

Annual Report
Fiscal Year 2012

ALASKA REAL ESTATE COMMISSION

July 2012



**DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING**

This Annual Performance Report is presented in accordance with Alaska Statute 08.01.070(1) and Alaska Statute 37.07.080(b). Its purpose is to report the accomplishments, activities, and the past and present needs of the licensing program.

**ALASKA REAL ESTATE COMMISSION
FY 2012 ANNUAL REPORT**

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**ALASKA REAL ESTATE COMMISSION
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IDENTIFICATION OF COMMISSION MEMBERS**

<u>Commission Member</u>	<u>Date Appointed</u>	<u>Term Expires</u>
Brad Cole Associate Broker / 3 rd Judicial District	March 1, 2007	March 1, 2014
Marianne K. Burke Public Member	March 1, 2010	March 1, 2014
Anita Bates Broker / Broker at Large	March 17, 2011	March 1, 2015
Stacy Risner Associate Broker / 4 th Judicial District	October 27, 2011	March 1, 2013
Nancy Davis Broker / 1 st Judicial District	March 1, 2009	March 1, 2013
Christina E. Swires Associate Broker / Broker at Large	January 28, 2008	March 1, 2012
Charlene L. Flyum Public Member	October 29, 2010	March 1, 2014

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IDENTIFICATION OF STAFF

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**ALASKA REAL ESTATE COMMISSION
FY 2012 ANNUAL REPORT
NARRATIVE STATEMENT**

The Alaska Real Estate Commission's Mission Statement:

The mission of the Alaska Real Estate Commission is to protect the public interest by licensing practitioners and enforcing the established standards, to promote professional excellence in the real estate industry and to support and encourage licensees.

Real Estate Commission Legislation

The only legislation that was acted upon during the Twenty-Seventh - second session of the Legislature was HB267. This bill allows for temporary permits issued by the Real Estate Commission (REC); relating to licensed assistants who are employed by other real estate licensees; and relating to contributions by a real estate licensee to a charitable organization.

Real Estate Regulations

The Commission worked on a variety of new and existing regulations.

Existing Project:

12 AAC 64.600-650 Errors & Omission Insurance-note: this is a split regulation with the Department of Commerce, Community & Economic Development and the Commission. The proposed regulations of the REC were tabled again at the December 2010 meeting. We were waiting for the Department to complete a revised draft of their regulations before proceeding with the Commission's regulation project. Our regulations for this project were proposed at the June 6, 2012 meeting and are expected to go out for public comment in the near future.

The remaining regulations were revisions to existing regulations and include the following:

Revised:

- 12 AAC 64.059(b)(6) Review of License Application
- 12 AAC 64.059(f)(7) Review of License Application
- 12 AAC 64.060(a)(3) Applications of Licensure
- 12 AAC 64.064(b)(3)(C) Educational Requirements after Initial License
- 12 AAC 64.064(c)(1) Education Requirements After Initial License
- 12 AAC 64.064(c)(1)(A) Education Requirements After Initial License
- 12 AAC 64.068(b) Legal Entities
- 12 AAC 64.071(b)(3) License Renewal
- 12 AAC 64.071(f) License Renewal
- 12 AAC 64.073 SF/RF Fee
- 12 AAC 64.130(4)(B) Grounds for Revocation or Suspension
- 12 AAC 64.111(2) Closing an Office
- 12 AAC 64.125(e) Supervision
- 12 AAC 64.280 SF/RF Scope
- 12 AAC 64.285 SF/RF Claims
- 12 AAC 64.290(c) SF/RF Notification of Claim
- 12 AAC 64.990(b)(8) Definitions
- 12 AAC 64.500(n) Continuing Education Requirements
- 12 AAC 64.940(d) Disclosure of Compensation

Repealed:

12 AAC 64.290(b) SF/RF Notification of Claim
12 AAC 64.305 SF/RF Hearings
12 AAC 64.320 SF/RF Motion for Reconsideration
12 AAC 64.980(a) Documents Submitted by Facsimile

Readopted:

12 AAC 64.310 Role of Involved Licensee
12 AAC 64.325 Finding and Conclusions

Recovery Fund Report

There were 0 Recovery Fund claims filed within FY12. There were no claims paid by the Commission for Recovery Fund claims for misrepresentation, fraud, deceit or conversion of trust funds or the conversion of community association accounts. The Commission noticed for the past few quarters of the prior fiscal year that the Recovery Fund was below the statutory minimum balance of \$250,000. In FY11 they took action to increase the fund by increasing all related fees, including education courses and instructors-temporary and permanent, initial course certification fees, re-certification course and instructor fees. This FY12 the Commission proposed regulation setting the Recovery Fund Fee at \$125.00. This was all done in a concerted and immediate effort to bring the balance back into compliance with statute 08.88.455. This measure made for an increase in the fund balance due to the biennial license renewal in ending in January of 2012.

Note:

As of March 1, 2010 the name of the Surety Fund changed to Recovery Fund and claims will now be determined by the Commission after a final arbitration award instead of going through a hearing process at the Office of Administrative Hearings.

Continuing Education

During this fiscal year the Commission approved:

Initial instructors 26; renewed 2
Initial courses 42; renewed 160

New licensees are required to complete 30 hours of post-licensing education (PLE) within 12-months of receiving their initial license. All licensees are required to complete 20 hours of continuing education which are comprised of 12 elective and 8 designated continuing education credits. The Commission continues to strive in providing online courses as consideration to our geographically distinct licensee population. All proceeds from PLE courses and certification of REC instructors are revenue for the Recovery Fund. In the past, the AREC has always sponsored a Train the Trainer workshop by soliciting, through a RFP, a nationally certified trainer to take on this task. However, due to the shortfall in the Recovery Fund, the Commission asked for volunteers to instruct the two-day workshop and provide for donations in the way of classroom, beverages, lunch, hotel and airfare for the instructor. We were fortunate to have volunteers step up and provide for our needs. 28 licensees attended the Train the Trainer course and the Commission was provided with cash donations in the amount of \$800.00 that covered the instructor's airfare, hotel and meals.

Executive Administrator Comments

The Alaska Real Estate Commission remains committed to continue communication with industry members and consumers. AREC staff has continued to work with the real estate industry on regulation and continuing education issues. Staff participates in numerous meetings with associations, boards, Real

Estate offices and continues to audit education courses and Broker trust accounts. This type of outreach has been beneficial in maintaining regulatory and industry cooperation.

The Commission encourages members of the public, the real estate industry and other agencies to utilize the resources we provide on our web site to ensure accurate and consistent information within our jurisdiction.

The Real Estate Commission has been successful because of the 7 members that volunteer their time to promoting the integrity of practicing real estate. The AREC staff and Division are grateful for the Commission's willingness to serve and protect the consumers of Alaska. We appreciate the sacrifice and dedication all members make for the benefit of this state.

Thank you.

Sharon J. Walsh
Executive Administrator
Alaska Real Estate Commission

**ALASKA REAL ESTATE COMMISSION
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 BUDGET RECOMMENDATIONS FOR FY 2013**

<p><u>September 5-6, 2012 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members – (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$2,023.00</p>
<p><u>Attend Alaska Association of Realtors Convention, Girdwood, AK</u> <u>September 2012</u> 1 Traveler (Anchorage) Trip is not a third party reimbursement.</p>	<p>\$0</p>
<p><u>The Association of Real Estate License Law Officials (ARELLO) Conference</u> <u>September 20– 24, 2012 in Halifax, Nova Scotia</u> 1 Traveler (Anchorage) Trip is not a third party reimbursement.</p>	<p>\$2,900.00</p>
<p><u>December 5-6, 2012 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members – (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$2,023.00</p>
<p><u>March 2013 REC Quarterly Meeting, Juneau, AK</u> 8 Travelers (5 Anchorage, 1 Sitka, 1 Homer, 1 Fairbanks) Trip is not a third party reimbursement.</p>	<p>\$6,970.00</p>
<p><u>June 2013 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$2,023.00</p>
<p>Estimated Total Cost:</p>	<p>\$15,939.00</p>

**ALASKA REAL ESTATE COMMISSION
FY 2012 ANNUAL REPORT
RECOMMENDATIONS FOR PROPOSED LEGISLATION FOR FY 2013**

The Real Estate Commission has no proposed legislation at this time to recommend to the Division.

**ALASKA REAL ESTATE COMMISSION
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REGULATION RECOMMENDATIONS FOR FY 2013**

The Real Estate Commission will continue to work on adopting and implementing the Errors & Omission insurance regulations, 12 AAC 64.600-650.

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GOALS AND OBJECTIVES FOR FY 2013

The AREC would like to see the Division of Corporations, Business and Professional Licensing (CBPL) submit a Request for Proposal (RFP) to obtain a provider for Errors and Omissions insurance required of all real estate licensees.

The AREC would like assurances from the Division of CBPL that they will monitor the Recovery Fund so that it does not exceed the statutory limit of \$500,000 and run the risk of any excess going into the State's General Fund. The AREC may consider reducing the Recovery Fund fee, if the financial statements present accurately and reliably in the next few quarters and no unforeseen expenditures will put the fund at risk with a minimum balance.

The AREC would like to see reliable and accurate information presented to them with regards to the Real Estate Commission Revenue and Expenditure Report. This report should include detailed information of expenditures to insure better monitoring of our financial status. There was significant fallout with the Division and the Commission after the Division proposed a 149% increase in licensing fees. The Division's proposal would have taken the fee from \$275 to \$685 to make the Commission "whole". It was determined by the Division that the Commission's expenditures exceeded revenues by \$606,119 for the prior FY10/FY11. The Commission and the licensees rejected this proposed fee increase in which the end result was a renewal fee of \$375. Therefore, the delivery of accurate and timely financials to the Commission is and will continue to be one of their primary concerns. The Commission is expecting the Division to provide financial transparency so that they are advised quarterly of the financial health of the Commission and its operations.

The Commission would like to see the remainder of the trust account audits completed this fiscal year. There are approximately 33 remaining trust account audits to be conducted in Southcentral Alaska. This will require travel to Homer, Soldotna, Sterling, Eagle River, and Wasilla. The other real estate offices selected for audit are located in Anchorage.

Through the combined effort and emphasis by the AREC and the Chief of the Investigative Unit of CBPL, we were able to reduce the backlog of cases in the latter half of the fiscal year. It was announced at the June AREC meeting that with a change in Investigator assignments and collaboration by members to spend time reviewing the large volume of cases, an accumulation over the past few years, the AREC was able to see a 40 percent reduction in cases. We were all encouraged by this development.

Consumer information and resource guides will continue to be added and updated to the Commission web site. The Commission staff will continue to make forms and information available on the web site.

Licensees will continue to be updated of Commission activity such as proposed regulations, meeting summaries and disciplinary actions through the ListServ, newsletter, and the posting of our meeting minutes on the AREC web site.

Continuing education will remain a priority for the Commission. The Commission and staff continue to encourage real estate and affiliated professionals in the industry to consider sponsoring a course. The Commission is interested in providing a broad range of continuing education courses that are relevant to real estate topics listed in 12 AAC 64.500. The Train-the-Trainer seminar was held in July 2011 to encourage additional instructors and improve upon skills for those who already teach. Commission members and staff will continue to update and review education regulations as needed.

The Commission staff will continue its goal to conduct course and instructor education audits.

The Commission and staff will continue to promote relationships with the Alaska Association of Realtors and the national organization of the Association of Real Estate License Law Officials (ARELLO).

The Executive Administrator will continue visits to real estate offices and review disclosure information.

The Commission will continue to ensure that resources are available to maintain an effective operational structure in order to meet the statutory requirements of real estate licensees.

Commission/Board training for new members and refresher training for veteran members was provided in this fiscal year. 3 of the 7 members and 2 AREC staff were able to attend this workshop in Anchorage. A presentation by the Department of Law on the Administrative Procedures Act would help in rounding out additional board/commission training.

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SUNSET AUDIT RECOMMENDATIONS

The Real Estate Commission did not have a Sunset Performance Report conducted in FY2012; however, the Commission did have an Audit Report, #08-20051-07, dated July 3, 2007, FY2006. In the report the auditors recommended three items for the Commission to consider.

Recommendation No. 1:

The Legislature should consider amending the statutes related to the Real Estate Surety Fund (RESF) to provide more complete, effective, and efficient consumer protection to claimants.

1. When the RESF was established in 1974 by statute, the individual claim limit was \$10,000 and the aggregate limit was restricted at \$50,000. At the time of the last audit in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. The recommendation suggested increasing the RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.

Current Status: The issue was partially resolved when the legislature increased the individual claim limit from \$10,000 to \$15,000. However, the prior aggregate claim of \$50,000 per licensee claim limit remained unchanged. *Note: The Legislature did not pass the language suggesting an increase from \$50,000 to \$75,000 in HB418. They kept it at the original aggregate claim level.*

2. Claims against the RESF are administered under the state's Administrative Procedures Act. Under APA a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until the appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Business and Professional Licensing was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the REC to disburse RESF claim awards after they have made a good faith effort to locate the respondent.

Current Status: This issue was resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.

3. State law specifies that RESF can be used to reimburse an individual for a loss "suffered in a real estate transaction as a result of fraud, misrepresentation, deceit." During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since the mobile homes are considered personal property, rather than real property, the sale does not represent a "real estate transaction." The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of the licensees. Despite the hearing officer rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendations suggested amending statutes to specify mobile home transactions as subject to RESF claims.

Current Status: This issue was not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify RESF claims for mobile home transactions. *Note: The REC went on record at the March 14, 2005 meeting stating in the form of a motion that "mobile homes are not considered real property and are not covered under the surety fund".*

Recommendation No.2

The Director of Boards and Commissions, Office of the Governor, should verify that Board members satisfy all statutory requirements prior to being appointed.

In 2007 a board member was appointed to the Commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the Commission. This board member was an associate broker for less than two years prior to his appointment.

The Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the Commission. This appointment could result in the Commission decisions not being supported by adequate professional experience. We recommend the Director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

Recommendation No. 3

The Division should increase licensing fees to eliminate the Commission's current operating deficit.

As of May 31, 2007, the Commission had an operating deficit of \$147,211. The deficit is caused by revenues not covering all of the Commission's expenditures for a two-year licensing period. Alaska Statute 08.01.065(c) requires fees, for an occupation, to be set at a level to approximate the related regulatory costs.

Accordingly, we recommend the Division review the regulatory costs and licensing fees to ensure fees collected are sufficient to eliminate the deficit and meet the annual operating costs of the commission.

Note: The 2006-08 renewal fee was set at: \$380.00 (\$350 licensing fee + \$30 surety fund fee)

The 2008-10 renewal fee was set at: \$380.00 (\$350 licensing fee + \$30 surety fund fee)

The 2010-12 renewal fee was set at: \$366.00(\$275 licensing fee + \$91 surety fund fee)*

The 2012-14 renewal fee was set at: \$500.00(\$375 licensing fee + \$125 surety fund fee)

**The \$91.00 surety fund fee for this renewal period did not follow regulatory procedure and therefore, the Commission was left to refund all renewal applicants \$61.00. The fee was later increased to \$55.00*

The Commission's termination date was extended to June 30, 2016 in HB 413.

FISCAL YEAR 20____ STATISTICAL OVERVIEW

Program: _____

AS 08. _____

12 AAC _____

Name of Individual Completing Report: _____

Date: _____

FY12 LICENSEES	NEW-ISSUED FY 20____	TOTAL AS OF 6/30/____

A. Current Active Licenses, Endorsements, Permits

List type and if issued by examination or credential, as applicable.

LICENSE TYPE & PROGRAM CODE	Lic. Type Code	Status Code	NEW-ISSUED FY 20____	TOTAL AS OF 6/30/____	LICENSURE BASIS
Example: Civil Engineer - AEL	C	AA	10	250	Exam: 6 Credentials: 4
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
TOTAL					

B. Temporary Licenses

LICENSE TYPE & PROGRAM CODE	Lic. Type Code	Status Code	NEW-ISSUED FY 20____	TOTAL AS OF 6/30/____	NOTES
Example: Physical Therapist - PHY	R	AA	4	24	
1.					
2.					
3.					
4.					
TOTAL					

C. Current Licenses Issued as Inactive (not lapsed licenses)
 (Only Medical, Chiropractic, CPA, and Real Estate)

LICENSE TYPE & PROGRAM CODE	Lic. Type Code	Status Code	TOTAL AS OF 6/30/____
Example: Salesperson - REC	S	II	64
1.			
2.			
3.			
4.			
TOTAL			

D. Retired Licenses

CATEGORY & PROGRAM CODE	Lic. Type Code	Status Code	RETIRED DURING FY 20____	TOTAL AS OF 6/30/____	NOTES
Example: Osteopath - MED	O	RR	1	8	
1.					
2.					
3.					
TOTAL					

E. Examination Detail

(List each examination administration separately. Write "See Attached" and attach a separate sheet if necessary.)

EXAM TYPE	LOCATION	DATE	CANDIDATES	NO. PASSED	NO. FAILED
Number of Postponed Exams					
Number of Exam Reviews					

F. Miscellaneous Program Activity

List all instances of fee-related work performed under Centralized Regulations per 12 AAC 02.105 (tracked by each program's fee ticker)

DESCRIPTION	TOTAL
Example: License Verification	62

G. Miscellaneous Program Activity

List all instances of fee-related work performed under the licensing program's regulations that is not included above

DESCRIPTION	TOTAL
Example: Course Approval	16

H. Board Meetings and Teleconferences

DATE	LOCATION (<i>indicate if teleconference</i>)