

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

**MEETING MINUTES**

March 12-13, 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 March 12-13, 2009, at the State Office Building, Conference Room A, Juneau, AK.

Thursday, March 12, 2009

**Agenda Item 1      Call to Order**

Chairman Brad Cole called the meeting to order at 10:15 a.m. due to conference room scheduling conflict. For the record the meeting actually started at 9:00 a.m. and the Commission went into executive session.

The Commission had an opportunity to welcome two new Real Estate Commissioners, Nancy Davis and Barbara Dickson.

**Roll Call**

Members present constituting a quorum, were:

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

Staff Present:

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner

Guests Present via teleconference:

Nancy Harris

Guests Present:

Peggy Ann McConnochie, Broker Alaska Coastal Homes  
Dan Branch, Department of Law, Assistant Attorney General  
Karen Wilke, Paralegal for Division of Corporations, Business and Professional Licensing  
Gayle Horetski, Department of Law, Assistant Attorney General

Terry Thurbon, Chief Administrative Law Judge  
Dale Whitney, Administrative Law Judge

Jun Maiquis, Regulations Specialist for Division of  
Corporations, Business and Professional Licensing  
Lynn Smith, Division Director  
Roger Porto, Broker of Century 21 Totem Properties

**Agenda Item 4**

**Meet with Terry Thurbon, Chief Administrative Law  
Judge Office of Administrative Hearings**

Terry Thurbon discussed hearings with the Commission members. As of right now, there are two kinds of cases, Surety Fund and Licensing. Ms. Thurbon stated that the surety fund cases will become recovery funds. Currently, individual parties are able to file a claim. If someone applies for a license and their license is denied, the applicant may request a hearing. The parties are generally permitted to bring in more information through evidence and a proposed decision is presented to the Commission for consideration. Whether it's a license denial or disciplinary action, once a proposed decision is issued the parties have an opportunity to file a 'proposal for action'. An executive session is not required for the Commission to deliberate on voting on the case. The Commission can have an executive session where deliberations are privileged with nothing being recorded and have an Administrative Law Judge as the legal advisor for any questions the Commission might have. If there is a problem with the case then an independent legal advisor may be hired, only the Commission members and the legal advisor may be the participants in the deliberation. Ms. Thurbon, assigns hearings and surety fund cases to the pool of Administrative Law Judges that she supervises in Anchorage and Juneau.

The Commission members move to executive session at 11:30 a.m.

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

**RESOLVED to move to executive session.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 12:00 p.m.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to reconvene from executive**

session.

**All in favor. Motion passed.**

**Agenda Item 5**      **Surety Fund Claim**  
**S-29-001 Smart v. Burden**

**On a motion duly made by Somers, seconded by DuVal, it was**

**RESOLVED to adopt case S-29-001 Smart v. Burden.**

**All in favor. Motion passed.**

**Agenda Item 3**      **Public Comments**

The Commission members reviewed a letter sent by William Reynolds regarding mold issues. Mr. DuVal stated that it's not in the purview of the Alaska Real Estate Commission to amend Title 34. Mr. Cole requested that Ms. Walsh write a letter to Mr. Reynolds expressing the Commissions appreciation for his concern and that on the last revision of Residential Real Property Disclosure Statement the Commission added a question relating to mold and mildew under Environmental Concerns.

**Gail Horetski and Dan Branch**

Gayle Horetski introduced Karen Wilke a Paralegal for Division of Corporations, Business and Professional Licensing to the Commission members. Ms. Wilke fills the position for Steve Winker. As a paralegal Ms. Wilke follows up on random Continuing Education audits of licensees. Ms. Horetski also introduced Dan Branch, Assistant Attorney General in Juneau who filled Jenna Conley's position. Mr. Branch has recently been moved to support the Boards and Commissions, section of the Department of Law. Karen Hawkins and Robert Auth are the Assistant Attorney General's in Anchorage for the Division of Corporations, Business and Professional Licensing.

**Regulations 12AAC 64.110(a), 12AAC 64.128, and 12AAC 64.905**

Ms. Horetski discussed with the Commission the proposed regulations; 12AAC 64.110(a), 12AAC 64.128, and 12AAC 64.905 a regulation project that needed further clarification on the issue of working out of a home office that is not a principal or branch office. 12 AAC 64.905 will be Part II of the regulation packet submitted to the Lieutenant Governor's office.

**12AAC 64.110(a)** Before March 1, 2010, a real estate broker holding an active license shall establish and maintain a *principal business* office. On or after March 1, 2010, a real estate broker holding an active license shall establish and maintain a *principal business office in the state*. The office in which the broker works and maintains the broker's license is considered the principal office ~~or principal branch office~~ of the broker.

This is a new section for the Regulations:

**12AAC 64.128** Home offices. (a) A broker in charge of a principal office who permits an associate broker or a salesperson under the supervision of the broker to work out of a home office that is not a principal office or a branch office, must comply with supervision requirements of 12 AAC 64.125. (b) An associate broker in charge of a branch office who permits another associate broker or a salesperson under the supervision of the associate broker to work out of a home office that is not a principal office or a branch office, must comply with supervision requirements under 12 AAC 64.125. (c) A broker, associate broker or salesperson working out of a home office that is not a principal office or a branch office may not

- (1) give the appearance or impression that the home office is a principal office or a branch office;
- (2) display a sign of the home office showing the name of the real estate business;
- (3) use the address of the home office in any form of advertising, business letterhead, or business cards for the real estate business; the address of the principal office or branch office from which the associate broker or salesperson conducts real estate business must be used in the advertising, business letterhead, or business cards for the real estate business.

**12 AAC 64.905** Exceptions to requirements for real estate license. (a) The exceptions to the requirements of AS 08.88 listed in AS 08.88.900 are limited to the roles or activities specified, and do not allow a person to perform other activities for which a license under AS 08.88.161 would be required. (b) ~~As used in AS 08.88.900(a)(9), "incidental to the regular course of business" means flowing as a consequence of or accompanying the regular course of business if the domestic or foreign corporation, general or limited partnership, or limited liability company.~~

The Commission further discussed with Ms. Horetski 12 AAC 64.905. Mr. Somers stated that if the directors of a Corporation

hire employees to go out and develop property and that it's their location then it's against the law, however; if it's incidental to something else that they do then it's ok. The law exists and the Commission needs to enforce it, but the investigators will not investigate because there is no way to show what 'incidental' is.

Ms. Horetski stated that she will provide an updated version of regulations 12 AAC 64.128 and 12 AAC 64.905 and present it to the Commission the following day.

Mr. Branch discussed with the Commission the regulation project implementing the Error's and Omissions insurance requirement that was put into law with HB 357. There is difficulty with the Legislation in section 24 with the transition provision which gives the Commission authority to adopt regulations to implement the statutory provisions but not the department. The transitional provision states that the Commission may move to adopt the regulation to implement this bill but the regulations may not take affect before March 1, 2010. The Department does not have the authority to adopt the regulations until the statute takes effect. The Commission can't proceed to adopt the regulation without the transitional authority until the statute itself takes place.

Ms. Horetski explained to the Commission how a cease and desist order for a subpoena works and the different type of subpoenas. Ms. Horetski stated that the records are public and anyone can view them. The State Legislature has adopted a set of statutes that govern how Boards and Commissions conduct their business in the Division of Corporations, Business and Professional Licensing. The Legislature has given the discipline power and general regulatory power to the Commission and it has given the investigative and enforcement power to the department.

The Commission recessed for break at 12:55 p.m.  
The Commission reconvened at 1:05 p.m.

**Agenda Item 1a**

**Approval of Agenda**

The Commission members reviewed and discussed the revised agenda.

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

**RESOLVED to approve the agenda.**

**All in favor. Motion passed.**

**Agenda Item 2**      **Approval of Minutes**

Commission members reviewed the December 11–12, 2008 meeting minutes as presented.

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

**RESOLVED to approve the December 11-12, 2008 with changes being made to page 8, 12AAC 64.110(g) (1) “within”, page 10, 12AAC 64.940(a) adding ‘in”, and page 11, Agenda Item 6 second paragraph 4<sup>th</sup> line “than”, page 12, correct numbering sequence (two #9’s listed).**

**All in favor. Motion passed.**

**Agenda Item 8**      **Education Report**

Ms. Harris presented the education statistics to the Commission for their review. As of February there are currently 281 approved courses, 10 new courses, 79 approved/permanent instructors, 2 new instructors, and 1 temporary instructor. Ms. Harris discussed the updated web site. Ms. Harris provided the Commission with an update on Landlord and Tenant information on the web site.

**Methamphetamines in the Community course # 2467**

Ms. Harris discussed with the Commission the approval of hours for the course “Methamphetamines in the Community”. Ms. Walsh stated to the Commission that she would like to see broader based education for the course in order to approve more hours for this course. The Commission accepted 6 Elective Continuing Education (ECE) hours for the Methamphetamines in the Community course.

The Commission members move to executive session at 2:20 p.m.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to move to executive session to discuss investigative issues.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 2:40 p.m.

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

**RESOLVED to accept voluntary license surrender (no case #) for Gary C. Cox, license # 17584.**

**All in favor. Motion passed.**

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

**RESOLVED to accept license surrenders for cases 3000-07-004 Lance C. Lockard, license #15657 and 3000-07-014 Donald S. Murray, license #15650.**

**All in favor. Motion passed.**

Methamphetamines in the Community course

Ruth Blackwell, Associate Broker of Powell Realty, Inc, Roger Porto, Broker of Century 21 Totem Properties, Inc, and Mike Ban, Broker of Tlingit-Haida Regional Housing Authority (THRHA) Realty Corporation, discussed with the Commission the importance of the course "Methamphetamines in the Community" and asked the Commission to reconsider allowing for the requested 12 hours of Continuing Education. The Commissions initial decision to keep 6 hours of ECE stands.

**Agenda Item 9**

**Executive Administrator's Report**

Ms. Walsh reviewed and discussed with the Commission the Surety Fund Tracker, Surety Fund Balance Report, and Trust Account Audits. For fiscal year 2009 there were 4 new surety fund cases opened.

The Commission recessed for break at 2:55 p.m.  
The Commission reconvened from break at 3:10 p.m.

Mr. DuVal discussed with the Commission members an e-mail regarding frequently asked questions. The Commission members asked the questions be posted on the Real Estate Commission web site.

12AAC 64.570 Property Management of Real Property  
Mr. DuVal asked if the current policy of the Alaska Real Estate

Commission was that a licensee in Alaska may retain another licensee in a different brokerage to represent or give specific assistance to the first licensee in the property owned by the first licensee?

**On a motion duly made by Somers, seconded by DuVal, it was**

**RESOLVED to move that the language above will be the Alaska Real Estate Commission policy.**

**All in favor. Motion passes.**

**Agenda Item 10**

**New Business**

**Licensing Issues**

Ms. Walsh discussed licensing issues with the Commission and provided e-mails from other jurisdictions on statutes and regulations that deal with licensees or applicants who are convicted of sexual offenses.

**Lead-Based Paint Disclosure**

The Commission discussed Lead-Based Paint Disclosure example form from a brokerage in Colorado. The Commission agreed that this was a federal form and that Alaska Real Estate Commission doesn't have the authority to make changes to a Federal form.

**Electronic Transfer of Trust Account Funds**

Ms. Walsh discussed an e-mail from Ms. Price referencing electronic funds transfers. Mr. Somers stated that there is nothing indicating that Ms. Price can not use the electronic funds transfer (EFT). The Commission agreed that it is ok to electronically transfer funds into a trust account and that the transaction must be recorded by the broker or their designee.

**Real Estate Education Support Letter**

Lorrie Saunders-Irwin, member of the public, is attempting to organize continuing education for all professionals in the real estate industry. Ms. Irwin is proposing a major focus with one of the universities in Anchorage in the Real Estate Studies program. This would give professionals in the real estate industry access to college credits for mandatory education courses. Included in this is CEUs that can also lead toward a degree program as well as college credits for courses required for professional designations like CRS, GRI, Member Appraisal Institute (MAI), etc. This option is currently not available in Alaska.



**Licensing Report**

**Licensing Examiner's Report**

Ms. Smith presented the statistical report to the Commission for the period of November 21, 2008 through February 20, 2009 for their review. There are 24 new licensees, 2334 active licensees, and 2529 total number of licensees with a January 31, 2010 expiration date. There are 485 active brokers, 400 active associate brokers, and 1442 active salespeople. Thirteen new offices opened, with 7 in Anchorage, 1 in Fairbanks, 1 in Juneau, 1 in Homer, and 2 in Wasilla.

12 AAC 64.570 Property Management of Real Property. In 12 AAC 64.570(b) Property Management of Real Property, *in addition to the duties set out in AS 08.88.615 a licensee who owns real property described in (a) of this section must also (2) provide the licensees broker with the following information for each property owned by the licensee.* Mr. Somers stated that something was changed. Mr. DuVal stated that there is a contradiction in the language. It was determined that a new regulation project would need to be correct this existing language

**Agenda Item 13**

**Continuing Education Issues-Division Paralegal**

**Donna Orr - Consent Agreement Case #3002-08-002**

Ms. Orr signed her name on the renewal form confirming that she completed 20 hours of Continuing Education. When she was audited it showed that she was lacking some of her CE hours.

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

**RESOLVED to accept Donna Orr - Consent Agreement Case #3002-08-002**

**All in favor. Motion passed.**

**Guadalupe Caro – Consent Agreement Case #3004-08-019**

Ms. Caro signed her name on the renewal form confirming that she completed 20 hours of Continuing Education. When she was audited it showed that she was lacking some of her CE hours.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to accept Guadalupe Caro - Consent Agreement Case #3004-08-019**

**All in favor. Motion passed.**

**Supplemental Information**

**HB 129**

Commission members reviewed and discussed HB 129 and a letter of support written by Chairman Cole to the Legislature. All licensees (Broker, Associate Broker and Salespersons) convicted of a felony should be licensed at the discretion of the Real Estate Commission in order to practice in Alaska.

The Commission members move to executive session at 4:53 p.m.

**On a motion duly made by DuVal, seconded by Sherman, it was**

**RESOLVED to move to executive session to discuss request for training approval.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 5:17 p.m.

The Commission recessed at 5:25 p.m. until March 13, 2009 at 8:00 a.m.

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

**RESOLVED to recess until March 13, 2009 at 8:00 a.m.**

**All in favor. Motion passed.**

Thursday, March 13, 2009

**Call to Order**

Chairman Brad Cole called the meeting to order at 8:05 a.m.

**Roll Call**

Members present constituting a quorum, were:

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

Staff Present:

Sharon Walsh, Executive Administrator  
Beata Smith, Licensing Examiner

Guests Present via teleconference:

Michele Wall-Rood, Investigator

Guests Present:

Peggy Ann McConnochie, Broker, Alaska Coastal Homes  
Gayle Horetski, Department of Law, Assistant Attorney  
General  
Jun Maiquis, Regulations Specialist for Division of  
Corporations, Business and Professional Licensing

**Agenda Item 12**

**Investigative Report**

Statistical Report

Ms. Wall-Rood presented the Investigative Report to the Commission. Starting November 19, 2008 through February 18, 2009 the Investigative Unit opened 8 cases and closed 8 cases. There are currently 43 open cases. Ms. Wall-Rood discussed the phone log where she tracks the types of calls received for December 2008, January 2009, and February 2009. The Commission members discussed and reviewed the Fine Matrix with Ms. Wall-Rood. Mr. Cole stated that some education violations require additional education and that the Commission members suggest that any violation that results in a fine should require education. Mr. Cole recommended for Commission members to meet with Rick Younkings, Chief Investigator to have a clearer view on the statistical report. (Side Note: April 2009 Rick Younkings retired with the State of Alaska)

Jan C. Hood

Surrender, Case # 3004-08-016

Ms. Wall-Rood discussed and reviewed with the Commission members the surrender for Jan Hood.

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

**RESOLVED to accept surrender for Jan C. Hood, Case #3004-08-016.**

**All in favor. Motion passed.**

Janice Hussein

The Commission members moved to executive session at 8:50

a.m.

**On a motion duly made by DuVal, seconded by Somers, it was**

**RESOLVED to move to executive session.**

**All in favor. Motion passed.**

The Commission members reconvened from executive session at 9:10 a.m.

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

**RESOLVED to accept Janice Husseini application.**

**All in favor. Motion passed.**

Gayle Horetski

Ms. Horetski provided the Commission with the Administrative Procedure Act, Office of Administrative Hearings (OAH) statutes, and regulations. She advised the Commission to contact her with any questions regarding these documents.

Ms. Horetski presented the Commission with the updated version of the proposed regulations.

**12AAC 64.110(a)** Before March 1, 2010, a real estate broker holding an active license shall establish and maintain a *principal* office. On or after March 1, 2010, a real estate broker holding an active license shall establish and maintain a *principal* office in the state. The office in which the broker works and maintains the broker's license is considered the principal office of the broker.

**12AAC 64.128** Home offices. (a) A broker in charge of a principal office who permits an associate broker or a salesperson under the supervision of the broker to work out of a home office that is not a principal office or a branch office, must comply with supervision requirements of 12 AAC 64.125. (b) An associate broker in charge of a branch office who permits another associate broker or a salesperson under the supervision of the associate broker to work out of a home office that is not a principal office or a branch office, must comply

with supervision requirements under 12 AAC 64.125.

(c) An associate broker or salesperson working out of a home office that is not a principal office or a branch office may not

- (1) give the appearance or impression that the home office is a principal office or a branch office;
- (2) display a sign of the home office showing the name of the real estate business;
- (3) use the address of the home office in any form of advertising, business letterhead, or business cards for the real estate business; the address of the principal office or branch office from which the associate broker or salesperson conducts real estate business must be used in the advertising, business letterhead, or business cards for the real estate business.

**12AAC 64.905** Exceptions to requirements for real estate license. (a) The exceptions to the requirements of AS 08.88 listed in AS 08.88.900 are limited to the roles or activities specified, and do not allow a person to perform other activities for which a license under AS 08.88.161 would be required.

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

**RESOLVED to adopt the new language on the proposed regulations 12AAC 64.110(a), 12 AAC 64.128, and 12AAC 64.905.**

**All in favor. Motion passed.**

**On a motion duly made by Dickson, seconded by Swires, it was**

**RESOLVED to adjourn the meeting.**

**All in favor. Motion passed.**

Meeting adjourned at 9:40 a.m.

Next meeting is June 18-19, 2009 in Anchorage at the Atwood Building, Conference Room 1270.

Prepared and submitted by Beata Smith,  
Division Staff.

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Approved:

  
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Brad Cole, Chairperson  
Real Estate Commission

Date: 10/9/09