

Annual Report
Fiscal Year 2011

ALASKA REAL ESTATE COMMISSION

July 2011



**DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING**

This Annual Performance Report is presented in accordance with Alaska Statute 08.01.070(1) and Alaska Statute 37.07.080(b). Its purpose is to report the accomplishments, activities, and the past and present needs of the licensing program.

**ALASKA REAL ESTATE COMMISSION
FY 2011 ANNUAL REPORT**

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**ALASKA REAL ESTATE COMMISSION
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 IDENTIFICATION OF COMMISSION MEMBERS**

<u>Commission Member</u>	<u>Date Appointed</u>	<u>Term Expires</u>
Brad Cole Associate Broker / 3 rd Judicial District Keller Williams Realty AK Group Kristen Cole Team Branch Office 5131 E. Mayflower Lane Wasilla, AK 99654	March 1, 2007	March 1, 2015
Marianne K. Burke Public Member 3818 Helvetia Dr. Anchorage, AK 99508	March 1, 2010	March 1, 2015
Anita Bates Broker/Broker at Large Bates & Associates Realtors 2041 Brandilyn St. Anchorage, AK 99516-1961	May 17, 2011	March 1, 2015
Gene DuVal Associate Broker / 4 th Judicial District Re/Max Associates of Fairbanks P.O. Box 73404 Fairbanks, AK 99707	April 16, 2005	March 1, 2013
Nancy Davis Davis Realty Broker / 1 st Judicial District 104 Lake Street Sitka, AK 99835	March 1, 2009	March 1, 2013
Christine E. Swires Associate Broker / Broker at Large Re/Max Properties, Inc. 4042 Kingston Drive Anchorage, AK 99504	January 28, 2008	March 1, 2012
Charlene L. Flyum Public Member 2281 Sprucewood Dr. Homer, AK 99603	October 29, 2010	March 1, 2015

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IDENTIFICATION OF STAFF

Sharon J. Walsh, Executive Administrator

Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 W. 7th Ave. Ste. 1500
Anchorage, AK 99501-3567
Phone: (907) 269-8197
Fax: (907) 269-8156

Nancy A. Harris, Project Assistant

Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 W. 7th Ave. Ste. 1500
Anchorage, AK 99501-3567
Phone: (907) 269-8168
Fax: (907) 269-8156

Beata A. Smith, Licensing Examiner

Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 W. 7th Ave. Ste. 1500
Anchorage, AK 99501-3567
Phone: (907) 269-8162
Fax: (907) 269-8156

Michele Wall-Rood, Investigator

Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 W. 7th Ave. Ste. 1500
Anchorage, AK 99501-3567
Phone: (907) 269-8186
Fax: (907) 269-8156

**ALASKA REAL ESTATE COMMISSION
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NARRATIVE STATEMENT**

The Alaska Real Estate Commission's Mission Statement:

The mission of the Alaska Real Estate Commission is to protect the public interest by licensing practitioners and enforcing the established standards, to promote professional excellence in the real estate industry and to support and encourage licensees.

Real Estate Commission Legislation

There was no legislation to be considered on behalf of the Real Estate Commission (REC) during FY11.

Real Estate Regulations

The Commission worked on a variety of new and existing regulations.

New regulations:

12 AAC 64.600-650 Errors & Omission Insurance-note: this is a split regulation with the Department of Commerce, Community & Economic Development and the Commission. The proposed regulations of the REC were tabled again at the December 2010 meeting. We are waiting for the Department to complete a revised draft of their regulations before proceeding with the Commission's regulation project.

There is one new regulation we proposed this past fiscal year 2011 dealing with Notice of Temporary Absence of Broker of Record. The remaining regulations were revisions to existing regulations and include the following:

Revised regulations:

12 AAC 64.130(8) Grounds for Revocation or Suspension
12 AAC 64.111(2) Closing and Office
12 AAC 64.990(b)(8) Definitions
12 AAC 64.059(f)(7) Review of License Application
12 AAC 64.060(a)(3) Applications for Licensure
12 AAC 64.064(c)(1) Education Requirements After Initial License
12 AAC 64.064(c)(1)(A) Education Requirements After Initial License
12 AAC 64.068(b) Legal Entities
12 AAC 64.071(b)(3) License Renewal
12 AAC 64.071(f) License Renewal
12 AAC 64.073 SF/RF Fee
12 AAC 64.125(e) Supervision
12 AAC 64.280 SF/RF Scope
12 AAC 64.285 SF/RF Claims
12 AAC 64.290(c) SF/RF Notification of Claim
12 AAC 64.310 SF/RF Role of Involved Licensee
12 AAC 64.325 SF/RF Findings and Conclusions
12 AAC 64.990(f) Definitions

Repealed regulations:

12 AAC 64.290(b) SF/RF Notification of Claim
12 AAC 64.305 SF/RF Hearings
12 AAC 64.320 SF/RF Motion for Reconsideration
12 AAC 64.980(a) Documents Submitted by Facsimile

Recovery Fund Report

There were 0 Recovery Fund claims filed within the fiscal year. There were no claims paid by the Commission for Recovery Fund claims for misrepresentation, fraud, deceit or conversion of trust funds or the conversion of community association accounts. The Commission noticed for the past few quarters of this fiscal year the Recovery Fund has been running below the statutory minimum of \$250,000. They took action to increase the fund by increasing all related fees, including education courses and instructors-temporary and permanent, initial course certification fees, re-certification course and instructor fees. The Commission has a proposed regulation setting the Recovery Fund Fee at \$125.00. This was all done in a concerted and immediate effort to bring the balance back into compliance with statute 08.88.455. It is hoped that the balance will be substantially increased once renewals in January 2012 have been completed.

Note:

As of March 1, 2010 the name of the Surety Fund changed to the Recovery Fund. Claims will be determined by the Commission after a final arbitration award.

Continuing Education

During this fiscal year the Commission approved:

Initial instructors 31; renewed 58

Initial courses 113; renewed 198

New licensees are required to complete 30 hours of post-licensing education within 12-months of receiving their initial license. All licensees are required to complete 20 hours of continuing education which are comprised of 12 elective and 8 designated continuing education credits. The Commission continues to strive in providing online courses as consideration to our geographically distinct licensee population.

Executive Administrator Comments

The Alaska Real Estate Commission remains committed to communication with industry members and consumers. We are in the process of building additional information for our web site that provides consumer information that specifically addresses the issues of buyers and sellers. AREC staff has continued to work with industry on regulation and continuing education issues. Staff participates in numerous meetings with industry associations, real estate boards, real estate offices and audits education courses and Broker trust accounts to keep in contact with licensees. This type of outreach has been beneficial in maintaining regulatory and industry cooperation.

The Commission encourages members of the public, industry and other agencies to utilize the resources we provide on our web site to ensure accurate and consistent information within our jurisdiction.

The Real Estate Commission is successful because of the 7 members that volunteer their time to promoting the integrity of practicing real estate. The staff and Division are grateful for their willingness to serve and protect the consumers of Alaska. David Somers, a Broker from Fairbanks recently completed his second term, which amounts to eight years, on the Commission. We appreciate the sacrifice all members make to serve this state.

Thank you.

Sharon J. Walsh
Executive Administrator
Alaska Real Estate Commission

**ALASKA REAL ESTATE COMMISSION
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 BUDGET RECOMMENDATIONS FOR FY 2012**

<p><u>September 7-8, 2011 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members – (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$1,700.00</p>
<p><u>Attend Alaska Association of Realtors Convention, Homer, AK</u> <u>Travel by car to Brokers Offices – Homer, Soldotna, Sterling, AK</u> <u>September 2011</u> 1 Traveler (Anchorage) Trip is not a third party reimbursement.</p>	<p>\$1,250.00</p>
<p><u>The Association of Real Estate License Law Officials (ARELLO) Conference</u> <u>September 28 – October 1, 2011</u> 1 Traveler (Anchorage) Trip is not a third party reimbursement.</p>	<p>\$2,500.00</p>
<p><u>Travel by car to Brokers Offices – Eagle River and Wasilla, AK</u> <u>October 2011</u> 1 Traveler (Anchorage) Trip is not a third party reimbursement.</p>	<p>\$350.00</p>
<p><u>December 7-8, 2011 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members – (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$1,700.00</p>
<p><u>March 2012 REC Quarterly Meeting, Juneau, AK</u> 8 Travelers (5 Anchorage, 1 Sitka, 1 Homer, 1 Fairbanks) Trip is not a third party reimbursement.</p>	<p>\$6,050.00</p>
<p><u>June 2012 REC Quarterly Meeting, Anchorage, AK</u> 3 Travelers (1 Sitka, 1 Homer, 1 Fairbanks) 4 Hometown members (1 Wasilla and 3 Anchorage) Trip is not a third party reimbursement.</p>	<p>\$1,700.00</p>
<p>Estimated Cost:</p>	<p>Total \$15,250.00</p>

**ALASKA REAL ESTATE COMMISSION
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RECOMMENDATIONS FOR PROPOSED LEGISLATION FOR FY 2012**

The Real Estate Commission does not have any proposed legislation at this time to recommend to the Division.

ALASKA REAL ESTATE COMMISSION
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REGULATION RECOMMENDATIONS FOR FY 2012

The Real Estate Commission will continue to work on adopting the Errors & Omission insurance regulation, 12 AAC 64.600-650. However, they are waiting for the Department of Commerce, Community, and Economic Development to implement their regulations on this same issue. The Commission will forward their project once the Department has finalized their regulations.

ALASKA REAL ESTATE COMMISSION
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GOALS AND OBJECTIVES FOR FY 2012

The Commission would like to see the remainder of the trust account audits completed this fiscal year. There are approximately 33 remaining trust account audits to be conducted in Southcentral Alaska. This will require travel to Homer, Soldotna, Sterling, Eagle River, Wasilla. The other real estate offices selected for audit are located in Anchorage.

The adoption by the Commission of the Category of Complaints and Disciplinary Sanctions (aka Fine Matrix) in FY10 was an attempt to reduce the backlog of Investigation issues and expedite sanctions where violations have occurred. However, this process has not seen a reduction in the backlog of investigative issues. It is recommended that further refining of the purpose of the matrix is needed. The Commission will continue to monitor this process.

Consumer information and resource guides will continue to be added and updated to the Commission web site. The Commission staff will continue to make forms and information available on the web site. One of our goals is to continue to make interactive forms available to our licensees.

Licensees will continue to be updated of Commission activity such as proposed regulations, meeting summaries and disciplinary actions through the ListServ, newsletter, and the posting of our meeting minutes on the REC web site.

Continuing education will remain a priority for the Commission. The Commission and staff continue to encourage real estate and affiliated professionals in the industry to consider sponsoring a course. The Commission is interested in providing a broad range of continuing education courses that are relevant to real estate topics listed in 12 AAC 64.500. The Train-the-Trainer seminar will be held in FY 2012 to promote additional instructors and improve upon skills for those who already teach.

The Commission will continue its goal to conduct course and instructor education audits.

The Commission and staff will continue to promote a strong relationship with the Alaska Association of Realtors and the national organization of the Association of Real Estate License Law Officials (ARELLO).

The Executive Administrator will continue office visits and review disclosure information.

The Commission will continue to ensure that resources are available to maintain an effective operational structure in order to meet the statutory requirements of real estate licensees.

Commission/Board training for new members and refresher training for veteran members has been requested of the Division to insure that the Administrative Procedures Act is followed.

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SUNSET AUDIT RECOMMENDATIONS

The Real Estate Commission did not have a Sunset Performance Report conducted this year. However, the Commission had an Audit Report #08-20051-07 dated July 3, 2007. In the report the auditors recommended 3 items for the Commission to consider.

Recommendation No. 1:

The legislature should consider amending the statutes related to the Real Estate Surety Fund (RESF) to provide more complete, effective, and efficient consumer protection to claimants.

1. When the RESF was established in 1974 by statute, the individual claim limit was \$10,000 and the aggregate limit was restricted at \$50,000. At the time of the last audit in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. The recommendation suggested increasing the RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.

Current Status: The issue is was partially resolved when the legislature increased the individual claim limit from \$10,000 to \$15,000. However, the prior aggregate claim of \$50,000 per licensee claim limit remains unchanged. *Note: The Legislature did not pass the language suggesting an increase from \$50,000 to \$75,000 in HB418. They kept it at the original aggregate claim level.*

2. Claims against the RESF are administered under the state's Administrative Procedures Act. Under APA a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until the appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Business and Professional Licensing was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the REC to disburse RESF claim awards after they have made a good faith effort to locate the respondent.

Current Status: This issue was resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.

3. State law specifies that RESF can be used to reimburse an individual for a loss "suffered in a real estate transaction as a result of fraud, misrepresentation, deceit." During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since the mobile homes are considered personal property, rather than real property, the sale does not represent a "real estate transaction." The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of the licensees. Despite the hearing officer rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendations suggested amending statutes to specify mobile home transactions as subject to RESF claims.

Current Status: This issue was not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify and RESF claims for mobile home transactions. *Note: The REC went on record at the March 14, 2005 meeting stating in form of a motion that "mobile homes are not considered real property and are not covered under the surety fund".*

Recommendation No.2

The Director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

In 2007 a board member was appointed to the Commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the Commission. This board member was an associate broker for less than two years prior to his appointment.

Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the Commission. This appointment could result in Commission decisions not being supported by adequate professional experience. We recommend the Director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

Recommendation No. 3

The division should increase licensing fees to eliminate the commission's current operating deficit.

As of May 31, 2007, the Commission had an operating deficit of \$147,211. The deficit is caused by revenues not covering all of the Commission's expenditures for a two-year licensing period. Alaska Statute 08.01.065(c) requires fees, for an occupation, to be set at a level to approximate the related regulatory costs.

Accordingly, we recommend the Division review the regulatory costs and licensing fees to ensure fees collected are sufficient to eliminate the deficit and meet the annual operating costs of the commission.

Note: The 2006-08 renewal fee was set at:\$380.00 (\$350 licensing fee + \$30 surety fund fee)

The 2008-10 renewal fee was set at:\$380.00 (\$350 licensing fee + \$30 surety fund fee)

The 2010-12 renewal fee was set at: \$366.00(\$275 licensing fee + \$91 surety fund fee)*

**The \$91.00 surety fund fee for this renewal period did not follow regulatory procedure and therefore, the Commission was left to refund all renewal applicants \$61.00. The fee was later increased to \$55.00*

The Commission's termination date was extended to June 30, 2016 in HB 413.

FISCAL YEAR 20____ STATISTICAL OVERVIEW

Program: _____

AS 08. _____

12 AAC _____

Name of Individual Completing Report: _____

Date: _____

CATEGORY	NEW-ISSUED FY 20__	TOTAL AS OF 6/30/____	EXAMINATION/ CREDENTIAL
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A. Current Active Licenses, Endorsements, Permits, Exam Fees, Course Approval Fees
(student, locum tenens, limited, courtesy licenses)

List type and if issued by examination or credential, as applicable
(Do not list "temporary permits" or "temporary licenses")

Example: License Type	10	250	Exam: 6 Credentials: 4
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
TOTAL			

B. Current Inactive Licenses (not lapsed licenses)
(Only Medical, Chiropractic, CPA, and Real Estate)

CATEGORY	TOTAL AS OF 6/30/____
1.	
2.	
3.	
4.	
TOTAL	

