

MINUTES  
Texas Real Estate Commission  
June 19, 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, June 19, 2006. In addition to Chairman Walton, members present were Larry Jokl, James Austin, Bill Flores, Louise Hull, Elizabeth Leal and Paul Jordan. Mary Frances Burleson and Ramon Cantu were 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 Jokl led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of May 1, 2006, Commission meeting. Mr. Flores, seconded by Mr. Jokl, 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 reported that July 1, 2006 would begin the postcard renewal mail out. She stated that the number of original applications and late renewal applications were up by approximately 20%. She introduced Jay Simmons, a new employee in the Licensing department and Becky Jarmon, a new employee in the Education department.

Ms. Lindquist, Director of Enforcement, reported that her department was working hard to stay ahead of the number of complaints filed. She stated that Kay Daniel, an investigator in the Houston area would be retiring at the end of the month.

Mr. Watson, Director of Information Services, reported that online transactions were up. He stated that the web pages had been redesigned for easier use. Mr. Watson introduced a new employee, Amy Johnson, who had been hired as a systems analyst during the previous month.

Mr. Waters, Director of Staff Services, reported that the yearly audit report, which had concentrated on customer communications and cash collections and fees, should be presented for approval at the August meeting. He also reported that the Legislative Appropriations Request (LAR) instructions had been received. These instructions require a 10% reduction in funding below the baseline for the current biennium. He stated the LAR would be an agenda item at the August 7, 2006 Commission meeting. Mr. Waters also announced that he would be retiring after 34 years at the end of August.

Denise Whisenant of the Real Estate Center at Texas A&M University reported that 56 teachers had completed the training in the updated Legal and Ethics courses in May. Another training session is planned for November 2-3 in Austin.

The Chairman introduced Dr. Gary Maler, and congratulated him on his selection as the new director of the Real Estate Center at Texas A&M University.

Mr. Thorburn reported that the 2007-2011 Strategic Plan would be submitted to the appropriate parties at the end of the month. Mr. Thorburn thanked Ms. Hassumani and Pat Holder for the work they did in putting the Strategic Plan together.

Mr. Thorburn announced that in early October he would be leaving the Texas Real Estate Commission. He stated that he had made this decision some time ago and that he had enjoyed working with the staff and commissioners during his tenure with the agency.

Ms. DeHay stated that since no action could be taken at this time to establish a selection committee or posting the position, she recommended that a meeting be scheduled during the next few weeks to appoint a selection committee and develop a job description. After discussion, it was decided that a meeting would be scheduled for June 30, 2006 to appoint a selection committee and develop a job description and requirements for the posting of the administrator position.

The Chairman moved to agenda item four, general comments from visitors. Mr. Thorburn stated that this was the last meeting for Ron Walker, general counsel, Texas Association of Realtors. The Chairman thanked Mr. Walker for all his hard work on behalf of the real estate industry.

Chairman Walton moved to agenda item five, 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 9:40 a.m. The meeting was called back to order at 9:55 a.m.

Chairman Walton moved to agenda item six, 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 06-005, Joy Sykora v. Greg Markwardt, in the amount of \$12,500 in actual damages. Mr. Flores, seconded by Mr. Jordan, moved to approve payment. The motion was adopted by unanimous vote.

IRF 06-0063, Jack Hobbs and Tammy Smith v. Greg Markwardt, in the amount of \$12,500 in actual damages. Mr. Austin, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-018, Bihari-Sheridan Family Partnershi v. Jennifer Sloan, in the amount of \$14,765 in actual damages and \$750 in attorney fees. Ms. Leal, seconded by Mr. Austin moved to approve payment. The motion was adopted by unanimous vote.

RF 06-019, James and Sandra Brooks v. Sandra Sills, in the amount of \$3,900 in actual damages. Mr. Jokl, seconded by Mr. Austin moved to approve payment. The motion was adopted by unanimous vote.

RF 06-020, The Cecil and Dorris George Family Partnership v. Jennifer Sloan, in the amount of \$3,090 in actual damages and \$750 in attorney fees. Ms. Hull, seconded by Mr. Austin moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion and possible action to adopt amendments to or take other action on: (a) 22 TAC §535.61 concerning Examinations, (b) 22 TAC §535.63 concerning Education and Experience Requirements for a License and (c) 22 TAC §535.220 concerning Professional Conduct and Ethics for Inspectors. Ms. DeHay presented agenda items seven (a) and seven (b) for discussion and possible action together. The amendment to §535.61 authorizes the commission to waive the national portion of the examination for an applicant who has passed a comparable national examination that has been certified by a nationally recognized real estate regulator association. The amendment to §535.63 requires a salesperson subject to annual education (SAE) requirements to furnish documentation to the commission of successful completion of appropriate courses 10 business days prior to the day the salesperson renews the salesperson's license. Ms. DeHay stated that no comments were received on the proposed amendments. Mr. Flores, seconded by Ms. Leal, moved to adopt the amendments to 22 TAC §535.61 concerning Examinations and 22 TAC §535.63 concerning Education and Experience Requirements for a License. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 7(c) for discussion and possible action to adopt. Ms. DeHay stated that she had received several suggestions concerning the amendments to §535.220 and that the inspector committee had not had a chance to meet and discuss the comments. She suggested that the amendments and comments be referred back to the committee as the inspector committee would be meeting June 26, 2006. Mr. Cahill spoke concerning referring the amendment back to the committee. Mr. Jokl, seconded by Mr. Flores, moved to refer the amendment to the committee. Ms. Leal, seconded by Mr. Flores, moved to amend the motion to include "22 TAC §535.220" in the motion to specify which rule was being sent back to committee. The amendment to the motion was

adopted by unanimous vote. The amended motion was adopted by unanimous vote.

Ms. DeHay moved to agenda item eight, discussion and possible action to adopt repeal of 22 TAC §535.217 concerning Dishonest Conduct as Grounds for Disciplinary Action. She suggested that final action be postponed subject to final action on 22 TAC §535.220. Ms. Leal, seconded by Ms. Hull, moved to delay action on §535.217 and refer it back to committee. The motion was adopted by unanimous vote.

Ms. DeHay moved to agenda item nine(a), discussion and possible action to propose amendments to 22 TAC Chapter 533 concerning Practice and Procedure. Ms. DeHay explained that the Commission would be proposing amendments to §533.34 concerning Disapproval of an Application for a License or Registration and §533.35 concerning Revocation or Other Action Against a License or Registration. The amendment to §533.34 clarifies that notice of disapproval will not be provided to a sponsoring broker of an applicant for a salesperson license as such licenses are issued as inactive with no sponsoring broker. The amendment to §533.35 clarifies that a hearing concerning a revocation or other disciplinary action against a licensee will be held at a time and place designated by the Commission except in cases involving a violation of §1101.652(a)(3) or (b), Texas Occupations Code. In those cases, the hearing shall be held pursuant to §1101.657(d) if the licensee requests. Mr. Jokl, seconded by Mr. Austin, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

Ms. DeHay moved to agenda item nine(b), discussion and possible action to propose amendments to 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act. The amendments and new rule are proposed to implement revisions to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted during the 79<sup>th</sup> Legislative Session, Regular Session, by House Bill 1045. The amendments provide for renewal requirements for registered timeshare properties, including a renewal form, and renewal fees. The amendments also propose to amend the Abbreviated Registration of a Timeshare Plan to request additional information from the developer about the jurisdiction in which the plan is already registered and to fix some typographical errors in the form. Mr. Flores, seconded by Ms. Leal, moved to propose the amendments and new rule as presented. The motion was adopted by unanimous vote.

Ms. DeHay moved to agenda item 10, discussion of comments and possible action to withdraw and return to the Real Estate Inspector Committee for further revision proposed: 22 TAC §535.223 concerning Standard Inspection Reports and (b) 22 TAC §535.227 - .233 (proposed as §§535.232-535.238) concerning Inspector Standards of Practice. Ms. DeHay stated that around thirty-four comments had been received concerning the amendments. Mr. John Cahill, Chairman of the Texas Real Estate Inspector Committee, spoke concerning returning the amendments to the committee and some of the comments

that had been received. Comments were offered by Joe Gonzalez, president of the Texas Association of Real Estate Inspectors, concerning TAREI's position on the amendments. Comments were also offered by Rodney George. After discussion, Mr. Jokl, seconded by Ms. Leal, moved to withdraw the proposed new rules, §§535.227 - .233(proposed as §§535.232-535.238), and send them back to the committee for further revision. The motion was adopted by unanimous vote. Mr. Flores, seconded by Mr. Austin, moved to withdraw the amendments to §535.223 and return them to the committee for further revision. The motion was adopted by unanimous vote.

Ms. DeHay moved to agenda item 11, discussion of comments on proposed review of: (a) 22 TAC Chapter 531 concerning Canons of Professional Ethics and Conduct for Real Estate Licensees and (b) 22 TAC Chapter 533 concerning Practice and Procedure. She stated that no comments had been received on this agenda item. No action was taken.

The Chairman moved to agenda item twelve, consideration of complaint information. Ms. Lindquist requested permission to open complaints against the following individuals:

- Rejis Lamont Williams, based on information obtained in connection with the investigation of TALCB case no. 05-063, accepting compensation for a real estate transaction from a person other than the broker with whom the salesperson is associated or was associated when the salesperson earned the compensation, in violation of Section 1101.651(b) of the Texas Occupations Code.
- Sandra Lynn Davis, based on information obtained in connection with the investigation of complaint file no. 063101, for paying a commission to someone not licensed as a real estate salesperson in violation of section 1101.652(b)(11), and for establishing an association with an unlicensed person in violation of section 1101.652(b)(26) of the Texas Occupations Code.
- Gail M. Whitfield, based on information obtained in connection with the investigation of a late renewal application, for acting negligently or incompetently in performing an act as a license holder in violation of section 1101.652 (b)(1) of the Texas Occupations Code, and establishing an association with an unlicensed person in violation of section 1101.652(b)(26), of the Texas Occupations Code.
- J'Nette Allred and Horia Aurelian Jordache, based upon information obtained in connection with application inquiry complaint file no. 061195, and unlicensed activity complaints, procuring, or attempting to procure, a real estate license for himself by making a material misstatement of fact in an application for a real estate license, in violation of §1101.652(a)(2) of the Texas Occupations Code.
- Eugene Hyongjung Kim, based on information obtained in the course of the investigation of a complaint, procuring or attempting to procure a license under this chapter by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license, in violation of Section

1101.652(a)(2) of the Texas Occupations Code, and for improper use of names in brokerage business, in violation of the Rules of the Commission, Section 535.154(c).

Mr. Jokl, seconded by Ms. Hull, moved to grant permission to open investigations as requested. The motion was adopted by unanimous vote.

Chairman Walton relinquished the gavel to Mr. Jordan for agenda item thirteen, motion for Rehearing in the Matter of: (a) Ricardo M. Estevez, Hearing No. 06-63-054240 and (b) Juan C. Estevez, Hearing No. 06-64-054241, and (c) Ana Maria Garcia, Hearing No. 06-194-062149

Raven Applebaum and Art Walker appeared for Ricardo M. and Juan C. Estevez. Staff attorney Beverly Rabenberg appeared for the Enforcement division.

Ms. Applebaum and Mr. Walker presented the motions for rehearing in both matters. Ms. Rabenberg presented the Enforcement Division's answer to the motions for rehearing. Mr. Walker responded to the Enforcement Division's answer to the motion for rehearing.

After discussion, Mr. Jordan called for a vote on the motion for rehearing concerning Ricardo M. Estevez. Mr. Jokl, seconded by Ms. Leal, moved to approve the motion for probation, with the following terms: (1) a term of three years probation; and (2) if no further violations were incurred during the probationary period, the record of probation would be expunged. Chairman Walton expressed concern over the terms of the probation. Mr. Flores, seconded by Mr. Walton, moved to amend the motion to (1) remove the expungement language, (2) state that there must be no further violations of the Act or any criminal convictions and (3) add that Mr. Estevez stay current on any restitution he has been ordered to make. The motion to amend the motion was adopted. The amended motion was adopted by unanimous vote.

Mr. Jordan called for a vote on the motion for rehearing for Juan Estevez. The motion was denied by unanimous vote. Mr. Jordan called for a vote on the motion for modification for Juan Estevez. The motion was denied by unanimous vote. Mr. Jordan called for a vote on the motion for probation with the following terms and conditions: (1) a term of three years probation; (2) state that there must be no further violations of the Act or any criminal convictions and (3) add that Mr. Estevez stay current on any restitution he has been ordered to make. The motion was adopted by unanimous vote.

Mr. Jordan moved to the motion for rehearing in the matter of Ana Maria Garcia, Hearing No. 06-194-062149. Ms. Garcia appeared pro se. She requested a continuance for 30 days in order to make payment as previously agreed. Ms. Lindquist appeared for the Enforcement Division. Ms. Lindquist stated that a proposed agreed order had been drawn up which included a repayment schedule. She stated that the Enforcement Division did not oppose the continuance. After discussion, Mr. Jordan called for a vote on the

motion for continuance until the next Commission Meeting which would be on June 30, 2006. The motion for continuance until June 30, 2006 was adopted by unanimous vote. Mr. Jordan called for a vote on the motion to modify the order for revocation and extend the date to June 30, 2006. The motion was granted by unanimous vote.

The Chairman moved to agenda item fourteen, entry of orders in contested cases. No orders were presented.

The Chairman moved to agenda item fifteen, scheduling future meetings and adjournment. After discussion, it was decided that the next meeting would be June 30, 2006 and August 7, 2006 in Austin and September 27, 2006 in San Antonio. The Chairman adjourned the meeting at 11:36 a.m.

APPROVED this the 7th day of August, A.D. 2006.

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John Walton  
Chairman

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

Wayne Thorburn  
Administrator