

MINUTES  
Texas Real Estate Commission  
August 2, 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, August 2, 1999. In addition to Chairman Brummett, members present were Michael Brodie, Chris Folmer, Maria Gonzalez-Gil, Deanna Mayfield, and Kay Sutton. Pete Cantu and Mitchell Katine arrived at 9:07 a.m. Hazel W. Lewis was absent.

Staff present were: Wayne Thorburn, Administrator; Brian Francis, Assistant Administrator; Mark Moseley, General Counsel; Michelle Bowen, Licensing Section Manager, and Christina Kaiser, Education Section Manager; Alan Waters, Director of Staff Services; Beverly Rabenberg, Staff Attorney, Enforcement Division; Glen Bridge, Director of Information Services, and Patricia Holder, Executive Assistant.

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

Chairman Brummett moved to agenda item two, minutes of the June 7, 1999 Commission meeting. Ms. Sutton, 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. Mr. Thorburn announced that at the end of the meeting the new video tape on agency would be shown. Mr. Thorburn thanked the staff at the Real Estate Center at Texas A&M for all the work they had done on the video tape. Mr. Thorburn introduced two guests from Russia, Kirill Volkay, deputy chair of the Leningrad Oblast Legislative Assembly, and Natalia Oskmakova also of St Peterburg, his escort and interpreter, visiting the United States through a program sponsored by the Library of Congress, the United Methodist Church and Rotary International.

Ms. Rabenberg presented the Enforcement reports.

Mr. Bridge announced that it was now possible to get information on inspectors on the web site, as well as real estate salespersons and brokers. Mr. Bridge also reported that he and Mr. Dudley were developing forms using Adobe Acrobat that would allow the end user to fill them out on the computer, instead of having to print them and fill them out manually.

Ms. Bowen introduced the new Education Section Manager, Christina Kaiser.

Mr. Waters reported that the State Auditor's Office was considering doing a small state agency

management control audit at TREC. The last audit of this type on the Commission was in 1995. If a decision was made to move forward the audit could take place in October or November.

Mr. Thorburn reported that an agreement had been entered into with KPMG, LLP to conduct internal audits of Commission programs. The auditors would be at TREC during the week of August 9-13 for a risk assessment and a public funds investment act audit.

Chairman Brummett moved to agenda item four, public comments. There were no comments.

The Chairman requested that agenda items 12 and 13 be moved up. As there was no objection the Chairman moved to agenda item 12, discussion and possible action to appoint two members of the Texas Real Estate Broker-Lawyer Committee. Rick Knowles, Avis Wukasch and Ann Walker spoke concerning their desire to be appointed to the committee. Mr. Brodie, seconded by Ms. Mayfield, moved that Ann Walker be appointed to be a member of the Broker-Lawyer Committee. After discussion, Mr. Katine, seconded by Mr. Brummett, moved to amend Mr. Brodie's motion to nominate Rick Knowles, Avis Wukasch and Ann Walker to fill the two vacant seats on the Broker-Lawyer Committee. Each member would vote for two people and the two persons who received the most votes would be appointed to the committee. Mr. Brodie accepted the amendment. The Chairman called for a vote on Ann Walker. Ms. Gonzalez-Gil, Ms. Sutton, Ms. Mayfield, Ms. Folmer, Mr. Cantu and Mr. Brodie voted for Ann Walker. Chairman Brummett called for a vote on Rick Knowles. Mr. Katine and Mr. Brummett voted for Rick Knowles. Chairman Brummett called for a vote on Avis Wukasch. The vote was unanimous. Avis Wukasch and Ann Walker were appointed to the Broker-Lawyer Committee.

Chairman Brummett moved to agenda item 13, discussion and possible action to appoint two members of the Texas Mortgage Broker Committee. Keno Torres, Rick Knowles, Ron Wakefield, Erle Rawlins III, Jeannie Mayer, and Mary Hughes Rothenberg spoke concerning their desire to be appointed to the committee. After discussion, it was decided that nominations would be made and the two persons receiving the majority of the votes would be appointed. Mr. Katine spoke in favor of Rick Knowles and Keno Torres. Ms. Sutton spoke in favor of J.B. Goodwin and Ron Wakefield. Chairman Brummett stated his support for comments made by Mr. Katine. Mr. Brodie spoke in favor of Ron Wakefield and J.B. Goodwin. Mr. Cantu nominated Ron Wakefield, Ms. Sutton nominated J.B. Goodwin, Ms. Mayfield nominated Keno Torres and Mr. Katine nominated Rick Knowles. The Chairman called for the vote on Ron Wakefield. Ms. Gonzalez-Gil, Ms. Sutton, Ms. Mayfield, Ms. Folmer, Mr. Cantu and Mr. Brodie voted for Mr. Wakefield. Chairman Brummett called for the vote on Keno Torres. Ms. Folmer, Ms. Mayfield, Mr. Brummett and Mr. Katine voted in favor of Mr. Torres. The Chairman called for the vote on Rick Knowles. Mr. Cantu, Mr. Brummett and Mr. Katine voted in favor of Mr. Knowles. Chairman

Brummett called for a vote on J.B. Goodwin. Ms. Gonzalez-Gil, Ms. Sutton and Mr. Brodie voted in favor of Mr. Goodwin. Keno Torres and Ron Wakefield were appointed to the Mortgage Broker Committee.

The Chairman announced a break from 10:30-10:40 a.m.

The Chairman moved to agenda item five, discussion and possible action to adopt: (a) amendments to 22 TAC §§537.11, 537.43 and 537.44 concerning standard contract forms, on an emergency basis, (b) amendment to 22 TAC §535.20, concerning the procuring of prospects. Mr. Moseley presented agenda item five(a), concerning standard contract forms. Mr. Moseley explained that due to new legislation two forms were being proposed for emergency adoption. The notices would provide information required after September 1, 1999 by new laws passed by the Legislature this year. The forms were the "Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association" and "Addendum for Property Subject to Mandatory Membership in an Owners' Association." Mr. Katine, seconded by Mr. Cantu, moved to adopt on an emergency basis amendments to 22 TAC 537.11, 537.43 and 537.44, concerning standard contract forms, to become effective September 1, 1999. After discussion, the motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item 5(b), amendment to 22 TAC §535.20, concerning the procuring of prospects. Mr. Moseley presented the agenda item for discussion and possible adoption. After discussion, Mr. Katine, seconded by Mr. Brummett, moved to adopt 22 TAC §535.20 as presented by staff. The motion was adopted by unanimous vote.

The Chairman moved to agenda item six, discussion only: (a) repeal of §§535.61-535.66 and §§535.68-535.70 and adoption of new §§535.61-535.66, concerning examinations, acceptance of courses, education and experience requirements, schools, and instructors; (b) amendments to §§535.71-535.73, concerning mandatory continuing education. Mr. Thorburn presented the agenda item for discussion. Comments were offered by Minor Peoples, Real Estate Institute of Corpus Christi; Rick Knowles, Capitol Real Estate Training Center and Bob Folden, Texas A&M University-Commerce. After discussion, staff was directed to develop draft rules to regulate open book examinations for discussion at the next meeting. Further comments were offered by Ron Walker, general counsel for the Texas Association of Realtors; Ruben Pena, President of the San Antonio Board of Realtors; Nanci Hawes, Nanci Hawes Real Estate School and Ralph Tamper, The Real Estate School. After discussion, Chairman Brummett requested that the staff provide the Commission with the part of the school application that deals with requests for financial information.

Additional comments were offered by Wayne Morgan, Austin Institute of Real Estate; Erle Rawlins III, Continuing Education Institute-Arlington and Benny McMahan, Texas Association of Realtors. Mr. Thorburn

called upon Ms. Kaiser for resource information. Mr. Folden of Texas A&M University-Commerce asked the Commission to consider appointing an advisory committee of educators-both proprietary and public-to provide input on how real estate education ought to be developed.

The Chairman indicated that such a committee could be appointed and asked that it be brought up for discussion at the next Commission meeting.

Chairman Brummett moved to agenda item nine, executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and to discuss adjustment of administrator's salary by the Appropriations Act pursuant to Texas Government Code, §551.074. Executive session began at 12:40 p.m.

Chairman Brummett called the meeting back in session at 1:17 p.m. The Chairman moved to agenda item ten, discussion and possible action to authorize payments from recovery funds.

RF 98-021 Annabelle Vaughn Coffey v. James H. Ayres, in the amount of \$11,000 for actual damages and attorney fees in the amount of \$39,000. Mr. Katine, seconded by Ms. Mayfield, moved to approve payment. The motion was adopted by unanimous vote.

RF 99-015 Thomas R. Parker v. Jerry L. Knowles, Jr., in the amount of \$18,000 for actual damages and attorney fees not to exceed \$7,500. Mr. Cantu, seconded Mr. Katine, moved to approve payment. The motion was adopted by unanimous vote.

RF 99-016 Harold E. Clark v. Mike M. Ghouse, in the amount of \$3,440 for actual damages and attorney fees in the amount of \$750. Mr. Katine, seconded Mr. Cantu, moved to approve payment. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item seven; discussion and possible action to propose amendments to 22 TAC: (a) §§537.11, 537.21, 537.36, 537.43, 537.44 and 537.46, concerning standard contract forms; (b) §535.81, concerning real estate recovery fund; (c) §535.1, concerning when a real estate license is required; (d) §535.101, concerning fees; (e) §535.210, concerning fees for inspectors. Mr. Moseley presented agenda item 7(a) for discussion and possible action to propose amendments to 22 TAC §§537.11, 537.21, 537.36, 537.43, 537.44 and 537.46. Mr. Katine, seconded by Ms. Folmer, moved to propose for adoption 22 TAC §§537.11, 537.21, 537.36, 537.43, 537.44 and 537.46, concerning standard contract forms. Ms. Sutton moved to have the addendum for "Sale of Other Property" modified to address the situation when the buyer has his property under contract and would like the seller's home taken off the market and the seller is willing to allow that. The motion failed for lack of a second. Chairman Brummett called for a vote on Mr. Katine's motion. Ms. Gonzalez-Gil, Mr.

Katine, Chairman Brummett, Ms. Mayfield, Ms. Folmer, Mr. Cantu and Mr. Brodie voted in favor of the motion. Ms. Sutton voted against the motion. The motion was adopted.

Mr. Moseley presented agenda item 7(b) for discussion and possible action to propose amendments to 22 TAC §535.81, concerning real estate recovery fund. After discussion, no action was taken on the agenda item.

Mr. Moseley presented agenda item 7(c) for discussion and possible action to propose amendments to 22 TAC §535.1, concerning when a real estate license is required. Mr. Katine abstained. Chairman Brummett, seconded by Ms. Sutton, moved to propose amendments to 22 TAC §535.1. Comments were offered by Robert Rice, attorney for ERA Stroman Realty. After discussion, Ms. Sutton called the question. Ms. Gonzalez-Gil, Ms. Sutton, Chairman Brummett, Ms. Mayfield, Ms. Folmer, Mr. Cantu and Mr. Brodie voted for the motion with Mr. Katine abstaining. The motion was adopted.

The Chairman moved to agenda item eight, discussion and possible action to readopt Chapter 535, §§535.1-535.3, §§535.12, 535.13, 535.15-535.17, 535.19-535.21, §§535.31-535.35, §§535.41-535.42, and §§535.51-535.53. Ms. Mayfield, seconded by Mr. Cantu, moved to readopt Chapter 535, §§535.1-535.3, §§535.12, 535.13, 535.15-535.17, 535.19-535.21, §§535.31-535.35, §§535.41-535.42, and §§535.51-535.53 as amended. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item fourteen, discussion and possible action on budget, revenue estimates and administrator's salary. Mr. Thorburn presented the agenda item for discussion and possible action. Mr. Thorburn presented two options to the Commission to meet the revenue shortfall. Option one would reduce expenditures by major cuts in personnel as well as deferring the purchase of a new computer system. Option two would produce the needed revenue by increasing subscriptions to the TREC Advisor by fifty cents per year; increasing the original application fee for each level of inspector license by \$10; increasing the test administration fee by \$10, \$5 of which would be retained by the vendor and \$5 would be forwarded to TREC; increasing the annual renewal fee for inspector licenses by \$10 at all levels and increasing the renewal fee for brokers and salespersons by \$2 a year. After discussion, Mr. Katine, seconded by Mr. Brodie, moved to accept option two to meet the budget shortfall. The motion was passed by unanimous consent. Mr. Katine, seconded by Ms. Gonzalez-Gil, moved to approve the increase in the administrator's salary to \$70,000 per year with the understanding that the administrator would look at increasing the department heads' salaries proportionately. The motion was adopted by unanimous vote. Members voting for the motion were Kay Sutton, Maria Gonzalez-Gil, Mitchell Katine, Jay C. Brummett, Deanna Mayfield, Chris T. Folmer, Pete Cantu, Sr., and C. Michael Brodie. There were no votes against the motion.

Chairman Brummett moved to agenda item fifteen, discussion and possible action on staff recommendations

for priorities for staff and commission travel and possible reimbursement of advisory committee travel. Mr. Thorburn presented item fifteen for discussion and possible action. Mr. Thorburn stated that the maximum amount allowed for travel is \$66,175. Staff recommended the following sums for staff travel: Enforcement-\$27,500; Administration & Directors-\$7,500; Residential Service Company Audits-\$2,500; Miscellaneous Travel-\$1,250; Credit for Hotel Tax Paid-\$600 for a total of \$38,150. That would leave a balance of \$28,000 available for travel by Commissioners and the two Advisory Committees. Mr. Katine, seconded by Mr. Brummett, moved to use all monies available for travel for the Commissioners and none for the two Advisory Committees. After discussion, Mr. Katine, seconded by Mr. Brodie, moved to amend his motion to designate \$2,500 for the Broker-Lawyer Committee and \$2,500 for the Inspector Committee. The motion was adopted by unanimous vote. The balance would be used for Commissioner travel.

Chairman Brummett moved to agenda item sixteen, discussion and possible action concerning the June 2000 Southern District ARELLO Conference. Chairman Brummett presented item sixteen for discussion and possible action. Texas had been asked to host the meeting and the Commission's permission was being requested to have the conference in Austin. After discussion, Mr. Brodie, seconded by Mr. Katine, moved to host the conference as long as there were no adverse budget effects. Ms. Gonzalez-Gil, Mr. Katine, Chairman Brummett, Mr. Cantu, and Mr. Brodie voted for the motion. Ms. Mayfield and Ms. Sutton abstained. The motion was adopted.

The Chairman moved to agenda item seventeen, discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.005. He recognized the Chairman of the Investment Committee, Commissioner Folmer. Ms. Folmer, seconded by Ms. Gonzalez-Gil, moved that, to comply with the Public Funds Investment Act, the Public Funds Investment Act training workshop held July 22, 1999 be an approved source of training for Alan Waters and Carla Barron. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item eighteen, consideration of complaint information. Ms. Rabenberg requested authorization for the Enforcement Division to proceed with investigations on the following persons for failure to provide information in connection with their license renewals- Clinton Scott Brady; Dale Hester Curry; Dorothy S. Daniel; Fatima Cristina Melo Azevedo; James Edward Truitt; Kathleen K. Keller; Lara Marie Hartt; Lorene Kay Torquato; Mary Jo Estes. Mr. Katine, seconded by Ms. Sutton, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. Rabenberg requested authorization for the Enforcement Division to proceed with investigations on the following persons for possible violations of sections 15(a)(6)(F) and (S) of The Real Estate License Act, Article

6573a, Texas Civil Statutes: Martha Turner Properties, Inc. and Martha Fuller Turner, Officer. Mr. Katine, seconded by Ms. Folmer, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. Rabenberg requested authorization for the Enforcement Division to proceed with investigations on the following persons failure to comply with the new requirements of Commission rule 22 TAC §535.92(h) for not completing their MCE hours in a timely fashion: Blain Hudson England; Carrol Sue Sinclair Morgan; Danny L. Johnson; David Jackson Miller; Frances June Cooper; Gary Kob; Guy Ramsay Carter; James A. Moran; Kenneth Ballew Ferguson; Kevin Austin Fleming; Orous Alan Mulder; Patricia H. Jones; Riis M. Christensen; Shyrl A. Easley and Sofia Gloria Aguilar. 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 nineteen, entry of orders in contested cases. There were none.

Ms. Folmer requested that future meetings be scheduled. Mr. Thorburn stated that at this time September 20, 1999 was the only meeting scheduled. After discussion, November 8, 1999 was selected as a meeting date.

Chairman Brummett announced that there would be a showing of the film "The Duties of Representation" a joint effort between TREC and the Real Estate Center at Texas A&M. Mr. Thorburn introduced Wendell Fuqua, Texas A&M University, who was the writer, director, and camera man on the film. The film was shown and the meeting was adjourned at 2:55 p.m.

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

\_\_\_\_\_  
Chairman

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