

MINUTES
Texas Real Estate Commission
December 4, 2006
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, December 4, 2006. In addition to Chairman Walton, members present were John Eckstrum, Tom Mesa, James Austin, Louise Hull, Elizabeth Leal, Bill Flores and Mary Frances Burleson. Paul Jordan was absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Della Lindquist, Director of Enforcement; Karen Alexander, Chief Accountant; Tom Watson, Director of Information Services and Patricia Holder, Executive Assistant.

The Chairman introduced the two new members, John D. Eckstrum of Conroe and Tom C. Mesa of Pasadena. Chairman Walton presented a plaque to Commissioner Austin in recognition of his service to the commission.

Ms. Burleson, seconded by Ms. Leal, moved to appoint John Eckstrum as the Ex Officio Member of the Real Estate Center Advisory Board.

Commissioner Leal led the attendees in the Texas pledge of allegiance.

Mr. Walton called for agenda item two, minutes of the September 27, 2006, Commission meeting. Mr. Austin, seconded by Ms. Burleson, 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 on the L1 and L2 reports. She stated that for the first time this year there was a decline in the number of original applications and a five percent drop in the number of two year renewals as compared to last year. Ms. Hassumani introduced a new employee in Licensing, Janna Banigo and two new employees in Cashier, Lashonda Reese and Beverly Body-Johnson.

Ms. Hassumani also announced that as part of staff reorganization, Karen Alexander would take over as Director of Staff Services January 1, 2007, and Gwen Jackson would become the Director of the newly formed division of Education, Licensing and Cashier. The Communications department would become a part of Administration.

Ms. Lindquist reported on the Enforcement Division's activities. Four hundred and seventy-one cases were opened in the month of October and three hundred and eighty-two cases were closed.

Mr. Watson, Director of Information Services, presented the I1 report. He introduced two new staff members, Paul Cooper-systems analyst and Bob Swanson- computer operator.

Ms. Alexander, Chief Accountant, presented the staff services report.

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

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 9:19 a.m. The meeting was called back to order at 9:30 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 claim for possible action:

RF 07-004, Marlan McCormack v. Jennifer Sloan, in the amount of \$50,000 in actual damages. Mr. Austin, seconded by Ms. Leal, 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 22 TAC §§537.11, 537.20-.23, 537.26-.28, 537.30-.33, 537.35, 537.37, 537.36-.41, 537.43-.49, concerning Professional Agreements and Standard Contract Forms. Ms. DeHay presented agenda item seven for discussion and possible action. Ms. DeHay explained that the amendments to Chapter 537 adopt by reference four revised contract forms to be used by Texas real estate licensees and restructure and clarify the rules by removing redundant provisions. The amendment to §537.11 deletes the text in subsection (a). The amendments to §§537.20-.23, 537.26-.28, 537.30-.33, 537.35, 537.37, 537.36-.41, and 537.43-.49 add the text deleted from §537.11(a) as appropriate for each section and form so that the description of each form is included in the section that adopts the form by reference. In addition, the amendments to each section include a reference to the commission's website as another means by which a person may obtain the form. Generally speaking the revisions to each of the forms are primarily non-substantive in nature and update them for consistency with existing contract forms that have been revised in the recent past. Minor non-substantive typographical errors were corrected on the proposed forms. The amendment to §537.26 adopts by reference Standard Contract Form TREC No. 15-4, Seller's Temporary Lease. Paragraph 12 is revised to require the tenant to provide the landlord with door keys and access codes to allow access to the property during the term of the lease. Paragraph 24 is revised to include a blank for e-mail addresses. The blank line for the execution date is removed as the execution date is provided for in the contract to which the lease is attached.

The amendment to §537.27 adopts by reference Standard Contract Form TREC No. 16-4, Buyer's Temporary Lease. Paragraph 12 is revised to require the tenant to provide the landlord with door keys and access codes to allow access to the property during the term of the lease. Paragraph 14 is revised to add equipment and appliances to the list of specific expenses of repairing, replacing and maintaining the property that the buyer/tenant will bear. Paragraph 24 is revised to include a blank for e-mail addresses. The blank line for the execution date is removed as the execution date is provided for in the contract to which the lease is attached.

The amendment to §537.33 adopts by reference Standard Contract Form TREC No. 26-5, Seller Financing Condition Addendum. Regarding proposed revisions to paragraph C, a blank line for the interest rate of the note is added; a provision addressing the interest rate of matured unpaid amount is added; subparagraphs (2) and (3) provide for a choice of monthly installments rather than an option to fill in the blanks on the type of installment; a note is added to subparagraph D(1) which states that the buyer's liability to pay the note will continue unless the buyer obtains a release of liability from the Seller; subparagraph D(2)(a) is revised by adding "ad valorem" before "taxes".

The amendment to §537.37 adopts by reference Standard Contract Form TREC No. 30-6, Residential Condominium Contract (Resale). The change to the form fixes a typographical error in paragraph 7.F. No comments were received.

Ms. Leal, seconded by Ms. Burlison, moved to adopt the amendment as presented with a mandatory use date of March 1, 2007. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eight, discussion and possible action to propose amendments to 22 TAC §535.223, concerning standard inspection report forms. Ms. DeHay stated that the amendment would delete a provision that exempts home inspectors from the requirement to use the promulgated Inspection Report Form for inspections for which a relocation company or a seller's employer requires use of a different form. Thus licensed home inspectors would be required to use the Inspection Report for such inspections.

The proposed amendment was recommended by the Texas Real Estate Inspector Committee.

Comments in favor of the amendment were offered by Rodney George, Professional Inspector, of Irving. After discussion, Mr. Austin, seconded by Ms. Leal, moved to propose the amendments and forms as presented by staff. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion and possible action to adopt the review of: (a) 22 TAC Chapter 534 concerning General Administration and (b) 22 TAC Chapter 537 concerning Professional Agreements and Standard Contracts. Ms. DeHay stated that no comments had been received. Mr. Eckstrum, seconded by Mr. Austin, moved to adopt the review as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item ten, discussion and possible action to approve Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund investment policies under the Public Funds Investment Act. Ms. Alexander presented the agenda item for discussion and possible action. After discussion, Mr. Flores, seconded by Mr. Austin, moved to approve the investment policies. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eleven, discussion and possible action to establish procedure for or to make appointment to the Texas Real Estate Inspector Committee. Mr. Thorburn presented the agenda item for discussion and possible action. Mr. Thorburn stated that on January 31, 2007 the term of office for three members of the Texas Real Estate Inspector Committee will expire. Individuals are appointed by the Texas Real Estate Commission for a period of six years.

Applicants must have five years experience as a professional inspector and be actively involved as an inspector at the time of appointment.

Mr. Thorburn suggested that the Texas Real Estate Commission appoint three individuals to these positions at its meeting on February 26, 2007. Also, individuals wishing to be considered for appointment to the committee should submit a letter requesting consideration along with a resume and any letters of recommendation addressed to: *Chairman, Texas Real Estate Commission, Post Office Box 12188, Austin, TX 78711-2188, Attention: Inspector Committee Appointment* no later than January 31, 2007. All such material submitted will be provided to the Members of the Texas Real Estate Commission for their review and consideration prior to the February 26th meeting. Ms. Hull, seconded by Mr. Eckstrum, moved to accept Mr. Thorburn's procedure for making appointments to the Texas Real Estate Inspector Committee with the addition that the Chairman would appoint a three-member task force to assist in the selection process. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, discussion and possible action on legislative housekeeping bills and other anticipated legislation that may impact the real estate industry. There was discussion concerning HB 222, which provides the Commission with limited responsibilities concerning the regulation of home owner's associations. There was additional discussion concerning the various bills filed that would affect TREC. Minor Peoples, Real Estate Institute of Corpus Christi, offered comments and concerns regarding the reporting of pass/fail rates of the Texas real estate examinations by school which had been recommended by the Sunset Commission. No action was taken on this agenda item.

Chairman Walton moved to agenda item thirteen, discussion and possible action to establish procedure for or to make appointment to the Mortgage Broker Advisory Committee. After discussion, Ms. Burlison, seconded by Mr. Eckstrum, moved to extend the date to accept resumes to January 31, 2007, ask the Chairman to appoint a task force to help in the selection of applicants and extend the date for appointment to the February 26, 2007 meeting.

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

- Carol Jean Kilby, Felicia Unice Barrs, Lepori Deweylene, Johnny Longoria, Jr., Rebecca Ramos Powers, Victoria Irene Lopez, Ryan Alan Moore, Robin Glazener Mueller, Jacqueline Elaine Lee, Emelia D. Dziadon, Diane Marie Alexander, Alysha Verne Morgan, Tracey Michelle Richardson, Sabrino Bulloch Miranda and Toni M. Ellington for failing to complete their Mandatory Continuing Education hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f). Mr. Eckstrum, seconded by Ms. Leal, moved to grant permission to open investigations as requested. The motion was adopted by unanimous vote.
- Hector Mauricio Alba for negligent supervision of a sponsored salesperson in violation of Section 1101.652(b)(1) of the Texas Occupations Code, for paying a commission or a fee to or dividing a commission or fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for compensation for services as a real estate agent, in violation of Section 1101.652(b)(11) of the Texas Occupations Code, and for establishing an association by employment or otherwise with a person other than a license

holder if the person is expected or required to act as a license holder, in violation of Section 1101.652(b)(26) of the Texas Occupations Code. Also, for procuring or attempting to procure a license under this chapter for the license holder or a salesperson 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) and for possible unlicensed real estate activity and violations of Sections 1101.351(a)(1) and 1101.758 of the Texas Occupations Code.

William Boyd Shoff based on information received from a special agent in the Office of the Inspector General, for entering a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence in violation of §1101.652(a)(1) of the Texas Occupations Code. Also, for failing to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of nolo contendere, that the person has been convicted of or entered a plea of nolo contendere to a felony or a criminal offense involving fraud in violation of §1101.652(a)(9) of the Texas Occupations Code.

Act Metro Properties, Inc. and Timothy Bryant Teas based on information obtained during the investigation of applications for late renewal of real estate licenses, for negligent supervision of a sponsored salesperson, in violation of Section 1101.652(b)(1) of the Texas Occupations Code, for paying a commission or a fee to or dividing a commission or fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for compensation for services as a real estate agent, in violation of Section 1101.652(b)(11) of the Texas Occupations Code, and for establishing an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder, in violation of Section 1101.652(b)(26) of the Texas Occupations Code.

Anthony Lee Antell based on information given to a Texas Real Estate Commission staff member, for paying a commission to someone not licensed as a real estate salesperson in violation of section 1101.652(b)(11) in violation of the Texas Occupations Code.

John Robert Prell, (dba Creekview Realty) based on information given to a Texas Real Estate Commission staff member, for publishing or causing to be published an advertisement, including an advertisement by newspaper, radio, television, the Internet, or display, that misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent in violation of section 1101.652(b)(23) of the Texas Occupations Code.

Gustavo Gonzales, Vincent K. Greene, Rodney A. Hayes, Charlotte Yevette Johnson and Grant Paul McWhirter based on information given to a Texas Real Estate Commission staff member, and information obtained during the investigation of applications for late renewal of real estate licenses, the Enforcement Division requests authorization to initiate an investigation on the following person for unlicensed brokerage activity, in violation of sections 1101.351(a)(1) and 1101.758 of the Texas Occupations Code. Ms. Burleson, seconded by Mr. Mesa, moved to grant permission to open investigations as requested. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fifteen, motion for Rehearing in the Matter of Andrew Blake Peltier, Hearing No. 06-265-062451. Leena Chaphekar, staff attorney, appeared for the Enforcement Division. Mr. Peltier appeared pro se.

After discussion, the Chairman called for consideration of the motion for rehearing. The motion was denied by unanimous vote.

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

The Chairman moved to agenda item seventeen, scheduling future meetings and adjournment. The next meetings are scheduled for February 26, 2007 and April 23, 2007 in Austin. The Chairman adjourned the meeting at 10:45 a.m.

APPROVED this the 26th day of February, A.D. 2007.

John Walton
Chairman

ATTEST: _____
Wayne Thorburn
Administrator