STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

REAL ESTATE COMMISSION
MINUTES OF MEETING
DECEMBER 2 & 3, 2004

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 2 & 3, 2004, at the Atwood Building, Room 240, Anchorage, Alaska.

Thursday, December 2, 2004

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 9:17 a.m.

Roll Call

Members Present:
Barbara Ramsey, Associate Broker, 3rd Judicial District
Larry J. Bauer, Broker, 1st Judicial District,
Susan Rainey, Associate Broker, 4th Judicial District
Rita Wilson, Broker at Large
Bradley Fluetsch, Public Member

Members Absent:
Glenn Clary, Public Member
David B. Somers, Broker at Large

Staff Present:
Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner
Margo Mandel, Investigator
Rick Urion, Director

Public Members Present:

Linda Cardoza, Anchorage Board of Realtors
Jed Weingarten, Broker, Dynamic Properties

Approval of Agenda

On a motion by Rainey, seconded by Wilson, and passed unanimously, it was

RESOLVED to approve the agenda as presented.

Approval of Minutes

On a motion by Rainey, seconded by Wilson, and passed unanimously, it was

RESOLVED to approve the November 10, 2004 teleconference meeting minutes.

Public Comment
Jed Weingarten is an active licensee, approved instructor, vice president of Dynamic Properties, and has assisted his broker in creating a policy manual for his company. Mr. Weingarten came to the Commission hoping for some direction and clarification in two areas regarding HB 29 so that broker's policies and licensee's actions are consistent and compliant. Mr. Weingarten asked about specific assistance and showing properties. Particularly, when do you need to have the pamphlet signed, at specific assistance or before showing properties? What documents are required prior to closing. He asked for the Commission's recommendations on these issues and says the bill states that scheduling an initial appointment to show property and casual conversation about real estate is not considered specific assistance. Whether that agent can literally open the door and allow the general public to see the property and at that point offer specific assistance. Mr. Weingarten is looking for direction from the Real Estate Commission so that the broker policy manuals say the same thing and the general public is getting the same message. His second question for the Commission related to the part of HB 29 that requires the broker to review the file prior to recording. Mr. Weingarten spoke with numerous brokers and their concern is that many times a closing will take place and documents are often issued at the closing. In many cases it could be physically impossible for the broker to have reviewed the file prior to closing or recording. There are other documents that are generated at the signing that may not be in the broker's file at the actual recording. Mr. Weingarten suggested that there needs to be a time frame of twenty-four or forty-eight hours for all the documents to actually get into the broker's

file. Mr. Weingarten thanked the Commission for their time, discussion and consideration

Linda Cardoza spoke to the Commission representing the Anchorage Board of Realtors. She invited all Commission members to the CRS (The Certified Residential Specialist's) holiday dinner that evening. She urged the Commission members to attend if they can. Linda also relayed to the Commission how pleased she is with Sharon Walsh, the Executive Administrator and what has been happening with the Real Estate Commission noting that Sharon attended the Alaska Bar Association class on HB 29, home inspector bill and the other real estate issues. She is getting herself up to speed on these issues. Ms. Cordoza conveyed that providing a disk of the board book to interested parties is very important to us. Anchorage is holding MLS classes on the 13th and 15th she hopes that the Commissioners that are in the Anchorage area will attend. She encouraged those Commissioners in other locations to attend the realtor board meetings in their area. She noted that on the 15th of December at 1:00, the Anchorage Board of Realtors is having their Annual luncheon, end of year meeting and installation of new officers, so those in Anchorage are invited and encouraged to attend.

Break at 10:27 a.m.
Reconvene at 10:35 a.m.

Investigator's Report

Margo Mandel asked if she could make a quick comment after hearing the Commission's discussion regarding specific assistance and dual agency requirements and she would like to bring it to the Commissions attention that those terms where defined legally in the Mehner decision both in the Hearing Officer's decision and in Judge Christen's findings and they are legal interpretations. She recommended that the Commission review those findings and use them as a basis for when they receive questions regarding those issues.

Ms. Mandel presented her report to the Commission.

On a motion by Rainey, seconded by Fluetsch, and passed unanimously, it was

RESOLVED to approve the investigator's report.

Audit Issue of Bradbury Downs Case

Sharon Walsh gave a brief background on the information regarding the Audit of the Bradbury Downs Case as requested from the Commission at the previous meeting. She said she was not sure how to proceed with the audit and had asked direction from Gayle Horetski with the Assistant Attorney's Generals office. She explained that the Commission has only administrative authority and therefore would need to go to superior court to get a Judgement and then take that to the Washington State court to get a judgement there in order to get to Theresa Bradbury's assets outside Alaska.

The Commission is interested in seeking an audit of the trust account records for that office, Pacific North Properties.

The Commission moved to the next agenda item while waiting for additional information required by the Assistant Attorney General Gayle Horetski before she addressed the Commission.

Licensing Examiner Report

Nancy Harris presented the Licensing Examiner's report to the Commission.

On a motion by Rainey, seconded by Bauer, and passed unanimously, it was

RESOLVED to approve the Licensing Examiner's report.

Heather Herndon – Broker application

Nancy Harris stated to the Commission that Ms. Herndon came to the office and inquired about becoming a broker after the September meeting with her associate broker application being previously submitted. She submitted her office registration application to open her office and the required fee at that time. However, after looking over the application it came to the Licensing Examiner's attention that another $25.00 fee was required because Ms. Herndon was transferring from her old office to her new office so it would be a $50.00 transfer fee instead of the $25.00 fee for a status change. Ms. Herndon was called and informed of the additional fee. When the application was reviewed again for the Executive Administrator's approval, the licensing examiner noticed that her exam application had expired on August 28, 2004. Ms. Herndon had submitted her exam score sheet/application to the Real Estate Commission office on October 3, 2004. Real Estate exam score sheets/applications are valid for six months from the date the individual passed the exam. The question for the Commission is will the Real Estate Commission accept her exam application as received or will she

be required to re-exam before staff would be able to issue her a broker's license.

On a motion by Wilson, seconded by Bauer,

RESOLVED to approve Heather Herndon's testing application.

All members opposed. Motion fails.

Audit Issue of Bradbury Downs Case Continued

Sharon Walsh distributed to Commission members a summary report of all the Bradbury surety fund cases that have been filed with the Real Estate Commission and briefly goes over what is included in the report that Gayle Horetski will address and give direction to the Commission.

Barbara Ramsey asked Assistant Attorney General Gayle Horetski what can be done to obtain an audit of the trust account of Pacific North Properties to try to determine where the funds have gone.

Gayle Horetski introduced herself to the Commission she is the Assistant Attorney General with the Civil Division with the Department of Law. She is one of four Assistant Attorneys that are assigned to advise the various occupational licensing boards and commissions. She said regarding the question of an audit there are two sources of authority or power that maybe relevant to that question. The first is, there is a general provision that appears in the title chapter one of AS 08.01.087 it talks about the investigative and enforcement powers of the department as opposed to the boards. That statute is a general statute and it applies to all boards and commissions that are regulated by the division of occupational licensing. The statute recognizes the separation of functions between the investigative function, the adjudicative function and the legislative functions that are carried out by the board. Under AS 08.01.087 it talks about the powers of the Commissioner, which are delegated down to his employees, and his assistant it would be to the Director of the Division of Occupational Licensing and through him to the head of the investigative unit, which is Gary Veres. Essentially what the statue says is that the Commissioner, through his agents, may do all these things that are listed in "b" and the Commissioner may under paragraph "b" "3", exam or have examined books or records of a person who business activities require a business license or licensure by a board listed in AS 08.01.010. In paragraph 4 it states, "issues subpoenas for the attendance of witnesses and the production of books and other documents". If we were

at the point that we are trying to investigate something then the investigators from the Division of Occupational Licensing working through their supervisors would issue subpoenas for business records of licensees or former licensees if we have reason to believe that a provision of this chapter is violated, is being violated or has been violated in the past. The other source of possible authority for looking into financial records AS 08.88.351 addresses the powers of the board as opposed to the power of the division. This requires AS 08.88.351(a) a real estate broker shall keep a complete record of all transactions provided upon request and any principle and accounting of money. Then in paragraph 3, "keep a separate trust account in a bank in which a broker shall deposit all real estate transactions in which the broker or employed licensees of the broker engaged." Then in paragraph 5, it says "a real estate broker shall make available to the Commission on request all account records and all other documents that the Commission may require in order to conduct an investigation or to audit an account required under this section. Under AS 08.88.351 the Commission has the authority to require accounting or turning over of business records as described in that statute. It is the licensee or the former licensee that has obligation to turn them over. So there are practical problems if someone has left the state, where are their records? Those are the statutory areas that address obtaining records of financial records of licensees.

Ms Walsh asked Ms. Horetski where the authority is in regards to a non-licensee?

Ms Horetski explained that except for some kind of action for unlicensed practice, if there is one, the board has no jurisdiction over someone who is not a licensee. If a licensee and a non-licensee had accounts together, theoretically the division could issue a subpoena for the accounts of the licensee or former licensee. If that is a joint account and the bank is willing to turn it over then we may end up with joint records. That is only because the Commission's jurisdiction extends to the licensee or former licensee and this other person's records co-mingle. Except for unlicensed practice the Board has no authority over a non-licensee.

Ms. Wilson asked Ms. Horetski if the Commission would have to go to court to get a subpoena to request those records?

Ms. Horetski said there are documents called administrative subpoenas that can be issued by the administrative agency either the board or the division. If a subpoena is served on a person or an institution, like a bank or university, if the entity or person refuses to comply with the administrative subpoena then the only recourse by the agency would be to go to superior court and seek an order enforcing the administrative

subpoena. In that case, if the person does not comply with the subpoena then "you" can try to obtain a court action against "them" for failure to honor the court subpoena.
Administrative issued subpoenas can be issued under the standard that's in AS 08.01.087 and will need to provide a reason that the person has violated a provision of this chapter and that the information would be useful to the administration.

Mr. Fluetsch asked, "once we find where the money went how do we get it back?"

Ms. Horetski said the statute themselves provide for two mechanisms for replenishing that account. You can either get the money back from the licensee before you re-license him or her or under 08.88.490 it states that when the Commission has paid a claimant from the real estate surety fund the sum awarded by the Commission, the Commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all right, title and interest in that portion of the claim to the Commission. Money collected by the Commission on the claim shall be deposited into the surety fund. The Commission would need to take the subrogation documents, which essentially substitutes the Commission for the individual for that portion of the claim. Then in the name of these individuals file a law suit against T. Bradbury and serve her, if we can find her, have a trial which we would bring in these people to establish our case and then obtain a judgement in favor of the Commission and then try to collect on the judgement. If that person has assets then there are steps that can be taken to collect that judgement. Those are the avenues under the statutes.

Ms. Horetski spoke to the Commission regarding the Bradbury surety claims. In AS 08.88.475 it establishes a maximum liability and it may not exceed $50,000. All of the claimants must be treated similarly and that appears in AS 08.88.475 (b). The $50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims or in another manner that the Commission considers equitable. Distribution shall be among the persons entitled to share in the recovery without regard to the order in which their claims were filed. There is a pool of $50,000 and how is it allocated to nine claimants that have proved claims well in excess of that amount. As long as the Commission has articulable reasonable grounds for its exercise of discretion, its decision on how to allocate this $50,000 will be defensible in court. As long as everybody is treated fairly by the Commission and there is a rational basis for your decision it will be defendable in court. Ms. Horetski felt compelled to point out a few items on the summary chart of the Bradbury surety fund cases. The maximum liability for any one injured party under AS 08.88.470 had been $10,000 and that was

the ceiling. In the sunset legislation last year there was a provision to that bill that changed the statute AS08.88.470 amending it to raise the amount from $10, 000 to $15,000 that was the only change in that section. It didn't change the maximum of the $50,000 it only raised the amount for individual claimants. The effect date of that was 6/30/04. Apparently in this case 23-011 Carson-Varnell, claimants felt they could prove $42,000 with interest and damages but knowing of the limit they filed in claim only of $10,000 not $42,000 and when the proposed decision came out Mr. Stebing recommended an award of $15,000. They only asked for $10,000 and Mr. Stebing recommended an award of $15,000. I would urge that the Commission treat this claimant in case S-23-011 the same as all the other claimants. I would suggest that it might be appropriate to cap that at $10,000 because that was all that the claimants had asked for, plus why should someone have a recovery of up to $15,000 because their case happened to be decided after the effective date of the new legislation. It would be different if there was a pool of money that was greater than your claim but you don't have that here. I have looked at that act and it doesn't have a retroactive provision in it and I am not sure if legally a person is entitled to get the $15,000 if his claim arose under the previous statute when the ceiling was capped. The other case is S-23-003 the Bonham case. If you look at this chart what you have is if someone proved up to the maximum of $10,000 and the hearing officer recommended an award of $10,000. In this one case the Bonham case, what Mr. Stebing did was he found that Mr. Bonham had proved damages which he claimed $9, 201.98 and then Mr. Stebing recommended interest that would take the amount to $10,000. What the hearing officer did was recommend that Mr. Bonham receives an award of $10,000 but that award contains about $800.00 in interest. Whatever the Commission decides to do regarding interest if you include the interest up to the $10,000 or not. But for the smaller claimants you should be aware that the $10,000 amount for Mr. Bonham already includes an award of interest. That is the only case where that occurs. The exact amount of that is $798.02 of interest. The six cases that have already been decided are done and the board has no authority to change those decisions in any way because 30 days has expired since they have become final and under the APA you lose your jurisdiction in that case after the 30 days. But there are the three cases that are pending now and I believe that these cases should be treated the same as the other six. She would like to alert the Commission of a problem that was found. In the proposed decisions where the claim did not reach the maximum of $10,000 where you had a smaller amount like $2,500. Mr. Stebing recommended that it be the amount of a proven claim plus interest and he cited state statute on fair trade practices. He recommended that the Commission set the interest rate at 10.5 percent which is the amount that is specified in AS 45.45.010 which is the legal interest for the State of Alaska. The Commission has collectively already adopted six decisions

with an interest rate 10.5% in those cases. Ms Horetski said that procedure should follow in the three remaining cases. And she would strongly urge the Commission to consider sending a letter advising Mr. Stebing that in the future, the Commission would prefer for him to use the interest rate that is established in state law for judgements which is AS 08.30.070. Currently that interest rate is 5%.

The Director Rick Urion offered a suggestion to take the awards, add in any interest, total that to make that total award plus interest then add that column, take whatever percentage of each number of those and multiply that by $50,000. He stated that when you start getting into what they should have claimed and actual damages then it would be hard to explain. The Commission needs to have something real simple. Mr. Urion's concern is that the Commission needs to look into what it will take to make sure this doesn't happen again. Get policies and procedures in place to keep track of the accounts and whose name is on the account. It has been an investigative policy that Investigator's do not investigate surety fund cases. Mr. Urion said he is going to get that policy changed so that they will also be required to investigate surety fund claims. Mr. Urion said that he denied the requested audit because the cost benefit ratio was not there. It would have cost the realtors more money for something that was not there. As far as asking the investigators for an administrative subpoena that is fine because of the minimal cost to see if there is something there or not.

Lunch break at 12:17 p.m.
Reconvened at 1:40 p.m.

Surety Fund Claims Proposed Decisions

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

RESOLVED to untable surety fund cases S-23-002, S-23-005, S-23-011

All members in favor. Motion passes.

S-23-002 Grandstaff v. Bradbury

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

RESOLVED to adopt recommendation of option #1 regarding S-23-002, in which the amount may be amended due to restrictions of fund limits of the surety fund.

All members in favor. Motion passes.

S-23-005 Simurdak v. Bradbury

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

> **RESOLVED to adopt recommendation of option #1 regarding S-23-005, in which the amount in which the amount may be amended due to restrictions of fund limits of the surety fund.**

All members in favor. Motion passes.

S-23-011 Carson v. Bradbury

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

> **RESOLVED to adopt recommendation of option #1 regarding S-23-011, with an amended award of $10,000, in which the amount may be amended again due to restrictions of fund limits available through the surety fund.**

All members in favor. Motion passes.

Commission members looked at the chart that summarizes all the Theresa Bradbury cases to discuss the distribution of money from the surety fund regarding these cases only. Members discussed three different proposals for the distribution of funds to all claimants to be no greater than the maximum of $50,000. Proposal I is based on the claim amount, Proposal II is based on the awarded amount, Proposal III is based on the award amount plus applicable interest of 10.5%

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

> **RESOLVED that in accordance with AS 08.88.475 and the $50,000 limit, the attached spreadsheet Proposal 3 prorates the $50,000 limit based on the awarded amount with applicable 10.5% interest minus the amount already received the by claimant shall be distributed to the surety fund claims S-23-002, S-23-003, S-23-004, S-23-005, S-23-006, S-23-007, S-23-008, S-23-009, and S-23-011. Total amount not to**

exceed $50,000 surety fund limit per licensee. All claims shall be paid within 30 days from adoption of this motion.

All members in favor. Motion passes.

On a motion made by Fluetsch, seconded by Rainey, and passed unanimously, it was

RESOLVED to have staff send the hearing officers a letter informing them of the judgment statute rate of interest (AS 08.30.070) and apply that rate of interest to future surety fund awards.

All members in favor. Motion passes.

Licensing Examiner's Report - Continued

Herndon Licensing Issue-continued
Nancy Harris addressed the Commission regarding Heather Herndon and the possible break of service after November 1, 2004 due to the delay of her incomplete application and her seeking the Commission's action

On a motion made by Fluetsch, seconded by Rainey, and passed unanimously, it was

RESOLVED that if H Herndon, license #15231, passes the Broker's exam and meets all requirements for a Broker's license by 01/01/05 the Commission will waive the break in service since October 2004.

4 members in favor; 1 member opposed. Motion passes.

Soldotna Realty Update-
Nancy Harris updated the Commission referring to the letter submitted by Mike McLane, Broker of Ron Moore Company and temporary broker for Soldotna Realty, to the Commission. He indicated that all pending transactions started under Cliff Haas of Soldotna Realty have closed and recorded and that he has no further relationship as managing broker for Soldotna Realty.

Inverness LLC death of Broker-
Nancy Harris presented a letter that was submitted for a request of a temporary broker due to the death of the Broker, for the office of

Inverness, LLC. However, Miles Ewbanks, the personal representative for Inverness LLC requested to have salesperson, Kenneth Tompkins, license #14234, be the temporary broker but he is not yet a Broker.

On a motion made by Rainey, seconded by Bauer, and passed unanimously, it was

RESOLVED to deny Miles Ewbank's request for a temporary broker's license.

All members in favor. Motion passes.

Interested Party List

Nancy Harris presented to the Commission the new interested party list that will be available at each meeting. Anyone may request to have their name added to the interested party list for future mail outs, such as regulations changes, newsletters, or any type of updates. It will be available at each meeting if anyone would like their name to be added. Individuals may also call in to the REC to be added to the list.

Despain Broker Issue-

Nancy Harris presented a letter from Mr. Despain, broker license #16089, to the Commission that was sent to the office in response to the letter the Commission had sent to him on September 29, 2004 regarding inadequate broker supervision. Mr. Despain's letter stated that selling his home and moving his family up to Anchorage would create a hardship or hiring a broker to supervise the Anchorage office who would be unknown to him or his company would therefore present greater liability to him. His request to the Commission was that one of his licensees Randy Morris, license #15979 will soon be eligible to take his broker's exam in April 2005 and he would like him to be an associate broker for his office. He requested from the Commission if they would allow him to continue in his present status until Mr. Morris receives his associate broker's license in April.

Susan Rainey asked to table this issue until tomorrow for further research.

4 members in favor; 1 member opposed. Motion is tabled.

On a motion made by Bauer, seconded by Wilson, and passed unanimously, it was

RESOLVED to untable the Despain issue for discussion.

6 members in favor; 1 member opposed. Motion passes.

On a motion made by Fluetsch, seconded by Rainey, and passed unanimously, it was

> **RESOLVED to direct Staff to send a certified letter with copy of state statutes by 12/6/04 to Mr. Despain (#16089) that his license is hereby suspended under 12 AAC 64.130 (18) until it has been demonstrated that this office is in compliance with 12 AAC 64.110 (b) and 12 AAC 64.110 (e)(7); 12 AAC 64.120 (c); 12 AAC 64.125 and AS 08.88.311. The only exception is for remote offices in which Anchorage does not meet the requirement (12 AAC 64.126). Also effective under 12 AAC 64.090 (a), all sales associates licensees are suspended for lack of an employing broker under 12 AAC 64.090 (b).**

All members in favor. Motion passes.

Executive Administrator Report

Financial Report/Surety Fund Report-

Commission members review and discuss the financial report and the surety fund report as presented.

Contractual Services-

Sharon Walsh asked Commission member Bradley Fleutsch if he could be more specific on the information he requested last meeting regarding contractual services. The Juneau office said that any detailed information beyond what is provided in the reports received is considered at an audit level request. Requests for detailed audit information is done on a time allowed basis and there is a charge for these services. Anything requested beyond what is given in the reports is time consuming for the Division and the staff has to report to all occupational boards.

Commission members directed staff to request a detailed monthly operating general ledger printout or allow REC staff access to the database for REC surety fund expenses.

Possible "475 issue on SF claims-

Sharon Walsh addressed the question from the previous meeting regarding any other AS 08.88.475 issues for the two surety fund cases that were tabled. There was another surety fund case with the same respondent as the two cases; however the Hearing office notified Ms. Walsh that the case had been dismissed. No "475" issue existed.

Publication Specialist Position-

Sharon Walsh explained to the Commission that she and Barb Gabier were working on filling the position and are getting the job description and notice placed on Workplace Alaska. The job description will include education, which would have the position reviewing course material, preparing the REC newsletter, maintaining and updating the database and the REC web site. She said the hope was to have this position staffed by the end of January or beginning of February 2005.

Education courses #1076 and #2125
Sharon Walsh presented to the Commission two courses that were approved courses #1076 and #2125 and asked for a clarification of the retroactive date. She asked the Commission to consider making these two courses retroactive to February 1, 2004.

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

RESOLVED to make the effective date of courses #1076 and #2125 for continuing education credits 2/1/04.

All members in favor. Motion passes

On a motion made by Fluetsch, seconded by Rainey, and passed unanimously, it was

RESOLVED to accept the Executive Administrator's Report with thanks.

All members in favor. Motion passes.

Susan Rainey asked to add to the agenda for the Commission to start working to get a legislative change for the requirements for in state office/broker and discuss the need of the surety fund and/or possibly of increasing the maximum limit.

Education Report
Bradley Fluetsch addressed the Commission about a letter to the editor in the Juneau Empire from PeggyAnn McConnichie. The issue was not related to the Real Estate Commission. Ms. McConnichie was expressing her opinion on a local political matter in Juneau.

The Commission members reviewed the Education Report submitted by PeggyAnn McConnichie.

On a motion made by Rainey, seconded by Fluetsch, and passed unanimously, it was

RESOLVED to accept the Education Committee Report without presumption of approval of any action.

On a motion made by Ramsey, seconded by Rainey, and passed unanimously, it was

RESOVLED to recess the meeting until tomorrow at 9:00 a.m.

Commission recessed at 4:42 p.m.

Friday, December 3, 2004

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 9:14 a.m.

Roll Call

Members Present:

Larry J. Bauer, Broker, 1st Judicial District,
Susan Rainey, Associate Broker, 4th Judicial District
Barbara Ramsey, Associate Broker, 3rd Judicial District
Bradley Fluetsch, Public Member
Rita Wilson, Broker at Large

Members Absent:
David B. Somers, Broker at Large
Glenn Clary, Public Member

Staff Present:
Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner

Public Members Present:
Jerry Royse, Broker, Royse & Associates
Jo Ellen Smith, Broker, JEMS Real Estate

Break at 9:16 a.m.
Reconvene at 9:20 a.m.

Forms Clean up

Property Disclosure Statement - Barbara Ramsey pointed out to the Commission that there was missing information on the Property Disclosure Statement from the information that they had received from the Department of Law. She believed the Commission had already made changes but somehow those changes had not made it on the form. She had thought that they had moved the statement "signing this waiver does not effect other obligations for disclosure." on page 9 of this form to another area on that form, more toward the top of the page. Larry Bauer said he would like to see the statement, " Parties may wish to obtain professional advice and/or inspection of the property." Be put in bold letters to bring more attentions to the statement. Sharon Walsh said that this would be another regulation project in order to add that language. Brad Fluetsch said that the Commission made changes to many forms and that they will probably be making revisions on those different forms for the next year.

Break at 10:20 a.m.
Reconvene at 10:43 a.m.

Public Comment

Jo Ellen Smith Broker of JEMS Real Estate commented her concerns to the Commission regarding to HB 29. She stated this new law is very cumbersome working with buyers and sellers but that it is way over board dealing with lessors and lessees or residential leases. She stated that, representing the lessor, I have to inform them that I am representing the lessor; however, to say that they have a viable option to go through somebody else they really don't because there is no financial incentive for anybody else to represent them. They don't have another choice. She wanted to know if she has to have someone sign that form before she can even open the door?

Instructor and Broker Jerry Royse spoke regarding HB29 and he is really positive about the change, and wants to support it. The challenge is that he can not find any information and he wants to make sure that the Commission is on the same track. The challenge that lies before the industry is that they are not getting any information regarding the new statutes and regulations. His concern is that even with the Real Estate Commission today the word agency and agents is still being used, which is confusing. He expressed the concern that the industry has to move very quickly with all available resources to get licensees up to speed as fast as possible. There will be some issues and challenges with HB29 and the concern that he has is that agents are out there getting entrapped in lawsuits because they are trying to figure out in fifty different ways how they are supposed to interpret HB29. Right now the Real Estate

Commission is not clear about the direction. He asked for the REC to provide some direction, through more communication, suggesting that the web site could be more in depth.Not having the form up anyplace in an official format until the 1st, is tough on licensee's. He applauded the Commission for its work. He spoke with Gale Lyon, who wrote the agency law in Colorado, she said that the problems that they faced over the last ten years in Colorado as they switched towards this kind of model, was not that the rules and the laws were not adequate it was that the training was not there. It is a partnership between private industry and the state.

Break for lunch at 12:00 a.m.
Reconvene at 12:55 a.m.

The Commission members discussed the issue of when and how licensees shall disclose their knowledge of a murder/suicide occurring in the property. Members stated that a licensee shall disclose if aware and if within one year of a murder/suicide occurred on the property. Advise seller of risk of not disclosing. It may be a material fact to the buyer which may be recommended for the seller to disclose.

Commission discusses and lists of FAQs for review by the Assistant Attorney's General office and available for licensees on the Real Estate Commission web site after the new statute goes in effect January 1, 2005.

Real Estate Commission recommendations:
Murder / Suicide – 08.88.615 (c)
Sellers are not required to disclose
Licensee shall disclose if aware and if within one year
Advise seller of risk of not disclosing - may be a material fact to the buyer -recommend disclosing.
Pamphlet
Give pamphlet to everyone.
Mark box? Two forms? Page 3? Sign that they are unwilling to sign
How to sign and give copy - take out two.

Designated representative of the seller/lessor
"I represent the seller/lessor" verbally at first contact. Recommend signing before opening the door. Checked that you are representing the seller (#2).

Neutral – #4 of the pamphlet
Preauthorization is already obtain, when to sign.
For the seller - at the listing with pre-authorization and with waiver.

For the buyer – prior to showing any property that the licensee is preauthorized to act as a neutral.

Designated representative of the Buyer
If a FSBO seller – #3 when to sign?
Prior to showing the house.
If they do not sign.
Note on copy that you gave them a copy. Note they declined to sign

When to Sign if Designated Licensee for Buyer?
At first initial face to face before:
asking confidential questions,
showing properties,
signing a buyer agency agreement.
If unwilling to sign?
Option #1 (specific assistance WITHOUT representation maybe able to obtain signature.)

Real Estate Commission writes up questions that they are seeking a opinion of Assistant Attorney General's office.

Isn't this a material fact or stigmatized property and shouldn't it be disclosed by the Seller, if known?

Can the new forms, statutes and regulations be posted before the 1st.

To define "specific assistance" if it is "opening the door" for showing and giving them more information about one home and showing the product. Or is it?
If unwilling to sign? 08.88.610 (b) (c)
Must still show the home,

Does law say that a seller's licensee cannot show a house if the buyer refuses to sign the pamphlet? If yes, is there a contract violation between seller and DL by not showing?
Can licensee note on copy that we gave them a copy.
Can licensee note they declined to sign
If they decline to sign can we move forward.

The Commission discussed and listed the documents required before recording to include, but not limited to, fully executed listing agreement, personal service contract, Consumer Pamphlet, Waiver by Agreement, Purchase Agreement, including any addendums or counters, Property disclosure or waiver, lead based paint (if applicable), Health Authority Approval (if applicable), also check your local, Borough or municipality

for any additional required documents. These documents are required to be in the file before recording of a transaction.

Future goals for 2005
The Commission members prioritize the goals for 2005.

HB 29 - FAQs to be posted on website to answer licensees questions.

Office statute changes to be specific to instate brokers and instate office requirements. – To draft regulations that states specifically the requirement for a broker to be present and have an office in the state of Alaska.

Broker Manual - Finalize broker manual for next meeting and receive feedback from the Commission members.

Forms clean up - Property Disclosure statement in regards to adding the sentence "Signing this waiver does not affect other obligations for disclosure." Staff to get statutes and regulations that need to be cleaned up.

Draft Regulations – Look at drafting regulations to add Continuing Education topics, additions to the property disclosure form, specific changes to the regulations for instate broker and instate office requirements and post licensing education.

More communication between REC and licensees - Initiating update from Real Estate Commission at licensee board meetings quarterly.

Surety Fund – Staff to research other commissions to see how many states also have a surety fund. Research how many states require E & O insurance for their licensees. Research what insurance companies will provide E & O insurance to our licensees. Do we need the surety fund or not? Increase the surety fund or should it remain the same? Should there be a requirement for E & O insurance?

Education – Re-evaluate the Education Committee to look at its role to the Real Estate Commission. Look at increasing the Broker education requirement and to look at the issue of testing for continuing education courses.

Statute change for post licensing – Look into post licensing education and eventually seek statute and regulation changes.

Sunset Audit recommendations re: mobile homes – Review and discuss the recommendations of the sunset audit regarding adding mobile homes sales to the surety fund.

New Business

Barbara Ramsey asked if any of the Commission members would like to attend the next regional ARELLO meeting on March 31- April 2, 2005 in Monterey California. No Commission responded; therefore, Sharon Walsh and Barbara Ramsey have volunteered to attend the ARELLO regional conference in March 2005.

March Meeting will convene in Juneau – March 14th and 15th to coincide with the Juneau Board of Realtors monthly meeting.

June meeting will convene in Fairbanks to coincide with the Fairbanks Board of Realtors monthly meeting dates which are June 13 and 14, 2005.

September meeting in Cooper Landing to coincide with the Realtor annual convention dates to be determined at a later date. The date of the AAR Convention is September 14-17, 2005.

Comments from the Commissioners.

Susan Rainey said a job well done on HB 29, and the Commission has done a lot of hard work. The staff is in her prayers starting the first of January when the new law goes into effect and good luck on getting a Publication Specialist.

On a motion made by Rainey, seconded by Bauer, and passed unanimously, it was

RESOVLED to adjourn the meeting.

All members in favor, motion passes.

Meeting adjourned at 2:12 p.m.

Prepared and submitted by Division Staff

Approved:

Barbara Ramsey

Barbara Ramsey, Chairperson
Real Estate Commission

Date: 3/24/05