

MINUTES
Texas Real Estate Commission
August 6, 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, August 6, 2007. In addition to Chairman Walton, members present were John Eckstrum, Louise Hull, Elizabeth Leal, Tom Mesa, Bill Flores, Troy C. Alley and Mary Frances Burleson. Commissioner Jordan was absent.

Staff present were: Loretta DeHay Interim Administrator and 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, minutes of the June 4, 2007 Commission meeting. Mr. Flores, seconded by Mr. Eckstrum, moved to approve the minutes as submitted. The motion was carried by unanimous vote.

The Chairman moved to agenda item three staff reports, committee reports. Ms. Jackson introduced a new employee in the licensing department, Rachel Guerrero. Ms. Jackson reported on the June staff report figures. She stated that there was an increase in the number of late renewals received. She reported that there was a total 167,890 registrants and licensees. There was discussion concerning the number of first time licensees who did not renew. There was further discussion concerning projected numbers of licensees.

Ms. Lindquist reported on the Enforcement Division's activities. Ms. Lindquist reported on the number of administrative and consumer complaints reflected in the reports.

Mr. Watson, Director of Information Services, presented the I1 report. There was discussion concerning the possibility of emphasizing the legal update and ethics courses on the individual licensee's education information page on the web. Mr. Watson introduced a new systems analyst, Gary Lewis.

Ms. Alexander, Director of Staff Services, presented the staff services report. She reported on staff services portion of the June reports. Ms. Alexander introduced a new staff member, Elena Vasquez-Rand.

Mr. Walton moved back to the minutes of the July 16, 2007 commission meeting. Mr. Eckstrum, seconded by Ms. Burleson, moved to approve the minutes as submitted. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item four, recognition of Wayne Thorburn for his contributions to TREC as Administrator from 1997-2007. Mr. Walton entered the following resolution into the minutes:

"Whereas Wayne J. Thorburn, PhD. of Austin, Texas, was selected administrator of the Texas Real Estate Commission by the members of the Commission on December 15, 1997 and

Whereas Dr. Thorburn served with great dedication as administrator of the Texas Real Estate Commission for over ten years and

Whereas throughout his tenure as administrator Dr. Thorburn provided exemplary leadership in carrying out TREC's commitment to protecting consumers, assuring the availability of qualified and honest real estate business professionals and fostering economic growth within Texas and

Whereas in addition to helping establish and oversee the implementation of successful TREC programs and professional licensing education, enforcement of regulations to protect all who are involved in a real estate transaction, Dr. Thorburn represented the State of Texas, by serving as President of the Association of Real Estate License Law Officials in 2005,

Now, therefore, be it hereby resolved that Wayne Thorburn is hereby recognized and honored by the Texas Real Estate Commission for his diligent and outstanding service as administrator of the Commission and be it further resolved that Dr. Thorburn be commended for his dedication to improving and upholding TREC's high standards of excellence and serving and protecting the best interest of all Texans.

Adopted this 6th day of August, 2007 by the Texas Real Estate Commission."

The Chairman presented Mr. Thorburn with an engraved bowl commemorating his service with the Commission. Mr. Thorburn spoke concerning his service with the commission and thanked the members for the resolution and bowl. Ms. Bureson, Mr. Eckstrum, Ms. Leal, Mr. Flores, Ms. Hull, Mr. Mesa and Mr. Alley spoke concerning various experiences they had with Mr. Thorburn.

Mr. Walton moved to agenda item five, introduction of Tim Irvine TREC Administrator as of September 1, 2007. Mr. Irvine spoke briefly thanking the commission for choosing him as the TREC administrator.

Chairman Walton called on Commissioner Hull to report on the Task Force Meeting on July 16, 2007 concerning the update of the TREC Legal Update and TREC Ethics courses. Denise Whisenant, from Texas A&M, along with a group of real estate education professionals met at A&M to update and revise the courses and the final product should be presented to the Commission at the October meeting.

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

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. Executive session began at 9:34 a.m. The meeting was called back to order at 10:00 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 07-014, Dale Lee Jaschke v. Kevin Allen Smith, in the amount of \$50,000 in actual damages.

Mr. Mesa, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion and possible action to adopt emergency rules on: (a) 22 TAC Chapter 533 concerning Practice and Procedure (new §§533.1-8; new §§533.30-.37; and new §533.40); (b) 22 TAC §535.42 concerning Jurisdiction and Authority; (c) 22 TAC §535.51 concerning General Requirements; (d) 22 TAC §535.61 concerning Examinations; (e) 22 TAC §535.63 concerning Education and Experience Requirements for a License; (f) 22 TAC §535.71 concerning Mandatory Continuing Education: Approval; (g) 22 TAC §535.72 concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records; (h) 22 TAC §535.91 concerning Renewal Notices; (i) 22 TAC §535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements; (j) 22 TAC §535.94 concerning Hearing on Application Disapproval: Probationary License; (k) 22 TAC Chapter 535, Subchapter Q concerning Administrative Penalties; (l) 22 TAC Chapter 535, Subchapter R concerning Home Inspectors and (m) 22 TAC Chapter 539, Subchapter O concerning Administrative Penalties. Ms. DeHay presented the individual rules for discussion and possible action. She stated that staff proposed that the list of rules under agenda item nine be adopted on an emergency basis with an effective date of September 1, 2007. The rules would be in effect for at least 120 days with an additional 60 days possible if needed. The rules would be proposed on a regular basis at the October 8, 2007 meeting.

Ms. DeHay moved to agenda item ten, discussion and possible action to adopt the emergency repeal of: (a) 22 TAC Chapter 533 Practice and Procedure (§§533.31 - 533.39) and (b) 22 TAC §535.209 concerning Professional Inspector Corporations and Limited Liability Companies. Mr. Flores, seconded by Mr. Eckstrum, moved to adopt the emergency repeal of 22 TAC Chapter 533. The motion was adopted by unanimous vote. Mr. Flores, seconded by Mr. Mesa, moved to adopt the emergency repeal of 535.209. The motion was adopted by unanimous vote.

Ms. DeHay moved back to agenda nine (a) The new rules are §533.1 concerning definitions of terms found in the chapter; §533.2 concerning the purpose and scope of the chapter; §533.3 concerning filling and notice procedures in a contested case; §533.4 concerning failure to answer, failure to attend a hearing and default; §533.5 concerning the adjudicative hearing record; §533.36 concerning filing of exceptions and replies; §533.7 concerning proposals for decisions; §533.8 concerning final orders, motions for rehearing, and emergency orders; §533.20 concerning informal proceedings; §533.30 concerning alternative dispute resolution (ADR) policy; §533.31 concerning referral of contested matters for alternative dispute resolution procedures; §533.32 concerning appointment of a mediator; §533.33 concerning qualifications of mediators; §533.34 concerning commencement of alternative dispute resolution; §533.35 concerning stipulations; §533.36 concerning agreements; §533.37 concerning confidentiality and §533.40 concerning negotiated rulemaking. The new rules are adopted on an emergency basis to comply with new legislation that transfers the functions of TREC's administrative law judge to the State Office of Administrative Hearings and provides for a negotiated rulemaking process. Mr.

Eckstrum, seconded by Ms. Leal, moved to adopt the rules as stated. The motion was adopted by unanimous vote.

Nine (b) removes a specific section of §535.42 that authorizes the administrative law judge to hear cases. Ms. Leal, seconded by Ms. Burleson, moved to adopt the rule as amended. The motion was adopted by unanimous vote.

Nine (c) adopts on an emergency basis revisions to §535.51 concerning General Requirements and adopts by reference four revised forms. The amendment is adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapters 1101 and 1102 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 is September 1, 2007. The adoption of the amendment permits TREC to comply with the effective date required by both bills. The amendment adopts by reference revised forms to reflect late renewal penalties for applicants for salesperson and broker license as SB 914 provides for such late penalties. Mr. Flores, seconded by Ms. Burleson, moved to adopt the revisions as stated. The motion was adopted by unanimous vote.

Nine (d) and (e) adopt on an emergency basis amendments to §535.61 concerning Examinations and §535.63 concerning Education and Experience Requirements for a License. The amendments are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1101 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914. The effective date of SB 914 is September 1, 2007. The adoption of the amendment permits TREC to comply with the effective date required by the bill. The amendments clarify that new Texas Occupations Code §1101.451(f) regarding late renewals does not apply to education and experience waivers authorized by rule under Texas Occupations Code §1101.362. Ms. Burleson, seconded by Ms. Leal, moved to adopt the amendments to §535.61 and §535.63. The motion was adopted by unanimous vote.

Nine (f) and (g) adopt on an emergency basis amendments to §535.71 concerning Mandatory Continuing Education: Approval and adopts by reference one revised form, and §535.72 concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records. The amendments are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1101 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914. The effective date of SB 914 is September 1, 2007. The adoption of the amendment permits TREC to comply with the effective date required by the bill. The amendments provide the procedure by which education providers must ensure compliance with the new statutory requirement which requires that online Mandatory Continuing Education courses may not be completed in less than 24 hours. Ms. Leal, seconded by Mr. Eckstrum, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Nine (h), (i) and (j) adopt on an emergency basis amendments to §535.91 concerning Renewal Notices, §535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements, and §535.94 concerning Hearing on Application Disapproval: Probationary License. The amendments are adopted on an emergency basis to comply with new legislation that included revisions to

Texas Occupations Code Chapters 1101 and 1102 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 is September 1, 2007. The adoption of the amendments to the rules permits TREC to comply with the effective date required by both bills. The amendments clarify a new provision in Chapter 1101 that permits a 3-hour legislative exemption for mandatory continuing education and delete a provision regarding contested case hearings held by TREC. Ms. Leal, seconded by Mr. Eckstrum moved to adopt the amendments as presented. Ms. Hull, seconded by Ms. Leal, made a friendly amendment to the motion to clarify that the exemption for a legislator should be for the Legal Update portion of the required legal courses only and that a legislator would still be required to take the TREC Ethics course. After discussion, the amendment to the motion was adopted by majority vote with Mr. Flores voting against it. The Chairman called for a vote on the amended motion. The motion was adopted by unanimous vote.

Nine (k) adopts on an emergency basis new Subchapter Q concerning Administrative Penalties, including new §535.191 concerning Schedule of Administrative Penalties. The new subchapter and rule are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1101 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914. The effective date of SB 914 is September 1, 2007. The adoption of the new subchapter and rule permits TREC to comply with the effective date required by the bills.

Ms. Lindquist, Director of Enforcement, explained the development of the matrix and the rule. After discussion, Mr. Flores, seconded by Ms. Leal, moved to adopt the new rule as presented. The motion was adopted by unanimous vote.

Nine (l) adopts on an emergency basis amendments to §535.206 concerning the Texas Real Estate Inspector Committee, §535.208 concerning Application for a License and adopts by reference new Form REI 8-0, Certificate of Insurance, §535.210 concerning Fees, new §535.211 concerning Professional Liability Insurance, §535.212 concerning Education and Experience Requirements for an Inspector License, §535.215 concerning Inactive Inspector Status, §535.216 concerning Renewal of License or Registration, and §535.224 concerning Practice and Procedure. The amendments and new rules are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1102 enacted during the 80th Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 is September 1, 2007. The adoption of the emergency revisions and new rule permits TREC to comply with the effective date required by both bills.

The amendments to §535.206 provide the standards for membership on the Real Estate Inspector Advisory Committee, the amendments to §535.208 provide for home inspector applicants to show proof of professional liability insurance, the amendments to §535.210 establish the fee for an educational evaluation of \$30, new §535.211 provides for home inspector applicants to show proof of professional liability insurance, the amendments to §535.212 provide that under the alternative licensing method for a real estate and professional inspector license, an applicant must have education and experience in lieu of the traditional requirements under three-tier method of licensure, the amendments to §535.215 provide

that a license will revert to inactive status if a licensee is unable to maintain professional liability insurance coverage as required by law, the amendments to §535.216 provide for home inspector renewal applicants to show proof of professional liability insurance, and the amendments to §535.224 delete provisions that authorized the committee to hear disciplinary cases as such cases must, under the new laws, be heard by the State Office of Administrative Hearings.

Ms. Leal, seconded by Mr. Flores, moved to amend §535.206(b)(2) to remove the following language "who are not licensed real estate brokers or salespeople" so that the rule would now read

"The committee consists of nine members appointed by the commission as follows:

(1) six members who have been engaged in the practice of real estate inspecting as professional inspectors for at least five years before the member's appointment and who are actively engaged in that practice; and

(2) three members who represent the public."

After discussion, comments were offered by Larry Foster, Foster Inspections. After further discussion, Ms. Hull, seconded by Mr. Flores, moved to make a friendly amendment to the previous amendment to §535.206(b)(2) to state "three members who represent the public, **who are not registered, certified, or licensed by an occupational regulatory agency in the real estate industry.**

The Chairman called for a vote on the motion as amended. The motion was adopted by unanimous vote.

Ms. DeHay stated that TREC REI 8-0, which was being adopted by reference by §535.208, stated that the section of the form where the individual would choose if it is an occurrence policy or a claims made policy, contains a phrase stating "Length of extended claims discovery period _____ years(must be at least 5 years)." Because of the cost of the extensions she would suggest that that portion of the form be deleted. Ms, Leal, seconded by Mr. Mesa, moved to make a friendly amendment to the permit the revision to the form. The motion was adopted by unanimous vote. Mr. Flores, seconded by Ms. Leal, moved to propose to increase the fee for an education evaluation as stated in §535.210, concerning fees, to \$30, and approve the adoption §535.206, §535.208, §535.210, §535.211, §535.212, §535.215, §535.216 and §535.224 as previously amended and submitted by staff. The motion was adopted by unanimous vote.

Nine (m) adopts on an emergency basis new Chapter O concerning Administrative Penalties including new §539.140 concerning Schedule of Administrative Penalties. The new subchapter and rule are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1303 enacted during the 80th Legislative Session, Regular Session, by Senate Bill 914. The effective date of SB 914 is September 1, 2007. The adoption of the new subchapter and rule permits TREC to comply with the effective date required by the bills.

The new subchapter and rules provide a schedule of administrative penalties to be assessed for violations of the Residential Service Company Act depending on the severity of the violation and other factors detailed in the rules.

Mr. Eckstrum, seconded by Ms. Burleson, moved to adopt the new rule as submitted. The motion was adopted by unanimous rule.

After discussion, Mr. Flores, seconded by Mr. Alley, moved to allow staff to correct a typographical area on the late renewal form for a salesperson. The motion was adopted by unanimous vote.

Agenda item eleven, proposes amendments to §535.101 regarding Fees. This section establishes the fees necessary for the administration of commission's functions. The amendments would remove Texas Online fees from the TREC fee schedule, increase the salesperson application fee from \$50 to \$75, add a provision for late renewal fees, and increase the education evaluation fee from \$20 to \$30. The justification for the amendments is to generate sufficient revenue to fund appropriations by the 80th Legislature (2007). Ms. Leal, seconded by Mr. Flores, moved to propose the amendments as presented. The motion was adopted by unanimous vote.

Agenda item twelve, discussion and possible action on TREC's sunset bill, TREC's legislative housekeeping bill, and other legislation that may impact the real estate industry. There was no discussion of this agenda item.

The Chairman moved to agenda item thirteen, discussion and possible action regarding TREC's request for an attorney general opinion about SB 914's requirements for home inspector liability insurance. Larry Foster, Foster Inspections, spoke concerning broadening the request to the attorney general for an opinion on this subject. Fred Wilcox, Wilcox Inspections, spoke concerning the requirements for inspectors to carry liability insurance. Ms. Leal, seconded by Mr. Flores, moved to resubmit the request for an attorney general's opinion after clarifying whether or not the insurance was to cover acts against public policy.

After discussion, Mr. Flores called the question; the motion was adopted by unanimous vote. After further discussion, Mr. Flores, seconded by Ms. Leal, moved to adopt a policy statement that the Commission require Errors and Omissions insurance for inspectors on only those things that are coverable and not those things that are against public policy. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item fourteen, discussion and possible action to establish a procedure to create an inspector advisory committee and make appointments thereto. Ms. DeHay stated that staff recommended that this agenda item be postponed in order to solicit applications and nominations of individuals to serve on the committee. Ms. Leal, seconded by Ms. Hull, moved to table this issue until the October 8, 2007 meeting. Mr. Wilcox spoke concerning the need to appoint members to this committee as soon as possible. There was discussion concerning notifying licensees and the public about this process. The Chairman called for a vote on the motion. The motion was adopted by unanimous vote. The Chairman requested that the Inspector Task Force to take applications and make recommendations at the next meeting.

The Chairman moved to agenda item fifteen, discussion and possible action to approve OP-H, Seller's Disclosure of Property Condition. Ms. DeHay stated that three changes had been made to the form due to recent legislation: (1) a disclosure regarding "meth" houses; (2) a disclosure regarding smoke alarms; and (3) a disclosure regarding public beaches. The new form reflected the changes concerning these

three disclosures. After discussion, Mr. Flores, seconded by Ms. Burleson moved to approve the revised form. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item sixteen, Discussion and possible action to make appointments to Broker Lawyer Committee. Ms. Burleson, seconded by Mr. Eckstrum, moved to table this item until the October 8, 2007 meeting. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item seventeen, discussion and possible action to authorize the TREC administrator to issue a request for proposals for examination-related services. Ms. Burleson, seconded by Mr. Mesa, moved to authorize the administrator to issue the request. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eighteen, discussion and possible action to authorize the TREC administrator to enter agreed orders, and default orders in contested cases. Ms. Hull, seconded by Mr. Flores, moved to authorize the administrator to enter agreed and default orders. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item nineteen, discussion and possible action to adopt a policy regarding the prioritization of investigations of consumer complaints. Ms. Lindquist, Director of Enforcement, presented the agenda item for discussion and possible action. Mr. Flores, seconded by Mr. Mesa, moved to adopt the policy. The motion was adopted by unanimous vote.

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

Edward Bartolo Barrientes 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.

Michael L. Rothchild for negligent supervision of a sponsored salesperson 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.

Michael Lee Spear 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; and 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.

Cory Christine Culpepper, Steven Ray McFarland and Jewel Cole Ryan 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. Flores, seconded by Ms. Leal, moved to authorize the investigations as requested. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twenty-one, motion for rehearing in the matter of Gerald Page Brockman, Hearing No. 07-250-07114. Ms. Rabenberg, staff attorney, stated that she had received a request to postpone the hearing until the October meeting and the Enforcement department had agreed to this.

Chairman Walton moved to agenda item twenty-two, motion for rehearing in the matter of Douglas Brett Horton, hearing No. 07-251-064376. The Enforcement division was represented by Devon V. Bijansky, staff attorney. No one appeared for Mr. Horton. Ms. Bijansky presented the Enforcement division's response in opposition to Mr. Horton's motion for rehearing. The Chairman called for a vote on granting the rehearing. The motion was denied by unanimous vote.

Mr. Walton 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 October 8, 2007 and December 10, 2007 in Austin. The Chairman adjourned the meeting at 11:37 a.m.

APPROVED this the 8th day of October, A.D. 2007.

John Walton
Chairman

ATTEST: _____
Timothy K. Irvine
Administrator