

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

December 1 & 2, 2010

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 1 & 2, 2010, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, December 1, 2010

Call To Order, Agenda Item 1

Chairman Brad Cole called the meeting to order at 9:03 a.m.

Roll Call, Agenda 1(a)

Members present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairman

Gene DuVal, Associate Broker, 4th Judicial District,

Chris Swires, Associate Broker, Broker at Large

Nancy Davis, Broker, 1st Judicial District, Education Liaison

Marianne Burke, Public Member

Charlene Flyum, Public Member

Absent:

David B. Somers, Broker, Broker at Large, Vice Chairman

Staff Present:

Sharon Walsh, Executive Administrator

Michele Wall-Rood, REC Investigator

Nancy Harris, Project Assistant

Guests Present:

Chuck Booher, Independ. Brokers Assoc., President

Art Clark, Broker & AK Assoc. of Realtors Liaison

Waltraud Barron, Broker Barron Investments

Amy Krier, Broker, Advantage AK Realty Amy Krier

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Robert Maney, Salesperson, Grubstake Realty
Anita Bates, Broker Bates & Assoc. Real Estate
Scott Hattenburg, COSA Committee for Muni of ANC
Sandra Harp, Broker, All Dream Properties
Jeanne Webster, Salesperson, 4 Seasons Real Estate
Chris Kennedy, Admin Law Judge, Ofc of Administrative Hearings
Gary Cox, Salesperson, Real Estate Brokers of AK

Approval of Agenda, Agenda Item 1(b)

Agenda Item 3, there are several public comments and Eileen Cummings comments from 8(c) should be moved to 3 (b). Item 9(b) move to 8(d), then 8(d) becomes 8(e). 8(e) is now 8(f). 8(g) 64.600-650 was 8(d) now propose to move to 8(g). The Commission had talked about the Exemption for first sale in the last meeting and Mr. DuVal asked that he would like to add it as 9(e). Ms. Walsh indicated that she already had 9(e), Instructor Issue. Mr. DuVal asked that 9(d) be the review of 12 AAC 64.111 with an addition of 9(f), a proposed draft of 12 AAC 64.935. Ms. Walsh indicated she had one additional public comment to add to agenda item 3. Comments from Scott Hattenburg, a member of the Municipality of Anchorage Board of On-Site Wastewater Systems.

On a motion made by DuVal, seconded by Burke, and passed unanimously, it was

RESOLVED to approve the agenda as revised.

All in favor; Motion passed.

Welcome New Public Member- Charlene Flyum, Agenda Item 1(c)

Chairman Cole welcomes Charlene Flyum of Homer to the public member seat on the Commission. Ms. Flyum stated that she works for Homer Electric Association as a Human Resource Generalist. She has worked in the past for the Division of Corporations, Business and Professional Licensing. She conveyed that she looked forward to participating in her new role as a Commission member.

Approval of Minutes, Agenda Item 2

September 9-10, 2010 Agenda Item 2(a)

The Commission members reviewed the September 9-10, 2010 meeting minutes for approval.

On page 3 of the meeting minutes, Mr. DuVal said it should read: "It is 'the' material position of the REC that appraisals are not a material item for disclosure, it is 'a' subjective opinion of value". Period.

Chairman Cole asked Mr. DuVal if he intended, "a" instead of "the" before the word material position?

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Mr. DuVal indicated that “a” is what he recommends and not “the”.

Ms. Davis asked if this needs to be voted on since there is a change on record. Chairman Cole called for the vote.

On a motion made by DuVal, seconded by Davis, and passed unanimously, it was

RESOLVED to change the wording in the September 9-10, 2010 meeting minutes on page 3, to reflect the Commission’s position on Best Practices. “It is a material position of the Real Estate Commission that appraisals are not a material item for disclosure, it’s “a” subjective opinion of value.”

All in favor; Motion passed.

Mr. DuVal had another issue he wanted to address in the meeting minutes on page 14, the reinstatement fee was tabled. Mr. DuVal asked that we put it back on the current agenda and address the late fee under agenda item 9, new business.

On a motion made by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to accept the September 2010 meeting minutes as amended.

All in favor; Motion passed.

Public Comment, Agenda Item 3

Chairman Coles addressed the public and asked that they please introduce themselves for the record. Chairman Cole then asked Mr. Hattenburg to address his issue with the Commission.

Scott Hattenburg, P.E., MOA, On-Site Waste Water Board, Agenda Item 3(b)

Mr. Hattenburg currently sits on the Municipality of Anchorage On-Site Waster Water Board. He addressed the Commission on the Certificate of On-Site Systems Approval (COSA), about the concern with the septic approvals in the Anchorage area. He said that about 40% do not have COSA’s on their property. He asked for assistance in the real estate community to come forth and help solve the problem of making sure septic systems are in order.

Mr. DuVal asked Mr. Hattenburg if he had a chance to look at the AREC Property Disclosure form and that this issue is addressed in this document.

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Ms. Swires stated that if the buyer is paying cash or the lender doesn't require it, or if the property is in foreclosure, then there isn't a COSA done. The cost is between \$600 and \$1000.00 for this type of inspection.

C. Booher & W. Barron, Independent Brokers Assn, Agenda Item 3(a)
Discussion on substitute broker issue.

Mr. Booher addressed the substitute broker issue. He indicated that the draft language on the new proposed regulation for this issue looks good. However, he does have an issue with the word "supervise". It can mean different things to everyone. How do we solve this problem? Does it include the right to sign checks on a trust account? If we could go back to a letter of authorization –the way we use to do it or if the State could draft a regulation on how we could do this. The 3rd approach would be a special power of attorney –available on the REC web site with a checklist of what a broker is authorizing for another broker to take on for filling in while the broker is away. That way the Broker of Record knows what he is authorizing the other broker to take care of in his absence.

Chairman Cole thanked Mr. Booher for his time and comments.

Mr. Cole stated that while he attended the Independent Brokers Association meeting, there was a concern expressed that everyone who was an independent broker wants to make sure that we as a Commission are representing them as well and not just the big offices. Every statute and regulation we work with also applies and protects them. To my knowledge no one at this table or in any meeting has that in mind. It's always been our intention to protect every licensee in the state of Alaska.

Ms. Burke stated that since our primary charge is to protect the public, we can't ignore all of the independent brokers. We have the same responsibilities over them as well as the big offices.

Sandra Harp, Broker, All Dream Properties expressed to the Commission that one person from a one person office should be represented on the Commission.

Amy Krier, Broker from Fairbanks, stated that there are between 20-30 single person offices that exist in Fairbanks. She liked the proposed regulation on the broker absence issue. She expressed her opinion on the contract agreement idea that was stated earlier by Chuck Booher. She indicated that brokers should be left to deal with that between the brokers and not involve the Real Estate Commission. In the meantime, she suggested that while the regulation is working its way through the process the Commission should provide guidelines for single broker offices to deal with current situations.

Art Clark, representing Alaska Association of Realtors (AAR), stated that the Commission was off to a good start on draft regulations for broker absences, 12 AAC 64.078. He offered assistance from AAR on this topic. He asked that a statement of policy from the REC be forthcoming during the regulation process to provide for guidelines to Brokers. He stated that it looked like the numbers of buyers not getting COSA's seemed high-but he

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said this is because the numbers were also including default sales. There is not going to be a COSA when the bank takes it back or it is for sale on the courthouse steps. Chairman Cole agreed with Mr. Clark, stating that in the Mat-Su Valley it is a rare transaction that a well and septic DEC approval is not done.

Waltraud Barron, broker with Barron Investments, stated she liked the draft regulation for broker absences; she would like to have the REC add to paragraph 2(b) with the verbiage, "including signing agreements and other forms during the broker of record absence".

Chairman Cole thanked the licensees for attending the Commission meeting. He appreciates them taking the time from their schedules to attend and express their input on the proposed regulation 12 AAC 64.078. He reiterated that the Commission takes this serious too; he indicated that he finds it interesting that in the process of reviewing what was presented and thinking about the issues that could arise it becomes obvious that it is not an easy solution and that was the point of our discussion as well. He stated that it is important that the regulation is done properly and written correctly so that everyone knows what they can and cannot do. He reminded them of the Independent Brokers Association meeting that he attended in October when they talked about what services that another broker could do and the talk centered on hosting an open-house. But the real issue here has to do with signing documents, supervising licensees, supervising a trust account and other office responsibilities. He stated we are not done with this but it was just the opportunity for public comment on this proposed regulation.

Ms. Walsh indicated that item 8(c) now needs to go under item 3(b) these are Eileen Cummings comments to the Commission at the September meeting on the topic of broker absences.

Education Report, Agenda Item 5

Education Statistics, Agenda Item 5(a)

Ms. Harris discussed the Education statistics with the Commission. She stated that as of November 12 there is one new pre-licensing course. Broker Upgrade and Post-Licensing Education courses stayed the same. There are 218 elective courses offered and 29 designated courses. 18 new courses have been approved since the last reporting period. There are a total of 296 courses approved. There are currently 77 permanent instructors. One new sponsor was added.

Chairman Cole asked who was the new sponsor?

Ms. Harris stated she would get that information for the members.

Office of Administrative Hearings, Agenda Item 4

Proposed decision: Tabitha Scott, Agenda Item 4(a)

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On a motion made by DuVal seconded by Burke, and passed unanimously, it was

RESOLVED to go into Executive session per AS 44.64.310(d)(1)

All in favor; Motion passed.

Into Executive Session at 10:10 a.m.
Staff and guests left the room.

For the record Mr. DuVal and Ms. Swires left the Executive Session before the members discussed the Tabitha Scott's proposed decision with Judge Kennedy.

On a motion made by DuVal seconded by Davis, and passed unanimously, it was

RESOLVED to come out of Executive session per AS 44.64.310 (d) (1)

All in favor; Motion passed

Out of Executive Session at 10:22 a.m.

On a motion made by Davis seconded by Burke, and passed unanimously, it was

RESOLVED to adopt the proposed decision from the Office of Administrative Hearings in the matter of Tabitha Scott, license application denial.

All in favor; Motion passed

Commission members Swires and DuVal recused themselves from voting on the issue.

Investigative Report –Agenda Item 7

Statistical Report, Agenda Item 7(a)

Michele Wall-Rood, Investigator III currently assigned to the REC, addressed the Commission and provided a statistical report on her cases and complaints. During the time of August 20th through November 10, 2010 there were 23 cases opened; 11 cases closed and 139 total opened cases. She stated that there are 3 cases at the Assistant Attorney General's office for litigation review. For the Fiscal Year 2011 there are 18 closed cases and 31 opened cases. Ms. Wall-Rood referred members to page 5 of her report to the term classified as "Intake". These are probably not jurisdictional but the new computer system reports them. These will have a "c" in front of the number and it's questionable until we get expert review to flip it into an actual case. She said that this information is not on the

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statistics report but they remain as open files. She stated that there is also a need to communicate with the complainant until further information is obtained.

Ms. Burke asked Ms. Wall-Rood about the 2007 cases and why are they still open?

Ms. Wall-Rood stated that she triages cases as they come in and they are prioritized for public safety and importance. If I have a case in 2010 and it is an incredible public safety issue, the other cases will have to sit for lack of resources.

Ms. Burke asked if we had an investigator that is no longer working with the Real Estate Commission?

Ms. Wall-Rood stated that she still has some cases assigned to her and if you look there will be more cases coming in. There are times when I'm involved in cases that require several weeks of time. If I am working on something that's a high priority or allegations of a criminal case, another investigator may have to pick up a public safety case that comes in because we can't manage it all or there may be a case where someone has specialized knowledge. It's much more efficient and effective to give the case to them.

Ms. Burke asked that the title of some of the 2007 cases sounded really urgent but these may be small allegations because they have been triaged?

Ms. Wall-Rood told the Commission if you are going to file a complaint with me it's going to be very detailed; very dramatic and very exciting. And when the other side comes in it might not be that dramatic. A major fraud and misrepresentation case looks terrible but it may be a box checked wrong or a signature in the wrong place but we can't tell. It's like listening to your children fight, one gives you one story and the other gives you the other side and it's all different.

New Applicants, Agenda Item 7(b)

Avigail Lyons

Avigail Lyons requested to be licensed with a "yes" question on her application.

**On a motion made by Davis seconded by Swires, and passed unanimously,
it was**

**RESOLVED to accept the application for licensure of real estate
salesperson Avigail Lyons.**

All in favor; Motion passed.

Dennis Hedgecock

Dennis Hedgecock requested to be licensed with a "yes" question on his application.

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Mr. DuVal asked to recuse himself, as Mr. Hedgecock is his client.

**On a motion made by Davis seconded by Swires, and passed unanimously,
it was**

**RESOLVED to accept the application for licensure of a real estate
salesperson Dennis Hedgecock.**

All in favor; Motion passed.

Gary Cox

Gary Cox requested to be licensed in November through application. He voluntarily surrendered his license in 2009 for personal reasons. He was not under investigation at the time of his surrender. This is an atypical situation.

**On a motion made by Davis, seconded by Swires, and passed unanimously,
it was**

**RESOLVED to accept the application of Gary Cox for licensure as a
real estate salesperson.**

All in favor; Motion passed.

Break at 10:40 a.m.

Reconvened at 10:50 a.m.

Update on the Leslie Ray Young case, Agenda Item 7(c)

Ms. Wall-Rood updated the Commission on the Leslie Ray Young case that was being litigated in AK. Ms. Young is a Broker in CA and advertising in NE and AK. NE has taken her to court. She appealed to Federal court in NE. There have not been any updates in the NE federal court. It is now pending in front of the AK Superior court. Ms. Wall-Rood stated that some jurisdictions see this issue as an advertising concern and not personal services contract and not a listing.

Mr. DuVal stated that ID does not have this issue because of their statute, which we are going to look at today. Mr. DuVal suggested to the AAR members that this may require the legislature getting involved.

Mr. Clark indicated that they are following the issue.

Old Business, Agenda Item 8

Substitute Broker Issue, Agenda Item 8(b)

Commission reviewed 12 AAC 64.078 (number is not official yet) draft regulation for temporary broker of absence, also reviewed the form for broker notification to AREC that

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will need to be updated.

Mr. DuVal asked the Commission if anyone had any questions?

Ms. Burke asked about the issue of when a broker and a buyer enter into a contract –that is a binding contract. Now we're having the broker unilaterally change that contract? Do you see that as a problem?

Mr. DuVal stated it could be. I see two ways you could approach this but we don't want to get into micro-managing people. You could do it if you are a small one-person office and put it in the listing contract that if you are going to be gone at anytime and then name the other broker that will substitute in your absence.

Ms. Burke asked do we really need a written contract? Is it necessary? Does this impact the original listing? Ms. Burke would suggest the language state a broker licensed in the state of Alaska and in good standing.

Mr. DuVal stated that there are some handicaps when you are a small broker. There is no simple solution.

Chairman Cole stated that when you create a listing agreement with another party to sell their property not all listing agreements are the same and the client has to agree to it. This scenario can be part of the listing agreement. It's not there now. Do we need a written agreement? Yes, absolutely and here's why because of the supervision of licensees. So you need an agreement to show the other broker was in charge.

Mr. DuVal stated that the signed agreement is the Broker Notice of Designation form we will be reviewing and modifying today. It will need to be signed by both brokers.

Ms. Davis stated that getting this set and in writing could open up all sorts of issues. Someone mentioned check lists or how to follow procedures. For example, if a broker leaves town for a couple of days and wants to have another broker show their property –they're not going to fill this out and send it to the REC. Is that what we're proposing- versus having a broker show houses because the broker is out of town for 3 weeks and will have another broker step in and take care of transactions? Where is the fine line?

Chairman Cole stated that you can still supervise from a distance but if you don't want to supervise you will have to fill out the form and send it into the Commission office. If you are turning your responsibility over to someone else you need an agreement.

Mr. DuVal stated that you still have to comply with licensee disclosure requirements.

Ms. Swires stated that this draft needs the suggested add-in language in 2(b), including creating and signing transaction documents. That is the key to this whole thing. We already have the statute that allows brokers to assist each other. They just can't sign their name and the other person's company name. But this would allow them to sign their name

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and their personal company name while having the authority to assist that broker with on-going transactions. How they handle new transactions is their business.

Ms. Burke asked wouldn't it work better if there was a checklist?

Mr. DuVal said the checklist would come later.

Chairman Cole said when you create a checklist you're creating a problem because we may forget to add something to the list. Or they check the wrong thing. Instead, use a line on the form for exception stating that this person is representing me except for this.

Ms. Burke said she was suggesting that it be turned 180 degrees not telling what they can do but the exceptions

Chairman Cole said that's my comment.

Ms. Burke stated that's what she meant.

Ms. Flyum stated that she would like to know the new broker she was dealing with and who they are representing by making copies and providing this to the client.

Ms. Wall-Rood suggested that the Commission needs to look at what information the real estate commission needs and what needs to be worked out as a business issue between the brokers.

Mr. DuVal proposed the draft regulation to go out for public comment.

On a motion made by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to propose 12 AAC 64.078 a regulation to allow for a temporary absence of broker of record with the added language suggested by Ms. Swires, as stated: "including creating and signing transaction documents in 2(a) and 2(b).

All in favor; Motion passed.

The Commission then reviewed the existing form: Notification of Designation of Broker/Associate Broker in Charge.

Ms. Walsh suggested a change in title of the form.

Mr. DuVal suggested, Notice of Temporary Broker of Record of Absence. This form will be used by a single brokerage or a brokerage that can provide for an Associate Broker to step in as Broker of Record.

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On a motion by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED that the form "Notice of Temporary Absence of Broker of Record" go out for public comment.

All in Favor; Motion passed

Lunch Break: 12:12 pm

Reconvened: 1:10 pm

On a motion by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to retract the prior motion to put the form Notice of Temporary Absence of Broker of Record out for regulation.

All in Favor; Motion passed.

The Commission agreed that this form is to be kept as an in-house document and not to go out for a regulation project. Ms. Davis suggested that staff send the "draft" form of the Notice of Temporary Absence of Broker of Record to all who were in attendance this morning since the form will not go out as a regulation project.

The Commission was introduced to the Director of the Division of Corporations, Business & Professional Licensing, Don Habeger. Director Habeger has been on the job for 5 months. He expressed his appreciation for the Commission's volunteerism.

Chairman Cole advised Mr. Habeger that the Commission chose to have their meetings in Anchorage and to reduce it to a one day meeting to do our part in reducing the travel expenses for the state. The Legislature allocated CBPL \$316,000 for travel and there are 40 boards and commissions.

On a motion by Swires, seconded by Davis, and passed unanimously, it was

RESOLVED to go into Executive session Per AS 44.62.310 (c)(2)

All in favor; Motion passed.

Into Executive session 1:39 p.m.

Staff and guests left the room.

On a motion by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to come out of Executive session.

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All in favor; Motion passed.

Out of Executive session 3:40 p.m.

Old Business, Agenda Item 8, continued

Tabled Regulation Projects: 12 AAC 64.990 & 64.130(8), Agenda Item 8(d)
Review proposed regulation 12 AAC 64.990 Definitions of a Listing
Mr. DuVal read the language for the definition of listing.

“A listing is a personal services contract or agreement signed by real estate brokerages and property owners or their legally authorized designees; whereby the listing licensee agrees to find, locate, secure, or promote obtaining a buyer or tenant for a specific property at a certain price and terms.”

Chairman Cole asked why Mr. DuVal has the inserted the language “legally authorized designees” as opposed to just using the term designee.

Mr. DuVal stated that to make sure that it’s a legally authorized person; there may be a Power of Attorney or a corporate resolution or an LLC member agreement. Sometimes people in an LLC and corporation; the person who is signing isn’t a legally authorized person.

Ms. Burke stated then the language should be, authorized to sign on behalf of the legal designee.

On a motion by DuVal, seconded by Davis, and unanimously, it was

RESOLVED to propose the regulation 12 AAC 64.990 definition of listing to go for public comment.

All in favor; Motion passed.

Review of 12 AAC 64.130(8) Grounds for revocation or suspension

The Commission reviewed regulation 12 AAC 64.130(8), Grounds for Revocation or Suspension. Adding to the existing regulation will deal with internet advertising specifically.

DuVal: 12 AAC 64.130(8) Exists as it is now we will modify it by adding to it specifically dealing with internet advertising. The hammer in this one is to hold out to the public that an advertisement of real estate is a listing... constitutes a license activity. So if I am advertising on craigslist I’m not saying it’s a listing. If I am advertising for you on craigslist then I’m saying it’s

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a listing it becomes a listing.

Davis: Is there something when you are advertising on craigslist that you have to designate whether you are a broker or it's a listing?

DuVal: If you are advertising on craigslist...if I am advertising your house on craigslist I'd better be saying that I'm a broker.

Cole: It's become an issue in this market we've got some aggressive sellers that have tried to put their own property on craigslist and sell it and the problem is they didn't indicate that it's listed with a broker.

DuVal: Or people who say list your property here and then they say I don't need to be licensed because it's not really a listing but by saying, if claim it's a listing it walks like a duck talks like a duck it becomes a listing.

Cole: Want to make a motion for this?

DuVal: I'd like to make a motion to adopt 12 AAC 64.130(8) as amended to move to public comment.

Notes/comments:

In reviewing the meeting minutes regarding the above discussion took place and based on the tabled regulation it is not clear what specific language was amended to 12 AAC 64.130(8)?

On a motion by DuVal, seconded by Burke, and passed unanimously, it was

RESOLVED to propose the regulation 12 AAC 64.130(8) grounds for revocation or suspension to go for public comment.

All in favor; Motion passed.

New Business, Agenda Item 9

Review of 12 AAC 64.935, New Proposed Regulation, Agenda Item 9(g)

Commission reviewed 12 AAC 64.935 (new number-not official) a new proposed regulation. This is to further define AS 08.88.161 specifically aimed at the term, "in this state".

On a motion by DuVal, seconded by Davis, and passed unanimously, it was

RESOLVED to propose the regulation 12 AAC 64.935 to define the term "within the state of Alaska" to go for public comment.

All in favor; motion passed.

12 AAC 64.111 Closing an office, Agenda item 9(d)

The Commission reviewed and proposed this regulation. This will go out for public comment and can be bundled with the recovery fund regulations if that is what the Commission wants.

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Old Business, Agenda Item 8, continued

12 AAC 64.600-650, Division E & O Insurance Regulations, Agenda item 8(g)

On a motion by DuVal, seconded by Swires, and passed unanimously, is was

RESOLVED to untable the regulation 12 AAC 64.600-650.

All in favor; motion passed.

Mr. DuVal wanted to make specific changes to page 2 of the Division E & O Insurance Regulations.

12 AAC 64.610- add new language: *Independent equivalent coverage may have a higher deductible amount if the brokerage being insured provides a sworn statement to AREC stating that they have self insured retention equivalent to the required deductible amount.*

On a motion by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to amend the language in 12 AAC 64.610 added language as stated above in italics.

All in favor; motion passed.

On a motion by DuVal, seconded by Davis, and passed unanimously, is was

RESOLVED to table the regulation 12 AAC 64.600-650.

All in favor; motion passed.

The Commission Chairman, Mr. Cole reviewed the agenda for items left to address. Chairman Cole asked if Ms. Burke will address the E & O comments for the Department's regulations tomorrow. All of agenda item 6, all of 9, 10, the reinstatement fees and also the amendment to AS 34.70 Exemption for First Sale.

Future Meeting Dates Agenda Item 8(a)

The Commission's preference was to hold the meetings on Wednesdays and Thursdays instead of Thursdays and Fridays. The Commission members reviewed and agreed on the future meeting dates for 2011.

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March 9 & 10;
June 8 & 9;
September 7 & 8 and;
December 7 & 8.

New Business, Agenda Item 9, continued

Pocket Guide for travel regulations, Agenda item 9(a)
The Commission members were asked to review the travel practices.

Mr. DuVal asked why they are making changes to our travel authorization and if there are changes to our expense account then they need to tell us why. Mr. DuVal requested that we speak to someone in Travel tomorrow to resolve some of these issues. He said let's get some rules so we are on the same page

Mr. Habeger said to contact the Administrative Services Director to set up a dialogue with travel staff to speak on the guidelines.

Elise Bucholtz, Instructor issue, Agenda item 9(e)
Ms. Bucholtz taught a class in which she wasn't approved to teach, topic #30, Ethical Decision Making. The Commission suggested that she be admonished for not knowing what she can and cannot teach. Staff was directed to write her a letter of reprimand. Also, the students in the class should be notified that she wasn't certified to teach course #2547, and as a result, their certificates for that course for 2 hours of Designated Continuing Education are not valid.

Recess for the day at 4:45 p.m.
Reconvene tomorrow at 9:00 am

On a motion by Davis, and seconded by Swires, and passed unanimously, it was

RESOLVED to adjourn for the day and reconvene tomorrow at 9:00am.

All in favor; motion passed.

Friday, December 2, 2010

Call To Order

Chairman Brad Cole called the meeting to order at 9:04 a.m.

Roll Call

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Members present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairman
Gene DuVal, Associate Broker, 4th Judicial District,
Chris Swires, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District, Education Liaison
Marianne Burke, Public Member
Charlene Flyum, Public Member

Absent:

David B. Somers, Broker, Broker at Large, Vice Chairman

Staff Present:

Sharon Walsh, Executive Administrator
Michele Wall-Rood, REC Investigator
Nancy Harris, Project Assistant

Guests Present:

Art Clark, Broker & AK Assoc. of Realtors Liaison

Chairman Cole asked to start with the licensing report.

Licensing Report, Agenda Item 6

Licensing Statistics, Agenda Item 6(a)

Ms. Walsh presented the licensing report to the Commission. She said currently there are 2207 active licensees. 2296 licensees with an expiration date of 1-31-2012. Five new real estate offices, 1 in North Pole, 1 in Petersburg, 2 in Anchorage and 1 in Fairbanks. 27 new licensees have completed their Post Licensing requirements.

Mr. DuVal asked Ms. Wall-Rood is "that" in Superior Court now Michele? Do we know when the hearing will take place or has it taken place?

Ms. Walsh reminded Mr. DuVal that we are on record and need to complete the Licensing Examiner's report.

Regulation Tracker, Agenda Item 6(b)

Ms. Walsh asked the Commission to review the Regulation Tracker in 6(b). The current regulation tracker showed tabled regulations from the September meeting. The Commission reviewed 12 AAC 64.111. In a prior telephone conversation, the Regulation Specialist asked Ms. Walsh if the Commission wanted to bundle the yet to be proposed Recovery Fund regulations with 12 AAC 64.111 to make it one regulation project. The Commission members thought that would be fine.

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Ms. Burke stated that she would get together with Ms. Walsh after the first of the year to address the regulations for the recovery fund.

Mr. DuVal asked about making sure that the proposed regulation for 12 AAC 64.935 is added to the regulation tracker.

Ms. Walsh asked if the members wanted to go on record and talk about the Leslie Ray Young decision.

New Business, Agenda Item 9, continued

Leslie Ray Young, Further Update, Agenda Item 9(c)

Ms. Wall-Rood updated the Commission members on the Leslie Ray Young case. The Superior Court has denied her motion for a stay so they supported the Department's Cease and Desist Order. Ms. Wall-Rood stated it is good news because this case has been around for several years.

Chairman Cole asked Ms. Wall-Rood to provide this information to the NE Executive Administrator and the ARELLO attorney, Dave Marsh to keep them informed of the case.

Review of Idaho Statute 54-2058 & 54-2002, Agenda Item 9(b) changed to 8(d)

Ms. Burke stated that since she has been on the Commission she has read through statute, and that only the Commission has the authority to initiate an investigation. She said the Commission cannot delegate it or ignore it. The current practice is that the Investigators begin the process and initiate an investigation. According to Ms. Burke and her reading of the statute, they (investigations) do not have the authority to initiate an investigation. Ms. Burke stated that the Chief Investigator, Quinten Warren, is going to look into this. She indicated that the statutes for the state of Idaho has language that addresses their Commission to either make a decision or take no action based on the information they receive.

As Ms. Wall-Rood pointed out to the members, this is important because not all complaints have substance. This supports Ms. Burke's reading of the statute. No one can have an investigation begun without the regulatory authority, which is the Commission, saying do it.

Ms. Burke stated this would also help Ms. Wall-Rood in the number of cases she has. Ms. Burke has asked Mr. Warren to check with the Attorney General's office on this matter. Ms. Burke has asked that the Commission be provided this information by the next meeting. Mr. Warren and Ms. Burke's intend to get interpretation on the reading of this statute, AS 08.88.037.

Mr. DuVal stated that it doesn't preclude the Department from conducting investigations.

Ms. Flyum stated that there may be a conflict in the centralized licensing statute AS 08.01.087 that clearly provides for the Department to conduct their own investigations.

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Ms. Burke indicated this needs to be clarified for the record.

Ms. Walsh pointed out that in the same statute, ID has language that does not allow for anyone to advertise property in ID because you have to have an ID real estate license. Therefore, you don't have the problem that we recently encountered with the Leslie Ray Young, Broker in CA Cease and Desist Order being challenged. Ms. Walsh wanted the members to see what other jurisdictions have for statutes and perhaps the AK REC needs to consider similar language.

Ms. Burke stated that is a very helpful statute for a third reason. She pointed to the other language in this ID statute relating to trust account audits. In ID the Commission may order a complete audit by a Certified Public Accountant at the Broker's expense. Ms. Burke said this is something to keep in mind. It is no expense to the state; it is an expense of doing business.

Executive Session AAS 44.62.310(c)(3), Agenda Item 9(c)

On a motion by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to go into Executive session for the purposes of discussing personnel issues per AS 44.62.310(c)(3).

All in favor; motion passed.

Into Executive session at 9:39a.m.

On a motion by Davis, seconded by DuVal, and passed unanimously, it was

RESOLVED to come out of Executive session.

All in favor; motion passed.

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

Break at 10:00 a. m.

Reconvene at 10:15 a.m.

Review of 12 AAC 64.075, Employment and Transfer Agenda Item 9(d)

Mr. DuVal stated that the Commission had inserted, a few years ago, verbiage that the Broker was to turn in licenses within 5 days. There was recently an instance where a Broker was not turning his licenses into the Commission when the office closed. This was a situation that is not typical and it was fixed so, Mr. DuVal does not think we need to make changes to this regulation.

Review 12 AAC 64.125 Supervision, Agenda Item 9(e)

Mr. DuVal requested revised language for item 12 AAC 64.125 (e):

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"Computer, *email*, facsimile *or telephone communications* may be used *to supervise licensees and* to review and approve transaction documents. All transaction records must be maintained in the real estate office where the supervised licensee is registered with the commission".

On a motion by DuVal, seconded by Davis, and passed unanimously, it was

RESOLVED to make changes to 12 AAC 64.125 (e) by adding the above referenced italicized language.

All in favor; motion passed.

Reinstatement Fee Considered, Agenda Item 9(g)

Ms. Walsh stated that the issue of a reinstatement fee was old business and can be found in the September meeting minutes on page 14. Ms. Harris explained the difference between an "inactive" versus a "lapsed" license. An inactive license is when you have 2 years from the date you inactive your license to reactivate it. Once you pass that date you have to re-test.

Mr. DuVal asked on an inactive license is there a fee?

Ms. Harris stated yes, fifty dollars. Ms. Harris went on to explain a lapsed license. A licensee who lapses has two years from the date it lapses to reinstate or a licensee has to re-test. Ms. Harris told the Commission to review 08.01.100(b) License Renewal, the Department may impose a delayed renewal penalty if the license is lapsed for more than 60 days.

Ms. Walsh pointed to regulation 12 AAC 02.360 this is set up specifically for Real Estate Commission fees, which are segregated from other boards and commissions. Therefore, fees collected here will go directly to REC.

Mr. DuVal considered a \$100.00 fine for reinstating a lapsed license. He stated that because an inactivation fee is \$50 and reactivation fee is also \$50, it made sense to keep the fee similar.

Ms. Wall-Rood was recognized by the Chair and stated to the Commission that lapsed licenses actively remained practicing after the renewal period had closed. In the last renewal she had about 20 cases where people were practicing without a license because they didn't renew. She suggested that if there are modifications to the regulations she recommended a significant penalty. She stated that there is a fine line in not keeping your professional license current.

Mr. DuVal then recommended a fee for reinstatement be set at \$250.00

On a motion made by DuVal, seconded by Swires, and passed unanimously,

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it was

RESOLVED to add a reinstatement fee of \$250.00 (two hundred and fifty dollars) for a lapsed license.

All in favor; Motion passed.

The Commission members stated that this fee also applies to those licensees who do not complete their Post Licensing Education and those that did not renew their license on time.

Mr. DuVal stated that if licensees lapse their license they are practicing without a license.

On a motion made by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to add a friendly amendment to have the \$250.00 fee fall under 12 AAC 02.360 (a) (11) calling it a Reinstatement fee for a lapsed license.

All in favor; Motion passed.

Executive Administrator's Report, Agenda Item 10

Recovery Fund Balance Report, Agenda Item 10(a)

Chairman Cole stated to the members that there has been a change in the reporting of the Commission's recovery fund.

Ms. Walsh indicated that the Recovery Fund reporting has changed from the Division of CBPL to the Division of Administration accounting staff.

Mr. DuVal stated that he doesn't trust the reporting of the recovery fund report-why are we so low?

Ms. Burke stated that she doesn't have any confidence in these numbers.

Ms. Davis stated that we should research and get answers before we get a contract for train-the-trainer.

Mr. DuVal recommended Ms. Burke and Ms. Walsh to research this balance in the recovery fund.

Ms. Burke stated Ms. Walsh needs to have read-only access for this program because you need a daily way to check on the reporting.

Chairman Cole stated we should do a teleconference after the research has been done and

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then consider the RFP for train-the-trainer.

Ms. Walsh recommended a fee for train-the-trainer of \$100.00 per person.

Mr. DuVal asked that the Director of Administration be available to the Commission at the March meeting to provide the members with answers to their questions about the expenditures of the recovery fund. Are the funds collected being applied to the right account? Renewal fees in the past have not been applied to the recovery fund-is this still an issue?

Ms. Walsh told the Commission she would talk to the CBPL Director Don Habeger about making arrangements for JoEllen Hanrahan, Director of Administrative Services to attend our March meeting.

Revenue & Expenditure Report, Agenda Item 10(b)
Commission members reviewed the revenue and expenditure report.

Chairman Cole stated that the new Director will be looking at changing the Division's expenses to include more revenue from Business Licensing and Corporations. Currently the Boards and Commissions are not paying for any Division expenses. Chairman Cole said that it appears that the change of personnel has opened up some new ideas and people are looking at things that had not been looked at before and were seeing some positive results.

Review & Comment on Dept. E & O Regulation Project, Agenda Item 10(c)
Ms. Walsh asked the Commission if they wanted to go on record to comment on the Department's Errors & Omissions insurance.

Ms. Burke asked that she go first and explain some of these things to see if that raises questions and then everyone else can put in their comments too.

The Chairman asked that the Commission go into Executive session to discuss Errors & Omission insurance regulations.

**On a motion made by Davis, seconded by Swires, and passed unanimously,
it was**

**RESOLVED to go into Executive session to review the Department's
Errors & Omissions insurance regulations noticed for public
comment and to make a public statement on behalf of the
Commission. Per AS 44.62.310**

All in favor; Motion passed.

Into Executive session 11:03 a.m.

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**On a motion made by DuVal, seconded by Davis, and passed unanimously,
it was**

RESOLVED to come out of Executive session.

All in favor; Motion passed.

Out of Executive session 12:20 p.m.

The Chairman asked Ms. Burke to read into the record the Commission's public comments.

Ms. Burke stated that this would be submitted as comments in accordance with the timeframe for December 7th. Ms. Burke asked that the Executive Administrator read them instead.

Ms. Davis indicated that Ms. Flyum had taken notes and can read them into the record.

Ms. Flyum addressed for the record the Commission's public comment on the Department's E & O regulations, 12 AAC 02.510 through 580. The Commission suggested the following be considered by the Department:

- The State's insurance Broker be available for the RFP and marketing and provide the Real Estate Commission with technical support.
- 12 AAC 02.510 (1) Is this in accordance with Rule 82 and that's AK Rules of Civil Procedure part 11?
- 12 AAC 02.510 (7) Define what continuous past coverage means.
- 12 AAC 02.510 (c) (1) Change to a capital letter in reference to "B" est. As in A. M. Best it's the name of a company and should be capitalized.
- 12 AAC 02.520 (5) It may be too broad; may want to consider tightening it up.
- 12 AAC 02.520 (8) Remove or refine the exceptions.
- 12 AAC 02.530 Equivalent coverage-include language: A licensee may self insure for the difference between the master policy deductible and their policy deductible. And provide the Commission with a sworn statement indicating that. We are talking about the difference in the deductible that this regulation requires versus what the licensee may already have.

Chairman Cole asked Mr. Clark to comment on E & O regulations.

Mr. Clark addressed the Commission and paraphrased the Alaska Association of Realtors comments submitted regarding E & O insurance. They would like to see a timeframe for licensees to get into the insurance program with a 30-60-90 days to get coverage and not be in violation. Also, if the licensee wants a higher deductible, if they want to get a better overall policy, then that should be their option.

New Business, Agenda Item 9, continued

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Exemption for First Sale, AS 34.70, Agenda Item 9(f)

Mr. DuVal asked that the Commission look at AS 34.70 Exemption for First Sale. Mr. DuVal recommended that this paragraph be revised. This idea came after having heard the testimony at the September meeting when Mr. Spinelli addressed the Commission. Under the first paragraph of Exemption for First Sale: add:

Except as follows-Is the builder a licensed general contractor in the State of AK with a residential designation? Answer "yes" or "no". Then put a line for the contractor's number.

Ms. Flyum suggested that there are exemptions under that statute that need to be included.

Mr. Clark was recognized by Chairman Cole. Mr. Clark stated that we should work on it with the Alaska Home Builders and Realtors -they have a task force looking into this issue and that maybe the Commission should work with contractors on it.

Mr. DuVal stated that he would like to table it and then work with the AK Home Builders task force on this issue and will communicate back at the March meeting. Mr. DuVal asked that Mr. Clark call him and talk to him about it.

On a motion made by DuVal, seconded by Davis, and passed unanimously, it was

RESOLVED to table the regulation to modify the form for Residential Real Property Transfer Disclosure Statement, specifically the paragraph dealing with Exemption for First Sale.

All in favor. Motion passed.

Old Business, Agenda Item 8, continued

Review of the Notice of Temporary Absence of Broker of Record form, continued

Commission reviewed the draft of the broker absence in charge form. The modified version now reads:

The Commission must be notified immediately in writing when broker returns and substitute broker is no longer in charge.

Commission recommended that there be a set amount of days, in this case, within 3 calendar days, to report that the substitute is no longer in charge. Commission finished the modifications to the form.

On a motion made by Davis, seconded by DuVal, and passed unanimously, it was

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RESOLVED to adjourn the meeting for December 1 and 2, 2010.


All in favor. Motion passed.

Meeting adjourned at 12:40 p.m.

The Commission adjourned until March 9 & 10, 2011 in Anchorage.

Prepared and submitted by Sharon Walsh

Approved:



Bradford Cole, Chairman
Alaska Real Estate Commission

Date: 5/27/11