

MINUTES
Texas Real Estate Commission
November 4, 2002
Conference Room 235, Texas Real Estate Commission
Austin, Texas

Vice Chairman Larry Jokl called the regularly scheduled meeting of the Texas Real Estate Commission to order at 8:30 a.m., Monday, November 4, 2002. In addition to Vice Chairman Jokl, members present were Kay Sutton, James Austin, Louise Hull, John Walton and Maria Gil. Ramon "Mick" Cantu was absent. Mr. Jordan and Chairman Brodie arrived at 8:45 a.m. and joined the other members in Executive Session.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Linda Bayless, Director of Enforcement; Alan Waters, Director of Staff Services; Mr. Thorburn introduced the new Director of Information Services, Mr. Lyndon Clements; and Beverly Arnold, Administrative Assistant.

Commissioner Jokl led the attendees in the pledge of allegiance.

Vice Chairman Jokl moved to agenda item two, executive session to discuss pending litigation pursuant to Texas Government code, §551.071; and, if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071. The executive session began at 8:34 a.m. The executive session ended and the open meeting resumed at 9:00 a.m.

Vice Chairman Jokl moved to agenda item three, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. Ms. DeHay presented the following claims to be paid without contest:

RF03-001, Chi Chuan Peng v. Ronald Allen Hinge, in the amount of \$20,000 in actual damages. Commissioner Gil, seconded by Commissioner Sutton, moved to approve payment. The motion was adopted by unanimous vote.

RF 03-002, Delton D. Shilling v. Gulf States Properties, Inc., in the amount of \$30,000 and \$10,000 in attorney fees. Commissioner Brodie, seconded by Ms. Sutton, moved to approve payment. The motion was adopted by unanimous vote.

Vice Chairman Jokl moved to agenda item four, minutes of the September 9, 2002, Commission meeting. Ms. Sutton, seconded by Commissioner Gil, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

Vice Chairman Jokl moved to agenda item five, monthly staff reports; committee reports. Ms. Hassumani, Assistant Administrator, reviewed various licensing reports and pointed out a new category on the L1 report, percentages on timely renewals for brokers and salespersons. She also noted that these reports began September 1, 2002 which was the beginning of a new fiscal year.

Ms. Bayless, Director of Enforcement, reported on the Enforcement Division's complaint statistics and administrative actions for the beginning of the fiscal year. There was discussion concerning the rise in open cases. Mr. Thorburn reported that many of these cases involved routine administrative penalties, such as violations of 22 TAC §535.92(h), concerning failure to complete the continuing education hours and to pay the fee as required. There was further discussion concerning streamlining this aspect of the complaint procedures.

Mr. Clements, Director of Information Services, covered the information contained in the I1 report. He reported the current statistics concerning online activity. Mr. Clements also reported on ongoing projects: Inspector renewals are online and the first Inspector renewed online this weekend; the Texas Appraisal Licensing and Certification Board (TALCB) renewals will be online by January, 2003; and the ERW renewals will be on line by June, 2003.

Mr. Alan Waters, Director of Staff Services, reported on the Recovery funds and also introduced four new employees: Lois Scott and Tegist Borga in the Cashier Department and Christine Matz and Crystal Rivera in the Accounting Department.

Chairman Brodie moved to agenda item six, general comments from visitors. No comments were made.

Chairman Brodie moved to agenda item seven, discussion and possible action to adopt amendments to 22 TAC §535.2, concerning a broker's responsibility. Ms. DeHay presented the item for discussion and possible action to adopt. Ms. DeHay explained that only positive comments had been received on the rules as proposed. Ms. Hull, seconded by Ms. Gil, moved to adopt amendments

to 22 TAC §535.2, concerning broker's responsibility. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item eight (a), discussion and possible action to propose (a) amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30, 537.32, 537.43, and 537.46, concerning standard contract forms. Ms. DeHay presented the item for discussion and gave an overview of all the amendments. Ms. Avis Wukasch, Mr. Henderson, Mr. Dan Hatfield, Ms. Peggy Sanfield, Mr. Joe Coleman, Commissioner Hull and Commissioner Walton commented on the amendments. Mr. Walton, seconded by Mr. Austin, moved to propose amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30, 537.32, 537.43, and 537.46, concerning standard contract forms. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item eight (b), discussion and possible action to propose the repeal of §§537.36 and 537.42, concerning standard contact forms. Ms DeHay presented the item for discussion and gave an overview of the forms. Mr. Austin, seconded by Ms. Gil, moved to propose the repeal of §§537.36 and §537.42, concerning standard contract forms. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item nine, discussion and possible action to approve revised Lead-Based Paint Addendum for voluntary use. Ms. Sutton, seconded by Mr. Jokl, moved to approve the revised Lead-Based Paint Addendum for voluntary use. The motion was adopted by unanimous vote. Mr. Walton and Ms. Hull were not present for the vote.

Chairman Brodie moved to agenda item ten, discussion and possible action on proposed legislation and other anticipated legislation that may impact the real estate industry. Mr. Thorburn presented the item for discussion. He gave an overview of the ten items that would amend the Texas Real Estate License Act, the two items that would amend the Residential Service Company Act and the seven items that would amend the Texas Timeshare Act. Mr. Walton, seconded by Mr. Jokl, moved to approve the housekeeping legislation as proposed. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item eleven, discussion and possible action to approve recovery fund investment policies under The Public Funds Investment Act, §2256.005, Texas

Government Code and to designate a chief audit executive under The Texas Internal Auditor Act, §2102.001, Texas Government Code. Mr. Waters presented the agenda item for discussion and possible action. Ms. Sutton, seconded by Mr. Austin, moved to approve the recovery fund investment policies as presented. The motion was adopted by unanimous vote. Chairman Brodie also asked Mr. Thorburn, Mr. Jokl, and Mr. Austin, to give an update on the ARELLO conference that was held in Kansas City. Mr. Thorburn reported that staff members Loretta DeHay and Linda Bayless, along with Commissioners Jokl, and Austin attended the conference. He noted that delegates from Thailand, South Africa, Australia, Puerto Rico and other countries were in attendance at the conference.

Ms. Hull gave an update on the Education Task Force Committee (ETF) and announced their mission statement: "To Re-Think and Re-Invent MCE (structure, delivery, reporting and content)." The ETF's purpose is "To expand and reinforce the knowledge, ethics, competency, and skills of Texas Real Estate licensees." She stated that the ETF is addressing other education issues and as they progressed would bring recommendations to the Commission. Considering all the things that the Task Force is discussing, it will probably have three or four more meetings during the legislative session.

Mr. Thorburn announced that he was re-elected to the ARELLO Board of Directors, and would be attending a meeting conducted in conjunction with the AMPI Annual Conference. During the conference, border states' regulators from the United States and representatives of the real estate industry in border states of Mexico will be discussing ways to facilitate the real estate industry in Mexico.

Chairman Brodie moved to agenda item twelve, consideration of complaint information. Ms. Bayless requested authorization for the Enforcement Division to initiate an investigation of Benson I. Okoye for paying a commission to or associating with unlicensed persons in violation of Sections 15(a)(6)(F) and (S) based on information obtained from a related case and on information provided in connection with a late renewal license application. Mr. Austin, seconded by Ms. Sutton, moved to authorize the investigation. The motion was adopted by unanimous vote.

Ms. Bayless requested authorization for the Enforcement Division to initiate investigations on the following people for failure to provide information in connection with their license renewals as required by 22 TAC §535.91(a): Loyda Ivette Garcia. Ms. Sutton, seconded by Mr. Jordan, moved to authorize the investigation. The motion was adopted by unanimous vote.

Ms. Bayless requested authorization for the Enforcement Division to initiate an investigation on the following person for failing to disclose to a potential purchaser a latent structural defect or other defect known to her in violation of Section 15(a)(6)(A) of the Real Estate Act, Article 6573a, Texas Civil Statutes: Mitzi C. MacLean. Ms. Gil, seconded by Mr. Austin, moved to initiate investigation of Mitzi C. MacLean. The motion was adopted by unanimous vote.

Ms. Bayless requested authorization for the Enforcement Division to initiate an investigation of the following persons for failing to complete their Mandatory Continuing Education hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f): Randall Quentin Smith and Marilyn Cray Kinney. Mr. Austin, seconded by Ms. Gil, moved to authorize the investigations. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item thirteen, Motion for Rehearing, Motion for Modification of Order and Motion for Probation in the matter of D. Neal Valenta, Hearing No. 02-138-01227. Ms. Sharon Rector, attorney for the Enforcement Division, stated that Mr. Valenta had requested that his motions be dismissed.

Chairman Brodie moved to agenda item fifteen, schedule future meetings and adjournment; A meeting for April 7, 2003 was scheduled in addition to meetings previously set for January 6, 2003, and February 24, 2003.

Chairman Brodie adjourned the meeting at 11:33 a.m.

APPROVED this the 6th day of January A.D. 2003.

C. Michael Brodie
Chairman

ATTEST: _____
Wayne Thorburn
Administrator