

MINUTES
Texas Real Estate Commission
August 11, 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, August 11, 2003. In addition to Chairman Brodie, members present were James Austin, Larry Jokl, Kay Sutton, Louise Hull and John Walton. Paul Jordan arrived at 9:06 a.m. Maria Gil and Mick Cantu were absent.

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.

Mr. Austin led the attendees in the pledge of allegiance.

Chairman Brodie moved to agenda item two, minutes of the April 28, 2003, Commission meeting. Ms. Sutton, seconded by Mr. Austin, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item three, monthly staff reports; committee reports. Ms. Hassumani presented the various licensing reports. There was discussion concerning the categories in the report on examinations. Ms. Hassumani introduced Marilyn Taylor, a new employee in the Communications Department.

Ms. Bayless reported on the number of open complaint cases. There was discussion concerning the origin of the complaints, e.g., in-house versus complaints filed outside the agency. It was requested that the E1 report be broken down to show how many complaints were coming from consumers and how many were generated in-house.

Mr. Clements reported on the Information Services Division. He stated that the TREC-L List Server has more than 50,000 subscribers. Mr. Clements introduced a new ADP operator, Dianne Voyles. There was discussion concerning the number of web pages viewed.

Mr. Waters gave the report for Staff Services and introduced a new employee in the Cashier section, Geanett Jones. He also introduced a guest, the agency's Legislative Budget Board analyst, Jody Wright. He reported on the progress of the internal audit and the upcoming annual review of fees.

The Chairman moved to agenda item four, general comments from visitors. No comments were offered.

Mr. Brodie moved to agenda item five, discussion and possible action to propose amendments to: (a) 22 TAC §535.1 concerning general provisions relating to the requirement of licensure; (b) 22 TAC §§535.12, 535.13, 535.16, 535.17, and 535.21 concerning definitions; (c) 22 TAC §535.31 concerning exemptions to a requirement of licensure; (d) 22 TAC §535.41 and §535.42 concerning the commission; (e) 22 TAC §535.51 and §535.53 concerning requirements for licensure; (f) 22 TAC §§535.61-.66 concerning education, experience, educational programs, time periods and type of license; (g) 22 TAC §§535.71 - 535.73 concerning mandatory continuing education; (h) 22 TAC §535.91 regarding renewal applications; (i) 22 TAC §535.101 concerning fees; and (j) 22 TAC §541.1 concerning criminal offense guidelines. Ms. DeHay

presented the agenda item for discussion and possible action to propose. After discussion, Ms. Hull, seconded by Ms. Sutton, moved to propose 22 TAC §535.1 concerning general provisions relating to the requirement of licensure; 22 TAC §§535.12, 535.13, 535.16, 535.17, and 535.21 concerning definitions; 22 TAC §535.31 concerning exemptions to requirement of licensure; 22 TAC §535.41 and §535.42 concerning the commission; 22 TAC §535.51 and §535.53 concerning requirements for licensure; 22 TAC §§535.61-.66 concerning education, experience, educational programs, time periods and type of license; 22 TAC §§535.71 - 535.73 concerning mandatory continuing education; 22 TAC §535.91 regarding renewal applications; 22 TAC §535.101 concerning fees; and 22 TAC §541.1 concerning criminal offense guidelines as presented. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item six, discussion and possible action to propose repeal of 22 TAC §535.113 concerning display of licenses. Ms. DeHay presented the agenda item for discussion and possible action to propose. After discussion, Ms. Sutton, seconded by Mr. Walton, moved to propose the repeal as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion of comments on 22 TAC (a) Chapter 541, concerning Rules Relating to the Provisions of Texas Civil Statutes, Article 6252-13c and (b) Chapter 535, concerning Provisions of The Real Estate License Act (§§535.1-535.81). No comments had been received.

Mr. Brodie moved to agenda item eight, a resolution recognizing Chairman Mike Brodie, Commissioner Maria Gil, and Commissioner Kay Sutton for their service to the Texas Real Estate Commission. Mr. Walton presented the resolution.

“Whereas, Charles Michael Brodie, Maria Gil and Kay Sutton were appointed to the Texas Real Estate Commission by Governor George W. Bush in 1997 and

Whereas, Charles Michael Brodie was selected by Governor Bush to serve as Chairman of the Commission in 2000 and

Whereas, Chairman Brodie and Commissioners Gil and Sutton have effectively represented the public and the licensees of the Texas Real Estate Commission through their service over the past six years, and

Whereas, Chairman Brodie and Commissioners Gil and Sutton have served with distinction on the Commission since their appointments, now

Therefore, be it hereby resolved that the Texas Real Estate Commission commends and expresses its gratitude to Charles Michael Brodie, Maria Gil and Kay Sutton for their efforts on behalf of the citizens of Texas and extends its best wishes to them in their future endeavors.”

“Adopted by the Texas Real Estate Commission, meeting in Austin on this eleventh day of August 2003.”

Mr. Austin presented copies of the resolution and plaques commemorating their service on the Commission to Mr. Brodie and Ms. Sutton.

Chairman Brodie moved to agenda item nine, legislative update. Mr. Thorburn stated that there were no bills pending during the special session that directly affected the Commission.

Mr. Brodie moved to agenda item ten, discussion and possible action to establish procedure for making appointments or to appoint members to the Texas Real Estate Broker-Lawyer Committee. The Chairman

stated that two members of the committee, Don Harvey from Boerne and Randy Jeffers from Amarillo, were stepping down and thanked them for their contributions. Four names had been submitted for consideration from the Texas Association of Realtors. After discussion it was decided that action could be taken at this meeting to appoint two new members. The names submitted for possible appointment were Michael Bray, Terry Brion, Dwight Hill, Mary Steele and Bob Baker. The Chairman stated that the Commission was not limited to these individuals. Bob Baker spoke concerning his qualifications and wish to be appointed to the committee. There was discussion concerning which areas of Texas were represented by the individuals. Mr. Jokl, seconded by Mr. Austin, nominated Michael Bray and Bob Baker for appointment to the Broker-Lawyer Committee. The appointments were approved by unanimous vote.

Chairman Brodie moved to agenda item eleven, discussion and possible action regarding the Education Task Force (ETF) recommendations regarding mandatory continuing education and other matters considered by the task force. Commissioner Hull, Chair of the ETF presented an oral report and suggested that the task force recommendations be posted on the TREC web site after the Commission meeting. Commissioner Hull invited all interested individuals to read and comment upon the ETF report. Mr. Jokl, seconded by Ms. Sutton, moved to commend the members of the task force. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, discussion regarding Seller's Disclosure Notice required by Texas Property Code section 5.008. Ms. DeHay presented the agenda item for discussion. The Broker-Lawyer Committee did not recommend changing the form at this time. There was discussion concerning the form currently used by the Commission and various other forms that were available.

Mr. Brodie moved to agenda item thirteen, 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 10:04 a.m. The executive session ended and the open meeting resumed at 10:30 a.m.

Chairman Brodie moved to agenda item fourteen, 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 03-007, Craig A. Jessen v. Kenneth E. Kelley, in the amount of \$16,000 in actual damages and \$1,500 in attorney fees. Mr. Austin, seconded by Ms. Sutton, moved to approve payment. The motion was adopted by unanimous vote.

IRF 03-002, John and Rosemary Duke v. Karl R. Kutzer, in the amount of \$7,500 in actual damages. Ms. Sutton, seconded by Mr. Walton, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item fifteen, consideration of complaint information. Ms. Bayless requested authorization to initiate investigations of Maricela Pappas, Peggy Irene King and Richard Lee Pierce 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). Mr. Walton, seconded by Ms. Sutton, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation of Gary Glenn Peterson for acting negligently or incompetently in performing an act as a license holder in violation of section 1101.652(b)(1) of the Texas Occupations Code; for conduct which constitutes dishonest dealings, bad faith, or untrustworthiness in violation of section 1101.652(b)(2) of the Texas Occupations Code, and for making a material misrepresentation to a potential buyer concerning a significant defect known to the license holder in violation of section 1101.652(b)(3) of the Texas Occupations Code. Authorization was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation of Gloria D. Gallego for conduct which constitutes dishonest dealing, bad faith, or untrustworthiness in violation of section 1101.352 (b)(2) of the Texas Occupations Code, and for making a material misrepresentation to a potential buyer concerning a significant defect known to the license holder in violation of section 1101.652(b)(3) of the Texas Occupations Code. Authorization was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation of Diane Mary Selinski-Davis for procuring or attempting to procure a license for the license holder by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license, in violation of section 1101.652(a)(2) of the Texas Occupations Code. Authorization was granted by unanimous vote.

Mr. Brodie passed the gavel to Mr. Jordan for the hearing of contested cases. Mr. Brodie announced a recess for prehearing conferences at 10:32 a.m. The meeting was called to order at 10:47 a.m. by Mr. Jordan. Mr. Jordan announced that the contested case under agenda item seventeen, motion for rehearing and/or motion to modify suspension in the matter of Debra Ann Porter, had been postponed.

Mr. Jordan moved to agenda item sixteen, motion for rehearing, and/or modification of prior order and probation in the matter of Michael Allen Schmidt, Hearing No. 03-106-030963. Mr. Schmidt appeared pro se. The Enforcement Division appeared by Sharon Harris, staff attorney. After presentations by Mr. Schmidt and Ms. Harris, the motion for rehearing was considered. The motion was denied with Mr. Walton voting for the motion and Ms. Sutton, Mr. Austin, Mr. Brodie, Ms. Hull, and Mr. Jokl voting against the motion. The motion for modification of the prior order was considered. Ms. Hull voted in favor of the motion to modify. Mr. Austin, Mr. Brodie, Mr. Jokl, Ms. Sutton and Mr. Walton voted against the motion to modify. The motion was denied. The motion for probation was considered. Mr. Thorburn explained the different levels of inspector licensure. There was discussion concerning the terms of the probation. Mr. Jokl, seconded by Ms. Sutton, moved to amend the motion for probation to extend the probationary period to two years upon passage of the inspector exam. The amendment was adopted by majority vote. Mr. Austin, Mr. Brodie, Mr. Jokl, Ms. Sutton and Mr. Walton voted in favor of the amendment. Ms. Hull voted against the amendment.

Mr. Jordan called for a vote on the amended motion for probation. The motion was granted by majority vote. Mr. Austin, Mr. Brodie, Mr. Jokl, Ms. Sutton and Mr. Walton voted in favor of the motion. Ms. Hull voted against the motion.

Mr. Jordan moved to agenda item eighteen, Motion for Rehearing; Motion to Modify Prior Order; Motion for Probation in the Matter of John McAllister Stevenson, Jr., Hearing No. 03-56-021928. Mr.

Stevenson appeared pro se. The Enforcement division appeared by Sharon Harris, staff attorney. After presentations by Mr. Stevenson and Ms. Harris, the motion for rehearing was considered. The motion for rehearing was denied by unanimous vote. The motion to modify the prior order was denied by unanimous vote. There was discussion concerning the motion for probation. Mr. Jokl, seconded by Mr. Brodie, moved to amend the motion for probation to include a five-year probationary period. The motion was adopted, with Mr. Walton voting against the motion. The amended motion for probation was denied with Ms. Hull, Mr. Brodie, Ms. Sutton and Mr. Walton voting against the motion. Mr. Jokl and Mr. Austin voted in favor of the amended motion.

Mr. Jordan announced a recess at 12:07 p.m. The meeting was called back to order at 12:16 p.m. Mr. Jordan moved to agenda item nineteen, Motion for Rehearing, Modification of Order and Probation in the matter of Cindy Gayle, Hearing No. 03-71-020823. Ms. Hull recused herself during this rehearing. Ms. Gale appeared by her attorney, Robert P. Houston, and the Enforcement division appeared by Beverly Rabenberg, staff attorney. After presentations by Mr. Houston and Ms. Rabenberg, the motion for rehearing was considered. The motion for rehearing was denied by unanimous vote. The motion to modify the order was denied by unanimous vote. The motion for probation granted with Mr. Austin, Mr. Brodie, Mr. Jokl and Ms. Sutton voted in favor of the motion and Mr. Walton voting against the motion.

The Chairman moved to agenda item twenty, entry of orders in contested cases. No orders were presented.

Chairman Brodie moved to agenda item twenty-one, scheduling future meetings and adjournment. After discussion, it was decided that the next meetings would be scheduled for October 13, 2003 and December 1, 2003. The Chairman adjourned the meeting at 1:28 p.m.

APPROVED this the 13th day of October A.D. 2003.

James N. Austin, Jr.
Vice-Chairman

ATTEST: _____
Wayne Thorburn
Administrator