

MINUTES
Texas Real Estate Commission
May 1, 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 2:00 p.m., Monday, May 1, 2006. In addition to Chairman Walton, members present were Larry Jokl, Mary Frances Burleson, Bill Flores, Louise Hull, Paul Jordan, Ramon Cantu and Elizabeth Leal. James Austin was absent.

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 Hull led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of February 13, 2005, Commission meeting. Mr. Jokl, seconded by Mr. Flores, moved to approve the minutes as written. The motion was adopted by unanimous vote.

Chairman Walton recognized Morris Peters from the State Employee Charity Campaign. Mr. Peters presented Esta Hardy, the agency coordinator, with the 2005 Award for Highest Participation by an Agency.

The Chairman moved to agenda item three, staff reports; committee reports. Ms. Hassumani presented the reports for the Licensing, Communications and Education Division. Ms. Hassumani reported that the total original applications are up almost 27%, the total late renewals are up almost 16%, and the total number of licensees and registrants at the end of March was 149,601. She introduced Orlando Colmenero, a new employee in the Communications department.

Ms. Hassumani stated that Administrator Wayne Thorburn was honored at the American Resort Development Association meeting on March 28, 2006 where he received the "Madsen Award" for his work on timeshare related matters.

Ms. Lindquist, Director of Enforcement, reported that since her department had become fully staffed, it had consistently closed higher numbers of cases for the past three months. She introduced Cindy Mahoney, who was recently promoted to a legal assistant position.

Mr. Watson, Director of Information Services, reported that the number of hits on the web site continued to increase.

Mr. Waters, Director of Staff Services, reported that staff should be receiving Legislative Appropriations Request instructions sometime later in the month of May.

Ms. Lindquist returned to report that Esta Hardy was promoted to Program Manager in the Enforcement department. In that position, she supervises the legal assistants and clerical staff.

Mr. Thorburn reported that he, Gwen Jackson, Education Manager, and Devon Bijansky, staff attorney, had recently attended the Texas Real Estate Teacher's Association (TRETA) conference. Mr. Thorburn also introduced the new President of TRETA, Phillip Schoewe of Lubbock.

Mr. Walton recognized Denise Whisenant from the Real Estate Center at Texas A&M. She reported on the changes that were made to the mandatory Legal and Ethics courses during the updating process. Ms. Whisenant reported that Gary Maler, former Assistant Director, had been appointed Director.

The Chairman moved to agenda item four, general comments from visitors. Philip Stojanik, a new member of the Real Estate Inspector Committee, introduced himself.

Chairman Walton moved to agenda item five, discussion and possible action to approve Strategic Plan for FY2007-2011. Ms. Hassumani presented the agenda item for discussion and possible action. Mr. Flores, seconded by Ms. Leal, moved to approve the text of the Strategic Plan as presented, allowing the staff to make editorial but not substantive changes, as well as any changes required by state law. After discussion, the motion was adopted by unanimous vote.

Ms. Hassumani moved to the three lists that had been included in the meeting packet containing recommendations from external and internal focus groups. The first list contains suggestions that TREC staff believes could be implemented given the relevant resources if the Commission desired it. Under the list of Education recommendations the Commission approved the following items.

- #1. Create core courses specific to commercial education. Commercial real estate is a growing area and there is a need for an expansion of commercial courses (S).
- #2. More education required regarding disclosure given ongoing confusion pertaining to agency.
- #3. The Enforcement division should provide a list of recurring problem areas to instructors to guide instruction. This would alert licensees to common violations of the law.
- #4. Create an education course for new licensee orientation. This course would provide information on RE business/expectations upon entering field. Many licensees begin working without a clear understanding of RE business practices (S).
- #8. Reevaluate core courses perhaps by establishing a taskforce (R).

- #10. Write more practically-oriented questions for the examination, especially in the area of contracts.
- #13. Eliminate student signature on Alternative Delivery Method (ADM) report form. This form is used for online courses and is currently signed by both the student and the course provider. (R)
- #14. Detailed contract training is needed (core and MCE). Many licensees need further education on how to accurately complete contract forms.
- #17. Require a "Broker Responsibility" core course to emphasize what a broker should do in supervising a salesperson. (S)
- #18. Ensure ongoing training of brokers by requiring MCE on specific broker relevant topics. (R)
- #19. All core courses should expire when a provider expires. Currently core courses do not expire. This change would ensure that core courses are refreshed every 5 years. (R)
- #20. Revise rules to include a requirement for a Power-of-Attorney for someone to be custodian of records for out-of-state core providers. This would allow TREC staff to review records for out-of-state core providers. (R)
- #22. Examine our Internet advertising rules for education providers. Current advertising practices are frequently confusing for consumers. (R)
- #24. Mandate that all core schools submit rosters rather than certificates. This would create greater efficiencies for the Education department. (R)
- #25. Track and post pass rates by school. This would provide for greater accountability with schools and would offer valuable information to consumers.
- #27. Increase the surety bond that is required of TREC approved proprietary schools from \$10,000 to \$20,000 under Section 1101.302(b)(1) of TRELA. (S)

After discussion, the following items were changed or deleted from the list of suggestions as individually noted.

- #6. Accept any 4 semester college hours towards the 60 hour related requirement. Currently, TREC staff work with a pre-established list of "related" courses such as English Composition, Sociology, Math, etc. (R). Ms. Leal, seconded by Ms. Burlison, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.
- #5. Tighten up the definition of "Real Estate related" courses that are acceptable for credit (R). Ms. Hull, seconded by Ms. Leal, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.
- #7. Make more use of ability to count experience in lieu of "Real estate related" course work. (S) Ms. Hull, seconded by Mr. Jokl, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.
- #9. Eliminate duplicate Fair Housing requirement. Currently it is a requirement in Principles as well as Property Management courses. (S) Ms. Leal, seconded by Ms. Hull, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.
- #11. Consider MCE courses in universal design that would give information on homes designed for individuals with special needs. Ms. Hull, seconded by

Mr. Jokl , moved to modify this item to add the words "Encourage providers to" at the beginning of the sentence and keep it on the list as modified. The motion was adopted by unanimous vote.

- #12. Outsource education evaluation and education reporting (core and MCE). Ms. Hull, seconded by Ms. Leal, moved to modify this item to change it to say "Consider the outsourcing of..." instead of "Outsource" at the beginning of the sentence and keep it on the list as modified. The motion was adopted by unanimous vote.
- #15. Too much emphasis on residential in the TREC Ethics and Legal Update courses/ need a separate commercial or non-residential module. (R) Ms. Hull, seconded by Ms. Leal, moved to modify this item to say " Evaluate the need for a separate commercial or non-residential module to the legal update course." The motion was adopted by unanimous vote.
- #16. Need to require business courses for brokers, to assist them in knowing how to run a small business. (S) Ms. Hull, seconded by Ms. Leal, moved to strike this item from the list of suggestions and keep item number seventeen which stated "Require a "Broker Responsibility" core course to emphasize what a broker should do in supervising a salesperson. (S)." The motion was adopted by unanimous vote.
- #21. Open up our rules to allow out of state salespersons and brokers to use correspondence or online courses taken from schools regulated by those states for core credit if they meet Texas content requirements. (R) Mr. Jokl, seconded by Mr. Flores, moved to strike this item from the list of suggestions. After discussion, the motion was adopted by majority vote with Ms. Hull and Ms. Leal voting against the motion.
- #23. Drop the requirement that correspondence courses come from accredited universities and colleges. TREC has no regulatory authority over universities and colleges as it does over proprietary schools. This change would allow greater oversight of correspondence courses. (R) There was discussion concerning this item after which Ms. Hull, seconded by Ms. Leal, moved to include the item as written. Comments were offered by Minor Peeples, Real Estate Institute-Corpus Christi, and Mary Jane Bizart. The motion was adopted by unanimous vote.
- #26. Require dates on course completion certificates (R) Ms. Hull, seconded by Ms. Leal, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.

Under the list of Licensing recommendations the Commission approved the following items.

- #2. Display sponsorship transfer records online. This would allow licensees to view sponsorship changes online.
- #3. Licensure requirement for Home Owners Association (HOA) property manager (S)
- #4. Need further oversight of homeowners associations or the licensing of HOA managers but don't over regulate or create responsibilities that cannot be met. (S)
- #5. Licensure of builders' representatives (S)
- #6. Accept national exam from other states in lieu of reciprocity (R).

- #7. TREC should be involved more with homebuilding industry and apartment management industry perhaps to better coordinate licensing and responsibilities.
- #9. Make applicants use their name as it appears on their driver's license for Sales applications. Alternatively, make them use the same name as they have on whatever ID they will use for the examination. (R)
- #10. Eliminate the \$20.00 fee for a change of sponsorship or revise the form. (S)

The following suggestions were added or deleted as individually noted.

- #1. Conduct stricter background checks (fingerprints, FBI check, etc.) on all applicants and renewals. After discussion and comments from Edra Anderson, TAR, supporting FBI checks for applicants, Ms. Hull, seconded by Ms. Burleson, moved to modify this item by adding "consider also for" before the word "renewals". The motion was adopted by unanimous vote.

The Commission upon consideration of the above item and the discussion concerning it added another item to the list of Licensing suggestions which would be number 11. Ms. Burleson, seconded by Ms. Hull, moved to add "Make it a condition of disciplinary action or a probationary license that the licensee be restricted in access to listed properties." The motion was adopted by unanimous vote.

- #8. Perhaps use email to notify salesperson that license renewal is due. Ms. Leal, seconded by Ms. Burleson, moved to change the word "Perhaps" to "Consider". The motion was adopted by unanimous vote.

Under the list of Enforcement recommendations the Commission approved the following items.

- #1. Eliminate "straw principal" and trustee loopholes (as with agent-infact) – cap on number of transactions? (S)
- #2. Allow Enforcement to initiate administrative complaints (\$200 fee cases, etc.) without Commission approval (S)
- #3. Review Chapter 53, Occupations code (currently, some felons end up with licenses). (S)
- #4. Advertise the Moral Character Determination process more clearly.
- #6. Buyer/seller should acknowledge in contract that they received IABS and IABS should be attached as an exhibit to the contract. (R)
- #8. Closer cooperation among various licensing agencies (TALCB,TDI,TSML,TREC) to deal with growing incidents of mortgage fraud and other mutual problems.
- #9. Clarify and enforce the advertising rules so that public knows who is broker
- #10. Speak to mineral rights conveyance on residential contracts (base it on F&R contract language.) (R)
- #11. Revise Chapter 1102 Occupations code so that it stands alone and doesn't refer back to 1101. 1102 is the inspector statute and it refers to 1101 for many of its provisions. It needs to stand on its own. (S)

- #12. Clarify that both administrative penalties and disciplinary actions affecting license can occur in the same enforcement action. Increase penalty to \$2,500 maximum per violation. (S)
- #13. Eliminate the 'trustee' loophole in 1101.005(5) to mimic (2). A person acting as a trustee does not need a real estate license so it's a loophole around licensure. Some people "abuse" it by naming themselves as "trustees" as a way of doing business rather than as a one-time thing. (S)
- #14. Provide for the revocation of any TREC license for failing to repay the trust account (recovery fund). (S)
- #15. Reconsider 541.1 crimes. Specify types of crimes directly related to real estate. A few crimes which escape our ability to do anything: possession of a controlled substance; aggravated assault with bodily injury. (R)
- #17. Overhaul of MCE procedures. No need for hearing or do away with 60 day extension. No ability to renew without education at time of expiration of prior license for salespersons. (S)
- #18. Ability to terminate RSC applications in 90 days without a response, similar to timeshare. (S)
- #19. Add to the list of 1101.204, the failure to give notice of crime pursuant to 1101.652(a) (9). 1101.204 is the section which allows Enforcement to open certain types of complaints without going to the Commission. Since 9/1/05 a licensee is required to give us 30 days notice after conviction of crimes. We'd like to add that to the list of things Enforcement can open a complaint without Commission approval. (S)
- #20. 1101.652(a)(9) add to include 'guilty pleas.' This requires a person to give 30 day notice after conviction of crimes. For some reason "guilty pleas" was omitted from the types of acts which require notification --- a plea of "nolo" or "conviction" is there, but no pleas of "guilty." (S)
- #21. 1303.302 (Residential Service Company Act) add to include Buyer's agents.
 - (a) A seller, seller's agent or buyer's agent may not condition the sale of the property on the buyer's purchase of a residential service contract.
 - (b) A seller or a residential property or the seller's or buyer's agent shall provide to the buyer a statement that clearly and conspicuously states that:
 - (1) the purchase of a residential service contract is optional, and
 - (2) the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in this state. (S)
- #22. Clarify that nobody but TREC can use the seal on anything. (R)
- #23. 1101.363(d): clarify that once the license is issued by TREC, the broker no longer needs to receive license before allowing salesperson to work. (S)

The following suggestions were changed or deleted as individually noted.

- #5. Prohibit conflict of interest by being mortgage broker and real estate broker at same time. (S) Ms. Hull, seconded by Mr. Flores, moved to change this item to "Explore the possibility of prohibiting conflict of interest by an individual being a mortgage broker and real estate broker in the same transaction and if necessary propose statutory modifications to address

same." After discussion, the motion passed by majority vote, with Mr. Jordan voting against the motion.

- #7. IABS Forms be given at the first face to face meeting, rather than at the time of the first substantive dialogue. (S) Ms. Hull, seconded by Mr. Jokl, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.

- #16. Require licensees to keep copies of transaction records for a period of time such as 48 months, the time limit for filing a complaint. (R) By general consensus the Commission changed the word "licensees" to "brokers".

Under the list of Technology recommendations the Commission approved the items as follows.

- #1. Enhance the search function for licensees on website. Currently it is not possible to search for licensees by region. This type of feature should be added to the search function.
- #2. Expand web services to include enhanced licensee search, reporting, custom data downloading. This would allow for more self-help and increase efficiencies at TREC.
- #3. Add DBAs/assumed names to Licensee Info Search
- #4. Invest more resources in the phone system to allow for greater automation.
- #5. Allow electronic submission of all education by providers (R)
- #6. Develop a Windows-based recordkeeping system
- #7. Capture licensee's email and be able to access it by licensee name (as opposed to merely dumping all emails into one massive file without ability to tie to individuals)
- #8. Request an appropriation for an imaging project and begin by imaging new documents in master file.
- #9. Provide online printing of license after renewal. If licensee prints license immediately suppress the printing and mailing at office.
- #10. Allow online sponsorship changes without a fee. (S)
- #11. Replace TRELIS with a new system.
- #12. Consolidate TALCB and TREC infrastructure – network, e-mail, fileshare, etc
- #13. Install VOIP to replace existing phone system.
- #14. Explore broadcasting commission meetings on internet.
- #15. Setup of login capability for web usage – assignment of id and pin number in order to complete secured tasks (renewal, address change, sponsor change, etc.)
- #16. Allow core and MCE instructors to renew online. (R)
- #17. Allow MCE and Core instructors to change their mailing address online.
- #18. Provide License History On-Line with the required fee (\$20.00) – Note: licensees who are still current who held a license prior to 1988, their records will not be on the system.

- #19. Sponsorship Changes On-Line - allow applicants and licensees to change sponsorship on-line.
- #20. Explore the purchase of recording equipment for Commission room that is more compatible with standard recording equipment. Present setup records at 1/2 speed, needs special transcriber and reformatter for copies of tapes requested by public.
- #21. Change fee structure for filing an original application or late renewal so that all fees are combined into one fee on the application. Require all applicants to pay the Recovery Fund fee each time they file an original application. (S)
- #22. Upgrade existing telephone system. This is a separate issue from VOIP and we will need to mention it in the Strategic Plan (that the current telephone system is no longer supported by the manufacturer) and request funding for the upgrade in the LAR. We are obtaining cost figures for the upgrade.

After discussion, Mr. Flores, seconded by Mr. Jokl, moved to combine numbers 4, 13, and 22 into one item. The motion was adopted by unanimous vote.

Under the list of Communications recommendations the Commission approved the following items.

- #1. Need more phone lines and staff to answer phones at TREC. Given the steady increase in licensees, TREC's phone volume has increased as well. It is difficult to get through to TREC via the phone.
- #2. Consider printing and mailing TRECAdvisor again. Currently, approximately 2% of all subscribers download the Advisor.
- #3. Remove log in requirement for accessing TRECAdvisor online. This may increase the Advisor's readership.
- #4. TREC needs to hire a Public Relations/Communications Specialist to publicize information about contract, rule changes through preparing news releases, mailings, emails, etc. and arranging appearances by TREC Commissioners and staff where appropriate.
- #5. Request additional funds for out of state travel to allow staff/commissioners to benefit from exchange of ideas and applications with other real estate regulators.

The following suggestion was deleted as noted.

- #2. Consider printing and mailing *TRECAdvisor* again. Currently, approximately 2% of all subscribers download the Advisor. Ms. Leal, seconded by Ms. Burleson, moved to strike this item from the list of suggestions. The motion was adopted by unanimous vote.

Under the list of Human Resources recommendations the Commission approved the items as listed.

- #1. Evaluate TREC's staffing needs and request appropriate appropriations/FTE.
- #2. Analyze staff salaries agency-wide to ensure equity with other licensing agencies.

Under the list of Miscellaneous recommendations the Commission approved following items.

- #1. Require sample Residential Service Company contract to buyer before/at closing (S)
- #2. Enhance cooperation among state agencies perhaps through memoranda of understanding to obtain documents for investigations (such as from title companies)
- #3. "Illness or disability" is now a cause for removal from Commission if a person cannot deliver their duties. Change this to delete the reference to "illness or disability." (S)
- #4. Consider appointing qualified disabled individuals to the Broker/lawyer and the Inspector committees.
- #5. Integrate TREC and TALCB staff in a functional manner with appropriate intermediate oversight.
- #6. License fees should be tied more closely to appropriations. TREC should either be allowed to spend all fees collected for running agency or the fees should be reduced.
- #7. Create fillable contract forms. Currently, approximately 15 companies provide this service to their customers. TREC would need additionally software to produce such forms.

The following suggestion was deleted as indicated.

- #8. Brokers should be required to disclose sales price to appraisal districts. (S) Mr. Jokl, seconded by Ms. Leal, voted to strike this item from the list of suggestions. The motion was adopted by unanimous vote.

Under the list of recommendations received from the web-site the Commission approved or deleted the items as noted.

- #1. As an office manager I have personally seen too many examples of fraud. TREC needs to put in place a procedure where we can feel good about reporting a transaction where fraud has taken place and the reporting office and or agent will not be punished for doing so on a deal they were involved in. (S) Also TREC needs to invest more in the Division that handles investigations so that investigations can be started and concluded faster.

After discussion, the Commission reworded the suggestion to say " Explore the possibility of considering the role of a whistleblower when assessing penalties pertaining to disciplinary actions." and added it to the list of Enforcement suggestions. The following suggestion was deleted as noted.

- #2. The needs of Hispanic and Spanish-speaking consumers should be directly addressed by TREC as it prepares its forthcoming strategic plan. A taskforce should be established to analyze and recommend to the Commission regulations concerning bilingual notices (example, "Consumer Information Form," notice pursuant to 1101.558, etc.), bilingual licensee

complaint procedures and even bilingual promulgated contract forms. After discussion, Ms. Hull, seconded by Ms. Leal, moved to strike this item from the list of suggestions. The motion was adopted by majority vote, with Mr. Cantu and Mr. Jordan voting against the motion.

Under the list of recommendations designated as "List 2" which staff either did not recommend or saw difficulties with implementing the suggestions, the Commission agreed with staff and did not consider these suggestions. The list is as follows.

Education

- #1. Commercial questions on exam
- #2. Specify required MCE topics
- #3. Competency exam (by topic) for instructors
- #4. Greater flexibility needed in getting MCE courses and instructors approved
- #5. Class evaluations directly to TREC or through neutral 3rd party
- #6. Increase core hour requirements
- #7. Review online courses to ensure they are well designed. Some individuals complete 30 hour courses in 6 hours.
- #8. Harmonize MCE/SAE reporting deadlines
- #9. Concern over quality of online education.
- #10. Wait and see on major changes enacted in core requirement and MCE.
- #11. Lack of adequate staff resources to provide timely approval of new courses submitted to TREC
- #12. Don't shut out minorities from licensure by requiring too much education; allow an alternative to course work, such as counting experience.
- #13. Stress importance of classroom education by requiring a specific percentage of core course work be completed in a classroom setting.
- #14. Establish Commission-administered final examinations for education courses.
- #15. Stop regulating education. Allow individuals who pass the exam to seek a license. Continue administering the exam.

Licensing

- #1. Separate certification/license for commercial RE
- #2. Single licensure
- #3. Registration of out-of-state referrals
- #4. Out-of-state permit for one-time transactions
- #5. Photograph on license
- #6. Consider certifications for specialized brokers for example in the area of commercial real estate, industrial leasing, etc. In particular, given the shift in demographics, consider a Spanish-language certification.

- #7. Regulate college/university course acceptance
- #8. Consider possible specialized add-on licenses after obtaining salesperson/broker license such as commercial, property management, farm & ranch - much like ability to drive a bus or truck requires more than a generic driver's license.
- #9. Brokers should be able to share licensees, much like appraiser trainees can have more than one sponsor. Salesperson could work for more than one broker at a time.
- #10. Concern over Internet brokers from out of state not licensed in Texas. Perhaps consider jurisdiction similar to timeshare projects (if you want to solicit Texas customers you need to register your out of state project in Texas)
- #11. Send renewal notices directly to salespersons but, at the same time, continue to notify broker when it is time for a salesperson to renew.

Enforcement

- #1. Accept anonymous complaints
- #2. Required reporting of violations. All licensees must report any violations that they are aware of.
- #3. Consider guidelines to assist TREC in determining when someone's license should be removed or not for a disability. Right now it's on a case-by-case basis.
- #4. Mortgage brokers acting as real estate broker (possibly without license) or steering applicants to other properties ("bait and switch," saying can't fund that property but I have another down the street you should consider).
- #5. Time limit on obtaining mortgage financing in the contract
- #6. Concern over foreclosures increasing due to "0" down programs
- #7. Stop payment of commission from title company directly to salesperson when TRELTA says only broker can receive commission.
- #8. Information About Brokerage Services form not being used and unable to enforce. Clients are refusing to sign and acknowledge receipt of IABS.
- #9. TREC staff should be able to open complaints and begin investigation without a signed complaint.
- #10. Need clarification as to who "owns" security deposit in lease management when property owner may demand deposit and then refuse to return it to tenant upon vacating.
- #11. Clarify and enforce the minimum services provisions. MLS still allowing listings to say contact seller directly and "do not contact listing agent."
- #12. Mortgage broker/closing statements/ disclosure abuses.
- #13. Accept digital signatures.
- #14. Clarify the statement of "expiration date" on promulgated contracts, not merely in special provisions.
- #15. Allow option fee to be paid to title company.
- #16. Alleviate confusion as to differing legal interpretations/opinions from NAR, TAR and TREC.

Technology

- #1. Appraisal districts should be required to post floor plans of residences
- #2. Post "education needed" on web site rather than only education completed.
- #3. Put information about digital signatures on web site.
- #4. Consider collecting license examination pass rates by instructor, rather than school.
- #5. Provide for rating of educators online.

Communication

- #1. Consider "call back" message where caller can leave phone number.
- #2. Proposed contract changes should be printable when posted on web site – not highlighted in a color that doesn't show on a normal black ink printer or copier.
- #3. Consider direction phone answering (recording directs you to standard info on various topics as alternative to speaking with an operator)
- #4. Confusion as to differing legal interpretations/opinions from NAR, TAR and TREC (this is directly to Enforcement staff and not Communications staff)

From TREC Web Site

- #1. Have an apprentice period so licensees can shadow a seasoned Realtor.
- #2. Confusion remains about education requirements for becoming a Sales Licensee. Please consider having one list of classes for Sales licensees and one for Broker's license. Get rid of the one year sales license.
- #3. We Realtors need a forum (a web site) where we can register Buyers who have signed a Buyers Rep Agreement with us. Too often Buyers may not be totally honest with us as to whether or not they have a working relationship with another agent, or may just not understand what they signed with another agent. A web site, and a requirement that the agent register the Buyer would be most useful.
- #4. I feel that all newer agents that are currently required to take 30 hours per year, really need to take 60 hours IN CLASS (not online). AND that those required to take MCE hours as I am need our requirements to be doubled as well. I see an extreme amount of Realtors who seem to NOT KNOW what they are doing. Brokers included as well.
- #5. Establish reciprocity agreements with other states.

Under the list of Inspector suggestions, staff recommended striking #5, #12, and #14. Ms. Leal, seconded by Mr. Flores, moved to strike suggestions #5, #12, and #14 and approve all the remaining suggestions. After discussion, Ms. Leal withdrew her motion. Larry Foster spoke concerning #14. He stated that he felt if the Commission implemented #14 it would have trouble finding inspectors willing to serve on the Inspector Committee. Licensees willing to serve on the Committee were often involved in trade associations, as well. After further discussion, Ms. Leal, seconded by Mr. Jokl, moved to strike the recommendations #5, #12 and #14. The motion was adopted by unanimous vote.

Ms. Hull, seconded by Mr. Jordan, moved to approve the remaining items on the list of Inspector suggestions. The motion was adopted by unanimous vote.

The list of inspector suggestions is as follows.

- #1. Modify inspector licensure to require experience prior to designation as a Professional Inspector. (S)
- #2. Create a distinction between core and CEU courses in the rules (with the intent to make CEU course and speaker approval easier). (S)
- #3. Require TREC-approved CEU providers to submit student completion rosters to TREC. Students may still submit completion certificates in lieu of a completion roster (notably for alternative provider sources). (R)
- #4. Accept courses approved by other Texas state agencies for CEU credit, where relevant to real estate inspection. (R)
- #5. Do not allow inspectors to repeat a specific CEU course for a period of four years. (R)
- #6. Reimburse the TREIC for travel expenses. (LAR)
- #7. Allow teleconferencing for TREIC. (S)
- #8. Fund an additional programmer for inspector education and record keeping. (S)
- #9. Eliminate the cap on exam fees. (S)
- #10. Abolish business licensing (corp. & LLC) for inspectors. (S)
- #11. Remove exception for ERC from mandatory report form rules. (R)
- #12. Create an autonomous inspector committee. (S)
- #13. Explore additional statutory violation categories (similar to agent/broker side). (S)
- #14. Prohibit any elected officer, director or employee from a state or national trade association from concurrently serving on the TREIC. (S)

A break was announced from 4:10-4:20 p.m. Mr. Thorburn stated that the attorney in the scheduled rehearings, Motions for Rehearing, Motions for Modification Order, Motions for Probation: in the Matter of Ricardo M. Estevez, Hearing No. 06-63-054240 and b. in the Matter of Juan C. Estevez, Hearing No. 06-64-054241, wished to address a request to the Commission concerning rescheduling the rehearings to the next Commission meeting and extending the date of the revocations to June 26, 2006. Beverly Rabenberg, staff attorney, stated that the Enforcement division had no objections to this. Mr. Jordan, seconded by Ms. Burleson, moved to accept the motion of the parties. The motion was granted by unanimous vote.

The Chairman moved to agenda item six, discussion and possible action regarding Sunset Advisory Commission Report. Mr. Thorburn presented Issue 1 for discussion and possible action. Issue 1 contained the following recommendations.

- 1.1 Require the Commission to prioritize complaint investigations based on potential risk to consumers.
- 1.2 Fully authorize TREC staff to open enforcement cases against licensees for violations of the licensing act and agency rules.
- 1.3 Repeal the \$1,000 fine limit for practicing with an expired license, and increase administrative fines to a maximum of \$5,000 per day, per violation.
- 1.4 Require the Commission to adopt a penalty matrix, in rule, that includes administrative fines and other sanctions against a licensee.
- 1.5 Authorize final orders against a person who committed a violation while licensed, but whose license expires during the investigation.
- 1.6 Authorize TREC to order refunds as part of the complaint settlement process.
- 1.7 Direct the Commission to improve on its collection of complaint and violation statistics, and to develop a method for complaint trend analysis.

Mr. Flores seconded by Mr. Jokl, moved to adopt the staff recommendation in not objecting Issues 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7. Philip Stojanik spoke concerning the penalty matrix for inspector licensees. After discussion, the motion was adopted by unanimous vote.

Mr. Thorburn presented Issue 2 for discussion and possible action. He stated that staff did not object to Issues 2.1 and 2.2. TREC staff disagrees with recommendation 2.3. Issue 2 contained the following recommendations.

- 2.1 Align TREC's hearing and administrative penalty processes.
- 2.2 Require the Commission to implement a standard enforcement process including a structure for informal complaint resolution.
- 2.3 Transfer the agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.

Moving TREC's hearings to the State Office of Administrative Hearings (SOAH) would delay the closing of cases. Once a SOAH judge rules, TREC's commissioners must approve SOAH's ruling. This adds up to 60 days to complaint closing. Additionally, it is beneficial having an Administrative Law Judge (ALJ) who specializes in statutes enforced by TREC. Mr. Flores, seconded by Mr. Jokl, moved to not object to Issues 2.1. and 2.2. After discussion, the motion was adopted by unanimous vote. Ms. Leal, seconded by Mr. Flores, moved to support staff's recommendation to disagree with recommendation 2.3. After discussion, the motion was adopted by unanimous vote.

Mr. Thorburn presented Issue 3 for discussion and possible action. The recommendations contained in Issue 3 are as follows.

- 3.1 Require TREC to establish a minimum exam pass rate for re-accreditation of private real estate schools.
- 3.2 Require the Commission to publish exam pass rates for individual real estate schools, and provide this information to the public.
- 3.3 Authorize the Commission to establish an ad-hoc peer review committee to conduct assessments of low performing schools.
- 3.4 Direct TREC staff to audit real estate schools based only on risk to consumers.

He stated that although staff did not object to 3.1., staff thought it should be modified. In order to alleviate confusion pertaining to first time pass rates, staff recommended combining into a single score the national and the state parts of the exam. This will make it easier to track exam pass rates. Minor Peoples, Real Estate Institute-Corpus Christi, spoke against this issue. After discussion, Mr. Flores, seconded by Ms. Leal, moved to object to recommendation 3.1. The motion was adopted by majority vote with Mr. Jordan voting against the motion.

Mr. Thorburn stated that staff does not object to 3.2. or 3.4., but that staff does disagree with recommendation 3.3. Ms. Leal, seconded by Mr. Flores, moved to accept staff recommendations concerning 3.2. and 3.4. After discussion, Ms. Leal withdrew her motion.

Ms. Hull, seconded by Ms. Leal, moved to object to recommendation 3.2. as it would be difficult if not impossible to establish a fair method of calculating a pass rate for a school. The motion was adopted by majority vote with Mr. Flores voting against the motion.

Mr. Thorburn stated that staff disagreed with 3.3. TREC staff believes a subcommittee of the Commission with staff support would be more neutral in its appraisal of low performing schools, rather than an ad-hoc peer review committee. It is likely that those individuals volunteering for such a non-paying assignment without reimbursement of travel costs would be competitors to the school being appraised and advised, thereby creating the appearance, if not the reality, of a conflict of interest. The Commission currently has the authority to convene such a subcommittee. Mr. Flores, seconded by Mr. Jordan, moved to object to recommendation 3.3. The motion was adopted by unanimous vote.

Mr. Flores, seconded by Ms. Burleson, moved to support staff's recommendation on issue 3.4. The motion was adopted by unanimous vote.

Mr. Thorburn presented Issue 4 for discussion and possible action. The recommendations contained in Issue 4 are as follows.

- 4.1 Authorize TREC to approve continuing education courses for inspectors.

- 4.2 Require the Commission to base delinquent license renewal fees on the standard renewal fee.
- 4.3 TREC should conduct criminal background checks for all license renewals.
- 4.4 TREC should indefinitely maintain records of licensees with violation histories, and check these records when issuing new licenses.
- 4.5 Authorize the Commission to issue cease-and-desist orders.
- 4.6 Authorize the Commission to levy administrative penalties against residential service companies who violate agency statute and rules.
- 4.7 Authorize the Commission to temporarily suspend a license.
- 4.8 Eliminate the agency's licensing and administrative fee caps and authorize the Commission to set fees in rule.
- 4.9 The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should develop an interagency agreement to coordinate their enforcement efforts.

Mr. Thorburn stated that TREC staff does not object to recommendations 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.9. However, TREC staff disagrees with recommendation 4.2. Assessing a delinquent license renewal fee based on varying criteria (more than 90 days/less than 90 days) would be an onerous and confusing task for staff. TREC used this model of assessing fees for inspectors in the past and revised it because it was overly cumbersome. Currently, late renewals are valid for only one year. Sunset's recommendation would grant a two year license with late renewals. However, it is unclear as to whether Sunset recommends that a late renewal would be valid for the remaining time of the normal two year renewal period or that the two year license period would start at the point of the late renewal. Additionally, this recommendation negates the penalty of having to take 15 hours of Mandatory Continuing Education (MCE) within one year. The recommendations contained in Issue 4 are as follows.

Mr. Flores, seconded by Ms. Leal, moved to accept staffs recommendations on 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.9. The motion was adopted by unanimous vote. Mr. Jokl, seconded by Mr. Cantu, moved to object to 4.2. The motion was adopted by unanimous vote.

Mr. Thorburn presented Issue 5 for discussion and possible action. The recommendations contained in Issue 5 are as follows.

- 5.1 Continue the Texas Real Estate Commission for 12 years.
- 5.2 Remove the Commission's authority to delegate decision making powers to committees, and authorize the Commission to create advisory committees as needed.
- 5.3 Authorize TREC's advisory committees to meet by teleconference.

5.4 Fully merge the Appraiser Board's staff functions with TREC, while retaining the Appraiser Board as an independent regulatory authority.

Mr. Thorburn stated that TREC staff does not object to recommendations 5.1, 5.3, and 5.4. Mr. Flores, seconded by Ms. Leal, moved to accept staff recommendations on 5.1, 5.3, and 5.4. There was discussion concerning allowing the Inspector Committee to meet by teleconference and which statutes would be effected by this. The motion was adopted by unanimous vote.

Mr. Thorburn stated that TREC staff does not object to recommendation 5.2. However, TREC staff offers modifications to recommendation 5.2.

TREC staff agrees that the statutory provisions which enable the Inspector Committee should be eliminated as the responsibilities of the Committee may be easily delegated to an advisory board subject to Chapter 2110, Texas Government Code. However, the provisions that enable the Broker Lawyer Committee should be preserved as the Committee is comprised of members appointed by the Texas State Bar, The Real Estate Commission, and a public member appointed by the Governor. The Committee's primary function is to draft and revise contract forms that are capable of being standardized. Given the unique function and composition of the Committee, a statutory provision must be in place to clarify its role, the appointment process, and the process by which differences of opinion between the Committee and the Commission are resolved. Mr. Flores, seconded by Ms. Leal, moved to accept the staff recommendations concerning 5.2.

Mr. Jokl thanked the Sunset Commission for all their efforts in preparing the report.

The Chairman moved to agenda item seven, discussion and possible action to approve TREC Audit Plan for FY 2006. Jose Gonzalez of Garza, Gonzales and Associates presented the agenda item for discussion and possible action. Mr. Flores, seconded by Ms. Burlison, moved to approve the Plan as submitted. The motion was adopted by unanimous vote.

Mr. 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 5:10 p.m. The meeting was called back to order at 5:20 p.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 06-013, Manuel Martinez and Sandra Ibarra v. Romie Enriquez, in the amount of \$24,000 in actual damages and \$10,000 in attorney fees. Ms. Leal, seconded by Ms. Burleson, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-014, Landy and Alysha Compton v. Yvonne West, in the amount of \$29,000 in actual damages. Ms. Leal, seconded by Mr. Cantu, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-017, Ricky and Chrisshonna Jackson v. Tavius Hadnot-Jones, in the amount of \$50,000 in actual damages. Ms. Burleson, seconded by Ms. Hull moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments to: (a) 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors; (b) 22 TAC §535.91 concerning Renewal Applications; (c) 22 TAC §535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements; (d) 22 TAC §535.144 concerning When Acquiring or Disposing of Own Property or Property of Spouse or Relative; (e) 22 TAC §535.210 concerning Fees; and (f) 22 TAC §539.71 concerning Miscellaneous Forms. Mr. Flores, seconded by Mr. Jordan, moved to adopt the rules and forms as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented for discussion and possible action to propose items eleven: (a) 22 TAC §535.61 concerning Examinations; (b) 22 TAC §535.63 concerning Education and Experience Requirements for a License; (c) 22 TAC §535.220 concerning Professional Conduct and Ethics for Inspectors; (d) 22 TAC §535.223 concerning Standard Inspection Reports; (e) 22 TAC §535.227 - .233 concerning Inspector Standards of Practice.

Mr. Flores, seconded by Ms. Burleson, moved to propose the amendment to 22 TAC §535.61 concerning Examinations. The motion was adopted by unanimous vote.

Mr. Flores, seconded by Ms. Burleson, moved to propose the amendment to 22 TAC §535.63 concerning Education and Experience Requirements for a License. The motion was adopted by unanimous vote.

Mr. Jokl, seconded by Ms. Hull, moved to propose the amendment to 22 TAC §535.220 concerning Professional Conduct and Ethics for Inspectors. The motion was adopted by unanimous vote.

Ms. DeHay presented eleven (e) for discussion and possible action to propose. John Cahill, Chairman of the Inspector Committee, and Russell Strahan, also of the

Committee, offered a slide presentation concerning the draft Standards of Practice, comparing them to the existing Standards and also the Standards of several other states and trade associations around the country. Larry Foster, Foster Inspections, spoke against proposing the amendments at this time, as he felt they were unfinished. Philip Stojanik of the Inspector Committee spoke in favor of proposing the amendments as they exist at this time. After discussion, Mr. Jokl, seconded by Mr. Jordan moved to propose the amendments. The motion was adopted by majority vote, with Ms. Hull voting against the motion.

Ms. DeHay presented eleven (d) for discussion and possible action to propose. After discussion, Mr. Flores, seconded by Ms. Leal, moved to propose the amendments to 22 TAC 535.223 as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda items twelve for discussion and possible action to propose the repeal of: (a) 22 TAC §535.217 concerning Dishonest Conduct as Grounds for Disciplinary Action; and (b) 22 TAC §§535.227-.231 concerning Inspector Standards of Practice. After discussion, Mr. Flores, seconded by Mr. Jordan, moved to propose the repeal of §535.217 as presented. The motion was adopted by unanimous vote. Mr. Jordan, seconded by Mr. Flores, moved to table the repeal of §§535.227-.231. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item thirteen for discussion and possible action to repeal TREC Form No. OP-M, Addendum for Unimproved Property Located in a Certificated Service Area of a Utility Service Provider. Mr. Jokl, seconded by Ms. Burleson, moved to repeal the form. The motion was adopted by unanimous vote.

The Chairman moved to agenda item fifteen, consideration of complaint information concerning: Emily Ann Alsabrook, Deborah Lynn Bashaw, Judy Gail Crowley, Philip Lee Shinalt, Sandra Jo McCormack, Zack Evans Williams, Anne McKee, Myna Mynga Tran, and Darren Lee Slawson; Lakeitha Roshun Bradley, Maria Alaniz, Erica Lorraine Sanchez. Ms. Lindquist requested authorization to initiate investigation of these persons. Emily Ann Alsabrook spoke concerning opening a complaint against her. Mr. Cantu, seconded by Mr. Jordan, moved to approve the initialization of investigations as requested. The motion was adopted by unanimous vote.

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

The Chairman moved to agenda item eighteen, scheduling future meetings and adjournment. After discussion, it was decided that the next meetings would be June

19, 2006, August 7, 2006, in Austin, and September 27, 2006, in San Antonio. The Chairman adjourned the meeting at 6:55 p.m.

APPROVED this the 19th day of June, A.D. 2006.

John Walton
Chairman

ATTEST: _____

Wayne Thorburn
Administrator