

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT
3 DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
4

5 REAL ESTATE COMMISSION
6 MEETING MINUTES
7

8 June 2, 2016
9

10 By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article
11 6, a scheduled meeting of the Real Estate Commission was held June 2, 2016, at the
12 State of Alaska Atwood Building Conference Room 102, 550 W. 7th Avenue, Anchorage,
13 Alaska.
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16 **Thursday, June 2, 2016**

17 **Agenda Item 1 - Call to Order**

18 Chairperson Nancy Davis called the meeting to order at 9:00 a.m. at which time a quorum
19 was established.
20

21 **Roll Call – 1(a)**

22 **Members present:**

23 Peggy Ann McConnochie, Broker, Broker at Large
24 Nancy Davis, Broker, 1st Judicial District, Chair
25 Marianne Burke, Public Member
26 Eric Bushnell, Associate Broker at Large
27 Stacy Harvill, Associate Broker, 4th Judicial District
28 Cindy Cartledge, Public Member
29 Traci J. Barickman, Broker, 3rd Judicial District
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31 **Staff Present:**

32 Sharon Walsh, Executive Administrator
33 Nancy Harris, Project Assistant
34 Jay Paff, Investigator
35 Nina Ackers, Investigator
36

37 **Guests Present:**

38 Errol Champion, Representative for AK Association of Realtors and Broker of Coldwell
39 Banker Race Realty, Juneau
40 Michael Droege, Associate Broker, Century 21 Realty Solutions- Midtown, Anchorage
41 Anita Bates, Associate Broker, Dwell Realty, Anchorage
42 Kassandra Taggart, Broker, Real Property Management Last Frontier, Anchorage
43 Tamara Nelson, Assistant, Century 21 Realty Solutions – Midtown, Anchorage
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45 **Guests Present via Telephone:**

46 Barbara Barnes, Finance Assistant, Legislative Affairs, for Representative Tammie Wilson
47 Martha Hewlett, Administrative Officer II, CBPL
48 Harriett Milks, Assistant Attorney General, Department of Law,
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50 **Approval of Agenda- 1(b)**

51 Commission members reviewed and discussed the meeting agenda and had no additions.
52 Chair Davis reminded the members to keep side-bar conversations to a minimum to
53 prevent interference with agenda item discussions.

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**On a motion duly made by Mr. Bushnell, seconded by Ms. Burke, it was,
RESOLVED to approve the meeting agenda for June 2, 2016.**

All in favor; Motion passed.

Agenda Item 2 - Approval of Meeting Minutes
March 9, 2016 – 2(a)

**On a motion duly made by Ms. Barickman, seconded by Ms. Burke, it was,
RESOLVED to approve the March 9, 2016 meeting minutes.**

All in favor; Motion passed.

Teleconference April 12, 2016 – 2(b)

**On a motion duly made by Ms. Harvill, seconded by Ms. Cartledge, it was,
RESOLVED to approve the April 12, 2016 teleconference meeting
minutes.**

All in favor; Motion passed.

Teleconference April 28, 2016 – 2(c)

**On a motion duly made by Ms. McConnochie, seconded by Ms. Burke, it was,
RESOLVED to approve the April 28, 2016 teleconference meeting
minutes.**

All in favor; Motion passed.

Agenda Item 3 – Public Comment

Barbara Barnes with Rep. Tammie Wilson's office (North Pole) was placed into conference call to listen to public comments on the issue of the Dept. of Environmental Conservation (DEC) letter sent to all licensees in the Fairbanks area. She did not want to testify only stated she was interested in what the Real Estate Commission was going to do on the matter.

103 Errol Champion, Chair of the Industry Issues Committee for Alaska Association of Realtors
104 (AAR) presented a matter that he wanted the Commission to be aware of from the Dept. of
105 Environmental Conservation (DEC), Div. of Air Quality letter addressed to all real estate
106 licensees in the Fairbanks North Star Borough(FNSB) regarding the issue of removal or
107 replace high emitting wood-fired heating devices when a property is sold, leased or
108 conveyed within the nonattainment area. This requirement by DEC would affect licensees
109 who sell, lease, convey or purchase property within the FNSB. The DEC has set up a web
110 site with additional information: <http://dec.alaska.gov/air/PM2.5-Real-Estate.htm>
111 Mr. Champion is concerned that it would require licensees to become the expert in every
112 field. Ms. Davis said it is up to the buyer or seller to do their due diligence not up to the
113 licensee. Mr. Bushnell said if this wood stove is on the property then it should be
114 considered a material defect. If the licensee knows about it then they are obligated to
115 disclose. Ms. McConnochie said we have to be very careful about putting licensees in a
116 position of being experts on woodstoves or requirements imposing whether or not they
117 should or should not be there. She went on to mention that perhaps consideration should
118 be given to modifying the Residential Property Disclosure form. The homeowner has
119 certain requirements and it's our responsibility as licensees to point homeowners where
120 they can get information on whether or not issues are compliant. Ms. Barickman
121 indicated that this issue isn't any different than any other issue that licensees have to deal
122 with for disclosure. She stated we need to be the source of the source-"here's where you
123 need to go to find out what you need to do". Ms. Cartledge asked about whether or not the
124 DEC has provided any legislation on this issue.

125
126 The Commission thanked Mr. Champion for his time and they would talk to him later today
127 on HB290 and SB158.

128
129 Ms. McConnochie asked Ms. Barnes about how DEC plans on enforcing this issue and if
130 there is any legislation introduced addressing the issue. Ms. Barnes said she has a call
131 into DEC but at this time has not heard back from them.

132
133 Michael Droege, Broker Owner of Century 21 Realty Solutions presented for the
134 Commission's consideration information on the Cartus Broker Network. He would like to
135 see the Commission allow for Cartus to operate in AK by allowing for their members to
136 offer reduced rates to those in this network. Primary user members are military families
137 that utilize this benefit. Other states allow for this type of program, Oregon and New Jersey
138 are the latest to participate in this program. He told the Commission that this program is a
139 reduction in referral fees not a reduction in commission. Ms. Barickman indicated that her
140 interpretation of statute AS 08.88.401 doesn't allow for this type of program to occur.

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143 **On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it**
144 **was,**

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146 **RESOLVED to provide the Cartus information, presented by Mr.**
147 **Droege, to the Dept of Law and ask for their opinion on whether or not**
148 **the information proposed is legal, based on statutes and regulations**
149 **that we have and ask that it be done expeditiously as possible.**

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151 **Ms. Burke offered a friendly amendment: to request a generic answer rather than**
152 **specific to this company.**

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Maker of the motion, Ms. McConnochie, accepted the friendly amendment.

**Six members voted in favor; Ms. Barickman abstained.
Motion passed.**

Commission recessed for break at 10:05 a.m.

Commission reconvened from break at 10:17 a.m.

Agenda Item 4 – Investigator’s Report/Probation Report

Statistical Report/Probation Report– 5(a)

Investigator Nina Akers, presented the Commission with an updated probation report. She said there are 7 new probationers, no one is off probation since the last report; everyone is in compliance except for one individual.

Investigator Paff presented the investigative report to the Commission for the time period February 24th through May 11, 2016. He stated that 20 matters were opened and 19 were closed-3 of those were intakes; 17 are currently ongoing or under active investigation. There are two cases at the AAG office about to go to hearing in the next 30 to 60 days and hopefully there will be a resolution by the next meeting.

Mr. Paff thanked all Commission members for their help in reviews since the last meeting because it helps to move cases forward in a timely manner and bring closure to both the respondent and complainant.

On a motion duly made by Ms. McConnochie, seconded by Ms. Barickman, it was,

RESOLVED that they go into executive session. Ms. Barickman stated: In accordance with AS 44.62.310(c): I move we go into executive session for the purpose of discussing subjects that tend to prejudice the reputation and character of a person.

All in favor; Motion passed.

The Commission went Into Executive session at 10:32 a.m.

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

RESOLVED that they come out of executive session.

All in favor; Motion passed.

The Commission came out of Executive session at 12:15 p.m.

203
204 **On a motion duly made by Mr. Cartledge, seconded by Ms. McConnochie, it**
205 **was,**

206
207 **RESOLVED to deny the application with regards to case #2016-**
208 **000626.**

209
210 **All in favor; Motion passed.**

211
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213 Commission recessed for lunch at 12:17 p.m.

214 Commission reconvened at 1:02 p.m.

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216 **Agenda Item 5 – Executive Administrator’s Report**

217 Recovery Fund Balance Report – 5(a)

218 Ms. Walsh stated to the Commission that Martha Hewlett will present the Revenue and
219 Expenditure Report later in the afternoon under tab 9, Division Update.

220
221 Ms. Walsh presented the Recovery Fund financial report to the Commission. She received
222 the recovery fund report in mid-April to review and she noticed that it was a little low. She
223 make some inquiries that there was not a Adjusted Journal Entry (AJE) for the revenue
224 that the REC received for renewals from the \$30.00 accumulated per licensee. So a AJE
225 had to be done. That correction was completed. In the future, before renewals are
226 available, the system will be set up to capture the ZSU (recovery fund) account online so it
227 all will not go into REC but split it out to go directly into the ZSU account and REC
228 accordingly. The past renewals, when they captured the revenue, it all went into REC then
229 they had to subdivide it into ZSU vs REC funds.

230
231 Ms. Walsh said she did not receive the latest version of the Recovery Fund Report, but will
232 email the report to all the Commission members as soon as she receives it for their
233 review.

234
235 Ms. Burke had questions regarding the projected number under Expenditures, Services-
236 Non Claims for Fiscal Year Ended 06/30/16 and Services – Claims & Associated Legal
237 costs. She also asked if the footnotes could be in a larger font.

238
239
240 Regulation 12 AAC 64.420(c) – 5(b)

241 Ms. Walsh stated to the Commission that the proposed regulation 12 AAC 64.420(c),
242 regarding designated and elective education, would need to be revised per the AAG
243 Harriett Milks. Ms. Milks said the language is confusing. Ms. Walsh and Ms. Harris
244 presented two revision options for the Commission’s consideration.

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246 The Commission reviewed and discussed the regulation proposed and the two revisions
247 presented.

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250 **On a motion duly made by Ms. McConnochie, seconded by Ms. Harvill, it**
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RESOLVED to withdraw the proposed regulation 12 AAC 64.420.

Roll call vote: Ms. Cartledge-yes, Ms. Harvill-yes, Mr. Bushnell-no, Ms. Barickman-no, Ms. McConnochie-yes, Ms. Burke-no, Ms. Davis-no.

3 votes “yes”, 4 votes “no”. Motion passed.

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

RESOLVED to table the rewrite of proposed regulation 12 AAC 64.420 until the next meeting and Mr. Bushnell and Ms. Barickman will work with staff to find a suitable solution that can be brought forward to the Commission.

All in favor. Motion passed.

Investigations- Case Review

Investigator Jay Paff introduced his supervisor, Senior Investigator, Alvin Kennedy to the Commission. There had been some concerns regarding public members on the Commission not reviewing cases and Mr. Kennedy was there to address that concern with the Commission. Mr. Kennedy stated it was determined through an AG opinion in 1998 and reaffirmed in 2010 that investigations would use licensed board or commission members to review cases. The reasoning behind this decision was the cost to boards or commissions with hiring experts to review cases and that investigators were fact finders not experts. According to the AG’s office, licensed professionals are the experts because they are doing the job everyday. The investigation section’s Standard Operating Procedure (SOP) is based on the AG’s opinion and what the Department of Law (DOL) has directed them to do.

Some of the discussion and concerns were:

- The AG’s office does not believe that public board or commission members have the skill set to review cases yet they both have experience with reading statutes and regulations and have a specific skill set that would be beneficial.
- There is no difference of authority/standing on the commission between public members than licensed members yet public members do not have authority, based on AG’s opinion, to review cases.
- Public members sit on the board/commission and vote on these cases before them at a meeting but cannot review these matters on the front end; does this then taint the process
- The Commission consists of licensed and public members therefore if not allowing public members to review cases are you dividing the Commission

Mr. Kennedy said that is no malice or disrespect intended in anyway of what they do. The investigation section tries to keep boards and commissions out of trouble and out of their own way. He said it is the investigation section’s job to follow statutes and regulations. He also wanted to make it clear that anyone can make a complaint at any time if they believe

303 there is a violation of statute or regulation. The investigation section would then determine
304 if it falls within their jurisdiction or not.

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307 Licensing Statistics Report– 5(d)

308 Ms. Harris, Project Assistant for the Real Estate Commission, presented the licensing
309 statistics to the Real Estate Commission. There were no questions or concerns.

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312 ARELLO Annual Conference – 5(c)

313 Ms. Walsh conveyed to the Commission that she would like to attend the Association of
314 Real Estate License Law Officials (ARELLO) annual conference in Vancouver, BC Canada
315 on September 21-25, 2016.

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318 **On a motion duly made by Ms. McConnochie, seconded by Ms. Barickman, it**
319 **was,**

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321 **RESOLVED that Ms. Walsh submit a travel request for both she and**
322 **Mr. Paff to attend ARELLO this year and use funds in the Recovery**
323 **Fund to be able to fund travel 100%.**

324
325 **There was an amendment to the motion by Ms. McConnochie and**
326 **agreed by Ms. Barickman; If this cannot be funded through the**
327 **Recovery Fund that it be funded through other real estate funds.**

328
329 **All in favor. Motion passed.**

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332 **Agenda Item 6 – Education Report**

333 Education Statistics – 6(a)

334 Ms. Harris, Project Assistant for the Real Estate Commission, presented the education
335 report and brief update on the Continuing Education(CE) audit to the Real Estate
336 Commission.

337
338 Ms. Burke asked what the methodology is and who determines that for the CE Audit. Ms.
339 Harris said she did not know but would get that information and send to all Commission
340 members.

341
342 Regulation Tracker – 6(b)

343 Ms. Harris presented the Regulation Tracker to the Commission for their consideration.
344 There is only one outstanding proposed regulation, 12 AAC 64.420. This regulation will
345 need some revisions per AAG Milks. It will not be able to go out as proposed. The
346 Commission had made a motion regarding this regulation earlier in the meeting.

347
348 Commission recessed for break at 2:28 p.m.
349 Commission reconvened from break at 2:45 p.m.

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352 **Agenda Item 10 – Division Update**

353 The Administrative Officer for Corporations Business and Professional Licensing, Martha
354 Hewlett, addressed the Commission via teleconference. Ms. Hewlett presented the
355 Division Revenue & Expenditure report for the 1st through 3rd quarters of FY16 to the
356 Commission for their consideration and review. Ms. Hewlett said at the time of the third
357 quarter, ending on 03/31/2016, the total licensing revenue was \$1,059,131 for the Real
358 Estate Commission.

359
360 Ms. Hewlett proceeded to go over the indirect expenses with the Commission. She stated
361 that the amount reflected in the indirect expenses is three fourths what the REC would be
362 charged in the prior year and it is there as a place holder. The indirect costs are not billed,
363 calculated, and allocated to programs until the end of the year. Therefore, when the 4th
364 quarter closes, the REC 4th quarter report will reflect actuals of what was incurred on the
365 REC's behalf throughout the year. She said REC is sitting with a nice surplus and is in
366 good standing.

367
368 Ms. Burke asked if the FY15 numbers were final and Ms. Hewlett said yes they were.
369

370 Ms. Burke asked if the Adjusted Journal Entry (AJE) that has to be posted to the Recovery
371 Fund, AJE reflected on this form on the REC side and will the REC get a corrected 3rd
372 quarter report for both of those accounts?
373

374 Ms. Hewlett said that AJE was processed in May so that it would not be reflected on the
375 3rd quarter reports since this report reflects anything that was processed through the
376 accounting system as of March 31, 2016. She said she would check with accounting to
377 see if they plan on revising the 3rd quarter report. She said most likely the transactions will
378 be placed in the 4th quarter and they will reflect in the 4th quarter final report.
379

380 Ms. Burke said she would like to see the correction reflected in the proper quarter if
381 possible.
382

383 Ms. Hewlett said she would check with accounting to see if that is possible.
384

385

386 **Agenda Item 7- Old Business**

387 **Broker Manual Update – 7(a)**

388 Commission members discussed the next step for completing the Broker's Manual.
389

390

**On a motion duly made by Ms. Barickman seconded by Ms. McConnochie, it
was,**

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**RESOLVED that the Commission take the broker manual out for RFP
for editing.**

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Commission members discussed the motion on the table. They discussed asking brokers
from around the state to review the draft of the broker manual for input before or after
sending it out for editing and how it would be funded.

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Motion was withdrawn by Ms. Barickman and Ms. McConnochie.

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403 **On a motion duly made by Ms. McConnochie, seconded by Mr. Bushnell, it**
404 **was,**

405
406 **RESOLVED that the Broker's Manual go to a group of brokers that**
407 **will be assembled by Ms. Walsh including but not limited to the**
408 **gentlemen that is the chair of UAA's real estate department, for initial**
409 **review and then it should be brought back to the REC for the**
410 **September meeting for the next step.**

411
412 **All in favor. Motion passed.**

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415 Consumer Disclosure Use w/Teams – 7(b)

416 Ms. Barickman addressed the Commission regarding the Consumer Disclosure and the
417 use of Teams. She provided information about the Consumer Disclosure with a copy of a
418 power point for them to understand how the disclosure works, best practices for teams and
419 representation for clients and customers. She said that the Commission needs to take the
420 team situation more seriously and we need to include rules and regulation and hopefully
421 statutes for representation and teams. This issue is complicated for licensees, and it is
422 even more complicated for clients and Alaska is very behind on dealing with this issue.

423
424 Commission members discussed the information addressed by Ms. Barickman.

- 425
426 • Seek help from an out of state real estate educator to provide the Commission with
427 information on best practice in other jurisdictions or look at what we have and
428 make some recommendation on how we as a Commission might define rules for
429 teams in Alaska.
430 • How teams are formed and ensure that the disclosure form is completed properly
431 and people receive the correct information
432 • Licensees need to understand what is broker policy and provide education about
433 best practices. What is the best way.
434 • Supervision. Who is supervising these licensees. There is a very fine line between
435 broker policy and what we should be doing as the Commission and how it reflects
436 on our laws because the Commission is responsible for licensees. Licensees on
437 teams do not know who their broker is.
438 • Jay Paff to provide information regarding teams from other jurisdictions through
439 ARELLO and the Commission will start working on this issue for about an hour at
440 the next meeting.

441
442
443 Legislation Review SB158 and HB 290/ and CBPL Legislative Guidance for Boards and
444 Commissions – 7(e)

445 Errol Champion, AAR Industry Chairman, updated the Commission on the current
446 legislation. He said there was success in the legislation this year. There were three bills
447 out that he had been working on for the REC, SB158, HB281 (identical bills) and HB 290.
448 SB158 and HB281 were the bills that REC asked AAR to be the primary sponsor of which
449 dealt with the change in statute to increase the hours of education and experience to
450 upgrade a salesperson license to an associate broker or broker license. Mr. Champion
451 said that with the legislature this year there was a lot of waiting. He complemented the
452 Commission's Chair Nancy Davis and Commission member Ms. Barickman for the

Real Estate Commission

Meeting Minutes

June 2, 2016

Page 10 of 12

453 number of hours they had waited to testify. He also said that there was a lot of pressure
454 and push back out of the Valley from Americans for Prosperity. The legislative offices in
455 Juneau and the Valley had hundreds a calls a day saying that SB158 was a bill that
456 favored existing brokers, was just turf protecting and many bizarre claims. Also, there was
457 a tremendous amount of phone tree pressure on those folks in the last minutes. There was
458 even some testimony against the bill even though AAR continued to maintain it was
459 putting a better set of credentials in place to protect the public and Alaskans. HB281 was
460 dropped and SB158 was the bill going forward. The final bill was to increase the education
461 hours from 15 to 30 hours, with 3 years of licensing experience instead of the 4 years, and
462 an effective date of January 2018. Mr. Champion said he was not sure when the bill would
463 be signed and that he is still waiting to hear.

464
465 HB290 was the other bill which was to extend the sunset date for the Real Estate
466 Commission. Mr. Champion said that there was an REC audit last year and although
467 there was many favorable things the REC did the Legislature was quite critical of the fact
468 that the REC had not been able to offer a masters E & O insurance policy and that is was
469 on the books for 8 years. HB290 only extends the life of the Commission for 2 years. This
470 will automatically trigger another legislative audit next year. Mr. Champion said the good
471 news out of this is that the legislature decided to remove the requirements of E & O
472 insurance and put it over in SB158. Therefore, the E & O master policy will not be tied to
473 the sunset law because it is now in SB158. The Legislature revised the language to say if
474 REC does not have a master policy within two years, it is automatically withdrawn from
475 the legislation.

476
477 Mr. Champion encouraged Commission members to read the final bills.

478
479 Ms. Davis thanked Mr. Champion for all his hours of hard work on this legislation. She said
480 he did a great job for the organization and in assisting the REC and it is very much
481 appreciated.

482
483 Ms. Davis gave the Commission members an update on the meeting with the Director,
484 Janey Hovenden, Ms. Burke and Ms. Walsh on June 1, 2016 to discuss E & O Insurance
485 and how to move forward. Ms. Davis said it was a good conversation. They addressed
486 past issues and what to avoid and set some good steps on how they can move this
487 forward.

488
489 Ms. Burke said that they are going to go ahead and do their best with the regulations and
490 statutes as they are, one last time, to try to get it through. If they can't, they will go for
491 regulation and statute changes but everyone knows that takes a lot of time. They will move
492 forward and see if they can do it or not.

493
494 Ms. Harvill asked what moving forward entailed.

495
496 Ms. Burke said that moving forward meant putting out an ITB in a manner and format that
497 we believe has a chance of either getting it or at least getting some feedback. She said it
498 was a good meeting.

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500

501 Reinstatement Fee Discussion – 7(c)

502 Ms. McConnochie spoke to the Commission regarding increasing the reinstatement fee.
503 She believes that the reinstatement fee of \$250.00 is inadequate. She said that for the
504 general licensee the reinstatement fee is too low. She would like the Commission to raise
505 the fee as a monetary fine because when it hits the pocket book licensees will start to pay
506 attention. This will force licensees to get their continuing education classes completed
507 within the 2 year period. She would like to see the fee double if not triple from the current
508 fee of \$250.00.

509
510 Commission members discussed Ms. McConnochie's recommendation. No action was
511 taken.

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513

514 Recovery Fund-Consumer info on website – 9(b)

515 Ms. Burke provided the Commission members with a more friendly recovery fund
516 information sheet that lets the consumer know the specific statutes that it covers. She
517 asked that this be placed on the Real Estate Commission website. She read all the
518 information provided with her board book from other jurisdictions regarding advertising this
519 type of information. She said she realizes many do not want this advertised. Also, she
520 read that attorneys in other jurisdictions are aware of the process to file a claim. A number
521 of Commission members agreed that attorneys in Alaska are aware and updated on the
522 process to file a claim in AK. Ms Burke suggested that one of the Commission's goals be
523 to work on Consumer outreach. She also asked Commission members to think of ways to
524 get this information out to the public. She believes that education and information solves
525 many problems. Ms Burke said she has spoken with Mr. Champion about getting this
526 information out to individuals that have completed mediation through AAR.

527

528 Ms. Walsh pointed out that one state indicated that they send out recovery fund claim
529 information with the complaint packets.

530

531 Ms. Burke asked if she could bring this issue up again at the next meeting.

532

533

534 **Agenda Item 9 – New Business**

535 **FY17 Goals & Objectives – 8(a)**

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- 538 1. **Obtain E & O insurance master policy**
- 539 2. **Finalizing the Broker Manual**
- 540 3. **Investigations- no investigation could be outstanding for longer than 16**
541 **months**
- 542 4. **Commission to start working toward establishing guidelines addressing**
543 **team issues**
- 544 5. **How to present the consumer pamphlet, video, etc.**
- 545 6. **Clean up the statute 08.88.171 qualifications of licensure**

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547

548 **On a motion duly made by Ms. McConnochie, seconded by Ms. Barickman, it**
549 **was,**

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551 **RESOLVED to adjourn the meeting.**

552 **All in favor; Motion passed.**

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554 **Meeting adjourned at 4:22 p.m.**

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Prepared and submitted by:
Real Estate Commission Staff

Approved:

Nancy Davis

Nancy Davis, Chairperson
Alaska Real Estate Commission

Date: 9/26/16