

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

REAL ESTATE COMMISSION
MEETING MINUTES

March 4 & 5, 2014

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 4 & 5, 2014, at the State of Alaska Atwood Building Conference Room 1450, 550 W. 7th Avenue, Anchorage, Alaska.

Tuesday, March 4, 2014

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:

Brad Cole, Associate Broker, 3rd Judicial District
Anita Bates, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District
Marianne Burke, Public Member
Eric Bushnell, Associate Broker at Large
Cindy Cartledge, Public Member
Stacy (Risner) Harvill, Associate Broker, 4th Judicial District

The March 4, 2014 meeting was for the purposes of conducting a workshop to make revisions to the consumer pamphlet.

Wednesday, March 5, 2014

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:

Brad Cole, Associate Broker, 3rd Judicial District
Anita Bates, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District
Marianne Burke, Public Member
Eric Bushnell, Associate Broker at Large (not avail. at time of roll call, bad rd. conds. arvd. at 9:40am)
Cindy Cartledge, Public Member
Stacy (Risner) Harvill, Associate Broker, 4th Judicial District

Staff Present:

Sharon Walsh, Executive Administrator
Beata Smith, Licensing Examiner
Nancy Harris, Project Assistant
Jennifer Wirawan, Investigator, Division of Corporations, Business & Professional Licensing
John Clark, Acting Chief Investigator

Guests Present:

David Somers, Broker, Somers & Associates, In
Jerry Royse, Broker, Royse & Associates
Scott Myers, Assoc Broker, Jack White Real Estate
Raney Hardman, Salesperson, ReMax Eagle River
Audrey Mason, Assoc Broker, ReMax Eagle River

Guests Present via Telephone:

Sara Chambers, Operations Manager, Corporation, Business and Professional
Licensing(CBPL)
Martha Hewlett, Administrative Officer, CBPL

New item "e" has been added to LE Report. No further additions were added to agenda.

Commission members asked Ms. Harris for examples of prior year REC newsletters to review. The Commission members reviewed and determined that they would like to have monthly news updates from the Commission staff on the web site.

Approval

The Commission Members reviewed and discussed the meeting agenda as presented.

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

RESOLVED to approve the meeting agenda as presented.

All in favor; Motion passed.

Approval of Meeting Minutes

Commission members reviewed the December 5 & 6, 2013 meeting minutes as presented.

After discussion by members, Burke and Bates the December 5 & 6, 2013 meeting minutes were tabled until Ms. Burke had a chance to review further and report back this afternoon.

Ms. Harvill asked about the sentence indicating next meeting will be March but there was a scheduled teleconference that should be referenced as the next meeting.

Ms. Burke said she notice some changes that needed to be looked into on the current meeting minutes verses those submitted in the meeting packet. She also had some concern as to whether Mr. Habeger provided the REC with information on the amount of indirect expenses that were "trued-up". Mr. Cole suggested staff email the Director after every meeting with questions and concerns that are addressed in the meetings and then members know there is a trail of communication with the Director. Ms. Burke suggested that the Director provide the REC with a summarization of what he intends to provide to the REC. Ms. Bates wasn't sure the REC could require that he provide a summary.

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of Feb 20, 2014 there are currently 8 Pre-Licensing courses, 111 Elective Continuing Education courses, 19 Designated Continuing Education courses. There are currently 142 approved courses, no new sponsors, 142 currently approved/permanent instructors. 8 Pre-Licensing, 3 Broker Upgrade and 30 Post-Licensing education courses.

Chairperson Bates suggested that the REC start to consider a Train the Trainer(TTT) course. Ms. Burke would like staff to look into seeing if CLEAR would be available for presenting a TTT course. Ms. Harris reminded the members that TTT is no longer a requirement to qualify as an instructor and that there are other options in which to get certified by the REC. Ms. Walsh stated she could look into CLEAR and see what they have to offer in addition to others out there. Ms. Bates would also like to see something being offered on course content development training for better course offerings. Mr. Bushnell stated he would check with the Valley Board of Realtors (VBR) as well as the Alaska Association of Realtors (AAR) to find out if they have suggestions or know who may be available for a TTT workshop. He will report back on those findings at the June meeting.

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

RESOLVED to have staff explore options of a Train the Trainer program and report any findings at the June meeting.

All in favor; Motion passed.

Ms. Harris stated that she would likely have some regulations for them to consider at the June meeting on penalties for instructors and endorsement issues.

Investigator's Report

Ms. Wirawan introduced Mr. John Clark, Acting Chief Investigator. This is a temporary contract so he is not with the Division permanently.

Ms Wirawan provided 3 prior REC decisions from the Office of Administrative Hearings (OAH) for the Commission to review. She would like the Commission members to be aware

of these historical decisions by previous Commissions. Ms. Wirawan asked that the Commission consider a three-tier approach to falsified applications. She distinguished between someone intending to deceive the Commission on the application and someone who just didn't think about it because the matter took place so long ago. She also asked for the Commission members to come up with some guidance for the reviewing member looking at investigative matters. What is the REC's intent on certain matters? Is it issuing an Advisement Letter and then it would close the matter. Or did someone fail to disclose a "yes" response to a Professional Fitness question because they didn't want their Broker to know or have to report it on their application to the REC. She indicated that the Medical and Nursing Boards issue fines for falsifying applications. They can't fine someone who isn't licensed so they license them pending the applicants go into a Consent Agreement. She also stated that the Medical Board fines \$1,000.00 for each falsified and unintentional answer on the application. These are just some ideas of what other Boards do on reviewing applications. Ms. Wirawan stated that she would like to see more of a general/broad guidance to have that reviewer know what the Commission may consider. Is the intent of the REC to issue a fine and review at the next meeting? Or to review for a possible denial or do you just want to go ahead and license the individual depending on the severity? Ms. Bates suggested that maybe they should consider changing the eligibility requirements. Mr. Bushnell noted that he has to go through more scrutiny to coach kids hockey than to obtain a real estate license. Ms. Wirawan also stated that she sees part of the problem with applicants is that they spend time and money getting the 40 hours of education, passing the test and then spending money to apply and then feeling it's their right to a real estate license. Ms. Wirawan discussed the preliminary review of an applicant who has a "yes" answer. She provided the Commission with an example of this from the Real Estate Commission in Hawaii. The Commission reviewed and discussed a preliminary application review. The applicant would still have to apply for a license after the review of the preliminary application screening by the REC. The Assistant Attorney General Harriet Milks told Ms. Wirawan that the REC does have authority under the crime section of 08.88.171, she believes the REC could write a regulation that states in the judgment of the REC the following crimes effect someone's ability to practice competently and safely. Does the REC want to take a hardline stance and deny falsified applications? Or do they want to create a standard policy when reviewing these matters using an advisement letter, fine or denial? Ms. Wirawan would like to know the will of the REC for the reviewing member to base guidelines. Mr. Cole stated that Ms. Walsh does have the authority to make that determination when someone is checking "yes". Ms. Wirawan said that what we are discussing is someone who is checking "no", and not disclosing information, intentionally deceiving or unintentionally, because they have forgotten the matter. Does the REC want to begin issuing civil fines or do it on a case by case basis? Mr. Cole stated all those applications should come before the REC for their decision and perhaps we should disclose on the application that it could take up to a year if you falsify your application. Send preliminary application form to AAG Harriet Milks for her review and input. All falsified applications to come to the entire REC for a decision. Two issues: length of time it takes for review by REC and the money already expended in the application process.

Recess for lunch at 12:15
Back on record at 1:17

Ms. Wirawan continued with her presentation on the merits of having a reviewing member of the Commission.

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

RESOLVED to impose a \$1,000.00 fine, on any applicant for licensure (new, upgrade or renewal) (allowing) for a six month payment period, and the Commission retains the right to deny or revoke a falsified application.

Motion passed.

Ms. Wirawan presented the Commission with a draft of the Consumer Pamphlet for their consideration.

Commission members reviewed and made suggestions to the clarify language and formatting of document. Ms. Wirawan presented another draft for their consideration.

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

RESOLVED to adopt the revisions to the Consumer Pamphlet, including a name change to be known as *Consumer Disclosure and* provide the Waiver of Rights form to be sent out for public comment and have it back for the June 4, 2014 meeting.

Motion passed.

Old Business

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Public Comment

Mr. Dave Somers stated he is at the Commission meeting representing the Alaska Association of Realtors and was asked by the incoming Chair, Errol Champion to sit in on REC meetings and provide the Association with Commission information/concerns.

Licensing Statistics

Ms. Smith presented the licensing report for the period of November 14, 2013 through February 18, 2014. There were 88 new licensees with expiration date of 1/31/201. 2165 total active licensees: 419 are Brokers, 360 are Associate Brokers, 1384 are Salespersons and 2 are Limited Brokers. The Regulation tracker was reviewed.

Ms. Bates asked Ms. Smith is there any reason why the LE report is not corresponding to a

calendar or fiscal year quarterly reporting? Ms. Bates suggested if it was changed it would track similarly with the fiscal reporting we get from the Division. Ms. Harris indicated that is up to the REC, how they would like to see it presented.

Ms. Smith presented the Commission with a certificate for pre-licensing education. The Commission members found the certificate to be valid and therefore, acceptable.

The Commission reviewed the draft revised application form that requires Brokers to initial the bottom of the first page. This will make them aware of their applicant's answers to the Professional Fitness questions. Ms. Davis suggested sending a letter to the Brokers showing changes to the form and advising them of their new requirement to initial each new application on page one and signing the second page.

The Commission discussed the need for an e-newsletter update each month. Use the List-Serv and find out what Brokers are not on the List Serv and request that they subscribe. Use List Serv for specific license information and advisories from the REC to communicate with Brokers.

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

RESOLVED to reinstate the REC newsletter and any costs associated with that will be paid out of the Recovery Fund.

Motion passed.

A friendly amendment was asked to be considered, on a motion duly made by Ms. Burke and seconded by Mr. Bushnell, it was,

RESOLVED to post the newsletter to the REC web site for all licensees and members of the public to access.

RESOLVED to accept the friendly amendment as stated.

Motion passed.

Members suggested staff keep the newsletter short and provide it on a monthly basis. They also suggested topics such as, emerging real estate trends, Investigator concerns, best practices, changes with REC forms/applications and any new statutory or regulatory changes. They recommended that it commence at the end of the month. After discussion, it was determined to wait until Ms. Harris was back on REC staff full-time.

Executive Administrator's Report

The Recovery Fund financial report was presented for members to review. Ms. Walsh stated that after license renewals it appears that the REC can expect approximately \$64,000 in revenue to the Recovery Fund. There were no new claims filed during the quarter from December to March 4th. Ms. Walsh indicated that there will be a change in the balance once the Project Assistant is reinstated full time. Ms. Burke asked about footnote #3 she stated

that it should be changed to reflect 100% effective January 1, 2014 since that is when the REC was told by the Director that the Project Assistant would be back full-time. Ms. Burke is concerned that the Fund balance may exceed the limit and then run the risk of any excess going into the General Fund. Mr. Bushnell and Mr. Cole both indicated that the balance is based on a two-year licensing cycle. Ms. Burke said the projections and footnote should reflect when the Project Assistant starts back with the REC.

Schedule of Revenue and Expenditure report was presented to the members for their consideration. The reporting period is for October through December 2013. It reflects a deficit of \$425,333. The next report won't be available until the June meeting showing revenue from license renewal. Ms. Burke asked that the Division be sure and date these reports, she stated that this one is but that she has many at home that are not with a date. She also asked Ms. Wirawan if she sees the Expert Witness invoice and if it is accurately reflected in the expenses on this report? Ms. Wirawan indicated that she does see them and yes that is the correct number. Ms. Walsh then presented a schedule of revenue and expenditures for the fiscal years 2008 through 2013 reflecting a significant decrease in Investigative expenditures.

Investigator's Report

Jennifer Wirawan, Investigator for the REC presented her report to the members. Ms. Wirawan discussed the issue of how the REC wanted to deal with falsified license applications. They suggested making changes to the application and change of status forms as a way for applicants and licensees to make more accurate and complete disclosure on the professional fitness questions. The REC asked that staff also inform brokers and post the change in the forms to the REC web site.

Ms. Wirawan stated that some other boards have a tiered approach in dealing with falsified applications, such as fines for every falsified answer but they must license pending that they go into a consent agreement before the Division/Commission has jurisdiction to levy a fine. She asked what the Commission would like to do for falsified applications? Issue an Advisement Letter? Issue a fine? Issue a Statement of Denial? Commission members suggested at the outset to better inform the applicants through a revision in the form and outreach to the Brokers and Education providers of Prelicensing.

Ms. Wirawan explained the process of having a member of the Commission review a potential falsified application. The applicant could then be offered a Consent of Agreement, which would waive their right to a hearing and the Commission can discuss it. If the entire Commission discusses it-it's a quasi-judicial hearing process. However, before the Commission can discuss it, the person has to agree to the discipline. If the applicant declines the agreement, the Investigator can file an accusation and the due process will be a hearing at the Office of Administrative Hearings.

Ms. Wirawan reiterated the reason why the entire Commission cannot discuss the merits of the case before the person agrees discipline.

On a motion duly made by Mr. Cole seconded by Ms Harvill, it was,

**RESOLVED to have staff create an informational sheet to provide to each Broker and prelicensing instructor to advise potential applicants there are certain things that may preclude you from getting a real estate license.
Motion passed.**

Investigator Wirawan recommends to the Commission that they go into executive session to review investigative matters.

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

RESOLVED to go into executive session.

All in favor; Motion passed

Into E. S. at 1:47pm

Out of E.S. at 2:40pm

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

RESOLVED to accept the Consent of Agreement in case #2014-000043.

All in favor; Motion passed.

Consent of Agreement for Errol Champion has been adopted.

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

RESOLVED to accept the license surrender for case #2013-002096.

All in favor; Motion passed.

Surrender of salesperson license #18481, Patrick Killoran.

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

RESOLVED to deny the application for licensure in the case of #2014-000098. Based on AS 08.88.171, that since 7 years have not lapsed since the conviction was imposed and under 08.88.401 the applicant gave false information to the Real Estate Commission in order to obtain a license; and provided per 12 AAC 64.160 making of false or misleading statements.

All in favor; Motion passed.

The license application for Landon Bauer is denied.

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

RESOLVED to accept the license surrender of case #2013-002096.

**All in favor; Motion passed.
License #18481 Salesperson, Patrick Killoran.**

On a motion by Mr. Cole, seconded by Ms. Davis, it was

RESOLVED to submit as a regulation project the revisions to the Consumer Pamphlet and the provide for comments on the Waiver of Right form for public comment and have it back with comments at the June meeting .

All in favor; Motion passed.

Old Business

A form was presented for REC members to review for appointing a Personal Representative trying to assist the REC in closing out the office of a deceased Broker. The intent is to provide for a smooth transition in closing out a small brokerage where there is no Associate Broker in the office. Changes to the form are still needed to make it look more like a State of Alaska form. The Commission reviewed the form, Office Closing Affidavit they made recommendations and will see the revisions at the June meeting.

Legal entities topic was briefly discussed, the proposed regulation was withdrawn at the September 2013 meeting due to opposition from a number of licensees and the Alaska Association. Mr. Somers stated that previous forums wanted nothing to do with it and that all members of LLC's or corporations must be licensed. Mr. Cole recommended the REC consider a regulation change. Mr. Bushnell expressed concern over requiring that all LLC's etc be required to be licensed.

On a motion by Ms. Davis, seconded by Ms. Harvill, it was

RESOLVED to rewrite 12AAC 64.068 and the new proposed language be provided at the June meeting for consideration.

All in favor; Motion passed.

New Business

The Commission spoke with Sara Chambers, Operations Manager and Martha Hewlett, Administrative Officer with the Division of CBPL discussion centered on the Project Assistant being reinstated to the REC full-time and the REC Licensing Examiner position being eliminated with a date certain of April 1, 2014 and presentation of 2nd quarter reports. Ms. Burke asked that the financial statements reflect the time period covered. The Revenue & Expenditure report should reflect the period of time. Ms. Hewlett said she would speak with Administrative Services Division about this request. Ms. Burke also requested that Mary Manning change the projections and the footnotes on the Recovery Fund financial statements to reflect that the Project Assistant is back 100% as of April 1, 2014. Additionally, Ms. Burke asked Ms. Chambers if Mr. Habeger provided written answers to her questions she had asked him at the December 2013 meeting before we

adjourned early due to the ice storm.

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

RESOLVED to instruct the Division (CBPL) to charge 100-percent of the Project Assistant's time to the Recovery Fund in accordance with AS 08.88.472 and that anytime that the Project Assistant doesn't need to spend on Recovery Fund time shall at the discretion of the REC, be used on administrative duties as necessary.

Ms. Davis and Ms. Burke accepted the friendly amendment offered by Mr. Bushnell to include that the effective date be no later than April 1, 2014.

All in favor; Motion passed.

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

RESOLVED to adjourn the meeting until June 4, 2014 in Anchorage.
All in favor; Motion passed.

Meeting adjourned at 4:25pm.

Prepared and submitted by:
Sharon J. Walsh

Approved:

Anita Bates
Anita Bates, Chairperson
Alaska Real Estate Commission

Date: 6/18/2014