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

REAL ESTATE COMMISSION
MEETING MINUTES

December 2, 2015

"These draft minutes were prepared by the staff of the Division of Corporations, Business and Professional Licensing. They have not been reviewed or approved by the Commission." 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 December 2, 2015, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, December 2, 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, Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District, Chair
Marianne Burke, Public Member
Eric Bushnell, Associate Broker at Large (arrived at 9:10 a.m.)
Stacy Harvill, Associate Broker, 4th Judicial District
Traci J. Barickman, Broker, 3rd Judicial District

Absent:

Cindy Cartledge-Public Member (excused)

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Project Assistant
Jay Paff, Investigator II
Dawn Bundick, Investigator II

Guests Present:

Errol Champion, Representative for AK Association of Realtors and Broker of Coldwell Banker Race Realty, Juneau
Dale Price, Heritage Homes & Relocation
Karen Moutry-Pelham, Salesperson, Real Estate Unlimited
Shana Ackles, Broker, Keller Williams Realty, AK Group, Anchorage
Anita Bates, Assoc. Broker, Dwell Realty, Anchorage
Brad Cole, Broker, Arolik Real Estate Investments
Carl Wiltfong, Salesperson, Real Estate Unlimited
Joel Fuller, North Star Properties
Renea Miller, Century 21 Realty Solutions
Gabe Stephan, Broker, Jack White Real Estate

DRAFT

Scott Myers, Assoc. Broker, Jack White Real Estate

Guests Present via Telephone:
Janey Hovenden, Director, Corporations, Business & Professional Licensing (CBPL)
Sara Chambers, Operations Manager, CBPL
Martha Hewlett, Fiscal Officer, CBPL

Chair Nancy Davis addressed the Commission members with board protocol. She spoke on how she would recognize members and that she would limit them if they got too lengthy in any discussion. She also added items to the agenda: 5(d) Royse Newsletter 7(g)ITB on E & O update 8(a) Audit of REC by Legislative Audit, 8(b) Difference between license styles new vs. old style formatting;

Approval of Agenda- 1(b)
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 December 2, 2015 as amended.

All in favor; Motion passed.

Agenda Item 2 - Approval of Meeting Minutes
September 2, 2015- 2(a)

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

RESOLVED to approve the September 2, 2015 meeting minutes.

Ms. Burke had concern as to how the goals & objectives appeared on page 10. Ms. Harvill suggested that wording be added to: Commission members discussed goals & objectives for FY16, "some ideas were" and list them out.

All in favor; Motion passed.

September 28, 2015- 2(b)

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

DRAFT

it was,

RESOLVED to approve the September 28, 2015 teleconference meeting minutes.

All in favor; Motion passed.

November 2, 2015- 2(b)

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

RESOLVED to approve the November 2, 2015 teleconference meeting minutes.

All in favor; Motion passed.

REC member Eric Bushnell joined the meeting at 9:24 a.m.

Agenda Item 3 - Public Comments

REC members heard from Errol Champion. Mr. Champion will be taking over as the Alaska Association of Realtors (AAR) Representative to the REC and will be present at future meetings. Mr. Champion addressed the issue of Brokers notification when a complaint is filed with the REC Investigator. He indicated that AAR supports that. He went on to state that the AAR is in support of the change to the statute to increase Broker education and experience as outlined in the letter from the REC Executive Administrator. Ms. McConnochie asked that the AAR take the lead with the REC terms. Ms. Burke stated her appreciation for AAR to carry the water for the REC, however, her concern remains that the REC maintain industry-regulator divide. Ms. Barickman thanked Mr. Champion and asked if any non-Realtors are invited to participate so they feel welcome in the process. She maintained that AAR is the best choice in assisting the REC with Legislation. Mr. Bushnell asked that CCIM members be included. Mr. Champion told the REC that legislation needs to be introduced by January 20, 2016.

Shana Ackles, Broker of Keller Williams sent an email to the REC and presented the issues she and other Brokers would like to see changed. She indicated that Broker Post-Licensing education (PLE) needs revising. She recommended requiring some amount of transactions. Mr. Bushnell raised concern regarding this idea being viewed as a restraint of trade issue. Ms. Ackles would like to see the broker sign-off on PLE as licensees complete the hours needed.

The REC reviewed an email from Ms. Fossoth regarding carbon sequestration on leased land and requested that the REC consider changing laws or regulations to allow for carbon offsets. The REC discussed Ms. Fossoth's comment/request and no formal action was taken to move on this issue.

The REC reviewed a letter from Mr. Terry Yeager, Broker from Homer. He asked for

DRAFT

direction on how to proceed with the new marijuana law allowing for possession and how should he deal with it as a Property Manager? Do we need to put language in lease agreements? Ms. McConnochie suggested a change to the Property Disclosure form. Mr. Bushnell stated the REC should wait until the regulations are complete and from a Brokers standpoint, it should be left to the Landlord to police the issue. Ms. Davis advised the REC that although that we don't know the final outcome we should consider how to handle it on documents.

Agenda Item 4 – Investigator's Report/Probation Report

Statistical Report/Probation Report – 4(a)

Mr. Paff addressed the Commission and introduced Investigator Dawn Bundick, who is the Probation Monitor for Real Estate and various other boards. Ms. Bundick presented the REC with the Probation Report. She indicated that all but two licensees are in compliance. She stated that as of yesterday Brandy Pennington had not paid her fine which was due. She stated that the other licensee, Geoffrey McGrath had not done his self-evaluation report however, he is not affiliated with a Broker at this time.

Investigator Paff provided an update for the time period August 17 through November 17, 2015. He stated that19 matters were opened and 24 were closed-10 of those were closed as Incomplete; 16 are currently open as a complaint or investigation.

Consent Agreements – 4(b)

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): 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 10:04 a.m.
Out of Executive session at 10:14 a.m.

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

RESOLVED that they come out of executive session.

All in favor; Motion passed.

Consent Agreement 2015-0001887

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

DRAFT

was,

RESOLVED to adopt the Consent of Agreement in case #2015-0001887.

All in favor; Motion passed.

The REC approved the Consent of Agreement in the matter of Christopher Walden.

Ms. McConnochie asked Mr. Paff about the notification of a Broker when a complaint is filed against a licensee in that Broker's office. Mr. Paff was asked to ask the Assistant Attorney General about notifying Brokers when a complaint is filed. Mr. Paff also discussed team and contractual agreements with team leaders and Brokers. Ms. Barickman suggested the members look at AS 08.88.396 and more specifically at 08.88.398.

Break at 10:25 a.m.
Reconvene at 10:34 a.m.

Agenda Item 5- Executive Administrator Report

Recovery Fund Balance Report – 5(a)

Ms. Walsh presented the Recovery Fund financial reports to the Commission. The Statement of Revenue and Expenditures was reviewed as of June 30, 2015. The ending balance was $454,264. Ms. Burke indicated she was pleased with this report from the Division of Administrative Services(ASD) and to pass on her gratitude to Mary Manning and her staff. Ms. Burke also inquired about whether there was any information about the Recovery Fund on the REC website. She suggested additional information be provided on the process for the real estate consumer. Item 5(b) would be discussed under Item 9 Division Update.

Licensing Statistics - 5(c)

The licensing statistics for the period ending November 20, 2015 were presented. Licensees with an expiration date of 1/31/2016 account for 2,705; total active (status of active) licensees during this time period: 2,466. We had 79 licensees transfer; 2 suspended; 2 on probation. There were 12 new offices that opened during this reporting period.
Mr. Bushnell would like to see a line added to the report indicating the number of licensees that need to complete PLE. Ms. Harvill asked about suspended license versus a lapsed license and that she is seeing more licensees on the new database as having a suspended status. REC staff will look into this and report back at the March meeting.

Royse Newsletter -5(d)

Ms. Walsh told the Commission that she provided the Department of Law a copy of the newsletter from Royse and Associates that stated there was a conflict of interest with two of the Commission members who are educators. A copy of the recording was also provided. Ms. Barickman also addressed the newsletter and stated that the 7th paragraph of the first page. The accusation is that the REC did not point out that we own and operate a real estate school. It is disclosed in the REC educators biographies that they each own a real estate education business and that it's been thoroughly disclosed. Mr. Bushnell pointed out

DRAFT

that another inconsistency in the Royse newsletter is that the regulation project cited on page two is that the project did not go out for the 30-day public comment period; however, it has not gotten that far in the project and is still under review before it can go out for public comment.

Executive Administrator Walsh updated the members on the renewal that began on November 16, 2015. As of December 1, 2015, 170 licensees had renewed. She advised the REC that there is a new system(database) and it requires licensees to provide not only their license number but also must include the board identifier (REC) and license type (B,A or S) as of June 30, 2015. That is your new number in the REC system. Ms. Harvill addressed the issue of license formatting showing a comparison of old versus new. She would like to see that the brokerage name be on the first third (top portion) of the license. Ms. Barickman stated that at the least it should have the Broker's name and the licensee's name on it. Ms. McConnochie stated it should have employing broker and office.

Agenda Item 6- Education Report

Education Statistics – 6(a)

Project Assistant Harris presented the Education report to the REC. There are currently 7 Broker upgrade courses, 10 Salesperson- Pre-licensing and 16-Post licensing courses. 257 elective courses, 51 designated courses for a total of 341 courses available. 6 new instructors were approved during this period and 68 permanent instructors. Ms. Harris stated that the new Continuing Education database still needs tweaking and is working with Division staff in Juneau and IT to correct these issues. Ms. Burke asked Ms. Harris if she compared her manual tally of the education fees collected for the Recovery Fund with those numbers provided by ASD. Ms. Harris stated she would look into it.

Regulation Tracker – 6(b)

Ms. Harris presented the Regulation Tracker for the Commission to review. She stated that there is one(1) outstanding regulation project. 12AAC64.420(c)-Application for course certification this project is at Dept. of Law. The Broker's Commission regulation 12 AAC 64.240, will be effective December 16, 2015..

Designated Continuing Education(DCE) Guidelines-6(c)

Ms. Harris asked the Commission about providing REC staff with guidelines for submission of DCE courses-similar to the procedure used in the past.

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

RESOLVED to adopt the following guidelines for the 8 hours of designated continuing education courses submitted for the time period February 1, 2016 through January 31, 2018: 1) Contract Law-understanding forms, fundamentals of contract law, rescission agreement, basic contract law. 2) Consumer Protection-Truth in Lending/RESPA Integrated Disclosure (TRID), Anti-Trust Price Fixing, Fair Housing, Advertising, Property Disclosure. 3) Licensee Relationships-complicated scenarios e.g. teams, consumer

DRAFT

disclosure, basics of a relationship, understanding the various relationships and options for licensees. 4) Situational Ethics-complicated scenarios e.g. open house scenarios, negotiating practices, good risk management techniques.

All in favor; Motion passed.

Recess for lunch at 11:27 a.m.
Reconvene at 12:36 p.m.

Agenda Item 7
Broker PLE information requested Item 7(a)
The REC recapped the September 2, 2015 meeting issue regarding Broker post-licensing education. They reviewed ARELLO information from other jurisdictions. Ms. McConnochie suggested they consider an amalgamation of upgrade course and post-licensing education. She went on to state that a longer period of time is needed before allowing a Salesperson to upgrade to an Associate Broker or Broker; 24 months is not long enough. Mr. Bushnell indicated that more education is good as long as it is the right education. Ms. Barickman stated that supervision is not a restraint of trade and that she thinks that people need more experience. Ms. McConnochie indicated that this would be an issue because the majority of real estate licensees don't have employers and are independent contractors. Ms. Barickman asked if increasing experience is a restraint of trade and do we need to go to the Department of Law to find out?

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

RESOLVED to ask Department of Law to look at whether or not they feel by adding another layer of education or experience whether or not it will trigger a restraint of trade.

REC discussed the motion on the table. Ms. Harvill suggested that a person test to become an Associate Broker and then stagger PLE with very specific training – similar to an internship. Mr. Bushnell stated this change must be done through the Legislature and that sending it to the Dept of Law would not be a good use of our money since this requires a statute change. Ms.McConnochie said there are two components: Salesperson to Associate Broker/ Broker and increase hours for Broker Upgrade course.

Ms. Burke calls for the question.

Ms. Barickman asked that the motion be read again.
The motion was re-read.
Ms. Barickman voted in favor. Ms. Burke, Ms. McConnochie, Mr. Bushnell and Ms. Harvill all voted against the motion.

Motion failed.

DRAFT

Ms. McConnochie suggested that the Executive Administrator send a letter to AAR and Errol Champion to look at what potentially they might suggest and present their findings at the next meeting. Ms. Harvill asked about the procedural direction for AAR and if the REC was okay with doing that? Ms. McConnochie said that we want the substance of our discussion to be used for AAR task force. Ms. Burke stated it was not necessary just let Mr. Champion know we want it done. Ms. McConnochie withdrew her motion. Mr. Champion addresses the REC and stated we can work together on this and that we are up against a tight deadline. Ms. Burke stated we are very much in favor, as long as we are communicating and that the REC can always hold a teleconference.

Broker Manual Update Item 7(b):
Ms. Walsh asked that the members look at the current draft of the Broker Manual and provide input. She would like to have all members sign off as having reviewed this by February 15, 2016. She indicated that other jurisdictions have these and are available to review and make suggestions before we meet in March. Ms. McConnochie stated the Brokers Manual needed to address the teams, advertising and trust account issues. Mr. Bushnell asked Brokers, Gabe Stephan with Jack White and Shana Ackles with Keller Williams if they would provide copies to the Executive Administrator for policies their respective companies have on the issue of teams.

Education Committee Update Item 7(c):
Ms. Barickman addressed the Commission on the overview of what the Education Committee was tasked with by former Chair Anita Bates and the former Commission. It was to develop a plan on the Broker Post Licensing issue and make recommendations. Ms. Barickman stated that the objectives have been accomplished. Ms. Barickman stated that in the future, the REC should provide expectations of a committee.

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

RESOLVED to sunset the Education Committee.
All in favor; Motion passed.

Update on regulation 12 AAC 64.240(e) Item 7(d)
Ms. Walsh updated the REC on the status of the regulation for Broker's Commission. It will become effective as a regulation on December 16, 2015. This will allow the Broker to pay the licensee's legal entity.

Commission breaks for lunch at 12:08 p.m.
Commission reconvened at 1:00 p.m.

Consumer Disclosure Video Proposal Item 7(e)
Mr. Paff provided the REC with the cost of producing a video on the violation a licensee can expect of not providing and explaining the relationship that a real estate consumer may enter into with the licensee. The estimated cost of travel throughout AK is approximately $3,600. The cost to produce the video involved two cost structures: $6,600 and $12,000. Mr.

DRAFT

Bushnell stated that the $12,000 video was a bargain and he reminded the REC that the intent of the video was to have a consistent model/message for licensees and not necessarily for the public. Ms. McConnochie stated that the problem is that the consumer is not consistent and that Mr. Paff's presentation that he gave in Juneau is more valuable. It is a far better way to get people to abide by the law. Ms. Burke stated that this is not an either or situation. Ms. Barickman stated that she hasn't seen Mr. Paff's presentation but she agrees with Ms. McConnochie that Mr. Paff and Ms. Walsh need to get out there. Mr. Bushnell was concerned that Mr. Paff is not an educator and Brokers are going to have varying ways to implement this document. Ms. Burke stated that the REC has the money in the Recovery Fund to accomplish this. Ms. Walsh stated that she thinks this is an invaluable tool to have a video of the Consumer Disclosure interpretation for licensees but that it is just as important for the consumer to have access to this information.

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

RESOLVED to move forward with the video for a Request for Proposal(RFP) for the Consumer Disclosure video.

Mr. Bushnell offers an amendment, seconded by Ms. Harvill, it was recommended that prior to an RFP that we complete a rough-draft of guidelines on what the structure and content will look like.

Ms. Burke, Ms. Harvill, Ms. Barickman and Mr. Bushnell in favor; Ms. McConnochie opposed the amendment. Motion passed.

Ms. Burke stated that she did not think it is appropriate to have Mr. Paff's presentation recorded for video.

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

RESOLVED to approve $4,900 for Mr. Paff to travel to educate licensees on the use and importance of the Consumer Disclosure.

Mr. Bushnell offered an amendment, seconded by Ms. Barickman, it not be limited to discussion on Consumer Disclosure.

Ms. Barickman asked for clarification on the motion and amendment:

Move to approve $4,900. for Mr. Paff to travel to educate licensees on Consumer Disclosure. Amendment to not limit to Consumer Disclosure.
Approve $4,900.00 for Mr. Paff to travel to educate licensees.

All in favor, motion passed.

DRAFT

Commission Breaks at 2:18 p.m.
Reconvene at 2:29 p.m.

Agenda Item 9- Division Update

REC members teleconference with Director Janey Hovenden, Operations Manager, Sara Chambers and Fiscal Officer, Martha Hewlett. Fiscal year (FY) 15 final report was reviewed. Prior to the afternoon teleconference the 1st quarter of FY16 Revenue and Expenditure report was received and subsequently reviewed. Ms. Burke thanked Director Hovenden, Ms. Chambers and Ms. Hewlett for the corrections in the numbers going forward. No further questions or comments were made. Ms. Davis thanked Director Hovenden and her staff in Juneau. Ms. Chambers stated that the REC would soon get the annual report. She also addressed Ms. Burkes question regarding the annual ethics report. She stated that only staff has an annual requirement to report and not board members. Board and Commission members are required at every meeting to report any ethical violations to the Executive Administrator and that any receipt of gifts should be reported and disclosed.

Agenda Item 7- Old Business

Ms. Burke asked that the following statement from her be added to the meeting minutes.

> "In light of the universally accepted definition of situational ethics, I would like to go on record that I oppose the use of that phrase to any educational context and that my vote on 09/28/2015 be changed to "no" in the motion containing that phrase".

No action was taken.

Invitation to Bid(ITB) Re-cap on Errors & Omissions Insurance Item 7(g)

Ms. Walsh told the REC that the Division (CBPL) through the Procurement section, issued an ITB for Errors & Omissions insurance. However, after approximately 20 days there were no bids submitted.
Ms. Burke stated that things were in the bid that were not necessary and should be stripped out. Ms. McConnochie asked if there was a way to get information from insurance providers for example, if the $300.00 a year premium is too low then what would you charge?
Ms. Burke agreed with Ms. McConnochie, and stated she will work on another ITB with Ms. Walsh to provide to Gina in the Procurement section before the end of December.

Letter to AK Association of Realtors Item 7(f)

Ms. Walsh addressed the letter sent to the AK Association of Realtors and all Brokers and had it posted to the REC web site regarding a change to Broker upgrade education and experience. This was also addressed earlier in the meeting by Mr. Champion and indicated that the AAR is willing to take this to the Legislature for a change to 08.88.171 and 08.88.091.

DRAFT

Agenda Item 8- New Business

Ms. Davis addressed the REC Sunset Audit conducted by the Division of Legislative Audit. She stated that good comments were provided. Two items of concern were noted: 1) lack of E & O insurance and 2) the Chief of Investigations should take action to ensure cases are actively investigated and completed. The REC audit can be viewed at the Alaska State Legislature, Division of Legislative Audit web site:
http://legaudit.akleg.gov/docs/audits/sunset/dcced/20091rpt-2015.pdf

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

RESOLVED to adjourn the meeting until March 9, 2016.

All in favor; Motion passed.

Meeting adjourned at 3:09 p.m.

Prepared and submitted by:
Sharon Walsh

Approved:

_____
Nancy Davis, Chairperson
Alaska Real Estate Commission

Date: _____

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