

MINUTES
Texas Real Estate Commission
September 20, 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, September 20, 1999. In addition to Chairman Brummett, members present were Michael Brodie, Ramon Cantu, Chris Folmer, Maria Gonzalez-Gil, and Kay Sutton. Hazel W. Lewis arrived at 9:05 a.m. Deanna Mayfield and Lawrence Jokl were absent.

Staff present were: Wayne Thorburn, Administrator; Brian Francis, Assistant Administrator; Mark Moseley, General Counsel; Michelle Bowen, Acting Director of Licensing and Education; Christina Kaiser, Education Section Manager; 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, 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 August 2, 1999 Commission meeting. Ms. Sutton, seconded by Mr. Brodie, moved to approve the minutes as mailed. The motion was adopted by unanimous vote. The Chairman introduced Ramon "Mick" Cantu, the new commissioner from Houston.

Chairman Brummett moved to agenda item three, staff reports; committee reports. Ms. DeHay introduced Brad Bowman, the new staff attorney for the Austin area. Ms. DeHay reported on the current complaint activity. Ms. DeHay reported on Attorney General Opinion JC0008, which concerned the selling of residential service contracts.

Mr. Bridge announced a new program to test the usability of Adobe Acrobat form-enabled application forms for MCE course applications. Once the test program is concluded, all TREC application forms will be adapted for electronic data entry in a similar manner. Contract forms will not be so enabled. Additionally, Mr. Bridge reported on SB 974, "Relating to the creation of a task force and demonstration project regarding the provision of certain state agency and local government services to the general public and to regulated entities through the Internet." TREC will be accepting applications for licensure and renewals via the Internet as part of the demonstration project.

Mr. Thorburn introduced Michelle Bowens, Acting Director of Licensing and Education.

Mr. Waters introduced a new employee in the Cashier Section, Laura Stevens. Mr. Waters reported that

his department was working on the annual report on measures and the annual financial report. Also, the internal auditors, KPMG, were finalizing their report and it would be available soon.

Mr. Thorburn introduced a new administrative assistant in the administration department, Deborah Kennedy.

Chairman Brummett moved to agenda item four, public comments. Comments were offered by Lisa Gardner concerning the scaled scoring system used by the testing service. Mr. Thorburn responded to the comments concerning the scoring system. Ms. Kaiser was assigned to assist Ms. Gardner. David Buhler, with Experior, offered comments regarding the scaled scoring system. Minor Peeples, Corpus Christi School of Real Estate, offered comments on the way the tests were scored and reported.

Rick Andrews, Lake Livingston Realty, presented documents concerning problems he had been having with a broker. Also, he spoke concerning the education and licensing requirements of Texas versus Nebraska.

Chairman Brummett moved to agenda five, discussion of and possible action to adopt: (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 §§537.11, 537.21, 537.36, 537.43, 537.44 and 537.46, concerning standard contract forms; (c) amendment to §535.1, concerning when a real estate license is required; (d) amendment to §535.101, concerning fees for real estate licensees; (e) amendment to §535.210, concerning fees for inspectors.

Mr. Moseley presented item 5(a) for discussion. He referred to comments received and possible alternatives addressing certain issues in the proposed text prepared by staff. Also, some nonsubstantive changes were included in the meeting material for this agenda item. Comments were offered by Jim Howze, Institute of Training of Houston; Rick Knowles, Capitol Real Estate Center; Ron Walker, Texas Association of Realtors; Rick Barnes, National Senior Instructor for Keller Williams; Nanci Hawes, Nanci Hawes School of Real Estate; Rita Santamaria, Champion School of Real Estate; Minor Peeples, Real Estate School of Corpus Christi; Benny McMahan, Texas Association of Realtors; Chuck Jacobus ; Michael Emmons, Home Index Real Estate; and Dennis Walker, Nanci Hawes Real Estate School.

After discussion, Mr. Brummett referred to the fourteen questions and suggestions under agenda item 5 supplied by staff and announced that each question would be considered and voted upon. Mr. Brodie, seconded by Ms. Lewis, moved that the language in the proposed rule §535.62(b) be accepted as proposed. The motion was adopted by unanimous vote. Mr. Brodie, seconded by Ms. Gonzalez-Gil, moved that the language in §535.62(d) be amended to say "the daily course presentation did not exceed ten hours". The motion was adopted

by unanimous vote.

The next two items referred to as three and four were accepted as originally proposed.

Mr. Brodie, seconded by Ms. Lewis, moved to amend §535.62(d)(9) to read " For a classroom course, the course was offered in a location conducive to instruction such as a classroom, training room, conference room, or assembly hall." After discussion, Mr. Cantu proposed to amend the motion by adding "that is separate and apart from the work area," before "such as a classroom,...". The amendment was accepted by Mr. Brodie. Mr. Brodie, Ms. Folmer, Mr. Cantu, Ms. Sutton and Ms. Lewis voted for the motion. Chairman Brummett and Ms. Gonzalez-Gil voted against the motion. The motion was adopted.

Mr. Brodie, seconded by Ms. Sutton, moved to delete §535.64(c)(1) and renumber the remaining subsections. After discussion, the motion was adopted by unanimous vote. Ms. Folmer was absent for the vote. The next two items concerning personal financial statements was no longer relevant after this vote.

Mr. Brodie, seconded by Ms. Sutton, moved to amend §535.64(c)(1) by striking the word "personal" and replacing it with "business" and striking all words after the word "worth." After discussion, the motion was adopted by unanimous vote.

Mr. Brodie, seconded by Mr. Cantu, moved to add the words "On an initial application" to the beginning of §535.64(c)(2) and §535.64(c)(3). After discussion, the motion was adopted by unanimous vote.

Ms. Sutton, seconded by Ms. Gonzalez-Gil, moved to accept the proposed language in §535.65(e)(1). After discussion, the motion was withdrawn due to no action being necessary to accept the proposed language.

Mr. Brodie, seconded by Ms. Folmer, moved to amend the proposed language to §535.65(1)(2) to add "Except in the case of math courses which require a minimum of 20 questions"at the beginning of the existing sentence.

No action was taken on the alternative language offered concerning makeup work in core courses by completing a written report on the subjects missed.

Chairman Brummett called for a vote on agenda item five(a) the 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 as amended by the preceding actions. Ms. Sutton, seconded by Ms. Gonzalez-Gil, moved to repeal §§535.61-535.66 and §§535.68-535.70 and adopt new §§535.61-535.66 as amended and to be effective January 31, 2000. After discussion , the motion was adopted by unanimous vote.

The Chairman announced a break from 11:48 a.m.-12 noon.

There was further discussion concerning the different items discussed during item 5(a). Ms. Sutton,

seconded by Ms. Gonzalez-Gil, moved to amend the proposed language in §535.62(d)(5) by adding the words "the course must have been offered by an accredited college or university," after the word "course". After discussion, the motion was adopted by unanimous vote.

Ms. Sutton, seconded by Ms. Gonzalez-Gil, moved to repeal §§535.61-535.66 and §§535.68-535.70 and adopt new §§535.61-535.66 as further amended with the same effective date of January 31, 2000. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item 5(b), amendments to §§537.11, 537.21, 537.36, 537.43, 537.44 and 537.46, concerning standard contract forms. Ms. Sutton, seconded by Ms. Lewis, moved to approve the amendments as submitted. After discussion, the motion was adopted by unanimous vote.

The Chairman moved to agenda item 5(c), amendment to §535.1, concerning when a real estate license is required. Mr. Moseley presented the item for discussion and possible adoption. Ms. Sutton moved to approve the proposal as presented. Motion failed for second. After discussion, Ms. Lewis, seconded by Mr. Cantu, moved to adopt the amendment as presented. The motion was adopted by unanimous vote.

Mr. Brummett moved to agenda item 5(d), amendment to §535.101, concerning fees for real estate licensees. Mr. Moseley presented the item for discussion and possible adoption. Mr. Brodie, seconded by Ms. Sutton, moved to adopt the amendment as presented. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item 5(e), amendment to §535.210, concerning fees for inspectors. Mr. Moseley presented the item for discussion and possible adoption. He reported that the amendment had been submitted to the Inspector Committee and the committee concurred with the recommendation to adopt. Mr. Brodie, seconded by Ms. Sutton, moved to adopt the amendment as presented.

The Chairman moved to agenda item 6, discussion and possible action to propose amendments to 22 TAC:(a) §§535.71-535.73, concerning mandatory continuing education; (b) §§535.208, concerning application for an inspector license and 535.216, concerning renewal of an inspector license. Mr. Moseley presented the item for discussion and possible action to propose amendments. After discussion of item 6(a), Chairman Brummett appointed four members of the Commission to an Education Task Force - Maria Gonzalez-Gil, Kay Sutton, Chris Folmer and Mike Brodie. The Chairman also invited interested parties to submit written requests to be placed on the committee. Future meetings would be scheduled to study existing rules and suggest amendments to the education rules.

Chairman Brummett moved to the discussion and possible action to propose amendments to 6(b). Ms. Folmer, seconded by Ms. Gonzalez-Gil moved to propose the amendments as presented. The motion was adopted by unanimous vote.

The Chairman announced that there would not be an executive session and moved to agenda item nine, discussion and possible action to adopt biennial operating plan for information resources. Mr. Bridge presented the biennial operating plan for consideration. After discussion, Ms. Lewis, seconded by Ms. Folmer, moved to adopt the biennial operating plan as presented. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item ten, discussion and possible action to approve questions and answers on use of standard inspection report form. Mr. Moseley presented the item for discussion and possible action to approve. Mr. Moseley stated that the Inspector Committee had approved the submitted material. Ms. Sutton, seconded by Ms. Folmer, moved to approve the questions and answers as presented. Comments were offered by Larry Foster, Chairman of the Texas Real Estate Inspector Committee. After discussion, the motion was adopted by unanimous vote.

Mr. Brummett moved to agenda item eleven, discussion and possible action on new Property Code notices and use of TREC contract forms after December 31, 1999. Mr. Moseley presented the item for discussion and possible action. Ms. Sutton, seconded by Mr. Brodie, moved to request that the Broker-Lawyer committee insert the notices in the body of the sales contracts. The motion was adopted by unanimous vote. Ms. Lewis, seconded by Mr. Brodie, moved to allow users of the sales contracts to modify the date fields to reflect the year 2000 until such time that the Commission changed its forms. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item twelve, consideration of complaint information. Ms. DeHay 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- Yolanda B. Blagg; Yong Tae Kim; Chad Christopher Nemecek; Natalie Claxton Sample; James Ronald Spaulding; and Thomas E. Wattinger. Mr. Brodie, seconded by Ms. Folmer, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay 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: Mary Nell Garrison; Michael Herman Levitin; and David Alberto Wise. Mr. Brodie, seconded by Ms. Folmer, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay 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: Charles Kent Conine; Matthew William Heffernan; George Brent Leftwich; Eleanor Fisher Mowery; Marilu Rumfolo; Mary Susan Ryan; Elma Delois Shultz; John Wesley Taylor;

Jon Forrest Van-Sant; Charles E. Wiggin and Kathleen Michelle Wood. Ms. Sutton, seconded by Ms. Gonzalez-Gil, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Chairman Brummett moved to agenda item thirteen, Motion for Rehearing in Hearing No. 99-83-971807 in the Matter of Michael G. Painter. The Chairman announced a pre-hearing conference from 12:55 p.m. until 1:05 p.m. Mr. Painter was represented by Susan E. Dvorak, attorney, and the Enforcement Division was represented by Sharon Rector, staff attorney. Ms. Dvorak presented the motion for rehearing, the motion for modification and the motion for probation. Ms. Rector presented the Enforcement Division's answer to the motion for rehearing, the motion for modification and the motion for probation. Ms. Dvorak presented her closing argument.

The Chairman called for a vote on the motion for rehearing. Ms. Gonzalez-Gil voted in favor of the motion. Mr. Brodie, Ms. Folmer, Mr. Brummett, Ms. Sutton and Mr. Cantu voted against the motion. The motion was overruled.

Chairman Brummett called for a vote on the motion for modification. Ms. Sutton, Ms. Gonzalez-Gil and Ms. Folmer voted in favor of the motion to modify. Mr. Brodie, Mr. Brummett and Mr. Cantu voted against the motion. The motion was overruled.

The Chairman called for a vote on the motion for probation. Ms. Sutton, Ms. Gonzalez-Gil, Ms. Folmer and Mr. Brodie voted in favor of the motion. Mr. Cantu and Mr. Brummett voted against the motion. The motion was granted. Mr. Cantu, seconded by Ms. Lewis, moved that the license be probated for five years with all the standard conditions and the following special condition: successful completion of a core course in agency and one in contracts to be completed in one year along with any MCE that is required for renewal. Mr. Brodie, seconded by Ms. Folmer, moved that the order be prepared and presented to the Chairman for signature before September 30, 1999.

The Chairman moved to agenda item fifteen, scheduling of future meetings. After discussion, meetings were scheduled for December 13, 1999 and February 7, 2000. The next regularly scheduled meeting of the Commission is November 8, 1999. The meeting was adjourned at 2:12 p.m.

APPROVED this the _____ day of _____, A.D., 1999.

Chairman

ATTEST: _____
Administrator