

MINUTES
Texas Real Estate Commission
February 24, 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, February 24, 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, election of vice-chairperson and secretary. Mr. Jokl, seconded by Ms. Sutton, nominated James Austin for Vice-chairperson. There being no further nominations, the motion was adopted by unanimous vote.

Mr. Walton, seconded by Ms. Sutton, nominated Louise Hull for secretary. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, minutes of the January 6, 2003, Commission meeting. Ms. Hull, seconded by Ms. Sutton, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item four, executive session to discuss pending litigation concerning 22 TAC §535.2(d) regarding broker responsibility and other 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 9:05 a.m. The executive session ended and the open meeting resumed at 9:30 a.m.

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

RF 03-003, Kule Texas LLC, et al v. Richard Maldonado, in the amount of \$10,500 in actual damages and \$2000 in attorney fees. Mr. Austin, seconded by Ms. Sutton, moved to approve payment. The motion was adopted by unanimous vote.

RF 03-004, Kule Texas LLC, et al, in the amount of \$38,000 in actual damages and \$7,000 in attorney fees. Ms. Gil, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten (a), discussion and possible action regarding an amendment to 22 TAC §535.2, concerning brokers' responsibility. Ms. DeHay presented item ten(a) for discussion and

possible action. Staff proposed the repeal of §535.2, subsection (d). The rule as adopted requires the licensee to do three things: (1) accept and present to the client offers and counteroffers 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, counteroffers, and notices that relate to the offers and counteroffers; and (3) answer the client's questions relating to the offers, counteroffers, and notices.

The questions that arose after the rule was adopted were whether the rule as written prohibits fee for service agreements in Texas or whether these minimum standards can be waived by the client. The rule was adopted to ensure that a consumer would know what level of service they were getting when the licensee was acting as an agent for the consumer. At the January meeting around thirty people commented on the rule. After reviewing the comments, staff is proposing the repeal of the provision for further study of the issue consistent with the original purposes for which it was first proposed, the concept of consumer protection. Ms. DeHay explained that once the rule repeal was adopted the Commission could reconsider the rule taking into account the concerns brought up by interested parties. Mr. Jokl, seconded by Ms. Gil, moved to repeal the rule. The Chairman opened the floor to discussion.

Ron Walker, general counsel for the Texas Association of Realtors, offered comments in favor of the repeal and consideration of a rule that would be in line with the original purposes for the rule. Don Walden, attorney for Aaron Farmer, asked for clarification of the Commission's previous order to staff to not enforce the rule. The Chairman stated that the order was to be continued until the repeal of the rule came to conclusion. Aaron Farmer, spoke in favor of the rule repeal. Bob Baker spoke in favor of the rule repeal and consideration of a future rule. Timothy Smith, My Castle Realty, spoke in favor of the repeal. Mr. Brodie called for a vote on the motion. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item eight, general comments from visitors. There were no comments offered.

Mr. Brodie moved to agenda item six, monthly staff reports; committee reports. Ms. Hassumani reported on the number of new applications, late renewal applications and licensees compared to the totals at this time last year. Ms. Bayless reported on the number of open cases and her departments efforts to reduce that number. Mr. Clements reported on the number of online applications, the number of pages viewed on the web site, and that the *Advisor* would be online by March 15. Mr. Waters reported that his staff had been busy preparing revised budget items.

The Chairman moved to agenda item seven, report on examination services. Tadas Dabsys, Vice President, Psychological Services, Inc., reported on the pass rate of salesperson and broker exams, presented pass rate statistics concerning the inspector exam and the results of their customer survey. There was discussion concerning credit card charge backs on the exam fees and the cut score on inspector exams.

Chairman Brodie moved to agenda item nine, discussion and possible action to adopt: (a) Amendments to §535.51 concerning real estate brokers and salespersons applications for license, (b) Amendments to §535.208 concerning real estate inspectors applications for license. Ms. DeHay presented the item for discussion and possible action to adopt.

After discussion, Mr. Jokl, seconded by Ms. Sutton, moved to adopt the amendment to §535.51, concerning real estate broker and salesperson applications for license with an effective date of April 1, 2003.

The motion was adopted by unanimous vote.

After discussion, Mr. Jokl, seconded by Ms. Sutton, moved to adopt the amendment to §535.208, concerning real estate inspectors applications for license with an effective date of April 1, 2003. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten(b) discussion and possible action to propose: amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors; and 10(c): amendments to §535.403, concerning Renewal of Registration of easement or right-of-way agents. Ms. DeHay introduced item 10(b) and asked Ms. Hull to present it for discussion and possible action to propose. After discussion, Ms. Sutton, seconded by Ms. Hull, moved to propose amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors. The motion was adopted by unanimous vote.

Ms. DeHay presented item 10(c), amendments to §535.403, concerning Renewal of Registration of easement or right-of-way agents. Mr. Walton, seconded by Mr. Jokl, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

Mr. Brodie moved to agenda item eleven, legislative update. Mr. Thorburn reported that two TREC housekeeping bills were in the Legislative Council and that the Senate Bill would be sponsored by Senator Troy Fraser and the House Bill by Representative Kino Flores. Also, a third bill amending the Timeshare Act was due to be filed. This bill was initiated by the American Resort Development Association with some input from TREC

The Chairman moved to agenda item twelve, discussion and possible action regarding the letter of January 23, 2003, from the Governor, Lieutenant Governor, and Speaker of the House requesting that TREC reduce FY03 spending by an amount equal to at least 7% of TREC's FY03 general revenue appropriation. Mr. Thorburn presented this item for discussion and possible action. The cost savings measures consisted of putting the newsletter online, saving the costs of printing and mailing, and eliminating seven employee positions. Mr. Sutton, seconded by Mr. Austin, moved to adopt the following resolution.

"The members of the Texas Real Estate Commission hereby support the administrator's proposed plan to reduce FY 2003 expenditures, which were submitted to Governor Perry, Lieutenant Governor Dewhurst and Speaker Craddock on February 26, 2003."

The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item thirteen, discussion and possible action regarding proposed modifications to Legislative Appropriations Request for FY2004-2005, including possible increase of license application and renewal fees. Mr. Thorburn presented this item for discussion and possible action. Mr. Thorburn referred to the material that had been sent to the commissioners earlier and was included in the meeting material. The material discussed the request by the Legislature that agencies reduce their appropriations by 12.5%. After discussion, Mr. Jordan, seconded by Ms. Hull, moved to adopt the following resolution:

"Be it hereby resolved that the Texas Real Estate Commission meeting in Austin, Texas, on February 24, 2003, hereby agrees to adjust the agency fee structure for FY 2004 and FY 2005 at a level sufficient to provide the difference between level funding and a 12.5% reduction and

provide that amount to General Revenue should the agency's FY 2004 and FY 2005 be equal to the base level of appropriations for FY 2002 and FY 2003."

After further discussion, Mr. Brodie called for a vote on the motion. The motion was adopted by unanimous vote.

The Chairman moved to agenda item fourteen, discussion and possible action to appoint members to the Texas Real Estate Commission Inspector Committee. Two nominees, Brian Murphy and Vernon Davis, were in attendance and were introduced to the Commission. Mr. Jokl suggested considering three of the following five nominees: Vernon Davis, Mark LaGross, Curtis Carr, Jim Hemsell, and Brian Murphy. There was discussion concerning the criteria used to select the nominees. Larry Foster, Chairman of the Texas Real Estate Inspectors Committee, spoke concerning a possible subcommittee to look at the resumes and make suggestions. After discussion, it was decided that no action would be taken at this time and it would be deferred to the next meeting.

Mr. Brodie moved to agenda item fifteen, discussion and possible action to approve training for investment officers, Alan waters and Karen Alexander, pursuant to Public Funds Investment Act, Texas Government Code, §2256.005. Mr. Waters presented this item for discussion and possible action to approve. Ms. Sutton, seconded by Mr. Austin, moved to approve the training as requested. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item sixteen, entry of orders in contested cases. There were no orders to enter.

The Chairman moved to agenda item seventeen, schedule future meetings and adjourn. No action was taken to schedule any additional meetings. The Chairman adjourned the meeting at 10:55 a.m.

APPROVED this the 28th day of April A.D. 2003.

C. Michael Brodie
Chairman

ATTEST: _____
Wayne Thorburn
Administrator