

**STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
REAL ESTATE COMMISSION**

**MINUTES OF MEETING
December 13 - 14, 2007**

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 13 - 14, 2007, at the Atwood Building, Conference Room 1270, Anchorage, Alaska.

Thursday, December 13, 2007

Agenda Item 1

Call to Order

Chairperson Gene DuVal called the meeting to order at 9:05 a.m.

Roll Call

Members present constituting a quorum, were:

David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District, Chairman
Rita Wilson, Associate Broker, Broker at Large
F. Lee Sherman, Public Member
Roger Stone, Broker, 1st Judicial District
Brad Cole, Broker, 3rd Judicial District

Members Absent

Tim Worthen, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner
Nancy Harris, Project Assistant
Margo Mandel, Investigator

Guests present:

Linda Cardoza, Prudential Jack White
Taunnie Boothby, Planner with Community Advocacy, Department of
Commerce
Dennis Wood, Prudential Jack White
Judge Stanley, Office of Administrative Hearings
Mike Rasmussen, Broker of Exit Realty

Guests Present via teleconference:

Jenny Strickler, Acting Director Division of Corporation Business and
Professional Licensing
Jenna Conley, Assistant Attorney General
Remigio Maiquis, Regulation Specialist Division of Corporation Business and
Professional Licensing

Approval of Agenda

The Commission members reviewed the revised agenda.

On a motion duly made by Sherman, seconded by Somers, it was

RESOLVED to approve the revised agenda.

All in favor. Motion passes.

Agenda Item 2

Approval of Minutes
September 12 - 13, 2007

Commission members reviewed the September 12 - 13, 2007 meeting minutes.

On a motion duly made by Somers, seconded by Wilson, it was

**RESOLVED to approve the September
12 - 13, 2007 meeting minutes as presented.**

All in favor. Motion passes.

November 14, 2007 – Teleconference

Commission members reviewed the November 14, 2007 teleconference meeting minutes as presented.

On a motion duly made by Somers, seconded by Wilson, it was

RESOLVED to approve the minutes as presented.

All in favor. Motion passes.

Agenda Item 6(c)

Regulation Tracker

Commission members reviewed and discussed the regulation tracker and the regulation process.

Agenda Item 3

Investigators Report

Ms. Mandel presented her statistical report for the period of August 22, 2007 through November 26, 2007 to the Commission.

The commission members reviewed and discussed Ms. Mandel's report as presented.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to accept the investigator's report.

All in favor. Motion passes.

Memorandum of Agreement - Grondin

Ms. Mandel requested for the Commission members to review and decide on the MOA for Ivan Grondin.

On a motion duly made by Wilson, seconded by Sherman, it was

RESOLVED to accept the MOA for Grondin.

All in favor. Motion passes.

Memorandum of Agreement – Enoch

Ms. Mandel requested for the Commission members to review and decide on the MOA for Phyllis Enoch.

On a motion duly made by Wilson, seconded by Cole, it was

RESOLVED to accept the MOA case #3004.07.010.

Commission members have a further discussion on MOA case #3004.07.010.

Motion is on the table.

Resolved to approve the MOA as it reads.

All in favor. Motion passes.

The Commission recessed for break at 10:24am.
The Commission reconvened from break at 10:35am.

Agenda Item 4

Public Comment

Taunnie Boothby, State Coordinator for the National Flood Insurance Program, discussed and asked the Commission members to consider strengthening the Residential Real Property Disclosure Statement for flood and other hazards.

Broker Mike Rasmussen from Exit Realty discussed virtual offices with the Commission members.

Agenda Item 5

The Commission moves to executive session to discuss Surety Fund case S-27-012, agenda item 5(a) Whitehurst v. Dowd.

On a motion duly made by Wilson, seconded by Somers, it was

**RESOLVED to adopt the decision proposed by the
Administrative Law Judge Stanley.**

All in favor. Motion passes.

The Commission moves to executive session to discuss Surety Fund case S-27-013, agenda item 5(b) Angell v. Dowd.

On a motion duly made by Somers, seconded by Wilson, it was

**RESOLVED to adopt the decision proposed by the
Administrative Law Judge Stanley.**

All in favor. Motion passes.

The Commission reconvenes from executive session at 11:15am.

Agenda Item 6(e)

Regulation Project

Jenna Conley and the Commission members reviewed and discussed proposed regulation 12 AAC 64.570.

6(d)

Commission members discussed the regulation tracker and how to speed up the process. Jennifer Strickler stated that we only have one regulation specialist for the 38 regulatory programs, also give the regulation specialist clearer instructions what the Commission wants. She also mentioned writing a letter to the Commissioner and Legislature for additional help for the regulation specialist. Regulation for HB 205 is out for public comment. Commission members give their comments regarding lag in regulation process.

**Agenda Item 4
Cont.**

Denny Wood represented himself and spoke on behalf of those licensees that have taken 20 hours of pre licensing education. Mr. Wood cited statute 08.88.171 and regulations 12 AAC 64.059(e)(3), 12 AAC 64.064(e), and 12 AAC 64.063(c)(2). Mr. Wood also was concerned that about 1000 individuals that have taken the course and do not get the information regarding having to turn in a completed application by 1/31/08.

The Commission recessed for lunch at 12:30pm.
The Commission reconvened from lunch at 1:35pm.

Agenda Item 3

Commission members reviewed and discussed statutes 08.88.161 license requirements and 08.88.331 making of transactions.

Mr. DuVal recused himself from memorandum of agreement case 3004-07-010.

Mr. Somers the vice chair took over as chair for discussion purposes of the memorandum of agreement case 3004-07-010.

On a motion duly made by Cole, seconded by Stone, it was,

RESOLVED to reconsider the decision on the memorandum of agreement case 3004-07-010.

All in favor. Motion passes.

Mr. Somers the vice chair discussed with the Commission the memorandum of agreement case 3004-07-010.

On a motion duly made by Stone, seconded by Wilson it was,

RESOLVED to give the memorandum of agreement case 3004-07-010 back to the investigator for additional investigation as the Commission does not agree with the use of statute citation AS 08.88.331.

All in favor. Motion passes.

Vice Chair Somers gives duties as Chair back to Mr. DuVal.

**Agenda Item 6(c)
Cont.**

Regulation Project

Commission members discussed the regulation tracker and the process with Jun Maiquis the Regulation Specialist. Commission members and Mr. Maiquis decided that the meeting minutes will be send out 10 – 20 days after the meeting. Ms. Walsh stated that she will sent the proposed regulations first and follow up with only the pages pertaining to the proposed regulations from the meeting minutes.

Not an Agenda Item

Commission member Rita Wilson introduced the subject for licensees to sell other things outside real estate. Ex: selling businesses, liquor license, tobacco, etc. Commission members discussed if these non real estate sales should go through the broker and if it has to be real estate, if it is not real estate then it's not within the Commission purview.

**Agenda Item 6(c)
Cont.**

Commission members revised regulation 12 AAC 64.570 Property Management, deleting #3 “notwithstanding 12 AAC 64.200, may collect rents and other incidental income and pay the rents and income directly to the licensee as the lessor”, and to now read:

- (E) written documentation to refund a security deposit and/or deduct funds from a security deposit;
- (c) notwithstanding 12 AAC 64.200, rents and other incidental income may be paid directly to the licensee as the lessor and need not be deposited in the brokers trust account.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to adopt the revised regulation 12 AAC 64.570 Property Management.

All in favor. Motion passes.

Agenda Item 7

Licensing Examiner's Report
Statistics Report

Ms. Smith presented her statistical report for the period of August 20, 2007 through November 19, 2007 to the Commission.

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to accept the Licensing Examiner's report as presented.

All in favor. Motion passes.

Renewal Update

Ms. Smith presented the renewal update to the Commission. Currently 207 licensees have renewed online and 80 by mail or in person.

Agenda Item 8

Education Report
Forms and Online Demo

Ms. Harris presented and demonstrated to the Commission an example on how to renew online.

**Agenda Item 8
Cont.**

The Commission members discussed the new education requirements effective February 1, 2008. A complete application with the proper fee and all the certificates must be received in the Real Estate Commission office or post marked by January 31, 2008.

Certificates for New Education Requirements

Commission members discussed the certificates for new education requirements. Commission members agreed to standardize the certificates. There will be one certificate for all education categories, with 1 box each for pre-licensing, post-licensing, and continuing education.

On a motion duly made by Wilson, seconded by Stone, it was

RESOLVED to have a mandatory standardized course completion certificate provided by the Real Estate Commission effective February 1, 2008.

All in favor. Motion passes.

The Commission recessed for break at 3:30pm.
The Commission reconvened from break at 3:45pm.

Agenda Item 9

Executive Administrator's Report

Surety Fund Report

Ms. Walsh asked the Commission members if they had any questions for Rhonda Leatham, Accounting Technician for the Division concerning the surety fund report. Ms. Leatham discussed the surety fund balance report with the Commission members. Chair DuVal stated that at the last meeting in September the Commission members were looking at the balances and fees for the renewal. Chris Wyatt told them that some funds have been found from the last 2006 online renewal licensing period and put into an account. Commission members were considering in increasing the fees for the new renewal period and Ms. Wyatt said that there would be no need to do that. Ms. Leatham said that Ms. Wyatt will be back in the office December 26, 2006 and that she will relay the Commission's concern to her about the surety funds balance that is now below the statutory floor of \$250,000.

Train the Trainer

The Commission members discussed the Train the Trainer which was provided in September. It was very successful and an excellent turnout. Out of 95 people that signed up, 67 people attended Train the Trainer. Ms. Walsh suggested having another Train the Trainer for Course Development in spring or fall but suggested holding off until the Surety Fund balance was addressed more thoroughly and funds were available.

Agenda Item 10

New Business

Calendar Quarterly Real Estate Commission Meeting for – 2008.

The Commission members discussed and scheduled the dates for the upcoming meetings in 2008. The Real Estate Commission meetings will be as follows:
March 13 - 14, 2008: Juneau

June 19 – 20, 2008: Fairbanks
September 15 – 16, 2008: Wasilla
December 11 – 12, 2008: Anchorage

Agenda Item 8(c)

Broker Post-Licensing Education

Ms. Harris reviewed and discussed with the Commission members the post-licensing education for Brokers. Mr. DuVal made a proposal for Ms. Walsh and Ms. Harris to do a spreadsheet for different courses for PLE, DCE, and ECE, so it will be more organized for the educators

The Commission recessed at 5:05pm until December 14, 2007 at 9:00am.

Friday, December 14, 2007

Call to Order

Chairperson Gene DuVal called the meeting to order at 9:00 a.m.

Roll Call

Members present constituting a quorum, were:

David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District, Chairman
Rita Wilson, Associate Broker, Broker at Large
F. Lee Sherman, Public Member
Roger Stone, Broker, 1st Judicial District
Brad Cole, Broker, 3rd Judicial District

Members Absent:

Tim Worthen, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner
Nancy Harris, Project Assistant
Margo Mandel, Investigator

Guests present:

Linda Cardoza, Prudential Jack White

Guests Present via teleconference:

Jenna Conley, Assistant Attorney General

**Agenda Item 8(c)
Cont.**

Education Advisory Committee

The Commission discussed the formation of an advisory group in order to review the use of ECE in PLE course material. The meeting will take place no later than January 15, 2008 .

On a motion duly made by Somers, seconded by Cole, it was

**RESOLVED to form a Education Advisory Group to
review educational needs.**

All in favor. Motion passes.

**Agenda Item 3(c)
Cont.**

Memorandum of Agreement - Enoch

Ms. Mandel provided additional information to the Commission members regarding the Memorandum of Agreement for Enoch. Ms. Mandel stated that she spoke with the Assistant Attorney General and that he stated that it wasn't the fact that Ms. Enoch stopped the representation outside the brokerage that necessarily violated 331. A commission is paid for conducting certain duties that only a licensee can do, those are listed in 161. Ms. Enoch is conducting the duties outside the supervision of her broker, that's a violation of 331 and 291(a). Ms. Enoch violated 331 because she negotiated the commission and stepped into a roll of a licensee. The transaction failed and was never completed. A normal buyer seeking representation can not negotiate and get part of the commission.

Somers takes Chair to reconsider.

Stone moves to reconsideration based on Attorney General recommendation.

Fails due to lack of second.

The Commission recessed for break at 10:30am.

The Commission reconvened from break at 10:43am.

Agenda Item 6(b)

Regulation Project

Residential Real Property Disclosure Statement

Commission members discussed and revised the Residential Real Property Disclosure Statement, to read:

Page 1:

Center: State of Alaska

Residential Real Property Transfer Disclosure Statement.

Prepared in compliance with Alaska Statute (AS) 34.70.010 – 34.70.200

Add in the first paragraph: Judicial

Legal Description

Property Address/City/Other

Third paragraph: AS 34.70.020 provides that if a disclosure statement or material amendment is delivered to the transferee after the transferee has made a written offer, the transferee may terminate the offer by delivering a written notice of termination to the transferor or the transferor's license within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

Fourth paragraph: AS 34.70.040(b) provides that if an item that must be completed in the disclosure statement is unknown or is unavailable to the Seller, and if the Seller or Seller's licensee has made a reasonable effort to ascertain the information, the Seller may make an approximation based on the best information available to the Seller or Seller's licensee. It must be reasonable, clearly labeled as an approximation, and not used to avoid the disclosure requirements of AS 34.70.010 – AS 34.70.200.

Fifth Paragraph: Upon delivery to a buyer, any inspection/reports generated by a purchase agreement of this property automatically becomes an addendum/amendment.

On a motion duly made by Wilson, seconded by Sherman, it was

RESOLVED to adopt revised changes to page 1.

All in favor. Motion passes.

Page 2:

Property Type: take out - "Please complete one Form for each unit" and "Construction"

Property Features: add - Satellite Components

Audio Components

Structural Components: add - Fences/Gates, Driveways, Private Walkways, Retaining Walls, Foundation, Crawl Space, Roof, Patio/Decking, Slabs, Rain gutters, Exterior Walls, Interior Walls, Floors, Ceilings, Doors, Windows, Skylights, Venting, Insulation, Woodstove(s) # of, Fireplace(s) # of (gas starter), Chimneys, Plumbing Systems, Heating Systems, Solar Panels, Window Generators, Electrical Systems, Sewage Systems, Water Supply, Garage, Garage Floor Drain, Carport, Washer/Dryer Hook-ups, Humidifier, Air Conditioner, Electronic Air Cleaner, Heat Recovery; ventilator system, Swimming Pool (mechanical, filtration, pool cover), Hot Water Heater, Other items not covered?

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to adopt revised changes to page 2.

All in favor. Motion passes.

Page 3:

Add: Comments:

Documentation:

Current Engineer/Property

Title/Information

Certificate of Occupancy

Drainage: Rain Gutter Extension

Roof or Other Leaks: Age:

Location of attic access?

Fireplace and/or Woodstove: Date chimney(s) last cleaned?

Heating System(s): Age:

Last Inspected:

Hot Water Heater: Age:

Capacity:

Type:

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to adopt revised changes to page 3.

All in favor. Motion passes.

Page 4:

Sewerage System: Does your sewerage system have a lift station/lift pump?

Secondary sewerage treatment plant.

Age of sewerage system: _____ Location: _____

Approval/Certification source (and date if known):

Are you aware of any sewerage systems, leachfields, cribs, etc. on the property?

Freeze-up: If yes please explain:

Are there any heat tapes, heat lamps, or other freeze prevention devices?

Gas \$ _____

Title: Monthly Dues Amount: _____

Setbacks/Restrictions: Are you aware of any violations of building codes, zoning, setback requirements, subdivision covenants, borough, or city restrictions on this property?

On a motion duly made by Stone, seconded by Wilson, it was

RESOLVED to adopt revised changes to page 4.

All in favor. Motion passes.

The Commission recessed for lunch at 11:56am.

The Commission reconvened from lunch at 12:20pm.

Page 5:

Additional Information Cont: Are you aware of any deed, or other private restrictions on the use of the property?

Environmental Concerns: 16a. Are you aware of any mildew or mold issues affecting this property?

17. Are you aware of any underground storage tanks on this property, other than previously referenced fuel or septic tanks?

18. Are you aware if the property is in an avalanche zone/mudslide area?

19. Are you aware if the property is in a flood zone or subject to flooding?

20. Are you aware of any erosion/erosion zone or accretion affecting this property?

Soil Stability: 22. Are you aware of any debris burial or filling on any portion of the property?

23. Are you aware of any permafrost or other soil problems which have caused settling, slippage, sliding, or heaving on any portion of the property?

Construction, Improvements/Remodel: 25. If applicable, was a final inspection performed?

29. Are you aware of any death, including murder or suicide, having occurred on the property?

30. Are you aware of any burial sites on the property?

31. Are you aware of any stigmatizing events, paranormal activity, or other latent events?

On a motion duly made by Stone, seconded by Sherman, it was

RESOLVED to adopt revised changes page to 5.

All in favor. Motion passes.

Page 6:

32. Noise

a. Are you aware of any objectionable sound disturbances that affect the property, including but not limited to, airplanes, trains, dogs, traffic, race tracks, neighbors, etc., that may constitute a nuisance?

b. If Yes, explain:

33. Pets

- a. Have there been any pets/animals in the house?
- b. If yes, what kind?

First Paragraph: add - I/We have completed this disclosure statements according to AS 34.70.010-AS 34.70.200 and these instructions, and the statements are made in good faith and are true and correct to the best of my knowledge as of the date signed. I/We authorize any licensees involved or participating in this transaction to provide a copy of this statement to any person or entity in the connection with any actual or anticipated transfer if the property or interest in the property.

Forth Paragraph: add – The Buyer is urged to inspect the property carefully and to have the property inspected by an expert. Buyer understands that there are aspects of the property of which the Seller may not have knowledge and that this disclosure statement does not encompass those aspects. Buyer also acknowledges that he/she has read and received a signed copy of this statement from the Seller or any licensee involved or participating in this transaction.

On a motion duly made by Sherman, seconded by Cole, it was

RESOLVED to adopt revised changes to page 6.

All in favor. Motion passes.

Page 7:

Add: AS 34.70.020 provides that if a disclosure statement or material amendment is delivered to the Buyer after the Buyer has made a written offer, the Buyer may terminate the offer by delivering a written notice of termination to the Seller or the Seller's licensee within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

On a motion duly made by Somers, seconded by Stone, it was

RESOLVED to adopt revised changes to page 7.

All in favor. Motion passes.

Page 8:

Center the heading.

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to adopt revised changes to page 8.

All in favor. Motion passes.

Page 9:

Center the heading.

On a motion duly made by Somers, seconded by Sherman, it was

RESOLVED to adopt revised changes to page 9.

All in favor. Motion passes.

The Commission moves to executive session at 2:00pm.
The Commission reconvenes from executive session at 2:20pm.

Chair DuVal recused himself from memorandum of agreement case #3004-07-101.

**Agenda Item 3(c)
Cont.**

Vice Chair Somers takes over as Chair and asked the Commission if they had any questions regarding case # 3004-07-010, Memorandum of Agreement in the matter of Phyllis Enoch.

On a motion duly made by Somers, seconded by Sherman, it was

RESOLVED for the MOA to proceed and not to disclose of the license status with the same penalty as proposed in the original MOA.

All in favor. Motion passes.

Vice Chair Somers gives duties as Chair back to Mr. DuVal.

The Commission recessed for break at 3:05pm.
The Commission reconvened from break at 3:20pm.

Ms. Walsh reminded the Commission that they have not yet accepted the Executive Administrator's Report or the Education Report.

On a motion duly made by Somers, seconded by Sherman, it was

RESOLVED to accept on the Executive Administrator's Report as well as the Education Report.

All in favor. Motion passes.

**Agenda Item 6(b)
Cont.**

The Commission members discussed the Surety Fund Balance Report with Rhonda Leatham, the Accounting Technician for the Division. Ms. Leatham spoke with Legislative Audit and they provided her with the most recent copy of the report for the Real Estate Commission on the surety fund. The Commission decided to postpone addressing the concern of allocation of funds until they can speak with Chris Wyatt, Administrative officer for the Division.

Agenda Item 10

New Business

The Commission members discussed the e-mail from American Lung Association. Chair DuVal asked the Commission members what kind of change can be made to the law to inform potential home buyers that a home or condo was owned by a smoker. The Commission members decided that it would not be addressed in the Residential Real Property Transfer Disclosure Statement.

Commission members reviewed and discussed the letter which was received from Davis, Wright & Tremaine, Attorneys for Eklutna, Inc. Ms. Walsh has replied to the letter on September 19, 2007 and has not received any response

from Eklutna, Inc. At this point there is no broker for Eklutna, Inc. Chair DuVal asked the Commission if they had any suggestions on how they should proceed with Eklutna, Inc. Mr. Sherman made a comment to make a motion to investigate whether or not they are violating the licensing law by selling real estate without a Broker. Mr. Duval mentioned that he wants to write out a formal complaint by filing a complaint and sending it to the investigative unit. In 3 months at the next meeting the Commission will review and discuss the Eklutna, Inc. issue.

On a motion duly made by Sherman, seconded by Stone, it was

RESOLVED to file a formal complaint for violating statute 08.88.161.

All in favor. Motion passes.

Agenda Item 6(a)

The Commission members reviewed and discussed the proposed regulation change for "incidental" and "vocational". Commission members did not vote on this proposed regulation.

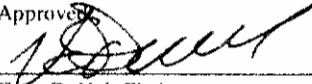
A teleconference will be scheduled for January 2008 to review and discuss public comments for the regulation 12 AAC 64.059, 12 AAC 64.063, 12 AAC 64.064, 12 AAC 64.064(b), 12 AAC 64.064(c), 12 AAC 64.126, 12 AAC 64.430, 12 AAC 64.510.

Next meeting is March 13 & 14, 2008 in Juneau.

Meeting adjourned at 3:45pm.

Prepared and submitted by Division Staff.

Approved:



Gene DuVal, Chairperson
Alaska Real Estate Commission

Date: March 9, 2009