

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

MINUTES OF MEETING

SEPTEMBER 14 and 15, 2004

The staff of the Division of Occupational Licensing prepared these draft minutes. They have not been reviewed or approved by the Commission.

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 14 and 15, 2004, in the Atwood Building, Anchorage, Alaska.

Tuesday, September 14, 2004

Call to Order/Roll Call

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

Members Present:

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

Staff Present:

Nancy Harris, Licensing Examiner
Sharon Walsh, Executive Administrator

Guests Present (at various times):

Margo Mandel, Investigator
David Stebing, Hearing Officer
Mark Bonham, public member
Linda Garrison, Broker, AAR #1 Buyers Agency
Heather Herndon, salesperson, Globe Real Estate
Edwin Osowski, salesperson, Alaska Capital Real Estate
Linda Cardoza, Anchorage Board of Realtors
Diane Melton, Broker, Five Star Realty, LLC
Dennis Smith, public member
Dorothy Smith, public member
Betty Kline, Salesperson, Five Star Realty, LLC

Approval of Agenda

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

RESOLVED to accept the agenda with amendment.

Approval of Minutes

Board requested to table meeting minutes until after lunch so that could have a chance to review them before approval.

Persons to be Heard

Mark Bonham brought his concerns before the board in regards to the length of time his surety fund case has been progressing. He said that it has been over two years since his case has started and now he is only receiving half of the money he was told he was to receive. Mr. Bonham said he received a letter indicating that the board had adopted the hearing officers recommendation but then he received another letter indicating that the amount of money he would receive was different.

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

RESOLVED to pay Mr. Bonham the rest of the \$10, 000 within the next week.

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

RESOLVED to table this discussion until meeting minutes are adopted this afternoon.

Heather Heardon brought her case before the board regarding her break in service. She said that when she turned her application in to upgrade to broker the licensing examiner said she showed a break in service and she would not be issued a broker license and that if she would like to appeal this she could take it to the board. She explained to the board that she had let her broker know she was leaving the country for a short period of time and that she had taken and passed her broker exam and that when she returned she would put in for her brokers license. However, upon her return from Scotland Ms. Herndon explained that she had a letter from the licensing examiner saying that her broker turned in her license and that she had thirty days to transfer her license. She immediately called her broker to see what had happened. He told her that the board of Realtors and informed him that she had outstanding Realtor dues and if they were not paid he, her broker, would not be able to be a realtor and therefore have to close his office so he turned her license in to the Commission

Linda Cordoza addressed the board regarding frequency and the importance of the Real Estate Newsletters. She invited the board to the Anchorage Board of Realtor luncheon tomorrow.

Edwin Osowski brought his case before the board regarding his lapsed license. He said he missed the renewal date, which gives him a two-year set back in his career. He said he was not notified of the renewal and that he hopes the board considers his case.

Linda Garrison asked to comment on HB29 but the Chairperson Barbara Ramsey stopped her and let her know no comments regarding HB29 can be taken because the board agreed at their July 29, 2004 meeting to only accept written comments. The period for written comment was closed on September 8, 2004 at 5:00pm.

Investigator's Report

Margo Mandel asked the board if they would like to go into executive session because of the nature of her report.

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

**RESOLVED to go into executive session.
For the purpose of AS44/62/31(c)(2).**

**Board goes into Executive Session at 10:20 a.m.
Board out of Executive Session at 11:15 a.m.**

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

RESOLVED to approve the Investigator's report.

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

**RESOLVED to accept the recommendation regarding Moser.
2 opposed and 5 in favor.**

Recessed for break at 11:25 a.m.
Reconvened at 11:35 a.m.

Surety Fund Claims Proposed Decisions

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

RESOLVED to go into executive session for the purpose of AS44.62.31(d)(1) to review proposed surety fund decisions.

Enter into Executive Session at 11:40 a.m.
Out of Executive Session at 12:30 p.m.

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

RESOLVED to table further discussion on any further case decision claims involving T. Bradbury until we have the results of the audit.

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

RESOLVED that in order to facilitate resolution of several surety fund cases, and in order to protect the public in the future from trust account violations, the commission requests the Director to order a specific audit of trust accounts relating to active and pending surety fund claims involving T. Bradbury, Pacific North

Properties and AK Home Seekers. Audit to be completed by December 1, 2004 but not later than March 1, 2005.

Recess for lunch at 12:30 p.m.

Reconvene at 1:40 p.m.

Margo Mandel asks the Commission if she could clarify a few things on record regarding the MOA presented earlier.

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

RESOLVED to reconsider the previous adoption of the MOA.

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

RESOLVED to go into executive session for the purpose of AS44.62.31(c)(2).

Enter into Executive Session at 1:43 p.m.

Out of Executive Session at 2:10 p.m.

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

RESOLVED to amend MOA for case #3000-03-003 to include the addition of a 60-day suspension effective immediately.

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

RESOLVED to move approval of minutes until tomorrow after lunch on the 15th.

Licensing Examiner Report

Nancy Harris presents her statistical report.

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

RESOLVED to accept licensing examiner's statistical report.

Licensing Issue – B. Kline

Nancy Harris presents the case of real estate licensee Betty Kline, License #16203 regarding conflict of interest. Betty Kline is a real estate salesperson in the office Five Star Realty and also is working for a building contractor. She is bringing her case before the board to ask if there is a conflict of interest with her working for a building contractor full time and working as a real estate salesperson also. She is only conducting office work, filing, answering the phones, showing and selling the model home to interested persons.

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

RESOLVED to have staff respond to Ms. Kline, an active licensee that she needs to be performing these kinds of services under a broker or as a broker.

The board urges Ms. Kline to upgrade to a broker as soon as she has the 24 months of continuous salesperson time and open her own office.

Endorsement – E. Ricketts

Licensing examiner presents the case of Edwin Ricketts regarding a broker endorsement application. Mr. Ricketts is a broker from Arizona. He can't show the requisite salesperson experience as required in AS 08.88.263 which is, 24 months of continuous salesperson experience.

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

RESOLVED that the request for license by endorsement by Edwin Ricketts be denied due to statute restrictions.

Recessed for break at 3:15 p.m.
Reconvene from break at 3:20 p.m.

Lapsed License – E. Osowski

Mr. Edwin Osowski's License #15882, case is presented to the board regarding his request for a retroactive effective date on his real estate salesperson license so that he may meet the 24 months of continuing salesperson experience requirement to receive his broker's license

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

RESOLVED to deny Mr. Osowski his request for a retroactive effective date of his real estate license.

Break in Service – Herndon

Heather Herndon's License #15231, case was presented to the board regarding her break of service of her real estate salesperson license. Ms. Herndon was seeking an upgrade to broker but had a break in service due to being out of country and a miscommunication between her and her broker and therefore would not be able to obtain her broker's license. She is asking the board to consider her circumstances regarding this break in service.

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

RESOLVED that the 05/05/04 termination date of license #15231 not be accepted because of the failure of the broker to notify the licensee at the address supplied and that the 30 days under 12 AAC 64.990 start as of 06/15/04.

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

RESOLVED to table until the board can talk to Ms. Herndon's broker tomorrow.

Recessed for break at 3:50 p.m.
Reconvened from break at 3:55 p.m.

New Licensee Issue – R. DeVall

New licensee Renee DeVall responded with a yes to question number 1 of the personal screening questions on her real estate salesperson score sheet/application.

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

RESOLVED to approve this licensee for licensure.

The board asked staff to let Ms. DeVall know the board appreciates her honesty on her application.

Remote Site Supervision – Bartos & Keskitalo

Anat Keskitalo License #16264, is a licensee living in Nome but would like to be supervised by broker Hank Bartos of Century 21 Gold Country (Fairbanks) out of Fairbanks.

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

RESOLVED that the request be denied because it is not in compliance and we cannot proceed without 12 AAC 64.126 (b).

Applicants w/Lapsed Instructor Status – Woods

Four individuals seeking licensure took their pre-licensing education from an instructor whose instructor approval had lapsed for a short period of time. This instructor is brought to the board for approval of this instructor for this time period so that these licensees may be licensed.

Board member Clary said he may need to recuse himself from voting on this matter because he knew the individual that is involved.

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

RESOLVED to accept their education training by the non-licensed instructor.

Board directs staff to notify instructors 60 days prior to expiration of their instructor approval application.

Unlicensed Assistant – Review Script

A script was presented to the Real Estate Commission of what an office would like to have unlicensed assistants read to make the determination if it is in compliance with the statutes and regulations.

Board member Rainey recused herself from this issue due to the fact that she works out of the same office.

On a motion by Somers, seconded Fluetsch, and passed by a majority, with one abstaining vote, it was

RESOLVED that this is not an acceptable script for an unlicensed assistant.

Applicant with Lapsed instructor – Sheppard

One individual seeking licensure had taken a pre licensing course from an instructor who had a brief lapsed of their instructor application. The instructor provided a list of fourteen individuals that took the same course. This is presented to the board seeking approval for instructor for this period of time so that the individuals that have taken this course with this instructor and who will seek licensure can be licensed.

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

RESOLVED to accept individuals who took the class on 02/13/04 – 02/15/04 receive credit.

The board directs staff to notify course sponsors at least 60 days prior to expiration of courses previously approved.

Board recessed at 5:30 p.m.

Wednesday, September 15, 2004

Meeting reconvened at 8:35 a.m.

Roll Call

Members Present:

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

Staff Present:

Nancy Harris, Licensing Examiner
Sharon Walsh, Executive Administrator

Guests Present (at various times):

Linda Cardoza, Anchorage Board of Realtors
Heather Herndon, salesperson, Globe Real Estate
David Haase, Broker, Globe Real Estate
Peter DiMaggio, Associate Broker, Globe Real Estate

Response from staff regarding the Bonham surety issue. The board directed the staff to send out a letter of clarification to all claimants regarding the surety fund adoption and pay out.

Break in Service – Herndon

Board revisited the issue of Heather Herndon's break in service. The Board asked to speak with Ms. Herndon's broker and hear his response to this issue and for the board to ask him a few questions. Mr. Fredrick Haase, broker and Peter DiMaggio, associate broker were present to be available to the board for questions and discussion regarding this issue.

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

RESOLVED that due to the incorrect submission of the termination notice for licensee, #15231, the 30 days notice referenced 12 AAC64.990 did not start until June 15, 2004.

Response from staff regarding letter to Mr. Bonham dated June 18, 2004 failing to address specific action by Commission at June 10 and 11th, 2004 meeting. Whereby, surety fund pay out is only 50% of principal award at this time.

Approval of Minutes

On a motion by Rainey, seconded by Somers,

RESOLVED to approve the June 10–11, 2004 meeting minutes and the July 29, 2004 teleconference meeting minutes.

Amended by Rainey, seconded by Fluetsch, and passed unanimously, it

It was asked that the case numbers on page 9 of the June 10 – 11, 2004 meeting minutes are checked for accuracy. Also, those additional notes brought forward by Nancy Harris for the July 29 teleconference meeting are added.

The Commission discusses the Train the Trainer course that was not yet approved for which a flyer went out from Alaska Association of Realtors indicating that the REC had approved this course and that money was to be submitted to the State of Alaska. The Commission was given a chronology of emails and correspondence that took place after this flyer went out to all licensees.

Education Committee Report

PeggyAnn McConnochie, chairperson for the Education Committee, spoke to the board by teleconference. She went over the Education Committee report and what the education subcommittee went over in their meetings. Ms. McConnochie said the biggest issue was testing of classroom courses for real estate continuing education. The subcommittee recommended to the board not to have testing for classroom CE and to add technology to the list of approved elective courses.

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

RESOLVED to accept the education committee report without presumption of approval of any action.

Recessed for Break at 11:20 p.m.
Reconvened at 11:15 p.m.

Executive Administrator Report

Sharon asked that the Commission revisit the Randle licensing issue and to restate the motion so that it can be captured on record. This motion was not captured on record at the June 10 and 11, 2004 meeting with apologies from staff.

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

RESOLVED to adopt the hearing officer's recommendation to deny the application of Joanie Vanessa Randle for a broker license by endorsement.

The board directed staff to send out a letter regarding the potential regulation changes in the endorsement application requirements.

Sharon Walsh presented her report to the board. The board looked over reports as presented. Mr. Fluetsch asked staff for the break down of contractual expenses.

Financial Report

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

RESOLVED to accept the Executive Administrator's financial report.

Commission member Somers asked staff for the balance of the surety fund report and that when they received that if they could email that information.

Mr. Clary asked for corrections of the dates in the Comments-Pymt/int/date column to the show the correct dates in the surety fund claim activity report.

Surety Fund Report

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

RESOLVED to accept the Executive Administrator's surety fund report as amended.

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

RESOLVED for staff to request an accounting from the broker of the trust fund for a specific claimant only, once a surety fund claim has been filed for conversion of trust funds.

The board looked over the Annual Report as presented. The board asked for a few corrections to the report.

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

RESOLVED to accept the Annual Report for FY04 as amended.

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

RESOLVED that the position of publication specialist be filled as soon as possible.

The board discussed future items for the Commission's goals and objectives for 2005. Some of the items were: home office regulation/criteria, education course hours, proposed amendments of AS 08.88.263 regarding license by endorsement of brokers, referral fees to unlicensed individuals with minor changes to regulations, testing, updating website on a monthly basis, publication specialist vacancy, quarterly news letter for mail out for those with email and web based for those with email, regulations covering broker that live and work out of state. The board requested a copy of Jeannie Johnson's letter in response to the sunset audit.

Bradbury & Downs Audit Issue Follow-Up Rpt

Board looks over information regarding the Bradbury & Downs issue. Investigator Mandel gave the board more information in her report on Tuesday, September 14, 2004.

Despain-Broker in Utah and Alaska

Sharon Walsh explains that Mr. Despain is a broker for an office here in Alaska but is not physically present here but working in the company's main office in Utah. A letter was sent out to Mr. Despain requesting information

from him regarding his adequate supervision. Mr. Despain did respond by email entailing his duties as a supervising broker who is not in the office.

The board directs staff to send a letter to Mr. Despain indicating that he must have a broker or associate broker physically based and in charge of the office in Anchorage per 12 AAC 64.077.

Hoban–Broker in Washington–Conduct business without an office

Sharon Walsh explains that Mr. Hoban was seeking to open an office here in Alaska to manage property for a company but was not yet ready financially to have a physical office here and had inquired if that was permissible.

The board directed staff to send a letter saying that he must have a physical presence and location to be a broker in the state.

Renewal Audit –Continuing Education Issues

The audit of continuing education was completed in August. There was one licensee who was non-compliant. Staff brought forward to the board the issue of instructor and courses that were not certified at the time of instruction of a course.

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

RESOLVED to accept the CE for licensees for course #959 at the 10/25/02 class.

Recessed for lunch at 12:35 p.m.

Reconvened at 1:10 p.m.

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

RESOLVED to accept the CE for licensees for course #1005 taught on 10/10/02.

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

RESOLVED to accept the CE credit for licensees for course #2010 taught on 07/17/02, 12/12/03 and course titled “Current Legal Issues” taught 02/7/04 only if it is determined to be a certified

approved course.

Staff asked the board if they would accept a real estate course from the state of Arizona for Alaska real estate continuing education.

The board directed staff to ask for a list of the classes with course numbers and instructors to determine if the classes are approved in this state.

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

RESOLVED to accept the continuing education audit report.

Staff responded to a question asked by commission member Larry Bauer regarding length of time required to keep records for trust accounts per AS 08.88.351 states, "keep records, for 3 years, of all real estate transactions..." Staff also brought forward to the Commission other occupations that allow for a translator at the exam. The medical and nursing boards do not allow translators at the exam but the board of barber and hairdresser do allow for a dictionary and also for someone to read the exam in English to the individual taking the exam.

HB29

Chairperson Barbara Ramsey did a recap of all the public comments that were received regarding the consumer pamphlet. She broke it down into categories, 11 asked to reconsider the Alaska State and Anchorage Board of Realtor Task Force draft, 23 said it was difficult to follow, confusing, not user friendly and complicated, 30 asked to keep it simple, needs to be short, concise and easy to understand, 10 provided examples, edits, and suggestions, a few suggested to try it out on the public first and others said there was confusion regarding HB29 requirements. Other HB29 issues are conflicts, of interests, confidentiality, security, designated licensee, broker supervision, and procedures/manual. There were other public comments regarding the property disclosure statement.

Regulation

The board discusses the changes in regards to broker supervision specifically 12 AAC 64.125(b).

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

RESOLVED to remove the phrase “or their designee” from (b) from 12 AAC64.125.

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

RESOLVED to correct (b) 12 AAC 64.125 “by a Broker or an Associate Broker.”

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

RESOLVED to adopt the regulation as amended.

Consumer Pamphlet and Waiver of Rights

Barbara Ramsey spoke regarding the Consumer Pamphlet and suggested that the board start from scratch and develop a tri-fold brochure that is friendlier to the public and that they can understand. She asked the board to discuss and to formulate questions to ask the Attorney General that might help the board to do this legally. The board formulated some questions and asked the AG their questions. The board decided to re-do the Consumer Pamphlet and the waiver of rights at the same time since those two forms are directly related.

Recessed for break at 3:05 p.m.

Reconvened at 3:10 p.m.

Property Disclosure Statement

The board discusses the changes regarding the property disclosure statement. Commission member Somers asked if it was just the two changes regarding the website and the addition of section #31 regarding murder or suicide. Barbara Ramsey asked Attorney General Dave Brower if the only those two items could be changed or was it opened to other changes. Mr. Brower said it looked like it was open to other changes according to the public notice. Board discusses other changes to the Property Disclosure Statement.

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

RESOLVED to add “signing this waiver does not affect other obligations for disclosure” to page 9 (Waiver by

Agreement) as the second sentence.” And to adopt the State of Alaska Residential Real Property Disclosure Statement as amended.

Other forms & Language

The board agreed to add this item to the agenda for the future teleconference.

Recessed for break at 4:40 p.m.

Reconvened at 4:45 p.m.

Broker Manual-Update

Board discussed the broker manual and decided to have two of the board members, Dave Somers and Larry Bauer, work on this and bring it to the board for final decision. Board discusses the importance of the broker manual as a reference tool and for those brokers opening a new office.

HB 29 Course approval on Train the Trainer

Staff explains to the board that a flyer went out regarding train the trainer that was incorrect and in violation of the statutes. The Executive Administrator asked for a retraction from AAR. She asked the board for criteria and approval of the content that will be needed for an instructor to teach the Train the Trainer course. She explained that there was not yet a board approved course outlining the content in which instructors would need to adhere to in order to bid for Train the Trainer course.

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

RESOLVED that REC fund up to \$1500 for “The Train the Trainer” course. The sponsor may charge a registration fee to offset the cost, not to exceed \$50.00.

Board discusses the train the trainer criteria as presented by Sharon Walsh. She states that the criteria can be whatever the board would recommend.

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

RESOLVED to accept the Train the Trainer criteria proposal as amended.

Amended that bullet 1 to read specific that of the 8 hours at least 4 be dedicated to HB29.

Amended bullet 3 to read: The audience for this course will be individuals who wish to teach or instruct licensees.

Amended curriculum in bullet 5 to add – 3) To include a 30 question multiple choice, self corrected quiz limited to the HB 29 segment of the course.

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

RESOLVED to accept the main motion as amended.

On a motion by Somers and passed unanimously, it was

RESOLVED adopting HB29 continuing education criteria with the REC funding up to \$8,500.00 for services and sponsor may charge a registration fee not to exceed \$50.00 per attendee. Response time no later than 09/30/04

Barbara Ramsey noted that any item not covered at this meeting would be on the agenda for the next scheduled board meeting in December.

There were no ethic violations for this period.

The meeting adjourned at 6:00 p.m.

Respectfully submitted:

Sharon Walsh, Executive Administrator

Approved:

Barbara Ramsey, Chair
Real Estate Commission

Date: _____