

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

March 9, 2011

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 9, 2011, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, March 9, 2011

Call To Order, Agenda Item 1

Chairman Brad Cole called the meeting to order at 9:05 a.m.

Roll Call, Agenda 1(a)

Members present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairman
Gene DuVal, Associate Broker, 4th Judicial District,
Chris Swires, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District, Education Liaison
Marianne Burke, Public Member
Charlene Flyum, Public Member
David Somers, Broker, Broker at Large, Vice Chairman

Staff Present:

Sharon Walsh, Executive Administrator
Michele Wall-Rood, REC Investigator
Nancy Harris, Project Assistant
Margo Mandel, Investigator

Guests Present:

Robert Maney, Salesperson, Grubstake Realty
Anita Bates, Broker, Bates & Assoc. Real Estate
Debbie Murphy, Associate Broker, Prudential Jack White, Wasilla
Jo Ellen Hanrahan, Director, Div of Admin Services, Dept of Commerce

Approval of Agenda, Agenda Item 1(b)

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Ms. Walsh asked if she could add item 6(d) to the agenda, the Department's Errors & Omissions insurance draft regulations received from Dan Branch at the Dept of Law. Mr. Somers asked that the Commission review trust account regulations from Nevada if there is time.

On a motion made by DuVal, seconded by Davis, and passed unanimously, it was

RESOLVED to approve the agenda as revised.

All in favor; Motion passed.

Reappointment of Commission members, Agenda Item 1(c)

Dave Somers will remain in his appointment for one more meeting. Brad Cole and the two public members, Marianne Burke and Charlene Flyum, will serve on the Commission until March 1, 2015.

Introduction of guests in the audience. Chairman Cole asked the guests in the audience to please introduce themselves to the Commission.

Approval of Minutes, Agenda Item 2

December 1 & 2, 2010, Agenda Item 2(a)

On a motion made by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to accept the December 1 & 2, 2010 meeting minutes as presented.

All in favor; Motion passed.

February 23, 2011 Teleconference, Agenda Item 2(b)

On a motion made by Davis, seconded by Somers, and passed unanimously, it was

RESOLVED to accept the February 23, 2011 teleconference meeting minutes as presented.

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All in favor; Motion passed.

December 29, 2010 Teleconference, Agenda Item 2(c)

On a motion made by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to accept the December 29, 2010 teleconference meeting minutes as presented.

All in favor; Motion passed.

Public Comment, Agenda Item 3

The Commission considered a request from Lori Price, Broker of Look with Lori, Inc. in Fairbanks. The Commission said that she can keep her records stored using electronic means. It is recommended that anyone using electronic storage of records use DVD's as opposed to CD's. The reason is that DVD's have a longer shelf life. The Commission recommended this method as a Best Practice and therefore, will be on our web site.

Education Report, Agenda Item 4

Education Statistics, Agenda Item 4(a)

Ms. Harris discussed the Education statistics with the Commission. She stated that as of February 16, 2011 there was one new prelicensing course approved for AK Academy of Real Estate through Prudential. One new broker upgrade course was added. There are currently 242 Elective and 37 Designated Continuing Education courses available. 55 Post Licensing education courses are available. Total courses are 349 with 35 new courses since December's report. There are currently 82 approved instructors.

Ms. Harris updated the Commission on the exam contractor, Pearson-Vue. She stated that they are undergoing system modifications which would allow candidates better access to their online capabilities. In addition, they added 4 new testing sites: Nome, Seward, Palmer and Dillingham. Unfortunately, they had to drop the testing sites in Bethel and Craig. These changes will go into effect in May 2011.

Executive Administrators Report, Agenda Item 6

Recovery Fund Balance Report, Agenda Item 6(a)

Ms. Walsh instructed Commission members to read the memo that she sent to JoEllen Hanrahan on January 24, 2011 addressing the issue of the Recovery Fund Report. Ms. Burke addressed the Commission about the memo and indicated that she stands behind the memo of having no confidence in the reporting. She is concerned whether or not there are expenses being charged that are inappropriate and since we as a Commission are

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responsible for this fund Sharon should be given “read-only” access to the database that tracks this fund. Ms. Walsh needs to be able to review entries for this fund otherwise we don’t know where we are at. Mr. Cole said at one point there was a huge discrepancy because funds from the renewal were not being placed into the Surety Fund account. There is good reason to be concerned. Ms. Burke asked the Commission to stand firm and what they were asking is entirely reasonable and in line with fulfilling our responsibility.

Ms. Walsh asked for the members to look at item 6 (a) Recovery Fund report. The Commission members didn’t have this in their meeting packet. Copies were subsequently provided to the members. Ms Walsh asked the members to review the report and keep in mind that the total is only through December 31, 2010 and that there are two quarters left to complete the fiscal year and the balance in this fund is only \$170,000.

Revenue & Expenditure Report, Agenda Item 6(b)

The Commission reviewed the REC Revenue and Expenditure report. Ms. Burke voiced her concern about the salaries being charged to the Recovery Fund and yet the expenditure for personnel on the REC account continued to increase. Mr. Cole indicated that we expect a detailed report from the Division of Administrative Services at every meeting. Ms. Burke asked if we have a procedural or legal question is there someone we can ask? Mr. Cole indicated that perhaps we can get Gayle Horetski. Mr. Cole asked Ms. Walsh to look into getting that answer.

12 AAC 64.130(8), Agenda Item 6(c)

Regulation 12 AAC 64.130(8), Grounds for Revocation or Suspension, was read from the December 2010 meeting minutes “as amended”. Mr. DuVal indicated “as stated” should have been the words used since there was no amendment to the regulation project 12 AAC 64.130(8).

Errors and Omission Regulation Project, Agenda Item 6(d)

The Commission reviewed the Errors and Omission insurance regulation project received from Dan Branch. The Commission did not have the changes that were made to see the different rendition of the regulations. Mr. DuVal requested the issue be tabled until the Commission can see the changes that were made. The Commission directed Ms. Walsh to contact Mr. Branch for a copy of the changes that the Department made to the E & O insurance regulations so the Commission can see the changes that were made to the regulations that were in front of them for their review.

Regulations table until Commission members receive a copy of the Department’s E & O insurance regulations to see what changes were made.

License Examiner Report, Agenda Item 7

Licensing Statistics, Agenda Item 7(a)

Ms. Walsh presented the licensing statistics for the period of November 17, 2010 through February 22, 2011. Ms. Walsh stated that Beata Smith is the Licensing Examiner and she

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compiled this information for the Commission. There are currently 2203 active licenses; 38 new licensees; 6 main offices opened; 1 branch office opened; Mr. Cole asked that additional information be provided on the next licensing statistical report that shows the name of the new offices and number of licensees in each office (not names of licensees).

Regulation Tracker, Agenda Item 7(b)

Commission members reviewed the Regulation Tracker as presented.

Break: 10:10 a.m.

Reconvene: 10:27 a.m.

Director of Administrative Services, Agenda Item 5

JoEllen Hanrahan, Director of Administrative Services for the Department of Commerce addresses the Commission regarding the Recovery Fund and the memo that the Commission sent to her on January 24, 2011 stating their concern over the reporting of the Recovery Fund. Those reports were not being done by the Fiscal section of the Div of Administrative Services. Ms. Hanrahan passed out a few reports: Schedule of Revenue, Expenditures and Changes in Fund Balance; corrected report; note the footnotes by staff accountants; her office went back to FY09; ending report did not include all expenses in the year; identified all revenue and expenses through chart of accounts; historical reports were identified from FY09 forward. Ms. Burke asked that some changes be made to the report such as actual quarter to quarter to help us manage our money. If one column is total for the year and the other column is total for 6 months we need to see reporting for that same time. She suggested perhaps having 3 columns on the report. Chairman Cole asked if we could get a projected end of the year number based on current expenditures so we can see where we may end up? Ms. Hanrahan said that they looked at this scenario and what you want to see is a Cash Flow Statement, which her staff completed. She presented this report to the Commission. Ms. Burke asked if this was cash basis? Ms. Hanrahan stated it was cash flow with projected numbers. We have accrued more expenditures in here. Ms. Burke said so it's a mixture of both? Accrual and cash? Chairman Cole said these are actual numbers? Ms. Burke stated that's cash. Ms. Hanrahan said the only part would be the warrants outstanding and that's why we adjust the fund balance to cash. Ms. Burke asked how salaries are charged to the fund? Are there statutes and regulations that cover this? Ms. Hanrahan stated that there are statutes and regulations that allow for charges to be made to the fund. Ms. Hanrahan said she wasn't sure who decides what salaries get charged to the fund. Ms. Burke asked if we can say we do not want personnel services charged to the fund. Ms. Hanrahan said you could say that but then there would be the issue of where the funding would come from. Ms. Burke said the Commission has the fiduciary duty to maintain the fund balance. Ms. Burke thanked Ms. Hanrahan for attending our meeting. Ms. Burke asked that Ms. Walsh have real time read-only access to the fund. Ms. Hanrahan made a recommendation that any source information regarding finances should come from the Div of Administrative Services, Fiscal section and she will not stand by any number that has not been sourced from their shop. Chairman Cole asked if Ms. Hanrahan has total confidence in these numbers? Ms. Hanrahan said she does have that confidence in FY10 and she has pulled source documents to verify. Mr. DuVal asked if

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we could get the personal services, salaries in particular, moved to the Real Estate Commission and not continue paying out of the Recovery Fund? Ms. Hanrahan said she has had talks with Director Habeger about it. It will need to be addressed. Ms. Walsh suggested that coding was an issue for revenue and expenses. Ms. Hanrahan asked if the Commission wanted to see the report for the Chart of Accounts at each meeting? Commission members agreed that they want to see this report each quarter. Chairman Cole asked that Ms. Hanrahan and Director Habeger meet regarding finances and then set up a teleconference with REC and Ms. Hanrahan. Ms. Burke is concerned that the budget was built with erroneous numbers from the Surety/Recovery Fund and salaries need to be removed from the Recovery Fund to bring the balance of the fund back to a minimum level. Chairman Cole suggested that we meet before the next June meeting. Ms. Hanrahan said she would have an answer by March 23 and a teleconference needs to be scheduled by April 8th. Mr. DuVal asked Ms. Hanrahan about travel issues. Ms. Hanrahan said there are over 500 people who travel for the state. She suggested that the traveler educate themselves on the rules. The meal reimbursement is another issue that people have issues with. Tourist fares are the ones that the state travel office uses. Ms. Hanrahan said that she is going to look into getting flex fares covered.

Investigative Report, Agenda Item 8

Statistical Report, Agenda Item 8(a)

Michele Wall-Rood, Investigator III currently assigned to the REC, addressed the Commission and provided a statistical report on her cases and complaints. November 11, 2010 through February 21, 2011 opened 21 cases and closed 24 cases. There are currently 136 opened cases. Litigation has been initiated in 3 cases. For the FY11 52 cases were opened 42 cases were closed. Mr. Somers asked Ms. Wall-Rood about the amount of Trust Account cases. Ms. Burke suggested that we get legislation passed regarding requirements for auditing a Brokers trust account. She suggested we have CPA firms audit Brokers at the expense of the Broker's company.

New/Transfer of Applicants, Agenda Item 8(b)

Ms. Wall Rood went on to section 8(b) of the agenda regarding new applicants or transfers: Nathan Swerdlin; Richard Doyle; Amanda Gebauer and Kathleen O'Hare.

Nathan Swerdlin

On a motion made by Somers, seconded by DuVal, and passed unanimously, it was

RESOLVED to approve the license application for Nathan Swerdlin.

All in favor; Motion passed.

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Richard Doyle

**On a motion made by DuVal, seconded by Swires, and passed unanimously,
it was**

RESOLVED to approve the license application for Richard Doyle.

All in favor; Motion passed.

Amanda Gebauer

**On a motion made by Davis, seconded by DuVal, and passed unanimously,
it was**

RESOLVED to approve the license application for Amanda Gebauer.

All in favor; Motion passed.

Kathleen O'Hare

**On a motion made by DuVal, seconded by Burke, and passed unanimously,
it was**

RESOLVED to approve the license transfer for Kathleen O'Hare.

All in favor; Motion passed.

Consent Agreements, Agenda Item 8(c)

David Keating and Kelly Griebel

On a motion by Davis, seconded by Swires, and passed unanimously, it was

**RESOLVED to go into Executive session Per AS 44.62.310 (c) (2) to
discuss agenda item 8(c) David Keating and Kelly Griebel Consent
Agreements.**

All in favor; Motion passed.

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Into Executive Session: 11:42 a. m.

Staff and guests left the conference room.

Out of Executive Session: 11:43 a. m.

Commission came out of executive session at 11:43 a.m. to recuse Mr. Somers from participating in the executive session.

On a motion by Flyum, seconded by Davis, and passed unanimously, it was

RESOLVED to go back into Executive session per AS 44.62.310 (c) (2)

All in favor; Motion passed.

Into Executive session: 11:45 a.m.

Out of Executive session: 12:26 p.m.

On a motion by Swires, seconded by Davis, and passed unanimously, it was

RESOLVED to come out of Executive Session.

All in favor; Motion passed.

On a motion by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to reject Consent Agreement for case number 3000-09-011 David Keating. The Commission feels that the actions in the Consent Agreement are so egregious that the license should be revoked.

All in favor; Motion passed.

On a motion by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to reject Consent Agreement for case number 3004-08-003 Kelly Griebel. The Commission feels that the actions in the Consent Agreement are so egregious that the license should be revoked.

All in favor; Motion passed.

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Lunch recess: 12:30 p.m.

Reconvened from lunch: 1:22 p.m.

Statute Deficiencies, Agenda Item 8(d)

Margo Mandel, Investigator with the Division of Corporations, Business and Professional Licensing addresses the Commission with her memo regarding statutory deficiencies. Such as 08.88.071(10) only allows the broker or associate broker to have their license revoked. It doesn't allow for the Commission to revoke the license of a salesperson. Additional concerns over statutory and regulatory deficiencies include compelling a licensee with the terms of a Commission Order. Ms. Mandel cited other boards that have this provision for licensees who violate a board order. Those boards are Nursing, Medical and Barbers and Hairdressers. Another area of deficiency is in the regulation of a trust account. Ms. Mandel stated that there are no provisions to allow for separation of the broker and the trust account of the brokerage. She cited the recent investigation with Alliance Realty in Ketchikan. She stated that there are no statutes or regulations allowing the Commission to intercede under circumstances where there is evidence of fraud. There are no circumstances for the Commission to appoint a licensee to oversee a trust account with or without assuming total liability for previous misappropriations of the trust funds, or to close out a trust account and finish any ongoing real estate transactions should a broker abruptly shut down his brokerage. AS 08.88.071(a) (6) (7) contains such provisions but only under conditions of a broker's death or a broker being found legally incompetent by a court of law. Neither of these circumstances applies.

Ms. Mandel proposed new language to AS 08.88.071 for the Commission's consideration:

(7a) issue a temporary permit to a licensee designated by the REC when an investigation has produced evidence that substantiates misappropriation of trust funds has occurred in order to secure proper administration in either temporarily managing or concluding the affairs of the real estate business of the broker.

(7b) issue a temporary permit to a licensee designated by the REC in the event that a broker surrenders his real estate license in order to secure proper administration in concluding the affairs of the broker's real estate business.

(7c) issue a temporary permit to a licensee designated by the REC in the event that a broker is temporarily incapacitated due to a traumatic event or medical condition in order to secure proper administration in either temporarily managing or concluding the affairs of the real estate business of the broker.

Ms. Mandel discusses the language of a permit that the Commission may consider. Ms. Burke doesn't care for the use of the term "Personal Representative" used in existing language. She suggests you don't want to use the term Personal Representative to issue a permit to under these scenarios. Chairman Cole recommends that we discuss this issue at the June meeting. Chairman Cole suggests that we discuss this with the Alaska Association

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of Realtors and find a legislator to sponsor legislation.

Mr. Somers indicated that he would take this to the Ak Association of Realtors for their consideration. Ms. Mandel brings up the issue of Mr. Ziegler, Broker of Alliance Realty, going on probation April 1, 2011. Who is going to make payments to the aggrieved parties involved in the misappropriations of the trust funds? The bookkeeper? Commission members discussed the issue. It is determined that the Commission doesn't have authority to step-in based on the duties and powers of the Commission. Ms. Walsh stated that we could ask for monthly bank statements from the brokerage. Ms. Mandel stated that in the Consent Agreement with Mr. Ziegler he is required to provide the Commission with quarterly bank statements. Chairman Cole indicated that the Commission is available for assistance should Ms. Mandel have further questions.

Continuing Education, Agenda Item 9

Colette LaRose, Agenda Item 9(a)

On a motion by Davis, seconded by Somers, and passed unanimously, it was

RESOLVED that we accept the Consent Agreement for Colette LaRose case number 2010-000606.

All in Favor; Motion passed

The Commission members discussed Ms. LaRose's written comments and Ms. Walsh advised the Commission that the issue of naming Designated Continuing Education courses has been changed for this next renewal in 2012. The name of the DCE course must match the subject area name in 12 AAC 64.500. This should eliminate future confusion for licensees.

Evelyn Harden, Agenda Item 9(b)

On a motion by Davis seconded by Burke, and passed unanimously, it was

RESOLVED to accept the Consent Agreement for Evelyn Harden case number 2010-000605.

All in Favor; Motion passed.

Jesse Clifton, Agenda Item 9(c)

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On a motion by Davis seconded by Swires, and passed unanimously, it was

RESOLVED to accept the Consent Agreement for Jesse Clifton case number 2010-000607.

All in Favor; Motion passed.

12 AAC 64.130(8), Agenda Item 6(d) -Continued

Commission reviewed tabled information from Agenda Item 6(d) Errors & Omissions insurance regulations. The Commission looked at the changes to the Department's regulations on the topic. Ms. Burke points out that the suggested changes are still not addressed in the Department's regulations. She specifically cites equivalent coverage. Mr. Somers stated that they have been told multiple times by the Commission and the AK Association of Realtors that they want this language in the regulation. Mr. Somers stated that we go back to the Dept of Law and tell them that it's critical specifically tell the drafters of the Department's Errors & Omissions regulations that equivalent coverage: ***"Independent equivalent coverage may have a higher deductible amount if the brokerage being insured provides a sworn statement to the AREC they have self insured retention equivalent to the required deductible amount"***.

Chairman Cole stated that he and Ms. Walsh would draft a letter to Ms. Signe Anderson at the Department of Law indicating that the REC deems it critical that the language about equivalent coverage must be included in the Department's regulations.

Old Business, Agenda Item 10

Update on Meeting with Home Builders Association, Agenda Item 10(a)

Mr. DuVal provided an update on the Home Builders Association. He provided the REC with a letter from Paddy Coan. Discussion centered on where it should be-on the AS 34.70 disclosure form. Members indicated that AS 34.70.120 should be voided. Commission members didn't think they had it in their purview. It is exempted so it couldn't be in the body of the disclosure form. Mr. DuVal pointed out the problem verbally to the Home Builders Association and the Commission will show support for future legislation if they want to make changes to AS 34.70.120 to vacate it. However, it is not a Commission issue and it is not in the Commission's purview to make changes. The Legislature needs to create new language for AS 34.70 but it will need to void the current language.

Proposed Regulation, Agenda Item 10(b)

Mr. DuVal reviews the proposed regulations after the regulations are drafted can they be sent back to us to see what, if any changes are made from our draft and the Regulation Specialist's version. Mr. DuVal asked that Ms. Walsh or Ms. Harris stay on top of this process and put it in "Old Business". Adopt proposed regulations for public comment: 12 AAC 64.059(b) (6); 12 AAC 64.059(f) (7); 12AAC 64.060(a) (3); 12 AAC 64.064(b) (3) (C);

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12 AAC 64.064(c)(1); 12 AAC 64.064(c)(1)(A); 12 AAC 64.071(b)(3); 12 AAC 64.071(f); 12 AAC 64.073; 12 AAC 64.078; 12 AAC 64.111(b); 12 AAC 64.125(e); 12 AAC 64.125(f)(1)(2); 12 AAC 64.130(8); 12 AAC 64.280; 12 AAC 64.285; 12 AAC 64.290(b); 12 AAC 64.290(c); 12 AAC 64.305; 12 AAC 64.310; 12 AAC 64.320; 12 AAC 64.325; 12 AAC 64.980(a); 12 AAC 64.990(b)(8); 12 AAC 64.990(f). Commission decided that they will only allow for written comment from the public on this regulation project.

On a motion by DuVal, seconded by Somers, and passed, it was

RESOLVED to move for public comment proposed regulations 12 AAC 64.059 through 990 as cited individually above.

All in favor; Motion passed.

New Business, Agenda Item 11

Review of Reporting Document by FL REC, Agenda Item 11(a)

Ms. Walsh showed the reporting document to the REC to think about what other states require for reporting violations within 30 days after a licensee is convicted or found guilty of, or entered a plea of nolo contendere (no contest) or guilty to, regardless of adjudication, a crime in any jurisdiction. Currently, the AK REC doesn't require this until renewal of a license. No action by the Commission was taken.

Commission/Board Training, Agenda Item 11(b)

Would the Commission be interested in board training? Commission members agreed that the September meeting would be the better timeframe for having this take place. Those involved would be a representative from the Dept of Law, Quinten Warren with Investigations, and Karen Wilke the Division's Paralegal would make up this workshop.

Legal Entity Proposed Regulation 12 AAC 64.068, Agenda Item 11(c)

A better practice was established in December 2008 in the REC meeting minutes to allow licensees to be paid as a legal entity. It didn't make it into the Best Practices on the REC web site. In 2008 it was addressed by the Commission and the issue was if it was a closely held LLC. Chairman Cole said the concern is when real estate licensees are operating as an LLC or an S or C-corporation they want to be paid their commission through that legal entity for tax purposes. The concern is the language regarding on the commission being paid should go to the individual (in the name of the licensed individual). Mr. Somers stated we didn't have a broad consensus on this issue because of the concern over the corporations being paid a commission whose members/shareholders may not be licensees. Mr. DuVal stated that the licensee must be a natural person; however the commissions are being paid to the Brokerage generally by the Title companies and then the Broker disperses the commissions to the licensees. Mr. DuVal stated that "A lot of licensees are getting paid as legal entities including myself". Mr. Somers stated how do we stop paying non-licensed people? Corporations can get kickback referrals with non-licensees. Chairman Cole asked about an owner of a corporation of a real estate company that doesn't require him/her to be

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a licensed. Money is coming from the commissions. The Broker is paid; the commission is dispersed to the non-licensee. Mr. Somers stated that the law whether it's stated clearly or not it implies that the brokerages can receive checks from Title companies as legal entities because it says brokerages can be legal entities. Mr. Somers didn't think that licensees could hold themselves out as legal entities-unless it clears the legal department. Ms. Burke doesn't want to give the impression that the Commission is providing tax advice on legal entities. Ms. Davis and Ms. Swires both stated that they didn't see a problem with paying the licensee's legal entity.

On a motion by DuVal , seconded by Swires, and passed, it was

RESOLVED to move for public comment proposed regulation 12 AAC 64.068.

**DuVal, Burke, Flyum, Swires, Davis in favor; Mr. Somers opposed.
Motion passed.**

Brokerage Violations of Outside Brokers, Agenda Item 11(d)

Discuss letter received from Prudential Jack White Vista Broker Gregg Gunnarson conveying his concerns about brokerage offices that are basically "broom closets" but their real office is outside the state and they potentially have never set foot in the state. Mr. DuVal stated that the new language in the proposed regulations may tighten this process and deal with the concern for commerce in the form of commissions leaving the state. Ms. Walsh indicated that she met with Mr. Gunnarson, Mr. Johnson and Mr. Woods who primarily work in commercial real estate. Mr. DuVal thinks that the new regulation that is proposed today will address their concerns. 12 AAC 64.990 defines the term "within the state".

Making of Transactions 08.88.331, Agenda 11(e)

Ms. Jaquie Rosenthal, Broker of ReMax Associates of Fairbanks and North American Properties requested that the Commission consider allowing for her to go back and forth between her two brokerages. Mr. Somers said her question is really can she co-list? Because, person from office A can't walk across the hall to office B and work without co-brokering. Everyone has to have their own files. Chairman Cole said he didn't think she was asking to co-list. He thought Ms. Rosenthal was asking to engage in management contracts with licensees. He indicated that there is language in our regulations (statute) now that you can hire another licensee with a management agreement between that Broker and the licensee and you and that licensee can work for you in your office.

Commission members stopped discussion to address issues with Chief Investigator Quinten Warren.

On a motion by Davis, seconded by Swires, and passed unanimously, it was

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RESOLVED to go into Executive session Per AS 44.62.310(c) (2).

All in favor; Motion passed.

Into Executive Session: 3:05 p.m.
Out of Executive Session: 4:03 p.m.

On a motion by Davis, seconded by Swires, and passed unanimously, it was

RESOLVED to come out of Executive session

All in favor; motion passed.

Making of Transactions 08.88.331, Agenda Item 11(e) - Continued

Chairman Cole asked the Commission members to look at 08.88.398 Licensed Assistant. He interpreted the statute as allowing for a Broker to hire a licensed person through a contract with that licensee's current Broker. Mr. Somers said maybe it means that, however Mr. Somers indicated that it was put in place by the Legislature to allow for team members to pay a licensee within that team-within that same office. Mr. DuVal said we could go on about this issue for a long time and instead asked that the members look at 08.88.331 Making of a Transaction and answer Ms. Rosenthal's question. Mr. Somers stated that you can't crossover he referenced 08.88.291 that a licensee can do real estate business "only through a principal office or from a branch registered by the broker by whom the licensee is employed." Chairman Cole disagreed with Mr. Somers interpretation of 08.88.398. Mr. DuVal asked the members to focus on Ms. Rosenthal's question and provide her with the answer. Mr. DuVal stated that co-listing was okay. Members said this is acceptable. Brokerages are allowed to co-list. All laws must be followed and consumer pamphlets need to include all licensees involved. Mr. DuVal stated that the lessor would need to agree to both companies involved in leasing the property? Mr. Somers indicated yes and the Broker needs to get the thought out of her head that another licensee from the other company can "go over and help out at the other company". Mr. DuVal stated that there needs to be separate records for each company. Ms. Rosenthal will be advised that brokerages are allowed to co-list properties but their records must be maintained properly and all laws followed by each office. AREC consumer pamphlet will need to list every licensee involved so the seller can see who is representing them. There is no cross-over on maintenance of the files either.

Regulations for Recovery Fund, Agenda Item 11(f)

Commission members reviewed the proposed regulations for approval to continue through the regulation process.

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Commission members adopted proposed regulations for public comment: 12 AAC 64.059(b) (6); 12 AAC 64.059(f) (7); 12AAC 64.060(a) (3); 12 AAC 64.064(b) (3) (C); 12 AAC 64.064(c)(1); 12 AAC 64.064(c)(1)(A); 12 AAC 64.071(b)(3); 12 AAC 64.071(f); 12 AAC 64.073; 12 AAC 64.078; 12 AAC 64.111(b); 12 AAC 64.125(e); 12 AAC 64.125(f)(1)(2); 12 AAC 64.130(8); 12 AAC 64.280; 12 AAC 64.285; 12 AAC 64.290(b); 12 AAC 64.290(c); 12 AAC 64.305; 12 AAC 64.310; 12 AAC 64.320; 12 AAC 64.325; 12 AAC 64.980(a); 12 AAC 64.990(b)(8); 12 AAC 64.990(f). Commission decided that they will only allow for written comment from the public on this regulation project.

On a motion by DuVal, seconded by Somers, and passed, it was

RESOLVED to move for public comment proposed regulations 12 AAC 64.059 through 990 as cited individually above.

All in favor; Motion passed.

Errors and Omission Regulation Project, Agenda Item 6 (d) - Continued

The Commission's E & O regulations, 12 AAC 64.600- 650, continue to be tabled until the members receive further information.

PLE Issue (not on agenda)

Licensee Shawn Donahue, Salesperson License #17884, license lapsed due to non-compliance of Post Licensing Education (PLE). Mr. Donohue provided the Commission office with information that he signed up and paid a fee to an instructor to complete 30 hours of Post Licensing Education (PLE). The instructor, Charlie Sandberg, informed the licensees in the class that he would submit the Affidavit of PLE on their behalf to the Commission office and subsequently collected the \$30 fee from each licensee at the time they signed up for the PLE course. Mr. Sandberg was advertising a 30 hour PLE course; however, his course was not approved. Nevertheless, Mr. Sandberg taught 5 licensees what they thought was an approved course. The Commission office contacted Mr. Sandberg and he could not provide us with a current PLE course number. Mr. Sandberg then attempted to call other course sponsors approved by us but they all refused to provide him with their course number. The licensees were forced to find an approved PLE course and pay for it while attempting to seek a refund from Mr. Sandberg for his non approved course. Mr. Donahue is requesting a 30 day extension to complete his 30 hours of PLE from an approved instructor.

On a motion made by DuVal, seconded by Davis, it was

RESOLVED to allow Mr. Shawn Donahue a 30 day grace period to complete 30 hours of required the Post Licensing Education.

NO VOTE was taken.

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On a motion made by DuVal, seconded by Swires, and passed unanimously, it was

RESOLVED to adjourn the meeting for March 9, 2011.

All in favor. Motion passed.

Meeting adjourned at 5:00 p.m.

The Commission adjourned until June 8 & 9, 2011 in Anchorage.

Prepared and submitted by Sharon Walsh

Approved:



Bradford Cole, Chairman
Alaska Real Estate Commission

Date: 6/8/2011