

MINUTES  
Texas Real Estate Commission  
February 13, 2006  
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 13, 2006. In addition to Chairman Walton, members present were Larry Jokl, Mary Frances Burleson, James Austin, Bill Flores, Louise Hull, Ramon Cantu and Elizabeth Leal. Paul Jordan arrived at 10:05 a.m.

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

Commissioner Leal led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of December 5, 2005, Commission meeting. Mr. Jokl, 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, election of vice-chairperson and secretary. Mr. Jokl, seconded by Mr. Flores, moved to elect Elizabeth Leal as vice-chair. The motion was adopted by unanimous vote.

Mr. Jokl, seconded by Ms. Leal, moved to elect William Flores as secretary. The motion was adopted by unanimous vote.

The Chairman moved to agenda item four, staff reports; committee reports. Ms. Hassumani presented the reports for the Licensing, Communications and Education Division. She introduced Catherine Juarez, a new employee in the Communications department and Benita Randle, a new employee in the Licensing department. Ms. Hassumani reported that original sales applications were up by 80% because of the law change that went into effect January 1, 2006. The bulk of the applications were received online. At the end of the report month, there was a total of 145,997 licensees and registrants

Ms. Hassumani updated the Commissioners concerning the Sunset review process. Sunset would be sending a draft issues report by the end of the month and an exit conference would be scheduled some time between March 1-7, 2006.

Ms. Lindquist, Director of Enforcement, reported that her department was fully staffed for the first time since July 2005. She introduced a new attorney, Chelsea Egmon and recognized staff attorney, Sharon Harris, for consistently closing a high

number of cases even though she had recently suffered a serious back injury. Ms. Harris had also appeared as an expert witness in a federal case in Dallas concerning mortgage fraud.

Mr. Watson, Director of Information Services, reported that online transactions jumped in the reporting month as previously mentioned by Ms. Hassumani. He also reported on the Business Continuity Plan and the results of the yearly test.

Mr. Waters, Director of Staff Services, reported that during the month of December his division completed the annual report of non-financial data.

Mr. Thorburn reported that 138 individuals have been licensed as real estate salespersons using the temporary licenses that TREC developed for victims of Hurricane Katrina. All of the temporary licensees were from the state of Louisiana.

Mr. Walton moved to agenda item five, general comments from visitors. Stephen A. Hester Jr., Houston Center for Independent Living, spoke concerning people with disabilities and various areas in the housing and real estate industries that he felt could be improved.

Chairman Walton 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 9:28 a.m. The meeting was called back to order at 9:55 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:

IRF 06-003, Brandon and Christina Mason v. Richard Kennimer, in the amount of \$7,500 in actual damages. Ms. Leal, seconded by Mr. Cantu, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-003, Kathryn Brown v. Henriette Langenbach, in the amount of \$100,000 in actual damages. Mr. Flores, seconded by Mr. Austin, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-006, Lucia Bonno, et al. v. Larry Schwing, in the amount of \$9,800 in actual damages and \$42,000 in attorney fees. Mr. Austin, seconded by Ms. Burluson moved to approve payment. The motion was adopted by unanimous vote.

RF 06-007, Clark R. Wilson v. Phyllis A. Woodham, in the amount of \$4,000 in actual damages. Mr. Jokl, seconded by Ms. Burleson moved to approve payment. The motion was adopted by unanimous vote.

RF 06-009, Martha Donley v. Walter Johnson, in the amount of \$1,500 in actual damages. Ms. Hull, seconded by Ms. Leal moved to approve payment. The motion was adopted by unanimous vote.

RF 06-011, Blanca and Juan Vallejo v. Barry S. Winkle, in the amount of \$50,000 in actual damages. Mr. Cantu, seconded by Ms. Burleson moved to approve payment. The motion was adopted by unanimous vote.

RF 06-010, Allison and Gregory Holland v. Phyllis A. Woodham and Guardian 2000, in the amount of \$1,350 in actual damages and \$1,500 in attorney fees. Ms. Burleson, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to adopt amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30-537.32, 537.37, 537.43, 537.44, 537.46 and 537.47 concerning standard contract forms. Ms. DeHay explained that this item would adopt by reference 10 forms that are required to be used by licensees engaging in real estate transactions. The contracts were proposed at the December 5, 2005 meeting. During the notice and comment period approximately 47 comments were received.

Five major changes were made to the forms:

(1) Paragraph 6 was revised extensively:

- 6C- regarding the survey, was changed to clarify that the seller agrees to provide an existing survey and if seller fails to provide the survey, buyer may obtain a survey at seller's expense;
- 6D-rewritten for clarification;

(2) Paragraph 18 was completely reformatted to clarify the responsibilities of the buyer and the seller in terms of releasing earnest money pursuant to that provision;

(3) Paragraph 23, the option period, provides a two day period in which the buyer can provide the option fee;

(4) the last page of the forms was completely reformatted, more lines were

added for e-mail addresses and brokers' addresses; option fee receipt and earnest money receipt have been retitled.

Ms. DeHay presented Bill Jones of Belton, Michael Bray of El Paso, and Norman Dierschke of San Angelo, all members of the Broker-Lawyer Committee to answer questions. There was discussion concerning the rationale for changing Paragraph 23 concerning the option period. The Chairman recognized the members of the Committee for their work and serving without reimbursement.

After discussion, Ms. Burleson, seconded by Ms. Leal, moved to adopt the proposed rules as presented with an effective date of May 1, 2006. The motion was adopted by unanimous vote.

Mr. Flores, seconded by Ms. Burleson, moved to approve the forms as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item nine. Ms. DeHay presented nine(a), discussion and possible action to propose amendments to 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors. The proposed rule amends §535.64(g)(7) that adopts by reference form ED 7-1, Instructor Manual Guidelines for Core Real Estate and Real Estate Related Courses. The amendments add a cite to the provisions of Chapter 1101, Texas Occupations Code and update the manual for style and clarity, and remove obsolete sections. Mr. Flores, seconded by Ms. Leal, moved to propose the rule and form as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented for discussion and possible action to propose items nine(b), amendments to 22 TAC§535.91 concerning Renewal Applications and nine(c), amendments to 22 TAC§535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements. The amendments would provide for mandatory online renewals and a postcard renewal notice. If unable for some reason to renew online a form to renew could be obtained from the Commission. Ms. Leal, seconded by Mr. Austin, moved to propose the amendments as presented. There was discussion concerning renewing without having the requisite education and providing notice.

The Chairman called the question. The motion was adopted by unanimous vote.

Ms. DeHay presented for discussion and possible action to propose item nine(d), 22 TAC §535.144 concerning When Acquiring or Disposing of Own Property or Property of Spouse or Relative. SB 810 authorized the commission to take disciplinary action against a licensee if the licensee engages in misrepresentation or fraud when selling, buying, trading or leasing real property in the name of the license

holder's spouse or a person related to the license holder within the first degree by consanguinity. The amendments are proposed to implement these revisions. After discussion, Ms. Burleson, seconded by Mr. Austin, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented for discussion and possible action to propose item nine(e), 22 TAC §535.210 concerning Fees. SB 810 revised Chapter 1002, Texas Occupations Code to require licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The proposed amendment adds a \$5 fee to be charged to corporations and limited liability companies licensed as Texas professional inspectors for the annual renewal of the license. Mr. Flores, seconded by Ms. Burleson, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented for discussion and possible action to propose item nine(f), 22 TAC §535.220 regarding professional conduct and ethics for inspectors. This issue was first presented to the Commission in July of 2005. The inspector committee recommended revisions to their ethics rules and they were proposed for notice and comment. Many comments were received and the inspector committee requested the proposal be withdrawn and sent back to the committee for revision. The committee was now presenting the revised proposal to the Commission for discussion and possible action to propose.

The Texas Real Estate Inspector Committee has recommended that the Commission amend the rule 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 or receiving a fee from a "settlement service provider" as defined in the rule for the referral of inspections, for inclusion on a list of preferred providers, or for inclusion on a list of inspectors contingent on other financial agreements; to prohibit an inspector from accepting a fee for referring services that are not settlement services or other products to the inspector's client without the consent of the inspector's client; to clarify that an inspector may pay or receive a fee for services actually rendered; 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; 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. Mr. Austin, seconded by Mr. Flores, moved to propose the amendments as presented.

Mr. Jokl asked that §535.220(e)(7) be changed from:

"(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible."

to

" (7) Inspectors shall not disclose inspection results or client information without prior **written** approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible."

John Cahill, Texas Real Estate Inspector Committee chairman, stated that the committee would be meeting on February 25, 2006 and he would present Mr. Jokl's recommendation to the committee for approval. He stated that he did not believe there would be any objections to the recommendation. Ms. DeHay reported that once the committee had approved the change, she would propose the amendment with that change. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item nine(g), discussion and possible action to propose amendments to 22 TAC §539.71 concerning Miscellaneous Forms. The amendment changes the cites in Form RSC 2-3, Residential Service Company Bond to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. Mr. Austin, seconded by Mr. Flores, moved to propose the amendments and form as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item ten, discussion and possible action to propose repeal of §535.17 concerning dishonest conduct as grounds for disciplinary action. Ms. DeHay presented the agenda item for discussion and possible action to propose the repeal. The repeal is proposed because the subjects addressed in these sections will be covered in the new proposed amendments to §535.220. Mr. Flores, seconded by Ms. Leal, moved to propose the repeal as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eleven, discussion and possible action to approve schedule of rule reviews for 2006. Ms. DeHay presented the agenda item for discussion and possible action to approve. Mr. Jokl, seconded by Mr. Austin, moved to approve the schedule of rule reviews. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twelve, discussion and possible action regarding Enforcement Division case load and staffing issues. The person wishing to speak on this agenda item was not present.

Chairman Walton moved to agenda item thirteen, discussion of draft of revisions to Inspector Standards of Practice under 22 TAC §§535.227-535.231. John Cahill, Chairman of Texas Real Estate Inspector Committee, presented the draft for discussion. Mr. Cahill stated that the committee had requested comments from industry and various associations. He requested that the Commission approve posting the draft rules on the TREC web site. After discussion, the Commission stated that it supported placing the draft rules on the web site for comment.

The Chairman moved agenda item fourteen, discussion and possible action regarding TREC's Fraud Prevention Program. Mr. Waters presented the agenda item for discussion and possible action. Mr. Waters stated that the Governor's Office through Executive Order RP 36 had requested that a formalized fraud policy be developed with procedures to follow in case of fraud. Ms. Hull, seconded by Mr. Flores, moved to approve the fraud policy as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fifteen, discussion and possible action regarding FY 2006-2008 Memorandum of Understanding between the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board. Mr. Thorburn presented the agenda item for discussion and possible action. Mr. Thorburn stated that the document had been presented to and approved by the Texas Appraiser Licensing and Certification Board. Ms. Leal, seconded by Mr. Austin, moved to approve the FY 2006-2008 Memorandum of Understanding between the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board as presented. After discussion, the motion was adopted by unanimous vote.

The Chairman moved to agenda item sixteen, consideration of complaint information concerning: Austin Area Realty Group, LLC, Richard Roy Jenkins, Designated Manager, for unlicensed activity and Santos Glasgow Romo for paying a commission to an unlicensed individual. Ms. Lindquist presented the agenda item for consideration.

Mr. Flores, seconded by Mr. Austin, moved to approve the initialization of investigations as requested. The motion was adopted by unanimous vote.

Chairman Walton relinquished the gavel to Mr. Cantu for agenda item seventeen, motion for rehearing in the matter of Wilfred Sheppard, Hearing No. 06-65-060005.

Mary Black Pearson appeared for Mr. Sheppard. Staff attorney, Jennell Senn, staff attorney, appeared for the Enforcement division.

Ms. Pearson presented Mr. Sheppard's motion for rehearing. Mr. Sheppard spoke concerning his motion for rehearing. Ms. Senn presented the Enforcement Division's answer to the motion for rehearing. Ms. Pearson responded to the Enforcement Division's answer to the motion for rehearing.

After discussion, Mr. Cantu called for a vote on the motion for rehearing. The motion was denied by unanimous vote.

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

The Chairman moved to agenda item nineteen, scheduling future meetings and adjournment. After discussion, it was decided that the next meeting would be May 1, 2006, and a meeting was tentatively set for June 5, 2006. The Chairman adjourned the meeting at 11:22 a.m.

APPROVED this the 1st day of May, A.D. 2006.

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John Walton  
Chairman

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

Wayne Thorburn  
Administrator