

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

REAL ESTATE COMMISSION
MEETING MINUTES

December 3, 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 December 3, 2014, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, December 3, 2014

Agenda Item 1 - 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 – 1(a)

Members present:

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 Harvill, Associate Broker, 4th Judicial District
Brad Cole, Associate Broker, 3rd Judicial District

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Project Assistant
Jay Paff, Investigator II
Angela Birt, Chief Investigator

Guests Present:

Shana Ackles, Broker, Keller Williams Realty, AK Group
Jennifer Stalcup, Salesperson, Keller Williams Realty, Eagle River Branch

Guests Present via Telephone:

Sara Chambers, Director of Corporation, Business and Professional Licensing (CBPL)
Colleen Kautz, Operations Manager, CBPL
Martha Hewlett, Administrative Officer II, CBPL

Agenda Item 2 - Meeting Minutes

Ms. Bates informed the Commission that she would like to have the meeting minutes completed within 10 working days after the meeting as required.

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

was,

RESOLVED to table the September 10, 2014 and November 12, 2014 meeting minutes until after lunch for approval.

All in favor; Motion passed.

Approval of Agenda- 1(b)

Commission Members reviewed and discussed the meeting agenda as presented.

Commission Chair, Ms. Bates asked if there were any additions to the agenda. Ms. Burke asked for an update on E & O insurance request for bid process tab 8(e). Ms. Bates also asked that the discussion of a statewide video conference for a Broker's forum be addressed under Old Business, tab 8(f).

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

RESOLVED to approve the meeting agenda for December 3, 2014 as amended.

All in favor; Motion passed.

Agenda Item 3 - Public Comment

There was no public testimony. Chair Bates closed Public Comment after an hour of opportunity.

Agenda Item 4 - Education Report

Education Statistics – 4(a)

Ms. Harris presented the education statistics as of November 18, 2014 to the Commission.

Ms. Harris presented information for the Recovery Fund fees collected for education in conjunction with that time period; a manual tracking of Recovery Fund fees.

Agenda Item 5- Executive Administrator Report

Recovery Fund Balance Report – 5(a)

Ms. Walsh presented the Recovery Fund Balance Report to the Commission.

Ms. Walsh answered questions from Commission members regarding the Recovery Fund (RF) Financial Report. Credit card swipe fees were provided to the Commission in an email from Mary Manning at the Division of Administrative Services. Ms. Burke asked Ms. Walsh to follow-up on any unrecognizable expenses to the RF in advance of the meeting, if financial statements are provided in advance of the Commission meeting.

Ms. Walsh indicated that we can expect to see some possible expenses to the RF. Those

would be in the form of a Train the Trainer session in the spring, conducting a statewide Broker forum and finally the possible cost to produce a Consumer Disclosure video- after the newly revised Consumer Disclosure is adopted as a regulation.

Schedule of Revenue and Expenditure – 5(b)

Ms. Walsh presented the Division's Revenue and Expenditure report for the Real Estate Commission. Indirect costs are forecasted on prior year (PY) expenditures and then actuals are put in at the end of the fiscal-year (FY). This process is called a "true-up" by the Division. Chair Bates expressed concern about the Contractual expenses for FY14 in comparison to FY13. She wanted to know why such a significant difference in this area, what occurred to generate this increase? Ms. Walsh suggested that Ms. Hewlett would have those answers as she knows what makes up the total cost represented on the Division's financial reports. Chair Bates also said she had the same concern for Indirect costs and that these were also higher in FY14 compared to FY13. Chair Bates had another question about Dept. of Law(DOL) expenses when a regulation project goes stale. Does the REC get billed for additional hours when DOL or the Regulation Specialist let a regulation project go too long without processing it in a timely manner? Ms. Walsh will inquire with DOL and Director Chambers. Ms. Burke asked Ms. Walsh about Indirect expenses and wants to know what the money was spent on; not what was spent. She also asked if FY14 Indirect expenses were "trued-up"? She suggested that this also be asked of Ms. Hewlett when we talk to her later this afternoon.

Licensing Statistics:

Ms. Walsh presented the licensing statistics for the period ending November 18, 2014. Licensees with an expiration date of 1/31/2016 account for 2,485; total active (status of active) licensees during this time period: 2,384. The breakdown is: 10 lapsed licensees as a result of non-compliance of Post licensing education (PLE). 37 licensees are Inactive. 50 licensees had not affiliated with a Broker and were therefore, in an "AWOL" status. Investigator Paff stated that we could follow up if after 30-days they have not transferred their license and advise of "AWOL" license status.

Regulation Tracker:

Ms. Walsh pointed out to the Commission that 3 regulations would be effective 12/13/14. Ms. Harvill suggested that those remaining Broker's using credit unions be advised of the change in the regulation 12 AAC 64.180 and it's effective date of 12/13/14.

Ms. Walsh indicated that we have already done this but that we would find out those who have not complied with the first notice sent earlier this fall.

Mr. Bushnell would like a written explanation from DOL as to why they suggested withdrawing regulation project 12 AAC 64.130.

Chair Bates asked about the application for course certification regulation project. Have Ms. Harris put a note that 12 AAC 64,990 is changed from 12 AAC 64.240. Line 152 of the Reg Tracker should show adopted January 2014.

Chair Bates wanted to know the status of the Proposed Regulation Request Form (PRRF)

that was submitted to Director Chambers for review in August or September.

Commission members discussed about having staff track those licensees that are in a AWOL and how many transfer after 30 days.

Licensing Statistics – 5 (c)

Ms. Walsh presented the licensing statistics for the period of May 30, 2014 through August 25, 2014.

Ms. Walsh presented the Recovery Fund fees for licensing.

Regulation Tracker – update w/prop'l sheets – 5(d)

The regulation tracker was presented to the Commission members for their review.

Agenda Item 7 - Investigator Report

Statistical Report – 7(a)

Mr. Paff presented the investigative statistical report covering information compiled August 20, 2014 through November 19, 2014. There were 12 complaints opened, and he closed 16 complaints. There are 15 opened investigations and 7 closed investigations. 1 license action was reported-a contested license denial.

Mr. Paff said that at the prior meeting the Commission adopted the procedure to allow investigations to start using additional education as a form of discipline for an individual that might not have caused harm but the Commission felt the need for more training in a particular area. He said that he has started to use this and a licensee has accepted it as a settlement of the infraction.

Mr. Paff stated that he has 2009-2010 cases that are awaiting completion over the next 3-6 months. He also would like to formalize what the Commission would like to be reported to ARELLO, which is done voluntarily. He would like to see: denial of license; revocation and civil fines; surrender of license; Consent of Agreements. He would prefer that these are mandatory reporting items for ARELLO with additional discussion by the Commission at the next quarterly meeting. Chair Bates asked that Mr. Paff provide a proposed list for the Commission to consider at the next meeting. Mr. Paff thanked the Commission for the opportunity to attend the ARELLO Investigator Workshop in Columbus, OH. He stated that he attended a pre-licensing course and spoke to potential real estate applicants about the Real Estate Commission.

Commission recessed for break at 10:03 a.m.

Commission reconvened from break at 10:11 a.m.

Agenda Item 6 - OAH Decision

Case # 14-001388 – 6(a)

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

RESOLVED to go into executive session with Administrative Judge Fredrick.

All in favor; Motion passed.

Into executive session at 10:12 a.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of executive session at 10:20 a.m.

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

RESOLVED to accept Case OAH #2014-001388.

All in favor; Motion passed.

In the matter of the proposal for action on case OAH #2014-001388 the decision was adopted to deny the license application for Mary Holbrook.

Agenda Item 7 - Investigator Report - Continued
Consent Agreement #2013-002009 – 7(a)

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

RESOLVED to go into executive session.

All in favor; Motion passed.

Into executive session at 10:21 a.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of executive session at 10:35 a.m.

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

RESOLVED to approve case #2013-002009

All in favor; Motion passed.

The motion to approve the Consent of Agreement for Kevin Elfrink was adopted.

Probation Report – 7(b)

Mr. Paff presented the probation report to the Commission. He said there are two licensees on probation. Arthur Clark's fine was paid before December 7th and Stacy Hague is on track for completing her education and her fine is due 6 months prior to the end of her probation date, June 11, 2015.

Mr. Paff provided the Commission a list of what investigations has done according to infractions for the last 18 months. This gives the Commission an idea at the licensee level of the action, what discipline was taken and in the comments he explained what the licensee failed to do. This is to help Commission members when he calls them for assistance that they have a history of what discipline has been taken for consistency.

Agenda Item 8 – Old Business

Education Committee Update- 8(a)

Chair Bates gave an update on the Education Committee. Ms. Barickman was unable to attend and asked Chair Bates to provide the Commission with a brief overview.

Chair Bates stated that the Committee was looking at keeping pre-licensing the same, refine post-licensing, one particular change is needed, Broker post-licensing. The Commission should expect recommendations forthcoming.

Consider Changes to Eligibility Requirements – 8(b)

Eligibility requirements were considered by the Commission with review of other states requirements. Ms. Walsh said that some states had an extensive list and subjective requirements, such as, good character. Chair Bates suggested that perhaps changes to education would be the place to start making changes. Chair Bates discusses her hand-out and suggested that the existing statutes and regulations be used as a starting point to look at for making changes.

Commission members recessed for lunch at 11:50 a.m.

Commission members reconvened from lunch at 1:00 p.m.

Agenda Item 2 - Meeting Minutes, Continued

September 10, 2014 – 2(a)

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

RESOLVED to approve the meeting minutes for September 10, 2014.

Commission members reviewed the September 10, 2014 meeting minutes as presented.

All in favor; Motion passed.

November 12, 2014 – 2(b)

Commission members reviewed the November 12, 2014 meeting minutes as presented.

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

RESOLVED to approve the meeting minutes for November 12, 2014 as amended.

Ms. Cartledge had a correction on page 1, in first paragraph, fourth line, the meeting date is not September 10, 2014 but November 12, 2014.

All in favor; Motion passed.

Advertising a Business Name – 8(c)

Chair Bates began by asking if this should be under a definition or signage regulation? Propose a change creating the definition of a team or group? Mr. Cole stated that licensees go through a lot of time, expense and effort to get branded. He advised that the Commission needs to be careful. Ms. Cartledge asked from a consumer stand-point, who is the responsible party? The Broker? The Licensee? If you are protecting the consumer, who is it that they are dealing with? Mr. Bushnell stated that the Broker has the listing agreement.

Ms. Cartledge stated that it made for an interesting situation: two separate entities and yet you have one that is supposed to be controlled by the other but it's not really controlled. It's kind of independent but not totally independent.

Ms. Walsh spoke about what Texas is doing. They levy fines for not including Broker information on signs. Chair Bates asked Ms. Walsh to get a copy of TX statutes and regulations covering this topic and then include it under Old Business at next quarterly meeting.

Regulation Adoption of Consumer Disclosure & Waiver of Right to Be Represented- 8(d)

Ms. Cartledge provided a copy of what changes she made to the Consumer Disclosure form. The Commission would like to table until staff can re-create and send newly drafted versions of forms via mail ballot.

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

RESOLVED to table discussion until staff can do a final draft of the Consumer Disclosure and Waiver of Right to be Represented and

send out a mail ballot to Commission.

All in favor; Motion passed.

Broker Forum Update – 8(e)

Ms. Walsh gave an update on the Broker Forum issue for delivery across the state using video conferencing. She said the State of AK Internet Technology (IT) provided a list of video conferencing sites around Alaska. They did not address the issue of whether or not non-state employees could access these rooms. Chair Bates suggested we look at using MLS sites/video capabilities to conduct Broker forums. Ms. Walsh will try to secure a room for a January Broker's forum.

Train the Trainer Update-

Ms. Walsh gave an update on the status of Train the Trainer. She advised the Commission that the Department's Procurement section recommended the REC reconsider the \$5,000. limit and make it higher. The Commission discussed the recommendation and decided to keep it at the \$5,000 limit and see what is presented.

Errors and Omissions Insurance Update – 8(f)

Ms. Walsh gave an update on the status and advised the Commission that she is working on addressing the Invitation to Bid proposal with the Department's Procurement section. Ms. Burke asked why hasn't anyone from the Division contacted her for professional insurance assistance? Chair Bates stated that Ms. Burke is on the record for volunteering to help with the Invitation to Bid.

Agenda Item 9 – New Business

Schedule four meeting dates for REC (FY15)- 9(a)

Commission members set the next REC meeting date for February 25, 2014 to be held in Anchorage. Additional FY 15 meetings of the REC will be held in Anchorage: June 3rd, 2015; September 2nd 2015 and December 2nd 2015.

Agenda Item 10 – Division Issues/Update

Year End Boards/Commissions report – 10(a)

Commission called Director Chambers who then introduced Colleen Kautz, Operations Manager and Martha Hewlett, Fiscal Officer for CBPL.

Chair Bates asked Ms. Chambers to explain the Annual Fiscal report and about Direct expenditures, specifically, Contractual Services account and Indirect expenses in FY13 and FY14 and the first quarter of FY15. Ms. Hewlett explained some of the costs that are derived: \$41K for Investigations, \$18K for regulations and investigations that get legal advice.

Ms. Burke asked Ms. Chambers about investigation costs in Contractual Services, and why is the REC being charged again, for an Investigator under Personnel Services, and why did Department of Law costs double?

Ms. Chambers stated that these are additional charges for legal representation to complete REC investigative requirements for appeals, accusations, OAH cases. Ms. Chambers suggested that Ms. Hewlett can communicate to Ms. Walsh on that bill.

Chair Bates suggested Ms. Hewlett, Ms. Chambers and Ms. Walsh get together and help answer Ms. Burke's questions.

Ms. Chambers directed the Commission to look at the annual report. She pointed out in the report the indirect expenses and the allocation of them. She stated this provides for the changes to the indirect allocation in FY14.

Chair Bates asked if the recent changes to the schedule of fees was taken into account when the Division passed on indirect costs to the REC? Ms. Chambers indicated she would need to review the report that was done by former Director Habeger.

Ms. Burke asked Ms. Chambers for a copy of the methodology, other than the generalized report and a copy of the supporting assumptions to the REC.

Ms. Chambers stated she will need to check with the Administrative Services Division(ASD).

Ms. Burke also asked Ms. Chambers for a copy of the 10-year look back of the Division's finances that had been provided a few years ago and the changes to the REC accounts.

Ms. Chambers finished her overview of the annual report and indicated that this is on the Division web site.

Chair Bates thanked Ms. Chambers for her time and also for allowing the Commission to travel in November to address the regulation project involving a revision of the Consumer Disclosure and Waiver of Right to be Represented forms. It was extremely beneficial and productive.

The Chief Investigator, Angela Birt was in the audience and asked to speak to the Commission. She addressed the issue of the \$41K, whenever an application is denied and a hearing is requested then it's tied to Investigations Unit.

Ms. Burke stated it should be billed as direct and not indirect.

Ms. Birt stated that Director Chambers is trying to work on this issue. She stated that cost is allocated based on a percentage of investigator time that is billed.

Ms. Burke thanked Ms. Birt for her very informative comments and stated that Ms. Birt had answered her questions directly.

Mr. Cole stated that has been the on-going frustration-we want honest numbers that support the numbers we're seeing.

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

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 3:45pm.

Prepared and submitted by:
Sharon Walsh

Approved:

Anita Bates
Anita Bates, Chairperson
Alaska Real Estate Commission

Date: 2/25/15