

STATE OF ALASKA  
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
REAL ESTATE COMMISSION

MINUTES OF MEETING

March 4 and 5, 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 March 4 and 5, 2004, at the Atwood Building, Room 240, Anchorage, Alaska.

Thursday, March 4, 2004

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 8:10 a.m.

Members Present:

Barbara Ramsey, Associate Broker, 3<sup>rd</sup> Judicial District  
Glenn Clary, Public Member  
Larry J. Bauer, Broker, 1<sup>st</sup> Judicial District  
Rita Stuckart, Associate Broker, Broker at Large  
Susan Rainey, Associate Broker, 4<sup>th</sup> Judicial District, (via teleconference)  
Bradley Fluetsch, Public Member  
David B. Somers, Broker at Large

Staff Present:

Nancy Harris, Licensing Examiner  
Barbara Gabier, Program Coordinator

Guests Present (at various times):

Linda Cardoza  
Margo Mandel, Investigator  
Robert Auth, Assistant Attorney General  
Jeffrey Feldman, Attorney

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Debra Sedwick  
Leo Wakefield  
Sally Wakefield  
John Vincens  
Rick Richmeyer, (Reporter)

**Approval of Agenda/Overview of Commission Areas of Concern**

Ms. Ramsey provided an overview of some of the items before the Commission. These included what the Real Estate Industry does on a national level and how that applies locally; national issues include both agency and education. Both pre-licensing and post licensing education are areas of concern. Broker supervision is also an area needing review/action; with new technology, more licensees are involved with home offices and less overall involvement by the broker. Hopefully with the passing of HB 29, some of the agency issues will be resolved. On a more personal, Commission level, an Executive Administrator was noted as needed; in particular a licensed Executive Administrator, who has knowledge and can answer the questions based on their industry experience and have an understanding what is happening and to be able to respond to licensee concerns.

Members concurred with the Chair's comments and identification of issues for the Commission. Mr. Bauer stated he feels there is a void regarding Commercial Brokers and sees a need for additional education in this area, especially in the areas of trust fund and handling of property on behalf of the client. Mr. Fluetsch noted his interest is coming from the public perspective and he felt clarification was needed regarding how this Commission serves and benefits the public. He noted there were other organizations and venues that protect the client outside of the surety fund and he felt review of the benefits of the Commission was appropriate. Could a private realtors organization serve the function and would it have the same credibility? He discussed the process used in authorizing stock brokers (i.e., not licensed via a state agency but rather regulated through the National Association of Securities Dealers). Stock Brokers are a self regulated, self trained, self tested, self enforcing, self disciplinary organization; the Real Estate Industry may not yet be ready for that approach, but it was suggested as avenue that should be explored. Discussion followed regarding the Commission's role and mandates. Public protection and service of the public is the role of the Commission and it is provided through means other than the surety fund (investigations, education, ability to suspend/revoke licensees). The overall consensus was that an organization with nationwide regulation of real estate professionals was not likely in the near future

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and did not appear to be necessarily in the best interest of consumers. The Commission can best serve the public and self policing would likely lower, or reduce, the credibility factor for the general public. Education on a local level continues to be a reoccurring theme and working at the local level is a challenge. Mr. Clary stated licensees have approached him with the need for more training; he advised he is interested in discussing education and Alaska specific needs at some time during the meeting. Mr. Fluetsch noted he would need to break at 11:45 for a lunch appointment.

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

**RESOLVED to accept the agenda as presented.**

**Approval of Minutes**

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

**RESOLVED to approve the September 10, 2003 meeting minutes as presented.**

**On a motion by Ramsey, seconded by Somers, and passed unanimously, it was**

**RESOLVED to approve the November 2003 teleconference minutes as presented.**

**General Information, Tab 3**

New member orientation booklets were made available to members who had not previously received a copy.

Licensing Examiner Responsibilities: The Licensing Examiner responsibilities were briefly discussed. The Examiner is responsible for accepting applications on behalf of the Commission and processing them in accordance with the Commission's statutes and regulations. The Commission has delegated this authority through regulation, to staff, and only those applicants who meet specific requirements may be processed without further Commission review/action. Staff is not delegated

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authority to deny a license, and any applicant which does not meet the specific qualification listed in statute/regulation will be presented to the Commission for a determination. Some licensing boards accept review of applications through the mail and a mail ballot vote may be taken rather than making the applicant wait until the next regularly scheduled meeting. It was noted boards/Commissions are not required to review applications through the mail, however, it may be a process the Commission would be interested in. If there is enough concern when the mail ballot is presented to the members—an option for requesting a teleconference regarding the matter is available on the ballot.

**Procedural Orientation, Tab 4**

Brief discussion of the orientation section ensued. Ethic reporting was noted and it was confirmed the Examiner would collect any ethics reports applicable at the end of the meeting. Quarterly reporting is done through the Division.

The 2002 annual report was briefly reviewed and it was noted items completed from the 2002 Report included: Property Disclosure Statement, Landlord Tenant Booklet, and On-line Renewals.

Discussion regarding the need for a Broker Manual followed. Ms. Harris stated that it would be very beneficial if a Broker Manual were available; the old one has so many outdated authorities that she hesitates to distribute the old manual. It was agreed that the Broker Manual Publication would go on the Goals for 2004. Ms. Gabier agreed that staff would work on revisions to the existing manual and bring a new revised “draft” to the Commission meeting in June 2004. The draft could be edited on-going as needed. The Commission stated they would like the goal to include putting the manual on-line. After additional discussion, it was agreed the draft would be developed and presented to the Commission by staff, the Commission would have the final say before the manual is approved and published. Ms. Gabier clarified that the Licensing Examiner would not be assigned this responsibility, but rather was an appropriate assignment for the Publication Specialist or the Executive Administrator. The manual draft would be the framework as initiated by staff and Commission members could assist with appropriate edits/directives. It was noted HB 29 may affect the manual and should be incorporated as applicable.

**On a motion duly made by Rainey, seconded by Fluetsch, it was**

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**RESOLVED to direct staff to update the manual and to include provisions of HB 29 as applicable, and that the manual be available on-line.**

By process of a friendly amendment, offered by Somers, accepted by the maker and the second, it was unanimously agreed that inclusion of HB 29 was subject to the bill passing the Legislature.

Defining Supervision for licensees, especially for Home Offices is noted as a 2004 Goal, and is to be included under Broker Supervision.

Update of the Web Site – ongoing. Continuing on-line renewals and putting the Broker Manual on line were noted as continuing goals.

Home Office regulation/criteria was noted as a Commission task as cited in HB 29 and will need to be developed for the Broker Manual. Although staff may provide the outline of the Broker Manual, the Commission acknowledged its' responsibility in giving the staff direction and developing the criteria.

The Agency Disclosure Pamphlet required in HB 29 was also noted as a priority for the Commission.

2002 Goal for considering a regulation change regarding vicarious liability of brokers in Surety Fund proceedings was discussed. This was noted as a continuing goal for 2004. With failure to supervise, the commission acknowledges they may not be able to take action through the Surety Fund process, however taking action separately through a license process for failure to supervise is a goal. The Commission asked staff to assist with getting clarification whether a statute change would be needed to allow the Commission to hold the Broker responsible, even if he/she had no knowledge, or whether a regulation could be enacted.

Previous Surety Fund cases which raised concerns were discussed whereby the Broker had no responsibility since he/she was not aware of the subordinates actions. Specifically, what recourse other than warning or educating the Broker is available to the Commission.

The status of the 2002 Goal of Enhancing Collection of license penalties and SF reimbursement through direct liens of PF dividends and through confessions of judgement was questioned. The Commission desired information regarding the status of fine collection and asked that the staff provide that information in the future. Ms. Gabier indicated that fines implemented through Memorandums of

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Agreements (initiated through the investigation unit) typically have a deadline when the fine must be paid and if it is not— license action will be taken. In the case of Surety Fund Decisions, most recent decisions have included a provision requiring suspension of the license until such time the fund is paid or a re-payment agreement is arranged (and complied with). In cases where payments have been made from the SF and the licensee either surrendered his/her license or it has lapsed— it is not likely repayment has been made. Exploring options for filing liens and any other collection avenues is desired by the Commission. Ms. Gabier indicated that while that avenue could be explored, she felt that a legal process would be required and that staff would need to work with an Assistant Attorney General to make that occur.

Recap of Priorities included: 1) Broker Manual-online; 2) Broker Supervision to include Home Office; 3) Information Pamphlet (via HB 29).

Break – 9:25 a.m.

Reconvene – 9:40 a.m.

**Persons to be Heard**

Prior to accepting comments, the Chair noted for the record that the board will not listen to any discussion of matters under litigation.

Linda Cardoza, presently with Jack White Real Estate, introduced herself. Ms Cardoza noted the public notice reflecting meeting continuation on March 5, with a starting of time of 9:30 a.m. appeared to be the starting time for both March 4 and 5, thus she did not arrive at the earlier time when the comment period was noted on the agenda. Ms. Cardoza noted she would like to see more newsletters and more information so that those serving the public in the real estate profession have a better understanding what the Commission is doing. In November, she had written to Governor Murkowski requesting that the Executive Administrator position be filled; she was not intending her remarks to be disparaging against current staff, however, she felt a licensed administrator was very necessary in serving the industry. She also noted it would be extremely helpful if agendas could be placed on the public notice. Additionally, she advised she is the Commission's unofficial photographer and would like to take the Commission's photo at the conclusion of the meeting so that she can include the photo in the Alaska Association of Realtors and the Anchorage Board of Realtors Newsletters. As the past 2002 President of

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the Anchorage Board of Realtors, she stated she has appreciation and respect for what the Commission does.

Ms. Gabier took this opportunity to apologize for the tardiness of the agenda. In the future, staff will strive to ensure that agendas and packets are available in advance (packets should be available at least two weeks in advance). Additionally, Ms. Gabier noted that staff would work toward developing a list of interested persons who would be mailed a copy of the agenda in advance. Posting the "tentative" agenda to the Real Estate Commission web page also should be a goal that is attainable. The decision to extend the meeting to a second day was only made a week before this meeting, and the notice of the meeting continuing on March 5, beginning at 9:30 am was not intended to supercede the earlier public notice which noticed the March 4 meeting beginning at 8:00 am. She understood how confusion occurred and regretted that misunderstanding.

Mr. Clary asked Ms. Cardoza if she saw the Commission as important and necessary. Ms. Cardoza responded that she felt the Commission was vital. With approximately 2,200 licensees throughout the state, it is the one and first source—beyond their broker—that they can call and ask questions of. A great amount of information gets disseminated from the staff (in the past) and often it gets forwarded on to the Commission to decide upon. The greatest concern now is with the staff, and the void of not having a licensee, (knowledgeable of the industry) to assist the industry and the Commission.

Members discussed the benefit of the newsletter, as produced in the past. The newsletter is seen as very important to provide information regarding Commission actions and decisions. It is a part of the education process and keeping licensing up to date in awareness of enforcement and regulation of the industry. Instructors are also able to fine tune their classes and educate on trends and decisions of the Commission.

Concerns were raised not only with the lack of a licensed administrator, but also with the cancellation of the December meeting. Mr. Fluetsch asked if being outside the Division of Occupational Licensing would enhance the Commission. Currently, the licensees pay for meetings, but yet the September meeting was downsized and the Commission was not allowed to hold their meeting in conjunction with the Realtors Convention and then the December meeting was cancelled. This is a concern and public relations and exposure of the Commission to a wide population of licensees is desirable. Further, the possibility that the Commission would be dissolved through the sunset is also problematic. It was noted that HB 418 is the continuation bill for the Commission and there appears to be a great deal of

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support— sunset review was noted as a process all boards and commissions go through.

**Preparation for meeting with the Director**

Members discussed items of interest they wished to cover with the Director. Consensus was to request information and feedback on the following: (1) Scheduling of Meetings; (2) Ensure the Commission is continued through legislation; (3) out-of-state travel; and (4) filling the Executive Administrator position, in particular, with a Real Estate licensee.

Financial support and fee collection: A brief discussion followed regarding funding of commission activities. Ms. Gabier clarified that all the licensing programs within the Division of Occupational Licensing are required to be self-supporting. That is, fees must be collected to pay for the cost of regulation of the profession. Fees are accounted for as they are received in the division and credited to each particular program. However, the Legislature reserves the right each year to designate how much spending authority, through the Division, is allowed. If a program were to collect \$100,000 more than it cost to regulate the profession, it does not mean the Legislature will automatically grant an extra \$100,000 of spending authority to the Division. Each year, the Legislature sets the budget for the Division of Occupational Licensing, and grants spending authority which the Division can spend on behalf of the programs. The Division's spending authority is contingent on the programs bringing in the revenues through license fees. Each individual board/commission does not have a budget, but rather the Division is responsible for overseeing the spending on behalf of all programs.

Staff was asked if the Surety Fund was ever raided by the Division or by staff. Ms. Gabier stated that she was not aware of any surety funds being spent, except those authorized very narrowly under statute (and identified in the budget as spending authority). Surety funds can not be used for any other purposes. Ms. Gabier clarified that the Publication Specialist's salary is paid through the surety fund, as well as a portion of the Executive Administrator's salary— she further clarified that license fees and surety fund fees are accounted for separately and the Commission has a report in it's packet reflecting receipt totals and expenditures. The Licensing Examiner is paid through license fee receipts.

Travel Approval: Brief discussion regarding travel approvals followed. Ms. Gabier indicated that all travel requests are submitted to the Director for review and



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approval. All out-of-state travel is required to be approved by the Commissioner, and all out of country travel required the Governor's approval.

**Informational Section, Tab 5**

Annual Report: The members reviewed information provided. Ms. Gabier committed on behalf of Division staff, that at the next meeting (prior to the beginning of the next fiscal year) staff would prepare a draft 2004 Annual Report for the Commission's review, editing, and approval. It was noted a 2003 report was not prepared; although a 2003 report could still be completed and turned in, Ms. Gabier felt the focus should be to get on track and complete a 2004 Report. The reports are used during the Division's Fall budget and legislation preparation.

Travel Policy: Information provided in the travel section was briefly reviewed. Ms. Harris agreed to work with members at the close of the meeting to assist with completion of the Travel Authorizations. In the future, approved authorizations will be mailed to members in advance. If a member's travel costs will exceed the limit approved on the authorization, the member should contact the examiner prior to travel (approval for increased expenses would be required). Keeping receipts was noted as being extremely important. Reimbursement will not be made for airfare unless a receipt is presented, keep cab fare and hotel receipts. One exception—members do not need to keep meal receipts; meals are paid at a flat rate regardless of the amount. Mr. Clary noted the possibility of using a private airplane and it was clarified he should work with the licensing examiner, in advance of the travel, to turn in insurance and pilot license information as required in the policy.

Use of credit cards— it was clarified that the section stating that travelers could not use their own credit card for airline and hotel purchases applied only to State employees at this time. Currently, board/Commission members may use their own credit cards. This directive is subject to change, however, hopefully a change will not be implemented for board members until the process has smoothed out for state travelers (employees not being allowed to use their own credit cards is a change to the travel policy).

**Financial Reports, Tab 6**

The reports were reviewed. The board asked for clarification on the Surety Fund 2/04 report, \$29,900 expenditure under contractual for FY 03. Discussion followed regarding the fund balance in relation to the spending authority as authorized each

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year by the Legislature. A special legislative appropriation would be required if expenditures in a fiscal year exceeds what the Legislature has authorized. Ms. Gabier agreed to follow-up after the meeting and provide more information regarding the \$29,900 line item, under 2003 (the current report contained back-up for expenses in 2004—03 back up had been provided at earlier meetings so staff will be able to double check and advise).

Questions followed regarding licensees paying back the SF when a claim has been paid out. It was noted that currently, the licensee is only required to reimburse the fund in accordance with the Order which the Commission adopts. Currently, hearing officer time and expenses are included in SF orders, however, other staff and Division expenses are not included. The commission again expressed interest in exploring avenues of recovering additional costs and pursuing liens/judgment.

Mr. Fluetsch expressed interest in knowing how the Department of Revenue invested surety fund monies and ask that staff, after the meeting to follow-up and advise via a memo.

**Licensing Examiner Report**

Ms. Harris provided information regarding the license statistics following the recent renewal. She reported that the on-line renewal went very smoothly; 843 licensees renewed on line and she looked forward to more people using the on-line renewal next cycle. Ms. Harris noted that some licensees lapsed as they apparently got confused with dues they were paying to another organization vs. license renewals.

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

**RESOLVED to accept the Licensing Examiners Report.**

Ms. Rainey noted that on-line renewals was one of the goals the Commission hoped to accomplish and she agreed that it went very well. She congratulated Nancy for a job well done.

**Leo and Sally Wakefield Request**

Mr. and Mrs. Wakefield addressed the Commission regarding their request to allow remote supervision in accordance with 12 AAC 64.126. The Wakefields are planning to move from Seward and have attempted to sell their business. Current

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Real Estate licensees in Seward are not interested in buying the business. The Wakefields are concerned with 20 clients with whom they have long term management agreements— these clients are spread all over (including out of the country). An individual named Judy Martin is willing to buy the business and willing to be licensed under the Wakefields' brokerage. The Wakefields would train and supervise her until she was able to obtain her own brokerage. Ms. Martin has taken the 20 hour class and is willing to take the exam, just as soon as the Commission acts upon the supervision request. The Commission discussed the matter at length. The interpretation of the statutes and regulations allowing remote supervision, methods for supervision, access to trust accounts and the overall sense of increased education needs within the industry caused much debate and concern among the members.

A motion was made by Clary, and seconded by Bauer to:  
MOTION Make the Wakefields a remote supervisor.  
(This motion was later withdrawn with the approval of the second.)

Additional comments followed, including members speaking against the motion due failure to have merit based on the quoted statues/regulations. There are two Real Estate Brokers in Seward and they do employ licensees. Additionally, Ms. Martin is not yet a licensee.

A motion to Table the matter until March 5 was made by Clary, and passed unanimously.

The request was considered complex and the commission wanted to assist by providing a workable solution (in accordance with existing law) which would cover the concerns expressed by the members as well as address the needs of the Wakefields and Ms. Martin. The Wakefields agreed to return March 5 after the Commission had time to further consider the issue.

11:30 a.m. – Break

11:40 a.m. – Back on Record

**Meeting with the Director**

The Commission welcomed Mr. Urion to the meeting. They noted they had several items of concern they would like to discuss with him, including recruitment of an Executive Administrator who is a licensee, out-of-state travel (to national and regional conferences of ARELLO), the Commission continuation (sunset

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review/legislation) and the unanimous consent of the commission that they would like to set meeting dates in conjunction with the State conference.

Executive Administrator: Mr. Urion responded by stating that as of last week, the recruitment for an Executive Administrator is in active mode. While he understood the Commission's desire to have a real estate licensee in the position, a licensee may not necessarily be the only person who could perform well in the position. The Medical Board, Architect, Engineer and Land Surveyor Board as well as the Marine Pilot Board all have Executive Administrators that are not licensees, and who serve the professions very well. The Commission agreed to spread the notice regarding the vacancy to industry and to refer interested persons to Mr. Urion (it was acknowledged for the record that the position is partially exempt and appointed by the Governor).

Out-of-State Travel: Mr. Urion stated that he looks at each travel request that crosses his desk and will approve travel when he sees benefit to the state. He confirmed he will not simply approve travel because the industry pays for the travel but rather each request must convincingly reflect the benefit. The members briefly discussed the April and October ARELLO conference and their desire to attend. Mr. Urion agreed to review the request and the Conference agenda once submitted.

(Mr. Fluetsch had to leave due to an earlier commitment – 11:58 a.m.).

Commission Continuation: Mr. Urion reported that HB 418 has been introduced to continue the Commission. The Legislation appears to have wide support and is expected to pass.

Commission Meeting Scheduling: The board addressed their concerns that they want to be able to set the dates of their meetings and to rely on the dates without them being changed/cancelled by the Division. In particular, the Commission desires to continue their past practice of annually holding one of their meetings in conjunction with the Realtors Association Conference. In September 2003, (for the planned three day meeting in Girdwood) the division shortened the Commission's meeting to one day and required it be held in Anchorage; the December 2003 meeting was cancelled by the Division. The Commission asked for information regarding their budget; Mr. Urion confirmed each individual board under the division does not get a spending appropriation granted by the Legislature, but that the Division as a whole is given the appropriation and the Division authorizes the expenditure for programs. Mr. Urion asked the board to be sensitive to costs when setting meetings, for example, the agenda for the three-day meeting planned in September 03 could be combined into a one-day agenda. By approving three days,

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there would have been a substantial increase to the overall meeting costs with additional hotel and meal expenses. The benefit of Commission members being accessible to industry members and meeting in conjunction with the conference, were that numerous licensees were able to address the Commission. This was seen, by the Commission, as a strong element in supporting that the Commission Meeting be held during the Realtors Association Conference. It was noted the 2004 Conference was to be held during a cruise of Southeast and the Commission would not likely request approval to meet in conjunction with the 2004 conference. In setting the meeting schedule, Mr. Urion asked that the Commission be sensitive to costs; if an agenda warranted a two-day meeting Mr. Urion indicated he would consider the travel requests accordingly. The Commission agreed to try to balance the division's needs with the Commission's needs in planning their upcoming meeting schedule.

The Commission thanked Mr. Urion for attending and discussing these issues with them. Mr. Urion stated he had an open office and invited members to feel free to contact him at anytime.

**Investigator Report, Tab 8**

Margo Mandel, Investigator, joined the meeting. Ms. Mandel briefly discussed information provided in her written report. She also presented an Agreement Not To Renew License in the case of # 3004-03-002.

**On a motion by Clary, and seconded by Bauer, it was**

**RESOLVED to accept the Agreement in Case # 3004-03-002.**

For the record, the licensee in this case is Jamie L. Moyer.

Members questioned Ms. Mandel regarding what some of the fraud/misrepresentation cases listed on her report were related to, and if there were any trends which would help the Commission know where to zero in on for education. Ms. Mandel stated that typically the fraud and misrepresentation border on criminal behavior and covers quite a variety. Some deal with trust accounts and money, some with failure to disclose, others are regarding earnest money disputes. Education wise, Ms. Mandel recommended possibly reviewing what is being taught in the pre-licensing classes and maybe incorporating practice and law issues in them. Ms. Mandel reported that when she took the pre-licensing course the emphasis was on passing the exam. Related to property management

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and relocation companies, unlicensed practice issues surface. In regard to relocation company unlicensed practice, letters go out advising of Alaska licensing laws and penalties attached for unlicensed practice. The Commission recommended that a copy of the letter be sent to the licensing agency in the State where the person is located/licensed.

Ms. Mandel requested the Commission to approve issuance of a subpoena in a matter which involves a Broker/Builder and the acceptance of \$6,000 earnest money. The home was never built and the individual is not cooperating with Ms. Mandel. The subpoena is for bank records to establish evidence to submit to the Attorney General's office.

**On a motion by Somers, seconded by Clary, and passed unanimously, it was**

**RESOLVED to approve the subpoena as requested.**

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

**RESOLVED to accept the Investigator's report.**

Lunch Break: 12:21 p.m.

On Record: 1:30 p.m.

**Members:** All members were present, with the exception of Ms. Rainey.

**Findings and Proposed Decision, Tab 10**

Mr. Stebing joined the meeting. He advised he was present at the Commission's request to discuss the Mehner Decision, Case # 3002-02-005. Mr. Stebing stated that there was a request by Ms. Mehner's attorney to address the Commission, however, Mr. Stebing recommended against allowing testimony before deliberation and recommended that Ms. Mehner's case be treated like all the other cases that the Commission has had in the past seven years that he has been the hearing officer. He recommended the Commission go into executive session and deliberate. An opportunity for the parties to address the Commission, if the Commission deems that is appropriate, can be provided after deliberations or supplement to the deliberations.

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Members questioned the principals involving not hearing additional testimony outside of what the Hearing Officer presents. Mr. Stebing clarified that there is no statute prohibiting the Commission from hearing arguments from the parties prior to deliberating. It has been the Commission's practice, and the practice of the approximately 30 boards Mr. Stebing works with, to go into executive session to deliberate and then, on rare occasions, boards have allowed parties to address them after deliberations with the hearing officer. Mr. Stebing further advised that if a Commission member believes they have a conflict of interest that provides a basis for them recusing themselves from participating in deliberations, it would be best for that member to recuse themselves before entering executive session. If someone is not sure if they have a conflict of interest, Mr. Stebing recommended the Commission enter executive session and, off the record, that member could discuss their potential conflict with him and he would give advice as the members' legal council.

Additional guidance was sought regarding why the Hearing Officer recommends the Commission enter executive session. Mr. Stebing further explained that he has held the hearing in accordance with the Administrative Procedure Act and taken testimony in this matter as delegated by the Commission. This is a quasi-judicial proceeding in which the hearing officer (in some states called a Law Judge) follows the steps such as a judge would do in judicial proceeding. Mr. Stebing hears the evidence in a case, (quite often there are attorneys involved, but not always), cases involve dealing with a person's livelihood and Mr. Stebing takes the matter very seriously. All the constitutional protections which apply in court apply in this proceeding. Mr. Stebing listens to opening statements of parties, allows parties to present evidence. One side has the legal burden in a case (for license denials it is the applicant with the burden and for license actions it is the State). In this instance, the hearing was a conducted over a period of 9 days; there were approximately a dozen witnesses, and 15 audio tapes. Mr. Stebing has listened to all the evidence and reviewed all the exhibits— writing his proposed detail decision took over a month. The Decision is a Proposed Decision which the Commission deliberates over in executive session. Any board or Commission always has the right to take evidence themselves but Mr. Stebing cautions boards to be careful what they ask for because they could end up spending a very long time on the issues and there is also a risk that if a Board or Commission deals with evidence that is not part of the current administrative record, then they have to reject the Hearing Officer's decision in accordance with AS 44.62.500(c). If new evidence is heard which is not on the record that the Proposed Decision is based, on then it must be rejected. Mr. Stebing noted he is the legal counsel for the Commission and he would further provide legal advice in executive session, however, only the Commission is allowed to deliberate. Action on the matter must be done in public,

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out of executive session. After the board takes action on a proposed decision, there is an opportunity for either party to request reconsideration prior to the action becoming final.

Ms. Ramsey stated that she had to recuse herself from these proceedings and asked that a temporary Chair be appointed. Ms. Stuckart also noted that she had to be recused.

Mr. Bauer was nominated by Ms. Ramsey as temporary Chair, the nomination was seconded by Fluetsch, and passed unanimously.

**On a motion duly made by Fluetsch, seconded by Somers and passed unanimously, it was**

**RESOLVED to enter executive session in accordance with AS 44.62.310(d)(1), for the purpose of deliberating on Case #3002-02-005.**

All staff and guests left the room, members in deliberation with Mr. Stebing were: Clary, Bauer, Fluetsch, and Somers.

Executive Session: 1:45 p.m.

Out of Executive Session: 4:40 p.m.

Ms. Ramsey and Ms. Stuckart joined the meeting. Temporary Chair Bauer clarified for the record, Ms. Ramsey and Ms. Stuckart would not be voting on the issue before the Commission.

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

**RESOLVED to adopt the Hearing Officer's Decision regarding Case 3002-02-005, by exercising Option 1 of the proposed decision.**

Temporary Chair, Mr. Bauer, passes Chair back to Ms. Ramsey.

**Application Review, Tab 7**



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John Vincens - Salesperson application for Mr. Vincens was reviewed. Mr. Vincens' application contains a **yes** response to the question, "Are you under indictment for, or have you ever been convicted of a felony?" All yes answer applications are brought to the commission, along with their explanation, for commission review and action.

A motion was made by Fluetsch and seconded by Somers as follows: MOTION to approve the issuance of a license to Mr. Vincens.

**After further discussion, on a motion made and passed by a vote of 3 for and 2 against, it was**

**RESOLVED to table the motion and to try to reach Mr. Vincens to see if he could meet with the Commission.**

Conflict between the two separate written statements submitted by Mr. Vincens within a short period of time caused concern.

Billie Sloane – Ms. Sloane has taken and passed the salesperson exam, however, the pre-licensing education submitted was completed outside the 18 month time period allowed under 12 AAC 64.063(a)(2). Ms. Harris has notified the applicant that she does not qualify for the license; however, Ms. Sloane requested the application be presented to the board. It was noted that staff do not have authority to deny a license, as only the Commission can deny.

A motion was made by Clary, seconded by Fluetsch, to approve the application. After further discussion, this motion failed unanimously.

The Commission acknowledged that they must follow the statutes and regulations when considering applications and that the requirements were clear in this instance. Staff noted that it is not unusual to have applicants wait until their pre-licensing education is almost at the end of the 18 month allowable period before they test. If an applicant fails the exam on the first attempt, they often have difficulty getting rescheduled for the exam prior to the 18 month period running out. The Commission could amend their regulation to allow a longer period of accepting the pre-licensing education, however, regardless of the cutoff date it is likely some applicants will miss the deadline again in the future.

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

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**RESOLVED to deny the application of Ms. Sloane based  
timeliness.**

Note: It was clarified that Ms. Sloane's fees would remain on file and credited to her (license fees are refundable, with the exception of the non-refundable application fee). The Commission confirmed that she could be licensed as soon as she provided current education.

**Promissor National Job Analysis for Real Estate**

The request for suggestions of names of Alaska licensees who may be interested in servicing on a National Job Task Analysis was reviewed. The Commission recommended the following: Peggy Ann McConnochie, Cody Gibson, Chris. It was realized that the above persons may already have full plate of activities, however, possibly they could refer others for this task force. Also Sandy at Anchorage Board of Realtors may be able to solicit names and provide recommendations.

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Open House – Board of Realtors

All were invited to attend the Board of Realtors open house this evening.

Recess: 4:10 p.m.

**Friday, March 5, 2004**

Meeting reconvened.

Chairperson Barbara Ramsey called the meeting to order at 9:35 a.m.

Members Present:

Barbara Ramsey, Associate Broker, 3<sup>rd</sup> Judicial District  
Glenn Clary, Public Member  
Larry J. Bauer, Broker, 1<sup>st</sup> Judicial District  
Rita Stuckart, Associate Broker, Broker at Large  
Bradley Fluetsch, Public Member  
David B. Somers, Broker at Large

Staff Present:

Nancy Harris, Licensing Examiner  
Barbara Gabier, Program Coordinator

Susan Rainey, Associate Broker, 4<sup>th</sup> Judicial District, joined the meeting shortly, via teleconference.

Schedule change, it was noted that Mr. Stebing's attendance would be a bit delayed, he would attend the meeting at 10:30 a.m.

**Old Business, Tab 11**

Barrow Remote Supervision: Regarding a past request by Mr. Ross and Ms. Sumida for remote supervision, Ms. Gabier reported that a message had been

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received from Mr. Ross and this matter was no longer an issue; the message indicated the person requesting supervision may no longer be in the State. Ms. Gabier confirmed she did not speak directly with Mr. Ross, however, this was the message left with another division staff member. No further action needed by the Commission.

John Hook, Potential Credential Broker Applicant: Ms. Gabier reported this request was still an active issue and Mr. Hook's attorney, Randall Farleigh was expecting feedback from staff after this meeting. Ms. Gabier noted that a draft/blank application form for Broker by Endorsement was included in the meeting packet. This application was developed by staff, in an attempt to determine all the statutory and regulatory requirements related to a broker endorsement application. Ms. Gabier noted that she had reviewed the requirements at length and the requirements were not always clear. A suggestion was for the Commission to review the new application to determine if the requirements listed were correct, then Ms. Gabier indicated she would be able to respond to Mr. Farleigh regarding what may be lacking in his client's paperwork. There currently is no application on file from Mr. Hook, therefore, a license approval/denial cannot take place at this meeting. It was noted failure to submit an application was through no fault of his own--Mr. Hook had not yet submitted an application because the application is provided as part the exam results. A candidate cannot take the Alaska portion of the exam until a "waiver letter" is provided from Commission staff. In Mr. Hook's case, Ms. Harris was concerned that Mr. Hook did not meet the requirements for having been a salesperson, without a break in service, for the required period of time prior to becoming a broker in another jurisdiction. The requirements of AS 08.88.171 and AS 08.88.263 were debated at length. Some members were concerned with the literal interpretation of .171, however, it was felt that .263 definitely leads an applicant back to the requirements of .171. Past applications have apparently been held to the strict interpretation of the provisions. Differences between scope of practice between broker practice and salesperson practice was debated. Discussion followed that possibly requiring the applicant to show a certain number of property transactions in the recent past would help to satisfy the members concerns that he had not been actively practicing, however, concern was noted that requirements could not be placed on an applicant that are not provided in law (i.e., an Alaska salesperson who is upgrading to broker does not have to provide proof of having been involved in any transactions in the past, they simply must show that they have had an active license for two years with no break in service within the recent 36 months of applying for the broker license).

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The definition of "salesperson" as it related to the provisions of .171 and .263 were questioned. One could read salesperson in this context to be a broker or associate broker. Concern was how could someone who was a broker in another jurisdiction for many years endorse to Alaska? Ms. Harris confirmed in screening applications, she has consistently looked for salesperson experience in the applicant's work history.

A motion was made by Bauer, seconded by Stuckart to: MOTION instruct staff to review all applications for experience within the previous 36 months, regardless of whether experience as a salesperson or broker.

The motion failed by vote as follows:

Bauer-Yes, Fluetsch – Abstain, all other members against.

Mr. Somers noted that after continual review of the statutes, he felt the approach in the motion had to be made legislatively. Ms. Rainey concurred with Mr. Somers and noted the Commission had applied the requirements in the past to mean salesperson experience, and had not accepted broker or associate broker experience.

Mr. Fluetsch stated he abstained because the confusion was so great surrounding this issue. Lengthy discussion followed. Staff advised they wanted to be certain they had the same understanding and interpretation of the requirements as the Commission, so that next week, when an applicant calls and asks what the requirement are--both Ms. Gabier and Ms. Harris would convey the same interpretation as the Commission members' interpretation. Everyone acknowledged there was no easy/clear answers to the issues raised. The need for legal advice was determined to be the appropriate next step.

A motion was made and passed to:

TABLE the matter until an Assistant Attorney General could be consulted and assist the Commission.

The Commission acknowledged that they may not have an answer on this issue until the next meeting.

**Application Review, Tab 7, continued:**

Mr. Vincens appeared before the Commission to discuss his application. Mr. Vincens confirmed he was not trying to mislead the Commission with his two statements which were submitted within a short period of one another. Mr. Vincens

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clarified he had been using cocaine at the time of arrest, however, he advised he has not used since the date noted in his statement.

**On a motion made by Fluetsch, seconded by Somers, and passed on a vote of 6 for and 1 opposed (Rainey), it was**

**RESOLVED to approve Mr. Vincens' application for salesperson licensure.**

Mr. Vincens thanked the Commission for their time.

Break: 10:30 a.m.

Reconvene: 10:35 a.m.

**Finding and Proposed Decision, Tab 10, continued.**

Mr. Stebing joined the meeting at the request of the Commission to discuss the Porto v. Bradbury matter, Case # S-23-004.

**On a motion made by Somers, seconded by Fluetsch, it was**

**RESOLVED to enter executive session in accordance with AS 44.62.310(d)(1), for the purpose of deliberating on Case # S-23-004.**

Executive Session: 10:40 a.m.

Staff and guests left the room.

Out of Executive Session: 11:20 a.m.

**On a motion made by Somers, seconded by Clary, and passed unanimously, it was**

**RESOLVED to adopt the Hearing Officer's Findings in Case #S-23-004, Option 1.**

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

**RESOLVED to adopt Mr. Stebing's recommendation to recover hearing costs in Case # S-23-004.**

**Pending Regulation Project, Tab 15**

Assistant Attorney Generals Gayle Horetski and Dave Brower, and Kurt West, Regulation Specialist, joined the meeting by teleconference.

Regulation project 99-03-0115: Purpose of this project was to implement the existing statute regarding disclosure of dual agency. The problem with the proposed regulations is they are trying to change the common law of agency. The law can be altered, but it must be altered by statute. HB 29 is currently pending in the Legislature which would essentially do in statute what the Commission was trying to do with these regulations. Ms. Horetski noted the Commission could take the project back and completely re-work the regulation if they wanted to, but it could not continue as written.

A motion was made by Rainey and passed by vote of 6 for and 1 oppose (Mr. Clary opposed) it was agreed to: TABLE the regulations until passing of HB 29.

The file is to remain open.

Regulation project 99-03-0165: This proposal was initiated in part to implement the on-line renewals. Two sections of the proposal were withdrawn and pulled out of the project. The problems with the sections pulled out were: 1) they were not included in the original notice; and, 2) they would allow a person to renew on-line, and the provisions of 08.88.241 and 08.88.251 were not reflected in the proposal.

It was recommended the project be closed. Staff advised that the portion of the regulations which were passed allowed for implementation of the on-line renewal. It is envisioned that the on-line program will be expanded in the future (such as allowing some to renew inactive) and prior to the next renewal, staff will likely have additional regulation changes needed to implement enhancements.

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

**RESOLVED to close this project.**

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Request for Legal Advice on Broker Endorsement Requirements: AS 08.88.171 and .263 and 12 AAC 64.061 were referenced. Mr. Brower was asked to assist the Commission in providing a definition of what was the legislative intent when the law refers to "a real estate salesperson." Mr. Brower briefly discussed a pending litigation case that is currently before the hearing officer, regarding Broker Endorsement qualifications. Mr. Brower agreed to review the requirements and provide the commission with feedback at a later date.

Lunch Break: 12:04 p.m.

Reconvene: 12:45 p.m.

**Education Committee:**

Ms. McConnochie joined the meeting via teleconference. Ms. McConnochie gave an overview of the Education Committee and discussed the activities and proposal for post licensing education requirements as described in her February 23, 2004 Correspondence to the Commission. Discussion followed regarding general practice of various Brokerages and the variance of education opportunities that persons in small firms vs. larger firms may have.

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

**RESOLVED to pursue legislation for post licensed education as outlined in Ms. McConnochie's February 23, 2004 memorandum.**

The Commission thanked Ms. McConnochie for all her hard work and efforts on behalf of the Education Committee.

**Remote Supervision Request, Tab 7, (Wakefield's) continued.**

It was acknowledged that the Commission did not have letters from the Brokers in Seward, stating that they were not willing to employ licensees, however, the Wakefield's assured the members that they had talked with the Brokers and they were not interested in property management (for various reasons). The Wakefields were questioned regarding how widely they had advertised the business for sale and it was suggested they may want to advertise wider. Ms. Martin became interested



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through her husbands contact with the Wakefield's as Mr. Martin does many of the fix-it projects for the properties. Ms. Martin is a professional and very eager to learn. She took the pre-licensing education class was led to believe that the Commission would need to approve this remote supervision plan before she could practice. She plans to take the exam as soon as she gets approval from the Commission. Ms. Martin has approached both Brokers in Seward to see if she could work for them as the licensee to do the property management once she got her license. Ms. Martin plans to buy the business once she is licensed; she has tried to find a place go once she is licensed but the other brokers do not want to do property management. The Wakefield's plan to supervise Ms. Martin until such time she can upgrade and become a broker. The technical aspects of the regulations were discussed; currently, there are two brokers in Seward who are willing to employ licensees. The problem is, the brokers in Seward do not want to do property management. The members were concerned with how far they could take this in interpreting the law. Venturing off the regulations, will require the Commission to be consistent in applying the law to others in the future. Mr. Bauer stated that in fact, a licensee can do property management from a distance— there is nothing that prevents this. It is a better service to the client if someone if there to look at the property and represent the property manager— and that could be an employee. Mr. Bauer noted that in Juneau, there are buildings managed by people in Anchorage, so it can be done. It is prudent to be on-site, but the licensee does not have to be. Mr. Bauer felt there was nothing preventing Ms. Martin from buying the business and hiring the Wakefield's to manage the business from a distance.

**A motion was made by Ms. Rainey, and seconded by Somers, to: deny the Wakefield's application for a remote site supervision. The motion was amended by Rainey, and seconded by Somers, and passed by 6,for and 1 oppose (Bauer), and it was**

**RESOLVED to deny the Wakefield's request for a remote site supervision.**

It was noted the amendment was necessary as there was no application/licensee before them, but rather a *request* related to a possible future licensee.

Some areas the Commission stated they would like to see if this comes back to them are:

- Written statements from the brokers in Seward.
- Work Plan for Remote Supervision, including how Contracts will be reviewed and executed as well as how trust accounts will be handled.

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- Ms. Martin to have a license.

The members thanked the Wakefields for attending. They expressed appreciation for the Wakefield's goal of following the law and working through this issue with the Commission. The Commission noted they would be willing to entertain a teleconference meeting if a request were presented which was not a hypothetical and additional information as noted above were available.

Break: 2:30 p.m.

Back on Record: 2:45 p.m.

**New Business**

**Legislative Audit, Sunset Report, Tab 13**

Information in the packet was reviewed, including a letter from past Chair Jeannie Johnson, thanking everyone for the time they had worked together on Commission activities. This section was informational and no action was needed. HB 418 is the continuation bill and it is expected to pass by the end of session.

**Legislation, Tab 14**

Mr. Somers briefly reviewed pending legislation with the Commission.

HB 9 – Home Inspectors. This bill passed last year, and licensing would begin July 1, 2004. Ms. Gabier reported that this licensing program does not have a board/commission and is a program administered by the division.

HB 29 – Brief overview given and discussion of various aspects of the bill in its various versions. One of the items contained in HB 29, is the publication of informational pamphlets. These forms are being generated and should be available in draft if the legislation passes.

HB 257 – This bill passed last session , is being challenged and is in Superior Court.

**ARELLO Conference Information, Tab 16**

**After discussion, on a motion made by Fluetsch, seconded by Stuckart and approved unanimously it was**

**RESOLVED to request one member to go to the April mid-year ARELLO conference in Omaha, Nebraska.**

(Note: An amendment was made and seconded, to send two members to the mid-year conference and two members to the annual meeting, however the amendment was withdrawn with concurrence of the second.)

It was determined that a request would be presented to Director Urion for Ms. Ramsey to attend the conference. Benefit of staff attending these conferences was also noted. In the future, the Commission will consider requesting staff to attend in conjunction with a member. The Commission expressed their support of a member attending the October 2-5 Annual Conference in Pittsburgh, however, would discuss this again at the next meeting.

**Proposed Surety Fund Report, Tab 17**

Ms. Gabier reported that for future meetings, she plans to have staff bring to the Commission a quarterly report regarding the Surety Fund Claim Activity. This is envisioned to be a brief report, however, it would include the number of open surety fund claims, the date of the claim, the number of pending claims that have been forwarded to the hearing officer, the number of claims in the fiscal year that have been resolved, either through a decision or that have been withdrawn and finally, the number that are pending that have not yet been forwarded to the hearing officer. Whether the names of the persons could be included in the report was still a matter for discussion (i.e., the Commission is interested in a report that may reflect repeat offenders). Ms. Gabier stated she planned to briefly discuss this with the Hearing Officer. The Commission is the ultimate judge in deciding these matters and knowledge of additional claims pending on behalf of the same licensee as a case before the Commission may be problematic. Case numbers will be provided.

The statutory limit for the fund balance was questioned. Ms. Gabier reported that she believed the fund maximum is \$500,000 and that if the balance exceeds that amount the monies go to the general fund. The quarterly financial reports should

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reflect the fund balance; when the balance is at the upper limits, reducing the fees coming into the fund is important.

**Recap**

Chairperson Ramsey gave an overview of the Commission priorities and notes as collected during the meeting.

**2004 REC Goals and Priorities**

- 1) Begin the process to prepare the policies, pamphlet and broker supervision outlined in HB 29 REC
  - a) Pamphlet
    - i) How will it be done?
    - ii) By Who?
    - iii) When Due?
    - iv) Second document?
    - v) Third document?
  - b) Policies
    - i) How will it be done?
    - ii) By Who?
    - iii) When Due?
  - c) Broker Supervision
    - i) How will it be done?
    - ii) By Who?
    - iii) When Due?
    - iv) Include Home office supervision
    - v) Remote office supervision
- 2) Direct Staff to update Broker manual w/or without HB 29 (if it does not pass) with the intent to eventually put on-line
- 3) Direct staff to send out letter to transgressor's State Licensing Department with cc of warning letter notifying the State of the request.
- 4) Direct staff to prepare process to follow liens/attach pfd.
- 5) Call to the industry for anyone interested in the executive administration position to apply immediately.
  - a) This is a state appointment position.
  - b) Contact Director Urion for more information.

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- 6) Provide Director Urion with the necessary detailed information he needs to approval travel authorization for meetings and conferences.
  - a) Before:
    - i) Details of classes attended
    - ii) How this information will help the REC and industry
  - b) After:
    - i) Presentation to the REC
      - (1) What was useful?
      - (2) Can it be implemented/modified for Alaska
        - (a) Important enough to be placed on the goals/priority list
        - (b) Need more information?
        - (c) Discarded?
    - ii) Barbara Ramsey to attend Regional (4/22/04 – 4/24/04) and make a report back to committee
- 7) Broker required to have doc on file that referral originator is licensed in the state where they reside.
  - a) Best business practice note in newsletter?
  - b) Regulation?
  - c) Legislative Committee to look at tentative language – Dave Somers

Under number 4, it was noted that at the next meeting the Commission would like to have an Assistant Attorney General available to discuss the legal process of how to file liens against property of a licensee/past licensee when reimbursement is due. The Commission is interested in both disciplinary and surety fund fines/reimbursements which are outstanding. Also, it was noted that a report of outstanding disciplinary fines would be handled through the investigation unit, while SF reimbursements would be reported through the Executive Administrator.

Under number 5, the salary of the Administrator was briefly discussed as well as the continued goal to see a licensee named to the position. It was noted interested persons should contact Director Urion. Mr. Clary asked the members to keep an open mind that the new Administrator may not be a licensee.

**Next Meeting**

**On a motion made by Clary, seconded by Stuckart, and passed unanimously, it was**

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**RESOVLED** the next meeting would be June 10 and 11, in Fairbanks.

Members agreed they would be willing to start the meeting late on June 10, in an effort to allow members to travel the morning of the meeting.

(Ms. Rainey was disconnected.)

**On a motion made by Fluetsch, Seconded by Somers, and passed unanimously, it was**

**RESOLVED** the September meeting would be the 14<sup>th</sup> and 15<sup>th</sup>, in Anchorage.

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

**RESOLVED** the December meeting would be the 2<sup>nd</sup> and 3<sup>rd</sup>, in Anchorage.

Election of Officers, Tab 19

**On a nomination made by Fluetsch, seconded by Bauer, and unanimously agreed upon, it was**

**RESOLVED** that Barbara Ramsey continues as Chairperson of the Commission.

**On a nomination made by Stuckart, seconded by Fluetsch, and unanimously agreed upon, it was**

**RESOLVED** that Larry Bauer be appointed as Vice Chairperson of the Commission.

**On a nomination made by Bauer, seconded by Fluetsch, and unanimously agreed upon, it was**

**RESOLVED** that Rita Stuckart be appointed as the Education Committee Liaison.

**Persons to be Heard/Closing Comments**

Ms. Cardoza expressed her congratulations to the Commission; she recognized the Commission was hitting the ground running and wanted to express her appreciation.

Chairperson Ramsey noted her appreciation to the new members for their contributions and recognized their participation as a valuable asset to the Commission. She also thanked staff for the time and efforts put forth in assisting during the meeting.

**Education and Instructor Applications**

Ms. Gabier requested a member be appointed that would work with her on reviewing and approving education materials which are pending in the Commission office.

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

**RESOLVED that Ms. Stuckart (Anchorage) and Mr. Bauer (Juneau) be the Commission's designees to approve education and instructor materials.**

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

**RESOVLED to adjourn.**

Meeting adjourned at 3:50 p.m.

Prepared and submitted by Division Staff.

Approved:



Barbara Ramsey, Chairperson  
Real Estate Commission

Date: 8/31/04