

MINUTES  
Texas Real Estate Commission  
August 9, 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, August 9, 2004. In addition to Chairman Walton, members present were James Austin, Larry Jokl, Louise Hull, Mary Frances Burleson, Elizabeth Leal, and William Flores. Paul Jordan arrived at 9:12 a.m. and Mick Cantu was 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; and Tom Watson, Director of Information Services.

Commissioner Hull led the attendees in the pledge of allegiance.

Chairman Walton called for agenda item two, minutes of June 7, 2004 Commission meeting. Mr. Flores, seconded by Mr. Austin, moved to approve the minutes as mailed. 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 increases in licensing activity and introduced two new employees in the Licensing section, LaShonda Clark and Sally Howard.

Mr. Thorburn reported that PSI would be hosting a review session in October for the state portion of the licensing exams.

Ms. Bayless presented the reports for the Enforcement Division. She reported that the number of open cases had increased over the summer.

Mr. Watson presented the reports for Information Services. He reported that 63% of salesperson applications were being submitted online.

Mr. Waters presented the Staff Services reports.

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

Mr. Walton moved to agenda item five, 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 9:12 a.m. The executive session ended and the open meeting resumed at 9:41a.m.

Chairman Walton moved to agenda item six, 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 04-010, John S. And Carolyn Buckley v. Christopher Donald Boyd, in the amount of \$6,700 in actual damages and \$1,500 in attorney fees. Ms. Leal, seconded by Mr. Flores, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion and possible action to propose amendments to 22 TAC §§535.62 & .64 concerning experience, educational programs, time periods and types of license. Ms. DeHay presented the item for discussion and possible action. Mr. Austin, seconded by Ms. Hull, moved to propose the amendments as submitted by staff. The motion was adopted by unanimous vote.

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

The amendments to a 22 TAC §535.2 establish a written disclosure requirement for a real estate broker to provide to a client. The disclosure clarifies 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. Comments were offered by Ron Walker, general counsel for the Texas Association of Realtors, Don Walden, attorney for Aaron Farmer, Aaron Farmer, Texas Discount Brokers and Bob Hale, CEO for the Houston Association of Realtors. Mr. Flores, seconded by Ms. Leal, moved to postpone any further action on the amendments to 22 TAC §535.2 concerning broker responsibility until after TREC received word from the Attorney General's Office on its opinion request concerning this rule. After discussion, Mr. Flores modified his previous motion to postpone any further action to withdraw the proposed rule. The amended motion was adopted by unanimous vote.

The amendments to 22 TAC §535.51 adopt by reference changes to a real estate broker corporation application form. Ms. DeHay referred to her memo of August 9, 2004 in which she distributed the form which had been corrected to eliminate a typographical error. Mr. Jokl, seconded by Mr. Flores, moved to adopt the amendments to 22 TAC §535.51 concerning requirements for licensure with the corrected form.

Ms. DeHay presented agenda item 8c for discussion. The amendments to 22 TAC §§535.71, .72, and .73 require that: all licensees 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 the Act; instructors of the legal course be certified to teach the courses by attending an instructor training course to be offered by the Real Estate Center at Texas A&M; and, the courses be updated biannually. The courses may be offered in correspondence and alternate delivery methods. The amendments also include a provision allowing a provider to grant partial credit to a student under certain circumstances. The 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 rules also adopt by reference 13 new or revised MCE forms that are consistent with the amendments. 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 Roger George and Mike Blacker, North Texas Association of Commercial Brokers. Mr. Jokl, seconded by Mr. Austin, moved to adopt the amendments to 22 TAC §§535.71, .72, and .73 concerning mandatory continuing education, with the changes submitted by staff. The motion was adopted by unanimous vote.

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. Leal, seconded by Mr. Austin, moved to adopt the amendments as presented. The amendment 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. Mr. Austin, seconded by Mr. Flores, moved to adopt 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. Ms. Burleson, seconded by Mr. Austin, moved to adopt the amendments to §535.171. The motion was adopted by unanimous vote.

The amendments to 22 TAC §§535.206, .208, .213-.216, .220, .224, and .227, change the cites to the relevant statutory provision in Chapter 1101, Texas Occupations Code. Mr. Jokl, seconded by Mr. Austin, moved to adopt the amendments to §§535.206, .208, .213-.216, .220, .224, and .227. The motion was adopted by unanimous vote.

The amendments to 22 TAC §535.217 adopt by reference a form that is designed for use by licensed inspectors to disclose to all parties to a transaction and obtain the written consent of the client that the inspector intends to receive a fee from or pay a fee to a person other than the inspector's client. The amendments to §535.223 revise the requirements regarding the use of the standard inspection report form and permit an inspector to use additional space on page two of the form for commentary that may not fit on page one. Ms. Leal, seconded by Mr. Flores, moved to adopt the amendments. Comments were offered by Al Osden of Diligent Inspections, Rodney George of Irving and Randy Irving of the American Home Inspection Association. The motion was adopted by unanimous vote.

The amendments to 22 TAC §535.300 change the cites to relevant statutory provisions in Chapter 1101, Texas Occupations Code. Ms. Hull, seconded by Mr. Flores, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

The amendments to 22 TAC §§535.400, .402, and .403 change the cites to relevant statutory provisions in Chapter 1101, Texas Occupations Code. Mr. Jordan, seconded by Mr. Flores, moved to adopt the amendments as presented. 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. Mr. Flores, seconded by Mr. Jordan, moved to adopt 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 adopt the repeal of 22 TAC §§535.71, .72, and .73. Mr. Flores, seconded by Ms. Leal, moved to adopt the repeal of §§535.71, .72, and .73. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten, discussion and possible action to adopt the rule review of 22 TAC §§535.92-535.403. Ms. DeHay presented the agenda item for discussion and possible action. Mr. Austin, seconded by Mr. Jokl, moved to adopt the rule review of 22 TAC §§535.92-535.403. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eleven, discussion and possible action to approve additional legislative housekeeping measures to clarify existing law. After discussion, Mr. Jokl, seconded by Ms. Leal, moved approve the additional legislative housekeeping measures. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twelve, update on and discussion of MCE required legal and ethics courses prepared by the Real Estate Center at Texas A&M University. Dr. Malcolm Richards

reported on the status of the course preparation. Comments were offered by Rodney George, Avis Wukash, Broker-Lawyer Committee, and Mary Jane Binder.

The Chairman moved to agenda item thirteen, discussion and possible action to approve Legislative Appropriations Request (LAR). Mr. Waters presented the LAR for discussion and possible action. Ms. Leal, seconded by Ms. Hull, moved to approve the Legislative Appropriations Request as presented by staff. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fourteen, discussion and possible action to approve the Information Technology Details. Mr. Watson presented this item for discussion and possible action. Ms. Hull, seconded by Ms. Leal, moved to approve the Information Technology Details. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item fifteen, consideration of complaint information. Ms. Bayless requested authorization to initiate investigations concerning Harry L. Pokorny and Dianne Wilson based on information obtained while processing salesperson late renewal applications for acting negligently or incompetently in performing an act as a license holder, for paying a commission to someone not a license holder and for establishing an association with an unlicensed person expected or required to act as a license holder in violation of §§1101.652(b)(1)(11)(26) of the Texas Occupations Code. Mr. Jokl, seconded by Mr. Austin, moved to authorize the investigations as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations concerning Beverly June Haas, Gregory J. Jones, Christopher Ryan Cawley and Philip Roy Watson 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). Mr. Austin, seconded by Ms. Leal, moved to authorize the investigations as requested. The motion was granted 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 October 18, December 6, 2004 and February 21, 2005 in Austin. The Chairman adjourned the meeting at 11:45 a.m.

APPROVED this the 18<sup>th</sup> day of October, A.D. 2004.

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John Walton  
Chairman

ATTEST: \_\_\_\_\_  
Wayne Thorburn  
Administrator