

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

REAL ESTATE COMMISSION
MEETING MINUTES

September 17, 2013

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 September 17, 2013, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Tuesday, September 17, 2013

Agenda Item 1a

Call to Order

Chairperson Anita Bates called the meeting to order at 9:00 a.m. at which time a quorum was established.

Roll Call

Members present:

Anita Bates, Broker at Large
Eric Bushnell, Associate Broker, Broker at Large
Marianne Burke, Public Member
Stacy Risner, Associate Broker, 4th Judicial District
Nancy Davis, Broker, 1st Judicial District

Members absent:

Brad Cole, Associate Broker, 3rd Judicial District

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Project Assistant
Beata Smith, Licensing Examiner
Jennifer Wirawan, Investigator III
Quinten Warren, Chief Investigator
Edward Riefle, Investigator II

Guests Present:

David Somers, Broker, Somers & Associate Realtors
Suellen Appellof, Associate Broker, Prudential Jack White/Vista Real Estate
Mark White, Associate Broker, Ron Moore Company
Sara Chambers, Division Operations Manager

Agenda Item 1b

Approval of Agenda

The Commission members reviewed and discussed the meeting agenda as presented. Added to the agenda were, section 5d-PLE certificate and section 6d-calls to terminating brokers.

**On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was,
RESOLVED to approve the meeting agenda as revised.**

All in favor; Motion passed.

Agenda Item 2a

June 5, 2013 meeting minutes

Commission members reviewed the June 5, 2013 meeting minutes as presented.

**On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,
RESOLVED to adopt the June 5, 2013 meeting minutes.**

There was further discussion.

Ms. Davis withdrew her motion.

**On a motion duly made by Ms. Burke, seconded by Ms. Davis, it was,
RESOLVED to table the June 5, 2013 minutes until December 2013
Real Estate Commission meeting and provide the Executive
Administrator with questions to research for clarification via email.**

All in favor; Motion passed.

June 26, 2013 teleconference

Commission members reviewed the June 26, 2013 meeting minutes as presented.

**On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,
RESOLVED to adopt the June 26, 2013 meeting minutes.**

There were a couple of changes to the meeting minutes. Page 2 of 5, last sentence: change to Ms. Burke abstained herself from voting on the increase of fees. Pages 3 through 5 add 'Ms. Burke abstained under each motion'.

All in favor; Motion passed.

July 18, 2013 teleconference

Commission members reviewed the July 18, 2013 meeting minutes as presented.

**On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,
RESOLVED to adopt the July 18, 2013 meeting minutes.**

All in favor; Motion passed.

Agenda Item 3

Public Comment

Commission members reviewed the public comments from various licensees regarding the proposed regulations.

Mr. Somers updated the Commission members with issues involving the Real Estate Commission. The Alaska Association of Realtors (AAR) will be introducing new pieces of legislation.

1. Authorize funding from the Recovery Fund to cover 100% of the Project Assistants position
2. To move the Executive Administrators range for the Real Estate Commission from 19 to 23
3. HB187

The AAR supports the changes on regulation project on fee adjustments, there was no opposition.

The Commission members discussed an email from licensee Lisa Nylad regarding broker supervision.

On a motion duly made by Ms. Risner, seconded by Ms. Davis, it was,

RESOLVED for the investigator to look into lack of broker supervision regarding email from Lisa Nyland per Sec. 08.88.03.

Ms. Risner withdrew her motion.

On a motion duly made by Ms. Risner, seconded by Ms. Davis, it was,

RESOLVED for the Executive Administrator to write a letter of advisement and send it to the broker and place it in the broker's licensing file.

All in favor; Motion passed.

Agenda Item 4a

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of September 4, 2013 there are currently:

- 9 Pre-Licensing courses
- 238 Elective Continuing Education courses

- 48 Designated Continuing Education courses
- 80 Post Licensing Education courses
- 7 Broker Upgrade Pre Licensing courses
- 36 course sponsors
- 136 currently approved/permanent instructors
- 16 new instructors

There are no temporary instructors during this reporting period.

Ms. Harris presented the fees collected for Recovery Fund for FY13.

Agenda Item 4b

Instructor Certification Review

Ms. Harris discussed with the Commission members the instructor certification review.

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

RESOLVED for Ms. Harris to contact instructor Tom Martin and the association and find out if Train the Trainer was provided in June of 1996.

All in favor; Motion passed.

Agenda Item 4c

Proposed Regulations 12 AAC 64.440(d)

Ms. Harris had clarified the proposed regulation 12 AAC 64.440(d) to the Commission members to read (d) Successful completion of an instructor workshop Alaska Real Estate Commission, Association of Real Estate License Law (ARELLO), the National Association of Realtors (NAR), the Real Estate Educator's Association, the International Right of Way Association (IRWA), the Communication Association Institute (CAI), Alaska sponsors, or other national organization determined to be comparable by the commission or the commission's designee, may be substituted for teaching experience or training required.

The Commission members requested Ms. Harris to be more specific with the verbiage on the proposed regulations.

Agenda Item 4d

DCE 2016/2018

Ms. Risner discussed and reviewed the DCE 2016/2018 with the Commission members.

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

RESOLVED to develop four 2-hour topics in each area.

All in favor; Motion passed.

**On a motion duly made by Mr. Bushnell, seconded by Ms. Davis, it was,
RESOLVED to table the DCE 2016/2018 to Old Business until after
lunch.**

All in favor; Motion passed.

The Commission recessed for break at 10:43 a.m.
The Commission reconvened from break at 10:56 a.m.

Agenda Item 5a

Recovery Fund Balance Report

Ms. Walsh provided an email from Mary Manning, Admin Services Accountant regarding the Recovery Fund Balance Report. The report will not be available until the end of October; therefore, the Commission members were not provided with the report during this meeting.

Agenda Item 5b

Schedule of Revenue and Expenditure

Ms. Walsh provided an email from Martha Hewlett, Division Administrative Officer II regarding the Schedule of Revenue and Expenditure. FY13 transactions are still being processed. Therefore, the report was not available to the Commission members during this meeting.

Agenda Item 5c

Annual Report

Ms. Walsh presented the Annual Report to the Commission members for their review.

Agenda Item 5d

PLE Certificate

Ms. Walsh presented the Commission members with a post-licensing issue.

**On a motion duly made by Ms. Davis, seconded by Mr. Bushnell, it was,
RESOLVED to accept the PLE classes for William Bernard Jr.**

There was further discussion.

**On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was,
RESOLVED to table this discussion until after lunch.**

All in favor; Motion passed.

Agenda Item 6a
Licensing Statistics

Ms. Smith presented the licensing report for the period of May 18, 2013 through September 12, 2013.

Expiration date of 1/31/2014:

- 72 new licensees
- 2295 total number of active licensees
- 2480 total number of licensees
- 75 total number of inactive licensees
- 92 licensees broke contact with a broker
- 54 licensees completed their post-licensing education (PLE)

Since the last licensing report there were 7 main and 2 branch offices that opened.

Agenda Item 6b
Regulation Tracker

Ms. Smith presented the regulation tracker to the Commission members for their review. Ms. Smith also provided the Commission members with a list of all regulation projects that are still outstanding.

Agenda Item 6c
Reporting on Fees Collected for RF April – June 2013

Ms. Smith presented the Commission members with the fees collected for Recovery Fund April - June 2013.

Agenda 6d
Calls to Terminating Brokers

Ms. Smith stated that there were a total of 108 transfers during this reporting period and calls were placed to terminating brokers.

The Commission members recessed for lunch at 11:45 a.m.
The Commission members reconvened from lunch at 12:54 p.m.

Agenda Item 4d cont.
DCE 2016/2018

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

RESOLVED to bring DCE 2016/2018 back on the table.

All in favor; Motion passed.

The Commission members further discussed the DCE 2016/2018 topics.

<u>Topic</u>	<u>Topic #'s</u>	<u>Hours</u>	<u>Material to Cover</u>
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Landlord Tenant Act – for all licensees	1, 2, 6, 15, 20	2	<ul style="list-style-type: none"> • Basics of LLTA • Tenant/Landlord responsibilities during a sale (notice to tenants, transferring leases, etc.) • Licensee responsibilities during a sale • Writing purchase contracts when a tenant is involved • Proper disclosure of Licensing Relationships in property management
Current Alaska Real Estate Legal and Ethical Issues	4, 9, 18, 30, 25, 33, 35	2	<ul style="list-style-type: none"> • Current cases • Ethical issues <ul style="list-style-type: none"> -Current Issues • Risk management • Real Estate License Law – especially licensed and unlicensed activities • Advertising <ul style="list-style-type: none"> -Traditional -Social Media • Supervision <ul style="list-style-type: none"> -Licensees -Teams • Deposits and trust activity <ul style="list-style-type: none"> -How are deposits handled, how trust accounts are managed, etc.
Contracts & Real Estate License Law	6, 25, 33, 15, 2	2	<ul style="list-style-type: none"> • Contract Modifications <ul style="list-style-type: none"> -Emphasis on the risks (and merits) of licensees adding verbiage to contracts and the consequences to all parties should the licensee miss a step per contract -Risk of changing contract – “adding verbiage to contracts & the consequences -Commonly used phrases, constructing contract clauses • Supervision <ul style="list-style-type: none"> -licensees -teams • Early occupancy, hold

			<ul style="list-style-type: none"> • harmless agreements, etc. • Land Issues <ul style="list-style-type: none"> -well/septic, easements, etc. • Fair Housing & Equal Opportunity Laws • RESPA Compliance • Conversation of trust funds • Duties of earnest money • Deposits and trust activity <ul style="list-style-type: none"> -how are deposits handled, how trust accounts are managed, etc.
Consumer Protection	2, 4, 6, 9, 18, 24, 25, 30, 41	2	<p>Procuring Cause</p> <ul style="list-style-type: none"> • Fair Housing & Equal Opportunity Laws • RESPA Compliance • Anti-trust regulations and State of Alaska E&O insurance requirements • Consumer pamphlet/licensing relationships • Advertising <ul style="list-style-type: none"> -Traditional -Social Media

Agenda Item 7a

Probation Report

Mr. Riefle presented the Commission members with the probation report. There are 5 licensees that are compliant with probation for the Alaska Real Estate Commission. There are no reports of public safety issues requiring the Commission’s immediate attention. One license lapsed on January 31, 2012; therefore, the probationary period will begin upon licensure.

Statistical Report

Ms. Wirawan presented the statistical report to the Commission members for their review. The following information is compiled as an Investigative Report for the period of June 5, 2013 through September 3, 2013.

- 33 opened files
- 35 closed Real Estate matters
- 20 open complaints
- 5 closed complaints
- 37 open investigations
- 6 closed investigations
- 3 license actions

Agenda Item 7b
Investigative Matters

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

RESOLVED to move into executive session to discuss investigative matters.

All in favor; Motion passed.

Into executive session at 1:15 p.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of executive session at 2:35 p.m.

Case #2013-001445

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

RESOLVED to accept the imposition of civil fine for Case #2013-001445.

All in favor; Motion passed.

Commission members adopted the imposition of civil fine for Linda Orr, Case #2013-001445.

Case #2011-000599

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

RESOLVED to accept the imposition of civil fine for Case #2011-000599.

All in favor; Motion passed.

Commission members adopted the imposition of civil fine for Michael Race, Case #2011-000599.

Case #2013-001227

On a motion duly made by Ms. Davis, seconded by Mr. Bushnell, it was,
RESOLVED to accept the license application.

Opposed were: Mr. Bushnell, Ms. Davis, Ms. Risner, Ms. Burke.

RESOLVED that the Real Estate Commission for the State of Alaska denies the application for licensure for Bradley Knowles, Case #2013-001227 based on Alaska Statutes 08.88.071(a)(1) and 08.88.171(c) because seven years has not elapsed since he completed a sentence imposed upon conviction of a felony that in the judgment of the Commission affects his ability to practice as a real estate salesperson competently and safely.

Case#2013-001870

On a motion duly made by Ms. Davis, seconded by Mr. Bushnell, it was,
RESOLVED to accept the license application.

Opposed were: Mr. Bushnell, Ms. Davis, Ms. Risner, Ms. Burke.

RESOLVED that the Real Estate Commission for the State of Alaska denies the application for licensure for Trevor Eastman, Case #2013-001870 based on Alaska Statutes 08.88.071(a)(1) and 08.88.171(c) because seven years have not elapsed since he completed a sentence imposed upon conviction of theft.

Agenda Item 8a

HB187

Sara Chambers, Administrative Operations Manager for the Division spoke to the Commission Members regarding HB187. HB187 is a bill that would help provide greater stability of fees from one licensing period to the next and is likely to be heard in committee during the next legislative session. Ms. Burke does not agree with the statement in the letter from Mr. Habeger regarding licensing fees “necessarily oscillate as independent boards self-govern their licensees and the collection of receipts always follow incurred expenses because the fees are collected on a two year forward”. The Commission has revenue before any of the expenses are incurred. Ms. Chambers stated that she will find out more and get back to the Commission. Ms. Burke also stated that there is a lack of understanding regarding the revenue.

Ms. Burke also questioned what the division provides the administrative, investigative and enforcement support to professional licensing programs, boards, and commissions. Ms. Chambers clarified that this doesn't apply to the Real Estate Commission. Ms. Burke

questioned the fee spiking can be smoothed by statutory amendments to provide the division discretionary authority to balance revenues with expenses over multiple biennial licensing cycle. Ms. Chambers explained that right now the primary fee setting statute, AS 08.01.065, requires an annual analysis of revenue and expenditure. Ms. Burke asked if this gives the Division the opportunity to go back and have all the licensees pay for deficits of the past? Ms. Chambers stated that right now this is the way the law is written. Ms. Burke asked Ms. Chambers for help in getting a true-up for the Real Estate Commission. Ms. Chambers will provide this to Sharon Walsh for her to distribute to the Commission members. Ms. Burke asked for a clarification of the term 'extending the period for fee adjustment collection'. Ms. Chambers explained that this is the biennial licensing cycle. Ms. Burke is concerned with the investigative unit being funded by the general fund. Ms. Burke also asked Ms. Chambers for information on indirects on an on-going basis. Ms. Chambers stated that she is working with Director Habeger to continue to provide that information. Last year a memo was sent out explaining the indirects and outlining what the costs were for and the increase in indirects. They are working to find a reasonable way that most board members will understand what each of the costs means and they are trying to come up with a defensible transparent document that will make more sense. There is no final product at this time. Ms. Bates thanked Ms. Chambers for taking the time to speak to the Commission members.

Agenda Item 8b

Adopt regulations DOL #JU2013200419

12 AAC 64.068

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

RESOLVED to not adopt regulation 12 AAC 64.068.

All in favor; Motion passed.

12 AAC 64.071(a)

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

RESOLVED to accept regulation 12 AAC 64.071(a).

To Read: (a) Except as provided in (g) of this section, all licenses lapse January 31 of every even-numbered year unless renewed under this section and in accordance with AS 08.88.091, 08.88.171, and 08.88.251. A renewal reminder document will be mailed to each licensee with a current expiration date at least 60 days before the renewal date.

All in favor; Motion passed.

12 AAC 64.130(4)(B)

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

**RESOLVED to accept regulation 12 AAC 64.130(4)(B).
To Read: Repealed**

All in favor; Motion passed.

12 AAC 64.440(h)

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

**RESOLVED to accept regulation 12 AAC 64.440(h).
To Read: (h) An applicant for initial instructor approval that wishes to substitute completion of an instructor workshop in (d) of this section for teaching experience or training required in (c) of this section, must apply for instructor approval within six months of completing an approved instructor workshop.**

All in favor; Motion passed.

12 AAC 64.500(n)

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

**RESOLVED to accept regulation 12 AAC 64.500(n).
To Read: (n) Notwithstanding the provisions of 12 AAC 64.420 – 12 AAC 64.450, a licensee who has taken a course offered outside of this state, or that is required to earn a professional designation, by a nationally recognized real estate education provider during a licensing period that has not otherwise been certified under 12 AAC 64.410 and 12 AAC 64.420 may apply to the commission under this subsection for continuing education credit under this section for the licensee's attendance at that course. To be considered for approval by the commission, within 60 days after completing the course but not less than 60 days before the end of the licensing period, the licensee must submit to the department**

All in favor; Motion passed.

12 AAC 64.600-650

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

RESOLVED to table Article 10. Errors and Omissions insurance 12 AAC 64.600 - .650 until December 2013 meeting.

All in favor; Motion passed.

The Commission members asked Ms. Walsh to contact the AAG at the Department of Law and find out if she could provide the regulations to the E & O insurance providers for review and feedback.

Agenda Item 5d cont.

PLE Certificate

The Commission further discussed the PLE certificate for William Bernard. In 12 AAC 64.064(a) In addition to the education requirements of 12 AAC 64.063 for an initial license and the continuing education requirements under 12 AAC 64.500 for license renewal, *within one year after the date that the commission issues an initial license to a real estate licensee under this chapter, the licensee shall complete 30 hours of education that meets the applicable requirements of (b) or (c) of this section.*

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

RESOLVED for Ms. Harris to contact the instructor for the actual dates and a sign in sheet.

All in favor; Motion passed.

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

RESOLVED to table action on approval of the PLE certificate for William Bernard until information is received by Ms. Harris.

All in favor; Motion passed.

Agenda Item 9a

Schedule of Future Meetings

The Commission members discussed the meeting dates for 2014.

The dates have been set as follows:

March 5, 2014

June 4, 2014

September 17, 2014

December 3, 2014

Agenda Item 9b

Election of Officers

Chair

Ms. Davis nominated Anita Bates as Chairperson.

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

RESOLVED that Anita Bates continue as Chairperson.

All in favor; Motion passed.

Vice Chair

Ms. Burke nominated Nancy Davis as Vice Chair.

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

RESOLVED that Nancy Davis continue as Vice Chair.

All in favor; Motion passed.

Education Liaison

Ms. Davis nominated Stacy Risner as Education Liaison.

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

RESOLVED that Stacy Risner continue as Education Liaison.

All in favor; Motion passed.

Agenda Item 9c

Consumer Pamphlet Regulations

The Commission members reviewed the Consumer Pamphlet Regulations from other jurisdictions.

Agenda Item 9e

Consumer Pamphlet Video: Idaho REC and North Carolina REC

Ms. Walsh showed a Consumer Pamphlet video from Idaho Real Estate Commission and North Carolina Real Estate Commission to the Commission members.

Agenda Item 9d

Proposed Regulations 12 AAC 64.420(d)

The Commission members reviewed the proposed regulations 12 AAC 64.420(d).

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

RESOLVED to adopt the proposed regulations and forward them to

the regulation specialist.

All in favor; Motion passed.

On a motion duly made by Ms. Davis, seconded by Ms. Risner, it was,

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 5:13 p.m.

Commission adjourned until the next regular scheduled meeting on December 4-5, 2013 in Anchorage.

Prepared and submitted by Beata Smith.

Approved:

Anita Bates
Anita Bates, Chairperson
Alaska Real Estate Commission
Date: 2/25/2014