

**STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING  
REAL ESTATE COMMISSION**

**MINUTES OF TELECONFERENCE  
October 10, 2008**

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Real Estate Commission was held October 10, 2008, at the Atwood Building, Room 1950, Anchorage, Alaska.

**Friday, October 10, 2008**

**Agenda Item 1**

**Call to Order**

Chairman Brad Cole called the meeting to order at 10:00 a.m. at which time quorum was established.

**Roll Call**

Members present via teleconference constituting a quorum, were:

Brad Cole, Broker, 3<sup>rd</sup> Judicial, Chairman

Gene DuVal, Associate Broker, 4<sup>th</sup> Judicial District

F. Lee Sherman, Public Member

Tim Worthen, Public Member

David B. Somers, Broker at Large, Vice Chairman

Roger Stone, Broker at Large

Chris Swires, Associate Broker/Broker at Large joined the teleconference at 10:10 a.m.

**Staff Present:**

Sharon Walsh, Executive Administrator

Beata Smith, Licensing Examiner

Michelle Wall-Rood, Investigator III

**Agenda Item 2**

**Errors & Omission Insurance Proposed Regulations**

Chairperson Cole asked the Commission if they had a chance to review the proposed regulations that Ms. Walsh prepared.

**On a motion duly made by Somers, seconded by  
Stone, it was**

**RESOLVED to adopt the proposed draft for  
further discussion .**

**All in favor. Motion passes.**

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The Commission members further discussed the Errors & Omission Insurance proposed regulations.

Mr. Cole: In the definitions in comparing the other two, we actually left two definitions out and my question is...Is that okay? One is "Extended Reporting Period" and the other one is "Licensee." Anybody see the need to include those?

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Mr. Stone: I don't have any problem with "licensee" but I was questioning the "extended reporting period."

Mr. DuVal: I see the need for both of them. So there is no confusion later.

Mr. Cole: What I would like to do is, go through this page at a time. There is also some stuff that I would like to include. On page 1, the only thing that I would change or possibly add to definitions is "extended reporting period" and two for licensee. Is that correct?

Mr. Stone: That's fine with me. The extended reporting period is most important.

Mr. Cole: On page 2, the thing that jumped out at me on this page is "Minimum Standards." Obviously we had to decide if it's 1, 2, or 3 hundred thousand dollars and as a suggestion we might compromise on this and come up with a 250,000 as a single limit liability coverage.

Mr. Stone: The question that I have, is there anything in the statutes that puts a maximum limit on that at this point?

Mr. DuVal: No.

Mr. Somers: So we're going to be tasked with putting a limit on what this is going to cost? That's part of our job, according to the statutes. That's going to play in what the limit coverages are.

Mr. Stone: Do we want this at two or three different limit levels, maybe 250,000 or 500,000? Currently we carry 500,000 in our office.

Mr. Cole: Is that for single limit coverage or for your aggregate?

Mr. Stone: For both.

Mr. Somers: I think the common coverage out there that we've seen in other states is 100,000.

Mr. Stone: What I'm getting at is, given the size of the transaction that we normally deal with in the state of Alaska, is \$100,000 adequate. Do we want to look at the higher limit? The reason we went to 500,000 aggregate is because it didn't cost that much more once you had that insurance in place to go to a higher level.

Mr. Somers: I agree. However, I think that the people that already carry it are going to carry well over the excessive limit.

Mr. Cole: We need to keep in mind what we're looking for is a minimum standard here. We still have the opportunity to add to that as individuals.

Mr. Somers: I think that whatever we decide on this, we are going to hear back from the public when this goes out for comment.

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Mr. Cole: Could we have a consensus here that let's start with 2500? Because anything that we put in this document, it's going to come back to us with a public comment. Can we start at 200,000?

Mr. Worthen: That sounds reasonable.

Mr. Cole: Let's move to the aggregate amount of 500,000. The one that really concerns me here is only having a \$1000 maximum deductible. I don't want to create a situation where licensees get the idea that "I'm not going to argue with this, it's only \$1000." I think it should be 2500.

Mr. Stone: I think it should be at least 2500. I was even considering possibly allowing it to 5000.

Ms. Swires: I think 5000 is good. At least 2500, I think more is better.

Mr. Worthen: You want a little bit higher deductible to discourage the use if we are going to be controlling the E & O policy from the state level.

Mr. Stone: The deductible amount can have an impact on your premium, but you hit a level where the premium doesn't go down that much, so it becomes a risk assumption in your own risk management program, is to how much you want to take on.

Mr. DuVal: I have a question for Sharon. If we put this out for a bid, what would be the sequence of events here before this becomes a regulation? Are we able to get this?

Ms. Walsh: I don't think we are. I'm not certain, I would think that we would have to have some guidelines for the insurance company to bid on.

Mr. DuVal: If we come up with 250,000 and then we find there is other options that are significantly better as far as cost. Are we able to put this out during the process of having it public comment before it's a final regulation?

Ms. Walsh: Let me look into that.

Mr. Stone: Part of the regulation in this area will be determined by what's out there in the market place that's reasonable.

Mr. DuVal: We need flexibility on these amounts, even with the discretion of the commission. If we can get bids before it becomes law, then we have flexibility.

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Commission members discussed "Exceptions to Coverage" Questions came up if E & O is not going to cover managed property or is it referring to property damage and liability insurance for managed property.

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**Definitions:** When used in this chapter, unless the context otherwise requires:

1. "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as the policy term.
2. "Equivalent coverage" means coverage obtained independently of the group plan available from the commission and subject to the terms and conditions as set forth in this chapter.
3. "Errors and Omissions Insurance" means a type of professional liability insurance that provides insurance coverage to holders of active Alaska real estate brokers, associate brokers and salesperson licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations and exclusions of the specific insurance policy or policies in place.
4. "Extended Reporting Period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim has been made during the policy period.
5. "Prior acts coverage" means claims that are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.
6. "Proof of coverage" means a certificate of insurance.
7. "Qualified insurance carrier" means an insurance carrier.
  - (a) Which for the entire term of its contract shall provide the group plan of errors and omission insurance contemplated by these regulations, maintains an A.M. Best rating of "B" or better and financial size category of class VI or higher;
  - (b) Which shall remain for the policy term authorized by the Alaska Division of Insurance to do business in Alaska as an insurance carrier;
  - (c) Which is and will remain for the policy term qualified and authorized by the Alaska Division of Insurance to write policies of errors and omissions insurance in Alaska of the type contemplated by these regulations;
  - (d) Which after competitive bidding, has been notified by the commission that it is the successful bidder for the group plan to provide the errors and omissions insurance contemplated by these regulations; and
  - (e) Which has entered into a contract to provide said group errors and omissions plan in conformity with said contract, these regulations, and the Alaska license law;
  - (f) Which will collect premiums, maintain records, and report names of those insured and a record of claims to the commission on a timely basis;
  - (g) "Retroactive date" means the date when the first real estate errors and omissions coverage was effective insuring the named insured on a claims-made basis and since which time the insured has been continuously insured.
  - (h) "Single-limit liability" means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

**Insurance required.** An applicant for issuance of a license on an active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of insurance coverage through the group plan or through certification of equivalent coverage.

**Minimum Standards:**

(a) Not less than Two hundred and fifty thousand dollars single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;

(b) A deductible amount of each occurrence of not more than one thousand dollars for single-limit liability coverage and two thousand-five hundred dollars maximum additional deductible for defense and investigation;

**NOTE:** The numbers may change based on premium bids.

(c) An extended reporting provision of ninety days and an option to purchase an additional three years extended reporting provisions for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;

(d) Stacking of benefits

(f) Proration of premiums for coverage that is purchased during the course of a calendar year but with no provision for refunds of unearned premiums;

(e) The ability of a licensee; upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverages from the group carrier as may be determined by the carrier;

(f) The coverage is individual and license-specific and will cover the licensee regardless of changes of employing broker; and

(g) Prior acts coverage shall be offered to licensees with continuous past coverage.

**Exceptions to Coverage:**

(see new changes-deleted sections vi, ix, xii from the prev. draft)  
Except as provided in this section, coverage may not arising out of an act or failure to act by the licensee when performing a professional service for which a real estate license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

(i) Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;

(ii) Out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;

(iii) From any criminal, dishonest, actual fraud, or willful act or omission. This exclusion does not apply to any insured person who did not personally participate in committing such an act or

- omission and who, upon having knowledge of the act or omission, reported it;
- (iv) From unlawful discrimination committed by or for the insured person;
  - (v) From fines or penalties imposed by law;
  - ~~(vi) From bodily injury, personal injury, advertising injury, or property damage;~~
  - (vii) From related business activities for which a license is not required under this chapter;
  - (viii) From hazardous materials, nuclear materials, or pollutants;
  - ~~(ix) From prior wrongful acts;~~
  - (x) From any violation of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of 1934, as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes; or
  - (xi) Other standard exclusions that are typical in the professional liability insurance industry may be permitted, subject to the approval of the Alaska real estate commission.
  - ~~(xii) From management or sale of property in which the insured or spouse has more than a ten percent financial or ownership interest. This exclusion does not apply for one year from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;~~
  - (xiii) From any violation of the Securities Act of 1933, as amended through July 1, 1993, or the Securities Exchange Act of 1934, as amended through July 1, 1993, or any other state blue sky or securities law or similar state or federal statutes; or
  - (xiv) Other standards exclusions that are typical in the professional liability insurance industry may be permitted, subject to the approval of that Alaska Real Estate Commission.

**Group policy approval requirements.** Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the Alaska Division of Insurance.

**Standards for equivalent coverage.** *A carrier issuing insurance coverage pursuant to Alaska statute 08.88.172 must be an admitted carrier in Alaska. All activities contemplated under Alaska statute 08.88.172 must be covered.*

*The insurance must provide a minimum, not less than two hundred and fifty thousand dollars single-limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of five hundred thousand dollars for each licensee, not including the cost of investigation and defense. A responsible broker may comply with this requirement by certifying coverages of a minimum of five hundred thousand dollars/one million dollars, if all licensees associated with the broker are covered.*

- (1) Licensees and applicants may obtain errors and omissions coverage independent of the group plan from any insurance carrier subject to the following terms and conditions:
- (i) The insurance carrier is licensed and authorized by the Alaska insurance department to write policies of errors and omissions insurance in this state and is in conformance with all Alaska statutes.
  - (ii) The insurance provider maintains an A.M. Best rating of "B" or better and Financial size category of class VI or higher.
  - (iii) The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in an affidavit issued to the insured licensee or applicant in a form specified by the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage.
- Independent coverage must provide, at minimum, the following:
- (A) The contract and policy are in conformance with all relevant Alaska statutory requirements.
  - (B) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - (C) Coverage cannot be canceled by the insurance provider except for nonpayment of premiums or fraud.
  - (D) Coverage is not less than **\$100,000/200K or 300K** for each licensed individual and entity per covered claim, regardless of the number of licensees or entities to which a settlement or claim may apply, with an annual aggregate limit if not less than **\$500,000???** per licensed individual and entity.
  - (E) Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.
  - (F) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.
  - (G) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the commission in writing of any cancellation or lapse in coverage of any independent policy.
  - (H) Licensees or applicants who obtain equivalent coverage and wish to be on active status must present the affidavit referred to in subsection (iii) of this section to the Commission:
    - (i) When renewing an active license, no later than the time of renewal; or
    - (ii) Upon any request for reinstatement or activation of a license; or
    - (iii) Upon application for an active license.

~~(b) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule on forms or in a manner prescribed by the commission. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the commission, shall be placed on inactive status:~~

- ~~(i) Immediately, if certain of current insurance coverage is not provided to the commission; or~~
- ~~(ii) Immediately, if certification of current insurance when certification of continued coverage is not provided.~~

**Time for Filing Certification of Equivalent Coverage.**

Certification of equivalent coverage must be filed with the commission by five p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

**Nonpayment of Premium.** If a licensee's insurance company or group plan notifies the commission that a licensee has not paid a premium, the commission shall place the license on inactive status as of that date of termination of coverage.

**Surrender of License for Failure to Provide Proof of Insurance.** (a) When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license to the commission.

**Notification Required for Cancellation.** (a) If insurance under equivalent coverage is to lapse or not be renewed, the providing company must notify the real estate commission of the intent to lapse or not to renew, a minimum of thirty days before the expiration date of the term.

**Proof of Insurance Required to Activate License.** (a) A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance.

**Authenticity of Coverage.** (a) A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission that is false, fraudulent, or misleading.

**On a motion duly made by Stone, seconded by Swires, it was**

**RESOLVED to approve changes made to Errors & Omission Insurance proposed regulations.**

Mr. Somers stated that a motion was made by mistake and would like to put the motion for reconsideration.

**On a motion duly made by DuVal, seconded by Stone, it was**

**RESOLVED to reconsider Errors & Omissions proposed regulations.**

**All in favor. Motion passes.**

Mr. Somers moves to adopt all the changes on the proposed regulation. Commission members further discussed "Minimum Standards.

- ~~(d) An extended reporting of ninety days and an option to purchase an additional three years extended reporting provision for a premium not to exceed two hundred percent of the premium charged for the last year of the terminating coverage;~~
- ~~(e) Coverage under this section for covered acts in any state, United States territory, or Canada in which covered individual, domiciled in Alaska, holds a license,~~
- ~~(f) A conformity allowing Alaska resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase a separate coverage in that state;~~
- ~~(g) Stacking of benefits;~~
- ~~(h) Proration of premiums for coverage that is purchased during the course of a calendar year but with no provisions for refunds of unearned premiums;~~
- ~~(i) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the group carrier as may be determined by the carrier;~~
- ~~(j) The coverage is individual and license specific and will cover the licensee regardless of changes in employing broker;~~
- ~~(k) Prior acts coverage shall be offered to licensees with continuous past coverage.~~

**On a motion duly made by DuVal, seconded by Stone, it was**

**RESOLVED to adopt changes as stated for Errors & Omissions proposed regulations.**

**All in favor. Motion passes.**

**Agenda Item 4**

Mr. DuVal had a question for the Commission "Can a licensee participate on a trade of an outside property? Mr. Somers stated that he does not see any issues as long as the person is not violating the other states license laws. Mr. DuVal stated that the theory on adding a part of the compensation for buying a property that is not located in Alaska. Mr. Stone stated that, the location of the property is being used as part of the payment, as long as the person is not writing a contract on that property not located within the state of Alaska. As long as the person is not doing anything that sets the value of the property in another state, as long as it is set by the seller.

**Agenda Item 3**

Ms. Wall-Rood, Real Estate Investigator discussed the surrender of a license for Christopher Haydon, allegations of misrepresentation and fraud, dual agency violations, employment of unlicensed personnel, operating a real estate business without proper broker supervision, and illegally withholding a client's property.

**On a motion duly made by Somers, seconded by Worthen, it was**

**RESOLVED to adopt the surrender of license on cases 3004-02009, 3004-03009, 3004-05005, and 3004-408012**

There was further discussion on the surrender of Mr. Haydon's license. Mr. DuVal and Mr. Somers do not feel they need to disqualify themselves from the discussion on this surrender. Mr. Stone recommended that the Commission table this surrender until further information is provided because he was concerned that there may be a possibility of a surety fund claim and additional potential actions that would either be license actions or civil actions. The voluntary surrender of the license does not preclude any additional actions which may be appropriate against Mr. Haydon. The concern that the Commission members had, is that by Mr. Haydon surrendering his license and if he is no longer licensed, then the cases might be dismissed and Mr. Haydon will still be able to get a real estate license in the future.

**On a motion duly made by Somers, seconded by Worthen, it was**

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**RESOLVED to accept the surrender for Mr. Haydon**

**Commission members in favor were: Mr. Cole, Mr. Sherman, Mr. Somers, and Ms. Swires.**

**Commission members that opposed were: Mr. Stone, Mr. Worthen, and Mr. DuVal.**

**Motion passes.**

Ms. Wall-Rood discussed with the Commission members the Consent of Agreement for May Sprague, Broker of Mat-Su Realty and temporary Broker in Charge of Best in the Land, while broker Richard Hunter was ill, a brokerage owned by Dean Beaulieu. Case #3000-08-008, case involved allegations regarding broker supervision and unlicensed activities. Mr. Beaulieu was previously licensed as a broker in the state of Alaska and surrendered his license in 2003 and now portrays himself to the public as real estate consultant. The division conducted an investigation which revealed that Mr. Beaulieu was performing license activities during the time period when Ms. Sprague was acting as a broker of record for Best in the Land Realty.

**On a motion duly made by Stone, seconded by Sherman, it was**

**RESOLVED to accept the Consent of Agreement for Mrs. Sprague for discussion.**

There was further discussion on the Consent of Agreement for Ms. Sprague. Mr. Worthen stated that the fine was too lenient for Ms. Sprague not supervising an office as she was required to do by law. A question came up whether there is anything done with Mr. Beaulieu. Mr. Beaulieu is being investigated as well as another broker associated with 'Best in the Land.' The Consent of Agreement states that Ms. Sprague does not admit nor deny these allegations but Ms. Sprague did sign the Consent Agreement agreeing to the terms. Mr. Somers had a concern why Ms. Sprague did not realize that Mr. Beaulieu was engaging in license activities. If the Commission does not accept the Consent of Agreement, it will be sent back to Ms. Sprague with an alternate form for acceptance and it may go forward with litigation. Ms. Sprague, as a broker in charge, has supervision responsibilities for that time while Mr. Hunter was out of the office. This is a voluntary agreement that Ms. Sprague signed and it can not be modified without her consent. Ms. Sprague would be notified that the Real Estate Commission denied the Consent of Agreement and Ms. Wall-Rood would submit another Consent of Agreement to see if Ms. Sprague would consent to it. If Ms. Sprague declines to sign the second Consent of Agreement, then we would refer this case to the Attorney General's office to follow through with a litigation process. Ms. Wall-Rood will provide Ms. Sprague with a new Consent Agreement that will indicate that the fine will be \$5000, with \$2500 suspended.

**RESOLVED to reject the Consent of Agreement for Ms. Sprague.**

**All in favor. Motion passes.**

**Agenda Item 5**

The Commission members discussed a non-licensee's entity entering into earnest money contracts. A real estate license can only be held by a natural person but a real estate licensee licensed under this chapter may do business and form legal entities when organized under Alaska Law. At all times the licensee and legal entities that hold a real estate license must comply with requirements of AS 08.88.401 and the name of the licensee's legal entities may be used by the licensee in advertisement contracts. A Real Estate licensee must sign a contract for which a license is required, but if the corporation is not in the contract then it's hidden from the public. The Real Estate licensee must sign every contract. A licensee's entity can receive the commission from the brokerage.

**On a motion duly made by Stone, seconded by Swires, it was**

**RESOLVED to table using the licensee's entity name in contracts.**

**All in favor. Motion passes.**

**Agenda Item 6**

Mr. Stone stated that there is an issue that Bed & Breakfast operators are using a reservation service a third party to arrange a long term tenancies. That may be rigging a gap into a license activity. If someone is booking B & B on a nightly or weekly basis then that's ok but if it's a month to month rental then they've crossed the line. Further discussion will take place at the December 11-12 meeting.

Meeting adjourned at 11:50 a.m.

**On a motion duly made by Stone, seconded by Swires, it was**

**RESOLVED to adjourn the meeting**

**All in favor. Motion passes.**

Prepared and submitted by Beata Smith.

Approved:

  
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Brad Cole, Chairperson  
Real Estate Commission

Date: 12/17/2008