

MINUTES
Texas Real Estate Commission
June 4, 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, June 4, 2007. In addition to Chairman Walton, members present were John Eckstrum, Louise Hull, Elizabeth Leal, Troy C. Alley, Paul Jordan, Bill Flores and Mary Frances Burleson. Commissioner Mesa was absent.

Staff present were: Wayne Thorburn, 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.

Commissioner Eckstrum led the attendees in the pledge of allegiance.

Chairman Walton moved to agenda item two, minutes of April 23, 2007, Commission meeting. Ms. Burleson, seconded by Mr. Eckstrum, moved to approve the minutes as written. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item three, staff reports; committee reports. Mr. Thorburn announced that staff would be speaking to the April staff reports which had been distributed to the members and were on the dais. Ms. Jackson reported on the L1 and L2 reports. Ms. Jackson stated that in April there were a total of 151,461 brokers and salespersons; 4,104 inspectors; and 1,389 easement and right-of-way registrants. For April the total number of licensees and registrants was 156,954. There was discussion concerning the percentage of 1st year renewals.

Ms. Lindquist reported on the Enforcement Division's activities.

Mr. Watson, Director of Information Services, presented the I1 report. There was discussion concerning the percentage of online applications. There was discussion concerning renewing online.

Ms. Alexander, Director of Staff Services, presented the staff services report. She stated that for the first month since May 2006, there had been no payments out of the Recovery Trust Account in April 2007.

Chairman Walton moved to agenda item four, Texas Real Estate Inspector Committee report. Vernon Davis, chairman of the Texas Real Estate Inspector Committee. Mr. Davis stated that at the meeting on May 7, 2007, he was elected as chair, Billy Meyerdirk was elected as vice-chair and Phillip Stojanik was elected secretary. A new Standards of Practice committee was appointed. Curtis Carr would serve as chair with Brad Phillips and Brian Murphy as members and Russell Strahan as alternative.

Mr. Walton moved to agenda item five, general comments from visitors. Rebecca Ray, Kaplan Professional Schools, thanked Mr. Thorburn for everything he had done during his time as administrator.

The Chairman moved to agenda item six and announced the 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; employment law; the Texas Open Meetings Act; and to discuss personnel matters regarding the administrator position under Texas Government Code, §§551.071 and 551.074. Executive session began at 9:16 a.m. The meeting was called back to order at 10:10 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 claim for possible action:

RF 07-011, John Derr v. June Dongog, in the amount of \$3,000 in actual damages. Ms. Hull, seconded by Mr. Eckstrum, moved to approve payment. The motion was adopted by unanimous vote.

RF 07-012, Prudential ADA Realtors v. Carolyn Vaughan, in the amount of \$55,000 in actual damages and \$6,700 in attorney fees. Mr. Alley, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

After discussion, Ms. Leal, seconded by Mr. Eckstrum, moved to disavow all actions made at the Texas Real Estate Inspector Committee meeting held on May 7, 2007. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to adopt rule review on: (a) 22 TAC Chapter 541 regarding Rules Relating to the Provisions of Texas Occupations Code, Chapter 53; and (b) 22 TAC Chapter 535 (§§535.1-.81) regarding General Provisions. Ms. DeHay stated that no comments had been received and no changes had been made. Mr. Flores, seconded by Mr. Eckstrum, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item nine, discussion and possible action on TREC's sunset bill, TREC's legislative housekeeping bill, and other legislation that may impact the real estate industry. Mr. Thorburn presented the agenda item for discussion. He stated that two amendments were added to SB 914 (TREC Sunset Bill) at the last minute. One would not permit anyone to complete an online real estate continuing education course in less than a 24 hour period. The other amendment requires home inspectors to have liability insurance. Mr. Thorburn stated that HB 1530 (TREC Housekeeping Bill) also had last minute additions to it. One amendment allows a member of the legislature who is also a real estate licensee to be exempted from 3 of the 6 legal hours that are required for renewal. The other amendment would require background checks from applicants and licensees renewing their license. Ms. DeHay reported that TREC was already discussing the procedures that would need to be implemented to satisfy this change in the law as of January 1, 2008. There was discussion concerning this subject.

Mr. Thorburn discussed the various changes that would be implemented by TREC due to SB 914 and HB 1530.

Chairman Walton moved to agenda item ten, discussion and possible action on TREC's legislative appropriations request. Mr. Thorburn presented the report on the legislative appropriations request.

The Chairman moved to agenda item eleven, discussion and possible action regarding TREC's interpretation of SB 914 regarding liability insurance for home inspectors. Ms. Leal, seconded by Mr. Eckstrum, moved, "Contingent upon passage of SB 914, I move that the Commission authorize the TREC Administrator to request an opinion from the office of the attorney general about the provisions of SB 914 which require an applicant for license or renewal of a home inspector license to provide proof that the applicant carries liability insurance with a minimum level of \$100,000 per occurrence of coverage. Specifically, the opinion request should seek clarification as to whether the law requires an applicant to carry general liability insurance or professional liability insurance or both. If the bill requires both general liability insurance and professional liability insurance how should the commission interpret the \$100,000 per occurrence requirement? Would the bill require a minimum of \$100,000 per occurrence of each type or \$100,000 combined coverage for both? "

The motion was adopted by unanimous vote.

Mr. Flores, seconded by Ms. Hull, moved "That the Commission's policy be to require an applicant for a license or a renewal of home inspector's license to show proof that the applicant carries professional errors and omissions and general liability insurance coverage with a minimum level of \$100,000 per occurrence effective concurrently with the provisions of the bill. This motion is contingent on the passage of SB 914." Mr. Flores stated that this motion was to aid staff by providing a policy statement while waiting on a response to the request for an Attorney General's Opinion. There was further discussion to clarify that this would be \$100,000 total for both types of insurance.

Comments were offered by Larry Foster, Inspector Committee member, against the motion. Fred Wilcox, Inspector Committee member, spoke against the amendment. Danny South, president of Texas Association of Real Estate Inspectors, spoke against the motion. Cade Jackson, inspector, spoke against the motion.

After discussion, Ms. Hull, seconded by Mr. Jordan, moved to amend the motion to require errors and omissions insurance only. The amendment was adopted by unanimous vote.

Frank Condor spoke against the motion. After discussion, Mr. Flores called the question. The Chairman called for a vote on calling the question. The Commissioners voted to accept calling the question by unanimous vote.

Mr. Flores restated the motion as amended.

"That the Commission's policy is to require an applicant for a license or a renewal of home inspector's license to show proof that the applicant carries professional liability insurance coverage with a minimum level of \$100,000 per occurrence effective concurrently with the provisions of the bill. This policy is effective upon the passage of SB 914." The Chairman called for a vote on the

motion. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item thirteen, discussion and possible action to establish a procedure to create an inspector advisory committee and make appointments thereto. The Chairman appointed Commissioners Alley, Eckstrum and Leal to a task force to determine the how procedure and establish a protocol for appointing an inspector advisory committee. Mr. Eckstrum was appointed as chair of the task force.

Mr. Walton moved to agenda item fourteen, discussion and possible action regarding the job description, job posting, selection criteria and selection process for the TREC administrator position including selection of applicants. Mr. Walton stated that a meeting of the Administrator Selection Committee is scheduled for June 13, 2007, at Commission headquarters.

The Chairman moved to agenda item fifteen, discussion and possible action to authorize interim TREC administrator to approve expenditures. Mr. Thorburn presented the agenda item for discussion and possible action. He stated that at the last meeting of the Texas Appraiser Licensing and Certification Board (TALCB), Loretta DeHay, general counsel for TREC, was appointed interim commissioner for TALCB. Ms. Leal, seconded by Ms. Burlison, moved to appoint Loretta DeHay as interim administrator for TREC.

Chairman Walton moved to agenda item sixteen, discussion and possible action to authorize interim TREC administrator to approve expenditures. Mr. Eckstrum, seconded by Ms. Leal, moved to authorize the interim administrator to approve expenditures. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item seventeen, discussion and possible action to authorize Barbara Jenkins and Loretta DeHay to approve payroll expenditures. Ms. Leal, seconded by Mr. Eckstrum, moved to grant authorization as requested. The motion was adopted by unanimous vote.

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

Robert Paul Rayner based upon information obtained in connection with complaint file no. 051330, for establishing an association with an unlicensed person in violation of section 1101.652(b)(26) of the Texas Occupations Code.

Charles Masinter and Paul Thompson in connection with complaint file no. 052524 for possible unlicensed real estate activity an violations of Sections 1101.351(a)(1) and 1101.758 of the Texas Occupations Code. Specifically, for arranging for a person to occupy a vacant residential property that the persons did not own or lease from its owner and for which the persons received a valuable consideration for making the arrangement, in violation of §535.13(f) of the Rules of the Texas Real Estate Commission.

Mr. Eckstrum, seconded by Ms. Hull, moved to authorize the investigations as requested.

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

The Chairman moved to agenda item twenty, scheduling future meetings and adjournment. The next meeting is scheduled for August 6, 2007 in Austin. The Chairman adjourned the meeting at 11:45 a.m.

APPROVED this the 6th day of August, A.D. 2007.

John Walton
Chairman

ATTEST: _____

Loretta R. DeHay
Interim Administrator