

MINUTES
Texas Real Estate Commission
December 6, 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, December 6, 2004. In addition to Chairman Walton, members present were James Austin, Larry Jokl, Louise Hull, Mary Frances Burleson, Paul Jordan, and Mick Cantu who arrived at 9:04 a.m. Elizabeth Leal and William Flores 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; 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 October 18, 2004 Commission meeting. Mr. Jokl, 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 that the numbers of licenses issued from original applications were up by over 12%, but licenses issued from late renewal applications were down by 5.5%. The total number of licensees and registrants was 133,343 at the end of October 2004. There had been an increase in the number of evaluations of education for inspectors due to the new law, which changed education requirements, going into effect January 1, 2005. There was discussion concerning the difference between the applicant pass rate and the examination pass rate on the real estate salesperson and broker examinations.

Ms. Bayless presented the reports for the Enforcement Division. She reported that sixteen orders issued on the E2 report, 5 orders resulted from consumer complaints and 11 orders resulted from administrative actions. Ms. Bayless introduced a new investigator, Chris Thornton who would be working in the San Antonio area.

Mr. Watson presented the reports for Information Services. He spoke concerning the current numbers for online transactions.

Mr. Waters presented the Staff Services reports. He stated that the financial portions of the Annual Report had been completed in November and the nonfinancial portion of the report is due December 31, 2004. Upon completion of the second portion, Staff Services would be distributing the Annual Report to the Commission. There was discussion concerning the S1 report.

Chairman Walton moved to agenda item four, general comments from visitors. Al Austin, an inspector from Houston, stated that he wished to be a candidate for one of the appointments to the Texas Real Estate Inspector Committee. Larry Foster, Texas Real Estate Inspector Committee, requested that an item be placed on the next

meeting's agenda concerning the standards of practice for inspectors. Eduardo Gutierrez, a real estate salesman, spoke concerning builders offering buyers substantial referral fees. Mary Jane Beisert spoke concerning the same scenario with timeshares.

Mr. Walton moved to agenda items 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 and 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 stated that there were no items for discussion in executive session.

The Chairman moved to agenda item six, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. There were no items to discuss or take action on.

The Chairman moved to agenda item seven, an update from the Real Estate Center at Texas A&M regarding instructor training programs for new MCE courses. Denise Whisenant, education director at the Real Estate Center, spoke concerning the recent training sessions for instructors. A total of four hundred instructors completed the courses during the sessions in Dallas, Houston and San Antonio. Changes were being made to the textbooks and the updated texts would be sent to the Commission as soon as possible. Loretta DeHay, general counsel, will film a DVD concerning agency disclosure and intermediary relationships. The next training sessions would be May 23 and 24 in College Station. Commissioner Jokl and Administrator Wayne Thorburn thanked the Real Estate Center and the instructors who taught the classes. There was discussion concerning keeping the courses current. Minor Peeples, Real Estate Institute of Corpus Christi, requested that the general counsel for TREC be available to offer her expert opinion concerning agency at any future training sessions.

Chairman Walton moved to agenda item eight, discussion of TREC housekeeping bill and other legislation that may impact the real estate industry. Mr. Thorburn stated that the ten legislative housekeeping measures that had been approved by the Commission at the last meeting had been incorporated into a draft bill by the general counsel. Mr. Thorburn pointed out that there would be some modification of the bill in the section concerning real estate inspectors. Section 8 of the bill which amends §1102.205, Occupations Code. Section (b) would be amended to read:

(b) As a prerequisite for renewal of a real estate inspector license or professional inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least the following number of classroom hours of core real estate inspection courses during the ~~year~~ license period preceding the renewal:

- (1) ~~eight~~ 16 hours for a real estate inspector license renewal;
- or
- (2) 16 hours for a professional inspector license renewal; or
- (3) 16 hours for an apprentice inspector license renewal.

Comments were offered by Steven Roth and Joel Coyn, Leonard Hawes Real Estate School, concerning allowing applicants to take the examination before completing all the required education. The applicant would complete the remaining education and then apply for issuance of the license. Fred Buck, chairman of the Texas Real Estate Inspector Committee, commented on possible problems concerning the amendments which would require licensing for an inspection company and the type of license required for the designated officer of such a company. There was discussion concerning this subject. Larry Foster, Texas Real Estate Inspector Committee, commented concerning the licensing of inspection companies. He also spoke concerning the Commission's jurisdiction over inspectors and possible changes to include other inspections performed outside a real estate transaction between a buyer and seller. Al Austin, inspector from Houston, commented on the liability issue concerning the different tiers of inspector licenses and a licensed inspection company. He also spoke concerning the MCE requirements and being able to take the test before completing the education required to obtain a license. Mary Jane Beisert commented on warranty companies using inspectors not licensed through TREC. There was discussion concerning these items. Mr. Thorburn informed the Commission that the American Resort Development Association (ARDA) would be submitting a bill during the legislative session that would amend the Timeshare Act. TREC worked closely with ARDA during the last session on this bill, but it died in committee.

The Chairman moved to agenda item nine, discussion of attorney general opinion regarding broker minimum service standards. Mr. Thorburn stated that the attorney general had not responded to the request for an opinion.

The Chairman moved to agenda item ten, discussion and possible action to approve recovery fund investment policies under the Public Funds Investment Act, Texas Government Code, §2256.005. Mr. Waters presented the agenda item for discussion and possible action. Mr. Austin, seconded by Mr. Jordan, moved to approve the Real Estate Recovery Trust Account Investment Policy and Real Estate Inspection Recovery Fund Investment Policy as submitted.

Chairman Walton moved to agenda item eleven, announcement of intention to fill three appointments to the Texas Real Estate Inspector Committee and one appointment to the Mortgage Broker Advisory Committee. Mr. Thorburn presented the announcement requesting letters for consideration to be appointed to the Inspector Committee for approval. Mr. Austin seconded by Ms. Hull, moved to publish the announcement as submitted. The motion was adopted by unanimous vote. Mr. Thorburn presented the announcement requesting letters for consideration to be appointed to the Mortgage Broker Committee for approval. Mr. Jokl, seconded

by Mr. Austin, moved to publish the announcement as submitted. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, consideration of complaint information. Ms. Bayless requested authorization to initiate investigations concerning the Anzer Investment Corporation, BTM, Inc., Milton Ray "Jim" Currey and John Clifford Herzer for paying a commission to someone not a license holder, establishing an association with a person expected or required to act as a license holder in violation of sections 1101.652(b)(11)(26) of the Texas Occupations Code. Mr. Austin, seconded by Ms. Burleson, moved to authorize the investigations as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation concerning Tiffany Tia Thompson for failure to provide information requested by the Commission in connection with the renewal of a real estate salesperson license as required by 22 TAC §535.91(c), in violation of Section 1101.656 of the Texas Occupations Code. Mr. Jokl, seconded by Mr. Austin, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations concerning Charles Kelly Forster, Judy v. Paredes, The Real Estate Team, Inc, and YNK, Inc. based upon information obtained in connection with applications for late renewal for establishing an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder in violation of Section 1101.652(b)(26); and for aiding, abetting or conspiring with another person to circumvent this chapter in violation of Section 1101.652(b)(27) of the Texas Occupations Code. Ms. Burleson, seconded by Ms. Hull, moved to authorize the investigations as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation concerning Christopher Paul Miller based upon information obtained in connection with a real estate inspector application, pursuant to Section 1102.305 of the Texas Occupations Code for: possible negligent supervision of a real estate inspector in violation of §1102.104(2) of the Texas Occupations Code, violations of §§535.220 and 535.226(f) of the Rules of the Commission, and for a professional inspector's business association with a person who has performed real estate inspections in Texas without a license. Ms. Burleson, seconded by Mr. Austin, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation concerning John Clifford Herzer for possible unlicensed real estate activity in violation of §§1101.351(a)(1) and 1101.758 of the Texas Occupations Code. Mr. Jokl, seconded by Mr. Austin, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations concerning Alex Hyman, Jr., Valree Thompson, Elizabeth Ann Hull, and Pamela J. Cravens 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. Burlison, moved to authorize the investigations as requested. The motion was granted by unanimous vote.

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

The Chairman moved to agenda item fourteen, scheduling future meetings and adjournment. The next meetings were scheduled for February 21, 2005 and April 18, 2005 in Austin. The Chairman adjourned the meeting at 10:26 a.m.

APPROVED this the 21st day of February, A.D. 2005.

John Walton
Chairman

ATTEST: _____
Wayne Thorburn
Administrator