

MINUTES
Texas Real Estate Commission
February 26, 2007
Room 235, 1101 Camino La Costa
Austin, Texas

Chairman John Walton called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, February 26, 2007. In addition to Chairman Walton, members present were John Eckstrum, Tom Mesa, Paul Jordan, Louise Hull, Elizabeth Leal, Bill Flores and Mary Frances Burleson. Commissioner Alley was absent.

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

The Chairman led the attendees in the pledge of allegiance.

Chairman Walton moved to agenda item two, introduction of new TREC Commissioner Troy C. Alley, Jr. He stated that Mr. Alley from Arlington had been appointed to replace Commissioner Austin, but was unable to attend because of illness.

Mr. Walton moved to agenda item three, minutes of the December 4, 2006, Commission meeting. Mr. Flores, seconded by Ms. Burleson, moved to approve the minutes as written. The motion was adopted by unanimous vote.

The Chairman moved to agenda item four, election of vice-chairperson and secretary. Ms. Leal nominated John Eckstrum for vice-chairperson. Mr. Eckstrum was elected by unanimous vote. Ms. Burleson nominated Tom C. Mesa for secretary. Mr. Mesa was elected by unanimous vote.

Chairman Walton moved to agenda item five, staff reports; committee reports. Ms. Jackson 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. Ms. Jackson stated that the decrease in the number of applications was due to the significant increase in the number of applications in December 2006 because of the change in prelicensure education requirements that went into effect January 2007. Ms. Jackson introduced a new employee in the Cashier section, Iben Lockingen.

Ms. Lindquist reported on the Enforcement Division's activities. Ms. Lindquist stated that because of the online renewals there had been a significant decrease in the number of administrative cases dealing with unanswered questions on the renewal form. Three hundred and six cases were opened in the month of December and three hundred and one cases were closed.

Mr. Watson, Director of Information Services, presented the I1 report. He stated that as of December, 85.6% of all renewals were being done online. There was discussion concerning renewing online and licensees who completed the required education for renewal, but neglected to pay the renewal fee.

Ms. Alexander, Director of Staff Services, presented the staff services report. She stated that TREC would be transferring funds from the Real Estate Inspection Recovery Fund, which was in

excess of its statutory cap of \$600,000, as of December 31, 2006, to the General Fund. There was discussion concerning the increase in the number of claims paid from the Recovery Trust Fund Account and the Real Estate Inspection Recovery Fund.

The Chairman moved to agenda item six, general comments from visitors. No comments were offered. Mr. Walton introduced Paul Garrett, Jack Bibb, and Mr. Walton's son, Wayne, daughter, Wendy and granddaughter, Brianna, all from Lubbock.

Chairman Walton moved to agenda item seven, 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 9:26 a.m. The meeting was called back to order at 9:47 a.m.

Chairman Walton moved to agenda item eight, 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 07-003, Michael Wofryd v. Robert Lee Flores, in the amount of \$50,000 in actual damages. Mr. Eckstrum, seconded by Mr. Mesa, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion and possible action to adopt amendments to 22 TAC §535.223 concerning Standard Inspection Reports. Ms. DeHay presented agenda item nine for discussion and possible action. Ms. DeHay stated that the amendment deletes 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.

Ms. DeHay further stated that TREC received three comments on the amendment, including a comment from the Worldwide ERC. One comment was in favor of the amendment.

One commenter opposed the amendment because of alleged misconduct and conflict of interest by one of the Texas Real Estate Inspector Committee (TREIC) members for filing "frivolous" complaints in 2004 against the commenter apparently related to alleged violations of current §535.223. The commission believes that any alleged misconduct on the part of one TREIC member related to a closed complaint is not a sufficient reason to delay taking action on the amendment.

One commenter opposed the amendment because the ERC Relocation Home Inspector Report form is widely used for relocation inspections and the uniformity of forms is critical in the relocation industry. The commenter also suggests as an alternative that stronger disclosures could be required when the ERC form is utilized. The commission respectfully disagrees with the commenter and believes that uniformity and consistency of inspection report forms promulgated by TREC for use in all home inspections for buyers and sellers in Texas provides neutral, across the board consumer

protection. As stated above, the ERC form may be attached to the promulgated Inspection Report Form if required by the parties.

After discussion, Ms. Leal, seconded by Ms. Burleson, moved to adopt the amendments as proposed. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item ten, discussion and possible action to propose amendments to (a) 22 TAC §§537.21-.23 concerning Professional Agreement and Standard Contracts, (b) 22 TAC §537.35 concerning Professional Agreement and Standard Contracts, (c) 22 TAC §§537.39-.41 concerning Professional Agreement and Standard Contracts and (d) 22 TAC §537.48 concerning Professional Agreement and Standard Contracts. Ms. DeHay presented the agenda item for discussion and possible action. The amendments would adopt by reference eight revised contract forms to be used by Texas real estate licensees. Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendments to §537. 21 would adopt by reference Standard Contract Form TREC No. 10-5, Addendum for Sale of Property by Buyer. The amendments to §537.22 would adopt by reference Standard Contract Form TREC No. 11-6, Addendum for "Back-Up" Contract. The amendment to §537.23 would adopt by reference Standard Contract Form TREC No. 12-2, Addendum for Release of Liability on Assumed-Loan and/or Restoration of Seller's VA Entitlement. The amendment to §537.35 would adopt by reference Standard Contract Form TREC No. 28-1, Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum. The amendment to §537.39 would adopt by reference Standard Contract Form TREC No. 32-1, Condominium Resale Certificate. The amendment to §537.40 would adopt by reference Standard Contract Form TREC No. 33-1, Addendum for Coastal Area Property. The amendment to §537.41 would adopt by reference Standard Contract Form TREC No. 34-2, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway. The amendment to §537.48 would adopt by reference Standard Contract Form TREC No. 41-1, Loan Assumption Addendum.

After discussion, Ms. Burleson, seconded by Ms. Leal, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eleven, discussion and possible action to propose schedule of rule reviews for 2007. Ms. DeHay presented the item for discussion and possible action. Ms. Leal, seconded by Mr. Flores, moved to propose the schedule of rule reviews as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item twelve, discussion and possible action on legislative housekeeping bills and other anticipated legislation that may impact the real estate industry. Ms. DeHay presented the agenda item for discussion and possible action. She reported that the TREC housekeeping bill had been filed and that it is HB 1530, companion bill SB 651. There was

discussion concerning SB 222, which requires property owner's associations subject to that chapter to annually file certain subdivision information with TREC. No action was taken on this agenda item.

Mr. Walton moved to agenda item thirteen, discussion and possible action on TREC legislative appropriations request. Mr. Thorburn presented the item for discussion. He reported on the various appropriations committee hearings and finance committee hearings that staff and the Chairman had attended to provide testimony and resource materials. There was discussion concerning TREC's request for exceptional items and the response received from the House Appropriations Committee and the Senate Finance Committee. No action was taken on this agenda item.

The Chairman moved to agenda item fourteen, discussion and possible action to make appointment to the Mortgage Broker Advisory Committee. Mr. Thorburn presented the agenda item for discussion and possible action. After discussion, Ms. Leal, seconded by Mr. Flores, moved to appoint Ann Walker to the Mortgage Broker Advisory Committee. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item fifteen, discussion and possible action to make appointments to the Texas Real Estate Inspector Committee. Mr. Thorburn presented the agenda item for discussion and possible action. After discussion, Mr. Eckstrum nominated Brad Phillips, Mark Eberwine and Larry Foster. Ms. Hull seconded the nomination of Brad Phillips; Ms. Leal, seconded the nominations of Mark Eberwine and Larry Foster. Mr. Flores, seconded by Ms. Hull, nominated Fred Willcox.

The Chairman called for a vote on the appointment of Brad Phillips. Mr. Phillips was appointed to the Committee by unanimous vote.

The Chairman called for a vote on the appointment of Mark Eberwine. Mr. Mesa, Mr. Jordan, Mr. Eckstrum and Mr. Flores voted against the appointment. Ms. Leal, Ms. Hull, and Ms. Burleson voted for the appointment. Mr. Eberwine was not appointed to the Committee.

Mr. Walton called for a vote on the appointment of Larry Foster. Mr. Foster was appointed to the Committee by unanimous vote.

Chairman Walton called for a vote on the appointment of Fred Willcox. Mr. Willcox was appointed to the Committee by unanimous vote.

The Chairman moved to agenda item sixteen, presentation by Tom Magallanes, Executive Director Business Development, of Pearson VUE, a licensing examination vendor, and discussion regarding the matters raised in the presentation. The presentation was made by Tom Magallanes and Dr. Jim Fryer.

Mr. Walton moved to agenda item seventeen, discussion and possible action regarding the job description, job posting, selection criteria and selection process for the TREC administrator position. The Chairman appointed Mr. Eckstrum and Ms. Burleson to join him as members of a Selection Sub-Committee. After discussion, Ms. Leal, seconded by Mr. Eckstrum, moved to post job vacancy announcement as presented. There was further discussion concerning the fact that the Assistant Administrator position could be vacant in the near future. It was decided that instead of

having a definite cut off date for accepting applications, that the posting would state that the position is "open until filled".

Chairman Walton moved to agenda item eighteen, discussion and possible action to adopt resolutions concerning recognition of licensees with 50 years of licensure. Mr. Thorburn presented the agenda item for discussion and possible action. Mr. Thorburn stated that in 1999 on the 50th anniversary of the Real Estate Commission, TREC began recognizing licensees who had been licensed for 50 years. He presented a list of 63 licensees to the Commission who have been licensed 50 years or more and asked that the board adopt resolutions recognizing these individuals. Mr. Flores, seconded by Mr. Eckstrum, moved to adopt the resolutions. The motion was adopted by unanimous vote.

The Chairman read the resolution for the record.

"Whereas the Texas Real Estate Commission was established as a state agency by the 51st Texas Legislature in 1949, and

"Whereas the Texas Real Estate Commission has served the people of Texas as the licensing and regulating agency for the real estate industry for the past fifty-eight years, and

"Whereas it is only appropriate that the Texas Real Estate Commission recognize those individuals who have served the people of Texas as real estate professionals for fifty years,

"Now therefore be it hereby resolved that the Texas Real Estate Commission, meeting in session on this twenty-sixth day of February in the year 2007, proudly congratulates and commends

<NAME OF LICENSEE>

for more than fifty years of services as a licensed real estate professional in Texas, having been continuously licensed since <date>."

The Chairman moved to agenda item nineteen, discussion and possible action to authorize Barbara Kolb as Chief Accountant to approve TREC expenditures. Ms. Alexander presented the agenda item for discussion and possible action. Ms. Leal, seconded by Mr. Mesa, moved to authorize Ms. Kolb to approve TREC expenditures. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twenty, discussion and possible action to designate Karen Alexander as Investment Officer and Barbara Kolb as Alternate Investment Officer. Ms. Alexander presented the agenda item for discussion and possible action. Ms. Burleson, seconded by Mr. Eckstrum, moved to designate Ms. Alexander as Investment Officer and Ms. Kolb as Alternate Investment Officer. The motion was adopted by unanimous vote.

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

Brenda Joyce Hoy, Richard H. Middleton, Jr., Hubert Turner Odom, Franklin Leonard Sellers, Jr., J.H. Hinojosa II, and Lottie Susan Odom 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).

Chester Hunt for unlicensed brokerage activity, in violation of sections 1101.351(a)(1) and 1101.758 of the Texas Occupations Code.

Blake Walter Dunlap for conduct which constitutes dishonest deals, bad faith or untrustworthiness in violation of section 1101.652(b)(2) of the Texas Occupations Code.

Mr. Flores, seconded by Ms. Leal, moved to authorize the investigations as requested. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item twenty-two, motion for Rehearing in the Matter of Philip Perez Romo, Hearing No. 06-348-051399. Mr. Jordan took the chair for this agenda item.

Devon Bijansky, staff attorney, appeared for the Enforcement Division. Thomas Culpepper, attorney, appeared for Mr. Romo.

Mr. Culpepper presented the motion for rehearing for Mr. Romo. Ms. Bijansky presented the Enforcement Division's answer to the motion for rehearing. After deliberation, Mr. Jordan called for consideration of the motion for rehearing. The motion was denied by unanimous vote.

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

The Chairman moved to agenda item twenty-four, scheduling future meetings and adjournment. The next meetings are scheduled for April 23, 2007 and June 4, 2007 in Austin. The Chairman adjourned the meeting at 11:24 a.m.

APPROVED this the 23rd day of April, A.D. 2007.

John Walton
Chairman

ATTEST: _____

Wayne Thorburn
Administrator