

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

April 28, 2008

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, April 28, 2008, at 9:00 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman John Eckstrum presided and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Eckstrum, Chairman  
Troy Alley  
Adrian Arriaga  
Mary Frances Burleson  
Chris Day  
William Flores  
Elizabeth Leal  
Tom Mesa  
Avis Wukasch

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

The Chairman introduced the new member to the Commission, Avis Wukasch of Round Rock and asked her to lead the attendees in the pledge of allegiance.

Chairman Eckstrum recognized Jackie King from the Governor's Office and Lori Levy from the Texas Association of Realtors (TAR).

The Chairman moved to agenda item two, minutes of February 25, 2008, Commission meeting. There was discussion concerning the fingerprint procedure as stated on page five of the minutes. After discussion, upon motion of Mr. Flores, duly seconded by Mr. Arriaga, the Commission unanimously approved the minutes of the previous meeting as presented. The Chairman recognized former Commissioner Henry Santamaria who was celebrating his birthday.

The Chairman moved to agenda item three, staff reports; committee reports. Ms. Jackson, Director of Licensing Services, announced that five vacancies in the Licensing Services Division had been filled. The new employees are Lynn Stender-Cashier Section, and Deyana Salinas-Education Section. The three new employees for the Communication Section are Sandra Taylor, Grace Lavrier, and Amy Calhoun.

Ms. Jackson reported that there was a 20.34% decrease in total original applications filed in February 2008 compared to February 2007. There is also an 18% percent decrease in total licenses issued from original application for that same period. The decrease is attributed to the current downward trend in the housing market. The L2 report shows that the Commission had a total of 158,056 licensees and registrants. Ms. Jackson stated that PSI, TREC's examination administrator, would be at the Commission on the following day to meet with subject matter experts and update the current examinations for the salesperson and broker licenses.

Ms. Lindquist, Director of Enforcement, reported on the division's activities. Ms. Lindquist stated that the E1 report showed a decrease in the number of cases closed in February. She stated that the division was working through the backlog of old cases and that quite a few hearings had been set with the State Office of Administrative Hearings.

Mr. Watson, Director of Technology Services, introduced a new employee, Scott Milo. Mr. Milo is a new Unisys programmer on staff. Mr. Watson presented the I1 report. He reported that the participation of brokers and salespersons in the online renewal process continued to be strong. Staff had added information concerning whether or not TREC has received fingerprint information to the web site.

Ms. Alexander, Director of Staff Services, reported on the S1 report. She also commented on the S2 report and the S3 report. There was discussion concerning the various reports. Ms. Alexander reported that quite a bit of progress had been made in answer to the Audit report on measures. She stated that each division had developed detailed written policies and procedures on each measure on which they report. Each division has implemented a review system so that before the numbers leave the division a second person reviews the numbers and signs off on them. Each division has done revisions to their performance measure definitions and clarified ambiguous language and inserted additional language when needed. These revisions have been accepted by the Legislative Budget Board and the Governor's Office. She stated that both entities were pleased with the progress the agency had made.

Mr. Eckstrum moved to agenda item four, general comments from visitors. There were no comments.

The Chairman moved to agenda item five, 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 9:21 a.m. The meeting was back in open session at 9:42 a.m.

Chairman Eckstrum moved to agenda item six, 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 08-007, Sunghee Kim vs. Ruben Reyes, in the amount of \$5,000 in actual damages and \$2,000 in attorney fees. Ms. Wukasch, duly seconded by Mr. Mesa, moved to authorize payment. The motion was adopted by unanimous vote.

RF 08-009, Lois Smith vs. Angela Wade, in the amount of \$30,000 in actual damages and \$20,000 in attorney fees. Ms. Leal, duly seconded by Ms. Wukasch, moved to authorize payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion and possible action to propose amendments to: (a) 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-7; (b) 22 TAC §537.28 concerning Standard Contract Form TREC No. 20-8; (c) 22 TAC §537.30 concerning Standard Contract Form TREC No. 23-8; (d) 22 TAC §537.31 concerning Standard Contract Form TREC No. 24-8; (e) 22 TAC §537.32 concerning Standard Contract Form TREC No. 25-6; (f) 22 TAC §537.37 concerning Standard Contract Form TREC No. 30-7; (g) 22 TAC §537.39 concerning Standard Contract Form TREC No. 32-2; (h) 22 TAC §537.43 concerning Standard Contract Form TREC No. 36-5; (i) 22 TAC §537.44 concerning Standard Contract Form TREC No. 37-3 and (j) 22 TAC §537.45 concerning Standard Contract Form TREC No. 38-2.

Ms. DeHay presented agenda item seven for discussion and possible action. The amendments propose to adopt by reference ten revised contract forms for use by Texas real estate licensees, the six major contracts and four addenda. Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-7, Unimproved Property Contract. The amendment to §537.28 proposes to adopt by reference Standard Contract Form TREC No. 20-8, One to Four Family Residential Contract (Resale). The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-8, New Home Contract (Incomplete Construction). The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-8, New Home Contract (Completed Construction). The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-6, Farm and Ranch Contract. The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-7, Residential Condominium Contract (Resale). The amendment to §537.39 proposes to adopt by reference Standard Contract Form TREC No. 32-2, Condominium Resale Certificate. The amendment to §537.43 proposes to adopt by reference Standard Contract Form TREC No. 36-4, Addendum for Property Subject to Membership in a Property Owners' Association. The amendment to §537.44 proposes to adopt by reference Standard Contract Form TREC No. 37-3, Subdivision Information, Including Resale Certificate for Property Subject to Membership in a Property Owners' Association. The amendment to §537.45 proposes to adopt by reference Standard Contract Form TREC No. 38-2, Notice of Buyer's Termination of Contract.

After discussion, Ms. Wukasch, duly seconded by Ms. Leal, moved to propose the amendments, contract forms and addenda as submitted by staff for comment. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda eight, discussion and possible action to propose the repeal of: (a) 22 TAC §537.49 concerning Standard Contract Form TREC No. 42-0; (b) 22 TAC §535.223 concerning Standard Inspection Reports; and (c) 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors.

Ms. DeHay presented agenda item eight for discussion and possible action. Agenda item eight (a) proposes the repeal of §537.49 concerning standard contract form TREC No. 42-0, in connection with the anticipated adoption of revised contract forms. The form adopted by reference in §537.49 is no longer needed as a result of consolidation of forms. Ms. Wukasch, duly seconded by Ms. Burleson, moved to propose the repeal of §537.49 and the form that it adopts by reference. The motion was adopted by unanimous vote.

Ms. DeHay requested that the Commission delay action on agenda items eight (b) and (c) until a decision was made on agenda item nine, discussion and possible action to propose new: (a) 22 TAC §§535.227-535.233 concerning Standards of Practice for Inspectors; (b) 22 TAC §535.222 concerning Inspection Reports; and (c) 22 TAC §535.223

concerning Standard Inspection Reports. The Commission agreed to delay action on the requested items and Ms. DeHay introduced Devon Bijansky, Assistant General Counsel, to present agenda item nine for discussion and possible action.

Ms. Bijansky stated that the new rules are proposed in conjunction with the Real Estate Inspector Committee's comprehensive review and recommendation regarding inspector standards of practice. The proposed new rules divide the standards of practice for inspectors into seven sections by providing two additional sections and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. Generally, the proposed new sections rearrange the current standards of practice, listing the systems, components, and items in a home which the inspector must include in an inspection unless the inspector's client agrees to limit the scope of the inspection.

New §535.227 addresses standards of practice: general provisions which include definitions, the scope, and the departure provisions of an inspection. New §535.228 addresses minimum inspection requirements for structural systems. New §535.229 addresses minimum inspection requirements for electrical systems. New §535.230 address minimum inspection requirements for heating, ventilation, and air conditioning systems. New §535.231 addresses minimum inspection requirements for plumbing systems. New §535.232 addresses minimum inspection requirements for appliances. New §535.233 addresses minimum inspection requirements for optional systems.

After discussion, Mr. Arriaga, duly seconded by Mr. Flores, moved to propose the amendments as presented for comment. The motion was adopted by unanimous vote.

Ms. Bijansky moved to agenda items nine (b) and (c) for discussion and possible action. Agenda item nine (b) proposes new rule §535.222, concerning inspection reports. The rule clarifies the inspection reporting requirements as recommended by the Texas Real Estate Inspector Committee. The rule clarifies that all inspections performed pursuant to an inspector license issued by TREC must be reported in writing and establishes general requirements regarding information contained in the report and delivery to the client.

Agenda item nine (c) proposes new §535.223, concerning standard inspection report forms. The new rule would adopt by reference a revised standard inspection report form. The new rules also clarify when the form is required and how it may be modified by licensees.

After discussion, Ms. Leal, duly seconded by Mr. Mesa, moved to propose the amendments and form as presented for comment. The motion was adopted by unanimous vote.

Ms. DeHay moved back to agenda items eight (b) and (c). Agenda item eight (b) proposes the repeal of §535.223, concerning standard inspection report forms. The repeal is proposed because the subjects addressed in this section will be covered in new §§535.222 and 535.223 TREC is simultaneously proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice and reporting requirements.

Agenda item eight (c) proposes the repeal of §§535.227-535.231, concerning inspector standards of practice. The repeal of the sections is proposed because the subjects addressed in these sections will be covered in new §§535.227-535.233 TREC is simultaneously proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice.

Mr. Flores, duly seconded by Ms. Leal, moved to propose the repeals as presented for comment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments or take other action on: (a) 22 TAC §535.62 concerning Acceptable Courses of Study; (b) 22 TAC §535.71 concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors; (c) 22 TAC §§535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements; (d) 22 TAC §535.95 concerning Miscellaneous Provisions Concerning License or Registration Renewals; (e) 22 TAC §§535.101 concerning Fees; (f) 22 TAC §535.212 concerning Education and Experience Requirements for an Inspector License; and (g) 22 TAC §§543.2, 543.4 and 543.10 concerning rules relating to the Provisions of the Texas Timeshare Act, Chapter 221, Texas Property Code.

Ms. DeHay presented agenda item ten (a) for discussion and possible action. The amendment as proposed would change the requirements for acceptability of correspondence courses offered to meet core education requirements for a real estate salesperson or broker license. Under the proposed amendment, the commission would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by schools accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet educational requirements for a real estate salesperson or broker license if the courses otherwise meet TREC's requirements. Based on written comments and other input received, staff recommended that the Commission withdraw the proposed rule, maintaining the current requirement that all correspondence courses must be offered through accredited colleges and universities.

Mr. Flores, duly seconded by Ms. Leal, moved to withdraw the proposed amendment to 22 TAC §535.62. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (b) for discussion and possible action. The amendments as proposed to §535.71 would change the requirements for approval of correspondence courses offered to meet mandatory continuing education requirements for a real estate salesperson or broker license. Under the proposed amendment, the commission would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by schools accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet mandatory continuing educational requirements for a real estate salesperson or broker license if the courses otherwise meet TREC's requirements. Based on written comments and other input received, staff recommends that the Commission withdraw the proposed rule,

maintaining the current requirement that all correspondence courses must be offered through accredited colleges and universities.

Ms. Wukasch, duly seconded by Mr. Flores, moved to withdraw the proposed amendment to 22 TAC §535.71. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (c) for discussion and possible action. The amendments as proposed to §535.92(f) change the procedure for licensees who choose to pay an MCE deferral fee under §1101.457, Texas Occupations Code to defer MCE requirements for an additional 60 days after the date the license is renewed. If a licensee fails to timely pay the deferral fee or fails to complete the MCE requirements within the 60-day period, the license will be placed on inactive status. To reactivate the license, the licensee must pay an additional \$250 fee, pay the original \$200 deferral fee, complete the MCE requirements, certify that the licensee has not engaged in real estate brokerage activity, and pay the appropriate change fee.

The amendments as proposed to §535.92(h) would change the requirements for approval of correspondence courses offered to meet MCE requirements for a real estate salesperson or broker license under the Real Estate License Act, Texas Occupations Code, Chapter 1101. Currently correspondence courses must be offered by an accredited college or university. TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by a school accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet mandatory continuing education requirements for a real estate salesperson or broker license under the Real Estate License Act. Staff recommends that the Commission adopt §535.92(f) as published in the Texas Register, but do not adopt the proposed amendments to §535.92(h).

After discussion, Mr. Flores, duly seconded by Ms. Wukasch, moved to adopt §535.92(f), with an effective date of June 1, 2008, as published in the Texas Register, but not adopt the proposed amendments to §535.92(h). The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (d) for discussion and possible action. The amendments as proposed to §535.95 to clarify recent amendments to the Real Estate License Act (the Act), Texas Occupations Code, Chapter 1101, enacted by House Bill 1530, 80th Legislative Session, Regular Session, regarding fingerprinting requirements. The amendments would clarify fingerprinting requirements in cases where a licensee renews a license, has been fingerprinted, and the fingerprints have been rejected by the DPS or the FBI. The proposed amendments to §535.95 authorize the commission to renew a salesperson or broker license on active status if the licensee has provided at least one set of fingerprints to the Department of Public Safety (DPS), the fingerprints were rejected by the DPS or the Federal Bureau of Investigation (FBI), and the licensee has met all other requirements for renewal of the license including paying a renewal fee and completing or properly deferring MCE (MCE) requirements. The proposed rule authorizes the commission to

take disciplinary action against a licensee for failing to provide the requested data in a timely manner. Staff recommends that the Commission adopt the amendments as published in the Texas Register.

After discussion, Ms. Wukasch, duly seconded by Mr. Flores, moved to adopt the proposed amendments to §535.95, with an effective date of June 1, 2008, as published in the Texas Register. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (e) for discussion and possible action. The amendments to §535.101 add a fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal. The fee is variable, but is currently set at \$19.25. The amendments also propose a late reporting fee of \$250 for licensees who fail to timely comply with the requirements of 22 TAC §535.92(f). Staff recommends the Commission adopt the amendments as published in the Texas Register.

Ms. Leal, duly seconded by Mr. Mesa, moved to adopt the proposed amendments to §535.101, with an effective date of June 1, 2008, as published in the Texas Register. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (f) for discussion and possible action. The amendments to §535.212 as proposed would change the requirements for acceptability of correspondence courses offered to meet core and continuing education requirements for real estate inspector and professional home inspector licenses. Under the proposed amendment, TREC would continue to accept correspondence courses offered by accredited colleges and universities, but correspondence courses approved by the commission and offered by schools accredited by the commission and acceptable correspondence courses approved by a real estate regulatory agency of another state could be used to meet core and continuing educational requirements for a home inspector license in Texas if the courses otherwise meet TREC's requirements. Based on written comments and other input received, staff recommends that the Commission withdraw the proposed rule, maintaining the current requirement that all correspondence courses must be offered through accredited colleges and universities.

Ms. Wukasch, duly seconded by Mr. Mesa, moved to withdraw the proposed amendments to §535.212. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item ten (g) for discussion and possible action. The amendments as proposed to §§543.2 and 543.10 change the notice requirements for developers to notify TREC of a change in the amount of a surety bond under §221.063(a) of the Texas Timeshare Act. Currently, a developer is required to file an amendment to a registration if there is a change of more than 20% in the amount of an original surety bond. The amendment would delete that requirement to amend the registration, but a developer would be required to notify the commission of any increase or decrease in the original surety bond as provided for in §221.063(a) of the Texas Timeshare Act. The amendment to §543.4 adopts by reference an amended Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-2 to make the form consistent with the text in the Application to Register a Timeshare Plan, Form TSR 1-4.

Mr. Flores, duly seconded by Mr. Mesa, moved to adopt the amendments as proposed. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item eleven, discussion and possible action to approve TREC Audit Plan for FY 2008. Richard Galindo of Garza/Gonzalez, the Internal Auditor for TREC, presented the internal audit plan. The two areas they propose to audit are the complaint and investigation process and the education program process. There was discussion concerning the audits that had been performed previously. Mr. Mesa, duly seconded by Mr. Flores, moved to approve the TREC Audit Plan for FY 2008. The motion was adopted by unanimous vote.

Mr. Eckstrum moved to agenda item twelve, discussion and possible action to authorize the administrator to issue a request for proposals, request for information, request for quotations, or similar action regarding upgrading or replacing TREC's Licensing and Information System. Mr. Irvine presented the agenda item for discussion and possible action. This agenda item is the first step in replacing the current computer system used by the Commission to store information on licensees and generate reports. Mr. Watson explained the various options and what staff hoped to accomplish with the request for information or RFI. There was discussion concerning various sources of information such as other states licensing agencies or the Department of Information Resources. After discussion, Mr. Flores, duly seconded by Mr. Arriaga, moved to direct management to issue a request for information for replacement of TRELIS. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, discussion and possible action regarding TREC policy on licensing requirements for corporations and limited liability companies. Mr. Irvine stated that staff was asking for permission to review the Commission's rules for updating, and incorporate prior Commission policy pronouncements appropriately in the actual rules in order to render the policies enforceable. In particular he wished to revisit the particular policy concerning requiring corporations and limited liability companies to be licensed. Mr. Flores, duly seconded by Mr. Mesa, moved to allow staff to review the Commission's rules for updating, and incorporate prior Commission policy pronouncements appropriately in the actual rules in order to render the policies enforceable and present these proposals at a meeting of the Commission for discussion and possible action. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item fourteen, discussion and possible action to appoint a disciplinary panel(s) pursuant to: (a) Texas Occupations Code, §1102.408; (b) Texas property Code, §221.027; and (c) Texas Occupations Code, §1303.356. The Chairman stated that he would step down as a member of this panel and appointed Troy Alley, Chris Day and Elizabeth Leal to serve as panel members under each of the statutes where it is required.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to propose schedule of rule reviews for 2008 of 22 TAC Chapter 535 (§§535.91-535.403). Ms. DeHay presented the agenda item for discussion and possible action. Mr. Flores, duly seconded by Ms. Leal, moved to approve the proposed schedule of rule reviews. The motion was adopted by unanimous vote.

The Chairman moved to agenda item sixteen, discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for the fiscal years 2009-2013. Mr. Irvine stated that after the meeting a Strategic Planning Session would be held in Commission Meeting room and encouraged members of the audience to stay and participate. He

stated that similar sessions had been held in Lubbock, Laredo, Longview and Beaumont. Action on this issue was not required at this time.

Chairman Eckstrum moved to agenda item seventeen, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings on hearing held on March 25, 2008, regarding Mutaz Saman Khalaf, Docket No. 329-08-1123. Ms. Lindquist explained the process for issuing this type of action and the difference between this and the rehearings that that the Commission had been involved in under the old law.

Mr. Day called the case. The respondent was not in attendance. Staff attorney, Nicki Hopkins, presented the background regarding the case. She stated that the Enforcement Division was asking the Commission to affirm the decision from the State Office of Administrative Hearings administrative law judge to deny the broker's license for Mutaz Saman Khalaf. There was discussion concerning the facts of the case. Ms. Leal, duly seconded by Ms. Burleson, moved to approve the decision from the State Office of Administrative Hearings. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eighteen, scheduling future meetings and adjourn. The next meetings are scheduled for June 30, 2008, and August 18, 2008, in Austin. The Chairman adjourned the meeting at 10:55 a.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 30<sup>th</sup> day of June, 2008.

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John Eckstrum  
Chairman

ATTEST: \_\_\_\_\_

Timothy K. Irvine  
Administrator