

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

**REAL ESTATE COMMISSION  
MINUTES OF MEETING**

**December 10 - 11, 2009**

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 10, 2009, at the Atwood Building, Room 602, Anchorage, Alaska.

**Thursday, December 10, 2009**

**Call to Order, Agenda Item 1**

Chairperson Bradford Cole called the meeting to order at 9:07 a.m.

**Roll Call, Agenda Item 1(a)**

**Members Present:**

Brad Cole, Associate Broker, 3<sup>rd</sup> Judicial District, Chairman  
David B. Somers, Broker, Broker At Large, Vice Chairman  
Gene DuVal, Associate Broker, 4<sup>th</sup> Judicial District  
Barbara Dickson, Public Member  
Nancy Davis, Broker, 1<sup>st</sup> Judicial District  
Chris Swires, Associate Broker, Broker At Large

**Staff Present:**

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner  
Nancy Harris, Project Assistant  
Michele Wall-Rood, Investigator

**Guests Present:**

Dale Price, Broker, Heritage Homes & Relocation  
Wesley Madden, Broker, Madden Real Estate, LLC, (via teleconference)  
Dale Whitney, Administrative Law Judge, Office of Administrative Hearings  
(via teleconference)

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Bela Bodnar, Broker, Home Group Real Estate

Approval of Agenda, Agenda Item 1(b)

Chairperson Brad Cole asked Commission members and staff if they had any additions or changes to the agenda.

Mr. DuVal asked if they needed to sign the regulation 12 AAC 64.570.

Ms. Harris asked that a tab 10(g), regulation 12 AAC 64.570 be added to the agenda.

Ms. Walsh asked that a tab 5(d), online public notices, be added to the agenda for a quick overview on the process.

The Commission members reviewed the agenda as presented.

**On a motion by Davis, seconded by Dickson, it was**

**RESOLVED to accept the agenda with changes.**

**All in favor; Motion passed.**

Approval of Minutes, Agenda Item 2

September 17 - 18, 2009, Agenda Item 2(a)

Commission member Chris Swires joined the meeting at 9:10 a.m.

**On a motion by Davis, seconded by Somers, it was**

**RESOLVED to approve the September 17, 2009 teleconference meeting minutes as presented.**

**All in favor; Motion passed.**

November 17, 2009 Teleconference, Agenda Item 2(b)

**On a motion by Davis, seconded by Swires, it was**

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**RESOLVED to approve the November 17, 2009 teleconference meeting minutes as presented.**

**All in favor; Motion passed.**

**Public Comment, Agenda Item 3**

**Wes Madden -Waiver of Right to Be Represented/  
Consumer Pamphlet, Agenda Item 3(a) & 3(b)**

Mr. Wes Madden presented a question to the Commission through email to Ms. Walsh regarding changes to the Waiver of Right to Be Represented and the Consumer Pamphlet. The Commission members agreed to call Mr. Madden at 9:30 a.m. to speak to him regarding his question before they respond.

**Steve Turner- Appraiser, Question for the Commission**

Ms. Walsh had a comment for the Commission members from an appraiser, Steve Turner, from an email she had received. Ms. Walsh read the email into the record. Mr. Turner's question to the Commission was: "A number of Anchorage licensees do not disclose home inspection reports to lenders or appraisers. This seems unethical to me as the report contains relevant information about the property. It may also be a legal issue if the lender is uninformed about health and safety issues noted in the home inspection report. What is the Real Estate Commission's position on this? "

The Commission members reviewed and discussed the email received from Steve Turner. The Commission's position on this issue is that the report is the property/possession of the buyer or whoever paid for the report and they would be the one to offer that report to the appraiser or lender; it is not the option (responsibility) of the licensee to disclose the report.

**Education Update – Agenda Item 4**

**Education and Renewal Report, Agenda Item 4(a)**

Ms. Harris presented the Commission with the education and renewal report. Ms. Harris stated that there were 261 elective continuing education courses, 61 designated continuing education courses and 46 post licensing courses that are currently approved. She also stated that currently there are 383 courses, 39 new courses and 38 courses that were renewed. There are 59 course sponsors and 103 instructors.

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Mr. DuVal asked for clarification on what is a temporary instructor versus a permanent instructor?

Ms. Harris said that a temporary instructor can teach a class for up to five days and a permanent instructor is approved for a two year period.

Leslie Dennis III, Agenda Item 4(b)

Ms. Harris presented a question to the Commission that came from Broker, Butch Jacques, regarding payment of a commission. Mr. Jacques question was: How would a commission be paid to a licensee whose license is not active and the brokerage to which he was registered with when he was active is now closed?

This issue was TABLED until the Commission members had a chance to review the short summary of the issue that was handed out to the members at the beginning of the meeting.

Wes Madden, Agenda Item 3 – Continued

Mr. Madden joined the meeting via teleconference. Mr. Madden presented his question regarding changes to the Consumer Pamphlet and the Waiver of Right to Be Represented forms in relation to teams. Mr. Madden's concern was the client/consumer's confusion when they are asked to sign these documents (which could be several) when they first meet a member of the team. He thought maybe more lines could be added to the forms.

Mr. Madden also asked if there was an option to having a license for "licensed assistants". He asked if anyone had ever considered that; just something to think about.

Mr. Cole thanked Mr. Madden for his concern and said that this was definitely something that needed to be addressed. The Commission would discuss his concern today and get back with him hopefully with a solution.

The Commission members discussed the consideration of changes to the Consumer Pamphlet and Waiver Right to Be Represented that Mr. Madden had suggested in regards to teams and a separate license for license assistants.

The Commission said that to make changes to the Consumer Pamphlet and the Waiver of Right to be Represented forms would require a regulation change and they would look at that when they do a full review. The separate license for license assistants would require a statute change and they do not want to take that on at this point.

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The Commission's Best Practice for team members signing the Consumer Pamphlet and the Waiver of Right to Be Represented is for all team members to sign and date on the lines provided.

**Executive Administrator's Report , Agenda Item 5**

**Surety Fund Tracker FY 09 & FY10, Agenda Item 5(a)**

Ms. Walsh presented the Surety Fund Tracker for FY09 and FY10 to the Commission members for review.

The Commission members reviewed and discussed the surety fund tracker as presented.

Ms. Davis asked what the typical number of surety fund claims were per year?

Ms. Walsh stated that in FY 2010 there were 3 surety claims filed. For the prior years, there were 7 claims in 2009 and 11 claims filed in 2008.

**Revenue & Expenditure Report, Agenda Item 5(b)**

Ms. Walsh presented the Revenue & Expenditure Report to the Commission for their review.

Ms. Walsh stated that the Expenditure and Revenue report is also based on the fiscal year and that this report is through November 20, 2010. She said that renewals started November 2<sup>nd</sup> so they would see a huge increase in revenue in the March report.

**Licensing Procedures, Agenda Item 5(c)**

Ms. Walsh provided the Commission members with an information sheet on the licensing examiner's daily procedures when dealing with new applications, upgrades, office registrations, PLE affidavit or the transfer of a license. Ms. Walsh stated that these procedures are now in place. However, she did add one new procedure to the list; the licensing examiner will not only send the licensee a status letter when there is missing information but also place a call to that applicant or licensee so that it is done in real time instead of waiting on the mail. When the licensing examiner makes that call they will note that information on the status letter. Ms. Walsh also stated that she holds staff meetings every Wednesday and she receives all the new applications at that time and discusses any licensing issues.

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The Commission members discussed ways staff could improve getting information to the licensees. They said better communication through phone and email, and contacting the licensee's broker if needed. Licensees should also give the Real Estate Commission office a call if they have questions or concerns regarding their application.

The Commission members and staff discussed the licensees that may have a deadline with upgrading or transferring their license. Staff stated that these licensees should contact the Real Estate Commission office prior to their transfer or upgrade and they would certainly work with them so that it is a smooth transition. Staff stated that the key is that the application(s) need to be complete in order to process the change.

Online Public Notices – Quick Overview, Agenda Item 5(d)

Ms. Walsh stated that Mr. DuVal emailed her and asked how meetings were public noticed when the Real Estate Commission has teleconferences.

Ms. Walsh said that teleconferences have to be publicly noticed 5 days in advance and regularly scheduled meetings have to be public noticed 10 days in advance. She then explained to the Commission the steps to access the online public notice information through the Real Estate Commission web site to ensure that the meetings have been public noticed.

Ms. Walsh said that she had staff go back into the archives of the online public notices of teleconferences and found that the last teleconference that was noticed online was February 1, 2008 and that the legislature requires that all meetings be noticed online in addition to advertising in the newspaper. She said that she has set up a procedure for the licensing examiner in order to ensure that the REC is in compliance.

Ms. Swires suggested that Ms. Harris post the licensing and public notice procedures on the Real Estate Commission web site in order to decrease phone calls to the Commission from licensees.

Break – 10:15 a.m.

Reconvene – 10:30 a.m.

Leslie Dennis III, Agenda Item 4(b)- Continued

The Commission members discussed the issue of how a commission can be paid to a licensee whose license is not active and the brokerage to which he was registered with when he was active is now closed. They reviewed statute 08.88.331 and regulation 12 AAC 64.960.

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The Commission said that the broker that inquired about the distribution of the commission would need to seek legal counsel.

**Licensing Report, Agenda Item 7**

**Licensing Statistics, Agenda Item 7(a)**

Ms. Smith provided the Commission with information regarding the licensing statistics. She said between August 31<sup>st</sup> and November 20<sup>th</sup>, 2009 there were 34 new licensees. There are a total of 2,440 licensees and 2,133 are currently in an active status with an expiration date of 1/31/2010. As of November 20, 2009 200 licensees have renewed. There are 426 brokers, 351 associate brokers, 1351 salespersons and 5 licensees with a limited license. There have been 4 upgrades from salesperson to an associate broker and 2 upgrades from associate broker to a broker, one broker came in by endorsement. There are 580 offices in the state of Alaska with 12 of those being new main offices; 3 of those are in Anchorage, 8 in Fairbanks and 1 in Juneau.

**Renewal Update of Licensing, Agenda Item 7(b)**

Ms. Smith explained the daily procedures for printing licenses for those individuals who renewed online and those who submitted a renewal by hard copy.

Ms. Swires asked if the renewal by "hard copy" were those individuals who mailed in their renewal form?

Ms. Walsh said yes, those are renewals that were mailed in or for those individuals who cannot renew online due to some type of issue be it a lawsuit, suspension, or some sort of MOA or for those who do not have access to a computer.

As of December 9, 2009 there were 331 licensees that have renewed online and by hard copy.

Ms. Walsh said that staff encourages licensees to renew online because it is a faster process.

Ms. Swires asked if the figure of 331 was down from the last renewal compared to the same time in December?

Ms. Walsh said that she thought it was about right because usually after Christmas we will see a huge upswing. Licensees spend time to complete their courses so that

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they can renew. Ms. Walsh said that she and Ms. Harris just reviewed the CE course certificates for licensees at the Dynamic office and staff also reviews CE by fax and email to let licensees know where they stand so they don't get caught short.

**Surety Fund Case, Agenda Item 6**

**S-29-005, Agenda Item 6(a)**

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

**RESOLVED to enter into executive session in accordance with AS 44.62.310(d)(1), for the purpose of deliberation on case #S29-005.**

**All in favor; Motion passed.**

Into Executive Session: 11:01 a.m.  
Staff and guests left the room.  
Out of Executive Session: 11:09 a.m.

**On a motion made by DuVal, seconded by Swires, it was**

**RESOLVED to adopt the Judge's decision and the claim be denied.**

**All in favor; Motion passed.**

The Commission called Judge Whitney to let him know that regarding the surety fund case S-29-005, it was discussed and agreed to adopt his findings and that the decision had been signed as of December the 10<sup>th</sup>, 2009.

**Regulation Tracker, Agenda Item 7(c)**

The Commission members reviewed and discussed the regulation tracker as presented.

**Licensing Issue – Carrigan Grigsby, Agenda Item 7(d)**



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Ms. Smith presented the licensing issue of Mr. Grigsby. Mr. Grigsby was required to complete PLE by September 9, 2009. On October 2, 2009, he turned in his certificate of PLE, the Affidavit of PLE, but no \$30.00 fee. Mr. Grigsby noted on his affidavit that he did not include a check for \$30.00. Ms. Smith contacted Mr. Grigsby numerous times through a mailed letter, email and fax stating that the \$30.00 fee was not included with his affidavit. As of November 18, 2009 the \$30.00 fee had yet been submitted.

Ms. Smith presented a question to the Commission for their consideration: Was this application a timely submittal and will Mr. Grigsby be required to submit the \$30.00 fee or will he need to reinstate his license?

The Commission discussed the issue as presented.

The Commission said that they are bound by the law and regulations. There is a lapsed license and the licensee and his broker should be notified that there is a lapsed license and that he should pay the reinstatement fee and contact the Real Estate Commission office immediately to get his license reinstated. He should also cease and desist from practicing real estate until he reinstates his license. Mr. Grigsby's broker should know immediately that his license is lapsed.

The Commission said that this issue did not need to come before them and that the staff had the authority to deal with it. However, if the licensee is insistent on bringing this type of issue to the Commission, they need to understand that while they are waiting to have their issue heard their license is in a lapsed status.

Ms. Davis asked if the Commission had a position on reinstating a licensee who knew he was letting his license lapse and actually practicing real estate without a license?

Mr. Cole said that he believes that a letter to the broker indicating that the broker is responsible to ensure that all facets of compliance have been followed, that includes licensing, classes, certification of the classes and payment of fees.

Ms. Swires said that putting the licensing procedures on the web site was an excellent ideal so that the licensees do not have to go to the statutes and regulations handbook. She said then licensees would have even less of an excuse; they cannot say that they called you and got confused because it is on the web site.

**Old Business, Agenda Item 10**

Letter Mr. Schreck, Agenda Item 10(a)

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Ms. Walsh presented the letter written by staff to Mr. Schreck as a follow up from his comment regarding regulation 12 AAC 64.061(c) from the June meeting.

Letter to Ms. Sharp, Agenda Item 10(b)

Ms. Walsh presented the letter written by staff to Ms. Sharp as a follow up from her comment from the last meeting regarding the disclosure form.

Letter to Mr. Royse, Agenda Item 10(c)

Ms. Walsh presented the letter written by staff to Mr. Royse as a follow up addressing a misleading statement regarding the Real Estate Commission that he had included in his newsletter dated May 2009.

Ms. Davis asked if the Commission received a response from any of these individuals that received a letter?

Ms. Walsh said that Mr. Royse did respond by email yesterday and that she read it this morning.

Mr. Cole said that this issue will be TABLED until after lunch when the Commission members could read over the response from Mr. Royse.

Update on Trust Account Audits, Agenda Item 10(d)

Ms. Walsh said that she has 29 trust account audits yet to be completed in Anchorage and Wasilla.

Mr. Cole asked for general information and knowledge for the Commission, how would Ms. Walsh sum up her findings of the audit to this point?

Ms. Walsh said that the audits that she has completed, in the Interior and Southeast, she thought that she would be going into a rat's nest but she did not find that. She said people have been very compliant. They want to make sure they are doing things right. There have been very positive responses, nothing egregious. They have given me full access to anything that she asked even if it was not readily available.

Mr. Cole said that what he would like to see, after the audits were complete, that staff write a letter, that will go on the REC web site, indicating the positive nature of this evaluation/audit; here is what we found. Let the people know that the internal audit was a positive experience with positive results.

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Mr. Somers also said to thank everybody in a broadcast letter for helping us in our mission to protect the public. Let them know that we appreciate and applaud everyone for helping and for the way they keep their files.

**Information on Pre-licensing education –ARELLO, Agenda Item 10(e)**

Ms. Walsh said that PeggyAnn McConnochie wanted her to look into to this issue regarding pre licensing education. She said that she had heard that some states were going toward including business etiquette and business manners within their pre licensing education without increasing the hours but increasing the content.

She said she had heard from a number of states and found that no one had business etiquette and business manners in their pre licensing except South Dakota.

Ms. Walsh said the other question Ms. McConnochie had was regarding inactive status. She found that all the states that responded have very similar language to the Alaska regarding inactive status.

Recessed for lunch at 11:50 a.m.

Reconvened at 1:00 p.m.

**Investigator's Report, Agenda Item 8**

**Statistical Report, Agenda Item 8(a)**

Ms. Wall-Rood presented the investigative report for the period of August 27, 2009 through November 23, 2009. Ms. Wall-Rood said that during this reporting period there were 21 cases opened and 2 cases closed. She said there are currently 76 opened real estate cases, 3 that have had litigation initiated, and 3 that are with the attorney general's office pending accusation. For the fiscal year 2010, there were 28 opened cases and 3 closed cases.

The Commission reviewed and discussed the statistical report as presented.

Ms. Wall-Rood said that her phone calls have remained pretty steady. She said that the November numbers were an aberration because there were a lot of complaints that came in for unlicensed practice and unlicensed activity, primarily with internet listing. She said landlord tenant issues are still the prize winner when answering phone calls.

The Commission discussed the phone logs as presented.

**Operational Definition of Listing Property, Agenda Item 8(b)**

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Ms. Wall- Rood said she has been receiving a lot of phone calls for her to clarify the meaning of listing. She said it is not defined in the statutes and regulations for her clarification. She understands a listing to be an agency relationship, an agreement between a property owner and a real estate broker to find a buyer; there is some type of relationship. She stated there have been complaints filed simply over things advertised in the newspaper that may not require a real estate license.

She said with the advent of the internet and so many properties being listed over the internet this may be something the Commission wants to define in statute and regulations of what a listing is in Alaska; maybe under definitions.

The Commission reviewed the statute and regulations and discussed the definition of listing.

Mr. DuVal volunteered to draft language and pass it on to Ms. Walsh.

Ms. Walsh said she would inquire to what other jurisdictions have for the definition of listing in their regulations or rules.

Fine Matrix, Agenda Item 8(c)

Ms. Wall-Rood said that a year ago she had drafted up a category of complaints and proposed disciplinary sanctions to make it a more stream line process. She said she is seeking a way to make the basic cases that are not huge investigations a more simple process. She would like them to be pretty uniform and consistent.

The Commission reviewed and discussed the fine matrix as presented.

**On a motion made by Somers, seconded by Davis, it was**

**RESOLVED to adopt the fine matrix as presented.**

**All in favor; Motion passed.**

Mr. Somers stated a special thanks to everybody that worked on the fine matrix.

Consent Agreement, Agenda Item 8(d)

**On a motion made by Swires, seconded by Somers, it was**

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**RESOLVED to enter into executive session in accordance with AS 44.62.310(d)(1), for the purpose of deliberation on a consent agreement.**

**All in favor; Motion passed.**

Into Executive Session: 1:27 p.m.  
Staff and guests left the room.

**On a motion made by Swires, seconded by Somers, it was**

**RESOLVED to come out of executive.**

Out of Executive Session: 1:36 p.m.

**On a motion made by Somers, seconded by Swires, it was**

**RESOLVED to adopt the consent agreement as presented regarding case 3004-09-014.**

**All in favor; Motion passed.**

Compare Investigation Phone Log with Education, Agenda Item 10(f)

Ms. Harris created a spread sheet comparing the topics of complaints and the number of phone calls from the phone log received from the investigator with the education topics to see if there may be a need for additional education in those areas. The majority of the complaints were landlord tenant/property management.

Ms. Davis asked because landlord tenant were the majority of the calls do we need additional education in property management or is it a matter of the general public not aware of their rights under the landlord tenant?

Ms. Wall-Rood said that about 5 percent of those landlord tenant calls involved licensees. A majority of those calls were people who are unhappy with their rental situation.

Mr. Somers said that the AAR Industry Issues Committee is going to take a through look at the landlord tenant act to see the gray areas that can be turned into black and white.

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Mr. Cole asked Ms. Harris from her perspective what would she say in terms of the classes we have scheduled and what she sees on the spreadsheet, do we have any loop holes?

Ms. Harris said that we pretty much have it covered with the designated courses that were chosen for the next renewal period.

Mr. Cole thanked Ms. Harris and Ms. Wall-Rood, he said that this gave them clarity on the fact that the Commission is looking in the right areas with education.

**Re-adoption of Regulations, Agenda Item 9**

12 AAC 64.061(c), 12 AAC 64.068; 12 AAC 64.111; 12 AAC 64.180; 12 AAC 64.961, Agenda Item 9(a)

The Commission members reviewed and discussed the regulation 12 AAC 64.111, Closing an Office. Because they were looking at substantial changes to this regulation, the Commission agreed to let this regulation go through, put their changes in writing, distribute it to the members for review and refine it at the March meeting.

Mr. DuVal read the language he had put together for 12 AAC 64.111, “the trust account must be kept open until the broker has distributed all monies due to be received to the proper person or the transactions have been assigned to another brokerage”. He said he will give this to Ms. Walsh to write up for the next meeting.

**On a motion made by Davis, seconded by Dickson, it was**

**RESOLVED to accept the regulations 12 AAC 64.061(c), 12 AAC 64.068, 12 AAC 64.111, 12 AAC 64.180(a), 12 AAC 64.961.**

**All in favor; Motion passed.**

**New Business, Agenda Item 11**

Proposed Regulation for Repeal – 12 AAC 64.112(c)

Ms. Walsh proposed to repeal regulation 12 AAC 64.112 (c) current language, “the business name that the broker registers with the Commission must be separate and distinct from all other active broker’s registered business names”. She said her

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justification was to allow for the Real Estate Commission members to determine what separate and distinct is for the office name.

The Commission members discussed the proposal to repeal regulation 12 AAC 64.112 (c), Registration of Business Name and the meaning of distinctive and separate.

Mr. Cole said that now that the Commission has had this discussion on what distinctive means and what you have if this came up again they would say acceptable or not acceptable. When staff sends out a mail ballot, when they have an issue with office name that they need clarification on, the vote would be just "yes" or "no," "acceptable" or "not acceptable", not a table. Leave the table option off the ballot.

Ms. Walsh said she is not sure she can do that because it may be a Division policy for all boards to have the table option on the mail ballot. She said she would do some research to see if the "table option" is required to be on the ballot or not.

The Commission decided to leave the regulation as is and allow staff to make those decisions and send a mail ballot to the members if there is a question.

Letter to Mr. Royse, Agenda Item 10(c)- Continued

Mr. Cole stated for the record that a letter did go out to Mr. Royse on November 24, 2009, concerning some misinformation that was sent out regarding the trust account audits. The REC took exception to this information because to his knowledge he knows of no broker who had to surrender his license due to the trust account audit. He said that in the AREC newsletter it specifically stated that the goal of the trust account audit was compliance and not punitive.

Executive Session, Per AS 44.62.310 (c)(3) Personnel, Agenda Item 12

**On a motion made by Swires, seconded by DuVal, it was**

**RESOLVED to enter into executive session to discuss personnel.**

**All in favor; Motion passed.**

Into Executive Session: 2:15 p.m.

Staff and guests left the room.

Out of Executive Session: 3:01 p.m.

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**Meeting Dates**

The Commission members discussed the future meeting dates.

March 17 – 18, 2010, Wednesday and Thursday in Juneau;  
June 17-18, 2010 in Fairbanks;  
September 9 -10, 2010 in Anchorage;  
December 1-2, 2010 in Anchorage.

The AAR Convention is September 14 -17, 2010 in Juneau the same time as the ARELLO conference that will be held Anchorage.

**On a motion made by Somers, seconded by Swires, it was**

**RESOLVED to adjourn.**

**All in favor; Motion passed.**

Meeting adjourned at 3:50 p.m.

Prepared and submitted by Nancy Harris.

Approved:



Brad Cole, Chairperson  
Real Estate Commission

Date: 9/13/10