

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

June 3, 2015

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 3, 2015, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, June 3, 2015

Agenda Item 1 - Call to Order

Chairperson Nancy Davis called the meeting to order at 9:09 a.m. at which time a quorum was established.

Roll Call – 1(a)

Members present:

Peggy Ann McConnochie, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District, Acting Chair
Marianne Burke, Public Member
Eric Bushnell, Associate Broker at Large
Stacy Harvill, Associate Broker, 4th Judicial District
Traci J. Barickman, Associate Broker, 3rd Judicial District

Members absent:

Cindy Cartledge

Staff Present:

Sharon Walsh, Executive Administrator
Jay Paff, Investigator II

Guests Present:

David Somers, Broker, Somers & Associates, Fairbanks
Shana Ackles, Broker, Keller Williams Realty, AK Group, Anchorage
Jerry Royse, Broker, Royse & Associates, Anchorage
Diane Greger, Distinctive Properties, Anchorage
Anita Bates, Assoc. Broker, Dwell Realty, Anchorage

Guests Present via Telephone:

Harriet Dinegar, Assistant Attorney General, Dept. of Law
Janey Hovenden, Director, Corporations, Business & Professional Licensing (CBPL)
Martha Hewlett, Administrative Officer, CBPL

Approval of Agenda- 1(c)

Commission members reviewed and discussed the meeting agenda as presented.

On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it was,

RESOLVED to approve the meeting agenda for June 3, 2015 as presented.

All in favor; Motion passed.

Commission Chair, Ms. Davis, asked to make some changes. Move item 9(a) to 7(a) on the

agenda to consolidate the CE issue with the Division Paralegal Report. And add to New Business 10 (e). She also added 4(b) PLE review by education committee, discussion on updating the Broker Manual. Ms. Burke asked to have 9(e) added to Old Business further discuss of administrative matters. Ms. Davis stated if the REC was interested in discussing the new HUD regulations (RESPA/TILA changes) that would be taken up in item 10(f).

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

RESOLVED to approve the meeting agenda for June 3, 2015 as amended.

All in favor; Motion passed.

Agenda Item 2 - Meeting Minutes

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

RESOLVED to approve the February 25, 2015 meeting minutes.

All in favor; Motion passed.

Abstaining from the vote was Ms. McConnochie.

Agenda Item 3 - Public Comment

Chair Davis had Investigator Paff introduce a new Investigator to the Division, Sonia Lipker.

Jerry Royse addressed the Commission regarding the need for discussion on legal entities and that other regulations such as, 12 AAC 64.110(e); 64.065(b) & 64.112 may need altering. Registering teams with the REC should also be a consideration.

Chair Davis acknowledged the letter to the REC from Century 21 Realty Solutions, Associate Broker Greg Lancaster, regarding their concern in the use of team advertising. Chair Davis indicated that it would be discussed under agenda item #9(b).

She also acknowledged an email from the Broker of Jack White, Gabe Stephan, regarding additional advertising methods by teams.

Agenda Item 4 - Education Report

Education Statistics – 4(a)

Ms. Walsh presented the education statistics as of May 15, 2015 to the Commission.

There are currently 296 approved; 8 pre-licensing courses; 7 broker upgrade courses; 35 designated courses; 6 post-licensing courses; 240 elective continuing education courses; 62 elective and/or post-licensing courses; there are 3 new sponsors for this reporting period. There are 150 permanent instructors; 1 temporary Instructor and 33 course sponsors. Instructors are approved for a 5-year period; 55 new Instructors.

Information for the Recovery Fund fees collected for education in conjunction with that time period was presented; this is a manual tracking of Recovery Fund fees by REC staff. Ms.

Walsh told the new members about the monitoring of the Recovery fund and that REC staff manually monitors revenue because the State system is not able to break this information down by education course/instructor revenue.

Chair Davis talked about the PLE review and asked for a committee update from Ms. Barickman. Ms. Barickman asked the REC for clarification now that she is a member of the Real Estate Commission. Ms. Barickman said she would still like to remain on the Committee but felt it was not appropriate for her to remain as Chair of this committee. Ms. McConnochie suggested sending out a note asking for more participants on this committee. And not to limit it to PLE Broker education but, also take into review the Broker upgrade education.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to have staff, by advisement through the List Serv, notify that the REC is seeking participants in an on-going education committee to provide feedback on the REC Broker PLE. Send out the List Serv a few times to generate interest.

All in favor; Motion passed.

On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it was,

RESOLVED to name Ms. Barickman to be the REC Liaison to the Education Committee.

All in favor; Motion passed.

Agenda Item 5- Executive Administrator Report

Recovery Fund Balance Report – 5(a)

Ms. Walsh presented the Recovery Fund financial reports to the Commission. Statement of Revenue and Expenditures was reviewed as of March 31, 2015 the ending balance was \$471,864. Ms. Walsh indicated that there are no new Recovery Fund claims filed.

Schedule of Revenue and Expenditure – 5(b)

Ms. Walsh presented the Division's Revenue and Expenditure 3rd quarter report for the Real Estate Commission. The ending balance on the 3rd quarter report is \$147,601.00. The 4th quarter report will not be available until October because Division staff has to close the fiscal year by August.

Licensing Statistics - 5(c)

Ms. Walsh presented the licensing statistics for the period ending May 15, 2015. Licensees with an expiration date of 1/31/2016 account for 2,689; total active (status of active) licensees during this time period: 2,527. The breakdown is: 29 lapsed licensees as a result of non-compliance of Post licensing education (PLE). 47 licensees are Inactive. 76 licensees had not affiliated with a Broker and were therefore, in an "AWOL" status; in our tracking we had 79 licensees transfer; 3 licensees are on Probation and 3 licensees passed away

during this reporting period.

There were 11 new offices registered with the Commission, 8 main and 3 branch.

Regulation Tracker - 5(d)

Ms. Walsh presented the Regulation Tracker for the Commission to review. Two outstanding regulations are 12 AAC 64.240 and 420.

Ms Burke asked if there are any regulations that are in limbo? In particular, from June 2013, 12 AAC 64.440. Ms. Walsh said she would look into that project and email the REC members with the current status. Ms. Burke asked that different verbiage be used and some statement be used to indicate that no further activity is needed by the Commission.

On a motion duly made by Ms. Bushnell, seconded by Ms. Harvill, it was,

RESOLVED to adopt the final draft regulation changes of 12 AAC. 64.240 as described in the written document provided by the Regulation Specialist.

On a friendly amendment proposed by Ms. Burke and accepted by Mr. Bushnell maker of the motion, it was

RESOLVED to include in the adoption of the motion a change in wording: “adding this new subsection” rather than “amending” as provided in the final draft regulation changes of 12 AAC. 64.240.

All in favor; Motion passed.

Review written comment on 12 AAC 64.420(c) and (g) - 5(e)

Ms. McConnochie asked if Department of Law reviewed this regulation for conflicts with legal entities in other REC statutes and regulations. Ms. Walsh said Department of Law reviews all regulation projects for conflicts in REC statutes and regulations.

Agenda Item 6- Assistant Attorney General Review

Commission calls Department of Law, Assistant Attorney General, Harriet Milks regarding the proposed regulation 12 AAC 64.420(g). The concern is with a potential conflict with 12 AAC 64.420(c). Mr. Bushnell indicated that the REC was trying to provide the DCE course sponsor the ability to use that course for 2-licensing cycles without renewal.

Ms. McConnochie suggested the proposed regulation 12 AAC 64. 420(g) be scraped and start a new project. Mr. Bushnell indicated he is not interested in starting over on this regulation project because it takes too long to get it through the process. Ms. Milks suggested if the REC wanted to amend the proposed regulation to make it clear on the record and Ms. Walsh could email it to her for review before the end of the meeting.

On a motion duly made by Mr. Bushnell, seconded by Ms. Barickman, it was,

RESOLVED that they TABLE the proposed regulation and work on

amending language through lunch and get it to Harriet (at Dept of Law) for her to review and provide some draft language.

All in favor; Motion passed.

Commission recessed for break at 10:40 a.m.
Commission reconvened from break at 10:55 a.m.

Agenda Item 7- Division Paralegal Report

The Commission called Charles Ward, the Division Paralegal to review and discuss Consent of Agreements for those licensees who were not in compliance with the continuing education audit from the renewal period 2014-16.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie , it was,

RESOLVED that they go into executive session. Mr. Bushnell stated:
In accordance with AS 44.62.310(c): I move we go into executive session for the purpose of discussing subjects that tend to prejudice the reputation and character of a person.

All in favor; Motion passed.

Into Executive session at 11:00 a.m.
Out of Executive session at 11:10 a.m.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED that they come out of executive session.

All in favor; Motion passed.

Consent Agreement 2015-000332

On a motion duly made by Mr. Bushnell, seconded by Ms. Barickman, it was,

RESOLVED to adopt the Consent of Agreement in case #2015-000332.

All in favor; Motion passed.

The REC approved the Consent of Agreement in the matter of Rebecca Baker.

Consent Agreement 2015-000323

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it

was,

RESOLVED to adopt the Consent of Agreement in case #2015-000323.

All in favor; Motion passed.

The REC approved the Consent of Agreement in the matter of Alfie Oyao

Consent Agreement 2015-000337

On a motion duly made by Mr. Bushnell, seconded by Ms. Barickman, it was,

RESOLVED to adopt the Consent of Agreement in case #2015-000337.

All in favor; Motion passed.

The REC approved the Consent of Agreement in the matter of Laura Temple.

Consent Agreement 2013-0002261

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to adopt the Consent of Agreement in case #2013-002261.

All in favor; Motion passed.

The REC approved the Consent of Agreement in the matter of Gloria Shriver.

Agenda Item 8 - Investigator Report

Statistical Report – 8(a)

Mr. Paff presented the investigative statistical report covering information compiled February 10, 2015 through May18, 2015. There were 20 opened matters and 43 closed matters. There are 23 matters that are under active investigations or pending litigation. Mr. Paff said the case load is becoming very current and the old cases are being worked now.

Probation Report

Mr. Paff discussed the Probation report with the Commission. There are currently 4 licensees on probation and they are so far complying with their probation requirements.

Investigator Paff presented the REC with two (2) voluntary surrenders for their consideration.

On a motion duly made by Ms. McConnochie, seconded by Mr. Bushnell, it was,

RESOLVED that the Real Estate Commission accept the voluntary

license surrender of case # 2014-002177.

All in favor; Motion passed.

The Real Estate Commission accepted the voluntary license surrender of Lorna J. Noriega.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie it was,

RESOLVED that the Real Estate Commission accept the voluntary license surrender of case # 2015-000296.

All in favor; Motion passed.

The Real Estate Commission accepted the voluntary license surrender of Melissa Godley.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to go into executive session. Mr. Bushnell stated:
In accordance with AS 44.62.310(c)(2): I move we go into executive session for the purpose of discussing subjects that tend to prejudice the reputation and character of a person.

All in favor; Motion passed.

Into executive session at 11:22 a.m.
Out of executive session at 11:44 a.m.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to come out executive session.

All in favor; Motion passed.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to deny the application for a real estate salesperson license in the matter of case #2015-000511.

All in favor; Motion passed.

License application for Geoffrey J. McGrath has been denied.

Broker Notification

Investigator Paff presented an item for the REC to consider, Broker notification. He told the REC when a licensee receives a complaint against them; their employing Broker is not notified. The Investigator would like for the REC to provide the REC Investigator the authority to notify the Broker of the complaint filed against the licensee.

Commission members discussed authority for this type of action and have the Department of Law look into authority for such notification.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to give the Investigator the authority that when a complaint is filed against a licensee, that the Broker of that licensee also receives a carbon-copy of the complaint letter. And that this action go to the AG's office (Department of Law) to make sure it is not in conflict with REC statutes or regulations.

All in favor; Motion passed.

Advertising Violations

Investigator Paff talked about a draft letter requested by the REC at the last meeting addressing imposition of civil fines for licensees with advertising violations. Investigator Paff did run it by the Department of Law and was advised that the REC has the authority to impose fines on this matter. The draft letter is for the REC to consider before it is sent to all Brokers.

REC members discuss advertising and signage. Ms. Burke suggested a \$500 starting fine. Ms. McConnochie suggested the letter go out immediately and provided it to the Broker several times. Mr. Bushnell stated he is not in agreement with an initial fine of \$500 but that it be escalated after multiple violations. The intent is that the Broker and the licensee both are fined for an advertising violation. Ms. Harvill stated for clarification, after Sept 1st (2015) licensees will need to be in compliance and it will no longer be a warning. Ms. Barickman suggested that the letter should state that advertising can only be in the name of the Brokerage registered with the REC to avoid a fine.

Commission convened for lunch at 12:35 p.m.
Commission reconvened at 1:30 p.m.

Agenda Item 6- 12 AAC 64.420(c) and (g) - Continued

Mr. Bushnell addressed the REC with his amended version of the proposed regulation 12 AAC 64.420(g). He re-wrote (c) to include (g).

C) A course certified by the commission may be offered for credit

- 1. A course certified by the commission to satisfy the requirements under 12 AAC 64.500(b)(1) may be offered for credit from the date the commission certifies the course until January 31 of the even numbered year that completes two full licensing cycles.*
- 2. A course certified by the commission to satisfy the requirements under 12 AAC 64.500(b)(2) may be offered for credit from the date the commission certifies the course until January 31 of the next even numbered year, except that a course that is certified by the commission from October 15th of an odd -numbered year*

through January 31 of an even - numbered year may be offered for credit from the date the commission certifies the course until January 31 of the following even – numbered year. The commission will provide course sponsors with applications for course recertification by October 15 of odd – numbered years.

Discussion ensued about the content of the amended version by Mr. Bushnell. Ms. McConnochie suggested it go back to Ms. Milks for review again. Ms. Barickman said she and Mr. Bushnell will work on this and email it to Ms. Walsh.

Agenda Item 9 – Old Business

RF Salary Expense Question from 02/25/2015 – 9(c)

Salary Expense question raised by Ms. Burke was responded to by email from Ms. Kathleen Huse with the Div. of Administrative Services. An adjusting journal entry for Ms. Walsh's time billed to the Recovery Fund will be made.

REC Financials: before/after 10-yr look back – 9(d)

The REC was provided with the 10-year look back on REC financials. Ms. Burke said the look-back is incorrect because they used the wrong numbers to make the allocation. In 2001 the carry-forward was a deficit of \$189,206 that is incorrect. The number should be \$146,809. The Division picked up was the *annual deficit* and they dropped \$42,397 from our books altogether. In a nutshell, Ms. Burke stated that this makes all the numbers going forward incorrect because they used those numbers to make the allocation. If you start out with an incorrect number you end up with a wrong number. The sheet (10-yr look back) looks correct; however, the email from Ms. Chambers to Ms. Walsh stated an incorrect number. Ms. Burke is concerned that the incorrect number was used in the re-allocation of the 10-year look back. Ms. McConnochie stated that perhaps Ms. Burke should talk to Ms. Chambers about this difference in the numbers. Ms. Davis stated that Ms. Burke keep Ms. Walsh informed of her findings.

Regulation update, 12 AAC 64.118 & .119 – 9(e)

REC reviewed the regulation project of 12 AAC 64.118 & .119.

On a motion duly made by Mr. Bushnell, seconded by Ms. Barickman, it was,

RESOLVED to adopt the regulation of 12 AAC 64.118

**Six in favor; One opposed. (Ms. McConnochie)
Motion passed.**

On a motion duly made by Mr. Bushnell, seconded by Ms. Barickman, it was,

RESOLVED to adopt the regulation of 12 AAC 64.119

**Six in favor; One opposed. (Ms. McConnochie)
Motion passed.**

Ms. McConnochie stated that the changes made are not necessarily what should have been

made to either document.

Ms. Burke stated that she would like to have items that are requested by the REC extracted from the meeting minutes and provided separately and Ms. Walsh has done that.

Investigator Paff provided REC members with a copy of Maryland regulations for advertising and teams. Mr. Bushnell said this will have to be considered in the future when the REC looks at potential regulation changes. Ms. Barickman stated that this is a huge topic not only advertising but supervision issues and public perception. Ms. McConnochie stated we have to be careful not to have restraint of trade to licensees. It's a very difficult issue. Ms. Davis stated we need to set aside time to address this issue and put it on the next agenda.

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to have staff put out notice to licensees and the public, that at the next regular meeting of the REC, we will be taking comment on how the REC should address real estate team names.

All in favor; Motion passed.

Agenda Item 11 – Division Issues/Update

Ms. Walsh stated that she and Ms. Davis recommend that the REC meet for a teleconference to discuss the renewal fee and biennial revenue needed. It was determined that the REC meets July 22 at 10:00 a.m.

Renewal Fees/Division Analysis – 11(a)

The REC spoke with Ms. Hewlett, Administrative Officer for CBPL and Director Janey Hovenden via telephone from Juneau.

Ms. Davis introduced each of the Commission members to the Director.

Ms. Hewlett went over 3rd quarter REC revenues & expenditures. Inter-agency Legal breakdown of \$45,195 for two types of legal items are: Investigative \$38,655 regulations advise \$6,540.

Ms. Burke asked Ms. Hewlett about account code 71818 PERS defined benefit unfunded liability, is that based on the actuarial determination? Ms. Hewlett stated she wasn't sure what "unfd" meant. Ms. Burke stated that it was "unfunded". Ms. Burke wanted to know if that unfunded liability of \$4,355 was the actuarial determined liability. Actuaries are determined every year and she wanted to know if that was a current determination. Ms. Hewlett misunderstood Ms. Burke's question and began discussing actual expenses. Ms. Burke stated this would not be expenditures but rather a liability. Ms. Burke asked Ms. Hewlett that if she comes across this information in the future to let us know. There were no further questions from the REC of Ms. Hewlett or Director Hovenden.

Ms. Burke asked Mr. Paff about the legal expenses incurred by Investigations. Investigator Paff said Chief Birt reviews all Dept. of Law invoices. Ms. Burke also indicated that she asked the question about the unfunded liability because if it is not tied to the actual amount the actuaries say you should be paying, we'll get a huge year-end adjustment and

there wasn't an answer provided.

Agenda Item 10 – New Business

Letter from Keller Williams' Broker, Shana Ackles – 10(a)

REC reviews the letter from Keller Williams Broker, Shana Ackles is seeking a new fee to transfer licensees or to change from one Broker to another.

Mr. Bushnell indicated that the change in fees were a result of the cost-allocation study and what was being charged for different services. Ms. Barickman spoke to this issue as well having just changed Brokers in multiple offices. She said the process is heaped in paperwork and that there needs to be a more streamlined process. Mr. Bushnell said we need to make a determination of the fees again. Ms. Walsh said there is going to be a cost somewhere either in service fees or in renewal fees to account for the REC cost to the Division. Ms. Ackles suggested that perhaps the fees be looked at on a scale of up to 10 be one fee and in excess of 20 it's another fee. Ms. Burke said we decided to spread the cost across all licensees to come up with the 1.5 million to operate the REC at the last renewal. Ms. Burke said the cost may be less but the billing amount either needs to be picked up by renewal costs or service fees. Ms. Davis said we need to look at fees and figure out what the Division is going to do to us. She also suggested that we have this issue on the agenda for September. Ms. Burke asked Ms. Walsh what the Broker's had to pay in fees to change a broker. Keller Williams, Jack White and Century 21 Realty Solutions all gave their permission to review their costs associated with a Change in Broker.

ARELLO Annual Conference 9/9-13/2015 – 10(b)

Travel to ARELLO was reviewed and discussed by the REC. Ms. Walsh indicated that it is about \$2700.00 per person per conference

On a motion duly made by Mr. Bushnell, seconded by Ms. McConnochie, it was,

RESOLVED to have up to three of our staff attend the appropriate ARELLO conferences in FY16 as they are scheduled.

All in favor; Motion passed.

AAR Conference 9/29-30/2015 – 10(c)

Travel to Alaska Association of Realtors conference in Homer.

On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it was,

RESOLVED to have Sharon Walsh attend the Alaska Association of Realtors conference in Homer.

All in favor; Motion passed.

Advertising as a R/E "consultant" – 10(d)

Ms. Walsh asked about someone advertising as a "real estate consultant" is that acceptable to the REC. The Commission members saw no issue or violation of someone that is a

licensee advertising as a real estate consultant.

Broker Manual – 10(e)

Ms. Davis spoke to the issue of updating and revising the Broker manual. Ms. Barickman and Ms. McConnochie will work on the Broker Manual. Investigator Paff asked that while this is under revision it should be taken down from the REC web site.

Advertising Violations -Broker Letter – continued

Ms. McConnochie said for the REC to take a look at the draft letter again going out to Brokers notifying them that they could be fined for advertising issues/violations.

Ms. Harvill said “lack of listing agreements” should be taken out. Mr. Bushnell said he’s okay with it and it should be left in and it’s just a list of things.

On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it was,

RESOLVED to send the revised letter out to licensees and Brokers as soon as possible at least once, if not twice, prior to September 1, 2015 when the fines would go into place and file a complaint, not just a phone call to the Investigator.

All in favor; Motion passed.

On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it was,

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 3:50 p.m.

Prepared and submitted by:
Sharon Walsh

Approved:

Nancy Davis, Chairperson
Alaska Real Estate Commission

Date: _____