

MINUTES  
Texas Real Estate Commission  
August 15, 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, August 15, 2005. In addition to Chairman Walton, members present were Larry Jokl, Louise Hull, Mary Frances Burleson, James Austin, Paul Jordan, Ramon Cantu, and Elizabeth Leal. Bill Flores was absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel and Acting Director of Enforcement; Alan Waters, Director of Staff Services; and Tom Watson, Director of Information Services.

Commissioner Jokl led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of June 13, 2005, Commission meeting. Mr. Austin, seconded by Ms. Leal, 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, Assistant Administrator, reported that the number of broker late renewals were down. She stated that the number of licensees and registrants at the end of June 2005 was 146, 047. A total of 34,637 exams have been administered as June 2005. A total of 2,290 instructors have been approved through TREC.

There was discussion concerning the pass rate of first time examinees and the increase in the number of licensees.

Loretta DeHay, general counsel and Acting Director of Enforcement, stated that in June the division opened 330 cases and closed 331. At the end of the month 808 cases were still open. Chairman Walton announced that Linda Bayless had retired at the end of June and Mr. Thorburn stated that they hoped to hire a new Director of Enforcement by September 1, 2005.

Mr. Watson, Director of Information Services, stated that over the last two months there had been a significant increase in the number of online transactions. There was discussion concerning the use of the web site.

Mr. Waters, Director of Staff Services, reported that the internal auditors were looking into compliance with the Public Funds Investment Act. They were also

looking at the licensee function and a risk assessment. Mr. Waters reported that TREC had received a letter from the Comptroller's Office stating that they agreed with TREC's assessment that fees would not have to be raised to cover the increase in appropriations that TREC would be receiving.

Mr. Thorburn reported on the proposed operating budget for Fiscal Year 06, which would be on the agenda for October 17, 2005. He also spoke concerning SB 182 which will allow a real estate licensee with the appropriate education to serve as an arbitrator for cases where individuals are involved in an arbitration hearing with an appraisal board.

The Chairman moved to agenda item four, adoption of resolution recognizing Walter Borgfeld's 27-year membership on and dedication to the Broker Lawyer Committee. The Chairman read the following resolution.

"WHEREAS, the President of the State Bar of Texas appointed Walter L. Borgfeld, Jr., to the Texas Real Estate Broker Lawyer Committee in 1978; and

WHEREAS, Walter L. Borgfeld, Jr. served with dedication as a member of the Texas Real Estate Broker Lawyer Committee for more than 27 years, serving as Co-Chairman of the Committee through several terms; and

WHEREAS, Walter L. Borgfeld, Jr. is deserving of recognition for his service to the citizens of the State of Texas and to the Texas Real Estate Broker Lawyer Committee ; and

WHEREAS, the Texas Real Estate Commission wishes to commend Walter L. Borgfeld, Jr. for his service; now, therefore, be it

RESOLVED, that the Texas Real Estate Commission commends Walter L. Borgfeld, Jr. for his work as a member of the Committee, and for his dedicated service to the Texas Real Estate Commission, the Texas Real Estate Broker Lawyer Committee and the citizens of the State of Texas; and, be it further

RESOLVED, that this resolution by presented to Walter L. Borgfeld, Jr. as an expression of the sentiment of the Texas Real Estate Commission.

Adopted on August 15, 2005, by the Texas Real Estate Commission at its meeting in the City of Austin, Travis County, Texas."

After discussion, Mr. Jokl, seconded by Ms. Hull, moved to approve the resolution as presented. The motion was adopted by unanimous vote.

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

The Chairman moved to agenda item six, executive session to: (a) discuss pending litigation pursuant to Texas Government Code §551.071; (b) consider administrator's job performance and salary under Texas Government Code, §551.074(a)(1); and, (c) if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071. Executive session to consider administrator's job performance and salary under Texas Government Code, §551.074(a)(1) began at 9:30 a.m. 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 began at 9:45 a.m. The meeting was called to order at 10:00 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:

RF05-013, Home Loan Corp. v. Larry Criswell, in the amount of \$50,000 in actual damages. Ms. Hull, seconded by Mr. Austin, moved to approve payment. The motion was adopted by unanimous vote.

RF05-015, Thomas & Laura Hoskins v. Phyllis A. Woodham, in the amount of \$3,377 in actual damages. Ms. Leal, seconded by Ms. Burleson, moved to approve payment. The motion was adopted by unanimous vote.

RF05-017, Gilles & Veronique Amblard v. Phyllis A. Woodham and Guardian v. Richard Staub, in the amount of \$3,962 in actual damages and \$1,000 in attorney fees. Ms. Leal, seconded by Mr. Austin, moved to approve payment. The motion was adopted by unanimous vote.

RF05-018, Kevin & Teresa O'Grady v. Donnie Miller, in the amount of \$50,000 in actual damages. Mr. Austin, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

Mr. Jokl, seconded by Ms. Leal, moved to increase the salary for the

administrator of the Texas Real Estate Commission. The motion was adopted by unanimous vote.

Mr. 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 §539.31 concerning residential service contracts, (c) 22 TAC §539.51 concerning employee defined, (d) 22 TAC §539.81 concerning funded reserves and (e) 22 TAC §539.121 concerning examinations. Ms. DeHay presented 22 TAC §535.2 regarding broker responsibility for discussion and possible action. She stated that since most of the provisions became law under SB810, staff recommended this amendment be withdrawn. Ms. Leal, seconded by Mr. Austin, moved to withdraw the amendment as recommended. The motion was adopted by unanimous vote.

Ms. DeHay presented eight (b) 22 TAC §539.31 concerning residential service contracts, (c) 22 TAC §539.51 concerning employee defined, (d) 22 TAC §539.81 concerning funded reserves and (e) 22 TAC §539.121 concerning examinations for discussion and possible action to adopt. After discussion, Mr. Jokl, seconded by Ms. Burleson, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item nine, discussion and possible action to propose amendments to or propose a new rule concerning: (a) 22 TAC §535.64 regarding Accreditation of Schools and Approval of Courses and Instructors; (b) 22 TAC §535.71 regarding mandatory continuing education: approval of providers, courses and instructors; (c) 22 TAC §535.208 regarding professional inspector Corp and LLC application forms; and (d) 22 TAC §535.209 regarding professional inspector corporations and limited liability companies.

Ms. DeHay presented the amendments to 22 TAC §535.64 regarding Accreditation of Schools and Approval of Courses and Instructors; which changes the cites in Form ED 5-1, Real Estate Provider Bond, to the relevant statutory provisions in Chapter 1101, Texas Occupations Code. Mr. Austin, seconded by Mr. Jordan, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented the amendments to 22 TAC §535.71 regarding mandatory continuing education: approval of providers, courses and instructors. The amendment revises subsection (d)(4) which adopts by reference MCE Form 3A-3, MCE Course Application, to parallel existing language in §535.71(r) which states an

applicant must provide a brief written statement that describes the course objective and how the subject matter is related to activities for which a real estate license is required. Ms. Hull, seconded by Mr. Austin, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented the amendments to 22 TAC §535.208 regarding professional inspector Corp and LLC application forms; and new 22 TAC §535.209 regarding professional inspector corporations and limited liability companies as one item. The amendments revise §535.208 concerning Application for a License, and add new §535.209 concerning Professional Inspector Corporations and Limited Liability Companies to comply with new legislation effective 9-1-2005 which requires licensing and renewal of corporations and limited liability companies engaging in professional home inspecting for buyers and sellers in Texas. It also proposes the adoption of two new application forms to be used by corporations and limited liability companies applying for a professional inspector license. Ms. Hull, seconded by Mr. Austin, moved to propose the amendments, new rule and forms as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten, discussion regarding the Texas Real Estate Inspector Committee recommendations for revisions to 22 TAC §535.220 concerning professional conduct and ethics for inspectors. This item was postponed.

Chairman Walton moved to agenda items eleven and twelve, emergency action to adopt revisions to 22 TAC §535.208 concerning professional inspector Corp and LLC application forms; and emergency action to adopt new 22 TAC §535.209 regarding professional inspector corporations and limited liability companies. The revisions adopt on emergency basis revisions to §535.208 concerning Application for a License, and add new §535.209 concerning Professional Inspector Corporations and Limited Liability Companies to comply with new legislation effective 9-1-2005 which requires licensing and renewal of corporations and limited liability companies engaging in professional home inspecting for buyers and sellers in Texas. They also adopt two new application forms to be used by corporations and limited liability companies applying for a professional inspector license. Mr. Jokl, seconded by Ms. Leal, moved to adopt on emergency basis the revisions to 22 TAC §535.208 concerning professional inspector Corp and LLC application forms; and new 22 TAC §535.209 regarding professional inspector corporations and limited liability companies, along with the forms referenced in the rule. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, discussion and possible action to

approve revisions to TREC Form No. OP-M, Addendum for Property Located in a Certificated Service Area of a Utility Service Provider. After discussion, Ms. Leal, seconded by Ms. Hull, moved to approve the revisions to the form as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fourteen, discussion and possible action to adopt rule review on 22 TAC Chapter 539 concerning provisions of the Residential Service Company Act (§§539.31-539.231). Ms. DeHay stated that this item was postponed.

Chairman Walton moved to agenda item fifteen, discussion and possible action to approve the revised required Legal Update and Legal Ethics Courses. Ms. DeHay stated that this item was postponed.

The Chairman moved to agenda item sixteen, discussion and possible action to appoint two broker members to the Broker Lawyer Committee. The Chairman asked for comments from any persons present that had submitted their names for consideration.

Mary Steele from Houston spoke concerning her wish to be appointed to the Committee and her qualifications.

Judy Elliott from Amarillo offered comments concerning her experience and qualifications to serve on the Committee.

Lloyd Hampton from Houston spoke concerning his qualifications to serve on the Committee.

After discussion, Ms. Burleson, seconded by Mr. Austin, nominated Mary J. Steele to serve on the Broker Lawyer Committee. There was discussion concerning the number of residential brokers, commercial brokers and farm and ranch brokers. Ms. Steele was appointed to the Committee by unanimous vote.

Ms. Hull, seconded by Mr. Jokl, nominated Judy Elliott to serve on the Broker Lawyer Committee. Ms. Elliott was appointed to the Committee by unanimous vote.

Mr. Walton moved to agenda item seventeen, discussion and possible action to approve TREC Report to Sunset Advisory Commission. Ms. Hassumani explained that this was the beginning of the Sunset Review for the Real Estate Commission and gave the Commissioners an overview of the process. Mr. Jokl, seconded by Ms. Hull, moved to approve the TREC Report to the Sunset Advisory Commission as submitted. The motion was adopted by unanimous vote.

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

Ms. DeHay requested authorization to initiate investigations on Jon Wynn Ferrill and Daryl Wayne McKenzie 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. Jordan, seconded by Mr. Austin, 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. DeHay stated that the motion for rehearing had been withdrawn.

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 October 17, 2005, December 5, 2005 and February 13, 2006 in Austin. The Chairman adjourned the meeting at 10:40 a.m.

APPROVED this the 17th day of October, A.D. 2005.

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John Walton  
Chairman

ATTEST: \_\_\_\_\_

Wayne Thorburn  
Administrator