

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

REAL ESTATE COMMISSION  
MEETING MINUTES

June 11, 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 June 11, 2014, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7<sup>th</sup> Avenue, Anchorage, Alaska.

**Agenda Item 1a**

Call to Order

Chairperson Anita Bates called the meeting to order at 9:01 a.m. at which time a quorum was established.

Roll Call

Members present:

Anita Bates, Broker at Large  
Marianne Burke, Public Member  
Stacy Harvill, Associate Broker, 4<sup>th</sup> Judicial District  
Nancy Davis, Broker, 1<sup>st</sup> Judicial District  
Brad Cole, Associate Broker, 3<sup>rd</sup> Judicial District  
Eric Bushnell, Associate Broker, Broker at Large  
Cindy Cartledge, Public Member joined the meeting at 9:05 a.m.

Staff Present:

Sharon Walsh, Executive Administrator  
Jennifer Wirawan, Investigator

Guest Present:

Jerry Royse, Royse & Associates  
Traci Barickman, AK Real Estate Education  
Dave Somers, AK Association of Realtors  
Scott Myers, Jack White, Eagle River Office  
Mike Rasmussen, Rasmussen Properties  
Sara Chambers, Director CBPL  
Diane Greger, Distinctive Properties  
Paul Moore, Distinctive Properties  
Mark Schneiter, ASCPA

**Agenda Item 2a**

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

**RESOLVED to adopt the agenda as presented.**

**All in favor; Motion passed.**

**Approval of Meeting Minutes**

Commission members reviewed the December 4 & 5, 2013 meeting minutes as presented and decided additional time was needed to review.

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

**RESOLVED to table the December 4 & 5, 2013 meeting minutes until this afternoon.**

**All in favor; motion passed.**

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

**RESOLVED to approve the meeting minutes for March 4 & 5, 2014.**

**All in favor; Motion passed.**

Ms. Burke asked if Ms. Harris followed up on the REC's request to get information from other states on penalties for instructors and endorsements. Also, if Ms. Walsh obtained information from CLEAR on a Train-the-Trainer workshop.

**Public Comment**

The REC heard from Traci Barickman with Alaska Real Estate Education and Associate Broker of Re/Max Dynamic of the Valley regarding the need to make changes to Post Licensing Education (PLE). The redundancy of information for pre-licensing and post-licensing education is problematic for Associate Brokers. Ms. Barickman suggested splitting course material to accommodate Associate Broker and Broker. It was recommended by the Chair that an education committee/task force be formed to review this issue. Ms. Barickman and Mr. Royse were asked by the Chair to serve on that committee. Mr. Bushnell suggested that maybe all team leaders be required to be Associate Brokers. Mr. Royse introduced himself and stated he is the proud recipient of the 2014 Alaska Association of Realtors Lifetime Achievement Award. Mr. Rasmussen also addressed the Commission regarding problems in the industry and being consistent in the approach, perhaps using a best-practice method. He also addressed the issue of employee vs. independent contractor and said this is a national issue that the National Association of Realtors is watching.

Note: Staff was informed Mr. Royse's award was for "Appreciation of exemplary contributions to Realtors and to the real estate industry from the Anchorage Board of Realtors®", not the state association.

Mr. Rasmussen also indicated that there needs to be some sort of follow-up mechanism on

these issues. Chair Bates indicated that education plays a very important role in getting the message across to all licensees. Mr. Cole indicated that education and investigations is important and suggested that the information be combined.

### **Executive Administrator's Report**

#### **Licensing Statistics**

Ms. Walsh presented the licensing statistics for the period of 2/19/2014 through 5/29/2014

Expiration date of 1/31/2016:

- 105 new licensees
- 2282 total number of active licensees
- 2328 total number of licensees
- 22 total number of inactive licensees
- 9 total number of lapsed licensees
- 19 licensees broke contact with a broker
- 5 licensees completed their post-licensing education (PLE)

Since the last licensing report there were 8 main offices and 1 branch office that opened.

#### **Recovery Fund Report**

Current balance for period ending March 31, 2014, is \$553,821. No claims were paid out as of that time period. There are some additional points for future consideration on the fund balance. One is that the Project Assistant salary will impact the fund balance as of April 1, 2014 it will be 100% from the Recovery Fund and the Executive Administrator's time will remain at 10% from the Fund. There is also a claim made and presented today for Commission consideration of pay out.

#### **REC Revenue and Expenditure Report**

Expenses and revenues as reported by the Division Fiscal Officer were reviewed by the Commission. Ms. Burke asked about Contractual costs and said she would address the issue with Ms. Chambers. Mr. Burke asked, who are the Expert Witnesses that the REC Investigator contracts with for this service? Ms. Walsh stated she does not see those contracts. Ms. Burke will ask Sara Chambers for DOL invoices to be presented to the Executive Administrator for any charges

#### **Recovery Fund Claim**

The Commission reviewed a claim filed against a former licensee, Jessica Thomas. The claim was made for \$6,429.00 by a former client of Ms. Thomas in her property management business in Fairbanks.

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

**RESOLVED to approve the Recovery Fund claim #14-001 for payment in the amount of \$6,429 plus interest at an interest rate of 3.75% from the date of judgment (12/15/13) until paid out.**

**All in favor; Motion passed.**

Regulation Tracker:

The regulation tracker was presented to the Commission members for their review. 12 AAC.064(d) will go back on the regulation tracker since our conversation with Ms. Milks this morning. Ms. Burke asked about 12 AAC 64.110(e)(5).

Mail Ballot Issue:

A mail ballot was sent to all members of the Commission for their consideration. The Commission members accepted the Imposition of Civil Fine for the Elizabeth Krasnasky. All members voted through the mail ballot process to accept this agreement.

Office Closing Affidavit

The Commission members discussed the Office Closing Affidavit form. It was suggested to use the term Personal Representative rather than Executor where referenced on the form.

Legal Entities:

Ms. Bates said we need to look at regulations that cover this issue.  
Mr. Bushnell asked about the structuring of an LLC.

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of May 30, 2014 there are currently:

- 8-Pre-Licensing courses
- 160-Elective Continuing Education courses (ECE)
- 21-Designated Continuing Education courses
- 34-Post Licensing Education courses(which could also be used for ECE)
- 7-Broker Upgrade Pre Licensing courses
- 25-course sponsors
- 147-currently approved/permanent instructors
- 5-new instructors

There are no temporary instructors during this reporting period.

For the CE audit after the renewal cycle there were 208 letters sent to licensees and so far 202 have responded with CE certificates.

List Serv information provided for the Commission members to review. Ms. Davis indicated that we need to get licensees to subscribe and perhaps a letter can go out to all the presidents of the local Board of Realtors. Mr. Cole suggested that we make every licensee sign up for the List Serv.

Investigations Report

Ms. Wirawan presented the statistical report to the Commission members for their review. She also indicated that Ed Riefler, the Investigator that oversees probation monitoring has

been deployed and Investigator Jay Paff has taken over probation duties. The following information is compiled as an Investigative Report for the period 2/21/2014 through 5/29/2014.

- 18 opened files
- 27 closed Real Estate matters
- 26 open complaints
- 6 closed complaints
- 29 opened investigations
- 11 closed investigations
- 4 license actions (1 surrender, 1 consent of agreement, civil fine & license denial)

#### Probation Report

Arthur Clark is on probation until 2016; civil fine is due 12/07/2014.

Nicholas Sanford is on probation until September 6, 2014

Ms. Burke asked if there was a payment agreement allowed for fines imposed? Investigator Wirawan stated they take installments as long as the final amount is paid on or before the due date. She also provided comments on the revised Complaint form after presenting it to the Commission at their March meeting and was asked by the members for the Dept of Law to provide feedback. She stated that the reviewing attorney found it "unobjectable" and can be used in the future.

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

**RESOLVED to go into Executive Session for the purposes of reviewing and discussing Investigative matters at 10:34am**

**All in favor; Motion passed.**

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

**RESOLVED to come out of Executive Session for the purposes of reviewing and discussing Investigative matters at 10:57am**

**All in favor; Motion passed.**

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

**RESOLVED to delegate to the Executive Administrator of the REC the authority to deny license applications who do not meet the licensure requirements of 08.88.171.**

**All in favor; Motion passed.**

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

**RESOLVED to adopt the Consent Agreement, Case #2012-000361**

**All in favor; Motion passed.**

The Commission adopts the Consent Agreement in the matter of Stacy L. Hague.

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

**RESOLVED to adopt the Imposition of Civil Fine, Case #2014-000488**

**All in favor; Motion passed.**

Imposition of Civil Fine has been adopted in the matter of Ryan K. Hall.

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

**RESOLVED to adopt the Imposition of Civil Fine, Case #2013-001735**

**All in favor; Motion passed.**

Imposition of Civil Fine has been adopted in the matter of Thomas Fisher.

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

**RESOLVED to adopt the Imposition of Civil Fine, Case #2014-000887**

**All in favor; Motion passed.**

Imposition of Civil Fine has been adopted in the matter of Keenan Fitzpatrick.

#### Dept of Law Issues

The Commission members met telephonically with Assistant Attorneys General Harriet Milks and Todd Araujo. Ms. Milks discussed her review of Hawaii's use of the process to do a preliminary review of an applicant who has a "yes" answer on the professional fitness questions of a real estate application. Ms. Milks suggested that instead of going through this added layer and another expense to do a preliminary review, that the REC add information on the REC web site in bold or red writing make it very clear to the applicant to be sure and look at question #1 of the application and to let them know there is a potential that they could run the risk of having a financial investment but may not yield a license. If you have a "yes" question you may not meet the eligibility requirements. However, there is no legal impediment or reason that the Commission can't do a preliminary review if they want to make that a policy.

Errors and Omissions insurance was discussed by Assistant Attorney General Todd Araujo. Mr. Araujo was asked by the Commission to address the statute requirement. Chair Bates

asked a series of questions for Mr. Araujo:

Does our statute require that the REC have a master policy for Errors & Omissions (E & O) insurance to make available to licensees? Mr. Araujo stated yes, it does require that. If the REC is unable to obtain that master policy, the licensees aren't obligated to carry E & O insurance? Mr. Araujo stated yes, if the REC is unable to affirmatively obtain an E & O master insurance policy then, essentially the requirement cannot be enforced and is void altogether even if the regulations are promulgated.

Ms. Burke stated that she didn't see what the issue was and it's very clear we need to put out an RFP for a master E&O policy. Mr. Bushnell stated the questions are coming from the emails exchanged between the Directors of Administrative Services and Corporations Business and Professional Licensing with the REC Executive Administrator who was seeking a Request for Proposal on a master policy for E & O and in the exchange of emails it was suggested REC use the free market. Ms. Burke stated the statute makes clear that the REC go out and obtain a master policy from an insurance company, using the advantage of a large group of people in the same profession. The advantage of a master policy is that you get the entire group insured and in theory, at a lower cost. It's simply a matter of offering to the licensees bulk purchasing. Chair Bates recognized Director Chambers in the room and asks her to provide comment on this issue. Ms. Chambers stated that she and AAG Araujo spoke this morning and she also spoke with the Procurement Supervisor to work on a final outcome. The situation is that the State won't be receiving the benefit of this service but an outside entity will be the effected recipients. We need to reconcile procurement statutes with the REC statutes. Ms. Chambers stated that attorneys from the Division and Procurement will begin to look into this unique situation. She also indicated that this process needs reconciliation and feels positive REC will get there. Ms. Burke thanked Ms. Chambers and strongly recommended that she utilize AAG Signe Anderson to assist in the process, as she knows insurance very well. Ms. Chambers agreed and that she will work with AAG Anderson and through Ms. Walsh to keep this moving forward and get this completed.

Ms. Milks addressed the issue of withdrawing part two of the regulation project 12 AAC 64.064(d), as she recommended it be re-written. Ms. Milks asked to call her back in 10 minutes while she looks at it again.

The Commission recessed for a lunch at 12:07 p.m.

The Commission reconvened from lunch at 1:09 p.m.

The Commission called Ms. Milks back to discuss the re-write of 12 AAC 64.064(d). Ms. Milks said the proposed language that was initially provided that was underlined, is okay and that it just needs to be restructured so that it fits within the section of .064. She recommended a regulation project part III to repeal and readopt the subsequent subsection. Therefore, keep the language, "within 30 days". The other issue is part 2 of the regulation project is approved but there has been a delay because of a turnover in DOL personnel. Ms. Walsh asked Ms. Milks when we are in executive session, do we need to stop recording? Ms. Milks stated that was correct but before you go into executive session you need to say that you are going into executive session to talk about a specific subject and it must be made in the form of a motion. You may not identify the subject in a way that defeats the purpose of

executive session. If action is needed, you then come out of executive session and go back on record to take action.

**On a motion duly made by Mr. Bushnell, seconded by Ms. Davis, it was,  
RESOLVED to adjourn meeting.**

**All in favor; Motion passed.**

Meeting adjourned at 4:00 p.m.

Commission adjourned until the next regular scheduled meeting on September 10, 2014 in Anchorage.

Prepared and submitted by Sharon  
Walsh.

Approved:

Anita Bates  
Anita Bates, Chairperson  
Alaska Real Estate Commission

Date: 10/22/2014