

MINUTES
Texas Real Estate Commission
June 7, 2004
Texas Real Estate Commission
Room 235, 1101 Camino La Costa
Austin, Texas

Chairman John Walton called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, June 7, 2004. In addition to Chairman Walton, members present were James Austin, Larry Jokl, Louise Hull, Paul Jordan, Mary Frances Burleson, Elizabeth Leal, Mick Cantu and William Flores.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Linda Bayless, Director of Enforcement; Karen Alexander, Chief Accountant; Tom Watson, Director of Information Services.

Commissioner Burleson led the attendees in the pledge of allegiance.

Chairman Walton called for agenda item two, minutes of April 19, 2004 Commission meeting. Mr. Austin asked for a correction to show that he was in attendance at that meeting and Ms. Leal asked to change the spelling of deWitter to deWetter. Mr. Jokl, seconded by Mr. Flores, moved to approve the minutes with the corrections. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, staff reports; committee reports. Assistant Administrator Sabrina Hassumani reported on the past month's licensing activity.

Ms. Bayless presented the reports for the Enforcement Division. She announced that the annual Enforcement Conference would be held June 21-23. There was discussion concerning the reporting of complaints concerning a licensee who does not have the required MCE courses completed on time and does not pay the \$200 fee.

Mr. Watson presented the reports for Information Services. He reported that effective June 1 an applicant may apply for a broker's license online.

Ms. Alexander reported for Staff Services in the absence of Director Alan Waters. She announced that TREC was currently waiting on the instructions for the Legislative Appropriations Request. Mr. Thorburn stated that Mr. Waters was attending a meeting of the Texas State Agency Business Administrators Association (TSABAA).

Chairman Walton moved to agenda item four, general comments from visitors. There were no comments presented.

Mr. Walton moved to agenda item five, discussion and remarks on Texas Department of Insurance (TDI) Rule P-53 by Rob Carter, Deputy Commissioner-Title Division, TDI. Mr. Thorburn introduced Mr. Carter and presented some background material pertinent to this issue. Mr. Carter explained the various items covered under Rule P-53. Mr. Carter referred to the TDI web site which has frequently asked questions with answers. There was discussion concerning some of the services that title companies had provided to real estate licensees in the past and what is allowed under the new law.

The Chairman moved to agenda item six, 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 10:12 a.m. The executive session ended and the open meeting resumed at 10:51 a.m.

Chairman Walton moved to agenda item seven, 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 claim to be paid without contest:

RF 04-008, Michael Miles v. Anthony Knight, in the amount of \$50,000. Mr. Jordan, seconded by Ms. Burleson, moved to approve payment subject to the documentation of attorney fees. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eight, discussion and possible action to propose amendments to: a) 22 TAC §535.2 concerning broker responsibility; b) 22 TAC §535.51 concerning requirements for licensure; c) 22 TAC §§535.63 & .64 concerning experience; educational programs, time periods and types of license; d) 22 TAC §§535.71, .72, and .73 concerning mandatory continuing education; e) 22 TAC §§535.91, .92, and .94 concerning licenses; f) 22 TAC §535.101 concerning fees; g) 22 TAC §§535.122 and .123 concerning termination of salespersons association with sponsoring broker; h) 22 TAC §§535.131 and .132 concerning non residents; i) 22 TAC §§535.141, .143, .147, .153, and .154 concerning suspension and revocation of licensure; j) 22 TAC §535.171 concerning hearing; subpoenas and fees; k) 22 TAC §§535.206, .208, .213, .214, .215, .216, .220, .224, and .227 concerning real estate inspectors; l) 22 TAC §§535.300 concerning residential rental locators; m) 22 TAC §§535.400, .402, and .403 concerning easement or right-of-way agents; and n) 22 TAC §§537.11 and .46 concerning forms. Ms. DeHay presented the items for discussion and possible action to propose.

The amendments to a 22 TAC §535.2 would establish a written disclosure requirement for a real estate broker to provide to a client. The disclosure would clarify that a client should direct any question concerning a transaction to the client's agent and not to the agent of another principal to the transaction. Mr. Flores, seconded by Mr. Jokl, moved to propose the amendments to 22 TAC §535.2 concerning broker responsibility. The motion was adopted by unanimous vote.

The amendments to 22 TAC §535.51 propose by reference changes to a real estate broker corporation application form. It would change the fees referenced in the form in conjunction with Government Code Chapter 2054, Subchapter I, section 2054.252, which requires TREC to participate in an electronic system using the Internet for licensing applications and renewals. Mr. Flores, seconded by Mr. Austin, moved to propose amendments to 22 TAC §535.51 concerning requirements for licensure.

The proposed amendments to 22 TAC §§535.63 and 535.64 were withdrawn.

Ms. Hull presented agenda item 8e for discussion. The amendments to 22 TAC §§535.71, .72, and .73 require all licensees to take a three hour legal update course and a three hour legal ethics course created for and approved by TREC to satisfy the six legal hours of mandatory continuing education required by Occupations Code section 1101.455 (the Act). Instructors of the legal course must be certified to teach the courses by attending an instructor training course to be offered by the Real Estate Center at Texas A&M. The courses will be updated biannually. The courses may be offered in correspondence and alternate delivery methods. The amendments also include a provision which allows a provider to grant partial credit to a student under certain circumstances. The proposed rules require instructor applicants to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, but providers will be responsible for ensuring that instructors are competent to teach a

particular subject. The proposed rules also adopt by reference 13 new or revised MCE forms that are consistent with the proposed amendments. Both the rules and the forms have been updated to reference the cites to Chapter 1101 Occupations Code and the forms have been reformatted for style and consistency with other TREC forms. Comments were offered by Malcolm Richards, Director of the Real Estate Center at Texas A&M; Sabrina Hassumani, Assistant Administrator-Texas Real Estate Commission; Ron Walker, General Counsel, Texas Association of Realtors; Rick Knowles, Capital Real Estate Training; Rebecca Ray, Leonard/Hawes Real Estate School; Minor Peeples, Corpus Christi Real Estate School; Albert Lilly, 360 Education. Ms. Hull, seconded by Ms. Leal, moved to propose the amendments to 22 TAC §§535.71, .72, and .73 concerning mandatory continuing education, as submitted by staff at the beginning of the meeting with the amended form, the Course Application Form.

The amendments to §§535.91, 535.92 and 535.94 change the cites to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. The amendments to §535.91 and §535.92 also require the three hour legal update and three hour legal ethics course, and partial credit for attendance for courses as proposed in §§535.71, .72 and .73. Ms. Hull, seconded by Mr. Jokl, moved to propose the amendments to §§535.91, 535.92 and 535.94. After discussion, Ms. Hull, seconded by Ms. Leal, moved to amend her motion to propose the amendments to §§535.91, 535.92 and 535.94 by deleting the words "and legal" from §535.92(i). The amendment was adopted by unanimous vote. The Chairman called for a vote on the amended motion. The motion was adopted by unanimous vote.

The amendments to 22 TAC §§535.101, 535.122-535.123, 535.131-535.132, 535.141, 535.143, 535.147, and 535.153 and 535.154 change the cites to the relevant statutory provision in Chapter 1101, Texas Occupations Code. Ms. Leal, seconded by Mr. Austin, moved to propose the amendments to 22 TAC §§535.101, 535.122-535.123, 535.131-535.132, 535.141, 535.143, 535.147, and 535.153 and 535.154. The motion was adopted by unanimous vote.

The amendments to 22 TAC §535.171 require a party appealing a final decision of the Texas Real Estate Commission in a contested case to pay the costs of preparing the original or certified copy of a record of the contested case proceedings. Mr. Flores, seconded by Ms. Leal, moved to propose the amendments to §535.171. The motion was adopted by unanimous vote.

The amendments to 22 TAC §§535.206, .208, .212, .213-.216, .220, .224, and .227, §535.300 and §§535.400, .402, and .403 change the cites to the relevant statutory provision in Chapter 1101, Texas Occupations Code. Ms. Leal, seconded by Ms. Hull, moved to propose the amendments to §§535.206, .208, .212, .213-.216, .220, .224, and .227, §535.300 and §§535.400, .402, and .403. The motion was adopted by unanimous vote.

The amendments to 22 TAC §§537.11 and .46 adopt by reference a revised contract form to be used by Texas real estate licensees, TREC No. 39-4. Ms. Leal, seconded by Ms. Hull, moved to propose the amendments to §§537.11 and .46. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item nine, discussion and possible action to propose the repeal of 22 TAC §§535.71, .72, and .73. Mr. Jokl, seconded by Mr. Austin, moved to propose the repeal of §§535.71, .72, and .73.

The Chairman moved to agenda item ten, discussion of comments on 22 TAC §§535.92-535.403. Ms. DeHay presented the agenda item for discussion of comments. No comments had been received.

Mr. Walton recognized Ron Walker, legal counsel for the Texas Association of Realtors. Mr. Walker requested that the Commission revisit agenda item 8a, 22 TAC §535.2, concerning

broker responsibility. The Commission agreed to reconsider that agenda item. After discussion, Ms. Leal, seconded by Mr. Austin, moved to withdraw the amendments to §535.2 until after receipt of the attorney general's opinion request that had been approved at the April 2004 meeting. There was further discussion of the motion and comments were offered by Dick Hargis, Houston Association of Realtors and Aaron Farmer, Texas Discount Brokers. The Chairman called for a vote. Mr. Austin, Ms. Hull and Ms. Leal voted for the motion. Mr. Cantu, Ms. Burleson, Mr. Jokl, Mr. Jordan and Mr. Flores voted against the motion. The motion failed.

Chairman Walton moved to agenda item eleven, discussion and possible action to discuss or amend the Commission's request for an opinion from the Attorney General as to whether the Commission has the statutory authority to revise 22TAC §535.2 concerning broker responsibility, or take other action related to the request for an opinion. Mr. Thorburn presented the agenda item for discussion and possible action to discuss or amend. He referred to a letter from the Texas Association of Realtors that requested that the phrase "when such services are appropriate" be stricken from paragraph (d) of the proposed text. Mr. Thorburn stated that if the Commission wished to do this he would send an additional letter to the Opinion Committee at the Office of the Attorney General asking for further clarification of whether or not the language could be adopted without these words. Mr. Jordan, seconded by Ms. Leal, moved to approve the request as stated. Mr. Walker spoke concerning TAR's request. After discussion, Ms. Hull, seconded by Ms. Leal, moved to make a friendly amendment to the motion deleting the language without asking an additional question of the Attorney General. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twelve, discussion and possible action to approve Strategic Plan for 2005-2009. Mr. Thorburn presented three sections from the Strategic Plan for 2005-2009 for approval:

- 1) revised recommendations for action reflecting the decisions made by the Commission on April 19th;
- 2) modified section on Information Services reflecting instructions from the Department of Information Resources on what should be included in this section; and
- 3) updated Performance Measures approved by the LBB and Governor's office effective on September 1, 2005.

The remaining sections were approved at the April meeting and remain the same. Mr. Jokl, seconded by Ms. Leal, moved to approve the three sections as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, report on examination services by Tadas Dabsys, Vice President, PSI Examination Services and discussion and review of extension of contract for examination services with PSI Examination Service. Mr. Thorburn presented the agenda item for discussion and review. Mr. Dabsys spoke concerning the number of testing centers in Texas, the number of registrants for the exams and survey results gathered from registrants concerning the testing and testing centers. Gwen Jackson, Manager of the Education Section, spoke concerning providing reports concerning comments on the testing service on a quarterly basis. After discussion, Mr. Jokl, seconded by Mr. Austin, moved to authorize the administrator to execute an extension of the contract for examination services with PSI. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fourteen, consideration of complaint information. Ms. Bayless requested authorization to initiate investigations on Robert Benard Davis and Oatis A. Leeper for failing to complete his 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). Ms. Leal, seconded by Mr. Austin, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Chairman Walton turned the gavel over to Commissioner Jordan for agenda item fifteen (a), Motion for Meeting in the Matter of Michael Christopher Cohen, Hearing No. 04-157-040452. Neither Mr. Cohen nor anyone representing him was present. Brad Bowman, staff attorney, represented the Enforcement Division. Mr. Bowman presented the Enforcement Division's response to Mr. Cohen's motion. Mr. Jordan suggested that the Commission consider the request as a motion for rehearing and that the Commission vote on it as such. Mr. Jordan called for a vote on the motion for rehearing. The motion failed by unanimous vote.

Mr. Jordan called for agenda item fifteen (b), Motion for rehearing, modification of order or probation in the matter of Michael Don Lewis, Hearing No. 04-154-041412. Neither Mr. Lewis nor anyone representing him was present. Sharon Harris, staff attorney, represented the Enforcement Division. Ms. Harris presented the Enforcement Division's response to Mr. Lewis's motion for rehearing, modification of order or probation. Mr. Jordan called for a vote on the motion for rehearing. The motion failed by unanimous vote. Mr. Jordan called for a vote on the motion for modification. The motion failed by unanimous vote. Mr. Jordan called for a vote on the motion for probation. The motion failed by unanimous vote.

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

The Chairman moved to agenda item seventeen, scheduling future meetings and adjournment. The next meetings were scheduled for August 9, October 18, and December 6, 2004 in Austin. The Chairman adjourned the meeting at 1:05 p.m.

APPROVED this the 9th day of August, A.D. 2004.

John Walton
Chairman

ATTEST: _____
Wayne Thorburn
Administrator