

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

MINUTES OF MEETING
SEPTEMBER 20 & 21, 2006

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Real Estate Commission was held September 20 & 21, 2006, Best Western Lake Lucille Inn, 1300 W. Lake Lucille Drive, Hallea Room, Wasilla, Alaska.

Wednesday, September 20, 2006

Agenda Item 1 Call to Order

Chairperson Barbara Ramsey called the meeting to order at 9:00 a.m.

Roll Call

Members present constituting a quorum were:

Barbara Ramsey, Associate Broker, 3rd Judicial District
David B. Somers, Broker at Large
Gene DuVal, Associate Broker, 4th Judicial District
Roger Stone, Broker, 1st Judicial District
Tim Worthen, Public Member
Rita Wilson, Associate Broker, Broker at Large

Members absent (excused):

Bradley Fluetsch, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner

Guests present via teleconference

Andrew M. Hemenway, Administrative Law Judge
Dale A. Whitney, Administrative Law Judge
Christopher Kennedy, Administrative Law Judge
Margo Mandel, Investigator
Steve Winker, Paralegal

Guests present:

Dave Feeken, Alaska Association of Realtors
Uli Johnson, Double Eagle Real Estate & Investments, Ltd.
Leslie Brady, Sheppard & Associates

Approval of Agenda

The Commission members discussed the changes to the agenda. A 15 minute work session was added to the agenda after the lunch break to review the supplemental information for agenda item 11(1). Added to the

agenda under item 11(h) was discussion regarding the State of Alaska Real Estate Commission web site.

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to approve the agenda as amended.

All in favor. Motion passed.

Agenda Item 2

Approval of Minutes

No corrections to the June 12 & 13, 2006 meeting minutes.

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

RESOLVED to approve the June 12 & 13, 2006, meeting minutes.

All in favor. Motion passed.

Agenda Item 4

Public Comment

There was no public comment.

Agenda Item 5

Investigator Report

Statistics

Ms. Mandel presented her statistical report for the period of May 17, 2006 through September 6, 2006 to the Commission.

The Commission members reviewed and discussed Ms. Mandel's report as presented.

On a motion duly made by Stone, seconded by Wilson, it was

RESOLVED to accept the investigator's report.

All in favor. Motion passed.

Surrender of W. Nakomoto

Margo Mandel presented to the Commission the surrender of Wesley Nakomoto's license for consideration.

The Commission members reviewed and discussed Mr. Nakomoto's surrender as presented.

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

RESOLVED to accept the voluntary surrender of W. Nakomoto.

All in favor. Motion passed.

Top 10 Complaints

Ms. Mandel provided to the Commission with information requested at the June meeting of the Common Types of Complaints Received for Investigations.

Commission members reviewed information as presented. Ms. Ramsey said that it would be a good item to add to the FAQ section on the web site when it is developed.

AG Verbal Comment

Mr. Somers asked Ms. Mandel if she had received a comment from the Attorney General's office regarding the question discussed at the June meeting regarding two licensees in another community, across the state, being supervised by a broker. The Commission requested, from the June 2006 meeting, that you check and see how they are displaying their letterhead, business cards, do they have a sign at their home and where they are meeting the people. Has that been looked into?

Ms. Mandel said the Assistant Attorney General, Robert Auth, had said that she could not provide this information to the Commission because it is confidential correspondence between the Attorney General's office and the division. She said she could give the Commission a summary of his comments regarding this issue. Basically, he stated that there is not much in the way of guidance on this issue in the statutes or the regulations. But, what the guidelines do say is that the office does not have to be in a normal business location, it just has to be where the employees transact business and receive phone calls. It comes down to the issue whether or not the licensees are actually transacting business and receiving phone calls from their homes. If they have business cards, phone listings, advertisements; that type of thing, indicating that their home is their principle place of business that would be a branch office. However, in the recent case of the two licensees in Kenai with their Broker in Anchorage, it seems to be ok since they advertise their business location to be in Anchorage and there are no clear cut statutes and regulations regarding this issue.

Commissioner DuVal asked Ms. Mandel about third party inducements, if the inducement came from a third party (e.g. Alaska Airlines) that the AG had determined that there was no violation. Is that correct?

Ms. Mandel said she is not sure if the AG had determined that there was no violation but, yes, if the transfer of whatever it is of value is occurring directly between the buyer and seller and it shows up on the settlement

statement, with the value factored into the transaction, that is fine, as long as it is not something that the licensee is giving as an incentive for somebody to do business or to buy a house.

Mr. DuVal asked what if the value is coming from Alaska Airlines, Lowes, or Home Depot, if you use a certain licensee? If you use one of their preferred licensees they will give you AK Airline miles, they will give you \$100 from Home Depot, etc.

Ms. Mandel said that those businesses are not licensees. The Real Estate Commission does not have jurisdiction over those businesses; they are not real estate businesses. What they are doing as incentive towards the licensee is not covered in the statute. The only concern for a payment is from a licensee to an unlicensed person.

The seller would have to pay for the miles not the licensee but the value of the incentive has to show on the settlement statement just like anything else that transferred. If this information is not appearing on the settlement statement it could be a federal violation, it could be considered loan fraud.

Mr. Somers asked Ms. Mandel if licensees are aware of bank fraud taking place in their transactions is there a licensee violation?

Ms. Mandel said, it could be; although, it is difficult to prove something like that. It is very difficult unless you have people come forward, the people involved in the transaction or the licensee. Otherwise, how are we going to know about it? It could be considered misrepresentation because technically the mortgage lender could be considered principle in a transaction.

Ms. Mandel recommended increasing the education requirements and tightening the statutes. AS 08.88.071, if fraud could be tied to a real estate transaction this would reduce this activity.

The Commission recessed for break at 9:45 a.m.
The Commission reconvened from break at 10:00 a.m.

Agenda Item 3

Surety Fund Issues

Douglas v. Ward & Korting, S-26-008

(Administrative Law Judge Whitney)

Administrative Judge Whitney was present by teleconference for discussion and questions on this claim.

The Chair, Ms. Ramsey, moved to enter into Executive Session according to AS 44.62.310.

Commission member DuVal recused himself from this claim.

Commission moved into Executive session at 10:03 a.m.

Commission out of Executive session at 10:08 a.m.

On a motion duly made by Wilson, seconded by Somers, it was

RESOLVED to adopt the Administrative Law Judge's decision regarding claim #S-26-008.

**5 members in favor. One member recused.
Motion passed.**

Reed v. Rednall & Danner, S-25-004
(Administrative Law Judge Hemenway)

Administrative Law Judge Hemenway was present by teleconference for discussion and questions on this claim.

The Chair Ms. Ramsey, moved to enter into Executive Session according to AS 44.62.310.

Commission member Ramsey recused herself from this claim.

Commission went into Executive session at 10:12 a.m.
Commission out of Executive session at 10:23 a.m.

On a motion duly made by DuVal, seconded by Wilson it was

RESOLVED to adopt the Administrative Law Judge's decision regarding claim #S-25-004.

**Five members in favor; one member recused (Ramsey).
Motion passed.**

Forrester v. Bolling, S-26-010
(Administrative Law Judge Kennedy)

Commission member Stone said he knows of both individuals involved and was not going to recuse himself from this claim. He said he was not involved in any way.

Administrative Law Judge Kennedy was present by teleconference for discussion and questions on this claim.

The Chair, Ms. Ramsey, moved to enter into Executive Session according to AS 44.62.310.

Commission went into Executive session at 10:26 a.m.
Commission out of Executive session at 10:31 a.m.

On a motion duly made by Wilson, seconded by DuVal it was

**RESOLVED to adopt the Administrative Law
Judge's decision regarding claim #S-26-010.**

All in favor. Motion passed.

Agenda Item 6

Licensing Examiner's Report

Statistics Report

Ms. Harris presents her statistical report for the period of May 18, 2006 through September 11, 2006 to the Commission.

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

**RESOLVED to accept the licensing examiner's
report.**

All in favor. Motion passed.

Mail Ballot – C. Walters

Licensing Examiner Nancy Harris presented to the Commission the salesperson application of Chase Walters. Mr. Walters had answered "yes" to one of the personal screening questions on his application. A mail ballot was sent out regarding this application to all Commission members and it was tabled for more discussion.

Commission members discussed Mr. Walters application.

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

**RESOLVED to approve the salesperson application
for C. Walters.**

**Roll call vote: Stone, no; Wilson, no; Somers, no; Duval, no;
Ramsey, no; Worthen, no.**

All opposed. Motion failed.

Mail Ballot – M. Ha

Licensing Examiner Nancy Harris presented to the Commission the salesperson application for Mark Ha. Mr. Ha had answered "yes" to one of the personal screening questions on his application. Mr. Ha's application was presented to the Commission members by a mail ballot and it was tabled for further discussion.

The Commission members discussed the salesperson application of M. Ha.

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

RESOLVED to accept the salesperson application for M. Ha.

All in favor. Motion passed.

Licensing Application – W. Hodges

Licensing Examiner, Nancy Harris, presented to the Commission the broker application by endorsement for William Hodges. Mr. Hodges' had disciplinary action on his license history for a lapsed license, conducting license activities without a license and failure to maintain E & O insurance. Any application showing disciplinary action or an investigation shall be referred to the Commission for further review, per 12 AAC 64.059(h).

The Commission members reviewed and discussed the broker's application by endorsement for William Hodges.

On a motion duly made by Somers, seconded by Wilson, it was

RESOLVED to approve the broker by endorsement application for William Hodges.

All in favor. Motion passed.

Remote Supervision – C. DeWitt-Paul

Licensing Examiner, Nancy Harris, presented to the Commission a new salesperson application requesting remote supervision. Ms. DeWitt-Paul will be working out of an office in Angoon and is requesting licensure through an office located in Anchorage.

The Commission members reviewed and discussed the remote request as presented.

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED to approve the application for remote supervision regarding C. DeWitt-Paul.

Break in Service – M. Israel

Licensing Examiner, Nancy Harris, presented to the Commission a change of status application for a transfer that resulted in a break of service due a postal issue. The Real Estate Commission office received Mr. Israel's original license certificate on June 28, 2006. Mr. Israel's

employing broker said that he had mailed Mr. Israel's application to the Real Estate Commission office. However, the office had not received it at the time of the call. Mr. Israel's completed change of status application to transfer his license was received at the Real Estate Commission office on August 17, 2006. The application was received past the 30 day period resulting in a break of service.

On a motion duly made by Wilson, seconded by Stone, it was

RESOLVED to reactivate the license to avoid a break in service for M. Israel.

All opposed. Motion failed.

The Commission recessed for break at 2:10 p.m.
The Commission reconvened from break at 2:25 p.m.

Proposed Regulation -- 12 AAC 64.059(d)(5)

Review of License Applications

Clean up of regulation 12 AAC 64.059(d)(5) to change salesperson to licensee.

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED to accept the proposed regulation change to 12 AAC 64.059(d)(5).

All in favor. Motion passed.

Proposed Regulation -- 12 AAC 64.075(b)

Employment and Transfer

Change of regulation requested at the June Real Estate Commission meeting.

Commission members discussed draft of regulation presented.

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

RESOLVED to accept the proposed regulation change to 12 AAC 64.075(b) as amended, "within 5 business days of the request of the licensee to transfer".

All in favor. Motion passed.

The Commission recessed for lunch at 11:37 a.m.
The Commission reconvened from lunch at 1:01 p.m.

The Commission members went into a 15 minute work session to review the supplemental material provided by staff. The material included a spreadsheet regarding the guidelines of disciplinary fines and the fine charge for continuing education audit within the REC and other occupational boards. The Commission also reviewed material from other jurisdictions on the issue of :

- Home office supervision
- Remote supervision
- Recovering fees from licensee before they transfer to another brokerage

Agenda Item 7

Education

Chairperson, Ms. Ramsey asked Mr. Winker what options the Commission had in regards to MOAs.

Mr. Winker explained to the Commission that the cases before them were memorandums of agreements (MOA's), and that individuals submit a renewal and a certain percentage were randomly selected for audit. These are the individuals who were, for various reasons, unable to comply with the audit and were unable to verify that they met the CE requirements in response to the audit. They are resolved through an agreement, a type of negotiation of a settlement of the issues. The guideline spreadsheet was based on license actions that had agreements in the past and what the Commission and other occupations had recommended some time ago.

Mr. Winker said that the agreements were already signed by the licensees and that they have agreed to the terms. If the Commission feels it appropriate, they can reduce the fine or reduce any of the disciplinary actions. The Commission would not be able to increase the fine, what they can do is reject the agreement and say it is insufficient. The Commission can make recommendations on what it needs to include. The revised agreement would need to be renegotiated.

The Commission members have three options:

- lessen the fine and disciplinary actions of the agreement
- reject the agreement for further negotiations
- adopt the agreement as presented

MOA- Case #3002-06-002 (D. Wolf)

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

**RESOLVED to adopt the MOA regarding Case
#3002-06-002.**

Commission members reviewed and discussed case #3002-06-002 as presented.

Commission members reviewed the chart that outlined how other boards applied fines and the 2000 meeting minutes that clearly directed the Commission members that these were the fines that needed to be applied.

**Somers, yes; DuVal, yes; Wilson, no; Stone, no; Ramsey, no; Worthen, undecided.
Motion failed.**

Staff – to write letter/newsletter/list serv to alert licensees what the fines are for a violation of continuing education during the audit process.

MOA – Case #3004-06-010 (M. McCusker)

On a motion duly made by Somers, seconded by Wilson, it was

RESOLVED to adopt the MOA regarding Case #3004-06-010.

**Somers, yes; DuVal, yes; Wilson, no; Stone, no; Ramsey, no; Worthen, undecided.
Motion failed.**

Commission members discussed the fines that may be recommended for cases presented.

Mr. Winker asked that as the Commission goes through each case that they give him a guideline on what fine they think is appropriate. He explained the process for the disciplinary fines imposed for real estate licensees. He asked that the Commission be quite clear on what their expectation is.

**D.Wolf –
Commission's Recommendation**

Commission members requested that there be a disciplinary fine of \$2500 with \$1500 suspended plus a \$700 fine (\$50.00 per credit hour lacking).

**M. McCusker
Commission's Recommendation**

Commission members requested that there be a disciplinary fine of \$2500 with \$1500 suspended plus a \$200 fine (\$50.00 per credit hour lacking).

MOA – Case #3001-06-010 (F. Haase)

Commission members reviewed and discussed case #3001-06-010 as presented.

Mr. Winker explained that this individual completed a course that was approved for continuing education and broker upgrade education. However, this licensee did not need this course for broker upgrade education at the time and believed he could use it for continuing education.

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

RESOLVED regarding Case #3001-06-010, he is in compliance, no MOA is necessary.

All in favor. Motion passed.

Commission members requested no action; Real Estate Commission will clear up course numbers if necessary. Licensees to sign up on proper sign in sheet.

Mr. Winker asked for clarification based on the information that they have, if you had a salesperson who, for this past renewal, took the broker upgrade training but did not upgrade their license; therefore, can not use the broker upgrade training at this point to upgrade their license. So it is clear it has no function to upgrade their license. Can this salesperson count that as continuing education?

MOA – Case #3004-06-012 (A. Posey)

On a motion duly made by Stone, seconded by Worthen, it was

RESOLVED to adopt the MOA regarding Case #3004-06-012 but amended to read that the fine is \$500 plus \$150 (3 credit hours at \$50.)

Commission members reviewed and discussed case #3004-06-012 as presented.

All in favor. Motion passed.

MOA – Case #3004-06-013 (M. Miranda)

Commission members reviewed and discussed case #3004-06-013 as presented.

On a motion duly made by Wilson, seconded by Stone, it was

RESOLVED to adopt the MOA regarding Case #3004-06-013 but amended to read that the fine is \$50 plus \$450 (9 credit hours at \$50.)

**5 members in favor; 1 member opposed (Somers).
Motion passed.**

Default – Case #3004-06-011 (J. Bailey)

Mr. Winker explained that this individual did not respond to the accusation of non compliance to the audit.

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

RESOLVED to adopt the order of default and finding of facts and conclusion of law regarding Case #3004-06-011.

All in favor. Motion passed.

The Commission recessed for break at 2:32 p.m.
The Commission reconvened from break 2:45 p.m.

Agenda Item 9

Assistant Attorney General

Broker/Associate Broker Issue

(2 licenses issued to one licensee, 2 offices)

Larry Bauer, a broker for Bauer and Associates Real Estate, asked the Commission if they would allow him to be a broker in his real estate office of Bauer & Associates Real Estate to do property management contracts and also be an associate broker with the real estate office of Bauer & Gates Real Estate to do residential sales. The sole purpose for Mr. Bauer's request is to do real estate transactions with an accredited real estate office, limit liability for Mr. Gates and to share expenses for advertisement materials and expenses necessary for real estate transactions. Mr. Bauer is not involved in both companies at this time; however, he does share office space and expenses with Mr. Gates, broker of Bauer & Gates Real Estate. Mr. Bauer said that the statutes do not say he can not do this nor do they say he can do this. Mr. Bauer pointed out that the state of California does allow a broker to be a broker of one office and an associate broker in another office for mortgage brokerages.

Assistant Attorney General Mr. Brower speaks to this issue of an individual who is a broker of one office conducting property management but would also like to be an associate broker in another office to sell property. Mr. Brower said that he found nothing in the real estate statutes or regulations that provides for this issue or anything that specifically prohibits it. As far as liability, the real estate Commission is not concerned with that issue as long as the licensee is not violating the law and practicing within the real estate statutes and regulations.

Mr. Somers asked Mr. Brower can the Commission issue a broker license and associate broker license to the same person?

Mr. Brower said that the question is if there is any violation of statutes and you can't vote on that, it is just to figure it out. At this point if the motion is to issue a separate license there is nothing in statute that prohibits that but he would come back to the board if he did find something that prohibits it. He believes that there would be no disciplinary action based on something that was taken to the board, but the interpretation of the law and the statutes is not subject to a vote, with respect to the board.

Commission member DuVal asked Mr. Brower if the vote is no on this issue what is Mr. Bauer's recourse if any? Mr. Brower said he could perhaps write a letter for the determination.

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED that a person can be issued 2 separate licenses under 2 categories working as a broker in one office and an associate broker under the other office.

All opposed. Motion failed.

Home office/Remote Supervision

Commission members discussed the issue of home office and remote supervision. Some of the issues discussed were:

- Remote can not be a branch office, must have the same company number.
 - Length of absence? To be determined by broker, as determined by: 12 AAC 64.125 add reference to 64.077c
 - 12 AAC 64.990. A branch office definition:
 - Where you meet clients and customers as a regular course of business
 - Sign of the principal office [(AS 08.88.311(b))], but can A branch office shall bear and be

advertised only in the name of the principal office but may also indicate that it is a branch office.

- Location noted on business/stationary, marketing material
- Must meet the other criteria for a branch office.
- A home/personal office will be considered a branch office if it meets any of the above criteria and then must meet all the requirements of the branch office.
- 64.120 – d) reference the items as defined in 64.990 “branch office”

**Agenda Item 7
Continued**

Education

Real Estate Designation – W. Dodge

Licensing Examiner presented to the Commission a request from William Dodge regarding Business Broker national designation education and if he could receive 12 elective hours for his continuing education requirements using this designation.

Commission members discussed the issue regarding William Dodge’s request as presented.

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

**RESOLVED to accept the Real Estate Designation
purposed by W. Dodge.**

All opposed. Motion failed.

Proposed Regulation – 12 AAC 64.063(a)(3)

BPL/Continuing Education

Commission members discussed the draft of the proposed regulation as presented.

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

**RESOLVED to accept the proposed regulation
change to 12 AAC 64.063(a)(3) as amended to read,
“(3) in addition, meet the education requirements of
AS 08.88.091(d). This education requirement may
not be used for continuing education credit.**

**5 members favor; 1 member opposed.
Motion passed.**

Proposed Regulation – 12 AAC 64.440(c)

Instructor approval-

Regulation change recommended by the Education Advisory Group.

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED to accept the proposed regulation change to 12 AAC 64.440(c) as amended to read, to be approved as an instructor, an applicant must have experience teaching or training adults, and at least one of the following”

All in favor. Motion passed.

Proposed Regulation – 12 AAC 64.440(d)

Instructor approval-

Regulation change recommended by the Education Advisory Group.

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

RESOLVED to accept the proposed regulation change to 12 AAC 64.440(d) as amended to read, at the end, “substituted for teaching experience or training required by section (c)”.

All in favor. Motion passed.

Proposed Regulation – 12 AAC 64.440(f)(3)(B)(C)(D)

Instructor approval-

Regulation change recommended by the Education Advisory Group.

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

RESOLVED to adopt the proposed regulation change to 12 AAC 64.440(f)(3)(B)(C)(D) to read as follows, (f) instructor approval expires on April 1 of years ending in 0 and 5, except that an instructor approved between January 1 and March 31 of the preceding year is exempt from recertification for the five year period following initial approval. An instructor may apply for recertification by submitting 1) a completed application, 2) the fees required in 12 AAC 64.360 and 3) evidence of completion during the previous licensing period of (A) repealed, (B) at least two hours of continuing

education in each topic area for which the instructor is applying for recertification or (C) teaching a course within the prior approval period in the topic area for which the instructor is applying for recertification or (D) practical experience in the topic area during the renewal period.

All in favor. Motion passed.

Proposed Regulation – 12 AAC 64.420(g)

Application for course certification-

Regulation change recommended by the Education Advisory Group.

On a motion duly made by Wilson, seconded by DuVal, it was

RESOLVED to adopt the proposed regulation change to 12 AAC 64.420(g) as amended to read, (g) a licensee may retroactively apply for certification and credit for a course offered outside of the state of Alaska by a nationally recognized real estate education provider. The application must include all materials provided as part of the class, materials promoting or describing the class, evidence that the real estate education provider is nationally recognized and proof of attendance including time of instruction. Application for certification and credit must be made within 30 days of completion of the class and at least 60 days prior to the end of the licensing period. The instructor or instructors of the course will not be required to apply for instructor approval under 12 AAC 64.440 or 450.

All in favor. Motion passed.

The Commission recessed at 5:49 p.m. until September 21, 2006 at 9:00 a.m.

Thursday, September 21, 2006

Call to Order

Chairperson Barbara Ramsey called the meeting to order at 9:11 a.m.

Roll Call

Members present constituting a quorum were:

Barbara Ramsey, Associate Broker, 3rd Judicial District
David B. Somers, Broker at Large
Gene DuVal, Associate Broker, 4th Judicial District
Roger Stone, Broker, 1st Judicial District
Tim Worthen, Public Member
Rita Wilson, Associate Broker, Broker at Large

Members absent (excused):

Bradley Fluetsch, Public Member

Staff Present:

Sharon Walsh, Executive Administrator
Nancy Harris, Licensing Examiner

Guests present via teleconference:

Jean Kay, RE/MAX of Wasilla
Dave Feeken, Alaska Association of Realtors
Jim McCall, Alaska Housing First Choice

Agenda Item 8

Executive Administrator's Report

Surety Fund Report

The Surety Fund Report was not available in time for the meeting. It will be emailed to all Commission members at a later date.

Surety Fund Balance Report

The Surety Fund Balance Report was not available in time for the meeting. It will be emailed to all Commission members at a later date.

Revenue & Expenditure Report

The Revenue & Expenditure Report was not available in time for the meeting. It will be emailed to all Commission members at a later date.

Surety Fund Claim Activity

Ms. Walsh presented the Surety fund claims activity spreadsheet to the Commission.

The Commission members reviewed and asked questions regarding the surety fund spreadsheet as presented.

Ms. Walsh also handed out earlier another spreadsheet to Commission members that show licensees that have had surety fund claims filed against them that have not paid back into the surety fund. She said that the spreadsheet is a guideline for those surety fund files she had access to and would need to search into archives files for cases further back. The spreadsheet indicates the dollar amount paid out of the surety fund, the case number, the licensee's name, license status and comments. The total amount of claims on the spreadsheet was \$113,156.00.

The Commission members reviewed and asked questions regarding the unpaid surety fund claims spreadsheet.

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

RESOLVED to accept the executive administrator's surety report.

All in favor. Motion passed.

Agenda Item 11

Old Business

Draft Proposed Regulation

12 AAC 64.900(e)-Public Official

Ms. Harris presents to the Commission a draft of a proposed regulation regarding public official as requested.

Commission members reviewed and discussed the draft of the regulation as presented.

The draft of the changes of the regulation of public official was TABLED until next meeting.

Commission member DuVal will provide a definition of public servant to staff to add to proposal to reference other statutes that define public servant/official. (What about Heritage Land Bank?)

Commission members would like to define the parties or individuals within the public sector that would be exempt from the licensing requirement.

ARELLO Response

To be discussed with agenda item #9b – Home office/Remote Supervision, later in meeting.

Promissor Contract

Commission members reviewed and discussed the Promissor contract information. Ms. Walsh added that the Promissor contract/agreement expires July 1, 2007 and there has been an inquiry from Thompson Prometric as to what the procedures were for testing services in the State.

Staff – to compile information to be presented at the next meeting regarding the number of total tests given by Promissor, the number of exams started but not completed and Promissor's policy if system goes down during an exam.

Approval & Effective Date of Regulation

Commission members reviewed and discussed information regarding the approval and effective date of the regulations 12 AAC 64.063, 12 AAC 64.095, 12 AAC 64.240, 12 AAC 64.325(c), and 12 AAC 64.500.

Ms. Walsh said that she had asked about receiving a clean copy of the final regulations and was told that there will be no clean copy until there is a new regulation booklet.

Staff – to include an update of the new regulations on list serv.

AS 08.88.263(3) License by Endorsement – FYI

Ms. Harris brought to the Commission members attention AS 08.88.263(3), for clarification, regarding if individuals who are licensed by endorsement are required to complete PLE. If individuals that are seeking to be licensed by endorsement in the state of Alaska and have not had their real estate license for more than 1 year in another state then they would be required to complete PLE.

Ms. Walsh said that there were 258 licensees that have received their license after January 1, 2006 and would be required to complete PLE.

Staff – to update endorsement information regarding new PLE law on list serv.

Audit/Implementation of Consumer Pamphlet

Commission members agreed that the intent of the implementation of the Consumer Pamphlet was to encourage compliance with AREC pamphlet as mandated by state law.

Implementation would include:

1. visit the office to review brokers/licensee files whenever visiting offices – at random:
 - a. fax or email
 - b. Take a day in:
 - i. Fairbanks, etc.
 - c. spot check at discretion
 - d. their close, pending, listing or in process(active)/buyer's agreement if applicable
2. Look for compliance of 08.88.685 – policy

Garnishing of PFD, Confession of Judgments

Repayment of SF

Discussed earlier in meeting.

Licensing Examiner & Publication Specialist II positions

Ms. Walsh said that there were interviews for the Publication Specialist II position; however, no one met the minimum qualifications. She will put it out again on work place Alaska. She also asked for another licensing examiner position and the Director was fine with another licensing examiner position but said there was no space for this additional person to work.

Ms. Wilson said she went to the Real Estate Commission website and the proposed regulations and current agenda was not showing up. She asked that old agendas be taken off the website after the meetings. Mr. Somers asked that information on the website be separated into a historical area and an area for the current information.

Ms. Wilson also brought to the Commission the concern that brokers were not getting the email newsletters and therefore are not getting the pertinent or recap information regarding the Real Estate Commission.

Staff - Remove old agendas and add historical section.

Education Advisory Group final Report/Distance Education

Ms. Ramsey brought to the attention of the Commission a new PLE salesperson course material for their review if they would like, sponsored by the Alaska Association of Realtors. She said it looked like they had done an excellent job if anyone would like to look it over.

Ms. Walsh said she spoke with Mr. Gordon Schadt regarding the final meeting for the Education Advisory Group. She said she will set up a meeting with ARELLO to speak to the Education Advisory Group regarding distance education. Gordon Schadt said that he then will report back to the Commission at the December meeting.

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

RESOLVED to extend the education advisory group's presentation to December 2006 meeting.

All in favor. Motion passed

Staff - revise the on-line renewal to eliminate reference for method B, C, D.

Broker PLE course update

Ms. Walsh updated the Commission members on the broker who submitted a course for broker PLE and said it had been approved. However, it was not approved for correspondence. She said she was hoping there will be another Broker PLE course developed soon. A couple of individuals are looking into developing a broker course but nothing has been developed at this time. Mr. Feecken said that AAR did approve, at the Homer conference, that the Alaska Association would develop a broker's upgrade course.

Ms. Walsh followed up from the last meeting regarding the waiving of fees. She said the fees can not be waived. The Commission does not have the authority. The Commission makes a recommendation to the Division and the Division sets fees.

Commission member audit form

Ms. Ramsey spoke to the Commission regarding the audit form that the Commission members can use when they audit a course from a Commission member perspective. There is nothing that prevents a Commission member from taking a course for continuing education as well as conduct an audit.

CE Audit update & review

This agenda item was discussed earlier in meeting.

Definitions: Modular vs. Manufactured

Mr. DuVal presented the definitions for Modular and Manufactured homes to the Commission for their information only.

Motion to Reconsider

Mr. DuVal asked for a reconsideration of agenda item #6b for further discussion.

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

RESOLVED to reconsider for agenda item 6b, Chase Walters.

Commission members reviewed and discussed the application of Chase Walters.

All opposed. Motion failed.

The Commission recessed for break at 10:41 a.m.

The Commission reconvened from break at 10:53 a.m.

Staff –to send to all brokers a copy of the Real Estate Commission meeting minutes and a short recap of the Real Estate Commission meeting with important issues to watch for until the Publication Specialist II position is filled.

Agenda Item 12

New Business

Conflict of Interest – office/ownership

Mr. Stone brought to the Commission a possible conflict of interest with a licensee who is a co-owner of a real estate business. The licensee transferred to another office but was still the co-owner of the office that he transferred out of but has information that can compromise confidentiality of clients and business. Mr. Stone sees four areas of conflict.

- Conflict of interest with individual transactions. (disclosure, confidentiality, etc.)

- Advertisement of only office in town that are members of AAR (possible violation of the AAR code of ethics)
- Business conflict of interest. (as a owner entitled to internal information, re: transaction, financial, etc.)
- Partner with another licensee in office, split of commission. (any commission to licensee has to go through office)

The Commission members discussed the information presented to them.

Commission members concluded that the question regarding payment of commissions was the only issue that the Commission can address. All commissions must be paid through the employing broker. All other issues presented are business practice issues.

Ms. Ramsey said that 12 AAC 64.117 the broker's written policy #5. A broker should in good business practice have a written policy for maintaining confidentiality within offices of all transactions. Not to just include the sales transactions but also include what to do for managers that may leave your employ.

Legislative Update

Mr. Somers said that there was nothing to report that has not been already talked about. The Alaska Association of Realtors has not had a legislative meeting in awhile and when they do he will report back to the Commission with an update. The issues that are on their agenda are mostly health care issues and do not involve the Real Estate Commission.

Mr. Feeken added that he would encourage the Real Estate Commission's support of the Mortgage Broker licensing issue this year. Another legislative issue is frivolous lawsuits. Mr. Feeken said when they get the legislation together regarding frivolous lawsuits he will bring it forward to the Commission to look at.

Mr. McCall, from Alaska Housing, spoke about the predatory lending task force of which Alaska Housing, FBI, Anchorage Neighborhood Housing, Fairbanks Neighborhood Housing, and other entities in the state of Alaska, are part of, to get the word out to the public regarding predatory lending. He had mentioned to Ms. Walsh that maybe the Commission members would consider attending these meetings just to be up to speed on what is being discussed. Fairbanks has also created a predatory task force which will be rolled out September 26 at the Anchorage Chamber luncheon. FYI for consideration, Gail West may be in contact with Commission members if they are interested in participating. It may be good to have a representative from the Real Estate Commission there to have some information on what is being discussed.

The predatory lending task force has created a four hour class that will be offered through out the state regarding predatory lending. Perhaps the Real Estate Commission could look at it for possible approval. Ms. Ramsey asked that Mr. McCall submit the course to the Real Estate Commission for approval. He said he would contact the individual responsible of the course to see if she would be willing to submit the course for approval.

Mr. DuVal asked Mr. McCall what is in place now for reporting violations of predatory lending. There is a toll free number through the Department of Banking that people can call and report any violations.

Property Management Advisory Group Update

Judy Cloud gave an update of the Property Management Advisory Group discussions. She said the first meeting was on July 18, 2006 and the members discussed ideals that they were interested in reviewing.

- Two sub committees
 - Commercial prop sub group
 - Residential prop sub group
- Increase Designated Continuing Education for property management
- Home Owner Association Budgets
- Review of:
 - Licensee disclosure form (geared more toward salesperson and not property management)
 - Commercial Property
 - Unlicensed activity
- Meetings in September and October
- Wrap up meeting end of November
- Final report to REC at December meeting

Agenda Item 9 Continued

Broker/Associate Broker Issue

Dual broker licenses at the same or separate locations

Mr. Stone spoke to the issue of two brokers at the same location. Two separate real estate offices with two brokers, one office conducting property management and the other conducting residential sales.

Commission members discussed dual broker issue as presented.

Staff – Executive Administrator to write letter to Mr. Stone outlining what is needed to correct situation with dual brokerage.

Commission members discussed the issue regarding one broker supervising two or more offices in the same or different location.

The Commission recessed for lunch at 12:05 a.m.

The Commission reconvened from lunch at 1:06 p.m.

Chairperson, Ramsey gave a quick recap of the items that they discussed from the prior day's meeting regarding remote office, home office and broker supervision.

Home office/Remote and Branch Office

ARELLO response

Commission members reviewed the supplemental information from various states regarding home office, remote and broker supervision.

Commission members continued to discuss the definition of branch and home office. Definition to be added to 12 AAC 64.900 for branch office and to amend 12 AAC 64.120 – d) reference the items as defined in 64.990 "branch office".

Commission members discussed amending the broker supervision regulation 12 AAC 64.125(b) with their authority under AS 08.88.685 and AS 08.88.071.

Commission members consulted the real estate investigator Ms. Mandel on what her thoughts were on what should be included as adequate supervision under 12 AAC 64.125. They asked what would tighten the statutes and regulations that would give the investigative unit some teeth to prosecute cases.

Ms. Mandel provided information of what she has seen in the industry and what may be needed to tighten up supervision.

- Semi-retired broker – not involved in the day to day business
- Salesperson committing violations but violations come back on the broker and not the salesperson
- Can only enforce through a statute not a regulation
- Have adequate statutes to discipline a broker
- Need statutes that address discipline of a salesperson
- Establish clear guidelines, if a salesperson would be required to work in office or allow them to work in a separate community
- Further define adequate supervision in 12 AAC 64.125(b), addressed in AS 08.88.071

Commission members discussed a few points on how to clearly define adequate supervision.

- What is considered adequate supervision? Under 12 AAC 64.125(b).
- Time involved for day-to-day operations/supervision?

Staff – Ms. Mandel agreed to give some thought on how to further define adequate supervision and to look at pharmacy statutes/regulations for a comparison.

Staff – Email ARELLO requesting information from other states for statistics/case history of broker supervision complaints.

**Agenda Item 12
Continued**

New Business

12 AAC 64.115 --

Mr. DuVal asked to connect 12 AAC 64.115, Minimum Requirements for Maintaining an Office to 12 AAC 64.110, Offices.

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED to add to 12 AAC 64.115 add a (3) to meet all of the requirements of 12 AAC 64.110.

**5 members approved; 1 member opposed(Somers).
Motion passed.**

**Agenda Item 9
Continued**

One Broker/Two Offices/One or More Locations

Commission members could not resolve the issue of one broker, two companies at one location; therefore, they forwarded this issue to the next Real Estate Commission meeting in December.

Staff – Email Assistant Attorney General and ARELLO requesting information regarding one broker supervising two companies at one location.

**Agenda Item 12
Continued**

New Business

Election of Officers

Chair

On a motion duly made by Wilson, seconded by Worthen, it was

RESOLVED to nominate Gene DuVal for Chair.

All in favor. Motion passed.

Vice-Chair

Rita Wilson nominated Dave Somers as Vice Chair.

On a motion duly made by Wilson, seconded by Worthen, it was

RESOLVED to nominate Dave Somers for Vice-Chair.

All in favor. Motion passed.

Education Liaison

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

RESOLVED to nominate Rita Wilson for Education Liaison.

All in favor. Motion passed.

Property Management Liaison

On a motion duly made by Wilson, seconded by DuVal, it was

RESOLVED to nominate Roger Stone for Property Management Liaison.

All in favor. Motion passed.

Legislative Liaison

On a motion duly made by DuVal, seconded by Wilson, it was

RESOLVED to nominate Dave Somers for the Legislative Liaison.

All in favor. Motion passed.

Next meeting is November 30 & December 1, 2006 in Anchorage.

Meeting adjourned at 2:32 p.m.

Prepared and submitted by Division Staff.

Approved:

Barbara Ramsey
Barbara Ramsey, Chairperson
Real Estate Commission

Date: 12/14/06