

MINUTES  
Texas Real Estate Commission  
June 7, 1999  
Conference Room 235, Texas Real Estate Commission  
Austin, Texas

Chairman Jay Brummett called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, June 7, 1999. Besides Chairman Brummett, members present were Kay Sutton, Pete Cantu, Deanna Mayfield and Michael Brodie. Mitchell Katine arrived at 9:43 a.m.

Staff present were: Wayne Thorburn, Administrator; Brian Francis, Assistant Administrator; Don Dudley, Director of Licensing and Education; Alan Waters, Director of Staff Services; Loretta DeHay, Director of Enforcement; Glen Bridge, Director of Information Services; and Patricia Holder, Executive Assistant.

After calling the meeting to order, the Chairman led the attendees in the pledge of allegiance and the Texas pledge of allegiance.

The Chairman moved to agenda item two, minutes of the April 12, 1999 Commission meeting. Mr. Cantu, seconded by Ms. Mayfield, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item three, staff reports; committee reports. Ms. DeHay reported on complaint activity and that the majority of the current cases were under six months old.

Mr. Bridge reported on the mainframe system and vendor software. There was discussion concerning Y2K and access to licensee information through the Internet connection.

Mr. Dudley introduced four new employees, Kenya Gooden, Debbie Mitchell, Jennifer Whited and Lisa Castillo. Mr. Dudley also reported that Julia Phillips, Education Department, would be retiring at the end of June with 25 years of state service. Mr. Thorburn commended Ms. Phillips for her service and she was recognized by the Commission.

Mr. Waters reported that staff was working on the 3<sup>rd</sup> Quarter Report on Measures due July 1, 1999. Mr. Waters reported on the payment activity concerning the recovery fund. Mr. Waters also reported that there would be a meeting of the Investment Committee before the August meeting of the Commission. The Chairman reappointed Ms. Mayfield, Ms. Folmer, Ms. Gonzalez-Gil and appointed Mr. Brodie as a fourth member of the Investment Committee. Ms. Folmer was reappointed as chairperson.

Mr. Thorburn reported on the video concerning intermediary agency that TREC and the Real Estate Center had been working on together. He also reported on plans to implement changes brought about by various bills that had passed during the Legislative session. Mr. Thorburn presented photos to the Commissioners that were taken before the previous meeting at the House of Representatives, and after the meeting at the Governor's Reception Room at the State Capital.

Chairman Brummett moved to agenda item four, general comments from visitors. Comments were offered by Sally Yaryan regarding the ability to fill in TREC's forms on the computer. A recess was called from 9:29-9:33 due to lack of a quorum. After discussion, the Chairman moved back to agenda item three. Mr. Brodie, seconded by Mr. Cantu, moved to direct staff to present ways to allow a person to fill out a TREC form on the computer. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item five, discussion of and possible action to adopt amendments or repeals of: (a) 22 TAC §§537.11, 537. 21, and 537.36, concerning standard contract forms; (b) 22 TAC §§535.1-535.4, §§535.11-535.21, §§535.31-535.35, §§535.41-535.42, and §§535.51-535.53, concerning provisions of The Real Estate License Act. Mr. Moseley presented agenda item 5(a) for discussion. After discussion, Ms. Sutton, seconded by Ms. Mayfield, moved to postpone action on agenda item 5(a) until it could be sent back to the Broker-Lawyer Committee for further study on the "Addendum for Sale of Other Property by Buyer." The motion was adopted by unanimous vote.

Mr. Moseley presented agenda item 5(b) for discussion. Mr. Katine, seconded by Ms. Sutton, moved to adopt §535.20(a) inserting the amount of \$50 as the maximum referral amount, whether cash or gift. After discussion, it was decided that further action on this item would be deferred until the next meeting of the commission. No vote was taken on the motion.

There was discussion concerning §535.1(a). Chairman Brummett, seconded by Mr. Cantu, moved to accept the staff recommendations substituting the following language for the second sentence of the original proposal: "For the purposes of the Act the Texas Real Estate Commission deems a person to be acting within this state, if the person maintains an Internet web site which may be accessed by residents of this state. Contacting a Texas resident from another state by mail, e-mail or telephone is not considered acting within this state." Comments were offered by Mark Eberwine, Texas Association of Real Estate Inspectors. After discussion, Mr. Brodie moved to table the motion. The Chairman called for a vote on the motion to table. Ms. Sutton, Ms. Mayfield and Mr. Brodie voted in favor of the motion to table. Mr. Katine, Chairman Brummett and Mr. Cantu voted

against the motion to table. The motion failed.

The Chairman called for a vote on the motion amending §535.1(a). Mr. Katine, Chairman Brummett and Mr. Cantu voted in favor of the motion. Ms. Sutton, Ms. Mayfield and Mr. Brodie voted against the motion. The motion failed.

Mr. Katine, seconded by Mr. Cantu, moved to return §535.1(a) to its original wording. After discussion, Mr. Katine withdrew his motion. Mr. Katine, seconded by Mr. Brodie, moved that §535.1(a) should be limited to the first sentence, deleting the second sentence. After discussion, Mr. Katine withdrew his motion. Mr. Katine, seconded by Chairman Brummett moved to adopt the following language amending §535.1(a): “Texas Civil Statutes, Article 6573a (the Act) applies to persons acting as real estate brokers or salespersons within this state, regardless of the location of the real estate involved or the residence of the person’s customers or clients. For the purposes of the Act, conducting business from another state by mail, telephone, the Internet, e-mail or other electronic medium is considered acting within this state.” Mr. Katine, Chairman Brummett, Ms. Mayfield, Mr. Cantu and Mr. Brodie voted in favor of the motion. Ms. Sutton voted against the motion. The motion was adopted.

Mr. Katine, seconded by Mr. Cantu, moved to adopt 22 TAC §§535.1-535.4, §§535.11-535.21, §§535.31-535.35, §§535.41-535.42, and §§535.51-535.53, concerning provisions of The Real Estate License Act with changes to §535.1(a) as approved by the commission, the new language from staff for §535.17 and postponing action on §535.20. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item six, discussion and possible action to readopt Chapter 537, concerning standard contract forms and Chapter 535, §§535.1-535.4, §§535.11-535.21, §§535.31-535.35, §§535.41-535.42, and §§535.51-535.53, concerning provisions of The Real Estate License Act. Action on agenda item six would be deferred until the next meeting of the Commission.

Chairman Brummett moved to agenda item seven, discussion of comments and possible action to propose repeal of §§535.61-535.66 and §§535.68-535.70 and adoption of new §§535.61-535.66, concerning provisions of The Real Estate License Act. Mr. Dudley presented the agenda item for discussion. Comments were offered by George Leonard-George Leonard School of Real Estate, Nanci Hawes-Nanci Hawes School of Real Estate, Jeannie Mayer and Lynn Morgan-Austin Institute of Real Estate. After discussion, Ms. Sutton, seconded by Mr. Brodie, moved to propose the repeals and adoptions as suggested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item eight, discussion and possible action to authorize

filing notice of intention to review 22 TAC §§535.71-535.73 and §535.81, concerning provisions of The Real Estate License Act. Mr. Moseley presented the agenda item for discussion. Mr. Katine, seconded by Mr. Cantu, moved to authorize filing the notice of intention to review. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item nine, executive session to discuss pending litigation pursuant to Texas Government Code, §551.071. Executive session began at 11:52 a.m.

Chairman Brummett called the meeting back in session at 12:05 p.m. The Chairman moved to agenda item ten, discussion and possible action to authorize payments from recovery funds.

RF 98-022 Sophie Caudell and Aubrey Duelm v. Victoria Ann Smith, in the amount of \$14,906 for actual damages and attorney fees in the amount of \$2,500. Mr. Cantu, seconded by Ms. Mayfield, moved to approve payment. The motion was adopted by unanimous vote.

RF 99-014 Ovid Richards v. Nancy Burns Montgomery, in the amount of \$30,000 for actual damages. Mr. Brodie, seconded Ms. Mayfield, moved to approve payment. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item eleven; discussion and possible action on legislative update. Mr. Francis reported on the bills that passed during the session that could have an impact on the real estate industry. There was discussion concerning the mortgage broker bill and the authority the Real Estate Commission would have to appoint two members to their board. Mr. Francis commented on several other bills and ended his report with the Appropriations Bill's expected effect on the commission.

Chairman Brummett moved to agenda item twelve; discussion and possible action to authorize administrator to contract for internal audit plan. Mr. Waters presented the agenda item for discussion. After discussion, Mr. Katine, seconded by Mr. Cantu, moved to authorize the administrator to contract for an internal audit plan. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item thirteen; consideration of complaint information. Ms. DeHay requested authorization to open investigations on the following persons for failure to provide information in connection with their license renewals: Alvin Lawrence Attaway; Boyd Warner Williamson; James Richard Torres; Mavis Lanell Childers; Phyllis Amanda Woodham; Randall Smith; Ronda Ward; and William Cordell Harrington. Mr. Katine, seconded by Ms. Mayfield, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item fourteen; Motion for Rehearing in Hearing No. 99-50-990028, In the Matter of The Application to License Patricia Donaldson as a real estate salesperson. Ms. Donaldson was not present. Michael Chisum, staff attorney, represented the Enforcement Division. Mr. Chisum presented the Enforcement Division's response to Ms. Donaldson's motion. The Chairman called for a vote on the motion for rehearing. The motion was overruled by unanimous vote.

Mr. Thorburn presented plaques to Mr. Katine and Mr. Cantu, two of the three members whose terms had expired in February 1999. Mr. Brodie, seconded by Chairman Brummett, moved to make the following a resolution: "To Mitchell Katine In recognition of dedicated service to the citizens of Texas as a member of the Texas Real Estate Commission 1993 - 1999 and serving as Secretary 1995 - 1996 and Vice-Chairman 1997." "To Pete Cantu, Sr. In recognition of dedicated service to the citizens of Texas as a member of the Texas Real Estate Commission 1993 - 1999 and serving as the ex officio member of the Real Estate Center Advisory Committee, Texas A&M University 1995-1999." The motion was adopted by unanimous vote.

The Chairman moved to agenda item fifteen, entry of orders in contested cases. There were none.

The next regularly scheduled meetings of the Commission will be August 2, 1999 and September 20, 1999. The meeting was adjourned at 12:27 p.m. by unanimous consent.

APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1999.

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Chairman

ATTEST: \_\_\_\_\_  
Administrator