

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION  
October 8, 2007  
Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, October 8, 2007, at 9:00 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman John Walton presided and Pat Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Walton, Chairman  
Troy Alley  
Adrian Arriaga  
Mary Frances Burleson  
Chris Day  
John Eckstrum  
Elizabeth Leal  
Tom Mesa

Staff present included Tim Irvine, Loretta DeHay, Della Lindquist, Karen Alexander, Gwen Jackson, Tom Watson, and Patricia Holder.

The Chairman led the attendees in the pledge of allegiance.

Chairman Walton moved to agenda item two, minutes of August 6, 2007 Commission meeting. Upon motion of Ms. Burleson, duly seconded by Mr. Eckstrum, the Commission unanimously approved the minutes of the previous meeting as presented.

The Chairman moved to agenda item three. He thanked former Commissioners Louise Hull and Paul Jordan for their service and read the inscriptions from plaques to be presented to them. Although the former Commissioners were not present, there was a round of applause for them.

The Chairman also introduced and welcomed two new Commissioners, Adrian Arriaga and Chris Day.

Chairman Walton moved to agenda item four, staff reports and committee reports. Mr. Irvine spoke briefly concerning the trends that were reflected in the staff reports. Ms. Jackson reported on the L1 report which showed fiscal year comparisons between 2006 and 2007, noting that the report showed an almost 24% increase in broker original applications. The number of late renewals filed and late renewal licenses issued continues to be high. At the end of fiscal year 2007 there were 158,966 licensees and registrants, an increase of 5,707 over the previous fiscal year. Almost 28,000 examinations were administered in FY 2007. There was discussion concerning possible revisions to the renewal notice cards.

Ms. Lindquist, Director of Enforcement, reported on the division's activities. Ms. Lindquist introduced two new attorneys, Nikki Hopkins and Virginia Fields. She stated that another attorney was scheduled to start later in the month and an additional attorney would be starting in January. Ms. Lindquist reported that the trend in complaint cases was an increase in the number of those cases filed by consumers. With the changes in the Enforcement processes brought about by the Sunset review and the increase in attorneys and support staff, Ms. Lindquist felt that the backlog of cases would be dealt with quickly. There was discussion concerning the timeline for filling remaining staff positions in Enforcement. There was discussion concerning the types of cases being filed by consumers and the types of application cases that were being referred to Enforcement.

Mr. Walton introduced the new administrator, Tim Irvine. Mr. Irvine introduced Loretta R. DeHay, who had accepted the position of assistant administrator as well as continuing to serve as general counsel for the Commission.

Mr. Watson, Director of Technology Services, presented the I1 report. There was discussion concerning the number of hits on the web site and the number of renewals being done online. There was discussion concerning key measures and the reporting of these benchmarks to the Legislature.

Ms. Alexander, Director of Staff Services, reported on the S1 report which showed the budget status for the end of FY 2007. She also reported on the S2 report which explained the status of the recovery trust account investments and the S3 report which lists payments and repayments.

Chairman Walton moved to agenda item five, general comments from visitors. After clarification that this agenda item was for general comments not concerning the specific items listed on the agenda, no comments were offered.

Mr. 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 counsel on posted agenda items. Mr. Arriaga asked if it were possible to take items on the agenda out of order. Since a large portion of the public audience was present with respect to inspector-related items (agenda items nine, ten(h), thirteen and fifteen), he questioned whether or not it would be possible to consider these items before any other items on the agenda. After discussion, Chairman Walton stated that he felt they should go into executive session first to receive legal advice from counsel if necessary. Executive session began at 9:25 a.m. The meeting was back in open session at 9:45 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. He stated that there were no recovery funds being presented for action at this meeting.

The Chairman moved to agenda item eight, discussion and possible action to adopt emergency amendments to 22 TAC §535.51 concerning General Requirements. Ms. DeHay presented the agenda item for discussion and possible action. The Commission had adopted amendments on an emergency basis at the August 6, 2007, meeting, along with four revised forms. These rules would be withdrawn and replaced with the new amended rules; specifically, the new emergency rules change one of the forms to reflect an increased salesperson application fee. Typographical errors were corrected and formatting changes to the fee summaries were made on all four forms. Upon motion of Mr. Mesa, duly seconded by Ms. Burlison, the Commission unanimously ordered the adoption of the rule on an emergency basis as recommended by staff.

The Chairman moved to agenda item nine, discussion and possible action to adopt emergency amendments to 22 TAC §535.212 concerning Education and Experience Requirements for an Inspector License. Ms. DeHay presented the agenda item for discussion and possible action. Ms. DeHay stated that the Commission had adopted an emergency rule on August 6, 2007, to implement the change in law requiring both education and experience in lieu of the traditional three-tier method of licensing in order to obtain a real estate or professional inspector license under §1102.111. Previous to September 1, 2007, applicants for a professional inspector's license had been able to enter through the "fast track" method by either providing proof of the required education or the required experience. The change in the law effective September 1, 2007, requires both education and experience to enter through the "fast track" method. In response to concerns raised, staff recommends to the Commission revisions to §535.212, both as a revised emergency rule effective immediately and as a proposed final rule, which would be subject to the public comment processes provided for in Texas Government Code, Chapter 2001. She expressed the staff belief that this proposal would meet the Legislature's expressed desire that new licensees entering the industry under the alternate education and experience track have significant hands on experience in addition to completing additional required education coursework. Under this proposal, there would be three ways for applicants other than actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings to gain relevant experience. The "education module" experience alternative would provide for experience to be obtained under conditions where the hands-on experience acquired is systematic in its coverage under closely supervised field instruction by an approved education provider. The "inspection experience" alternative would assure that the aspiring licensee would get actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the "experience" alternative would assure that the applicant had experience in a field directly related to home inspecting. The applicant would be able to choose which method of alternate experience was best suited to that applicant's background and training. If the applicant were already enrolled in an education program with a significant experience component prior to September 1, 2007, the applicant would meet the experience requirement in §1102.111(a), Texas Occupations Code. Not more than two persons would be allowed to accompany a licensed professional inspector on inspections to meet the alternate experience component described in the amendments to 22 TAC §535.212. All applicants under the alternative

education and experience licensing method would be required to take the threshold education courses for a license and pass the relevant licensing examination.

Larry Foster, Foster Inspections, spoke in favor of the amendment with the recommendation that an inspector be allowed to take more than two persons on inspections to meet the alternate experience component described in the rule.

Jay Fuller, Texas Association of Real Estate Inspectors, stated that he and the association were concerned about the reduction of classroom hours from 320 hrs. to 200 hrs.

Richard Whitsett, Kaplan Professional Schools, spoke in favor of the amendment and stated that the requirement was for 128 hours of core inspector courses, plus the 200 hours in addition to 120 hours in the field. He asked for clarification concerning filing applications under the present requirements. Ms. DeHay stated that individuals would be required to follow present requirements if their applications were filed prior to January 1, 2008.

Fred Willcox, Willcox Inspections, spoke for the amendment and expressed concern regarding the effect the change in law has on inspector education.

Mike Brown, spoke to suggest developing a licensing path for property adjusters.

Jim Hemsell spoke against the revisions to the amendment which substituted field experience for required classroom education.

Gary Loughman stated that the number of education hours required for fast track inspector licensing was only available through correspondence courses. He stated classroom hours were not available. His concern was the requirement of more hours when quality education is not available. Ms. DeHay stated that the rule called for classroom hours, but the Commission could delete the word "classroom" if they agreed with the concerns expressed by some of the commenters.

Frank Conder spoke concerning the benefits of in field training for inspectors.

Rita Santamaria, Champions School of Real Estate, spoke concerning the passage of the bill which changed the education for inspectors. She stated that her schools offered up to 10% of the course time in laboratory settings.

Richard Whitsett stated that Texas requires almost five times the amount of education of any other state for inspectors. He stated that his facility also had labs available and he stressed the importance of in field education.

Mike Cothran, Greater Houston Chapter of the Texas Association of Real Estate Inspectors, spoke against the lessening of the requirements for fast track licensing.

David Whitfield asked for clarification on the experience module of the requirements for the fast track inspector license that were being proposed. Mr. Irvine stated that if the class he had taken contained actual hands on experience and he was enrolled in this class before September 1, 2007, then it would satisfy the requirements of the proposed rule.

Dott Smith spoke concerning the number of people allowed to go on a ride along and whether or not the Commission could grandfather individuals who were in programs on the effective date of the bill.

Bryon Parffrey, Builders Academy, spoke concerning the number of hours required to become an inspector. He said that he felt that these requirements laborious.

Rob La Montagne asked for clarification concerning the number of class hours now required versus the number of hours in the field required under the previous law. Ms. DeHay stated that every professional inspector applicant was required to have at least 128 core hours, whether they were applying through the fast track method or the three tier method. She explained how each tier of inspector licenses was required to have a minimum number of inspections and education before the individual progressed to the professional inspector level or an applicant could become a professional inspector through the "fast track" method which, before September 1, 2007, had required either experience or education. To satisfy the education requirements at that time an applicant had to have 128 core hours, plus 320 hours or seven years of experience in a related field as outlined by the rules. The new law stated that an applicant must have the education and the experience, not to exceed, respectively 320 hours and seven years. At the August 6, 2007, meeting the Commission, upon the recommendation of the Inspector Committee, had adopted an emergency rule setting these requirements at their statutory caps. The item had been placed on the agenda because these requirements were considered by some to be too onerous for a "fast track" applicant and because of a number of issues raised with respect to aspiring licensees who had already enrolled in classes prior to September 1, 2007. Staff was recommending a modification of the original emergency rule. Under this proposal, there would be three ways for applicants (other than actively practicing licensed or registered architects, professional engineers, or engineers-in-training) to gain required experience. The "education module" experience alternative would provide for experience to be obtained under conditions where the hands-on experience was systematic in its coverage under closely supervised field instruction by an approved education provider. The "inspection experience" alternative would assure that the aspiring licensee got actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the experience alternative would assure that the applicant had experience in a field directly related to home inspecting. An applicant would be able to choose which method of documenting their alternate experience was best suited to the applicant's background and training.

If the applicant was enrolled in an education program with a significant experience component prior to September 1, 2007, the applicant would meet the experience requirement in §1102.111(a), Texas

Occupations Code. Not more than two persons may accompany a licensed professional inspector on inspections to meet the alternate experience component described in the amendments to §535.212.

All applicants under the alternative education and experience licensing method would be required to take the threshold education courses for a license and pass the applicable licensing examination.

There was discussion concerning the method to verify completion of the Inspection experience alternative. After further discussion concerning the proposal, the Chairman asked for a motion.

Upon motion of Ms. Leal, duly seconded by Mr. Alley, the Commission approved publication of the proposed amendments to 22 TAC §535.212 for public comment, as recommended by staff amended except that the word "education" would be substituted for the word "classroom" wherever it appeared in the proposed rule.

Chairman Walton recognized former Commissioner Henry Santamaria, who was in the audience.

The Chairman moved to agenda item ten (a), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 533 concerning Practice and Procedure. Ms. DeHay presented the item for discussion and possible action. The current rules were adopted on an emergency basis at the August 6, 2007, meeting. This action would start the process to adopt the new rules on a permanent basis. The proposed rules would enable the Commission to comply with the directives in SB 914 which transferred the hearing process from an in house administrative law judge to the State Office of Administrative Hearings. Upon motion of Mr. Eckstrum, duly seconded by Mr. Mesa, the Commission approved publication of the proposed rules for public comment, as recommended by staff.

The Chairman moved to agenda item ten (b), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC §535.42 concerning Jurisdiction and Authority. Ms. DeHay presented the item for discussion and possible action. The current rule was adopted on an emergency basis at the August 6, 2007, meeting. This action starts the process to adopt the amendments on a permanent basis. The amendments to the rule remove language referring to the in house administrative law judge and replace it with references to the State Office of Administrative Hearings. Upon motion of Mr. Mesa, duly seconded by Ms. Burleson, the Commission approved publication of the proposed rules for public comment, as recommended by staff.

Chairman Walton moved to agenda item ten (c), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC §535.51 concerning General Requirements. Ms. DeHay presented the item for discussion and possible action. This action starts the process to adopt the amendments on a permanent basis. The amendments to the rule adopt by reference six revised application forms. Four of the forms are late renewal forms for salespersons and brokers to reflect the new late renewal fees that became effective through SB 914 on September 1, 2007. This part of the

amendments to the rule were adopted on an emergency basis at the August 6, 2007, meeting. In addition to these amendments, amendments were added that allowed the revision of the salespersons application for an inactive license and the broker step-down form to reflect the increase in the original application fee from \$50 to \$75. Also, typographical errors have been corrected and language was added to clarify that sales and broker applicants are going to be required to provide fingerprints within six months of the date of the filing of their applications. There was discussion concerning the process of collecting the fingerprints and how the background checks would be conducted. Upon motion of Ms. Leal, duly seconded by Ms. Burleson, the Commission approved publication of the proposed rules for public comment, as recommended by staff.

The Chairman moved to agenda item ten (d), discussion and possible action to propose amendments to existing rules or propose new rules 22 TAC Chapter 535, Subchapter F concerning Education, Experience, Educational Programs, Time Periods and Types of License (§§535.61-535.65). Ms. DeHay presented the item for discussion and possible action. The amendments to §§535.61 and 535.63 were adopted on an emergency basis at the August 6, 2007, meeting. This action starts the process to adopt the amendments on a permanent basis and adds amendments to §535.64 and §535.65 that change references concerning the education provider bond from \$10,000 to \$20,000, and adopt by reference a revised bond form reflecting the increased amount as required by the new law.

The amendments to 22 TAC §535.62 provides that all Commission core courses that are offered by an alternative delivery method must be certified by a distance learning certification center that is acceptable to the Commission, such as the International Distance Education Certification Center (IDECC). Commission staff would continue to review the courses for content, but IDECC or a similarly approved center would evaluate the courses for appropriate design and delivery, including whether the course teaches mastery.

Upon motion of Mr. Eckstrum, duly seconded by Ms. Leal, the Commission approved publication of the proposed rules for public comment, as recommended by staff.

The Chairman moved to agenda item ten (e), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 535 Subchapter G concerning Mandatory Continuing Education (§§535.71 and 535.72). Ms. DeHay presented the item for discussion and possible action. This action starts the process to adopt the amendments on a permanent basis. The proposed amendments provide the procedure by which education providers must ensure that online Mandatory Continuing Education courses may not be completed in less than 24 hours. There was discussion concerning other states going to testing for MCE classes. Ms. Jackson clarified that testing was done on the Legal and Ethics courses only when they are taken online. Upon motion of Mr. Alley, duly seconded by Ms. Burleson, the Commission approved publication of the proposed the rules for public comment, as recommended by staff.

Chairman Walton moved to agenda item ten (f), discussion and possible action to propose amendments to existing rules or propose new rules to §22 TAC Chapter 535 Subchapter I concerning Licenses (§§535.91, 535.92, and 535.94 ). Ms. DeHay presented the item for discussion and possible action. The amendments were adopted on an emergency basis at the August 6, 2007. The amendments clarify a new provision in Chapter 1101 that permits an exemption for legislators from the mandatory continuing education three hour legal update and delete a provision regarding contested case hearings held by the Commission. At the August meeting the rule had been refined to specify that the exemption for legislators should be for the Legal Update portion of the required legal courses only and that a legislator would still be required to take the required three hour Ethics course. This action starts the process to adopt the amendments on a permanent basis. After discussion, upon motion of Ms. Leal, duly seconded by Mr. Mesa, the Commission approved publication of the proposed rule for public comment, as recommended by staff.

Chairman Walton moved to agenda item ten (g), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 535, Subchapter Q concerning Administrative Penalties. Ms. DeHay presented the item for discussion and possible action. The amendments were adopted on an emergency basis at the August 6, 2007. The new rules are necessary in order to comply with legislation enacted during the 80th Legislative Session which requires the Commission to adopt a schedule of administrative penalties for violations of law in order to ensure that the amount of penalty imposed is appropriate to the violation. Senate Bill 914, which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1101. This action starts the process to adopt the amendments on a permanent basis. Upon motion of Mr. Eckstrum, duly seconded by Ms. Burleson, the Commission approved publication of the proposed rule for public comment, as recommended by staff.

The Chairman moved to agenda item ten (h), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 535, Subchapter R concerning Home Inspectors. Ms. DeHay presented the item for discussion and possible action. The amendments were adopted on an emergency basis at the August 6, 2007. On August 6, 2007, the Commission adopted emergency rules to comply with the September 1 effective date.

The proposed amendments to 22 TAC §535.206, set the composition of the Texas Real Estate Inspector Committee, at six professional inspector members and three public members appointed, all to be appointed by the Commission. At the August 6, 2007, meeting changes had added the restrictions that the three public members could not be registered, certified or licensed by an occupational regulatory agency relating to the real estate industry.

The proposed amendments to 22 TAC §535.208, Application for a License, require all applicants for home inspector licenses to provide proof that the applicant maintains professional liability insurance. The

amendments also propose to adopt by reference Certificate of Insurance, Form REI 8-0, to provide the requisite proof of insurance.

The proposed amendments to 22 TAC §535.210, Fees, establish the fee for an educational evaluation of \$30, and delete the fee provisions for filing and renewing a professional inspector business license as the business license requirement was repealed by H.B. 1530.

Proposed new 22 TAC §535.211, would provide for home inspector applicants to show proof of professional liability insurance.

The proposed amendments to 22 TAC §535.212 require both education and experience in lieu of the experience required under the traditional three-tier application process to reflect new requirements under §1102.111, Texas Occupations Code. The proposed amendments require an applicant under the alternate application process for a professional inspector license to provide proof of completion of 200 additional hours of education and either proof of completion of 120 hours of an experience training module, 120 hours of experience working with a licensed professional inspector, or evidence of 5 years of experience in a field directly related to home inspecting.

Under this rule, there would be three ways for applicants (other than actively practicing licensed or registered architects, professional engineers, or engineers-in-training) to gain required experience. The “education module” experience alternative would provide for experience to be obtained under conditions where the hands-on experience was systematic in its coverage under closely supervised field instruction by an approved education provider. The “inspection experience” alternative would assure that the aspiring licensee gets actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the experience alternative would assure that the applicant had experience in a field directly related to home inspecting. The applicant would be able to choose which method of alternate experience was best suited to that applicant’s background and training.

The proposed amendments to §535.212 require an applicant under the alternate application process for a real estate inspector license to provide proof of completion of 30 additional hours of education and proof of either completion of 60 hours of an experience training module, 60 hours of experience working with a licensed professional inspector, or evidence of 3 years of experience in a field directly related to home inspecting. If the applicant were an actively practicing licensed or registered architect, professional engineer, or engineer-in-training, the applicant would meet the professional inspector education and experience requirement by actively practicing for 3 years and would meet the real estate inspector education and experience requirement by actively practicing for 1 year.

If the applicant was enrolled in an education program with a significant experience component prior to September 1, 2007, the applicant would meet the experience requirement in Texas Occupations Code, §1102.111(a). Not more than two persons may accompany a licensed professional inspector on

inspections to meet the alternate experience component described in the amendments to 22 TAC §535.212.

All applicants under the alternate education and experience licensing method would be required to take the threshold education courses for each license type and pass the relevant licensing examination.

The proposed amendments to 22 TAC §535.215, Inactive Inspector Status, would provide that a license would revert to inactive status if a licensee were unable to maintain professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, as required by law.

The proposed amendments to 22 TAC §535.216, Renewal of License or Registration, would provide for home inspector renewal applicants to show proof of professional liability insurance.

The proposed amendments to 22 TAC §535.224 would 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. The amendments also provide that failure to maintain proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 would be an additional cause for disciplinary action.

Ms. Leal, duly seconded by Mr. Arriaga, moved that the Commission approve publication of the proposed the rules for public comment, as recommended by staff. Chairman Walton opened the floor for comments and questions.

Fred Willcox referred to a memo that he had submitted to the Commission in which he stated the reasons he felt that the insurance provisions should be withdrawn.

Joe Gonzales, Texas Association of Real Estate Inspectors, stated that the association was against the insurance requirements.

Warden Fox, Fox Inspections Group, spoke in favor of the insurance requirements. Commissioner Arriaga raised a question concerning the cost of insurance for an individual inspector. Commissioner Day raised a question concerning the effect the insurance requirements would have on the cost of inspections and the availability of qualified inspectors.

Joe Gonzales stated that the cost of the insurance would vary due to coverage and deductibles.

George Howe spoke against the need for insurance and stated that the Recovery Fund was in place to take care cases where the consumer was harmed in an inspection transaction.

Bud Rozell spoke against the requirements for inspectors to carry insurance and the possibility of a third party causing the inspector to lose his/her license. There was discussion concerning the issue.

Frank Conder spoke against the need for insurance for inspectors.

Mike Cothran, Greater Houston Chapter of the Texas Association of Real Estate Inspectors, spoke concerning ramifications of the requirements for liability insurance for inspectors and urged the Commission to do what it could to lessen the negative impact of the legislation.

Bernardo Melendez spoke concerning the transferring of increased costs due to the insurance requirement to the consumer and the fact that many consumers may choose to forego an inspection because of this.

Royse Clayton spoke concerning the effect of E&O insurance on inspectors and the Inspection Recovery Fund payout for the past year.

Jim Hemsell stated that the statute does not require E&O insurance, but insurance to cover incompetence and negligence. He stated that the interpretation of the Commission put the requirement for E&O insurance not the legislature.

The Chairman stated that the Commission has asked for an Attorney General's Opinion on this matter.

Mr. Arriaga and Mr. Eckstrum stated that they wished to comment after the public had finished with their comments.

Steven Fairweather stated that his concern was the possible shortage of licensed inspectors because of the insurance requirements.

Gary Loughman spoke concerning the origins of the law and requested that the Commission wait for the Attorney General's Opinion before trying to enforce it.

Rob La Montagne stated that the Governor, after signing the bill, had stated that the Senate and the House had not thought this portion of the bill out very well.

Jim Taylor stated that the cost of the insurance would be at least \$3500-\$6000 a year.

Mr. Arriaga asked if there were anything the Commission could do to postpone action on this issue. The Chairman asked if the Commission would like to go into executive session to obtain legal advice. Mr. Arriaga stated he would prefer to discuss the item in open session.

After discussion, the Chairman announced that the Commission would be going into executive session to receive legal advice from counsel on posted agenda items. Executive session began at 11:24 a.m. The Commission reconvened in open session at 11:55 a.m.

Mr. Arriaga, duly seconded by Ms. Leal, proposed to amend the motion on the floor to add the language "or any other insurance that provides coverage for violations of Texas Occupations Code, Chapter 1102, Subchapter G" wherever the proposed rules refer to professional liability insurance.

Larry Foster, Foster Inspections, requested that the rules be clarified to include language stating that the required insurance did not have to cover acts against public policy.

Upon motion of Mr. Arriaga, duly seconded by Ms. Leal, the motion was further amended to add a provision to clarify that the required insurance does not cover violations wherein coverage would be against public policy.

Ms. DeHay restated her understanding of how staff should revise the draft of the rules in the meeting materials to comply with the commission's intent as set forth in the amended motion.

Jim Hemsell asked for clarification of requirements if the Attorney General's Office decided that the law was unenforceable. Mr. Irvine and Ms. DeHay stated that if it was ruled that the law was unenforceable the rule would no longer be enforceable.

Steven Fairweather spoke concerning the availability and cost of insurance and the regulation of insurance providers.

After discussion, the motion as amended was adopted by unanimous vote.

Chairman Walton introduced Jackie King with the Governor's Office and then moved to agenda item ten (i), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 537, Professional Agreement and Standard Contracts. Ms. DeHay stated that this item proposes amendments to 22 TAC §537.30 concerning Standard Contract Form TREC No. 23-7, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-7, New Home Contract (Completed Construction); §537.41 concerning Standard Contract Form TREC No. 34-3, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; §537.47 concerning Standard Contract Form TREC No. 40-3, Third Party Financing Condition Addendum; and new §537.50 concerning Standard Contract Form TREC No. 43-0, Addendum Containing Required Notices Under §420.001 and §420.002, Texas Property Code. The amendments propose to adopt by reference five revised contract forms for use by Texas real estate licensees.

The amendment to 22 TAC §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-7, New Home Contract (Incomplete Construction). The disclosure on page 8 of the contract required by §27.007(a), Texas Property Code, is revised because the disclosure was amended by House Bill 3147, 80th Legislature, R.S. (2007).

The amendment to 22 TAC §537.31 proposes to adopt by reference Standard Contract Form TREC No. 23-7, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for Form TREC No. 23-7.

22 TAC §537.41 proposes to adopt by reference Standard Contract Form TREC No. 34-3, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway. The addendum was revised to reflect changes that were made to the disclosure under House Bill 2819, 80th Legislature, R.S. (2007).

The amendment to 22 TAC §537.47 proposes to adopt by reference Standard Contract Form TREC No. 40-3, Third Party Financing Condition Addendum. On page 2 of the addendum, a reference to having HUD form 92564-CN signed and dated by the buyer was removed as the form no longer has a signature line.

New 22 TAC §537.50 is proposed to adopt by reference Standard Contract Form TREC No. 43-0, Addendum Containing Required Notices Under §420.001 and §420.002, Texas Property Code. The new addendum contains disclosures required by House Bill 1038, 80th Legislature, R.S. (2007) in cases where the seller may be subject to or exempt from the requirements of Title 16, Texas Property Code, regarding registration with the Texas Residential Construction Commission.

Upon motion of Mr. Eckstrum, duly seconded by Ms. Burleson, the Commission approved publication of the proposed rules for public comment, as recommended by staff.

Mr. Walton moved to agenda item ten (j), discussion and possible action to propose amendments to existing rules or propose new rules to 22 TAC Chapter 539, Subchapter O concerning Administrative Penalties. Ms. DeHay stated that the new rules were necessary in order to comply with legislation enacted during the 80th Legislative Session requiring the Commission to adopt a schedule of administrative penalties for violations of law by residential service companies in order to ensure that the amount of penalty imposed was appropriate to the violation. The new rule was adopted on an emergency basis on August 6, 2007. Ms. DeHay stated that staff was requesting permission to start the adoption process on a permanent basis. Upon motion of Mr. Eckstrum, duly seconded by Mr. Arriaga, the Commission approved publication of the proposed the rules for public comment, as recommended by staff.

The Chairman moved to agenda item eleven, discussion and possible action to propose the 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. Ms. DeHay presented the agenda item for discussion and possible action. Chapter 533 was being replaced by new rules that had been proposed in a previous agenda item, and §535.209 was being repealed because the law on which it was based was repealed under HB 1530. Upon motion of Ms. Burleson, duly seconded by Mr. Mesa, the repeal was approved

Chairman Walton moved to agenda item twelve, discussion and possible action to adopt amendments to 22 TAC §535.101 concerning Fees. Ms. DeHay presented the agenda item for discussion and possible action to adopt. This section establishes the fees necessary for the administration of the Commission's functions. The amendments would remove Texas Online fees from the Commission's 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. No comments were received during the comment period. Upon motion of Ms. Leal, duly seconded by Mr. Day, the Commission ordered adoption of the amendments.

Chairman Walton moved to agenda item thirteen, update on the Commission's request for an attorney general opinion about SB 914's requirements for home inspector liability insurance. Ms. DeHay stated that nothing has been received from the Attorney General's office.

The Chairman moved to agenda item fourteen, discussion and possible action to make appointments to the Broker Lawyer Committee. Chairman Walton stated that he would accept nominations for the two positions available. Ms. Leal, duly seconded by Ms. Burlison, moved to nominate Ron Walker. Mr. Arriaga asked if each of the applications had been reviewed and determined to be eligible for nomination. Ms. DeHay replied that they had. Mr. Arriaga also stated that a more systematic process for applying would be preferable to what had been provided. He also expressed concern over whether or not a nominee was a practicing broker.

There was discussion concerning the nomination of Ron Walker. There was discussion concerning the term length. Mr. Arriaga asked for clarification on the nomination and election procedures. The Chairman stated that the persons who had made application were those included in the meeting material. Information and recommendations concerning each individual were included. Mr. Arriaga asked as a point of parliamentary procedure if the Commission was subject to parliamentary procedures on nominations of elected people.

Mr. Eckstrum called the question. Mr. Walker was elected by majority vote with Mr. Arriaga abstaining.

Ms. Burlison, seconded by Mr. Mesa, moved to nominate Barbara Straughn from Dallas. Mr. Arriaga raised the issue of the nomination and election procedures again. After discussion, upon motion of Mr. Eckstrum, duly seconded by Mr. Arriaga, the Commission agreed that multiple nominations would be taken and considered.

Mr. Eckstrum nominated Jane Caskey. The Chairman asked Ms. Straughn and Ms. Caskey if they would like to introduce themselves and speak concerning their nominations.

Ms. Straughn introduced herself and spoke concerning her background in real estate and real estate contracts.

Ms. Caskey introduced herself and spoke concerning her background in real estate and real estate contracts.

Ms. Leal requested a written ballot. Mr. Mesa, Ms. Burlison and Mr. Arriaga voted for Ms. Straughn; Mr. Alley, Mr. Day, Ms. Leal and Mr. Eckstrum voted for Ms. Caskey. Ms. Caskey was appointed to the

Broker-Lawyer Committee by majority vote.

Chairman Walton moved to agenda item fifteen, discussion and possible action to establish a procedure to create an inspector advisory committee and/or make appointments thereto. The chair recognized Mr. Eckstrum, the chair of the Inspector Advisory Committee Search Subcommittee. Mr. Eckstrum, seconded by Ms. Leal, moved to nominate the following people selected by the Advisory Committee Search Subcommittee: Larry Foster, Ray Armendariz, Mark Eberwine, Fred Willcox, Shauvana Morgenroth, and Brad Philips for the inspector members and Jill Frankel, Wayne Burgess and Mary Wheeler as the public members. Mr. Eckstrum stated that as a member of the Commission and not as a member of the search subcommittee he would like to add Curtis Carr and Brian Murphy to the list of nominees.

The Commission appointed Jill Frankel, Wayne Burgess and Mary Wheeler as the public members by unanimous vote. After discussion, it was decided that the Commission would vote on the industry members individually.

Larry Foster, Austin, TX, was appointed by a majority vote with Mr. Arriaga abstaining.

Ray Armendariz, El Paso, TX, was appointed by a majority vote with Mr. Arriaga abstaining.

Mark Eberwine, San Antonio, TX, was not appointed with three votes for, three against and Mr. Arriaga abstaining.

Fred Willcox, Houston, TX, was appointed by a majority vote with Mr. Arriaga abstaining.

Shauvana Morgenroth, The Woodlands, TX, was not appointed with two votes for, four against and Mr. Arriaga abstaining.

Brad Phillips, Temple, TX, was appointed with five votes for, one against and Mr. Arriaga abstaining.

Curtis Carr, Beaumont, TX, was appointed by a majority vote with Mr. Arriaga abstaining.

Brian Murphy, Arlington, TX, was appointed by a majority vote with Mr. Arriaga abstaining.

The Inspector Advisory Committee will initially consist of Larry Foster, Austin, TX; Ray Armendariz, El Paso, TX; Fred Willcox, Houston, TX; Brad Phillips, Temple, TX; Curtis Carr, Beaumont, TX; Brian Murphy, Arlington, TX as industry members and Jill Frankel, Wayne Burgess and Mary Wheeler as the public members. Mr. Foster was appointed as temporary chair for the first meeting where officers would be elected and staggered terms decided by the committee.

Mr. Walton moved to agenda item sixteen, discussion and possible action to approve the revised required Legal Update and Legal Ethics Courses. Denise Whisenant, Education Coordinator, Real Estate

Center, Texas A&M University, presented the agenda item for discussion and possible action. There was discussion concerning the changes, the availability of a red-line draft and the process used to make the revisions. Mr. Arriaga expressed concern that errors in the original materials be corrected. Mr. Eckstrum, seconded by Mr. Alley, moved to approve the revised courses as submitted. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seventeen, discussion and possible action to approve annual internal audit report. Rene Gonzales, Garza & Gonzales, the Commission's Internal Auditors, presented the agenda item for discussion and possible action. Mr. Gonzales explained the audit process. There was discussion concerning the one area of the audit that staff did not agree with, the payment to the Commission from the examination provider of fees. Ms. Leal, seconded by Mr. Eckstrum, moved to accept the internal audit report as submitted. The report was accepted by unanimous vote.

Chairman Walton moved to agenda item eighteen, annual review of fees and estimated revenues. Ms. Alexander presented the agenda item for review. The meeting material included a chart of actual revenue collected for FY 2005-FY 2007 and the amounts estimated for FY 2008. There was discussion concerning the methodology used to arrive at the estimated amounts. No action was required on this agenda item.

Mr. Walton moved to agenda item nineteen, discussion and possible action to approve fiscal year 2008 operating budget. Ms. Alexander presented the agenda item for discussion and possible action to approve. She referred to the exhibits contained in the meeting material and explained that the differences in the amounts budgeted for the two years were due to money received for exceptional requests, as well as Article IX riders that came about because of the fiscal notes. There were also variances because of staff vacancies during the last fiscal year. There was discussion concerning staff vacancies, staff salaries and one-time merit bonuses. The Chairman asked for a motion to approve the operating budget. Upon motion of Mr. Mesa, duly seconded by Ms. Burleson, the FY 2008 operating budget was approved as submitted.

Chairman Walton moved to agenda item twenty, discussion and possible action to authorize Tim Irvine to approve expenditures. Upon motion of Ms. Leal, duly seconded by Mr. Mesa, the Commission authorized Tim Irvine to approve expenditures.

Mr. Walton moved to agenda item twenty-one, discussion and possible action regarding a resolution authorizing the Administrator or Assistant Administrator to enter into a Memorandum of Understanding with the Texas Appraiser Certification and Licensing Board. Mr. Irvine presented the agenda item for discussion and possible action. Upon motion of Mr. Eckstrum, duly seconded by Mr. Alley, the following resolution was adopted:

RESOLVED, that the Administrator and Assistant Administrator, and each of them, are hereby authorized, empowered, and directed, for and on behalf

of the Texas Real Estate Commission (TREC), to negotiate and enter into an amendment to the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board (TALCB) regarding administrative services and support provided by TREC to TALCB and expenses paid by TALCB. They are also authorized to do all such other acts and execute and deliver such documents, instruments, and writings as they may reasonably deem necessary or advisable to effectuate the foregoing.

The Chairman moved to agenda item twenty-two, discussion and possible action to amend previously adopted policy regarding administrative penalties and other disciplinary action for unlicensed activity. Ms. Lindquist presented the agenda item for discussion and possible action. She explained that in April of 2001 the Commission had adopted a policy regarding administrative penalties and other disciplinary action for unlicensed activity. Ms. Lindquist was presenting a revised policy regarding administrative penalties and other disciplinary action for unlicensed activity for approval. After discussion, upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission approved the revised policy as presented except for the following change, "for the violations in the column labeled **2-4 years** the minimum administrative fine amount would be raised from \$1000 to \$2500."

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

Joe William Ferguson, Tim Martin Knabe, Zehra Ahmed, James Edward Polk, Jr., John Anthony Henry, Arturo Torre, and Sylvia Ann Martinez 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).

Upon motion of Ms. Leal, duly seconded by Mr. Eckstrum, the Commission authorized the investigations as requested.

The Chairman announced at 1:15 p.m. that there would be a break. At 1:28 p.m. the Commission reconvened in open session. Chairman Walton turned his gavel to Mr. Day to preside as Chairman for the motions for rehearings.

Mr. Day moved to agenda item twenty-four, motion for rehearing in the matter of George Limon Alejos, Hearing No. 07-249-072052. Beverly Rabenberg, staff attorney, appeared for the Enforcement Division. Neither Mr. Alejos nor his attorney was present. Ms. Rabenberg stated that The Enforcement division was ready to proceed. The basis of license revocation was a payment from the Real Estate Trust Account (Recovery Fund). Ms. Rabenberg stated that the motion for rehearing did not contain a reference to any error in the original hearing and should not be granted. Mr. Day called for a vote on the rehearing. The motion was denied by unanimous vote.

Mr. Day moved to agenda item twenty-five, motion for Rehearing in the Matter of Larry Wayne Brooks, Jr., Hearing No. 07-291-052515. Mr. Brooks appeared *pro se*. Mr. Brooks stated that he was requesting a rehearing because testimony at the original hearing was false and the order was in error because of this. Devon Bijansky, staff attorney, presented the response from the Enforcement Division. Ms. Bijansky stated that because neither the Movant nor his attorney filed a motion to extend the time for revocation that the revocation had been entered and the motion for rehearing was not valid and should not be considered. Ms. Bijansky stated that the basis of the case was falsifying a lease to aid the complainant in obtaining financing during a separate transaction. Ms. Bijansky requested that the Commission decline to take any action based on the grounds that the motion was already overruled by operation of law.

There was discussion concerning the Commission's jurisdiction over this case.

Mr. Brooks stated that there had been discussions between his attorney and the Enforcement Division and oral agreements had been made to extend time for response. There was discussion concerning various facts of the initial complaint case.

Mr. Day called for a vote on the motion for rehearing. The motion was denied by majority vote.

Mr. Day called for discussion of the motion for modification in this case. Ms. Bijansky stated that she felt the arguments she made against the rehearing were relevant against the motion for modification. There was discussion concerning the motion for modification of the order revoking Mr. Brooks' license and the motion for probation. Mr. Day called for a vote on the motion for modification. After further discussion, Mr. Day announced that the Commission would go into executive session to receive legal advice from counsel on posted agenda items. Ms. Leal exited the meeting at 2:10 p.m. Executive session began at 2:10 p.m. The Commission reconvened in open session at 2:25 p.m.

Ms. Bijansky asked that the Commission grant the motion for rehearing rather than a motion for modification or probation, so that the Commission could hear testimony and receive additional information pertaining to the case.

Upon motion of Mr. Mesa, duly seconded by Ms. Burleson, the Commission rescinded all actions with respect to the request for an agreement for an extension. Mr. Arriaga abstained.

Mr. Eckstrum, duly seconded by Ms. Burleson, moved that the Commission probate the revocation of Mr. Brooks' license from three to five years. Ms. Bijansky urged the Commission to grant the motion for rehearing instead of probating the revocation so it could hear all the facts and make a decision based on those facts. Mr. Arriaga stated that he felt that the rehearing was in order. Mr. Day called for a vote on the motion. The motion was adopted by majority vote with Mr. Arriaga opposed.

Chairman Walton moved to agenda item twenty-seven, entry of orders in contested cases. No orders were presented at this time.

The Chairman moved to agenda item twenty-eight, scheduling future meetings and adjournment. The next meetings are scheduled for December 10, 2007, and February 25, 2008 in Austin. The Chairman adjourned the meeting at 2:37 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 10th day of December, 2008.

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John Walton  
Chairman

ATTEST: \_\_\_\_\_  
Timothy K. Irvine  
Administrator