

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

MINUTES OF MEETING  
MARCH 14 & 15, 2005

*DRAFT*

“These draft minutes were prepared by the staff of the Division of Occupational Licensing. They have not been reviewed or approved by the Board.” Authority of AS 08.01.070(2), and in compliance 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 September 30, 2004, at the Atwood Building, Room 1500, Anchorage, Alaska.

*Monday, March 14, 2005*

**Call to Order**

Chairperson Barbara Ramsey called the meeting to order at 9:05 a.m.

**Roll Call**

Members Present:

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

Members absent:

Glenn Clary, Public Member  
Susan Rainey, Associate Broker, 4<sup>th</sup> Judicial District

Staff Present:

Sharon Walsh, Executive Administrator  
Nancy Harris, Licensing Examiner  
Gayle Horetski, Assistant Attorney General  
Margo Mandel, Investigator, via teleconference  
Steve Winker, Paralegal

Public members present:

Ann W. Resch, Attorney, Brown, Waller & Gibbs, representing Mr. Despain, via teleconference

Terry Thurbon, Chief, Administrative Hearings

**Approval of Minutes**

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

**RESOLVED to adopt meeting minutes of December 2 & 3, 2004.**

**All members in favor; Motion passes.**

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

**RESOLVED to adopt the meeting minutes of December 7, 2004.**

**All members in favor; Motion passes.**

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

**RESOLVED to adopt the meeting minutes of December 21, 2004.**

**All members in favor; Motion passes.**

**Approval of Agenda**

Nancy Harris asked to add two items to the agenda in tab #7, licensing actions Edward Heidel and Richard Balgenorth. She also asked that one item be added to the investigator report under section #3, Despain update.

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

**RESOLVED to approve the agenda as presented as modified.**

**All members in favor; Motion passes.**

**Persons to be Heard**

There were no persons to be heard, however the Chairperson Barbara Ramsey said she would easily accommodate any one who should come to the meeting at a later time and allow them to be speak to the Board.

**Licensing Examiner's Report**

Nancy Harris presents her report to the Board for the period 11/16/04 through 02/28/05.

Mr. Fluetsch asked how difficult it would be to break down the number of new licensees per location and said that it would be valuable information in the future. He asked how

do we gather information and how could we expand that information to help the industry. Mr. Bauer commented on having a break down according to the districts and then under the districts indicates what Boards are in that district. That way the Commissioners would know whom they represent and the licensees would have more information on their area.

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

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

**All members in favor; Motion passes.**

**Emerson Licensing issue**

Licensing Examiner, Nancy Harris, presents Mr. Emerson's licensing issue to the Board. Mr. Emerson did not answer yes to any of the personal screening questions but he did include a letter with his application with an explanation of an offense and the outcome. He thought he should address this issue and bring it forth.

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

**RESOLVED to accept Samuel Emerson's licensing application.**

**All members in favor; Motion passes.**

**Schurig Licensing issue**

The licensing examiner, Nancy Harris, presents Mr. Schurig's licensing issue to the Board. Mr. Schurig did answer yes to question #5 of the personal screening questions of the application.

On a motion by Bauer to reject Mr. Schurig's application until he completes his probation and be allowed to resubmit his application at that time.

Motion withdrawn.

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

**RESOLVED to reject his Mr. Schurig's application according to AS 08.88.171 eligibility of license.**

**All members in favor; Motion passes.**

**Heidel licensing issue**

Licensing Examiner, Nancy Harris presents the Heidel licensing issue to the Board. Mr. Heidel is an endorsement applicant from the state of Washington and he has been a broker since 1969 and was a salesperson prior to that in 1966. It is not the issue of

salesperson experience, but the issue of the equivalence of his continuing education to our 15 hours of broker training education. At the time he was licensed as a broker in 1969, Alaska did not require broker education. He is also an approved instructor with the state of Washington and has submitted courses he has taken and courses that he has taught or will be teaching.

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

**RESOLVED to approve Mr. Heidel's license by endorsement.**

**1 member in favor and 3 members against; Motion fails.**

The Board decides to table the Heidel licensing issue until a later time for more discussion with all Board members for their opinions.

Break at 2:30 p.m.

Reconvened at 2:35 p.m.

**Balgenorth licensing issue**

Licensing examiner, Nancy Harris, presents the Balgenorth licensing issue to the Board.

Commission member Wilson discloses to the Board that she does know of the applicant and says she can make a fair judgement but wanted to bring that to the Board's attention.

Mr. Balgenorth came to our office prior to submitting his application for licensure. He spoke to Ms. Walsh and Ms. Harris regarding a suspension of his teaching license in Texas and how that may effect in receiving a real estate license. He did not answer yes to any of the personal screening questions but Ms. Harris felt that because of her prior knowledge of Mr. Balgenorth and speaking with him earlier that it was needed to take his application to the investigator and also to the Board for approval.

Mr. Fluetsch made a motion to refuse Mr. Balgenorth's license application, however, after further discussion with the Board Mr. Fluetsch withdraws his motion.

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

**RESOLVED to approve Mr. Balgenorth's salesperson application.**

**All members in favor; Motion passes.**

Break at 10:30 a.m.

Reconvened at 10:35 a.m.

### **Investigator's Report**

Investigator Margo Mandel presents her investigative report of the open and close cases to the Board as submitted for review. She said they have started detailing the license actions that occur for the fiscal year on the front page of the statistics sheet. So far for the FY 05 there has been one licensing action, which was a contested license denial.

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

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

**All members in favor; Motion passes.**

### **Edward Sanders Surrender 3000-01-015**

Investigator Margo Mandel presents the voluntary surrender of Edward Sanders as submitted for the Board's consideration.

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

**RESOLVED to the recommendation of the investigator and accept the voluntary surrender of Edward R. Sanders license.**

**All members in favor; Motion passes.**

Commission member Wilson asked Ms. Mandel that if at a later date the Commission has a claim against the surety fund and it is awarded, do they have any recourse for the cost of the hearing from Mr. Sanders. Ms. Mandel said that she would think so because the Teresa Bradbury surety fund hearings occurred after she had surrendered her license and she has been charged with those hearing fees. She explained if the person is not licensed at the time they can still be handled through regular collection of a debt. She points out that under AS 08.88.460(c) it states that when a small claim is filed the surety fund case is dismissed. It addresses that a person may elect to defend the claim as a small claim or through the surety fund. She believes the two-year application period for the surety fund for this case has passed.

### **Despain Findings- Supervision Issue**

The investigator Margo Mandel explains to the Board that this case was referred to investigations following a teleconference. This case was then sent to the Attorney Generals office for review. Bob Auth the attorney that reviewed this case is one of the attorneys assigned to the division and has handled many real estate cases and is very familiar with real estate law. She said there was a finding of no violations in this case and the investigative unit has closed this matter.

Gayle Horetski introduces herself and informs the Board that she has a copy of Mr. Auth's review memo and asks if it would be helpful to the Board. The Board agrees and Ms. Horetski passes out Mr. Auth's review memo of the Despain matter to the Board members.

The Board members discuss the Despain matter and the issue of supervision of a principal office. Barbara Ramsey said that the Commission had understood things differently, which is why they had proceeded as they did. Mr. Auth's memo has shown them that the statutes and regulations need to slightly be modified. Mr. Bauer said that there seems to be a loop hole in the regulations and he believes that the intent of the legislation was to have someone in charge on site to supervise and to make sure things are being done appropriately. Margo Mandel said that this office does not do real estate transactions but they manage leases for medical buildings for two health care clients and if they were doing real estate sales there may be more of a concern. Ms. Mandel also pointed out that the Board might want to look at and specifically address what is adequate supervision regardless of whether it is occurring in state or out of state.

### **Investigation Process Flowchart**

Margo Mandel explains to the Board the investigation process with a visual help of a flowchart for the Board members. Ms. Mandel explains that once they receive a complaint the first thing that is done is that they screen it to see if they have any jurisdiction. The investigation unit receives a lot of complaints regarding code of ethics and standard of practice, which is out of their jurisdiction, they only have jurisdiction in licensing issues. If they determined that they do not have jurisdiction then they decline the case and refer them to the proper agency that can handle that type of complaint. If it is in their jurisdiction they open a case and begin their investigation. Sometimes an investigation may involve a Board members review or a contracted expert's review, it depends on the complexity of the case. The investigation reveals whether or not the allegations are valid or if there is sufficient evidence to prove the allegations. If there is no violation and there is not sufficient evidence they close the case. If there is a violation or sufficient evidence then they proceed to the next step, which is litigation. The investigative unit use to prepare the accusation, which is basically a charging document but that procedure has changed and they now send that information to the attorney generals office. The Attorney General's Office reviews it and determines whether or not they are going to pursue litigation and if so they would then draft an accusation. Some cases will enter into an informal agreement because once a case is at the litigation stage and they start preparing for the hearing the licensee may decide to surrender, so that is one of the options that is available to the licensees. A surrender is the ultimate disciplinary action that can come out of their cases, it resolves a lot of issues if they do surrender and it also avoids the state expense of a hearing. A memorandum of agreement is an informal agreement between the division and the licensee and it usually consists of terms and conditions that the licensee has to comply with during the specified period of time that they are under the agreement. These are usually cases that are not considered as serious of violations as far as the public is still going to be protected even if this person remains active in the community as a licensee. If they can not come to any agreement

then they proceed to a hearing if the attorney general approves the case, sometimes they lack the resources to try cases. There were periods of times in the 1990s when all the state money had dried up and state resources were down to bear bones. Most real estate cases were declined at that time and were not considered a real public safety issue and they poured all their resources into fighting the real public safety issues against doctors and those types of licenses. If the accusation is declined by the attorney general's office, they may send it back to the investigative unit for more information or they completely reject it and they close the case. However, if an accusation is accepted it is filed and sent to the respondent and a hearing date is set, if they request a hearing. The respondent has 10 days to respond to the accusation and request a hearing, if they don't respond it is automatically defaulted. There would still be a hearing, the respondent may still not show up but there would be a default action and a decision rendered by the hearing officer. If the respondent requests a hearing, the hearing process begins or they could just stipulate to the allegations, they may also say they don't want to go through a hearing and they just stipulate to the allegations, then the hearing officer would propose sanctions. The Board asked questions of Ms. Mandel and discusses the investigative process.

#### **Assistant Attorney General – Gayle Horetski**

Gayle Horetski introduces herself to the Board for the record. She is the Assistant Attorney General in the Juneau office. She adds that there are four AG's assigned to assist the Division of Occupational Licensing and the various Boards and Commissions with legal advice, regulation drafting and drafting of legislation if approved by the Governor. She explains to the Board that from the Juneau office they handle accusations, which are disciplinary actions as well as all the license denial cases for all the professions regulated by the division.

Ms. Horetski explains that statutes are a general grant of authority to the Board collectively to regulate the profession. Some statutes are very narrow saying you have to do these seven things to be licensed and some statutes are very broad saying you can be regulated at the discretion of the Board. In the particular situation of supervision by brokers there is a general grant of statutory authority to this body to supervise licensees. The regulations that implement the statute are up to the Board, if it has to do with the regulation of the conduct, reasonable regulations are intended to implement the statute. She said she had done some research on the issue of whether people can be regulated on the fact that they are in state residence verses out of state residences in this context and the answer to that is no. Ms. Horetski explained that if the Board wanted to have supervision requirements, that they would have to be reasonable and directly related to ensure that real estate transactions are appropriately supervised by the broker. She says the Board may adopt any regulations but that they applied to everyone, all licensees.

Ms. Horetski explains to the Board the Administrative Procedures Act and due process. She says that besides the regulation for real estate there are other provisions that apply to actions by this body and some of them are of a constitutional nature. There are rights that are given to each of us or also known as due process. Statutes may say you have these additional duties and responsibilities but they do not do away with the underlying concept of due process. Title 8 was established by the legislature for all Boards and

Commissions, a separation of the functions of power. The Board has certain disciplinary powers as in AS 08.801.75. Under the APA functions are divided so that people can wear the right hat. The investigation function is given to the division on purpose so that the division can investigate, bring the results to back in a accusation and then it will go into the hearing process, then the Board decides, the Board is the jury, the finder of fact.

11:30 a.m. David Somers joins the meeting. Mr. Somers was late due to mechanical difficulties with airplane.

Ms. Horetski explains that the legislature understood there may be some instances where there is a clear and immediate danger to the public health and safety and in those circumstances the Board could suspend someone's license immediately, with findings, with a summary suspension. A person who loses their license through a summary suspension still has the right to a hearing within 7 days. If an immediate danger to public health and safety does exist that is the circumstances when a summary suspension is appropriate. The summary suspension is an exception to the general rule and it is very rarely used. She also explains that whatever avenue that the Board should receive what may appear to be a violation their immediate response should be to refer it to the investigation unit. In AS 08.88.071, powers and duties of the Commission, the commission shall after a hearing, have the authority to suspend someone, the only exception to that is summary suspension. She points out that in AS 08.88.131 it talks about the APA applies to regulation proceedings. Title 8 gives the Board certain authorities, duties and responsibilities but the procedural vehicle for carrying those out, for this Board and numerous others, is under the General Administrative Procedure Act, which is in Title 44. Ms. Horetski then goes over the administrative procedure act with the Board section by section.

Ms. Horetski introduces Terri Thurbon, she use to be an Assistant Attorney General. She was also in private practice in Juneau. She is the head of the new office of Administrative Hearings. Starting July 1 all of the hearings on behalf of the Occupational Licensing Boards as well as other state agencies, are going to be centralized and Terri is the Chief administrative law judge. This will be a group of six administrative law judges, two in Anchorage and four in Juneau. She explained to the Board that the reason she introduced Ms. Therbon and the new office coming in, is to let the Board know that there may be some changes after July 1 regarding what can be done in a proposed decision. The changes regarding time limits and the procedures with this new office coming in.

Ms. Horetski goes over the question "if a proposed finding is contested by the Board". The Board either adopts the hearing officer's decision or they may reduce, not increase, the monetary amount of findings. If the Board does not adopt the hearing officer's decision they can make the decision themselves but the Board must review all evidence.

She also pointed out is that the fact that a licensee surrenders their license there may not be a lack of jurisdiction if it is regulated by statute or regulations.

Ms. Horetski points out that if a hearing officer or a Board member cannot be impartial is a case they must disqualify themselves from voting on that case. If a Board member feels they can be impartial the other Board members may take that Board member off the case if needed.

Ms. Ramsey brought her concern to Ms. Horetski about receiving feedback from the investigation unit regarding a decision of a case that the Board may have referred to them. Ms. Horetski explains that the Board would receive a letter just as an individual would receive a letter regarding if the division has jurisdiction in the case, or if the case was close due to insufficient evidence, etc.

The Board asks Ms. Horetski questions regarding endorsement requirements in regards to Mr. Heidel and the 15 hours of education required. Ms. Horetski explained that the legislature for some profession wanted to make sure that people coming from other states are not of a lower quality or they have the equivalent in training in education as those licensees in Alaska. The legislature may have written the statute like this particular statute in addition too having a license in another state the potential licensee would also be required to meet our requirements too. Ms. Horetski said that the adoption of those types of standards is hostile to the concept of license by comity and essentially makes it more difficult for people to be licensed by comity. She said that there does not have to be comity at all. The legislature can appeal the statute or make it as tough as they want. The legislature was probably concerned about ensuring the quality or equivalence of the Alaska real estate licenses. She also said she does not see where the 15 hours of education doesn't apply and she doesn't see anywhere that it takes them out of that 15 hours.

Mr. Bauer asked Ms. Horetski what the proposed regulation change procedure is.

Ms. Horetski explains that first the Board writes or draft up the language they want changed and the Board can speak with Jun Maiquis, the regulation specialist, who can help them with the language. Once the language is drafted then that proposed regulation will go out for public comment. It is printed in the newspaper and you have to allow at least 30 days so that regulated community or members of the public can give their comments. Once the public comments are received and considered by the Board then at the Board meeting or a special meeting, the Board can either adopt as is without changes or make changes and then adopt the proposed regulations. Once the proposed regulations are adopted by the Board they go to the Department of Law for legal review, and according to the new statutes, it is also reviewed by the Legislative Affairs Agency. The Department of Law looks at and if it is within the statutory authority of the Board and it is reasonable and not arbitrary law will stamp the department of law approval on the regulation, which is required by state law. Then it goes to the Lt. Governor who signs it and files it, he doesn't change it but only signs and files it. The regulation will go into effect 30 days after being signed by the Lt. Governor. Emergency regulations can be adopted within a short period of time but that is only in an emergency. With emergency regulations, you have to have public notices afterwards and automatically, by law, the expire 140 days after they take effect unless they have been continued by the Board and

the way they are continued is through the public comment period and that process. The due process comes afterward for emergency regulations but you are still required to do it.

### **Executive Administrator Report**

#### **Jennifer Strickler – Financial Information**

Sharon Walsh introduces to the Board Jennifer Strickler and Kathy Taylor with Occupational Licensing. Ms. Strickler and Ms. Taylor track the surety fund and the revenue expenses for the Commission and they also generate the reports for the Board for the quarterly meetings. Ms. Strickler explained to the Board that she is the administrative manager and that Kathy Taylor is the accounting technician for Occupational Licensing. Ms. Strickler lets the Board know that her and Ms. Taylor are responsible for overseeing all the financing of the division, from the division's budget all the way down to every expense that is paid by the division. This includes all programs, as well as tracking all the revenues that come through the division. Ms. Strickler gives the Board an overview of how the budgeting is done. In order to track your costs we have categories in the state accounting system in your report there is direct and indirect costs. Direct costs are expenses that are directly generated by the Commission. Examples of direct costs are Board meetings, printing of statute books and applications. Indirect costs are the Commission portion of the division's administrative overhead cost. They give the Commission a portion of that cost which is based on a percentage, 4.69%. That percentage is based on the number of current licensees that were recorded in the last annual report. Each year they look at number of current licenses for each of the programs and divide that number into the total number of division licensees to come up the Commission's overhead percentage. Also, the indirect costs at the end of the year, they look at the total indirect costs take off roughly 15% and say business licensing will pay for this amount. The Commission is going to pay for 15% less then the total division cost and whatever that cost is the commission's share is 4.69%. She explained that in the Commission's direct costs they have separate categories broker, associate broker and salesperson. They track these costs so that they can tell us how they charged it. As long as each Board area pays for their own costs that is ok. All revenue that is generated is coded so that they know how much this Commission has generated. With the self-sufficiency statute, the division has the authority to roll forward any excess revenue that they collect and so it does not go to the general fund. This excess revenue is rolled forward in a separate category referred to receipt supported services and in order to use that excess it requires a budget appropriation as part of the state budgeting process. The Commission would need to make a request to the division to use that money.

Ms. Strickler said the financial budgeting report is a part of the divisions overall operating daily, day to day transactions. The surety fund is actually reported under a separate appropriation in the state accounting system. The report that is presented to the Board is based on that appropriation which is the part that the legislature has authorized as money that can be spent from surety fund for educational and claim purposes. Expenses in the surety fund personal services payroll that is charged to the surety fund consist of 35% of the executive administrative salary, and publication specialist position. Contractual expenses are primarily for train the trainer that was in the fall and posting

adjustments. Mr. Stebing's salary comes out of the surety fund only if he is doing a surety fund case, if he was doing another licensing issues it would come out of the operating fund. All claims paid out would be shown on this report.

The balance of the surety fund, also called the "big fund", is maintained by the fiscal office and Ms. Strickler does not have the ability to put in or take out of this fund. The interest is managed by the Department of Administration with the Division of Finance. They manage all the state's investments and report the interest. She can look into the system and see the interest posted but to receive an explanation to the calculation you would have to get that from finance. Ms. Strickler says they watch the maximum and the minimum of this fund very closely. At the end of the year, although the end of the year ends June 30<sup>th</sup>, the state actually has a couple of extra couple months for the books to close and it definitely closes on August 31<sup>st</sup>. The fiscal office looks at the fund balance and if it looks like it is going to over \$500,000 what they try to do is get the authorization to remove the part that they can spend. They will reduce that amount from the "big fund" before they settle all the books so the fund will not go over \$500,000. That has not been a problem in the past few years.

Ms. Walsh asks Ms. Strickler if we would try to do a small procurement is it still \$5,000 dollar limit? Ms. Strickler said she spoke with the department's procurement officer and she said if all the costs remain under \$5,000 that there will not be a problem. She said one of the areas are that we need to get clarification on with our departments collections officer is part of the collection of fees and the part of refunding of fees for those coming more than fifty miles. Her discussion with them was that we couldn't legally do that because how would we make sure they really coming from more than fifty miles. She also said that any fees collected by the staff would have to go through the state system and any monies that come through the state system must be authorized by the legislature. In the past train the trainer programs staff have helped collect the fees but it was always going to who the presenter was or presenter's company it was not run through the state system. As long as it is under \$5,000 as far as expenses (airfare, lodging, food, copying of materials, presenter fee, etc.) go, which does not include staff time, they tell her it should be fine. All of the expenses involved with the train the trainer program must remain under \$5,000.

### **Bishop Surrender**

Steve Winker presents to the Board the Bishop surrender due to non-compliance of the 2004 continuing education audit.

Mr. Winker asks the Board if they concurred with the guides that the Board had given him in 2001. The guides were civil fine in a negotiating agreement would be \$0 to \$2,500 dollars that is depending the gravity of the offense, up to \$0 to \$2,000 of that amount may be suspended. There is a fine amount of \$0 to \$50.00 for each credit hour lacking and other elements. Barbara Ramsey asks Mr. Winker if he could give the Board a copy of the guidelines so that the Board can be it on the agenda for them to go over the next meeting and they will let them know if they agree.

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

**RESOLVED # 3004-04-012 to accept the voluntary surrender of real estate salesperson license.**

**All members in favor. Motion passes.**

**Publication Specialist – Introduction**

Sharon Walsh introduces the new publication specialist Teresa Thacker to the Board.  
The Board welcomes Ms. Thacker.

Recess for lunch at 1:13 p.m.

Reconvened at 2:13 p.m.

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

**RESOLVED accept the financial and surety fund report.**

**All members in favor; Motion passes.**

**Surety Fund Decisions**

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

**RESOLVED move to enter into executive session in accordance with to AS 44.62.310(d)(1).**

**All members in favor; Motion passes.**

Into Executive session at 2:20 p.m.

Out of Executive session at 2:56 p.m.

**S-23-014 Basargin v. Comer**

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

**RESOLVED that in case S-23-014 to adopt the Hearing Officer's recommendation of option #1.**

**All members in favor; Motion passes.**

**S-24-006 Roberts v. Gunawan**

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

**RESOLVED that in case S-24-006 to adopt the Hearing Officer's recommendation of option #1.**

**All members in favor; Motion passes.**

**Nathan Jackson 3054-04-001**

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

**RESOLVED that in case 3054-04-001 to adopt the Hearing Officer's recommendation of option#1.**

**All members in favor; Motion passes.**

**John Hook 3050-04-001**

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

**RESOLVED in case#3050-04-001 in recommendation that we remove the two cases of parenthetical 1 after AS 08.88.263 both in the text and the recommendation box and adopt the Hearing Officer's recommendation option #1.**

**Friendly amendment accepted.**

**All members in favor; Motion passes.**

**Heidel licensing issue continued**

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

**RESOLVED to approve Mr. Heidel's license by endorsement.**

**All members in favor; Motion passes.**

**Education**

**Education Committee Report**

PeggyAnn McConnochie gives the Board an overview of the education report and the Train the Trainer course proposal. Ms. McConnochie explains to the Board that the education sub committee is responsible for providing Train the Trainer program which are intended for those who either have had teaching experience within the real estate

community or would like to be a teacher within the real estate community. These courses are typically put on every other year or every year to provide those within Alaska instruction train the trainer course in Alaska rather than having to go outside. The sub committee made a priority for 2004 to have two Train the Trainer programs. They wanted to make sure that they were providing those who had experience within Alaska teaching or outside of Alaska teaching with a top notch quality course especially HB29 was coming in. They also wanted to encourage more people to come into the instructor cadre. The committee sent out proposals to 5 of the top instructors with REEA, which is the educators association through out the United States. They received three proposals back. The education sub committee reviewed all three proposals from Billy Benton, Marie Spodak, and Julie Garton-Good. The education sub committed recommended Billy Benton.

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

**RESOLVED to accept the Education report without any presumption of approval of any action.**

**All members in favor; Motion passes.**

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

**RESOLVED to accept the Train the Trainer program Mr. Benton as proposed with an amendment to eliminate the \$50.00 registration fee.**

**All members in favor; Motion passes.**

#### **Audit Evaluations from AAR Cruise**

The Board looks over and discusses the audit of evaluations from four courses that were given on the AAR cruise last September. Barbara Ramsey said this was in response to the horrible class that she attended on the cruise ship regarding technology and the Board is looking over the audit of that class. Ms. Ramsey said that if we are going to focus on education then the Board needs to focus on grading the instructors to make certain that the classes are beneficial.

#### **Change of status for Broker to Reside in AK**

This item was for two Board members to draft a change in regulation of a supervising broker to reside in Alaska.

Break at 3:48 p.m.

Reconvene at 3:53 p.m.

The Board discusses the changes that may be made to regulation 12 AAC 64.110 to ensure that Alaska based licensees are being adequately supervised. The Board feels that the public is best served when a principal office is under a locally based B or AB supervision. The Board decides to formulate a question for the Assistant Attorney General Dave Brower regarding this issue. What would be the best regulation modification of 12 AAC 64.110 to ensure that Alaska based licensees are being adequately supervised? The Board believes that the intent of the statute was that all offices shall have an onsite broker or associate broker supervising but how do they amend the regulation to reflect that.

Recessed at 4:22 p.m.

### **Tuesday, March 15, 2005**

#### **Call to Order**

Chairperson Barbara Ramsey called the meeting to order at 8:30 a.m.

#### **Roll Call**

##### Members Present:

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

##### Members absent:

Glenn Clary, Public Member  
Susan Rainey, Associate Broker, 4<sup>th</sup> Judicial District

##### Staff Present:

Sharon Walsh, Executive Administrator  
Nancy Harris, Licensing Examiner  
Teresa Thacker, Publication Specialist  
David Brower, Assistant Attorney General  
Jun Maiquis, Regulation Specialist

No public members present

#### **2005 Goals and Priorities**

##### **HB 29 FAQ**

The Chair asked to briefly go over the 2005 goals and priorities to make sure they are still on track and to see if some items need to be shifted or added to the goals and priorities list.

Barbara Ramsey said that HB 29 has been implemented and the consumer pamphlet has been used and asked if there had been any answers on the frequently asked questions that they Board had asked of Mr. Brower from the last meeting for clarification on. Ms. Ramsey said that with the new Publication Specialist on Board she will be able to get started setting up the FAQ's online.

Mr. Dave Brower, Assistant Attorney General for the Division, addresses the questions of the FAQ's that the Board had written up at the last meeting. The first question was regarding who was required to disclose if there was a murder and suicide on the property. Mr. Brower said that as far as the disclosing for the real estate licensee involved in a transaction, if the licensee knows and if it occurred within a year they must disclose. If you are a buyer's agent and the seller is not represented than the seller does not have a duty to disclose whether there has been a murder or suicide. If as a buyer's licensee, if you know you want to tell your buyer anyway but you would be required to if it falls within the statutory requirements if you know about it but there is no duty of a non-licensee to disclose that.

The requirements are that you are required to disclose it if it has happened within one year and if you know. If you know and it happened within five years and you want to disclose there is no statutory requirement that you have to. There is nothing that precludes you from disclosing if it happened outside statutory timeframe but only that you are required to disclose if it happened within the statutory timeframe. The Board members asked does the licensee have liability for disclosing outside the time frame? Mr. Brower said that it would appear no that they don't, because they do not have a duty to the owner and if they represent a buyer and there is no indication that the licensee is going to provide specific assistance to the seller as a unrepresented party, and the licensee knows about something that happened out of the statutory timeframe. If a seller knows about a murder or suicide that happened in his house six months ago and he hires a real estate licensee to sell the house and purposely doesn't tell him there is nothing in statute that would require the owner to tell the licensee. There is no specific law that says you can require an owner to disclose but you need a specific law to require disclosure. It's not a law that is requiring you to do something but it's a law that is not preventing you from doing something. A law that requires someone to do something has to be pretty specific.

Specific Assistance. Dave Brower said that specific assistance and neutral licensee are defined. A neutral licensee provides specific assistance to both the buyer and the seller or both the lessor and the lessee in a real estate transaction and does not represent either party. Mr. Brower points out that in AS 08.88.610, Authorization of neutral licensee relationship, reads that, "If pre-authorization is not obtained under (a) of this section, when a buyer or lessee expresses an interest to the licensee in acquiring or leasing real estate and the licensee is representing the seller or lessor of the property, the licensee shall obtain written consent to act as a neutral licensee before the licensee shows the real estate.

The Board asks Mr. Brower when does specific assistance begin? Does it begin at opening the door or at the sharing of confidential information? The Board members discussed the different scenarios regarding when specific assistance may occur. Mr. Brower said that the licensee can not be responsible for what an individual is going to say. He also said there is obviously going to be a line that can be crossed about asking confidential information, their ability to pay, etc and there would be specific assistance at some point and at that point the pamphlet would need to be signed. He said this is not a cut and dry industry everyone does things differently. Barbara Ramsey told Mr. Brower that the Board members agreed at the last meeting that the consensus of the Board was that it is a good business practice to give the pamphlet to people early and get them to sign it. Some of the Board members said they get the people who refused to sign the pamphlet to sign saying that they refused to sign the pamphlet just for their records. Mr. Brower said that if people will not sign the pamphlet that does not preclude the licensee from doing their job.

Ms. Walsh asks if a person signs the pamphlet after the transaction is there a violation and if so what type? The Board believes that it would be a licensing violation because the licensee is required to have the pamphlet signed before they provide specific assistance, before preparing a written offer and entering into a personal service contract so at that time it has to be done.

Barbara Ramsey said that the pamphlet seems to be going well, she has had only a few comments from the public although the Board still has some tweaking to do, with minor changes and corrections. The Board members agree to look at the pamphlet at the next meeting because then it will have been used for about six month and that should give them a better ideal at the changes needed.

The Board members ask Mr. Brower for his assistance in what would be the best regulation modification of 12 AAC 64.110 to ensure that Alaska based licensees are being adequately supervised? One of the thoughts that the Board had was that in the office in which the broker physically works as his primary place of business and maintains his license is considered the principal office. The Board believes that all offices should have an onsite broker or associate broker supervising but how do they amend the regulation to reflect that. Mr. Brower said we will look into it and bring it to others attention and try to figure it out. He is not sure what the statutes require if the statute gives you broad authority to determine what supervision is.

The Board asks Mr. Brower if the Board has to accept a voluntary surrender. The Board's concerns were if a revocation could be a possibility rather than a surrender so that if that individual would go to another state that other states would be able to get that information. Mr. Brower said that the Board does not have to accept surrender. If the Board does not accept a surrender they could do nothing or there would be an accusation, a hearing, proposed decision, sanctions and/or revocation. Barbara Ramsey said she would look into what ARELLO has on their site and what type of information they are reporting.

### **Draft Regulations**

The Board discusses the need of the possible regulation changes for paying of a referral fee to out of state brokers. Mr. Somers would like to see a change in regulation to clarify this issue. The Board would like the regulation to state “Broker paying the referral fee will have a current, valid, copy of the real estate license on file before paying the out of state broker.”

Mr. Brower suggests to the Board that HB 169 has a lot of statutes that are being amended and implemented and is now in the legislature for approval. AS 08.88.263 is licensing by endorsement for out of state licensees who want to be licensed in the state of Alaska. He suggested to the Board that if AS 08.88.263 was a stand alone statute that spells out the requirements for licensing by endorsement rather than referring back another licensing statute that it may help with some of the problems that have happened in the past. The Board may want to recommend to the legislature to amend this statute as a stand a lone statute. For instance, if someone would like to be licensed as a broker in Alaska from out of state you would have to have been a active broker in the other jurisdiction for a number of years.

Barbara Ramsey said that is one of the things that she could look into when at the ARELLO conference about reciprocity and their licensing requirements for review at the next meeting.

The Board discusses the changes that they will recommend to the legislature to amend AS 08.88.263.

Break at 10:18 a.m.  
Reconvene at 10:30 a.m.

The Board members look over the FAQ’s that have been emailed to the Real Estate Commission office to make sure that their questions have been answered. All questions have been addressed or will be taken up at the next meeting for modifications to the consumer pamphlet.

### **Broker Manual**

The Board agrees to review the draft of the Brokers Manual and to email comments to Sharon Walsh by March 29, 2005 and a mail ballot will be sent out for a vote. There were major revisions on page 31.

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

**RESOVLED to adopt the broker manual as revised in the absence of material revisions by April 5, 2005.**

**All members in favor; Motion passes.**

## **Education**

The Board reviews the draft of regulation 12 AAC 64.500 to add continuing education topics to the list of approved topics.

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

**RESOVLED to adopt the draft regulations of 12 AAC 64.500 amendments with modifications to remove “and real estate mathematics” from topic #23 and remove the entire line for topic #38.**

**All members in favor; Motion passes.**

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

**RESOVLED to approve the revised draft regulation 12 AAC 64.500 for public comment.**

**All members in favor; Motion passes.**

Break for lunch at 11:36 a.m.

Reconvene at 1:40 p.m.

## **HB 169**

The Board reviewed, discussed and made a list of the changes they will recommend to the legislature for amending HB 169 regarding post licensing. The real estate commission’s recommendations of changes to HB 169 are:

- Page 2 line 6, “before the course is”
- Page 3 line 28 – 30 eliminate
- Page 4 line 5 eliminate “for six months or more” and “20 hours of”
- Page 4 lines 14 – 16 eliminate
- Page 4 lines 17 – 20 eliminate
- Page 4 lines 26 change “licensed real estate salesperson” to “ real estate licensee”
- Page 5 line 21 change “licensed real estate salesperson” to “real estate licensee”
- Page 5 line 22 change “five” to “seven”
- Page 6 line 19 - Ask the AG regarding age of majority at 18. Any specific reason why a person of 18 could not be a real estate licensee.
- Why is 08.88.403 in this bill when it is unclear of the need because it is covered in 12 AAC 64.125?

The Board discusses how to modify 08.88.263 as a stand alone document. The Board decides to wait to make changes until after the ARELLO conference when they will have

a better understanding of the pre licensing requirements in other states is compiled and presented to the Board. The Board decided to have staff ask Jun Maiquis if the June 04 draft of 08.88.263 could be put into the regulations under the authority of AS 08.88.171. They also wanted to ask Mr. Maiquis about if the referral fee issue could be put into the regulations.

The Board asks staff to ask for other professions to attend the train the trainer classes to increase education pool. Also, for staff to research having the train the trainer class in May or in Fairbanks and Juneau or at the state convention.

The Board asks staff to ask Mr. Brower, that if a broker is required to be physically present to supervise, but a single broker without licensees, is excluded.

Break at 2:37 p.m.

Reconvene at 2:55 p.m.

### **Sunset Audit Recommendations re: Mobile Homes**

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

**RESOVLED that mobile homes are not considered real property and are not covered under the surety fund.**

**All members in favor; Motion passes.**

### **New Business**

Barbara Ramsey and Sharon Walsh will be attending the ARELLO regional conference on March 30 through April 2. They will inquire about other states pre-licensing and post licensing education and reciprocity requirements while at the conference for the next meeting.

The next real estate commission meeting will be June 13<sup>th</sup> and 14<sup>th</sup> in Fairbanks. The first day will start at 9:00 am and the second day will begin at 8:30 a.m. This meeting is in conjunction with the local monthly Board of realtor meeting that the Commissioners are encouraged to attend.

Barbara Ramsey comments that the Board did a great job and we stayed somewhat on schedule.

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

**RESOVLED to adjourn the meeting.**

Meeting adjourned at 4:53 p.m.

Prepared and submitted by Division Staff.

Approved:

---

Barbara Ramsey, Chairperson  
Real Estate Commission

Date: \_\_\_\_\_