

Alaska Real Estate Commission (AREC) Report

Dave Somers

The AREC met on March 4-5 in Anchorage. The following is a summary of some of their actions.

The first day of the meeting was mostly dedicated to a work session on the revision to the Alaska Real Estate Commission Consumer Pamphlet. The second day of the meeting the proposed changes to the form were approved and will eventually be going out for public comment as a regulation project. I don't expect we will see the final draft until after the June AREC meeting. The Commission members were hoping to make the form less confusing and more clear to the users. The title of the form is changed to Alaska Real Estate Consumer Disclosure. Note the removal of the word "Pamphlet". As there never really was a pamphlet, this makes sense. They are recommending one disclosure form versus the multiple forms that AAR supported. The multiple form approach would have had one type for commercial, one for property management, and a third form for all uses.

A good portion of the agenda was dedicated to the investigative process. Investigator Jennifer Wirawan continues to impress by closing out old files and looking for innovative ways to streamline the investigative process. One new process that was discussed was the "conditional dismissal". This new approach has been used with great success in other states. Currently in cases where a complaint has been filed and there is no question that a law or regulation has been violated all files were moved forward through the entire process. With the conditional dismissal system, if it is determined by the investigator that the action by the licensee was not intentional, the licensee may be given the option of taking classes and then having the file closed. A commission member must review the case and give their approval for this to happen. This process not only avoids public testimony and punitive damages, it's saves staff time and money. The AREC will be moving ahead with this new system. Investigator Wirawan also introduced a new complaint form. The old one was not geared toward real estate, confused the public and forced staff to spend time making follow up calls to complete the file. This form is already in use and is saving valuable time and resources.

During public testimony the topic of paying commission to all legal entities was brought up, again. The licensees, who were all REALTOR members, asked that the AREC reconsider their position on this issue. The Commission, in reviewing a related regulation project in 2013, went on the record stating that it is against the law to pay a commission to a legal entity. They stated that statute clearly says that only a natural person can hold a license and that commissions can only be paid to a license holder. The concern has always been that the legal entity can be made up of people that do not have a real estate license and therefore not subject to the oversight of the AREC. All the Commission members were supportive of finding a way to pay commissions to legal entities, as long as all the members of the legal entity had a real estate license. It was suggested that AAR take on a statute change to achieve this goal. I suggested that if the AREC moved forward with a regulation project with the licensee restriction language included it would have a good chance of passing a legal review. The regulation would state that the broker would be responsible to ensure that, when paying a commission to a legal entity, all members of the entity have a license hanging in that broker's office. The Commission members agreed to look into a solution.

The AREC will meet again in Anchorage in June of 2014.

The Division appears to be close to making the position currently held by Nancy Harris 100% dedicated to the AREC. It was also announced that Ms. Harris will again start publishing the E-newsletter.

There was a lengthy discussion regarding establishing criteria for denial of a license for prior criminal conduct. The concern was having someone take the time and money to get to the point where they can apply for the license and then be denied. The Commissioners were very clear that they wanted final review on a case by case basis, as there were too many variables involved.

The Commissioners were asked if they would like to make a distinction between those that answered "no" on the real estate application regarding a previous conviction in an intentional manner versus unintentional. The answer was no, but they did agree that all falsified applications would be fined \$1000.00 with up to 6 months to pay. They made it clear that in addition to the fine they still retained the right to deny the license.