MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION
December 10, 2007
Room 235, 1101 Camino La Costa
Austin, Texas

On Monday, December 10, 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 Patricia 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

William Flores

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

Mr. Eckstrum led the attendees in the pledge of allegiance.

Chairman Walton moved to agenda item two, minutes of October 8, 2007, Commission meeting. Upon motion of Ms. Leal, duly seconded by Ms. Burleson, the Commission unanimously approved the minutes of the previous meeting as presented.

The Chairman moved to agenda item three, staff reports and committee reports. Mr. Irvine spoke briefly concerning the trends that were reflected in the staff reports. Ms. Jackson, Director of Licensing Services, introduced Nicole Marengo a new employee in Communications. She also introduced three new employees in Licensing: Mariah Jackson, who is working in the file room, and Carla White and Paula Batista, who are working in the renewal application

processing section. Ms. Jackson reported that there continued to be a high number of late broker renewal applications. At the end of September 2007 the Commission had a total of 158,694 licensees, an increase of over 5,000 from the previous year. Over 2,500 examinations were administered in September 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 Beverly Rabenberg, the new Assistant Director of Enforcement. She stated that Sharon Harris was now the supervisor and manager for the legal assistant team. Ms. Lindquist also introduced two new legal assistants, Amber Hinton and Michelle Moore; a new member of the administrative staff, Anne Boyle; and two new attorneys, John Goehrs and Aimee Cooper. There was discussion concerning the number of cases being filed and the number of cases being closed. Ms. Harris addressed the Commission concerning the upward trend in the number of instances where brokers were not supervising their sponsored salespersons. Mr. Arriaga expressed concerns regarding this trend.

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 an in depth presentation and discussion concerning computer down-time during the month of November due to hardware failures and a high levels of attempted security attacks.

Ms. Alexander, Director of Staff Services, delivered the S1 report. She also commented on the S2 report, describing the status of the recovery trust account investments and the S3 report, listing payments and repayments. There was discussion concerning the average annual payments from the funds and the average annual payments into the funds. Ms. Alexander explained that by statute the Commission could assess additional fees from its licensees if the recovery trust account balance fell under 1.7 million dollars.

Ms. DeHay, Assistant Administrator and General Counsel, reported on the request for proposals process for selecting a vendor to provide testing services. The contract with the current vendor will expire September 1, 2008. Staff intends to recommend a vendor at the February 2008 meeting.

Fred Willcox, Texas Real Estate Inspector Advisory Committee, reported that the Committee had held its first meeting. In that meeting Larry Foster was elected Chairman, Brad Murphy was elected Vice-Chair, and Jill Frankel was elected Secretary. Brad Murphy was named Chair of the Enforcement Subcommittee, Wayne Burgess was named Chair of the Education Subcommittee and Mr. Willcox was named Chair of the Standards of Practice Subcommittee. Mr. Willcox stated that the Inspector Advisory Committee had unanimously voted to advise the Commission to defer enforcement of the portion of the Act requiring liability insurance for inspector licensees until the next legislative session, in order to receive clarification from the legislature as to the intent of this portion of the Act. Mr. Irvine responded that although the Attorney General's opinion did not address the issue of whether a general liability policy or an errors and omissions policy would meet the new requirements, the rule approved by the Commission for publication and comment would effectuate the law, as explained in the Attorney General’s opinion. The Chairman indicated that any further discussion of this item

would be had at the time of the appropriate agenda item.

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

Mr. Walton moved to agenda item five, discussion and possible action to adopt a Commission Ethics Policy as required by Texas Government Code §572.051(c). Ms. DeHay presented the policy for discussion and possible action. After discussion, Ms. Leal, duly seconded by Ms. Burleson, moved to adopt the policy as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item six, discussion and possible action to adopt, pursuant to Texas Occupations Code §1101.102, a Commission policy that separates the policymaking responsibilities of the Commission and the management responsibilities of the administrator and staff of the Commission. Mr. Irvine presented the policy for discussion and possible action to adopt. Mr. Flores, duly seconded by Mr. Mesa, moved to adopt the policy as presented. It was unanimously adopted.

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 counsel on posted agenda items. Executive session began at 9:55 a.m. The meeting was back in open session at 10:18 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 recovery fund claims for possible payment as follows: .

RF 07-015, Alicia Watson vs. Leta Dee Burnett, in the amount of $50,000 in actual damages. Mr. Flores, duly seconded by Ms. Burleson, moved to authorize payment up $50,000. The motion was adopted by unanimous vote.

RF 07-016, Wakefield Realtors vs. Sharon Stellges, in the amount of $2,400 in actual damages. Mr. Alley, duly seconded by Mr. Mesa, moved to authorize payment. The motion was adopted by unanimous vote.

RF 08-001, Howard and Joy Davis vs. Jennifer Sloan, in the amount of $14,530 in actual damages. Mr. Day, duly seconded by Mr. Burleson, moved to authorize payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion and possible action to propose amendments to 22 TAC §535.141 concerning the Initiation of Investigation, exception for covert investigations pursuant to Texas Government Code §§402.031, 402.032 and 555.051. Ms. DeHay presented the agenda item for discussion and possible action.

The amendments to 22 TAC §535.141(a) and (b) are proposed to comply with new legislation that amended Texas Occupations Code Chapters 1101 and 1102 enacted during the 80th Legislative Session, Regular Session, by Senate Bill 914. Senate Bill 914 in part amends Texas Occupations Code §1101.204 to authorize Commission staff to file complaints and conduct investigations as necessary to enforce Chapter 1101 and Chapter 1102. The proposed amendment to 22 TAC

§535.141(a) clarifies that the section applies to all persons licensed or registered by the Commission, including persons licensed under Chapter 1102. The proposed amendment to §535.141(b) deletes references which are redundant or conflict with the recent amendments to §1101.204.

The new text in 22 TAC §535.141(b) is proposed to comply with new legislation that included amendments to Texas Government Code §402.031 enacted during the 80th Legislative Session, Regular Session, by House Bill 716 relating to mortgage fraud. The proposed amendments to 22 TAC §535.141(b) recognize that while Texas Occupations Code §1101.204(e) does not permit staff to conduct convert investigations except as authorized by the commission, such investigations may be conducted if they relate to a report of fraudulent activity as defined in §402.031. Similarly, the proposed amendments reflect that while Texas Occupations Code §1101.204(d) requires TREC to provide notice to a licensee who is the subject of an investigation, new Texas Government Code §402.031 requires TREC to withhold such information from the subject of the report if it is a report of fraudulent activity as defined in §402.031. Upon motion of Ms. Leal, duly seconded by Mr. Flores, the Commission authorized staff to propose the amendments for adoption.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments to existing rules or adopt new rules as follows: (a)TAC Chapter 533 concerning Practice and Procedure: (b) 22 TAC §535.42 concerning Jurisdiction and Authority; (c) 22 TAC §535.51 concerning General Requirements; (d) 22 TAC Chapter 535, Subchapter F concerning Education, Experience, Educational Programs, Time Periods and Types of License (§§535.61-535.65); (e) 22 TAC Chapter 535 Subchapter G concerning Mandatory Continuing Education (§§535.71 and 535.72); (f) 22 TAC Chapter 535 Subchapter I concerning Licenses (§§535.91, 535.92, and 535.94); (g) 22 TAC Chapter 535, Subchapter Q concerning Administrative Penalties; (h) 22 TAC Chapter 535, Subchapter R concerning Home Inspectors; (i) 22 TAC Chapter 537, Professional Agreement and Standard Contracts and (j) 22 TAC Chapter 539, Subchapter O concerning Administrative Penalties.

Ms. DeHay presented agenda item 10(a) for discussion and possible action. The proposed rules were adopted on an emergency basis at the August 6, 2007, meeting. The Commission filed a notice of proposed new rules to Chapter 533, concerning Practice and Procedure, as follows: §533.1, concerning definitions of terms found in the chapter; §533.2, concerning the purpose and scope of the chapter; §533.3, concerning filing 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; §533.6, concerning filing of exceptions and replies; §533.7, concerning proposals for decision; §533.8, concerning final order, motions for rehearing, and emergency orders; §533.20, concerning informal proceedings; §533.30, concerning alternative dispute resolution (ADR); §533.31, concerning referral of contested matters for ADR procedures; §533.32, concerning appointment of a mediator; §533.33, concerning qualifications of mediators; §533.34, concerning commencement of ADR; §533.35, concerning stipulations; §533.36, concerning agreement; §533.37, concerning confidentiality; and §533.40, concerning negotiated rulemaking with the Secretary of State's Office on October 15, 2007. The proposed new rules were published in the *Texas Register* at 32 TexReg 7644 on October 26, 2007. No written comments were received. The reason for the new rules is the implementation of legislation enacted during the 80th Legislative Session which transferred the functions of the Commission's administrative law judge to the State Office of

Administrative Hearings and which provided for a negotiated rulemaking process. Mr. Mesa, duly seconded by Ms. Burleson, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(b) for discussion and possible action. The Commission filed a notice of proposed amendments to §535.42, concerning Jurisdiction and Authority, with the Secretary of State's Office on October 15, 2007. The amendment was published in the *Texas Register* at 32 TexReg 7650 on October 26, 2007. No written comments were received. The amendment is proposed for adoption without changes from the rules as published. The amendment to §535.42, concerning Jurisdiction and Authority, deletes a reference to an employee of TREC conducting contested case hearings. The reason for the amendment is the implementation of legislation enacted during the 80th Legislative Session which transferred the functions of the Commission's administrative law judge to the State Office of Administrative Hearings. Ms. Burleson, duly seconded by Mr. Mesa, moved to adopt the rule as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(c) for discussion and possible action. The Commission filed a notice of proposed amendments to §535.51, concerning Requirements for Licensure, with the Secretary of State's Office on October 15, 2007. No comments were received. The amendment was published in the *Texas Register* at 32 TexReg 7650 on October 26, 2007. The amendments are proposed for adoption without changes from the rules as published. The forms have been changed to correct typographical errors. The amendments to §535.51, concerns General Requirements, and permanently adopts by reference six revised forms to reflect late renewal penalties for applicants for salesperson and broker licenses and an increased application fee for salesperson applicants. The amendment also provides that an applicant for a real estate salesperson or broker license must provide fingerprints to the Department of Public Safety within six months of the date of the application for a license or the application will be considered void and no longer subject to further evaluation.

The three applications for a salesperson's license, Commission Forms SL-11, SLR-9 and BSL-6 were corrected to remove typos in the fee amounts. The Application for Late Renewal of Real Estate Broker License by a Corporation, Commission Form BLRC-5, and Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, Commission Form BLRLLC-4, were corrected where they referenced the late renewal of a license expired after September 1, 2007, that had been expired for more than 90 days but less that six years. The term six years was an error and was changed to one year on each form. The reason for the adoption of the amendments is the implementation of legislation enacted during the 80th Legislative Session which created the fingerprint requirement and affected the referenced late renewal penalties and also to reflect an increased application fee for salesperson applicants. Ms. Leal, duly seconded by Mr. Day, moved to adopt the rule as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(d) for discussion and possible action. The Commission filed a notice of proposed amendments to §535.61, concerning Examinations; §535.62, concerning Acceptable Courses of Study; §535.63, concerning Education and Experience Requirements for a License; §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors; and §535.65, concerning Changes in Ownership or Operation of Schools,

Presentation of Courses, Advertising, and Records, with the Secretary of State's Office on October 15, 2007. The amendments were published in the *Texas Register* at 32 TexReg 7651 on October 26, 2007. No written comments were received. The amendments are proposed for adoption without changes from the rules as published. The amendments to §535.61 and §535.63 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.

The amendments to §535.64 and §535.65 change references concerning the education provider bond from $10,000 to $20,000 and adopt by reference a revised bond form reflecting an increased amount required by law. The amendment to §535.62 provides that all 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. The reason for the adoption of the amendments is the implementation of legislation enacted during the 80th Legislative Session which affected education requirements and operation of educational programs. Mr. Flores, duly seconded by Mr. Arriaga, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(e) for discussion and possible action. The Commission proposes to adopt amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses, and Instructors and by reference one revised form, and to §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records. The amendments are proposed for adoption with changes to the proposal as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7653). §535.71(d) (7) was changed to update the form number referenced in that paragraph. The 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. The Commission received no comments during the notice and comment period regarding adoption of the amendments. The reason for the amendments is the implementation of legislation enacted during the 80th Legislative Session which created a new requirement that online Mandatory Continuing Education courses may not be completed in less than 24 hours. Mr. Arriaga, duly seconded by Ms. Leal, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(f) for discussion and possible action. The Commission proposes for adoption 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 proposed for adoption without changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7654). The Commission received no comments during the notice and comment period regarding adoption of the amendments. The reason for the adoption of the amendments is the implementation of legislation enacted during the 80th Legislative Session which created a new provision that permits a 3-hour legislative exemption for Mandatory Continuing Education and which transferred the functions of the Commission's administrative law judge to the State Office of Administrative Hearings. Ms. Leal, duly seconded by Ms. Burleson, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(g) for discussion and possible action. The Commission proposes for adoption new Subchapter Q, concerning Administrative Penalties, including new §535.191, concerning Schedule of Administrative Penalties. The new rules are proposed for adoption without changes to the proposal as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7655). The Commission received no comments during the notice and comment period regarding adoption of the new rules. The reason for the new rules is the implementation of 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. Mr. Arriaga, duly seconded by Ms. Leal, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(h) for discussion and possible action. The Commission proposes for adoption amendments to §535.206, concerning Texas Real Estate Inspector Committee; §535.208, concerning Application for a License; §535.210, concerning Fees; new §535.211, concerning Professional Liability Insurance; amendments to §535.212, concerning Education and Experience 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 the new rule are proposed for adoption with changes to the proposal as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7656).

Paragraph §535.212(b) (1) is changed to replace the word "or" with "and" where it states "experience or additional education in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code." The adopted language reads "An applicant may substitute the following experience and additional education in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code, (Chapter 1102) and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:…"

Paragraph §535.215(a) (4) "the failure of the licensee to satisfy continuing education requirements for an active license; or" is changed to delete the word "or" which was left in the rule text in error.

The amendments to §535.206 set the composition of the Texas Real Estate Inspector Committee and detail the qualifications and terms for each member.

The amendments to §535.208 require all applicants for inspector licenses to provide proof that the applicant maintains professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 of the Texas Occupations Code and adopts by reference the Certificate of Insurance, Form REI 8-0 to provide the requisite proof of insurance.

The amendments to §535.210 establish the fee for an educational evaluation and delete the fee provisions for filing and renewing a professional inspector business license, as the business license requirement was repealed by House Bill 1530, enacted during the 80th Legislative Session.

New §535.211 provides for inspector applicants to show proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, Texas Occupations Code.

The amendments to §535.212 require both education and experience in lieu of the experience required under the traditional three-tier application process in order to reflect new requirements under §1102.111, Texas Occupations Code. The 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 the rule, there are three ways for applicants who are other than actively practicing licensed or registered architects, professional engineers, or engineers-in-training to gain the required experience.

- The "education experience module" alternative will provide for experience to be obtained under conditions where the hands-on experience is systematic in its coverage under closely supervised field instruction by an approved education provider.

- The "inspection experience" alternative will assure that the aspiring licensee gets actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the experience alternative assures that the applicant has experience in a field directly related to home inspecting. An applicant will be able to choose which method of alternate experience is best suited to the applicant's background and training.

- The amendments to §535.212 require applicants 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 is an actively practicing licensed or registered architect, professional engineer, or engineer-in-training, the applicant meets the professional inspector education and experience requirement by actively practicing for 3 years and meets 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 meets 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 alternate education and experience licensing method would be required to take the threshold education courses for each license~~d~~ type and to pass the relevant licensing examination.

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 or any other insurance that provides coverage for violation of Subchapter G of Chapter 1102, Texas Occupations Code.

The amendments to §535.216 provide for home inspector renewal applicants to show proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, Texas Occupations Code.

The amendments to §535.224 delete provisions that authorized the Texas Real Estate Inspector Committee to hear disciplinary cases as such cases must, under 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, Texas Occupations Code, is an additional cause for disciplinary action.

The Commission received three comments during the notice and comment period regarding adoption of the amendments and the new rule, two from the Texas Real Estate Inspector Committee (the Committee) and one from a licensed inspector.

Comment: The Committee, by unanimous vote in public meeting, recommended that the Commission not enforce the requirement that applicants and license holders provide proof of professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, Texas Occupations Code.

Response: The Commission respectfully disagrees with the Committee as the Commission has no discretion to choose whether to enforce the requirements of Texas Occupations Code §1102.114 which requires applicants for a home inspector license to provide proof that the applicant maintains liability insurance to protect the public against a violation of Subchapter G of Chapter 1102 of the Texas Occupations Code.

Comment: The Committee voted to recommend a change to the “fast track” experience component to require that the 120 hours of hands on experience with a professional inspector be with a professional inspector who is qualified to be a sponsor by having reached the 200 inspection mark and having been approved by the CommissionC.

Response: The Commission agrees with the comment and has changed the rule accordingly.

Comment: The licensed inspector recommended that those entering the inspection business have 448 core educational hours and 120 hours of hands on and simulated experience, which he indicated was the position of the Texas Association of Real Estate Inspectors.

Response: The Commission respectfully disagrees with the commenter as it believes that 328 core education hours and 120 hours of hands on or simulated experience is sufficient to meet the education and experience requirements under §1102.111, Texas Occupations Code.

The reason for the adoption of the amendments is the implementation of legislation enacted during the 80th Legislative Session. Ms. Leal, duly seconded by Mr. Flores, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(i) for discussion and possible action. The Commission proposes for adoption amendments to §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 §5.016, §420.001 and §420.002, Texas Property Code. The amendments propose for adoption by reference five revised contract forms for use by Texas real estate licensees. The amendments are adopted with changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7662). §537.50 was corrected to include a reference to §5.016, Texas Property Code which was omitted in the proposed rule.

The amendment to §537.30 adopts 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 §537.31 adopts by reference Standard Contract Form TREC No. 24-7, New Home Contract (Completed Construction). The revisions adopted are the same as those adopted for Form TREC No. 23-7.

The amendment to §537.41 adopts 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 §537.47 adopts by reference Standard Contract Form TREC No. 40-3, Third Party Financing 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 §537.50 adopts by reference Standard Contract Form TREC No. 43-0, Addendum Containing Required Notices Under §5.016, §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 requirements of Title 16, Texas Property Code, regarding registration with the Texas Residential Construction Commission.

The Commission received no comments during the notice and comment period regarding adoption of the amendments or the new rule. The reason for the adoption of the amendments, the new rule and the forms adopted by reference is the revision of standard contract forms required for use by real estate licensees to reflect recent changes in law. Ms. Burleson, duly seconded by Mr. Mesa, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item 10(j) for discussion and possible action. The Commission proposes for adoption new Subchapter O of Chapter 539, Provisions of the Residential Service Company Act, concerning Administrative Penalties, including new §539.140, concerning Schedule of Administrative Penalties. The new rules are proposed for adoption with changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7663). §539.140(c) (7) was corrected to show the referenced statute as §1303.352(a) (6), not §1303.352(6) and §539.140(d) was corrected to remove a reference to subsection (a). The Commission received no comments during the notice and comment period regarding adoption of the new rules. The reason for the adoption of the rules is the implementation of 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. Mr. Arriaga, duly seconded by Mr. Flores, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eleven, discussion and possible action to adopt 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 agenda item 11 (a) and (b) for discussion and possible action. The Commission proposes the repeal of provisions of Chapter 533, concerning Practice and Procedure, specifically §§533.31-533.39, under agenda item 11(a). New rules are being simultaneously adopted to replace the repealed rules. The repeal is proposed for adoption without changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7649) and will not be republished. The Commission received no comments during the notice and comment period regarding adoption of the repeal. The reason for the proposed adoption of the repeal is that the existing rules conflict with the new rules adopted to implement legislation enacted during the 80th Legislative Session which transferred the functions of the Commission's administrative law judge to the State Office of Administrative Hearings.

The Commission proposes the repeal of §535.209, concerning Professional Inspector Corporations and Limited Liability Companies, under agenda item 11(b) The repeal is proposed for adoption without changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7661) and will not be republished. The Commission received no comments during the notice and comment period regarding adoption of the repeal. The reason for the proposed adoption of the repeal is the implementation of legislation enacted during the 80th Legislative Session which repealed the licensure requirements for corporations and limited liability companies that engage in home inspection

services for a fee. Ms. Leal, duly seconded by Ms. Burleson, moved to adopt the rules as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, discussion and possible action to extend for an additional 60 days the effective date of emergency rules regarding: (a) 22 TAC Chapter 533 concerning Practice and Procedure; (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.

Mr. Walton moved to agenda item thirteen, discussion and possible action to extend for an additional 60 days the effective date of 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.

Ms. DeHay presented agenda items twelve (a)-(m) and thirteen (a)-(b) for discussion and possible action. These agenda items request permission to extend the emergency adopted rules from the August and October meetings for an additional 60 days. This would prevent any gaps in the effectiveness of the rules due to the filing of the adoptions on a permanent basis. Once the rules that are being adopted on a permanent basis are filed they will replace the emergency rules. Mr. Flores, duly seconded by Ms. Leal, moved to extend the emergency rules as requested. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item fourteen, discussion regarding Texas Attorney General Opinion No. GA-0581 (2007) regarding whether an applicant for a real estate inspector license is required to carry general liability insurance, professional liability insurance, or both. Mr. Irvine presented the agenda item for discussion. Mr. Irvine stated that the opinion could be distilled into two statements. One – there is nothing that requires that anyone provide insurance that is against public policy. There are certain things that are uninsurable, such as intentional acts. Two -- regardless of what a policy is called, it is the terms of the policy that govern whether it is responsive to the legislative requirements of Subchapter G. The Commission had anticipated both conclusions expressed in the opinion and the current rules are consistent with the law, as interpreted in the opinion.

Fred Willcox spoke concerning various aspects of the insurance requirements and the ways they will impact not only the inspector industry but also the consumer. He asked the Commission to defer enforcement of the requirement until the legislative intent was clarified. There was discussion concerning Mr. Wilcox' comments.

Brad Phillips spoke urging the Commission to postpone enforcing the insurance requirement.

Norman Rozell asked if the Commission could furnish a list of insurance companies that will provide the required liability insurance. There was discussion concerning this issue.

Chairman Walton moved to agenda item fifteen, discussion and possible action to authorize the administrator to enter into a Memorandum of Understanding with the Texas Department of Public Safety (DPS) for DPS to provide fingerprinting services for the Commission as authorized by Texas Occupations Code §1101.352. Mr. Irvine presented the agenda item for discussion and possible action. He stated that this agenda item allows the Commission's administrator to enter into a Memorandum of Understanding with the Texas Department of Public Safety to provide fingerprinting services for the Commission as required by law. Mr. Flores, duly seconded by Mr. Mesa, moved to authorize the administrator to enter into the Memorandum of Understanding with the Texas Department of Public Safety as requested. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item sixteen, discussion and possible action to appoint a member to the Mortgage Broker Advisory Committee. Mr. Irvine presented the agenda item for discussion and possible action. The Mortgage Broker Advisory Committee is composed of six members, four appointed by the Commissioner of the Texas Savings and Mortgage Lending Department and two appointed by the Commission. George Stephens is a Commission appointee whose term is set to end on January 31, 2008. He has applied to be reappointed. The Texas Savings and Mortgage Lending Commissioner is the principal person that this committee advises, and in the past the Commissioner has favored members serving two consecutive terms to provide for enhanced continuity. Ms. Leal, duly seconded by Ms. Burleson, moved to appoint George Stephens for another term to the Mortgage Broker Advisory Committee as requested. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seventeen, discussion and possible action to accept the Texas Comptroller of Public Accounts' post payment audit report of certain Commission payroll, purchase, refund, and travel transactions. Ms. Alexander presented the agenda item for discussion and possible action. After discussion, Ms. Burleson, duly seconded by Mr. Flores, moved to accept the Texas Comptroller of Public Accounts' post payment audit report as requested. The motion was adopted by unanimous vote.

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

> Latressa Delniqua Brown, Cathy Marie Majors, Dana Johnson Smith, Kathryn Marie Budde, and Patricia Jean Smith 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 Mr. Alley, duly seconded by Ms. Leal, the Commission authorized the investigations as requested.

Ms. Leal asked the administrator to establish a policy to honor any outgoing Commissioners at the meeting in February. After discussion, the Chairman stated that former Commissioners Louise Hull and Paul Jordan would be invited to attend the meeting scheduled in February to honor them for their service on the Commission.

Chairman Walton moved to agenda item nineteen, Motion for Modification in the Matter of Gerald Lee Morey. The Chairman turned his gavel to Mr. Day to preside as Chairman for the motion for rehearing at 11:14 a.m.

Mr. Day moved to agenda item nineteen, motion for modification of order and for probation in the matter of Gerald Lee Morey, Hearing No. 07-348-070178. Sharon S. Harris, staff attorney, appeared for the Enforcement Division. Stephen W. Drinnon appeared for Mr. Morey. Ms. Harris stated that the Enforcement Division was ready to proceed. Mr. Drinnon stated that the basis for the motions was abuse of discretion by the administrative law judge. Ms. Harris stated that the motion for rehearing did not contain a reference to any error in the original hearing and should not be granted. After presentations by both attorneys and discussion, Mr. Day called for a vote on the motion for modification. The motion was denied by unanimous vote. After discussion, Mr. Day called for a vote on the motion for probation. The motion was denied by unanimous vote.

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

The Chairman moved to agenda item twenty-one, scheduling future meetings and adjournment. Mr. Walton recognized Jackie King from the Governor's Office. The next meetings are scheduled for February 25, 2008, and April 28, 2008, in Austin. The Chairman adjourned the meeting at 11:48 a.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 25th day of February, 2008.

_____
John Walton
Chairman

ATTEST:_____
Timothy K. Irvine
Administrator