

MINUTES

Texas Real Estate Commission

June 13, 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, June 13, 2005. In addition to Chairman Walton, members present were Larry Jokl, Louise Hull, Mary Frances Burleson, James Austin, Paul Jordan, Bill Flores, and Elizabeth Leal. Ramon 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.

Chairman Walton led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of April 25, 2005, Commission meeting. Mr. Jokl, seconded by Mr. Austin, moved to approve the minutes as written. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, staff reports; committee reports. Ms. Hassumani spoke about the L1 and L2 reports, which show licensing statistics for the month of April.

Ms. Bayless spoke concerning the E1 and E2 reports. These reports summarize the number of Enforcement cases open and closed, and the number of Administrative actions and what they concerned. Ms. Bayless announced that the Annual Enforcement Conference would begin that afternoon. She stated that all the investigators were present and they introduced themselves. They were Kitty Martin, Austin; John Barajas, Austin; Christopher Thornton, San Antonio; Larry Cook, Terrie Coffman, and Greg Leet, Dallas; Angie Gladney, Kay Daniel, and Bill Titter, Houston; and Bruce Wooley, Corpus Christi and West Texas. She announced also that Bill Titter would be retiring on June 30, 2005 after sixteen years with TREC.

Mr. Watson spoke concerning the I1 report. He reported that in May the web site had over 2,000,000 hits.

Mr. Waters spoke concerning the S1-S3 reports regarding agency finances.

Denise Whisenant, Director of Continuing Education for the Real Estate Center at Texas A&M University, reported that 106 people attended the instructor training session for the Legal Update and Ethics courses held in College Station on May 23-24, 2005.

The Chairman moved to agenda item fourteen, discussion and possible action to request the Real Estate Center at Texas A&M University to update the required Legal Update and Legal Ethics Courses. Mr. Flores, seconded by Ms. Hull, moved to request an update. The motion was adopted by unanimous vote.

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

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. Executive session began at 9:16 a.m. The meeting was called to order at 9:34 a.m.

Chairman Walton moved to agenda item seven, 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:

RF05-008, Antonio Moreno and John Moreno v. Wayne Fogus, in the amount of \$100,000 in actual damages. Mr. Austin, seconded by Mr. Jokl, moved to approve payment. The motion was adopted by unanimous vote.

RF05-009, Estate of Verna Neely v. the Estate of Salle McBee, in the amount of \$7,000 in actual damages and \$2,000 in attorney fees. Ms. Hull, seconded by Mr. Jordan, moved to approve payment. The motion was adopted by unanimous vote.

RF05-011, Allen Feuling v. Richard Staub, in the amount of \$7,000 in actual damages. Ms. Leal, seconded by Ms. Burlison, moved to approve payment. The motion was adopted by unanimous vote.

RF05-012, Carolyn Autry v. Jerome S. Clayborne, in the amount of \$2,500 in actual damages and \$2,000 in attorney fees. Mr. Burlison, seconded by

Mr. Austin, moved to approve payment. The motion was adopted by unanimous vote.

IRF05-003, Raymond Glath v. John Belding, in the amount of \$4,200 in actual damages and \$3,800 in attorney fees. Mr. Jokl, seconded by Mr. Austin, moved to approve payment. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eight, discussion and possible action to adopt amendments to or to take other action concerning: (a) 22 TAC §535.2 regarding broker responsibility, (b) 22 TAC §535.51 regarding general requirements, (c) 22 TAC §535.71 regarding mandatory continuing education: approval of providers, courses and instructors, (d) 22 TAC §535.121 regarding inactive license, (e) 22 TAC §535.220 regarding professional conduct and ethics for inspectors

Ms. DeHay presented agenda item eight (a) for discussion and possible action. Ms. DeHay explained that this was the "broker minimum services" rule. Many of the provisions of the proposed rule were incorporated into SB 810 which was enacted by the Legislature. Mr. Jokl, seconded by Ms. Leal, moved to postpone further action on this item until after the governor signs SB 810 or the deadline to sign the bill passes. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item eight (b) for discussion and possible action. The amendment revises subsection (c)(6) of §535.51 to clarify that an education evaluation must be obtained within one year of the date of application for a license. No comments had been received on the amendment. Mr. Austin, seconded by Mr. Jordan, moved to adopt the amendment as proposed. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item eight (c) for discussion and possible action. The amendment revises subsection (d)(11) of §535.71. It adopts by reference MCE Form 14-1, Individual MCE Partial Credit Request Form, in order to revise the verification on the form to parallel existing language in §535.72(b)(1)(E) and adds new subsection (hh) to allow accredited colleges and universities and professional trade associations that are otherwise approved MCE providers, to use experts from other related fields, including those from outside Texas, to teach an MCE elective course without first registering as a commission-approved instructor. No comments

were received on this amendment. Ms. Leal, seconded by Mr. Austin, moved to adopt the amendment as proposed. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 8(d) for discussion and possible action. The amendment revises subsection (b) of §535.121 to clarify that a broker may notify the Commission that a sponsorship of a salesperson has ended by either sending the license, a copy of the license to the Commission, TREC form, Notice of Salesperson Sponsorship Termination, or otherwise notifying the Commission that sponsorship has ended. No comments had been received on this amendment. Mr. Jokl, seconded by Ms. Burleson, moved to adopt the amendment as proposed. After discussion, the motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 8(d) for discussion and possible action. These amendments revise §535.220 concerning Professional Conduct and Ethics for real estate inspectors. The Real Estate Inspector Committee had recommended that the Commission revise the real estate inspector professional conduct and ethics provisions to prohibit contingency arrangements in cases where compensation depends on specific findings or on closing or settlement; to prohibit an inspector from paying a fee to any person for referral of inspections; to prohibit an inspector from receiving an undisclosed fee for an inspection from more than one party without the consent of the inspector's client; to prohibit an inspector from accepting a fee for recommending services or products to the inspector's client or other parties with an interest in the inspected property; to prohibit an inspector from conducting repair for a fee of any systems or components of property covered by the Standards of Practice on which the inspector has performed an inspection under an earnest money contract, lease, or exchange of real property within 12 months of the date of the inspection; to require that inspectors perform services and provide opinions based only on areas in which they are educated, trained, or have experience; and to prohibit an inspector from disclosing inspection results or client information without prior approval from the client, except for observed immediate safety hazards to occupants exposed to such hazards. The Inspector Committee had recommended that the Commission send the proposed rule back to the Committee along with any comments that had been received for further study. Approximately 500 comments were received. Ms. Leal, seconded by Mr. Flores, moved to withdraw any action at this time and send the proposed amendments back to the Inspector Committee. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item nine, discussion and possible action to adopt the repeal of §535.217 concerning dishonest conduct by inspectors as grounds for disciplinary action. The repeal had been proposed because the subjects addressed in the rule would be covered in new proposed revisions to §535.220. Ms. DeHay recommended that action on this rule be postponed since the Commission had voted to postpone action on §535.220. Mr. Flores, seconded by Ms. Leal, moved to withdraw further action on the repeal of §535.217.

Ms. DeHay presented agenda item ten, discussion and possible action to propose amendments to (a) 22 TAC §539.31 concerning residential service contracts, (b) 22 TAC §539.51 concerning employee defined, (c) 22 TAC §539.81 concerning funded reserves and (d) 22 TAC §539.121 concerning examinations. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. Mr. Austin, seconded by Ms. Burlison, moved to propose the amendments as submitted by staff. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item eleven, discussion of comments on 22 TAC Chapter 539 concerning provisions of The Residential Service Company Act (§§539.31-539.231). Ms. DeHay stated that no comments had been received.

Chairman Walton moved to agenda item twelve, discussion and possible action concerning implementation of a disclosure statement regarding broker minimum services. Ms. DeHay stated that Commissioner Flores had asked, at a previous meeting, that an interim disclosure notice be drafted to be used in cases where a principal instructs their broker to deliver copies of any offers or counter offers to the principal. Since SB 810 incorporated most of the revisions proposed under §535.2, she drafted the disclosure to parallel the changes in the Occupations Code. Mr. Flores, seconded by Ms. Leal, moved to withdraw consideration until the August meeting. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, legislative update. Mr. Thorburn presented the item for discussion. SB 810 revises sections of the Occupations Code Chapters 1101 and 1102. This bill has been known as the TREC Housekeeping Bill. H.B. 1236 provides an exemption to the requirements of the License Act to persons who conduct foreclosure sales. H.B. 1045 amends the Texas Timeshare Act. All three bills are at the Governor's desk awaiting signing.

Mr. Walton moved to agenda item fifteen, discussion and possible action to request an attorney general opinion regarding the Inspector Committee's ability to meet by teleconference under section 552.125 Texas Government Code. Ms. DeHay

presented the draft of the opinion request for approval. Mr. Jokl, seconded by Mr. Austin, moved to send the letter as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item sixteen, discussion regarding future elimination of license renewal cards for salespersons and brokers and replacement with proposed postcard for renewal notification. Ms. Hassumani presented the agenda item for discussion. She explained that this change was recommended by staff to further streamline the salesperson and broker license renewal process by encouraging licensees to renew online using a credit card. In addition to enhancing convenience for licensees, Ms. Hassumani outlined the printing, postage, and time savings that would result for the agency by switching to a postcard notification. She proposed a start date of July 1, 2006. There was a discussion concerning the proposed notification process. The response from individual commission members was positive.

The Chairman moved to agenda item seventeen, discussion and possible action to adopt Equipment Financing Resolution regarding the acquisition of computer equipment and software. Mr. Watson presented the agenda item for discussion and possible action. Mr. Jokl, seconded by Mr. Austin, moved to adopt the resolution as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eighteen, consideration of complaint information.

Ms. Bayless stated that Bradley Mayers, Joy Orms, John Rucinsky, Frank Santos and Eugene Tapia, Jr. had all provided the information requested by the Commission in connection with the renewal of a real estate salesperson license.

Ms. Bayless requested authorization to initiate investigations on Kathlyn Sue Sage and Molly Mcknight Price 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. Hull, moved to authorize the investigations as requested. The motion was granted by unanimous vote.

Chairman Walton moved to agenda item nineteen, motion for rehearing in the matter of Stephen Douglas Henry, Hearing No. 05-189-043306. Ms. Bayless stated that Mr. Henry had filed a motion for continuance and it had been granted. Most likely the case would be presented at the next meeting.

Mr. 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 August 15, 2005, October 17, 2005 and December 5, 2005 in Austin. The Chairman adjourned the meeting at 10:12 a.m.

APPROVED this the 15th day of August, A.D. 2005.

John Walton
Chairman

ATTEST: _____

Wayne Thorburn
Administrator