

MINUTES  
Texas Real Estate Commission  
October 17, 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, October 17, 2005. In addition to Chairman Walton, members present were Larry Jokl, Louise Hull, James Austin, Bill Flores, Ramon Cantu, and Elizabeth Leal. Paul Jordan and Mary Frances Burlison were absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel and Della Lindquist, 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.

Mr. Walton called for agenda item two, minutes of August 15, 2005, Commission meeting. Mr. Austin, seconded by Mr. Flores, moved to approve the minutes as written. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, minutes of the September 12, 2005 emergency Commission meeting. Mr. Flores, moved to approve the minutes. Ms. Leal stated that there was an error in the minutes. The minutes stated that Mr. Walton had suggested that both salespersons and brokers from the affected states should be under a Texas broker. Ms. Leal stated that she had made that suggestion and wished the minutes to be corrected to reflect this. Mr. Flores, seconded by Ms. Leal, moved to approve the minutes with that correction. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item number five, recognition of awards from ARELLO. Mr. Thorburn announced that TREC had won a communications award honoring and recognizing the TREC website as the "Outstanding Website for 2005." Chairman Walton presented the award to Paul Simpson, TREC's web designer and programmer. TREC also won an award for its Post-licensing or Continuing Education Program for the Legal Update and Ethics Mandatory Program. Mr. Walton presented the award to Gwen Jackson, TREC Education Program Manager and Denise Whisenett, Texas A&M Real Estate Center Education Director.

Chairman Walton recognized TREC Administrator Wayne Thorburn for his service during the past year as President of ARELLO, the Association of Real Estate License Law Officials. Mr. Thorburn thanked the Commission for allowing him to serve as

ARELLO President and thanked the staff, in particular Ms. Hassumani, for keeping things going when he was out of the office.

The Chairman moved back to agenda item four, staff reports; committee reports. Ms. Hassumani presented the reports for the Licensing, Communications and Education Division. She reported that original applications were up by 17% over last year and late renewals were up by 11% over last year. During FY 2005, 64,602 renewals had been processed. At the end of FY 2005, there were a total of 142,585 licensees and registrants. The Education department evaluated 29,274 transcripts in FY 2005. During FY 05, a total of 41,657 exams were administered by the testing company, PSI Inc.

Mr. Thorburn introduced Della Lindquist, the new Director of Enforcement. Ms. Lindquist had been an attorney at TREC for over two years; before that she worked as the General Counsel for ReMax of Texas and in the title industry. Ms. Lindquist reported that during FY 2005 the Enforcement staff had processed 4,585 complaints. Two positions are open in the Enforcement Division; one is Ms. Lindquist's former position of staff attorney, and one is the position of Program Administrator.

Tom Watson, Director of Information Services, reported concerning the web site and the steady increase in the use of it.

Mr. Waters, Director of Staff Services, reported concerning the end of the year figures in the Staff Reports. There was discussion concerning the Recovery Trust Account and the Inspection Recovery Fund.

The Chairman moved to agenda item six, discussion and possible action to approve internal audit report for FY 2005. Mr. Thorburn introduced Rene Gonzalez of Garza, Gonzales and Associates, to present the report. After discussion, Mr. Austin, seconded by Mr. Flores, moved to approve the internal audit report for FY 2005 as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item seven, general comments from visitors. No comments were presented.

Chairman Walton moved to agenda item eight, 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 9:31 a.m. The meeting was called to order at 10:08 a.m.

Chairman Walton moved to agenda item nine, 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:

RF 05-019, Ray & Tonia Greathouse v. Deana Coale, in the amount of \$31,000 in actual damages and \$7,500 in attorney fees. Mr. Austin, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-001, James and Leah Benton v. Barry S. Winkle, in the amount of \$50,000 in actual damages. Ms. Leal, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

IRF 06-001, Mykola Kruchko v. B.F. Godfrey, in the amount of \$5,200 in actual damages and \$2,500 in attorney fees. Mr. Flores, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

IRF 06-002, Gus A. Woman v. Carl Michael Nettles, in the amount of \$12,500 in actual damages. Mr. Austin, seconded by Mr. Flores, moved to approve payment. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item ten, discussion and possible action to adopt amendments to or to take other action 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; (d) 22 TAC §535.209 regarding professional inspector corporations and limited liability companies; (e) 22 TAC §535.63 regarding Education and Experience Requirements for a License (extension of time for salespersons impacted by Hurricane Rita to complete annual education requirements); (f) 22 TAC §535.92 regarding Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements (extension of time for brokers and salespersons impacted by Hurricane Rita to complete mandatory continuing requirements); and (g) 22 TAC §535.216 regarding Renewal of License (extension of time for licensed home inspectors impacted by Hurricane Rita to complete continuing education requirements).

Ms. DeHay presented 22 TAC §535.64 regarding Accreditation of Schools and Approval of Courses and Instructors for discussion and possible action to adopt. Mr. Flores, seconded by Mr. Austin, moved to adopt the amendment as recommended. The motion was adopted by unanimous vote.

Ms. DeHay presented ten (b), 22 TAC §535.71 regarding mandatory continuing education: approval of providers, courses and instructors for discussion and possible action to adopt. Ms. Leal, seconded by Mr. Flores, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented ten (c) 22 TAC §535.208 regarding professional inspector Corp and LLC application forms and ten (d) 22 TAC §535.209 regarding professional inspector corporations and limited liability companies. After discussion, Mr. Flores, seconded by Ms. Leal, moved to adopt the rules amendments, change the fee from \$20 to \$10 and require a certificate of existence or certificate of status with the application. The motion was adopted by unanimous vote.

After further discussion concerning the effective date of the rule and form, Mr. Flores, seconded by Ms. Leal, moved to adopt the emergency rule as proposed. The motion was adopted by unanimous vote.

Ms. DeHay stated that agenda items ten (e)-(g) concern extension of time for licensees in the areas impacted by Hurricane Rita to obtain their required education. She presented agenda item ten (e) 22 TAC §535.63 regarding Education and Experience Requirements for a License (extension of time for salespersons impacted by Hurricane Rita to complete annual education requirements) for discussion and possible action to adopt on an emergency basis. Licenses expiring by or before March 31, 2006 would be eligible for this extension if they are located in Jefferson, Orange, Jasper, Newton, Tyler, Hardin, Polk, Liberty, or Chambers Counties. Mr. Jokl, seconded by Mr. Austin, moved to adopt the rule on an emergency basis. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (f) 22 TAC §535.92 regarding Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements (extension of time for brokers and salespersons impacted by Hurricane Rita to complete mandatory continuing requirements) for discussion and possible action to adopt on an emergency basis. Mr. Jokl, seconded by Mr. Flores, moved to adopt the rule on an emergency basis. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (g) 22 TAC §535.216 regarding Renewal of License (extension of time for licensed home inspectors impacted by Hurricane Rita to complete continuing education requirements) for discussion and possible action to adopt on an emergency basis. Mr. Jokl, seconded by Mr. Flores, moved to adopt on an emergency basis an extension of time for licensed home inspectors impacted by Hurricane Rita to complete continuing education requirements. Russell Strahan, Texas Real Estate Inspector Committee, stated that he would like to recommend that the commission make this extension available to inspectors working as or for a FEMA

contractor in a disaster area created by Hurricane Katrina or Hurricane Rita. After discussion, Mr. Flores, seconded by Ms. Leal, moved to amend the motion to extend time for licensed home inspectors impacted by Hurricane Rita to complete continuing education requirements to include inspectors working as or for a FEMA contractor in a disaster area created by Hurricane Katrina or Hurricane Rita with suitable documentation of same. The amendment to the motion was adopted by unanimous vote. Mr. Walton called for a vote on the motion as amended. The motion as amended was adopted by unanimous vote.

The Chairman moved to agenda item eleven, discussion and possible action to propose amendments to: (a) 22 TAC §535.210 concerning Fees for Inspector Licenses; (b) 22 TAC §535.216 regarding Renewal of License or Registration; (c) 22 TAC §535.218 concerning Inspector Continuing Education; and (d) 22 TAC §543 concerning rules Relating to the Provisions of the Texas Timeshare Act.

Ms. DeHay presented the amendments to (a) 22 TAC §535.210 concerning Fees for Inspector Licenses; (b) 22 TAC §535.216 regarding Renewal of License or Registration; (c) 22 TAC §535.218 concerning Inspector Continuing Education as one item. After discussion, Mr. Flores, seconded by Ms. Leal, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented the amendments to (d) 22 TAC §543 concerning rules Relating to the Provisions of the Texas Timeshare Act. Mr. Jokl, seconded by Mr. Flores, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda items twelve, 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) and thirteen, discussion and possible action to propose rule review on 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act (§§543.1-543.6). Ms. DeHay presented the two agenda items for discussion and possible action. Mr. Austin, seconded by Ms. Hull, moved to adopt agenda item twelve and propose agenda item thirteen as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item fourteen, discussion and possible action to approve the revised required Legal Update and Legal Ethics Courses. Denise Whisenant, Education Coordinator for the Real Estate Center at Texas A&M, presented an overview of the changes that had been made to the courses. Ms. Hull, seconded by Mr. Flores, moved to approve the courses as submitted. The motion was adopted by unanimous vote.

Chairman Walton asked for a motion to excuse Commissioners Mary Frances Burleson and Paul Jordan for their absence from the meeting. Mr. Flores, seconded by Ms. Leal, moved to excuse the absences of these two commissioners. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fifteen, discussion regarding Sunset Commission review of the Texas Real Estate Commission. Ms. Hassumani presented background on the agenda item and the schedule of meetings with the Sunset Commission. She introduced two staff members from the Sunset Commission, Kate Moore and Christian Ninaud. Mr. Ninaud, Project Manager for the Sunset Review of the Texas Real Estate Commission, presented the Commission with an overview of the review process.

The Chairman moved to agenda item sixteen, discussion and possible action to approve revisions to the FAQ on Intermediary. Ms. DeHay presented the agenda item for discussion and possible action. Ms. Hull, seconded by Mr. Flores, moved to approve the revisions as submitted. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item seventeen, review of fees and estimated revenues. Mr. Waters presented the agenda item for discussion.

After discussion, the Chairman moved back to agenda item fourteen, Minor Peeples, Real Estate School of Corpus Christi, expressed concern regarding schools' ability to present the revised courses by November 2005. After discussion, Ms. Hull, seconded by Ms. Leal, moved to make the material available to all providers and instructors as soon as it was available from the Real Estate Center, but that the effective date for the mandatory teaching of the revised courses be January 1, 2006. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item eighteen, discussion and possible action to approve fiscal year 2006 operating budget. After discussion, Ms. Leal, seconded by Mr. Jokl, moved to approve the operating budget as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nineteen, consideration of complaint information. Ms. Lindquist requested permission to initiate investigations on the following: Mutual Warranty Company for selling residential service contracts and otherwise acting as a residential service company without proper licensure; and Toni Lynn Thompson Sharrets, John Newton Walker, Edward R. Burget Juan Antonio Gonzalez, and Tasleem U. Siddiqui for failing to complete their Mandatory Continuing Education hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f). Ms. Hull, seconded by Mr. Jokl, moved to initiate investigations as requested. The motion was adopted by unanimous vote.

Chairman Walton relinquished the gavel to Mr. Cantu for agenda item twenty, motion for rehearing in the matter of (a) Mary Helen Klonek, Hearing Number 05-322-051829; and (b) Kimberly Dawn Zentner, Hearing Number 05-368-053042.

Mr. Cantu called for agenda item twenty (a) in the matter of Mary Helen Klonek. Ms. Klonek appeared Pro Se. Beverly Rabenberg, staff attorney, appeared for the Enforcement Division. Ms. Klonek presented her request for rehearing. Ms. Rabenberg presented the Enforcement Division's response. After discussion, Mr. Cantu called for a vote on the motion. The motion for rehearing was denied by unanimous vote.

Mr. Cantu called for agenda item twenty (b) in the matter of Kimberly Dawn Zentner. Ms. Zentner appeared Pro Se. Jannell Senn, staff attorney, appeared for the Enforcement Division. Ms. Zentner presented her request for rehearing. Ms. Senn presented the Enforcement Division's response. After discussion, Mr. Cantu called for a vote on the motion. The motion for rehearing was denied by unanimous vote.

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

The Chairman moved to agenda item twenty-two, scheduling future meetings and adjournment. The next meetings were scheduled for December 5, 2005 and February 13, 2006 in Austin. The Chairman adjourned the meeting at 11:40 a.m.

APPROVED this the 5th day of December, A.D. 2005.

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John Walton  
Chairman

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

Wayne Thorburn  
Administrator