

MINUTES
Texas Real Estate Commission
January 6, 2003
Conference Room 235, Texas Real Estate Commission
Austin, Texas

Chairman Michael Brodie called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, January 6, 2003. In addition to Chairman Brodie, members present were Paul Jordan, Maria Gil, Mick Cantu, James Austin, Larry Jokl, Kay Sutton, Louise Hull and John Walton.

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; Lyndon Clements, Director of Information Services; and Patricia Holder, Executive Assistant.

The Chairman led the attendees in the pledge of allegiance.

Chairman Brodie moved to agenda item two, minutes of the November 4, 2002, Commission meeting. Mr. Jokl, seconded by Ms. Sutton, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

The Chairman stated that after the executive session he would be moving to agenda item ten. The Chairman explained the functions and funding of the Commission. He stated that the Commission consists of six brokers and three public members, each serving a six year term. The members are appointed by the Governor, who also appoints one member as Chairman.

Chairman Brodie moved to agenda item three, 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 9:10 a.m. The executive session ended and the open meeting resumed at 10:00 a.m.

The Chairman moved to agenda item ten, discussion and possible action regarding 22 TAC §535.2(d), concerning broker's responsibility. Ms. DeHay presented the item for discussion and possible action. During Ms. DeHay's presentation, she explained that the rule had been proposed September 9, 2002, published in the Texas Register on October 4, 2002, and adopted on November 4, 2002, with an effective date of November 26, 2002. The rule as adopted adds section (d) which states as follows:

(d) A broker who represents a party in a real estate transaction must, at a minimum, provide the following services to the broker's client:

(1) accept and present to the client offers and counter-offers to buy, sell, or lease the client's property or property the client seeks to buy or lease;

(2) assist the client in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and

(3) answer the client's questions relating to the offers, counter-offers, and notices.

The day before the rule was to become effective a temporary restraining order had been served on the Commission to stop the enforcement of the rule. It was initiated by Mr. Aaron Farmer, Texas Discount Realty, through his attorney, Don Walden. A hearing has been scheduled for January 21, 2003. Mr. Brodie opened the item to public comment.

Don Walden, attorney for Aaron Farmer, commented that the rule is not needed and that he and his client are opposed to the rule as written. Don Dykestra, Pulte Homes, stated that he did not believe the minimum service rule should apply to brokers who represent home builders. Randy Wright, broker from Plano, spoke in favor of the rule, stating that it would protect the general public in business transactions where they were using a "discount broker". Ben Cabellero, Guaranty Realtors, stated that he thought the rule should be modified to exclude "informed sellers", e.g., builders, lending institutions and governmental entities. Aaron Farmer, Texas Discount Realty, stated that he did not feel that builders should be exempted and suggested a disclosure of some sort to inform the seller of the broker's duties.

Lance Mann, The Real Estate Counselors, stated that he was opposed to the rule and also a disclosure form. Mr. Walton questioned Mr. Mann concerning the services he provides. James Tan, Re/Max-Collin County, stated that two issues were being discussed because of the rule. One issue is representation and the other is a minimum service. He explained the awkwardness of representing a buyer in a transaction using the "discount brokerage service." Mr. Tan stated that he is in favor of the rule with an exemption for "professional buyers."

Timothy Smith, MyCastle.com, stated that he was opposed to the rule, but in favor of a disclaimer that would state what services the consumer would be getting for a flat fee. Sandy Watson, ERA Home Surf-Dallas, commented on the evolution of the relationship between builders and brokers. Ms. Watson stated that she would be in favor of the rule if builders were exempt. David Osborn, attorney for First Preston Management Inc., a private contractor for the U.S. Department for Housing and Urban Development and various financial institutions that have REO properties, stated that he was against the rule as written. Dennis Ciani, director of sales and marketing for Centex Homes, spoke against the rule. His company uses real estate licensees to list its new homes with MLS and uses its own salespeople to negotiate and finalize a sale.

Ron Walker, general counsel for the Texas Association of Realtors, spoke in favor of the rule. Mr. Walker stated that current rules required brokers to provide a certain level of service for their clients and the new rule only clarified the existing law. Rosalia Austin spoke against the rule. Bill Clopton, Clopton Realty spoke against the rule. John Applegate, RE/MAX Plano, spoke in favor of the rule and offered an example of the additional tasks a buyer's broker had to perform due to the seller having a "discount broker." Bob Baker, Keller Williams-Plano, spoke in favor of the rule, stating that the fiduciary duties of a licensee will still be the same with or without the rule. J.C. Posey, Century 21-Posey, spoke in favor of the rule. Cathy Smith, Flower Mound, spoke in favor of the rule. Jim Wiedemer, attorney, spoke in favor of the rule.

After discussion, Don Walden, Ben Cabellero, Timothy Smith and, Don Dykestra responded to comments made in favor of the rule. Ron Walker clarified his opinions on the rule. Aaron Farmer spoke concerning the National Association of Realtors' guidelines for "discount brokerage service". Comments were offered by Ms. Sutton and Mr. Jokl. Linda Spence, L S Smart Choice, spoke concerning the MLS requirements and how they affect the issue. Comments were offered by Mr. Walton, concerning the different views presented from the day's discussion. Ms. Hull offered comments concerning the fiduciary duty of a broker to the client. Ben Cabellero and Don Dykestra spoke concerning the agency's role in protecting the consumer. Bob Baker spoke concerning the rule.

After discussion, Mr. Jokl, seconded by Ms. Sutton, moved to direct staff to not enforce subsection (d) of section 535.2 after the temporary restraining order has expired in order to give the Commission the opportunity to address the concerns raised after the rule was adopted. Don Walden asked how long the staff would be under instruction not to enforce the rule. Mr. Brodie stated that the instruction was unlimited until further action was taken and that this item would appear on the February 24, 2003, meeting agenda. Mr. Jordan left the meeting at 11:25 a.m. The Chairman called for a vote on the motion. The motion was adopted by unanimous vote of the members present.

Chairman Brodie announced a recess at 11:45 a.m. for lunch. The meeting was called back to order at 1:10 p.m. Mr. Jordan did not return to the meeting after lunch. The Chairman called for agenda item four, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. There were no recovery fund payments.

Mr. Brodie moved to agenda item five, monthly staff reports; committee reports. Ms. Hassumani introduced a new employee in the Licensing department, Lorraine Rost, and then presented an overview of the Licensing reports.

Ms. Bayless reported on the E1 and E2 reports. She also explained that around 50% of the complaints the Enforcement Division receives are internally generated when an application is received with some questions not answered or mandatory continuing education was not completed on time. In 2002 over 3100 complaints were received and around 3000 were closed.

Mr. Clements reported that approximately a quarter of all renewals were being received online. He introduced a new employee in the Information Services division, Susan Jackson. He explained that Susan was returning to TREC; she had previously worked in the Information Services division for four years.

Mr. Waters introduced the new Human Resources director, Barbara Jenkins. He stated that his staff had been working on the annual financial report.

The Chairman moved to agenda item six, general comments from visitors. There were no comments.

Chairman Brodie moved to agenda item seven, discussion and possible action to adopt: (a) amendments to TAC §§537.11, 537.20, 537.28, 537.30, 537.31, 537.32, 537.37, 537.43 and 537.46, concerning standard contract forms; and (b) repeal of §§537.36 and 537.42, concerning standard contract forms.

Ms. DeHay presented agenda item seven (a) for discussion and possible action to adopt. These amendments would adopt six revised contracts and two revised addenda by reference. Ms. Sutton, seconded by Mr. Austin, moved to adopt the amendments to TAC §§537.11, 537.20, 537.28, 537.30, 537.31, 537.32, 537.37, 537.43 and 537.46, concerning standard contract forms with an effective date of April 1, 2003. Ms. DeHay presented agenda item seven (b) repeal of §§537.36 and 537.42, concerning standard contract forms. This amendment would adopt the repeal of two addenda that were no longer needed due to changes in the contract forms. Ms. Sutton, seconded by Mr. Austin, moved to adopt the repeal as presented effective April 1, 2003. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to propose: (a) amendments to §535.51 concerning real estate broker and salespersons applications for license and (b) amendments to §535.208 concerning real estate inspectors applications for license. Ms. DeHay presented

agenda item eight (a) for discussion and possible action to propose. This amendment proposes ten revised applications for broker or salesperson licensure to be adopted by reference. The applications have been reformatted; the request for a photograph has been eliminated and the addition of the words "or community supervision" has been added to the question concerning whether or not the applicant had ever been put on probation. Ms. Hull, seconded by Ms. Sutton, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item eight (b) for discussion and possible action to propose. This amendment proposes three revised applications for inspector licensure to be adopted by reference. Two of the applications were revised to eliminate the request for a photograph and the addition of the words "or community supervision" has been added to the question concerning whether or not the applicant had ever been put on probation on all three applications. Mr. Walton, seconded by Ms. Sutton, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

Mr. Brodie moved to agenda item nine, discussion and possible action to establish procedure for making appointments to the Texas Real Estate Commission Inspector Committee and possible action on appointments. Mr. Thorburn stated that the terms of three inspector committee members would expire in February. Also, to be eligible a person must be a professional inspector in Texas, licensed and active in the profession for no less than five years and no more than three members of the committee could be licensed as an inspector and also hold a license as a real estate broker or salesperson. Letters of recommendation and resumes should be submitted to the TREC Chairman, Mike Brodie, at the Austin TREC office no later than February 15, 2003.

Chairman Brodie asked Ms. Hull to make a report on the Education Task Force. She stated that the next meeting would be January 15, 2003. A survey on mandatory continuing education (MCE) was being mailed out with January's renewal forms and it is also available on the TREC web site to be filled out electronically.

The Chairman moved to agenda item eleven, consideration of complaint information concerning: William Pike Chapman; Steven Paul Mays; Joe D. Martinez; Kerri Lynn Miner; Melissa Standridge Werner; and Edwin Kenneth Seligman. Ms. Bayless presented the item for consideration. Ms. Jokl, seconded by Ms. Hull, moved to authorize investigations on William Pike Chapman and Steven Paul Mays for failing to complete their Mandatory Continuing Education (MCE) hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f). The motion was adopted by unanimous vote. Mr. Walton, seconded by Mr. Austin, moved to authorize investigations on Kerri Lynn Miner and Melissa Standridge Werner for failure to provide information in connection with their license renewals as required by 22 TAC §535.91(a). The motion was adopted by unanimous vote. Ms. Sutton, seconded by Mr. Walton, moved to authorize an investigation of Edwin K. Seligman for engaging in misrepresentation or dishonest or fraudulent action in violation of section 15(a)(3) of the Real Estate License Act, Article 6573a, Texas Civil Statutes. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, motion for rehearing, motion for reconsideration and motion for probation in the matter of Robert S. Morgan, Hearing No. 03-14-021779. Chairman Brodie announced a brief recess for Mr. Cantu to meet with Mr. Morgan, his attorney, Terry Weeks, and Enforcement

Staff. The recess began at 1:35 p.m. and the meeting was called back to order at 1:48 p.m. at which time Mr. Brodie passed the gavel to Mr. Cantu.

Mr. Weeks appeared for Mr. Morgan and presented the motion for rehearing and the motion for probation. Lynn Latombe, staff attorney, appeared for the Enforcement Division and presented their answer to the two motions. After discussion, Mr. Cantu called for a vote on the motion for rehearing. The motion was denied by unanimous vote. Mr. Cantu called for a vote on the motion for probation. After discussion, the motion was granted as amended.

The Chairman called for agenda item thirteen, entry of orders in contested cases. There were no orders to enter.

After discussion, it was decided that a meeting would be tentatively scheduled for June 9, 2003. The current meeting dates are February 24, 2003, April 7, 2003 and June 9, 2003. The Chairman adjourned the meeting at 2:10 p.m.

APPROVED this the 24th day of February A.D. 2003.

C. Michael Brodie
Chairman

ATTEST: _____
Wayne Thorburn
Administrator