

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

December 5, 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 December 5, 2012, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, December 5, 2012

Agenda Item 1a

Call to Order

Chairperson Anita Bates called the meeting to order at 9:01 a.m. at which time a quorum was established.

Roll Call

Members present:

Anita Bates, Broker at Large
Brad Cole, Associate Broker, 3rd Judicial District
Christina Swires, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District
Marianne Burke, Public Member
Stacy Risner, Associate Broker, 4th Judicial District

Members absent:

Charlene Flyum, Public Member

Staff Present:

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

Guests Present:

Mera Matthews, Attorney, Ashburn & Mason P.C.
Mila Sturm, Public
Branko Sturm, Public
Kameron Draper, Dynamic Properties
Don Habeger, Director of Corporation, Business and Professional Licensing
Eric Bushnell, Prudential Jack White/Vista Real Estate
William Jacques, Keller Williams Real Estate – Alaska Group

Agenda Item 1b

Approval of Agenda

The Commission Members reviewed and discussed the meeting agenda as presented. There

was a change for times to agenda item 6 and 8, agenda item 6 was switched from 11:00 a.m. to 1:00 p.m. and agenda item 8 was switched from 1:00 p.m. to 11:00 a.m. Also added to the agenda was section 5d, application Fitness Questions.

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

RESOLVED to approve the meeting agenda as revised.

All in favor; Motion passed.

Agenda Item 2a

Approval of Meeting Minutes

July 23, 2012 Teleconference meeting minutes

Commission members reviewed the July 23, 2012 teleconference meeting minutes as presented.

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

RESOLVED to approve July 23, 2012 teleconference meeting minutes.

There was further discussion regarding the July 23, 2012 teleconference meeting minutes. Ms. Burke suggested postponing the July 23, 2012 teleconference meeting minutes based on Ms. Walsh review. Ms. Burke stated that there was quite a bit of material that was not included in the meeting minutes. Ms. Bates explained that she does not want the meeting minutes verbatim, she wants the outline of the proceedings of the meeting and to include the motions.

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

RESOLVED to table the July 23, 2012 teleconference meeting minutes until after break.

All in favor; Motion passed.

Agenda Item 2b

September 6, 2012 meeting minutes

Commission members reviewed the September 6, 2012 meeting minutes as presented.

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

RESOLVED to approve September 6, 2012 meeting minutes.

All in favor; Motion passed.

Agenda Item 2c

September 20, 2012 teleconference meeting minutes

Commission members reviewed the September 20, 2012 teleconference meeting minutes as presented.

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

RESOLVED to approve September 20, 2012 teleconference meeting minutes.

All in favor; Motion passed.

Agenda Item 5a

Education Report

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of November 15th, 2012 there are currently 9 Pre-Licensing courses, 196 Elective Continuing Education courses, 29 Designated Continuing Education courses, 75 Post Licensing Education courses and 7 Broker Upgrade Pre Licensing courses. There are currently 243 approved courses, 29 sponsors, 109 currently approved/permanent instructors. There are no temporary instructors during this reporting period.

Agenda Item 5b

Review of Instructor/Course Evaluation

Ms. Harris presented the Review of Instructor/Course Evaluation to the Commission. There were changes to #4 and #7 of the evaluation.

Course: #4 **The presentation increased my knowledge of the course subject?**

Instructor: #4 **How well did the instructor keep personal experiences consistent with the course material?**

General: #7 **Did the instructor **excessively** promote the sales of products (i.e., tapes, text, etc) during the educational portion of the course?**

Agenda Item 5c

PLE & ECE Clarification

Ms. Harris asked the commission members if a licensee takes the same course number on two different dates, can it be used for PLE and ECE.

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

RESOLVED to accept the PLE certificate for a licensee who took the same course number but on a different day.

All in favor; Motion passed.

Mr. Cole made a friendly amendment that anyone who took the same course numbers on a different day is to be given credit. From this point on, it will not be allowable. The Commission members asked staff to write a letter to each instructor regarding Best Business Practice, by adding specific information on CE certificates. To be added to the certificate: course number, course expiration date, and instructor certificate expiration date. Ms. Risner made a friendly amendment to specify that the same course numbers cannot be used for PLE & ECE.

Agenda Item 5d

Change in fitness questions on application

Ms. Harris provided the Commission members with the revision to the fitness questions on the applications.

Agenda Item 7a

Licensing Report

Licensing Statistics

Ms. Smith presented the licensing report for the period of August 14 through November 16, 2012. There were 65 new licensees with expiration date of 1/31/2014 and 1/31/2014. Total number of licensees with an expiration date of 1/31/2014 was 2249, there are 2184 active licensees, 335 lapsed licensees with 1/31/2012 expiration date, 39 inactive licensees, and 26 licensees that broke contact with broker and 29 licensees completed their post-licensing education. Since the last licensing report there were 12 main offices that opened and 1 branch office that has opened.

Ms. Burke pointed out that the numbers did not match, that the total number of licensees should be 2249. NOTE: 2259 the total number of licenses that Ms. Smith reported on her report was correct. 2259 the total number of licensees consists of: 2184 number of active licensees, 5 licensees who lapsed due to non compliance of PLE, 39 inactive licenses, 2 deceased, 1 surrendered, 26 AWOL, and 2 licenses that are on probation.

Agenda Item 7b

Regulation Tracker

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

Agenda Item 7c

Notice of Broker Absence

Ms. Smith presented the Notice of Broker Absence form to the Commission members for their review. Associate Broker was added to the notice.

Agenda Item 3

Public Comment

Mr. Habeger, Director of Corporation, Business and Professional Licensing addressed the Commission members with the response to a conversation with Ms. Bates which was held in preparation for the meeting. Mr. Habeger admitted that it was his failure due to other more important projects and getting budgets out that the regulation project is on hold. The Commission recommended up to a \$125 fee on renewals to replenish the recovery fund, however, Mr. Habeger stated that it might be a potential cash surplus, minus any reductions for payouts. Ms. Burke stated that we should be looking at the projections the way they are right now because the Commission members had previous discussions with Mary Manning and that Ms. Manning agreed that the numbers being used for the projections are not in the recovery fund. Since the Commission members know what the payouts will be, they will have more accurate information to go forward and there is no exact date when the new system will be in place. Ms. Bates stated that she would like the fees adjusted fairly soon because of the renewal starting next year and licensees must be educated. Ms. Burke asked for the staff to start a report capturing the elements of revenue

that goes to the recovery fund from the past licensing period.

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

RESOLVED to the Commission members direct staff to begin a report capturing the elements of revenue that go to the recovery fund to the extent that the data is available beginning the last licensing period so it may be used for budgeting process determining the validity of the fees that are proposed. The report to be available at the March 2013 meeting.

All in favor; Motion passed.

The Commission recessed for break at 9:55 a.m.
The Commission reconvened from break at 10:00 a.m.

Agenda Item 4
OAH 12-0186-REC

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

RESOLVED to go to the executive session to discuss OAH Case 12-0186-REC

All in favor; Motion passed.

Into executive session at 10:01 a.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of executive session at 10:50 a.m.

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

RESOLVED to grant the request for the upgrade to Associate Broker for Kameron Draper in Case OAH 12-08186-REC

Ms. Burke abstained.

Mr. Cole – yes, Ms. Risner – yes, Ms. Davis - yes, Ms. Swires – yes, Ms. Burke – no.

The Commission recessed for break at 10:52 a.m.
The Commission reconvened from break at 11:00 a.m.

Agenda Item 8a

Investigator's Report

Statistical Report

Ms. Wirawan presented the Commission with the Performance Measures and Accomplishments Real Estate Report – Six Month Period for review.

Ms. Wirawan presented the Commission with the statistical report for the period of August 23 through November 16, 2012. There were 19 new opened cases and closed 30 Real Estate Matters. There are 41 opened investigations with 10 investigation closed. The Commission adopted 3 disciplinary actions and 3 consent agreements. Ms. Wirawan shared with the Commission members that she has made several phone calls to licensees letting them know where in the process is the complaint.

Agenda Item 8

Consent Agreement

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

RESOLVED to go to the executive session to discuss Consent Agreement

All in favor; Motion passed.

Into executive session at 11:06 a.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of executive session at 11:20 a.m.

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

RESOLVED to approve the Consent Agreement in the matter of John Stiegele, Case #2010-001175

All in favor; Motion passed.

Agenda Item 8c

Licensing Issues

Mark Luce

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

RESOLVED to approve the application for Mark Luce.

All in favor; Motion passed.

Branko Sturm

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

RESOLVED to approve the application for Branko Sturm.

All in favor; Motion passed.

Agenda Item 9a

Old Business

March 2012 Meeting

Commission members discussed the March 2013 meeting location. Ms. Bates amended the meeting dates for the March 2013 meeting. Ms. Burke suggested that the meeting will be held in Juneau so the Commission members can be available to the licensees in that area and also to meet with the legislators to answer any questions that might come up. Also, that the money that we have for travel, it is not enough and we have to be vocal, stated Ms. Burke. Mr. Cole stated that the way to accomplish this is for Ms. Walsh to draft a letter to Mr. Habeger requesting for additional money for travel and indicating the Commissions collective desire that Ms. Walsh go to ARELLO and Ms. Wirawan to go to ARELLO Training. Ms. Davis suggested that it is very essential that the investigator have the best training and for the executive go to the ARELLO Conferences. The Commission members agreed that the trip to Juneau is too cost effective for a half day meeting.

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

RESOLVED to not having the March 2013 meeting in Juneau and to have the meeting in Anchorage.

Ms. Burke abstained to the decision.

Mr. Cole – yes, Ms. Risner – yes, Ms. Davis - yes, Ms. Swires – yes, Ms. Burke – no.

The meeting will be held in Anchorage, March 20, 2013

Agenda Item 9c

MOA Change to Property Disclosure Form

The Commission members reviewed and discussed the letter which was sent to Ms. Walsh regarding the changes to the Property Disclosure Form. The recommended changes will serve to recognize the requirement for Certificates of On-Site Systems Approval to be obtained prior to certain property transactions within the MOA, as well as to update language used in the form concerning advanced wastewater treatment system.

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

RESOLVED to table the MOA Change to Property Disclosure Form

until after lunch.

All in favor; Motion passed.

The Commission recessed for lunch at 11:59 a.m.
The Commission reconvened from lunch at 1:01 p.m.

Agenda Item 9c cont

MOA Change to Property Disclosure Form

The Commission members further discussed the Change to Property Disclosure Form. Ms. Swires stated that the mortgage lenders won't approve on a loan until the Certificate of On-Site Systems Approval (COSA) is provided to them. Ms. Swires doesn't think that the State of Alaska Disclosure form should be changed based on this. Where the problem lays, is for sale by owner situations, they don't fill out the disclosure. Therefore it's defeating the purpose. This doesn't affect the Anchorage area.

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

RESOLVED to un-table the MOA Change to Property Disclosure Form

All in favor; Motion passed.

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

RESOLVED to move the request to regulation writers for their review and recommendation.

All in favor; Motion passed.

Mr. Cole – yes, Ms. Risner – no, Ms. Davis - yes, Ms. Swires – no, Ms. Burke – yes.

Agenda Item 9b

Penalty for Unapproved Real Estate Instructor

The Commission members discussed the Penalty for Unapproved Real Estate Instructors and instructed that staff send a notification to all instructors to include course expiration date and instructor certification expiration date on the certificates.

Agenda Item 2a cont

July 23, 2012 Teleconference Meeting Minutes

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

RESOLVED to un-table the July 23, 2012 Teleconference Meeting Minutes

All in favor; Motion passed.

Commission members further discussed the July 23, 2012 Teleconference Meeting Minutes. Ms. Burke stated that questions regarding the financials asked to be presented to the Real Estate Commission still have not been answered by the Division. Therefore, the additions from the teleconference that were provided by Ms. Walsh should be added to the minutes. The minutes should fully disclose topics that were discussed but were not transcribed in the original minutes. Ms. Bates stated that the tape is available for anyone that wants to listen to the meeting therefore, there is no reason for the meeting minutes to be this detailed. Ms. Burke stated that during the July 23rd meeting she asked Mr. Habeger if it's reasonable for him to provide the Commission with the information by the September meeting and if Ms. Walsh can have the read only access. Mr. Habeger agreed to have that provided to the Commission during the September meeting. Mr. Cole stated that every meeting we have included in the meeting minutes that the Commission members are asking questions that are never being answered by the Division.

RESOLVED to oppose the July 23, 2012 Teleconference meeting minutes

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

RESOLVED to edit the July 23, 2012 teleconference meeting minutes and bring them back to the March 2013 meeting.

All in favor; Motion passed.

Agenda Item 6

Executive Administrator's Report

Ms. Walsh shared an email with the Commission members received from Misty Frawley, Administrative Officer for the Division regarding the financials. Ms. Frawley's explanation for indirect is that the indirect is divided by last year's total and it will be trued up at year end. Ms. Burke stated that this is the same fund that she has been asking questions about from prior years and she also requested that staff start a spread sheet with all the fees coming in and provide that to the Commission at the March meeting. Ms. Burke stated that previously Mr. Habeger stated that the Legislature has appropriated about \$3.4 million to take care of all the licensees in all the Boards and try to make adjustments to make them whole, however there weren't any adjustments made to the Real Estate Commission and the longer they wait it gets more critical. Ms. Walsh shared with the Commission members that Ms. Frawley stated that she will be working on the analysis on the indirect increase from FY12, hopefully this will be presented with further explanation to the members at the March 2013 meeting. The Commission members did not receive the cost allocation report that was completed by the independent auditor and asked if they are incurring these costs that are being spiked by other Boards and Commissions.

Agenda Item 6b

Schedule of Revenue & Expenditure

Ms. Walsh presented the Schedule of Revenue & Expenditure Report to the Commission members. The total direct expenditures is \$31,162, however, the indirect expenditure is unknown because it is not spelled out. Ms. Walsh is concerned because we are running on

deficit of \$5380.00. Ms. Burke spoke about the spreadsheets from staff showing the fees coming in and have a discussion at the March meeting based on what the Commission has gathered. Ms. Walsh stated that staff has gone back one year to previous meeting minutes and that the Commission members has asked seven time on different occasions about the budget. The Commission members asked Ms. Walsh to write a letter to Mr. Habeger for an explanation on the indirect expenditures and budget costs.

Agenda Item 6a

Recovery Fund Balance Report

Ms. Walsh and Ms. Burke had a meeting with Mary Manning, Administrative Services. Both Ms. Walsh and Ms. Burke were pleased and it was a very healthy discussion. Ms. Manning was uncomfortable with the projections because she had to project on a number that she knows doesn't exist. The surety fund expenses were placed in the recovery fund incorrectly and it's the basis that is being used to project. Ms. Walsh explained how the recovery fund claims are being processed.

Agenda Item 6c

Schedule of Revenue & Expenditure FY 01 – FY12

Ms. Walsh provided the Commission members the Schedule of Revenue & Expenditure FY 01 – FY12 for their review.

Agenda Item 6d

Recovery Fund Claims

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

RESOLVED to go into an executive session

All in favor; Motion passed.

Into executive session at 2:39 p.m.

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

RESOLVED to go out of executive session

All in favor; Motion passed.

Out of executive session at 2:52 p.m.

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

RESOLVED that the Commission direct the custodian of the Recovery Fund pay the judgment in the benefit of Shelane Etchison in the amount of \$9,052.00 with post judgment interest at the rate of 3.75% from the date of the judgment, June 5, 2012, until the day the warrant is prepared.

All in favor; Motion passed.

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

RESOLVED that the Real Estate Commission direct the custodian of the Recovery Fund pay Debra Miller and Theodore Miller the sum of \$2,491.07, in accordance with the final judgment, plus post judgment interest at a rate of 3.75% from the date of the judgment, December 19, 2011, until the day the warrant is prepared.

All in favor; Motion passed.

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

RESOLVED that the Real Estate Commission direct the custodian of the Recovery Fund to make payment to Jarrine K. Lovett et al, in the amount of \$10,656.97 plus interest at the rate of 3.75% from August 8, 2012 until the day the warrant is prepared.

All in favor; Motion passed.

The Commission recessed for break at 2:57 p.m.
The Commission reconvened from break at 3:01 p.m.

Agenda Item 10a
Banking Issues

Ms. Burke discussed with the Commission members banking issues. The trust accounts will no longer be allowable to be opened in a Credit Union, only at the Banks since the interest is being accumulated. The Commission directed staff to write a letters to the brokers that hold their trust accounts in the Credit Unions to switch over to a bank.

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

RESOLVED to remove credit union from regulation 12 AAC 64.180(a)

All in favor; Motion passed.

Agenda Item 10b
Proposed Regulations Revised

Commission members discussed the proposed regulations.

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

RESOLVED to not approve the changes in regulation 12 AAC 64.110(e)(5)

All in favor; Motion passed.

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

**RESOLVED to not approve the changes in regulation 12 AAC
64.111(a)(2)**

All in favor; Motion passed.

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

RESOLVED to not approve the changes in regulation 12 AAC 64.190

All in favor; Motion passed.

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

**RESOLVED to not approve the changes in regulation 12 AAC
64.220(e)(4)**

All in favor; Motion passed.

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

**RESOLVED to not approve the changes in regulation 12 AAC
64.220(f)(1)(3)**

All in favor; Motion passed.

The staff will write letters to the brokers that hold their trust accounts in the Credit Unions to move the accounts to a bank.

Agenda Item 10c

Dual Licensees: "Mortgage Originator/ Real Estate

Ms. Harris shared an email from Tracy Reno, Banking and Securities. At this time the Real Estate Commission and the Division of Banking and Securities it is not against statutes to have a real estate license and be a licensed mortgage loan originator, however, any conflict of interest would have to be disclosed.

Agenda Item 10d

Question on "Team" Make-up

Ms. Harries shared an email from Michele Wall-Rood, Investigator, regarding "Team" Make-up. Ms. Bates stated that a team concept it's more of a marketing issue as far as a business model a broker has established or adopted. Any team members should be on the AREC for all the consumers that they are working with. We do not have any jurisdiction over this. Mr. Cole stated that this isn't anything that the Commission needs to take up. Any situation that there are teams, the team leader typically the associate broker, has direct responsibility for the person that is writing the contract. The AREC needs to be signed by anyone who comes in contact with the contract.

Meeting adjourned at 3:20 p.m.

The Commission adjourned until the next regular scheduled meeting on March 2013 in Anchorage.

Prepared and submitted by Beata Smith.

Approved:

Anita Bates
Anita Bates, Chairperson
Alaska Real Estate Commission

Date: 4.2.2013