

MINUTES
Texas Real Estate Commission
October 13, 2003
Conference Room 235, Texas Real Estate Commission
Austin, Texas

Vice-Chairman James Austin called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, October 13, 2003. In addition to Vice-Chairman Austin, members present were Paul Jordan, Larry Jokl, Kay Sutton, Louise Hull and John Walton. Mr. Cantu arrived at 9:05 a.m. Maria Gil and Chairman Brodie 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. Jokl led the attendees in the pledge of allegiance.

Vice-Chairman Austin moved to agenda item two, minutes of the August 11, 2003, Commission meeting. Mr. Jokl, seconded by Ms. Sutton, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item three, acknowledgment of Commissioner James Austin's nomination for National Association of Realtors' Good Neighbor Award. Mr. Thorburn congratulated Mr. Austin on his nomination and selection as one of ten finalists.

The Vice-Chairman moved to agenda item four, resolution recognizing Commissioner Maria Gil for her service to the Texas Real Estate Commission. Mr. Austin acknowledged Ms. Gil for her six years of service on the Commission.

Mr. Austin moved to agenda item five, monthly staff reports; committee reports. Ms. Hassumani reported that the number of late renewals had increased while the number of licenses issued from an original application was slightly down.

Ms. Bayless reported on the number of open complaint cases. She reported on the revamped E1 report which now showed complaints by origination, e.g., in-house or consumer generated.

Mr. Clements reported on the Information Services Division. There was discussion concerning how many people were accessing the *TRECA*Advisor online.

Mr. Waters gave the report for Staff Services and also reported on the number of recovery fund payments in FY 2003.

Mr. Thorburn pointed out that two additional reports were included in the staff reports. One referred to the status of Residential Service Company registrants and the other concerned Timeshare registrants.

The Vice-Chairman introduced Larry Sutton, husband of Commissioner Kay Sutton and Mr. Austin's wife, Gloria Austin.

Vice-Chair Austin moved to agenda item six, general comments from visitors. No comments were offered.

Mr. Austin moved to agenda item seven, discussion and possible action to propose amendments to: 22 TAC §§537.11, 537.22, 537.43, 537.47, and add new §537.49 concerning Professional Agreements and Standard Contract Forms. Ms. DeHay presented the agenda item for discussion and possible action. She

stated that both Ann Walker and Avis Wukash from the Broker-Lawyer Committee were available to answer questions concerning this agenda item. The amendments would propose for adoption by reference three revised forms and one new form. After discussion, Ms. Sutton, seconded by Mr. Walton, moved to propose the rules as requested. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item eight, discussion and possible action to adopt 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 adopt.

After discussion, Ms. Sutton, seconded by Mr. Jokl, moved to adopt 22 TAC §535.1 concerning general provisions relating to the requirement of licensure without changes from the proposed amendment, effective January 1, 2004. The motion was adopted by unanimous vote. Ms. Sutton, seconded by Mr. Jokl, moved to adopt 22 TAC §§535.12, 535.13, 535.16, 535.17, and 535.21 concerning definitions. The motion was adopted by unanimous vote.

After discussion, Ms. Sutton, seconded by Ms. Hull, moved to adopt 22 TAC §535.31 concerning exemptions to requirements of licensure without changes from the proposed amendment, effective January 1, 2004. The motion was adopted by unanimous vote.

After discussion, Ms. Sutton, seconded by Mr. Jokl, moved to adopt 22 TAC §535.41 and §535.42 concerning the commission without changes from the proposed amendment, effective January 1, 2004. The motion was adopted by unanimous vote.

Mr. Thorburn stated that after studying the projected revenue from fees for the next fiscal year, staff recommended that the fees for a salesperson's original license not be increased as in the originally proposed amendment to §535.51, but remain at the current amount of \$50. Ms. Sutton, seconded by Mr. Walton, moved to adopt 22 TAC §535.51 with the changes to the original proposed amendment as recommended by staff and §535.53 without changes from the proposed amendment, both effective January 1, 2004. The motion was adopted by unanimous vote.

After discussion, Mr. Walton, seconded by Ms. Hull, moved to adopt the amendments to 22 TAC §§535.61-.66 concerning education, experience, educational programs, time periods and type of license without changes from the proposed amendment, effective January 1, 2004. The motion was adopted by unanimous vote.

After discussion, Mr. Walton, seconded by Ms. Sutton, moved to adopt the amendments to 22 TAC §§535.71 - 535.73 concerning mandatory continuing education without changes from the proposed amendment, effective January 1, 2004. The motion was adopted by unanimous vote.

After discussion, Ms. Sutton, seconded by Ms. Hull, moved to adopt the amendments to 22 TAC §535.91 regarding renewal applications with changes from the proposed amendment, effective January 1,

2004.

Mr. Thorburn stated that staff recommended fees for an original sales license not be increased at this time. After discussion, Ms. Sutton, seconded by Mr. Jokl, moved to adopt the amendments to 22 TAC§535.101 concerning fees with changes to the proposed text as recommended by staff, effective January 1, 2003.

After discussion, Mr. Jokl, seconded by Ms. Sutton, moved to adopt the amendments to 22 TAC §541.1 concerning criminal offense guidelines without changes as presented. The motion was adopted by unanimous vote.

Vice-Chairman Austin moved to agenda item nine, discussion and possible action to adopt repeal of 22 TAC §535.113 concerning display of licenses. There was discussion concerning the current law regarding display of licenses. After discussion, Ms. Sutton, seconded by Mr. Jokl, moved to approve the repeal of §535.113 as proposed. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item ten, discussion and possible action to adopt the rule reviews of Chapter 541, concerning Rules Relating to the Provision of Texas Civil Statutes, Article 6252-13c and Chapter 535, concerning Provisions of the Real Estate License Act (§§535.1-535.81). Ms. Hull, seconded by Ms. Sutton, moved to adopt the rule reviews as submitted by staff. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item eleven, discussion and possible action regarding a letter from the Texas Association of Realtors dated September 11, 2003, requesting that the Commission consider amending 22 TAC Section 535.2(b) to define the term "negotiate." Ms. DeHay provided history on the rule. Ron Walker, General Counsel, Texas Association of Realtors (TAR), spoke concerning his organization's request to amend the rule. Aaron Farmer, Texas Discount Realty, spoke concerning his reasons against amending the rule as requested. Mr. Farmer answered questions from the board concerning his services at Texas Discount Realty. There were discussions concerning limited service listings and whether or not any complaints had been filed concerning limited service agreements. There was additional discussion concerning exclusive agency, limited service agreements in other states and how those licensing entities were handling the issue in their jurisdictions. Comments were offered by D'Ann Harper, Coldwell Banker, San Antonio, who spoke in favor of amending the rule as proposed by TAR. Steve Malacowski, One Percent Realty-Austin, spoke against amending the rule. Larry Sutton, Midland, spoke concerning exclusive listings and modifying them in the case of a limited service agreement to permit brokers to contact the seller under certain conditions. Bill Riley, Broker-Austin, spoke against amending the rule. Bob Hale, CEO of the Houston Board of Realtors, spoke in favor of the amendment. Lance Mann, Real Estate Counselors, spoke against the rule amendment. Bob Baker, Keller Williams Realty, Plano, spoke in favor of the amendment. Mr. Jokl suggested that a group of individuals representing the different points of view on this issue meet with Commissioner Jordan before the December 1 meeting. Mr. Jordan would report to the Commission at its next meeting concerning the views and suggestions of this group. Mr. Austin announced a break at 11:12 a.m. The meeting resumed at 11:21 a.m.

The Vice-Chairman moved to agenda item twelve, presentation by Amy Jones of the Texas Veteran's Land Board concerning the Board's mission and its relationship with TREC licensees and discussion of issues raised by Ms. Jones. Ms. Jones reported on the Board's efforts to educate real estate licensees regarding the

various loan programs available to Texas veterans. She reported that the available loan amount had increased from \$45,000 to \$240,000. She introduced the associate deputy commissioner for the Texas Veteran's Land Board, Jim Darwin. Mr. Darwin spoke concerning the increase in the number of veterans since September 11. During the last fiscal year there was an increase of 68% in the number of home loans made and an 88% increase in the dollar volume of the loans. The program is funded through bond proceeds, paid by veterans for veterans and, not by tax dollars. There was discussion concerning interest rates and an online real estate broker registry on their website.

Vice-Chairman Austin moved to agenda item thirteen, discussion and possible action regarding Education Task Force recommendations regarding mandatory continuing education and other matters considered by the task force. Commissioner Hull presented the following recommendations from the Task Force:

- 1) That a seven member MCE committee write an update course that would become a 3-hour section of the required 6 hours of legal education bi-annually. The course would emphasize the most recent trends, developments, case studies, complaints, laws, statutes, regulations, disciplinary actions, and court cases as they relate to currently listed legal topics with the addition of agency and ethics as specified topics. Ms. Hull, seconded by Ms. Sutton, moved to approve this recommendation. The motion was adopted by unanimous vote.
- 2) That a taped version of the 3 hour course be sent to each of the MCE providers as a "Train the Trainer" video. Ms. Hull, seconded by Ms. Sutton, moved to approve this recommendation. After discussion, the motion was adopted by unanimous vote.
- 3) That the method of approval for the remaining three hours of legal topics remain the same. Ms. Hull, seconded by Ms. Sutton, moved to approve this recommendation. The motion was adopted by unanimous vote.
- 4) That the process for approval of the nine hours of non-legal MCE be simplified to allow approved providers to approve courses. The Commission staff would assign a course number. Ms. Hull, seconded by Ms. Sutton, moved to approve the recommendation. After discussion, the motion was adopted by unanimous vote.
- 5) That the responsibility for approval of instructors be given to the approved MCE providers. Ms. Hull, seconded by Ms. Sutton, moved to approve the recommendation. The motion was adopted by unanimous vote.
- 6) That a method be devised to allow feedback directly to the Commission to allow for complaints about ineffective instructors. Repeated complaints would result in an audit and possibly removal of poor quality instructors. Ms. Hull, seconded by Ms. Sutton, moved to approve the recommendation. After discussion, the motion was adopted by unanimous vote.
- 7) That with the exception of the TREC-written course, double credit be given to instructors for MCE for classes they teach. Ms. Hull, seconded by Ms. Sutton, moved to approve the recommendation. Comments were offered by Sabrina Hassumani-TREC staff, Renee LaClaire- Leonard-Hawes Real Estate Schools, and Wayne Thorburn-TREC staff. The motion was denied by unanimous vote.
- 8) That a method be devised to provide MCE non-legal credit for any course sponsored by a

nationally recognized trade association that leads to the attainment of a designation. Ms. Hull, seconded by Ms. Sutton, moved to approve the recommendation. After discussion, Mr. Jokl recommended staff adding a list of recognized trade associations. The motion was adopted with the addition of Mr. Jokl's suggestion.

- 9) That the Commission explore a method of one time carry-over of MCE hours from one renewal period to the next. Comments were offered by Sabrina Hassumani, Minor Peeples, Dwight Hale, and Ron Walker. Mr. Jordan, Ms. Hull, Mr. Cantu, and Ms. Sutton voted in favor of the motion. Mr. Jokl and Mr. Walton voted against the motion. The motion was adopted.

Ms. Hull, seconded by Mr. Walton, moved to approve the following suggestions for further study:

- 10) Explore the possibility of an MCE opt-out test that would reward licensees for knowledge rather than time in a seat.
- 11) Explore a method of partial credit in cases of unavoidable tardiness for MCE classes, removing the present feeling of jail.
- 12) Explore the possibility of requiring all licensees to take the 3-hour Commission-written course – even those currently under SAE requirements.
- 13) Explore a 2-tiered level of course approval, with a higher cost attaching to longer courses.
- 14) Explore the possibility of changing our statute and procedures to MCE hours to adjust to an annual basis for at least the Commission-written 3-hour course.

Comments were offered by Rich Thomas, CEO Greater Dallas Association of Realtors, Bob Hale, CEO Houston Association of Realtors, Minor Peeples and Ron Walker, Texas Association of Realtors. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item fourteen, discussion and possible action to approve Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law. Ms. DeHay presented the agenda item for discussion. Mr. Jokl, seconded by Mr. Jordan, moved to postpone any action on this agenda item until the December 1, 2003 meeting. Comments on the motion were offered by Tom Bazan, who had requested that changes be made to the form. After discussion, the motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item fifteen, discussion and possible action to approve annual internal audit report. Rene Gonzalez, Garza/Gonzalez and Associates, presented the agenda item for discussion. Mr. Jokl, seconded by Ms. Sutton moved to approve the annual internal audit report. The motion was adopted by unanimous vote.

Vice-Chairman Austin moved to agenda item sixteen, annual review of fees and estimated revenues. Mr. Waters presented the agenda item for discussion.

Mr. Austin moved to agenda item seventeen, 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 12:53 p.m. The executive session ended and the open meeting resumed at 12:57 p.m.

Vice-Chairman Austin moved to agenda item eighteen, 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:

IRF 03-004, Max Messmer v. Michael E. Schmidt, in the amount of \$2,200 in actual damages. Ms. Hull, seconded by Mr. Jordan, moved to approve payment. The motion was adopted by unanimous vote.

IRF 04-001, Catherine Bill v. Steve K. Reid, in the amount of \$7,500 in actual damages. Mr. Jokl, seconded by Mr. Jordan, moved to approve payment. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item nineteen, consideration of complaint information. Ms. Bayless requested authorization to initiate investigations of Larry Michael Martin for failing to complete his 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. Jokl, seconded by Mr. Jordan, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Mr. Austin passed the gavel to Mr. Cantu for the hearing of contested cases. Mr. Cantu moved to agenda item twenty, motion for rehearing and/or motion to modify suspension in the matter of Debra Ann Porter.

Mr. Bowman, staff attorney, appeared for the Enforcement Division. Mr. Bowman stated that Ms. Porter's attorney, Mr. Wilkins, had sent a letter stating that Ms. Porter no longer wished to contest the order, but the motion for rehearing and/or motion to modify suspension had not been formally withdrawn. The Vice-Chairman called for a vote on the motion for rehearing. The motion was denied by unanimous vote. Mr. Austin called for a vote on the motion to modify the suspension. The motion was denied by unanimous vote.

Vice-Chairman Austin moved to agenda item twenty-two, scheduling future meetings and adjournment. The next meeting was scheduled for December 1, 2003. After discussion, it was decided that the next meeting would be scheduled for February 2, 2003 in Houston. The Chairman adjourned the meeting at 1:10 p.m.

APPROVED this the 1st day of December A.D. 2003.

C. Michael Brodie
Chairman

ATTEST: _____
Wayne Thorburn
Administrator