

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

REAL ESTATE COMMISSION
MEETING MINUTES

June 8, 2011

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate Commission was held June 8, 2011, at the State of Alaska Atwood Building Conference Room 1270, 550 W. 7th Avenue, Anchorage, Alaska.

Wednesday, June 8, 2011

Agenda Item 1a

Call to Order

Chairman Bradford Cole called the meeting to order at 9:13 a.m. at which time a quorum was established.

Roll Call

Members present:

Dave Somers, Broker, Broker at Large, Vice Chairman
Charlene Flyum, Public Member
Christina Swires, Associate Broker, Broker at Large
Nancy Davis, Broker, 1st Judicial District, Education Liaison
Gene DuVal, Associate Broker, 4th Judicial District
Marianne Burke, Public Member
Brad Cole, Associate Broker, 3rd Judicial District, Chairman

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Project Assistant

Guests Present:

Michele Wall-Rood, Investigator, Division of Corporations, Business & Professional Licensing
Margo Mandel, Investigator, Division of Corporations, Business & Professional Licensing
Deborah Murphy, Associate Broker, Prudential Jack White/Vista Real Estate
Helen Jarratt, Salesperson, Re/Max Properties, Inc
Art Clark, Broker, Real Estate Brokers of Alaska
Anita Bates, Broker, Bates & Associates Realtors
Robert Auth, Assistant Attorney General, Department of Law

Guests Present via telephone:

Gayle Horetski, Assistant Attorney General, Department of Law
Jo Ellen Hanrahan, Division Director, Administrative Services, Department of Commerce

Agenda Item 1b

Approval of Agenda

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

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

RESOLVED to approve the meeting agenda as presented.

All in favor; Motion passed.

Agenda Item 2a

Approval of Meeting Minutes

March 9-10, 2011

Commission members reviewed the March 9-10, 2011 meeting minutes as presented.

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

RESOLVED to adopt the March 9-10, 2011 meeting minutes as presented.

All in favor; Motion passed.

Mr. DuVal asked, where in the process is the Department's version of the Errors & Omission insurance regulations? Ms. Walsh stated that she spoke with Jun Maiquis, Regulation Specialist and he has not received a current draft. Ms. Walsh said she has spoken with Signe Anderson and that they are still working on the regulations.

Agenda Item 3a

Public Comment

Review public comments regulations 12 AAC 64.

Ms. Walsh stated that for clarification that the public comments are for the regulation project for recovery fund issues and supervision. The Commission members reviewed the public comments and the drafted regulations as presented. The regulation project was tabled for approval until later in the afternoon.

Agenda Item 3b

Comments from AAR on Legal Entities 12 AAC 64.

Helen Jarratt introduced herself to the Commission. Ms. Jarratt read a letter to the Commission stating that the Alaska Association of Realtors is opposed to the proposal that would authorize paying commissions to all legal entities. Ms. Jarratt asked the Commission if they had any comments or questions.

There were no comments or questions.

Agenda Item 3c

Community Association/Conflict of Interest (E-mail)

Ms. Harris shared an e-mail from John Chenoweth with the Commission regarding conflict of interest with Community Association Management. Mr. Chenoweth's Community Association is managed by a property management company and one of the individual unit owners asked the same company to manage his unit. Is this a conflict of interest? Would they have to disclose it and if the community association board had the authority to say that they could not allow the property management company to manage the individual unit? Mr. Somers stated that this is out of the Commission's purview and to tell them what they can and can't do. Mr. Cole asked

Ms. Harris to respond to Mr. Chenoweth's e-mail letting him know that it is a conflict of interest but it is the Community Association decision whether they allow the member to move forward with doing the property management.

Agenda Item 4a

Education Report

Education Statistics

Ms. Harris presented the education statistics to the Commission. As of May 5th, 2011 the pre-licensing, broker upgrade and post-licensing education courses have stayed the same since the last reporting period. There were 263 Elective Continuing Education courses and 40 Designated Continuing Education courses. Currently there are 373 courses that are approved, 24 new courses, 53 sponsors, 96 permanent instructors, and 3 temporary instructors.

Agenda Item 4b

Test Development Update

Ms. Harris presented the Commission members with an update of the test development which was recently completed. Ms. Davis also shared with the Commission that she attended the test development workshop. She said the test development workshop was very interesting and that they are a great group of people who participated. As a group they went through test questions and made changes. There were about 15 new questions that were added to the test.

Agenda Item 4c

Train the Trainer Development

Ms. Walsh asked, "Due to the low recovery fund amount can we seek sponsorship for Train the Trainer?" Ms. Walsh received an opinion from Julia Bockmon, Assistant Attorney General with the Department of Law, and she did not see a problem with getting sponsors unless there is a personal gain for personnel or Commission members. There is still the question if the Commission can charge the licensees a fee if we receive sponsorship?

Agenda Item 5a

Executive Administrator's Report

Recovery Fund Report

Ms. Walsh presented the recovery fund report and the e-mail received from Jo Ellen Hanrahan, Director of Administrative Services for the Department of Commerce with the Commission and stated that she does have a read-only access for the recovery fund. Ms. Hanrahan could not schedule another meeting with the Commission because the Legislature is in session. Ms. Burke stated, "We still do not have all of the information that the Commission is looking for, there is some information that is still missing. We are talking to someone that doesn't understand accounting, therefore we're talking in a foreign language." Mr. DuVal asked when does the Department do the budget? Ms. Walsh stated that the budget is done in August for 2013. Ms. Burke stated that they are rolling forward surety fund expenses which are not appropriate to the new fund and are shifting other expense to the recovery fund that they did not pick up in the past and cannot put expenses where ever there is room and they cannot pay for old expenses that were not picked up when they should have been. In addition, the Commission should receive a balance sheet. Ms. Burke suggested that the Commission should do the recovery fund budget because the Department doesn't know what the recovery fund does. Ms. Burke stated that by reading the e-mail from Ms. Hanrahan, she doesn't understand what each statement is telling us and we need this in greatest detail and not summarized. Mr. DuVal asked Ms. Walsh

to explain to the Commission how the surety fund budget is prepared. Ms. Walsh explained that she has never been involved in that discussion and that the Division prepares it. Ms. Burke stated that because the Commission makes deposits into the real estate recovery fund and that Ms. Walsh should track this and make sure that it is all going into the recovery fund and not the general account. Ms. Burke suggested that the Commission have a follow up meeting with Mr. Habeger at his convenience regarding this issue.

The Commission Members recessed for break at 10:14 a.m.
The Commission Members reconvened from break at 10:25 a.m.

Mr. Cole asked Ms. Walsh and Ms. Burke to meet with Mr. Habeger and provide a short e-mail summarizing the high points. Ms. Walsh will ask Ms. Hanrahan for a new projection with the new fees.

Agenda Item 5b

Revenue and Expenditure Report

Ms. Walsh did not receive the Revenue and Expenditure Report because the person that prepares this report retired May 30, 2011. Mr. Habeger does not know when he will fill that position, however, as soon as he does, he will have the new person provide Ms. Walsh with the report and she will e-mail that report to the Commission members. Ms. Burke stated that this scares her because the position will not be filled until July, attached it is going to be a reoccurring problem because they will put a bunch of FY11 into FY12.

Agenda Item 5c

Meeting with Don Habeger and Marianne Burke

Ms. Walsh gave the Commission a recap of the meeting she and Ms. Burke had with Mr. Habeger.

Agenda Item 5d

Attend ARELLO Conference approval

Ms. Walsh asked the Commission members for approval for her to attend the ARELLO Annual Conference in Baltimore, Maryland to be held September 28 through October 1, 2011.

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

RESOLVED to approve Ms. Walsh to attend the ARELLO Annual Conference in Baltimore, Maryland to be held September 28 through October 1, 2011.

All in favor; Motion passed.

Agenda Item 6a

Licensing Report

Licensing Statistics

Ms. Walsh presented the licensing report for the period of February 22 through May 20, 2011. There were 43 new licensees, total number of licensees with an expiration date of 1/31/2012 was 2386, there are 2222 active licensees, 16 lapsed licensees, 83 inactive licensees, 1 deceased, 2 surrendered, 58 licensees that broke contact with broker, 3 on probation and 1 suspended

license. 53 licensees completed their post-licensing education. Since the last licensing report there were 10 main offices and 3 branch offices that opened. The locations were in Anchorage, Wasilla, Palmer, Fairbanks, Ketchikan and Craig.

Agenda Item 6b
Regulation Tracker

Ms. Walsh presented the regulation tracker to the Commission. Mr. Cole asked Mr. DuVal if he had any questions about the regulation tracker. There were no questions.

Agenda Item 7a
Investigator's Report
Statistical Report

Ms. Wall-Rood presented the Commission with the statistical report for the period of February 22 through May 17, 2011. There were 23 new opened cases, 17 closed cases and there are a total of 165 cases that are opened.

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

RESOLVED to go into an executive session Per AS 44.62.310 (c)(2) to discuss new applications with yes answers.

All in favor; Motion passed.

Into Executive session 10:35 a.m.

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

RESOLVED to come out of the executive session.

All in favor; Motion passed.

Out of Executive session 11:22 a.m.

Agenda Item 7b
New Applicants
Kristy Miller

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

RESOLVED to table Kristy Miller's application until legal counsel is available.

All in favor; Motion passed.

Stephanie Wyszowski

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

RESOLVED to approve Ms. Wyszowski's application by endorsement.

All in favor; Motion passed.

Brandy Sullivan

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

RESOLVED to approve Ms. Sullivan's application by endorsement.

All in favor; Motion passed.

Agenda item 8b

E-mail from Jerry Koerner: regulation 12 AAC 64.125

The Commission members reviewed an e-mail from Jerry Koerner regarding regulation 12 AAC 64.125. Mr. Koerner asked the Commission, "Does he have to designate his associate broker if he is out of the office?" Mr. Somers suggested referring Mr. Koerner to the statutes and regulations and indicating how he can supervise electronically. Mr. Cole stated that the independent brokers are the ones that are impacted by this and they want to make sure that they are not being unduly regulated against and that the Commission is taking their needs and issues into consideration. Mr. Cole asked that an e-mail be sent to Mr. Koerner stating that this will become clear when the regulations are accepted. Mr. Somers suggested to also provide in the e-mail what the current rules are and that Mr. Koerner can supervise out of town as long as it's done properly.

Agenda Item 8c

Conflict with language on Property Disclosure

Ms. Harris received a phone call from a licensee regarding a conflict with language on the Property Disclosure form and the statutes. The Property Disclosure form states that a murder or suicide occurred within three years and in the statutes it states one year. Ms. Harris spoke to Mr. Maiquis and he said that as long as it is more than one year it should be fine. The statutes are for licensees and the Property Disclosure form is more for the seller, therefore, the Commission members do not see a conflict with the language.

The Commission recessed for lunch at 11:30 a.m.

The Commission reconvened from lunch at 1:05 p.m.

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

RESOLVED to move into an executive session Per AS 44.62.310 (c)(2) to discuss Kristy Miller's application by endorsement.

All in favor; Motion passed.

Into Executive session 1:06 p.m.

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

RESOLVED to come out of executive session

All in favor; Motion passed.

Out of executive session 1:10 p.m.

On a motion duly made by Mr. DuVal, seconded by nobody, it was

RESOLVED to move into executive session Per AS 44.62.310 (c)(2) to speak with Gayle Horetski, Assistant Attorney General.

Motion was withdrawn.

Agenda Item 7b cont.

New Applicants

Kristy Miller

Ms. Horetski introduced herself and thanked the Commission members for taking their time to speak with her. Ms. Wall-Rood gave a quick review of Kristy Miller's application by endorsement regarding the statutes pertaining to that seven years must have lapsed from the date a person completed their sentence imposed upon conviction. Ms. Horetski stated that since the sentence was set aside, in reality there was no sentence. If there is no sentence, the seven years does not apply. Ms. Horetski along with the Commission members reviewed statute 12.55.085 provided by Ms. Wall-Rood which was obtained from the Alaska Legal Resources. Ms. Horetski stated that this is a legal issue and should be researched. She also suggested that the application either should be tabled until the next meeting or grant the application. Ms. Walsh asked if a mail ballot or a teleconference at a later time would be appropriate. Ms. Horetski stated that it is up to the Commission members if they have reviewed the application and came to a decision, the only hesitation is the legal issue that might be okay. Mr. Somers asked if we can throw the seven years issue out or it would be seven years from the conviction if there is no sentence. Ms. Horetski stated that there was no sentence upon the conviction and if the Commission is comfortable with the interpretation that there was no sentence imposed then there is no seven years restriction.

Agenda Item 8a

Statute Review 08.88.398 License Assistant

Ms. Horetski reviewed statute 08.88.398 and House Bill 33 with the Commission regarding a licensed assistant. Ms. Horetski stated that in the statute it doesn't say that there are two different brokers involved. This language was adopted in 1998, in Section 32, Chapter 45. It was originally introduced in 1997 and the language on License Assistant in Section 398 was not in the bill. A series of hearings were held and there was a break in the session. The next version of the bill, which was adopted January 1998 at the next Legislative session, the changes were incorporated over the interim and in that version of the bill the language appeared. In other versions of the bill the language was repeated, it was not altered. Since there is no copy of the memorandum file, all they have to go by is sectional analysis, the bill itself and the statement from the Chair at that time as to what this means. Ms. Horetski apologizes to the Commission that she is not able to provide much assistance regarding this matter.

Agenda Item 4c cont.

Train the Trainer Development

Commission members asked Ms. Horetski if they can charge the licensees a fee for Train the Trainer if we receive sponsors. Ms. Horetski does not see any reason the Commission cannot charge licensees if it has been done in the past. Ms. Horetski suggested that the Commission seek sponsorship from all title companies and not just one or two.

Agenda Item 9b

Old Business

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

RESOLVED to move into executive session Per AS 44.62.310 (c)(2).

All in favor; Motion passed.

Into Executive session 2:22 p.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of Executive session 3:17 p.m.

Agenda Item 9d

Henry Bartos – Case #3000-04-012

Mr. DuVal stated to the Commission, due to multiple conversations with Mr. Bartos about his case, he would like to recuse himself. Robert Auth, Assistant Attorney General with the Department of Law, discussed the case with the Commission. Mr. Bartos participated via telephone. Mr. Auth stated that the Superior Court affirmed most of the Commissions decisions on the four counts. Part of the decision that was reversed and remanded is the issue of the finding of Lori Schooley who was employed by Mr. Bartos with regard to her taking his place in one transaction. The court said that substituting for a broker for one day doesn't rise to the level of employment that requires something more than that. Since the Commission found sanctions of \$1000 and 6 hours of education for violation of employing Ms. Schooley on two occasions and one of them was reversed. The court said that this should be remanded back to the Commission to determine now that it's only based on one instance and if the Commission still wants to impose the \$1000 fine and education. Mr. Cole asked that based on the fine matrix that the commission has been using, is there any precedent that would give the Commission indication as to what would be a fair and equitable fine for educational requirements? Mr. Auth stated that on the remand issue it couldn't be more than \$1000. Mr. Cole asked if the decision must be made today or can it be presented at the next commission meeting. There is no deadline for the decision.

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

RESOLVED to reduce the monetary fine from \$1000 to \$500 and continuing education from 6 hours to 3 hours.

Ms. Flyum stated that the first violation wasn't as severe as the second set of facts and her concern is that it should fit that to a point, one was for one day and the other one was for a number of months. The educational requirement should be rated as 80/20 based on a percentage rather than just cut it in half. Ms. Burke agreed to Ms. Flyum's proposition. Ms. Flyum made a friendly amendment to go with 80 percent rather than half for both the monetary fine and the educational requirements. The friendly amendment is that the monetary fine will be \$800 and 4 hours of continuing education requirements. Ms. Burke withdrew her motion.

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

RESOLVED to adjust the monetary fine to \$800 and adjust the educational requirements to 4 hours as referenced in the remand.

All in favor; Motion passed.

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

RESOLVED for the suspension for Mr. Bartos to be effective July 1, 2011.

All in favor; Motion passed.

Mr. Bartos will receive a notification via postal service regarding the suspension and all the licensees will receive another notification regarding change of brokers for the time of the suspension of Mr. Bartos' license.

Agenda item 7b cont.

New Applicants

The Commission members asked Mr. Auth if someone has been convicted of a crime, but it was not a felony and the sentence has been set aside does the language waiting seven years apply. Mr. Auth stated that generally all SIS's are always considered convictions.

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

RESOLVED to move into executive session Per AS 44.62.310 (c)(2) to discuss AS. 08.88.0171 Eligibility for a License.

All in favor; Motion passed.

Into Executive session 3:52 p.m.

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

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of Executive session 4:20 p.m.

Agenda Item 5a cont.

Recovery Fund Report

The Commission spoke with Jo Ellen Hanrahan, Division Director, Administrative Services for Department of Commerce regarding the recovery fund report. Ms. Burke stated that the Commission would like to have all three statements. Without a balance sheet the revenue and expenditures do not tie to anything. The Commission wants to know if this is on a cash basis, a modified accrual or a full accrual. Ms. Hanrahan stated that at this time she cannot tell the Commission which one it is. Ms. Walsh stated the Commission members are ready to adopt regulations pertaining to the recovery fund fee. Ms. Hanrahan suggested that Ms. Walsh speak with Mary Manning, Accountant with the Division of Administrative Services in the Department of Commerce.

Agenda Item 7b cont.

New Applicants

Kristy Miller

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

RESOLVED to deny Kristy Miller's application.

All in favor; Motion passed.

Agenda Item 9a

08.88.071 Expand Duties and Powers

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

RESOLVED to table 08.88.071 expanding the Duties and Powers of the Commission until September 7-8, 2011 meeting.

All in favor; Motion passed.

Agenda Item 9c

Adopt Regulation Project

On a motion duly made by Mr. Somers, seconded by Mr. DuVal it was

RESOLVED to table 12 ACC 64.059(b)(6) through 12 AAC 64.073 until further notice.

All opposed; Motion failed.

On a motion duly made by Mr. Somers, seconded by Mr. DuVal, it was

RESOLVED to table 12 AAC 64.059(b)(6) through 12 AAC 64.071(f)

All in favor; Motion passed.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOVED to adopt 12 AAC 64.073 as written.

All in favor; Motion passed.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOLVED to adopt 12 AAC 64.078 as written.

All in favor; Motion passed.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOLVED to adopt 12 AAC 64.111 as written.

The Commission further discussed the amended subsection of regulation 12 AAC 64.111.

All opposed; Motion failed.

On a motion duly made by Mr. Somers, seconded by Mr. DuVal, it was

RESOLVED to amend the motion by removing the comma after the first sentence after the work "money".

Motion withdrawn.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOLVED to move forward with amended regulation 12 AAC 64.111 by removing a comma after the word "money" in the first line.

All in favor; Motion passed.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOLVED to adopt 12 AAC 64.125(e) as written.

All in favor; Motion passed.

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

RESOLVED to withdrawal 12 AAC 64.125(f)(1)(2) from the regulation project.

Mr. Somers stated that this needs to be withdrawn from this project because it was mistakenly put in when it went out for public comment. Ms. Walsh stated that in 2008 the Commission

rejected this when it came before them at the September 15 and 16, 2008 meeting. No action was taken, however, this proposed sheet inadvertently went to the Regulation Specialist.

All in favor; Motion passed.

On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was

RESOLVED to adopt 12 AAC 64.130(8) as written.

The Commission further discussed 12 AAC 64.130(8). Mr. DuVal suggested that the commission members should look at the public comments written by Ms. Ramsey.

On a motion duly made by Mr. Somers, seconded by Mr. DuVal, it was

RESOLVED to move 12 AAC 64.130(8) to New Business until the September 7-8, 2011 meeting.

All in favor; Motion passed.

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

RESOLVED to table 12 AAC 64.280 through 12 AAC 64.325 until further notice.

All in favor; Motion passed.

**On a motion duly made by Mr. DuVal, seconded by Mr. Somers, it was
RESOLVED to adopt 12 AAC 64.980(a) as repealed.**

All in favor; Motion passed.

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

RESOLVED to adopt 12 AAC 64.990(b) as written.

All in favor; Motion passed.

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

RESOLVED to adopt 12 AAC 64.990(f) as written.

All in favor; Motion passed.

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

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

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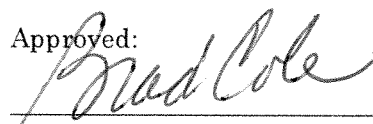
Mr. Cole thanked Mr. Somers for his experience and expertise he provided the Real Estate Commission during his time he volunteered as a Real Estate Commission member.

Meeting adjourned at 5:45p.m.

The Commission adjourned until the next regular scheduled meeting in September 7-8, 2011 in Anchorage.

Prepared and submitted by Beata
Smith.

Approved:



Bradford Cole, Chairman
Alaska Real Estate Commission

Date:

