

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

June 6, 2012

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 June 6, 2012, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, June 6, 2012

Call to Order

Chairman Bradford Cole called the meeting to order at 9:03 a.m. at which time a quorum was established.

Agenda Item 1(a)

Roll Call

Members present:

Bradford Cole, Associate Broker, 3rd Judicial District, Chairperson
Nancy Davis, Broker, 1st Judicial District, Vice-Chairperson
Marianne Burke, Public Member
Anita Bates, Broker at Large, Education Liaison
Stacy Risner, Associate Broker, 4th Judicial District
Christina Swires, Associate Broker, Broker at Large
Charlene Flyum, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Project Assistant
Beata Smith, Licensing Examiner
Jennifer Wirawan, Investigator II
Brian Howes, Investigator

Guests Present:

David Somers, Broker, Somers & Associates Realtors, Inc
Deborah DeBoer, Salesperson, Prudential Jack White/Vista Real Estate
Greg Erkins, Broker, Greg Erkins Realty and Email Realty

Agenda Item 1b

Approval of Agenda

The Commission members reviewed and discussed the meeting agenda as presented.

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

RESOLVED to approve the meeting agenda as presented.

All in favor; Motion passed.

Agenda Item 2a

Approval of Minutes
March 7, 2012

Commission members reviewed the March 7, 2012 meeting minutes as presented.

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

RESOLVED to approve the March 7, 2012 meeting minutes.

All in favor; Motion passed.

Ms. Bates pointed out that on page 3 of 16, 3rd paragraph, to remove the word 'them' from the sentence. To read 'Ms. Bates asked if the Commission members had received the list of objectives that was sent to Ms. Walsh by e-mail?' and make a spelling correction in the same paragraph, last sentence to the word 'perspective'.

Ms. Burke asked Mr. Cole if he has received any answers to any of the questions raised regarding Recovery Fund Balance Report. Mr. Cole has not received anything. Ms. Burke has reviewed the report and none of the corrections have been addressed.

Ms. Burke pointed out that on page 13 of 16, under 'Findings and Conclusions' it should read '(a) After consideration of a claim, the Commission will make written findings *of facts and* conclusions *of law* in accordance with the provisions of AS 08.88.465.

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

RESOLVED to amend the motion to include corrections made to the March 7th meeting minutes.

All in favor; Motion passed.

(Note: at the September 21, 2012 teleconference this motion was rescinded because it indicated a change of verbiage to page 3 paragraph. See September 21, 2012 meeting minutes for clarification)

Agenda Item 2a
April 13, 2012

Commission members reviewed the April 13, 2012 teleconference meeting minutes as presented.

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

RESOLVED to approve the April 13, 2012 teleconference meeting minutes.

Ms. Burke pointed out that on page 2 of 3, under the first motion passed, she asked that her objection to the recovery fund regulations be included in the meeting minutes.

Ms. Risner pointed out a typographical error. It should read 'Ms. Burke', not 'Mr. Burke'.

Ms. Burke pointed out the misspelling of her last name.

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

RESOLVED to withdraw and table both March 7, 2012 and April 13, 2012 meeting minutes for corrections and email the revised minutes to Commission members for approval.

All in favor; Motion passed.

Agenda Item 3

Public Comment

David Somers updated the Commission members regarding the payment of a Commission to legal entities. The Commission will expect a large number of licensees opposing this regulation. If the regulation does go through, he then will be challenged with a statute change or clarification of the existing statutes. Mr. Somers told the Commission members to ask themselves where the demand is coming from, because, it is not coming from the Alaska Association of Realtors or their members. Also, the statutes do indicate that only a natural person could hold a license and the Commission can only be paid to the person that holds the license. Mr. Somers feels that this is a violation of the statutes.

Ms. Davis asked, what the nature of the reason is for the change to legal entities? Mr. Somers stated that the main concern is the ability to get outside of the control of the Real Estate Commission for legal entities and take advantage of people that are not licensed. Legal entities themselves are taking advantage of the fact that they don't have to respond to anybody or comply with the laws or the Real Estate Commission's oversight.

Ms. Burke asked Mr. Somers if he had received any answers regarding the authority for read only for all the financial data. Mr. Somers stated that they didn't understand why the Commission couldn't get the read only for all the financials but they are pushing for it as an Association.

Mr. Cole thanked Mr. Somers for taking his time to speak to the Commission.

Agenda Item 4a

Education Report

Education Statistics

Ms. Harris presented the education statistics to the Commission. She reported that, as of May 18, 2012 there are currently 8 Pre-Licensing courses, 147 Elective Continuing Education courses, 12 Designated Continuing Education courses 54 Post Licensing courses and 7 Broker Upgrade Pre Licensing courses. There are currently, 104 approved/permanent instructors and 3 new instructors.

Ms. Davis asked what is the Commission's opinion of teaching experience? Ms. Bates stated that the Train the Trainer Workshop can be substituted for teaching experience.

Ms. Flyum asked, regarding the increase in the cost, what is the feedback from the instructors? Ms. Harris stated that the instructors were surprised about the increase. Ms. Bates mentioned that most of the instructors don't teach on a full time basis and if it's too expensive for the instructor to develop and get the classes approved, the instructors will not be submitting courses for course renewal.

Agenda Item 4b

CE Audits Update

Ms. Harris presented the CE Audit update to the Commission. Out of 198 licensees that were audited, there were 12 licensees that were non-compliant and 7 licensees that did not respond to the audit letter. However, 5 out of the 7 licensees did respond and provided the certificates after the board books were sent out to the members. Ms. Walsh stated that this renewal period was different because during prior renewals, Ms. Harris and herself went out to many firms and reviewed the certificates before a licensee could have renewed their license. She and Ms. Harris found this beneficial to license renewal.

Agenda Item 4c

Instructor Issues

Ms. Harris discussed the instructor issues with the Commission members. Two instructors taught a continuing education course when either the instructor or the course was not approved.

- Course #2575, MREA Business Planning was given on November 10-11, 2010, but the instructor did not renew her instructor certification until December 12, 2010.
- Course #854, Fair Housing and Course #2575, Effective Negotiation were taught on May 18, 2011, however, the courses were not approved until May 20, 2011.

Sign in sheets for all courses have been requested but yet to be provided to Ms. Harris.

The Commission members determined that the licensees who took the courses, which were provided by Ms. Owen and Mr. Sandberg, will not be penalized because they did not know that the instructor or the courses were not approved.

Ms. Burke suggested that in the future, a penalty and fine be considered for instructors that violate education regulations.

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

RESOLVED to approve the courses for licensees who took the classes and table the discussion regarding the penalty for the instructors until later in the day.

All in favor; Motion passed.

Ms. Bates suggested that in the future the course and instructor approval dates be added to all course advertisements.

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

RESOLVED to amend the motion to add course #2575, MREA Business Planning; course #854, Fair Housing; and course #2466, Effective Negotiations.

All in favor; Motion passed.

Ms. Harris informed the Commission members that Pearson Vue (the test contractors) is having some proctor issues in Fairbanks and is trying to get a new proctor.

Agenda Item 5b

Executive Administrator's Report

Schedule of Revenue and Expenditure Report

Ms. Walsh informed the Commission members that the Schedule of Revenue and Expenditure Report will be provided on quarterly basis, so this quarter will be available at the end of June. Ms. Burke asked if there was any logic to this since the Commission members should be able to receive the report at any time?

Recovery Fund Balance Report

Ms. Burke stated "This underlines the absolute necessity for us to have read only. If we have to wait a quarter to find out what's going on, based on past experience if there is an error. The accounting staff for the Division always has an excuse for not correcting it, and they don't. They have not corrected any of the errors we have pointed out that they have agreed to. They just don't do it. So we've got to be able to have read only."

Ms. Walsh presented the Commission members with the Recovery Fund financials which were provided by Mary Manning out of the Department of Administrative Services. Ms. Burke made a comment regarding the reports, "This again is a situation where we pointed out errors to them, and they have not corrected it, for fiscal year ended 6/30/2010, and we pointed this out to them immediately after we got that over two years ago. There were no claims, and they are showing \$33,888.00. That has been pointed out to them two years ago. They also are doing projections based on the 2010 actuals, which there were none and it increased by the cost of living, which is a totally invalid way to project claims. Now, if we had the contingent liabilities disclosed to us then we would have valid information upon which to project. Right now these service claims are illogical; therefore, the fund balance is not logical. This then makes the cash flow statement incorrect. We also had errors from 2010, payments to employees. That is incorrect. Payments for services in claims, incorrect. Other payments I don't even know what it's for. That is noted incorrect, the fund balance from 2010 and forward, is incorrect." Mr. Cole stated that the Commission might see actual numbers some time later this month and that this will require a teleconference to discuss this issue. Ms. Burke stated that "Since this adversely impacts every licensee, because they have to pay into this fund to maintain it and we know that the number they are paying now was based on incorrect information. There's no validity to it, at all. If we let this just go by, we're going to be criticized for charging too much and then we'll reach a point where we have a too big of a fund balance and it goes into the general fund. So, we are having licensees subsidize the general fund because we can't get correct information." Ms. Walsh stated that when we hit that low point in the recovery fund, they reduce the percentage out of that recovery fund for her salary and Ms. Harris' salary. Ms. Burke stated that everything about the recovery fund is the sole responsibility of the Commission. Ms. Burke asked that if they get any information for Ms. Walsh to email a copy to the Commission members. Ms. Burke stated "Since this fund has been established to pay for hearings and legal expenditures, that's a surety fund. They are using these bogus numbers." Mr. Cole asked the Commission members to take the time and review it so they can formulate the questions and have it corrected for the September meeting.

Ms. Walsh informed the Commission that she has received a recovery fund claim along with a court order and asked if this should go through the Commission. Ms. Burke stated that it does need to come in front of the Commission for review to find the facts and conclusions. Mr. Cole stated that he wants to see the recovery fund claim through email.

The Commission recessed for break at 10:02 a.m.
The Commission reconvened from break at 10:15 a.m.

Agenda Item 6a
Licensing Report
Licensing Statistics

Ms. Smith presented the licensing report for the period of February 15, 2011 through May 24, 2012. There were 63 new licensees with an expiration date of 1/31/2014. Total number of licensees with an expiration date of 1/31/2014 was 2135. 2107 active licensees, 343 lapsed licensees with the expiration date of 1/31/2012, 18 inactive licensees, and 6 licensees that broke contact with broker. There were 24 licensees that completed their post-licensing education. Since the last licensing report, there were 19 new main offices and 1 branch office that opened; 9 in Anchorage, 2 in Wasilla, 3 in Fairbanks, 1 in Sitka, North Pole, Eagle River, Juneau, Homer and Soldotna.

Ms. Smith also updated the Commission members on Mr. Keating's status. Mr. Keating's suspension ended on June 4th and his probationary period started.

Ms. Burke had a question regarding the total number of licensees and the total number of active licensees. Ms. Smith explained that the total number of licensees consists of licensees that are AWOL (not affiliated with a broker), lapsed, inactive, deceased, on probation, on suspension, surrendered, all which have 1/31/2014 expiration date.

Agenda Item 9a
Old Business
E & O Regulation Update

Ms. Harris updated the Commission members with the E & O Regulations. The Commission members reviewed and made a few changes to the E & O Regulations.

On a motion duly made by Ms. Bates, seconded by Ms. Swires, it was,

RESOLVED to put out for public comment regulation 12 AAC 64.068 with the proposed language.

All in favor; Motion passed.

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

RESOLVED to approve regulation 12 AAC 64.130(4)(B).

All in favor; Motion passed.

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

RESOLVED to put out for public comment regulation 12 AAC 64.500(n) with the proposed language.

All in favor; Motion passed.

On a motion duly made by Ms. Bates, seconded by Ms. Flyum, it was,

RESOLVED to approve Section 12 AAC 64.600 through 12 AAC 64.650.

Commission members further discussed Section 12 AAC 64.600 through 12 AAC 64.650.

12 AAC 64.600 to read:

12 AAC 64.600 Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or a licensee with an inactive or suspended license activating a license must submit proof of errors and omission insurance coverage through the group plan *made available* by the commission under AS 08.88.172(d) or through certification of equivalent coverage.

12 AAC 64.610 to read:

12 AAC 64.610 Time for filing certification of equivalent coverage. A licensee wishing to comply with AS 08.88.172 by obtaining equivalent coverage under AS 08.88.172(c)(2) must file a certification of insurance showing equivalent coverage with the commission. (a) A licensee wishing to replace coverage under the master insurance policy *made available* by the commission under AS 08.88.172(c)(1) or independent equivalent coverage with another policy shall file a certification of equivalent coverage with the commission *prior to* 5:00 p.m. on the date *the licensee cancels* coverage under the master insurance policy *made available by the commission as required by this section*.

The Commission tabled Section 12 AAC 64.600 through 12 AAC 64.650 until later on in the day.

Agenda Item 7
Investigator's Report

On a motion duly made by Ms. Bates, seconded by Ms. Swires, it was

RESOLVED to go into an Executive Session Per AS 44.62.310(c)(2) to discuss investigative matters.

All in favor; Motion passed.

Into Executive Session 10:41 a.m.

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

RESOLVED to come out of the Executive Session.

All in favor; Motion passed.

Out of Executive session 11:53 a.m.

Agenda Item 7b
Gregory Erkins, Case #2012-000484

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

RESOLVED to table the decision until the applicant provides verifiable certification for Train the Trainer to the Commission.

All in favor; Motion passed.

Dennis Wood, Case #2010-000791

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

RESOLVED to accept the imposition of Civil Fine, Case #2010-000791 for Dennis Wood.

All in favor; Motion passed.

Agenda Item 7a
Statistical Report

Ms. Wirawan presented the Commission with the statistical report for the period of February 7, 2012 through May 18, 2012. There were 69 new opened cases, 96 closed cases. Ms. Wirawan explained to the Commission members the 3 different levels of case files with the Division. They are: Intake Level (before the complaint is received), Complaint Level (receive a formal complaint or there is evidence of violation), and Investigation Level (determine jurisdiction and whether there is a violation). Open cases reflect investigations. Since the date of the report, there were approximately 30 more matters closed.

Mr. Cole stated that we are reaching a point where the findings are no longer intended to be punitive, they are intended to be educational. We can move forward and do it in a positive way and this is a great change that the industry will appreciate. Ms. Flyum stated how much the Commission appreciated all the work the investigative staff has done to get the case loads down and how far this has come. Ms. Walsh expressed her appreciation for the time that all the Commission members have taken to help expedite the cases. Ms. Wirawan also expressed her appreciation toward the Commission members. Ms. Wirawan has only been assigned to Real Estate Commission as an Investigator for a month, Mr. Cole and the members recognize the effort she put into this and the knowledge she has brought, the enthusiasm and the willingness to work and get all of the Commission members involved. Mr. Cole also stated that Ms. Wirawan has indicated that this is only a temporary situation. The Commission members will take action to let it be known that their desire is for Ms. Wirawan to permanently fill this position. The Commission members recommended that Ms. Wirawan participate in the ARELLO Conference, Investigative Workshop in August 2012. In resolution, 40% of cases have been closed in one month since Ms. Wirawan was assigned to the Real Estate Commission. The Commission members were very impressed with Ms. Wirawan.

The Commission recessed for lunch at 12:08 p.m.
The Commission reconvened from lunch at 1:15 p.m.

Agenda Item 9a cont.
E & O Regulation Update

12 AAC 64.610 to read:

12 AAC 64.610 Time for filing certification of equivalent coverage. A licensee wishing to comply with AS 08.88.172 by obtaining equivalent coverage under AS 08.88.172(c)(2) must file a certification of

insurance showing equivalent coverage with the commission. (a) A licensee wishing to replace coverage under the master insurance policy *made available* by the commission under AS 08.88.172(c)(1) or independent equivalent coverage with another policy shall file a certification of equivalent coverage with the commission *prior to* 5:00 p.m. on the date *the licensee cancels* coverage under the master insurance policy *made available by the commission as required by this section. (b) or an affidavit certifying that the insured licensee has the financial resources to pay the higher deductible or self insured retention to be filed on the form provided by the commission.*

If the certification is not filed as required by this section, the commission shall suspend the license.

The Commission took a brief recess.

Mr. Gregory Erkins spoke with the Commission members regarding his instructor approval. The Chair let Mr. Erkins know that the Commission members tabled his request until he provides further information.

Back in session.

Agenda Item 9a cont.
E & O Regulation Update

On a motion duly made by Ms. Bates, seconded by Ms. Flyum, it was,

RESOLVED to amend the motion to include the revised wording of 12 AAC 64.600 Insurance required and 12 AAC 64.610 Time for filing certification of equivalent coverage.

All in favor; Motion passed.

On a motion duly made by Ms. Bates, seconded by Ms. Flyum, it was,

RESOLVED to approve Section 12 AAC 64.600 through 12 AAC 64.650.

All in favor; Motion passed.

Agenda Item 9b
Recovery Fund Regulations

Ms. Harris provided an update to the Commission members with the Official Notice of Corrections of Adopted Regulations which became effective May 31, 2012.

Agenda Item 6b
Regulation Tracker

Ms. Smith presented the Commission members with the regulation tracker for their review.

Agenda Item 6c
Applications with 'yes' answer

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

RESOLVED to go into an Executive Session Per AS 44.62.310(c)(2) to discuss

applications with yes answers.

All in favor; Motion passed.

Into Executive Session 1:45 p.m.

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

RESOLVED to come out of the Executive Session.

All in favor; Motion passed.

Out of Executive Session 1:50 p.m.

Kameron Draper

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

RESOLVED to deny Kameron Draper's Associate Broker upgrade because 7 years have not lapsed since completion of his sentence that was imposed for conviction of a felony.

All in favor; Motion passed.

A letter will be mailed out to Mr. Draper with details of the next step in the process.

William Skinner

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

RESOLVED to approve William Skinner's application.

All in favor; Motion passed.

Agenda Item 6d

Update March meeting licensing/renewal statistics

Ms. Harris stated that Ms. Walsh will meet with the Chair regarding this matter on June 7, 2012.

Agenda Item 8a

New Business

Annual Report – 2012

Mr. Cole asked the members to review the Annual Report for 2012 as presented. This will be discussed during the teleconference at the end of the month. Commission members should email their input to Ms. Walsh.

Agenda Item 8b

Division's New Policy – Mail Ballots/Board Books

Ms. Harris discussed with the Commission members the Division's New Policy regarding the distribution

of Mail Ballots/Board Books. The Commission members are opposed to this new policy regarding the board books. Ms. Bates stated that she is volunteering her time to the Commission she should at least receive a hard copy of the board book. The Commission members are fine with the mail ballot new policy. The Commission's recommendation is to continue with the mail ballots, however, they want to receive a hard copy of the board books.

Agenda Item 8c

Education Regulations Revisited

12 AAC 64.440(e), Instructor Approval

Ms. Bates discussed with the Commission members the Education Regulations. Ms. Bates would like to see the regulations tightened up not only real estate education but also for real estate educators. She proposed amending the wording to regulation 12 AAC 64.440(e), Instructor Approval.

On a motion duly made by Ms. Bates, seconded by Ms. Swires, it was,

RESOLVED to submit the rewording of regulation 12 AAC 64.440(e) to Jun Maiquis to prepare for public comment. 12 AAC 64.440(e) to read: (e)An applicant for initial instructor approval that wishes to substitute completion of an instructor workshop in (d) of this section for the teaching experience or training required in (c) of this section must apply for instructor approval within six months of completing an approved instructor workshop.

All in favor; Motion passed.

12 AAC 02.360(b), Real Estate Commission

Ms. Bates proposed a reduction of fees for initial course certification and biennial course recertification. Ms. Burke stated that she agrees with Ms. Bates, however, the Commission does not have the authority to change the fees and that Mr. Habeger made that perfectly clear that this is their authority. Ms. Burke also stated that she doesn't think that the Commission should be reducing fees until they know where they stand and then address all fees to be reduced. Mr. Cole thought that the Commission should address this because he does not want to put the burden of the fund on just the educators. Mr. Cole stated that what the Commission members need to keep in mind is that they need to keep looking at ways to improve the educational opportunities for people through educators. Ms. Flyum suggested tabling this until the teleconference when they receive the financials.

On a motion duly made by Ms. Bates, seconded by Ms. Swires, it was,

RESOLVED that the initial course certification fee be changed to \$30 per credit hour and the biennial course recertification fee be changed to \$25 per credit hour.

All in favor; Motion passed.

Agenda Item 9d

Renewal Regulations – Notifications 90 days

Ms. Harris proposed language to regulation 12 AAC 64.071 License Renewal, for the Commission's approval. This regulation regarding the renewal reminder to be mailed out at least 60 days before the renewal date.

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

RESOLVED to change the proposed language for regulation 12 AAC 64.071 by adding: *A renewal reminder document will be mailed to each license with a current expiration date at least 60 days before the renewal date.* Also deleting the word 'surety' and replacing it with 'recovery' fund fee.

All in favor; Motion passed.

Ms. Burke asked since Ms. Walsh is back on the job, will Ms. Harris and Ms. Smith be transferred back to Ms. Walsh's supervision? Mr. Cole stated that now there is a different organization chart. Ms. Burke stated that she doesn't agree with someone being in charge of real estate if they do not have any knowledge in Real Estate.

Ms. Flyum thanked Ms. Harris and Ms. Smith for doing a great job while Ms. Walsh was out of the office.

Ms. Harris thanked the Commission members for all their help and support while Ms. Walsh was out of the office.

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

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 2:20 p.m.

The Commission adjourned until the next regular scheduled meeting on September 5-6, 2012 in Anchorage.

Prepared and submitted by Beata Smith.

Approved: 

Bradford Cole, Chairman
Alaska Real Estate Commission

Date: 9/26/12