

## MINUTES

Texas Real Estate Commission  
February 21, 2005  
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, February 21, 2005. In addition to Chairman Walton, members present were Larry Jokl, Louise Hull, Mary Frances Burleson, Paul Jordan, Elizabeth Leal and William Flores. James Austin and Ramon 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; and 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 December 6, 2004 Commission meeting. Mr. Jokl, seconded by Mr. Jordan, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, election of vice-chairman and secretary. Mr. Jokl, seconded by Ms. Hull, moved to nominate Mary Frances Burleson as vice-chair. The Chairman called for the vote. The motion was adopted by unanimous vote. Mr. Jokl nominated Ms. Leal as secretary. The Chairman called for the vote. Ms. Leal was elected secretary by unanimous vote.

Mr. Walton moved to agenda items four, discussion of attorney general opinion regarding broker minimum service standards and five, discussion and possible action to propose amendments to 22 TAC §535.2, concerning broker responsibility. Ms. DeHay presented the background on agenda item four.

Ms. DeHay stated that the opinion was issued on December 14, 2004. The Attorney General concluded that the Commission does have the statutory authority to revise §535.2 of the Rules of the Real Estate Commission, to adopt a rule that would define the minimum level of service that a consumer can expect to receive from a broker who negotiates for that consumer.

The Attorney General made four conclusions in his opinion letter. They are as follows:

1. The Commission has the statutory authority to revise §535.2.
2. The Commission prior to the opinion request had the statutory authority to adopt the current rule that defines negotiation currently in §535.2.
3. The proposed subsection (d) concerning minimum services clearly expresses what is only implied by §1101.652(b)(22) of the Act; and
4. The Attorney General recommended that the Commission change "may" not refuse to "shall" in subsection (d) which if left at "may not refuse" would contradict §1101.652(b)(22) of the Act.

The Chairman stated that questions from the floor would be accepted at this time. Lance Mann, of the firm Real Estate Counselors, asked for a clarification of the fourth conclusion concerning the change from "may" not refuse to "shall".

Chairman Walton asked for a motion on agenda item five. Ms. Leal, seconded by Ms. Hull, moved to publish a proposed amendment to §535.2 of the rules that adds Subsections (d), (e) and (f) as written in the Commission's letter to the Attorney General dated June 8, 2004 with the change to subsection (d) as recommended by the Attorney General. The language is as follows:

(a)-(c) (No change.)

**(d) In negotiating for his or her principal a broker shall provide the following services:**

**(1) accept and present to the principal offers and counter-offers to buy, sell, or lease the principal's property or property the principal seeks to buy or lease;**

**(2) assist the principal in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and**

**(3) answer the principal's questions relating to offers, counter-offers, and notices.**

(e) Under §1101.652(b)(22) of the Act a broker may not negotiate or attempt to negotiate the sale or lease of property with a principal with knowledge that the principal is a party to an outstanding written contract that grants exclusive agency to another broker. Under §1101.652(b)(27) of the Act, a broker may not aid, abet, or conspire with another to circumvent the Act. A broker who represents a principal under a listing contract that grants an exclusive agency to the broker may not instruct or authorize another broker who represents another party in the transaction to negotiate directly with the principal.

(f) When a broker delivers an offer or counter-offer to another broker, the broker is not negotiating or attempting to negotiate with a principal he or she does not represent by delivering a copy of the offer or counter-offer to the principal he or she does not represent so long as the broker representing the principal consents to the delivery and the broker who makes the delivery does not discuss or attempt to discuss the terms or conditions of the offer or counter-offer with the principal he or she does not represent.

Mr. Flores stated that he wished to propose an amendment to the motion. Mr. Flores moved to change subsection (d) to read as follows:

(d) In negotiating for his or her principal a broker **may not refuse** to provide the following services **when such services are appropriate in the transaction**:...

Chairman Walton called for a second to the motion. The motion failed for lack of a second.

The Chairman called for discussion on the motion.

Lance Mann (Real Estate Counselors) spoke against the motion. Mr. Mann stated that he saw no need for the rule and presented his reasoning. After discussion, the Mr. Walton asked for any other comments.

Lance Lacy, Chairman of the Board for the Texas Association of Realtors, spoke in favor of the motion. Mr. Lacy stated that he was appearing for the Texas Association of Realtors and its 70,000 members.

Aaron Farmer (Texas Discount Realty) spoke against the motion. Mr. Farmer stated that he had been in communication with the Federal Trade Commission and that the Federal Trade Commission had stated it would be commenting on the rule if it was proposed.

Mike DeGenero (El Paso), Travis Kessler (San Antonio Board of Realtors), and Randy Jeffers (Amarillo), spoke in favor of the rule. Mr. Farmer, Texas Discount Realty, spoke concerning a possible disclosure form that could be presented to consumers to explain the services of a limited service broker.

Brook Hunt (Colleyville) spoke concerning specific problems in a transaction with a limited service broker. Bob Hale, President and CEO of the Houston Association of Realtors, spoke in favor of the rule. Mr. Hale stated that the State of Illinois had passed a law concerning limited service brokerage which used the language being proposed almost verbatim.

Philip Schoewe (Lubbock) spoke in favor of the rule. After discussion, Chairman Walton called for a vote on the motion. The motion was adopted by unanimous vote.

Chairman Walton recognized former Commissioners Hazel Lewis and Don Harvey. He also thanked those persons attending the meeting from different areas of the state. The Chairman announced a recess from 9:55 a.m. - 10:02 a.m.

Mr. Walton moved to agenda item six, discussion and possible action to appoint one member of the Texas Mortgage Broker Committee. Ms. Hull, seconded by Ms. Leal, moved to appoint George Stephens of Houston to the Texas Mortgage Broker Committee. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion and possible action to appoint three members of the Texas Real Estate Inspector Committee. The Chairman stated that he was appointing a subcommittee. Fifteen individuals had submitted their names for consideration. Commissioners Paul Jordan, Larry Jokl and Elizabeth Leal were appointed to the subcommittee and will report to the full Commission at the next meeting on their recommendations.

Chairman Walton moved to agenda item eight, discussion and possible action to appoint one member of the Texas Real Estate Broker-Lawyer Committee. Mr. Jokl, seconded by Ms. Hull, moved to appoint Bill Jones of Temple to the Broker-Lawyer Committee. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item nine, discussion and possible action to approve a request from the TREC Inspector Committee to conduct public roundtable discussions to review the real estate inspector standards of practice. Fred Buck, Chairman of the

Inspector Committee, presented the agenda item for consideration. Mr. Jordan, seconded by Ms. Hull, moved to approve the request as submitted. There were some questions from Rebecca Ray, Leonard Hawes Real Estate School. After discussion, the motion was adopted by unanimous vote.

The Chairman moved to agenda item ten, discussion and possible action to amend 22 TAC Chapter 534 by adding §534.3 concerning employee training and education; 22 TAC Chapter 534 by adding §534.4 concerning historically underutilized businesses; 22 TAC Chapter 534 by adding §534.5 concerning bid opening and tabulation; 22 TAC Chapter 534 by adding §534.6 concerning negotiation and mediation of certain contract disputes and 22 TAC Chapter 534 by adding §534.7 concerning vendor protest procedures. Ms. DeHay presented the agenda item for discussion and possible action. She stated each of the proposed new rules is required under various provisions in the Government Code. Mr. Flores, seconded by Ms. Burlison, moved to propose the amendments to §§534.3-534.7 as submitted. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eleven, discussion and possible action to approve the rule review plan for 2005-2008 and the schedule of reviews for 2005. Ms. Leal, seconded by Mr. Flores, moved to approve the rule review plan and the schedule of reviews for 2005. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twelve, discussion and possible action to adopt a resolution concerning recognition of licensees with 50 or more years of continuous licensure. Mr. Thorburn presented the agenda item for discussion and possible action. Seventy-eight individuals would be presented with a copy of the resolution at various locations around the state. Mr. Jokl, seconded by Mr. Flores, moved to adopt the resolution. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, discussion regarding Business Continuity Plan test and report. Mr. Waters presented the information for discussion.

Chairman Walton moved to agenda time fourteen, legislative update. Mr. Thorburn presented the information. Mr. Thorburn reported that representatives from the agency had met with subcommittees of the House Appropriations Committee and Senate Finance Committee concerning exceptional items. The TREC housekeeping bill was still in Legislative Council, but was expected to be filed soon. He also reported on a bill amending the Texas Timeshare Act.

The Chairman moved to agenda item fifteen, 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. Executive session began at 10:32 a.m. The meeting was called to order at 10:47 a.m.

Mr. Walton moved to agenda item sixteen, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. Ms. DeHay presented the following recovery fund claims for possible action:

RF05-003, Diane Henry v. Mark Frankes, in the amount of \$17,000 in actual damages and \$10,000 in attorney fees. Mr. Jokl, seconded by Mr. Jordan, moved to approve payment. The motion was adopted by unanimous vote.

RF05-004, Luis Cendejas v. Ester Melendez, in the amount of \$5,000 in actual damages. Mr. Jordan, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seventeen, staff reports; committee reports. Sabrina Hassumani, Assistant Administrator, presented the reports for the education, licensing and communications departments. She referred to the L1 report which showed increases in original applications and the L2 report which showed a total of 130,943 brokers and salespersons.

Linda Bayless, Director of Enforcement, presented the reports for the Enforcement Division. She reported on the increase in the number of complaints reflected in the E1 report. She also reported that an investigator had been hired for the Dallas area and introduced two new attorneys, Devon Bijansky and Leena Chaphekar, who would be taking the places of two attorneys who had resigned.

Tom Watson, Director of Information Services, reported that improvements had been made to the Internet server. This would allow people to access and search the TREC web site, especially the licensee lookup function at a much faster speed.

Alan Waters, Director of Staff Services, reported that his division had been working on legislative requests for fiscal notes on proposed legislation. There was discussion concerning the way the staff reports show expenditures.

Mr. Thorburn, Administrator, reported that the Commission after careful consideration had joined with the Texas State Securities Board in asking the Attorney General to bring an action for injunction and other relief against several entities

operating as Branson City Limits Inc., and Resort Hotels, Inc., that appeared to be selling timeshare interests.

Ms. Leal recognized staff members for working on a state holiday, so the Commission could meet.

Chairman Walton moved to agenda item eighteen, general comments from visitors. No comments were offered.

The Chairman moved to agenda item nineteen, consideration of complaint information. Ms. Bayless requested authorization to initiate an investigation concerning the North Central Texas Properties, for establishing an association with an unlicensed person in violation of sections 1101.652(b)(26) and (27) of the Texas Occupations Code. Mr. Jokl, seconded by Mr. Flores, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation concerning D&J Real Estate Services, Inc. for paying a commission to someone not licensed as a real estate salesperson in violation of Section 1101.652(b)(11) and establishing an association with an unlicensed person in violation of sections 1101.652(b)(26) and (27) of the Texas Occupations Code. Mr. Jordan, seconded by Ms. Leal, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations on Stephen Marquette Payne and Joe Charles Shaffer for failure to provide information requested by the Commission in connection with the renewal of a real estate salesperson license in violation of Section 1101.656 of the Texas Occupations Code. Mr. Flores, seconded by Ms. Hull, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate an investigation concerning Sammy Bickham, Jr. for acting or attempting to act, as a real estate inspector in Texas at a time when not properly licensed, in violation of Section 1102.103 of the Texas Occupations Code. Mr. Jokl, seconded by Mr. Flores, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations on Denise Cox Delay and Gregory Dean Parker 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). Ms. Leal, seconded by Mr. Jokl, moved to

authorize the investigations as requested. The motion was granted by unanimous vote.

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

The Chairman moved to agenda item twenty-one, scheduling future meetings and adjournment. The next meetings were scheduled for April 25, 2005 and June 13, 2005 in Austin. The Chairman adjourned the meeting at 11:11 a.m.

APPROVED this the 25th day of April, A.D. 2005.

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John Walton  
Chairman

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