion passed.

Break at 11:30
Reconvene at 11:43

2021 Strategic Plan Review – 7(b)

Ms. Markwood explained the Commission will have this item on every meeting agenda, so everyone is on the same page as far as progress in the completion of items on the Strategic Plan. It helps keep the Commission on track with their goals and tasks. Ms. Markwood discussed the updates provided in red regarding the Property Management Committee, the regulation revisions, and the draft Property Transfer Disclosure Statement, all of which were/will be addressed at this meeting. Ms. Consalo added that the Commission was doing a great job in keeping on track with the Strategic Plan and moving forward on several items quickly.

AREC Property Transfer Disclosure Form Re-Write – 7(c)

Ms. Markwood stated this was a project the Commission started a couple of years ago. A lot of information was gathered by previous Commission members, and the project was given to her just before those Commission members' terms of service ended. Ms. Markwood stated the changes to this form would require a regulation change to adjust the new form date referenced in our regulations. The Commission also must ensure that any changes made to this form are consistent with Alaska statutes. Ms. Markwood opened the floor to the Commission members for discussion.

Several changes were recommended by adding additional items in the Property Features section and having those items alphabetized; removing the language “Built-In” on a couple of the items in the Property Features section; adding more clarity to the Property Features section regarding items already having been repaired/replaced verses items still needing

repair; and adding an additional checkbox option of N/A to the Additional Information section.

Ms. Heaton asked if it were possible to divide the Property Transfer Disclosure Statement so that the waiver and exemption pages are not on the same form, as there is often confusion if those aren't taken out before presenting the form to the seller to complete. She was wondering what it would take to have these documents be three separate forms. Ms. Consalo explained that would require additional changes to the regulation to list out all the forms individually. Additionally, if these forms are referenced as a part of the Property Transfer Disclosure Statement in the statute, that would require a legislation project to change that statute, which would have to occur before any regulation change could occur.

On a motion duly made by Ms. Schok, seconded by Mr. Sumner, it was

RESOLVED to approve, as amended, the proposed draft regulation change for the Residential Real Property Transfer Disclosure Statement form, as referenced in 12 AAC 64.930, to go out for public comment.

Roll call vote: Ms. Schok – yes, Ms. Heaton – yes, Ms. Matthews – yes, Mr. Sumner – yes, and Ms. Markwood – yes.

Motion passed.

The Commission decided to allow for written public comment only, and should there be a need to allow for oral public comment, they will re-asses as needed.

Agenda Item 8 – New Business

Annual Report – 8(a)

Ms. Markwood thanked Ms. Consalo for all the hard work she put into drafting the Annual Report, and articulating the Commission's accomplishments, goals, and projects so well. Ms. Markwood explained that this report is reviewed by the Governor and Legislature, and it gives them an overview of what the Commission has accomplished over the previous year, and what goals the Commission has for the upcoming year.

On a motion duly made by Mr. Sumner, seconded by Ms. Heaton, it was

RESOLVED to approve the 2021 Annual Report, as presented.

Roll call vote: Ms. Schok – yes, Ms. Heaton – yes, Ms. Matthews – yes, Mr. Sumner – yes, and Ms. Markwood – yes.

Motion passed.

Agenda Item 9 – Executive Administrator's Report

Education Statistics – 9(a)

Ms. Consalo presented the education report for June 16, 2021. She reported that as of June 2, 2021, there were 13 pre-licensing courses; 4 broker upgrade courses; 357 elective courses; 59 designated courses; and 72 post-licensing courses approved, with a total of 505 courses approved. Ms. Consalo stated there are currently 73 approved instructors.

Licensing Statistics – 9(b)

Ms. Consalo presented the licensing report for June 16, 2021. She reported that as of June 2, 2021, there were 121 new licenses issued; 2,900 active licensees; 9 inactive licensees; 481 lapsed licenses with 1 of those for non-compliance of PLE; 213 transfers; 60 licensees who completed their PLE requirements; 11 license upgrades from salesperson to associate broker; 2 license upgrades from salesperson to broker; and 1 licensee on probation.

RISC E&O Claims Report – 9(c)

Ms. Consalo presented the report for RISC E&O claims for their first quarter (Jan - Mar). Total closed claims were \$3,000, and the total open claims were \$32,002, for a total of \$35,002 in claims for the first quarter. All of these claims were the same claims/cases reported in the fourth quarter report; however, there was an additional claim reported since the last report that has not incurred any loss amounts yet.

Recovery Fund Balance Report – 9(d)

Ms. Consalo presented the Recovery Fund Report for the third quarter, ending March 31, 2021. The Commission received a total of \$14,504 for license fees processed between January and March, leaving the current total fund balance at \$277,201. The projected balance for the end of the fiscal year is \$238,217 with an average 2-year licensing cycle fund balance of \$288,392.

Ms. Consalo mentioned that the Commission must maintain a recovery balance of no less than \$250,000 and no more than \$500,000. The Commission is very close to the lower end of the spectrum, so at the next meeting, they will need to look at possibly increasing the recovery fund fee to ensure the recovery fund balance is within the acceptable statutory limits. Ms. Markwood thanked Ms. Consalo for mentioning that, and explained that it is going to be very important for Commission members to attend and participate in the discussion at the next meeting about fee changes, in anticipation of the upcoming renewal. Ms. Consalo stated our finance staff will have a fee analysis prepared for review with the Commission, to help aid in making the appropriate changes to any fees.

Agenda Item 10 – Commission Member Comments & Questions

Mr. Sumner thanked everyone for the good work they've been doing. Ms. Markwood thanked Mr. Sumner for serving as a public member on the Commission, and commended him on the impressive work he's been doing in the area with his business.

Ms. Matthews thanked the staff and Commission members involved in all the hard work it took to push the regulation changes forward – it's nice to see projects that have been worked on for a while moving forward and being completed. Ms. Matthews thanked Ms. Consalo for all the work she does, even when she stretched thin – she appreciates the good meetings that occur.

Ms. Heaton expressed the same sentiments as Ms. Matthews, and stated it's great to see the regulation changes move forward. She also thanked the Commission members and Ms. Consalo for all the work they've done so far – she's still new to this and learning, so she appreciates everyone's efforts.

Ms. Schok stated she's thrilled to be here with everyone, and appreciates all the hard work that goes into everything.

Ms. Markwood thanked everyone in attendance, and thanked Chad Stigen for attending the meeting, and absorbing the information in anticipation of starting his service with the

Commission on June 27, 2021. She thanked Commission staff for their hard work in moving items forward. The regulation change was a huge project over the last couple years, and she appreciates the Commission moving that item forward today. She thanked everyone for their participation in the discussion of changes to the Property Transfer Disclosure Statement, and thanked Ms. Taggart for her continuous work on the Property Management Committee. She further thanked Ms. Consalo for being the backbone of the Commission, and all the hard work and dedication she commits to the Commission, despite her being pulled in other directions due to staffing shortages with the State. She stated she's honored to serve as the Commission Chair, and honored to serve on the Commission with everyone.

Agenda Item 11 – Adjournment

On a motion duly made by Mr. Sumner, seconded by Ms. Schok, it was

RESOLVED to adjourn.

All in favor; Motion passed.

Meeting adjourned at 12:37 p.m.

The next meeting will be held September 15, 2021 in Anchorage.

Prepared and submitted by:
Real Estate Commission Staff

Approved:



Cheryl Markwood
REC Chairperson
Alaska Real Estate Commission