

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
REAL ESTATE COMMISSION

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DIVISION OF
OCCUPATIONAL LICENSING
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MINUTES OF TELECONFERENCE
November 10, 2004

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference meeting of the Real Estate Commission was held November 10, 2004, at the Atwood Building, Room 1500, Anchorage, Alaska.

Wednesday, November 10, 2004

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 1:05 p.m.

Roll Call

Members Present:

Barbara Ramsey, Associate Broker, 3rd Judicial District
Glenn Clary, Public Member, via teleconference
Larry J. Bauer, Broker, 1st Judicial District, via teleconference
Rita Wilson, Associate Broker, Broker at Large
Susan Rainey, Associate Broker, 4th Judicial District, via teleconference
David B. Somers, Broker at Large, via teleconference

Absent members: Bradley Fluetsch, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner
Barbara Gabier, Program Coordinator, via teleconference
Jun Maiquis, Regulation Specialist, via teleconference
Dave Brower, Assistant Attorney General, via teleconference

Introduction

Barbara Ramsey asked to verify a couple of points for the record, she said that it is the boards job to clarify, to the best of their ability, for the real estate industry through these regulations, what the legislature mandated through statutes in particular. Because of HB29 we are at a crossroads, we can actively guide the industry and establish the direction that the industry will go or we can let the industry wander at will. She also said that it is important to avoid any legal

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dispute or potential legal challenges, during this meeting members can only discuss the information that was received in their packets. Nothing outside the public comment period or anything that did not go through the regulation specialist can be discussed as part of this meetings legitimate regulation record. Any violation of that could compromise the entire project and force the board to start all over. Once the board adopts these regulations every thing will go before the Department of Law for legal review where additions and changes could be made, again. The Department of Law's job is to make certain that what is adopted is defensible and legal. Regarding any changes to the forms in your packets, keep in mind that the public notice was broadly written, however, if any of the changes that the board makes today are considered substantial it may require a new public notice and it could delay the process beyond January 1. As we make changes, ask yourself have we potentially crossed that line. Once the forms are adopted they are not set in stone and we can make changes at any time through a new regulation process, and a new public comment period. Ideally, our first opportunity to make changes would be in the spring of 2005 and we will have had some history of use.

12 AAC 64.117, Brokers written policy guidelines

On a motion by Somers, seconded by Rainey, it was unanimously,

RESOLVED to officially adopt 12 AAC 64.117 as outlined in the 10/25/04 draft.

All in favor; none opposed; motion passes.

12 AAC 64.125, Supervision

A motion was made by Wilson for reconsideration for the purposes of additional editing on 12 AAC 64.125(b)(1). Motion failed due to lack of second.

A motion was made by Rainey, seconded by Wilson, to reopen all of 12 AAC 64.125, Supervision, for reconsideration and additional edits.
2 in favor; 3 oppose. Motion fails.

A motion was made by Somers to officially adopt 12 AAC 64.125 as amended in and noted in 10/25/04 draft. Motion fails due to lack of second.

On a motion by Bauer, seconded by Rainey, it was unanimously,

RESOLVED to insert on 12 AAC 64.125 on (b)(1) the word "real estate related" in between "required" and "documents".

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All in favor; none opposed. Motion passes.

On a motion by Somers, seconded by Bauer, it was unanimously,

RESOLVED to reconsider the earlier adoption from 9/14/04 and 9/15/04 meeting, 12 AAC 64.125 for the purposes of additional edits.

All in favor; none opposed. Motion passes.

A motion was made by Rainey to change the verbiage of item (a) under 12 AAC 64.125, Supervision, to remove "provide for the supervision of" and replace it with "supervise". Motion fails due to lack of second.

12 AAC 64.930(a), Residential Real Property Transfer Disclosure Statement

On a motion by Rainey, seconded by Somers, to officially adopt 12 AAC 64.930(a) as amended in the 9/14 and 9/15/04 meeting.

The members discuss with the attorney general about when the disclosure form is required to be filled out, before or after a written offer.

A motion was made by Wilson to change the fourth line of (a) in our 10/25 04 draft, it starts out with "in residential real property must disclose to a prospective transferee of the property, insert the words, "in accordance with AS 34.70.010 through AS 34.70.020" and eliminate "before the transferee makes a written offer". Motion failed due to lack of second.

Motion on the table was,

RESOLVED to officially adopt 12 AAC 64.930(a) as amended in the 9/14/04 and 9/15/04 meeting of draft 10/25/04.

5 members in favor; 1 member opposed. Motion passes.

The Chair, Barbara Ramsey recognizes that Glenn Clary is in attendance at the meeting at 2:10 pm.

12 AAC 64.118, Alaska Real Estate Commission Consumer Pamphlet

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Barbara Ramsey stated she would like to thank everyone who took the time to submit comments. She feels we've made progress. Overall the comments were not as negative but were more positive and constructive.

Barbara Ramsey made a point of clarification for the record. She stated that even though she is a member of the MLS forms committee group, she and her husband were on vacation and not part of the MLS forms committee group that developed drafts mentioned in the public comments. She then went on to give a recap of the public comments received.

Susan Rainey leaves the meeting at 2:50 p.m.

On a motion by Somers, seconded by Bauer, it was unanimously

RESOLVED to adopt the Sheri Boyd, 10/15/04 document submitted for public comment.

All in favor; none opposed. Motion passes.

Break -- 3:05 p.m.

Reconvene -- 3:15 p.m.

Members begin to discuss the section that starts with the words, "About this pamphlet.. to .. Your cooperation is appreciated."

To change paragraph "1" to the following: delete the word "professional, parenthesis, licensee" replace that with the word "licensee", delete the word "of" in the second line so that the section will read as follows: About this pamphlet, In Alaska, a Real Estate licensee is required by law to provide a pamphlet outlining the duties of a real estate licensee. After you have read the information contained in this pamphlet, please acknowledge receipt by signing below and return it to the real estate licensee who provided it to you. Your cooperation is appreciated.

On a motion by Somers, seconded by Wilson, it was unanimously

RESOLVED to change referencing as just read.

All in favor; none opposed. Motion passes.

On a motion by Somers, seconded by Bauer, it was unanimously

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**RESOLVED to have the heading of the pamphlet to read:
Alaska Real Estate Commission Consumer Pamphlet.**

All in favor; none opposed. Motion passes.

The members begin to discuss paragraph 2 of the Consumer Pamphlet, which starts with "There are four different ... to "Waiver of Right to be represented form."

Barbara Gabier wanted to stress to the members that whatever you are adopting today, in this format, is going to go to Department of Law. If you want it in a pamphlet version you would need to have a pamphlet prepared and adopted today for it to go to Department of Law. If you adopt it today it is going to be however it was adopted at the end of today.

On a motion by Wilson, seconded by Somers, to use the 8 ½ x 11 format, not the trifold. 2 members in favor; 3 members opposed. Motion fails.

On a motion by Wilson, seconded by Somers, it was unanimously

**RESOLVED to change the first bullet item in section 2 from
"assist" to "specific assistance".**

All in favor; none opposed. Motion passes.

Change section 2 to read as follows: There are four different types of relationships established by Alaska Real Estate Law: delete "assist" put in "specific assistance" dash Licensee owes "Duties owed by a Licensee in all relationships" as described, delete "below" insert "in this pamphlet. Bullet number 2: represent - Licensee owes "Duties owed by a licensee when representing a party" as described, delete the word "below" insert "in this pamphlet". Bullet number 3, Designated - this occurs when a Licensee represents or assists a party to a transaction and another Licensee within the same company represents or assists the other party in the same transaction. Bullet 4, Neutral - this occurs when a Licensee does not represent either parties but assists both parties in the same transaction. The parties must authorize the, delete the small "n" put in a capital "N", Neutral Licensee relationship by signing the "Waiver of Right to be Represented" form.

On a motion by Clary, seconded by Somers, it was unanimously

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RESOLVED to change as read.

All in favor; none opposed. Motion passes.

On a motion by Clary, seconded by Somers, it was unanimously

RESOLVED to accept as written paragraph 3, which is: "Duties owed by a licensee in all relationships – Assist and paragraph 4 which is "Duties owed by a licensee when representing a party".

All in favor; none opposed. Motion passes.

On a motion by Clary, seconded by Somers, it was unanimously

RESOLVED to adopt the first four paragraphs on page 2 ending with bullet "To show or search for properties without compensation."

All in favor; none opposed. Motion passes.

On a motion by Clary, seconded by Somers, it was moved to starting with, "This disclosure pamphlet is not a contract", add after that period the sentence, "It does not create any relationship between you and any real estate licensee unless you choose representation." Follow through to the end of the document. The last line is real estate company with a line above it.

Glenn Clary pulls the phrase out of the motion "This disclosure pamphlet is not a contract." As long as second approves. Dave Somers the second approves the change to the motion.

The board has questions regarding if spelling errors will be corrected automatically. Barbara Gabier clarifies for the board that Jun will finalize it the way that it is actually adopted and then it will go to Law. Jun will not have the ability to make any changes to it that was not stated on the record today. Jun will send it to Law the way the board actually adopted it. Whatever the Commission adopted today, Jun will put it in exactly that same form and send it to Law. Law has the ability to make other changes to it.

Larry Bauer makes a friendly amendment to the motion on the table that "This disclosure is pamphlet is not a contract. The second part, I understand and acknowledge that, then there is a line. Then, Licensee of, I would like to see that

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line moved up so that it is on the same area. Move the company line up. On the next page, under preauthorization, that "neutral" be capitalized, licensee (attached "Waiver of Right to Be, the word" Represented", to be moved up and located next to Be.

By process of a friendly amendment, offered by Bauer to amend motion by Clary, accepted by the maker and the second.

Barbara Ramsey reads section again with changes starting with "This pamphlet is not a contract." To the end of the document, which ends with, "real estate company" and then there is a line there. Bring up the word "- company" to behind the word (Licensee), which is the fourth line from the bottom. On the next page, "Under preauthorized small "n" is changed to capital "N", the next sentence is only the word "be " we are going to move the word "Represented" up to right after that.

**On a motion by Clary, seconded by Somers, it was unanimously
RESOLVED to accept changes as read.**

**On a motion by Somers, seconded by Bauer, to leave the paragraph
the licensee anticipates Compensation in the same spot.**

**Larry Bauer makes a friendly amendment, to the motion on the table to
move the "The Licensee anticipates", paragraph to below the statement in
bold and capitalize, "This disclosure is not a contract."**

By process of a friendly amendment, offered by Bauer to amend motion by Somers, accepted by the maker and the second.

On a motion by Somers, seconded by Bauer, it was unanimously

**RESOLVED to change all references of tenant to lessee and
references to landlord to lessor within the document. Then to
take the paragraph that starts, "licensee anticipates" and move
that paragraph to just below "This disclosure pamphlet is not a
contract" which is in bold and all caps.**

All in favor; none opposed. Motion passes.

Glenn Clary and Dave Brower leave meeting at 4:30 p.m.

On a motion by Bauer, seconded by Ramsey, it was unanimously

RESOLVED to reconsider the 8 ½ x 11 published format.

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All in favor; none opposed. Motion passes.

On a motion by Wilson, seconded by Ramsey, it was unanimously

RESOLVED for the last 4 lines on page 2 starting with “I understand and acknowledge..” changing the line that has blank company will be working with me, include the words “under the following relationship: and inserting on the next line, blank, Specific Assistance without representation.

Barbara Ramsey reads the entire changes for clarification: the paragraph is “I understand and acknowledge that blank (Licensee) of blank (company) will be working with me under the following relationship: The next line will read: blank Specific Assistance without representation and then following with Representing the Seller/Lessor only (may assist the Buyer/lessee). Then the next line is Representing the Buyer/lessee only (may assist Seller/lessor).

3 members in favor; 1 member opposed. Motion passes.

On a motion by Somers, seconded by Wilson, it was unanimously

RESOLVED to officially adopt 12 AAC 64.118 with the noted amendments published in a 8 ½ x 11 format not to exceed 2 pages.

All in favor; none opposed. Motion passes.

Barbara Gabier states that we are going to incorporate all the changes that are here on the record and on that document we are going to place the form number 08-4145 and we are going to date September 2004. That will then go with the regulations that go to the Department of Law. You noticed that 118 references a specific form dated September 2004 and it will be edited as your form that will be recognized in that regulation 118 we will include that date and that form number

12 AAC 64.119 – Waiver of Right to Be Represented

On a motion by Wilson, seconded by Somers, it was unanimously

RESOLVED to open for discussion the Sherri Boyd 10/15/04 email “Waiver Right to Represented” form as submitted.

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All in favor; none opposed. Motion passes.

On a motion by Wilson, seconded by Bauer, it was unanimously

RESOLVED to make minor changes as follows: on the first line change, capitalize real estate, the "r" in real and the "e" in estate, the "l" in license. Change all references and delete the word professionals (licensee). Change all references to landlord to lessor, change all references to tenant to lessee, this is to be published 8 ½ x 11 format limited to one page.

All in favor; none opposed. Motion passes.

On a motion by Somers, seconded by Bauer, it was unanimously

RESOLVED to officially adopt 12 AAC 64.119 with noted amendments published in 8 ½ x 11 form on one page.

All in favor; none opposed. Motion passes.

Barbara Gabier stated for the record that on this document we will make the changes noted and then we will give it the form number 08-4212 with a date of September 2004 so that it will match with the regulation 12 AAC 64.119.

The Chair Barbara Ramsey states for the record that during the time of the adoption the Commission paid special attention to the costs to private persons of the regulatory action being taken.

The next meeting is December 2nd and 3rd here in Anchorage, in the Atwood Building starting at 9:30 a.m. in room #240 on the second floor.

Dave Somers asked the Chair if she had received notification that he asked to be excused for that meeting. The Chair did receive that request. Dave Somers gives his apologies.

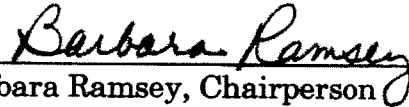
Barbara Ramsey would like to thank everybody for hanging in there. This discussion helped to clarify all the aspects we have been dealing with and she felt more comfortable where we are with the forms and the process.

Meeting adjourned at 5:06 p.m.

Prepared and submitted by Division Staff.

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Approved:



Barbara Ramsey, Chairperson
Real Estate Commission

Date: 3/24/05