

MINUTES  
Texas Real Estate Commission  
August 7, 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, August 7, 2006. In addition to Chairman Walton, members present were Larry Jokl, James Austin, Mary Frances Burleson, Louise Hull, Elizabeth Leal and Ramon Cantu. Bill Flores joined the meeting at 9:08 a.m. and Paul Jordan 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 Leal led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of the June 19, 2006, Commission meeting. Mr. Jokl, seconded by Ms. Burleson, moved to approve the minutes as written. The motion was adopted by unanimous vote.

Chairman Walton called for agenda item three, minutes of the June 30, 2006, Commission meeting. Mr. Jokl, seconded by Ms. Leal, moved to approve the minutes as written. The motion was adopted by unanimous vote.

The Chairman moved to agenda item four, staff reports; committee reports. Ms. Hassumani reported numbers were up for both original applications and late renewals. She stated that July showed a significant increase in the number of online renewals.

Ms. Lindquist, Director of Enforcement, reported that her department was fully staffed at this time. There was discussion concerning the Sunset recommendations and the need for additional staff.

Mr. Watson, Director of Information Services, reported that online transactions were up.

Mr. Thorburn announced that after thirty-four years Mr. Waters would be retiring and this would be his last meeting. The Chairman stated that Mr. Waters' work with the Commission was greatly appreciated and he would be missed.

Mr. Waters, Director of Staff Services, reported that this year approximately \$500,000 would be paid out of the Recovery Trust Account, this was twice the amount paid out last year.

The Chairman moved to agenda item five, general comments from visitors. No comments were offered.

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 and employment law, and to discuss personnel matters regarding administrator position under Texas Government Code, §§551.071 and 551.074. Executive session began at 9:11 a.m. The meeting was called back to order at 9:26 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:

RF 06-021, Rene Gujajardo and Sandra Enriquez v. Daniel Pereyra, in the amount of \$20,000 in actual damages and \$10,500 in attorney fees. Ms. Leal, seconded by Mr. Jokl, 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: (a) 22 TAC Chapter 533 concerning Practice and Procedure and (b) 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act. Ms. DeHay presented agenda items eight (a) for discussion and possible action. 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. The difference between the rule as proposed and the rule as adopted was the addition of a period to correct a typographical error. No comments have been received on the amendments. Mr. Austin seconded by Ms. Burleson, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda items eight (b) for discussion and possible action. The amendments provide for renewal requirements for registered timeshare properties, including a renewal form, and renewal fees. The amendments amend the Abbreviated Registration of a Timeshare Plan form 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. The proposed Renewal of Registration form was changed to correct typographical errors. Part I.F. of the proposed Abbreviated Registration of a Timeshare Plan form was changed to make it clear that the developer must provide additional information about any one jurisdiction in which the plan is already

registered. The developer need not provide the information for all jurisdictions in which the plan is registered. No comments were received on the rules. Mr. Jokl, seconded by Mr. Austin, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item nine, discussion and possible action to adopt amendments to 22 TAC §535.220 concerning Professional Conduct and Ethics for Inspectors. Ms. DeHay presented agenda item nine for discussion and possible action to adopt. Ms. DeHay stated that she had received three comments concerning the amendments to §535.220 and that the inspector committee had changed the rule and was resubmitting it to the Commission for final action. Section 535.220 as proposed for adoption prohibits contingency arrangements in cases where compensation depends on specific findings or on closing or settlement; prohibits 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; permits an inspector to engage in legal promotional or educational activities to or with a settlement service provider that are not conditioned on the referral of business; permits an inspector to purchase advertising and promotion at market rates from any person in any publication, event or media; prohibits 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; clarifies that an inspector may pay or receive a fee for services actually rendered; prohibits 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 a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection; and prohibits 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. Ms. Leal, seconded by Mr. Austin, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item ten, discussion and possible action to adopt repeal of 22 TAC §535.217 concerning Dishonest Conduct as Grounds for Disciplinary Action. Ms. DeHay presented the agenda item for discussion and possible action. The subjects addressed in the repealed sections are covered in new amendments to §535.220 that the Commission is simultaneously adopting as part of the Real Estate Inspector Committee recommendations regarding Professional Conduct and Ethics. As the new subsections comprehensively address the subjects of the repealed rules as well implement the recommendations, repeal of the rules is necessary to avoid confusion and repetition. Mr. Jokl, seconded by Mr. Austin, moved to adopt the repeal of §535.217 as presented. The

motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eleven, discussion and possible action to propose amendments to 22 TAC §535.61 concerning Examinations. Ms. DeHay explained that Section 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 §535.61 would clarify that the waiver would only apply to an applicant who has a current license equivalent to the license being applied for. Ms. Burluson, seconded by Mr. Austin, moved to propose the amendment as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item 12(b), discussion and possible action to propose amendments, propose new rules, or take other action on 22 TAC §535.227-.233 concerning Inspector Standards of Practice (alternatively numbered 22 TAC §535.232.-238). Ms. DeHay stated that this was for possible action to repropose the Standards of Practice. The Texas Real Estate Inspector Committee (TREIC) has recommended that the Commission take action on the proposed new rules. The proposed new rules divide the standards of practice for inspectors into seven sections by providing two additional sections and contain a number of substantive changes. At the last meeting the rules were sent back to TREIC for consideration of comments received during the interim period and to make any additional revisions they wanted to make. Commission staff received approximately forty comments during the notice and comment period. A comment was received from the Lone Star American Society of Home Inspectors in favor of the proposed standards. The Texas Association of Real Estate Inspectors did not comment during the formal comment period, but it did solicit input from its members with a position statement that was basically against the proposed standards and it was forwarded to TREC staff and Commission members. Of the forty comments that staff received, twenty-nine were against the proposed standards, primarily because of the lack of safety items, the perceived unenforceability of the standards and the lack of a commentary. Most of the comments were boilerplate. Five of the comments were in favor of the standards as proposed. Finally, five commenters did not state that they were for or against the proposal, but asked questions concerning such things as pest inspections.

Mark Eberwine, an inspector from San Antonio, spoke against the proposed Standards of Practice. He compared the proposed Standards of Practice to allowing a licensee to only fill in those portions of the promulgated contracts that he/she felt were necessary. He stated that the problem with the proposed Standards is that they do not establish standards, but leave it up to the individual inspector to establish standards. Mr. Eberwine recommended that the Commission send the proposed Standards back to TREIC for further study.

Russell Strahan, TREIC member, spoke in favor of the proposed Standards of Practice. He stated that in his opinion the unenforceability of the proposed standards was a fallacy. Mr. Strahan stated that the Standards of Practice should be proposed and published for comment.

John Cahill, Chairman of TREIC, spoke in favor of the proposed Standards of Practice. He stated that the committee had met the previous month and made approximately twenty changes to the proposed standards before resubmitting them to the Commission for proposal and public comment. He stated that the TAREI board voted against the proposed standards, but they did not request input from the membership. He stated that the proposal was supported by the American Society of Home Inspectors (ASHI) and the National Association of Certified Home Inspectors (NACHI). Mr. Cahill stated that he would recommend that the Standards of Practice be proposed and published for public comment. There was discussion concerning the term "commentary".

Joe Gonzalez, president of the Texas Association of Real Estate Inspectors, spoke concerning the solicitation of comments through their web site from members regarding the proposed Standards of Practice and that the vote of the board was to have the standards republished.

Fred Wilcox, a former member of TREIC, spoke against the proposed standards, and concerning the current Standards of Practice and how they were developed. Mr. Wilcox stated that he would like to see the proposed standards go back to the committee for further deliberation.

Brad Phillips, real estate inspector and member of the Board of Directors of the Texas Association of Real Estate Inspectors spoke against the proposed standards. He stated that he would like the proposal withdrawn.

Ms. Burlison, seconded by Mr. Jokl, moved that the Commission return the Standards of Practice and Inspection Report Form back to the Inspector Committee to make additional changes consistent with the issues discussed at today's meeting including addressing safety items, enforceability and possible adoption of a commentary to the Standards of Practice. The motion was adopted with Mr. Flores voting against the motion.

The Chairman moved agenda item thirteen, discussion and possible action to propose repeal of 22 TAC §535.227-.231 concerning Inspector Standards of Practice. Ms. DeHay stated that because of the action taken on agenda item 12(b), no action should be taken on this matter. No action was taken.

Chairman Walton moved to agenda item fourteen, discussion and possible action to adopt 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. Ms. DeHay presented the agenda item for discussion and possible action. No amendments were made to Chapter 531. In conjunction with this review, the agency

adopted amendments to §§533.34 and .35. The amendments update the rules for consistency and clarity with the underlying and related statutory provisions. The agency has determined that with this change, the reasons for adopting the sections in Chapters 531 and 533 continue to exist. No comments were received in response to the notice of the proposed rule review as published in the *Texas Register*. Ms. Burlison, seconded by Ms. Leal, moved to adopt the review as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item fifteen, discussion and possible action to propose review of: (a) 22 TAC Chapter 534 concerning General Administration and (b) 22 TAC Chapter 537 concerning Professional Agreements and Standard Contracts. Mr. Flores, seconded by Mr. Cantu, moved to propose the review as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item sixteen, Discussion and possible action regarding the job description, job posting, selection criteria and selection process for the TREC administrator position including selection of applicants. Ms. Leal, seconded by Mr. Austin, moved that the Commission approve Mr. Thorburn's decision to stay on as Administrator of TREC at least through the next legislative session, and request that staff terminate the job search for his position for the present time. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item seventeen, discussion and possible action regarding strategic plan initiative concerning background checks on applicants and license renewals. Ms. Hassumani presented a report on stricter background checks. Staff recommended that this process be outsourced. The Department of Public Safety has a program that TREC could use to conduct fingerprint-based background checks. The name of this program is "Fingerprint-based Applicant Background Checks" (FAST). DPS uses a state contracted vendor, Identix, to collect electronic fingerprints from individuals, which has many locations around the state of Texas. Identix has the authority to collect all requisite fees (\$48.95) on behalf of DPS. The fees include: Fingerprint acquisition (Identix)-\$9.95, DPS Search-\$15.00, and FBI Search-\$24.00. Fingerprints are sent to DPS electronically the same day. DPS runs a check through its database. DPS also sends fingerprints to the FBI electronically. Results of both the DPS check and the FBI check would be sent to TREC electronically within 24 hours. Currently, DPS issues two separate rap sheets; within a year, they hope to consolidate DPS and FBI results into one rap sheet. DPS also has a service that is called the "Rapback Service". DPS retains all fingerprints taken on file. Subsequent to the initial criminal background check, if an individual is arrested in Texas, DPS would alert TREC. There is no additional fee for this service.

There was discussion concerning the detail contained in the various levels of the background checks. There was discussion concerning the number of license applicants and licensees who renew who have committed a crime that could appear in such a background check.

Ms. Leal, seconded by Mr. Flores, moved that the Commission ask the legislature to consider amending the Real Estate License Act to permit TREC to use Fingerprint-based Applicant Background Checks through the Department of Public Safety for TREC license applicants. After discussion, Mr. Flores, seconded by Mr. Jokl, moved to amend the motion and change the words "for TREC license applicants" to "as the Commission deems necessary".

Minor Peeples, Real Estate Institute of Corpus Christi, commented concerning whether or not there was a problem serious enough to warrant this action. There was discussion concerning Mr. Peeples' comments.

Ms. Leal accepted the amendment as a friendly amendment. The amended motion was adopted by unanimous vote.

The Chairman moved to agenda item eighteen, discussion and possible action regarding TREC policy concerning applicants who have passed a national examination certified by a national real estate regulators association. Mr. Thorburn stated that this agenda item would define a policy statement and cause it to be in effect until the rule that had been proposed under agenda item eleven became effective. Mr. Jokl, seconded by Mr. Austin, moved that the Commission establish a TREC policy concerning recent amendments to 22 TAC section 535.61(g) adopted on June 19, 2006 to clarify that the Commission may waive the national portion of the examination of an applicant for a broker or salesperson license only if the applicant maintains a license equivalent to the license being applied for. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item nineteen, report on examination services by Tadas Dabsys, Vice President, PSI Examination Services and discussion, review, and possible action to extend contract for examination services with PSI Examination Services. Mr. Dabsys presented the report for discussion and review. There was discussion concerning the examination pass rates. After discussion, Mr. Jokl, seconded by Mr. Austin, moved to extend the contract for two additional years. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twenty, discussion and possible action to approve annual internal audit report. Rene Gonzalez of Garza, Gonzalez and Associates, presented the agenda item for discussion and possible action. After discussion, Mr. Flores, seconded by Ms. Hull, moved to approve the report as submitted. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twenty-one, discussion and possible action to

approve Legislative Appropriations Request. Mr. Thorburn presented the agenda item for discussion and possible action. He stated that this document includes, in the Administrator's Statement, the nine exceptional items that came out of the Strategic Planning process. Mr. Jokl, seconded by Mr. Flores, moved to approve the Legislative Appropriations Request as submitted. There was discussion concerning the Administrator's Statement and also material that would be submitted at the Joint Budget Hearing on August 22, 2006. Comments were offered by Sabrina Hassumani, Assistant Administrator and Rebecca Ray regarding TREC services. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item twenty-two, discussion and possible action to approve Information Technology Detail. Mr. Watson presented the agenda item for discussion and possible action. Mr. Jokl, seconded by Mr. Austin, moved to approve the Information Technology Detail. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twenty-three, consideration of complaint information. Ms. Lindquist requested permission to open complaints against the following individuals:

- Maria Alaniz, Celeste Marie Morris, Erica Lorraine Sanchez and Janet J. Shaw for failing to complete their Mandatory Continuing Education (MCE) hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f).
- Richard Allen Small, Jr based upon a newspaper article delivered to a staff member, for conduct which constitutes dishonest dealings, bad faith, or untrustworthiness in violation of section 1101.652 (b)(2) of the Texas Occupations Code.
- Myrna Trevizo based upon a newspaper article delivered to a Texas Real Estate Commission staff member, for unlicensed brokerage activity, in violation of sections 1101.351 and 1101.758 of the Texas Occupations Code.

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

Mr. Walton moved to agenda item twenty-four, motion for Rehearing in the Matter of Rosalyn Patricia Duncan Fagen, Hearing No. 06-74-060548. Ms. Lindquist stated that the Enforcement Division had closed the case against Ms. Fagan based upon the fact that Ms. Fagan's real estate salesperson's license expired July 31, 2006. She stated that it was the opinion of the Enforcement Division that the Commission no longer had jurisdiction over the matter.

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

The Chairman moved to agenda item twenty-six, scheduling future meetings and adjournment. The next meetings are scheduled for September 27, 2006 in San Antonio and December 4, 2006 in Austin. The Chairman adjourned the meeting at 11:36 a.m.

APPROVED this the 27th day of September, A.D. 2006.

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John Walton  
Chairman

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

Wayne Thorburn  
Administrator