

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

**REAL ESTATE COMMISSION
MINUTES OF MEETING**

March 17 – 18, 2010

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 17-18, 2010 at the State Office Building, Conference Room A, Juneau, AK.

Wednesday, March 17, 2010

Call To Order, Agenda Item 1

Chairman Brad Cole called the meeting to order at 9:15 a.m.

Roll Call, Agenda Item 1(a)

Members present were:

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

Excused Member:

Barbara Dickson, Public member

Staff Present:

Sharon Walsh, Executive Administrator

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Staff present via teleconference:

Margo Mandel, Division Investigator
Michele Wall-Rood, REC Investigator
Nancy Harris, Project Assistant-Continuing Education
Beata Smith, Licensing Examiner

Guests Present:

Peggy Ann McConnochie, Broker, AK Coastal Homes & REC Liaison for AAR
Denny Wood, Associate Broker, Prudential Jack White Vista Real Estate
Jerry Royse, Broker, Royse & Associates

Welcome New Public Member – Marianne Burke, Agenda Item 1(c)

The Chairman welcomed our newest public member to the Commission, Marianne Burke. She provided the Commission with background of her illustrious career in accounting and insurance and was looking forward to serving on the Commission.

Approval of Agenda, Agenda Item 1(b)

The Chairman added agenda item 7(e) and tabled 5(c) until the June meeting.

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

RESOLVED to approve the amended agenda.

All in favor; Motion passed.

Approval of Minutes, Agenda Item 2

December 10, 2009, Agenda Item 2(a)

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

RESOLVED to table the December 10, 2009 meeting minutes.

All in favor; Motion passed.

February 3, 2010, Agenda Item 2(b)

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

RESOLVED to accept the February 3, 2010 teleconference minutes.

All in favor; Motion passed.

Public Comment, Agenda Item 3

Review Proposal Submitted by Denny Wood/PeggyAnn McConnochie,
Agenda Item 3(a)

Peggy Ann McConnochie addressed the Commission along with Denny Wood. Ms. McConnochie presented the Commission with information on combining designated education topics for this renewal period. She and Denny asked the Commission to review their concept and provide the continuing education instructors with some guidelines as to what the Commission had in mind when they decided to combine two topics.

The Commission asked them to consider compiling information on education topics to consider at a future Commission meeting when the 2012 renewal date gets closer.

Jerry Royse also provided a comment to the Commission on some of the forms that licensees have to provide their clients such as the property disclosure and the consumer pamphlet. One of the issues Mr. Royse brought up was the transfer of a licensee to another Broker. The licensee takes that transaction with him/her along with the signed consumer pamphlet. Mr. Royse asked how do we re-define that transfer disclosure form? Does it need to be resigned once the licensee transferred to the other brokerage?

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

RESOLVED to accept the proposal by Denny Wood and Peggy Ann McConnochie to come back to the Commission with the information and get that information out to the committee.

The Commission members discussed the proposal presented to them.

Mr. Somers made a friendly amendment to the motion, amending that the Commission adopt this outline designed by the instructors.

All in favor; Motion and amendment to the motion passed.

Errors & Omission Insurance, Agenda Item 9

Review of Written Comments, Agenda 9(a)

The Commission reviewed and discussed the Department of Commerce's regulations on Errors & Omission insurance. They reviewed public comment for both the Commission's regulation project and the Department's regulations. The Commission members expressed concern about the regulations put forth by the Department and would like to discuss the proposed regulations with Assistant Attorney General Dan Branch.

OAH Decision on L. Garrison, Agenda Item 10

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

RESOLVED to go into Executive Session with ALJ Kennedy to discuss OAH case #09-0289-REC per AS 44.62.310

All in favor; Motion passed.

Into Executive Session

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

RESOLVED to come out of Executive Session.

All in favor; Motion passed.

Out of Executive Session

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

**RESOLVED to adopt Administrative Law Judge Kennedy's
proposed decision in case, OAH 09-0289-REC.**

All in favor; Motion passed.

Surety Fund Case, Agenda Item 6

S-29-001 & 003, Agenda Item 6(a)

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

**RESOLVED to go into Executive Session to discuss the surety
fund cases, S-29-002 and 003 per AS 44.62.310.**

All in favor; Motion passed.

Into Executive Session

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of Executive Session

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

**RESOLVED to adopt Administrative Law Judge Whitney's
proposed decision in Surety Fund case S-29-002 and 003
Charles McAlpine v. Gary Manson**

ALJ Whitney found that although Mr. McAlpine suffered losses due to a breach in contract, the losses were not a result of a real estate transaction or of the conversion of trust funds for the purposes of a claim against the Surety Fund. The claim was denied.

Executive Administrator's Report, Agenda Item 5

Pre-Licensing Course #697 Issue, Agenda Item 5(d)

The Commission discussed the pre licensing course #697; the course owner is Jerry Royse. Mr. Royse permitted a broker who was not approved as an instructor through the Real Estate Commission to read and answer questions to pre licensing students in Fairbanks. His course allowed for correspondence but he provided a classroom setting for 10 students and provided what he described as a "Correspondence Facilitator". There is no definition in regulation that allows for this and it may confuse students who think they are getting an AREC approved instructor. The Commission asked that in the future when he has to cancel a class that he not provide a "Correspondence Facilitator". The Chair asked that Mr. Royse help us be a solution and not create problems for us; to move forward, to educate and bring our organization to a higher level and make sure we make it happen.

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

RESOLVED to allow the certificate of completion for students that took classes with Royse & Associates on February 19-21 and 26-28, 2010 are valid.

All in favor; Motion passed.

Lunch Break: 1:00 p.m.

Reconvene: 1:40 p.m.

Investigator's Report, Agenda Item 8

Statistical Report, Agenda Item 8(a)

The Commission reviewed the statistical report presented by Michele Wall-Rood.

Time period of report was for November 24, 2009 through February 22, 2010. During this time there were 62 opened cases; 34 closed; 89 open cases; 4 in litigation and 3 accusations were filed with the AG's office.

The Chairman asked the Investigator about complaints on licensees typically doing residential trying to sell commercial or act as condo managers. The Investigator, Ms. Wall-Rood, indicated there have been frequent calls but they are typically coming from brokers and not the general public.

Ms. Davis asked that we keep in mind that when you are in smaller communities you tend to engage in all real estate transactions and they are not always limited to residential transactions. We want to be real careful when you start saying you need additional endorsements or classes. Investigator Wall-Rood said most of those calls are not from smaller communities but from the Anchorage area.

Fine Matrix- Final Presentation, Agenda Item 8(c)

The Fine Matrix was reviewed before adopting. Mr. DuVal asked if there were any significant changes to it since the last version? Investigator Wall-Rood said there are not. Chairman Cole asked if this is something that needs to be sent out to the

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Brokers. Investigator Wall-Rood said Ms. Walsh will email it to all Brokers. Ms. Davis asked if perhaps we could have a video conference for all Southeast brokers to go through the document. Ms Walsh said we could do that and that we had just presented it at the Anchorage Brokers forum.

Phone Log, Agenda Item 8(d)

The phone log was reviewed and discussed by the Commission with Investigator Wall-Rood. Renewal case issues were up during this time period. There were no questions from the Commission on the phone log.

Revision of Fitness Questions #1, Agenda Item 8(e)

Revision of fitness question #1 on the renewal form to now read: biennial license renewal **application** instead of, biennial license renewal salesperson. All forms need to be consistent. Chairman Cole asked Ms. Walsh to look into the change of the word on the form. He asked if it require a regulation project to add the word “application”? Ms Walsh will report back to the Commission on her findings.

Discussion of Suspension, Agenda Item 8(f)

Suspension issue is discussed by Investigator Wall-Rood in a generic manner. To discuss further specifics the Commission would need to go into executive session.

Consent Agreement –forthcoming, Agenda Item 8(g)

Consent agreements were issued to 12 licensees in the continuing education audits requiring that licensees indicate in the next two renewals that they have had a licensing action. However, in this last renewal 3 licensees did not check the correct box.

Add to Fine Matrix – Licensee Not Using Broker’s Trust A/C, Agenda Item 8(h)

Investigator Wall-Rood said before going into executive session she would like to bring up the topic of adding another item to the Fine Matrix;-licensees failing to use their Broker’s trust account to conduct license's property management.

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Mr. Somers pointed out that the Broker does not need to maintain the records and that a licensee can have another Broker manage that property for the licensee. He suggested renaming the title in the Fine Matrix to reflect as much. Commission will discuss and get information on a title for the fine matrix by tomorrow.

OAH Interim Order, Agenda Item 8(b)

OAH Interim Order will not be discussed at this time with the Commission as requested by Chief ALJ Thurbon.

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

RESOLVED to go into Executive Session to discuss cases #3001-09-002 and 3002-10-005

All in favor; Motion passed.

Into Executive Session

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

RESOLVED to come out of executive session at 2:50pm.

All in favor; Motion passed.

Out of Executive Session at 2:50 p.m.

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

RESOLVED to accept the Consent Agreement of Julie Burns's case #3001-09-002.

All in favor; Motion passed.

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

RESOLVED to accept the Consent Agreement of Geri Crawley case #3002-10-005.

All in favor; Motion passed.

Review Public Comments for E & O Ins. Regulations, Agenda Item 9, Revisited

Review of Written Comments, Agenda Item 9(a)

The Commission discussed Errors & Omission insurance with Assistant Attorney General Dan Branch. Mr. Branch discussed the regulation project proposed by the Department. Chairman Cole asked Mr. Branch if he reviewed the public comments received on the Department's proposed regulations and how it interfaces with the Commission's regulations. The Commission would like to see more involvement from the Division of Insurance in the drafting of the regulations. Chairman Cole stated that the Commission can not adopt the Commission's regulation project until the Department's regulation project is acceptable. Based on the proposed regulations and public comment the Department will need to make significant changes and re-notice for the 30 day public comment period. Therefore, the Commission is not any closer to having errors & omission insurance.

Adopt E & O Insurance Regulation, 12 AAC 64.600-650, Agenda Item 12(a).

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

RESOLVED to table (time uncertain) the regulation project 12 AAC 64.600-650 relating to Errors & Omission insurance.

All in favor; Motion passed.

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

**RESOLVED to go into Executive Session to discuss AAG
Branch involvement and E & O insurance.**

All in favor; Motion passed.

Into Executive Session

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

RESOLVED to come out of executive session at 4:50 p.m.

All in favor; Motion passed.

Out of Executive Session: 4:50 p.m.

Executive Administrator's Report, Agenda Item 5

Revenue & Expenditure Report, Agenda Item 5(b)

The Commission reviewed and discussed the revenue & expenditure report as presented.

Ms. Burke requested that the Commission be provided with more detail on indirect expenses in account 73000.

Ms. Walsh reminded the Commission that the Recovery Fund took effect March 1, 2010.

Ms. Walsh discussed the regulation project 12 AAC 64.073 whereby there was a Recovery Fund fee increase from \$30 to \$55 effective June 26, 2010. She also discussed the attempt during renewal to make the fee change but it wasn't until after renewal closed that the Division informed staff that the Commission didn't have the authority to make the change without going through the regulation process. Therefore, the Division had to refund anything over the \$30 fee. The fee

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hadn't been changed since 1996. The Commission must maintain a minimum balance fund of \$125,000 and not exceed \$500,000.

Unlicensed Activity Enforcement Legislation from Nebraska (NE),
Agenda Item 5(c)

The Commission will review the unlicensed activity enforcement legislation from NE at a future meeting.

Old Business, Agenda Item 11

Letter to William Jacques, Broker KW, Agenda Item 11(a)

The Commission reviewed old business and responses to letters sent out by Commission staff.

The Commission reviewed the letter sent to Butch Jacques, Broker of Keller Williams, regarding how a commission can be paid to a licensee who no longer is associated with a Broker and that Broker has since closed his office. The dilemma is how can he receive his earned commission payment. The Commission advised Mr. Jacques that legal advice should be sought because the Broker has to pay another Broker.

Surety Fund Balance Report dated 1-8-10, Agenda Item 11(b)

The Commission reviewed the latest Surety Fund balance report dated January 8, 2010. There were no questions.

Letter from Stuart Bond, Broker BSJ, Agenda Item 11(c)

Stuart Bond, Broker for the real estate office Bond Stephens & Johnson, wrote a letter to the Commission requesting CCIM credit for continuing education. He also asked for a commercial real estate qualification or endorsement. Ms. Davis advocates education but in small communities it becomes very restrictive on licensees to require endorsements.

Appraisal Question

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The Commission at this time feels it is not a necessary issue and we will review it at another time.

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

RESOLVED to include in Best Practices: It is the position of the Real Estate Commission that appraisals are *not* a material item for disclosure. It's a subjective opinion of value for disclosure by seller or licensee.

Note: A vote by the Commission on this motion did not occur.

The Commission discussed the appraisal issue presented.

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

RESOLVED to table this topic until morning.

New Business, Tab 12

“REALTOR® of the Year”, Agenda Item 12 (b)

The Commission recognized Dave Somers, REALTOR of the Year for Alaska. Mr. Somers was recognized in the ARELLO newsletter for his accolades.

On a motion made by DuVal second by Davis, it was.

RESOLVED to adjourn for evening.

All in favor; motion passed.

Friday March 18, 2010

Call to Order

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

Roll Call

Members present were:

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

Staff Present:

Sharon Walsh, Executive Administrator

Excused Member:

Barbara Dickson, Public member

Staff present via teleconference:

Nancy Harris, Project Assistant-Continuing Education
Beata Smith, Licensing Examiner

Guests Present:

Peggy Ann McConnochie, Broker, AK Coastal Homes & REC Liaison for AAR
Denny Wood, Associate Broker, Prudential Jack White Vista Real Estate
Jerry Royse, Broker, Royse & Associates
Gina Pelaia, Salesperson, Bay Realty, Homer

Licensing Report, Agenda Item 7

Licensing Statistics, Agenda Item 7(a)

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Ms. Smith was called via teleconference to discuss with the Commission licensing statistics and other issues listed on the agenda. She said that there were 36 new licensees from 11-20-09 to 3-2-10. 2108 active licensees and the total number of licensees are 2135 this included licensees that are active, inactive or licensees not affiliated with a broker.

Regulation Tracker, Agenda Item 7(c)

The regulation tracker was reviewed and discussed with the Commission. 12 AAC 64.073 was added to tracker.

Licensing Issue – T. Martin, Agenda Item 7(e)

The Commission reviewed and discussed the Tom Martin licensing issue. Information was provided by Mr. Martin for the Commission to review. The Commission determined that Mr. Martin's paperwork was insufficient and provided late to the Commission office. Therefore, Mr. Martin will have to re-test to practice real estate in Alaska.

Re-adoption of 12 AAC 64.570(a)(f), Agenda Item 7(d)

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

**RESOLVED to adopt the regulation 12 AAC 64.570(a)(f)
Property Management.**

All in favor; Motion passed.

Education Report, Agenda Item 4

Education & Renewal Report, Agenda Item 4(a)

The education report was presented to Commission by Ms. Harris. She reported that currently there are 206 approved courses and 114 currently approved instructors. New instructors are now being approved for 5 years instead of every two.

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Certification Change Consideration, Agenda Item 4(b)

Ms. Harris asked the Commission to consider allowing for topic numbers to be added to the certificates that are issued.

The other consideration is to keep course titles that are taught for Designated Continuing Education (DCE) the same as the topic numbers. Therefore, Risk Management topic #33 is the same on every certificate issued throughout the state and not listed as some other course name. The intent is to keep it simple for licensees to understand what they have. This only applies to the DCE's.

Approval of Minutes, Agenda Item 2(a)- Continued

The Commission discussed the reasons why they could not adopt the December 2009 meeting minutes as presented. Therefore, the minutes were denied and will be resubmitted after Ms. Walsh completes the revision.

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

RESOLVED to approve the December meeting minutes of 2009.

Motion failed due to unanimous No vote.

Appraisal Issue- Continued

The Commission wanted to address the issue of appraisals. It was suggested that staff post to the Commission's web site under Frequently Asked Questions the comment: Appraisals were excluded by the AREC in the last revision of the Residential Property Disclosure form AS 34.70.

The topic of appraisals were considered and excluded.

Old Business, Agenda Item 11(a) - Continued

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

RESOLVED to propose changes to regulation 12 AAC 64.111(2) new language will include: *A Broker shall maintain a trust account until a Broker has distributed all the money due to be received from the proper person or entity or until the transaction for which money is due to be received.*

All in favor; motion passed.

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

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 11:48 am.

The Commission adjourned until June 17 & 18, 2010 in Fairbanks, Alaska

Prepared and submitted by Sharon Walsh

Approved:



Bradford Cole, Chairperson
Alaska Real Estate Commission

Date: _____

9/13/10