

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

June 30, 2008

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, June 30, 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

Adrian Arriaga

Mary Frances Burlison

Chris Day

Elizabeth Leal

Tom Mesa

Avis Wukasch

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

Chairman Eckstrum asked Commissioner Leal to lead the attendees in the pledges of allegiance to the United States and Texas flags. The Chairman acknowledged and welcomed Lori Levy (Texas Association of Realtors); Jackie King (Governor's Office); and the members of the Texas Real Estate Inspector Advisory Committee

The Chairman moved to agenda item two, minutes of April 28, 2008, Commission meeting. There was discussion concerning the fingerprinting procedure, as stated on page five of the minutes. After discussion, upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission unanimously approved the minutes of the previous meeting as presented.

Mr. Eckstrum moved to agenda item number three, discussion and possible action to excuse commissioner absence(s). The Chairman asked for a motion to excuse the absences of Commissioner Flores and Commission Alley. Upon motion of Ms. Leal, duly seconded by Mr. Mesa, the Commission unanimously approved the absences of Commissioners Flores and Alley.

Chairman Eckstrum deferred agenda item four, discussion and possible action to adopt a resolution recognizing John Walton. Mr. Walton was unable to attend the meeting and the agenda item was deferred to such time as the former Chairman could attend.

The Chairman moved to agenda item five, staff reports; committee reports. Ms. Jackson, Director of Licensing Services, introduced new employees in the Licensing Services Division. Laurie Rangel was the new employee in the Licensing Section. She then introduced the two new employees in the Communication Section, Monica Reyna and Joann Arevalo.

Ms. Jackson stated that while original broker license applications and licenses issued remain steady, there has been a slight decrease, twenty-eight percent, in applications for salesperson's licenses and licenses issued. She also stated that there was a downward trend in the number of licensees, which had peaked at approximately 153,000 and at this time

showed approximately 150,000.

Ms. Jackson stated that licensees renewing timely starting June 30, 2008, and after who did not complete their MCE requirements by their renewal date and did not complete the education and pay the deferral fee within 60 days would be subject to a new rule. The new rule states that if the fee is not paid and/or the education is not completed within the 60 days, the licensee's license will become inactive. To reactivate the license the individual will be required to complete the education, pay the \$200 deferral fee, pay a \$250 late reporting fee and pay a \$20 fee to return to active status.

There was discussion concerning the downward trends in renewals and new licenses and the possible repercussions to TREC's budget. Mr. Irvine explained the budget process and stated that even with a downward trend; the amount of money collected by TREC is anticipated to be well in excess of its appropriations.

Ms. Lindquist, Director of Enforcement, reported on the division's activities. Ms. Lindquist presented a series of charts that showed the types of complaints being filed and closed. At this time the complaints being filed were one third administrative, one third public complaints, and one third application investigations, non-jurisdictional complaints and moral character determinations. Ms. Lindquist introduced Brian Galvez, the newest member of the Enforcement staff, who was responsible for putting the presentation together. Ms. Lindquist explained the new process concerning opening and closing cases that has been revised to follow guidelines set out in the Sunset Commission recommendations.

Mr. Watson, Director of Technology Services, reported that the number of web pages viewed had increased by six percent over the number for last year at this time. There was discussion concerning the e-mail notification list.

Mr. Irvine stated that the agency had issued a Request for Information concerning the replacement of the current database system. Ten responses have been received and staff will review the responses and continue working on the vendor selection process.

Ms. Alexander, Director of Staff Services, reported on the current status of the recovery trust account and the inspection recovery fund. Ms. Alexander reported that the internal audit would begin mid-July. Ms. Alexander, Director of Staff Services, introduced a new employee in her division, Kemya Harris.

Larry Foster, Chairman of the Texas Real Estate Inspector Advisory Committee, reported on the progress being made on the review and revision of the standards of practice.

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

The Chairman 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. The Executive session began at 9:30 a.m. The meeting was back in open session at 9:50 a.m.

Chairman Eckstrum 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. Bijansky, Assistant General Counsel, presented the recovery fund claims for possible payment as follows:

IRF 08-001, Chrystal Butler vs. Larry Smith, in the amount of \$12,500 in actual damages. Mr. Day, duly seconded by Mr. Mesa, moved to authorize payment. The motion was adopted by unanimous vote.

RF 08-006, Melinda Silas vs. Jovita I. Ugwu, in the amount of \$888.12 in actual damages. Ms. Leal, duly seconded by Mr. Arriaga, moved to authorize payment. The motion was adopted by unanimous vote.

RF 08-010, Ann Tasian, Brittany Phillips and Cameron Phillips, vs. Andrew Le, in the amount of \$1,800 in actual damages and \$1,575 in attorney fees. Ms. Wukasch, duly seconded by Ms. Leal, 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 §535.208, concerning Application for a License (Certificate of Insurance for Home Inspectors). Ms. Bijansky presented agenda item nine for discussion and possible action. The amendment is proposed to adopt by reference a revised Certificate of Insurance, Form REI 8-1, which includes revisions to the Certificate of Insurance form for inspectors to use in showing proof of liability insurance coverage to the Commission.

The proposed amendment modifies the Certificate of Insurance form in order to clarify the types of conduct for which coverage is required, to clarify that the aggregate limit is as specified in the policy, and to extend from 10 days to 30 days the time period within which insurers must notify TREC of canceled or non-renewed policies. After discussion, Ms. Wukasch, duly seconded by Ms. Leal, moved to propose the rule and form as presented. There was discussion concerning the numbering of the sections of the form and the duplicating of certain numbers. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item ten, discussion and possible action to adopt amendments or take other action on: (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 ten for discussion and possible action. The amendments would adopt by reference ten revised forms for use by Texas real estate licensees, six major contracts and four addenda. Minor non-substantive changes had been made to the forms as proposed at the last meeting. In the original proposal of the forms staff at the recommendation of the Broker-Lawyer Committee had removed the word "mandatory" where an owner's association was being referred to and used "property owner's association" in its place to track the wording in the Property Code. There were several suggestions that the word "mandatory" be reinstated in the forms. Ms. DeHay stated that fourteen comments were received. In the preamble of the rule each comment was listed along with TREC's response to the comment. She suggested that the Commission adopt the amendments and revised forms as presented. Licensees would be able to use the forms on a voluntary basis as soon as they are available and they would become mandatory after September 1, 2008. Ms. DeHay stated that during the comment period the Broker-Lawyer Committee received quite a few comments regarding reservation of mineral rights. The Broker-Lawyer Committee has drafted an addendum addressing this issue; the addendum will be put on the web site for comment and the committee would be looking at the comments at their next meeting. The committee plans to present the addendum for proposal in August if possible. There was discussion concerning the addendum concerning mineral rights. After discussion, Ms. Wukasch, duly seconded by Mr. Arriaga, moved to adopt the amendments, contract forms and addenda as presented at the meeting for voluntary use as soon as possible and mandatory use as of September 1, 2008. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda eleven, discussion and possible action to adopt the repeal of 22 TAC §537.49 concerning Standard Contract Form TREC No. 42-0. Ms. DeHay presented agenda item eleven for discussion and

possible action. This form will no longer be needed as a result of consolidation of forms. Ms. Leal, duly seconded by Ms. Wukasch, moved to adopt the repeal of §537.49 and the form that it adopts by reference. The motion was adopted by unanimous vote.

The Chairman moved to agenda item twelve, discussion regarding: (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. Ms. Bijansky presented the agenda item for discussion. She stated that the Inspector Advisory Committee had received over thirty comments, some quite lengthy and detailed and that the Committee was still working on the amendments. The Committee hopes to present the finished proposals at the August meeting.

Mr. Eckstrum moved to agenda item thirteen, discussion and possible action to propose the review of 22 TAC Chapter 525 General Provision (§§535.91-.403). This would start the review of the rules for the current year. Ms. Wukasch, duly seconded by Mr. Mesa, moved to propose the review as requested by staff. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item fourteen, discussion and possible action to approve the Strategic Plan for the fiscal years 2009-2013, including the Technology Initiative Alignment. Mr. Irvine presented the agenda item for discussion and possible action. Mr. Irvine described the processes uses in developing the Strategic Plan. He also stated that this plan was different than preceding plans in that it contained information on TREC and the Texas Appraiser Licensing and Certification Board (TALCB). Mr. Arriaga discussed the plan and some areas of concern were discussed with staff. Ms. Leal, duly seconded by Ms. Burleson, moved to approve the Strategic Plan for the fiscal years 2009-2013, including the Technology Initiative Alignment as presented, with technical, non-substantive corrections as staff may deem necessary or advisable... The motion was adopted by unanimous vote.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to adopt a Use of Technology Policy as required by §1101.159, Texas Occupations Code. Mr. Irvine presented the agenda item for discussion and possible action. The stated purpose of the policy is to foster the effective use of technology in supporting the commission in the execution of its mission. The policy states the following:

“The commission and its staff, through the Director of Technology Services, will keep informed about those products and technologies, including newly developed ones that could enable the commission to perform its mission in a manner that was more efficient and/or a manner that would better serve its stakeholders. The commission staff will develop, update regularly, and, within its appropriated authority and availability of funds and other necessary resources, follow a systematic plan to utilize technology consistent with this policy. The commission will use technology to support online activities via Web or alternative methods to allow the public to conduct business with the commission and obtain information from the commission.”

After discussion, Mr. Mesa, duly seconded by Mr. Arriaga, moved to adopt the policy as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item sixteen, discussion and possible action authorizing the administrator to enter into an agreement with the Association of Real Estate License Law Officials (ARELLO) entitled the ARELLO Timeshare Registry Agreement. Mr. Irvine presented the agenda item for discussion and possible action. Ms. DeHay and Ms. Rabenberg presented additional information concerning the registry and ARELLO. There was addition discussion

concerning the cost of belonging to ARELLO. Ms. Wukasch, duly seconded by Ms. Burluson, moved to authorize the administrator and/or the assistant administrator, for and on behalf of the Commission, to execute and deliver an agreement with ARELLO entitled the ARELLO Timeshare Registry Agreement. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item seventeen, discussion and possible action to create an advisory committee to develop information and recommendations regarding the proposal of rules defining the specific responsibilities of a broker and agenda item eighteen, discussion and possible action to create an advisory committee to review the Commission's rules regarding the approval and conduct of education providers and to develop recommendations regarding the proposed revisions to those rules.

The broker responsibility advisory committee would include brokers from representative types of real estate brokerage operations, office managers or compliance managers for such operations, one or more attorneys whose practice includes advising real estate brokers on compliance matters, two or more individuals who are able to represent general consumer interests and representation from one or more real estate trade associations. After discussion, Mr. Arriaga, seconded by Ms. Wukasch, moved to authorize the Chairman to appoint an advisory committee to develop information and recommendations regarding the proposal of rules defining the specific responsibilities of a broker under the criteria set for the under agenda item seventeen in the meeting materials. The motion was adopted by unanimous vote.

The education advisory committee would include brokers from representative types of real estate brokerage operations, representatives from representative types of education providers; two or more individuals who are able to represent general consumer interests, and representation from one or more real estate trade associations. After discussion, Mr. Mesa, seconded by Ms. Leal, moved to authorize the Chairman to appoint an advisory committee to review the Commission's rules regarding the approval and conduct of education providers and to develop recommendations regarding the proposed revisions to those rules under the criteria set for the under agenda item eighteen in the meeting materials. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item nineteen, consideration and possible action regarding Proposals for Decision from State Office of Administrative Hearings. The Chairman announced a five minute break. The meeting was called back to order at 10:36 a.m. The Chairman requested that Commissioner Day preside over the Proposals for Decision.

Ms. Lindquist explained the process for approving or denying the Proposals for Decision. She explained the circumstances under which a proposal could be denied or changed. She stated that if the members had specific questions about a case the staff attorneys who handled the cases were present and could be called upon.

Ms. Lindquist stated that the proposals for decision concerned the following: Leslie J. Rodriguez; Tywuan P. Watkins; Eloy Deanda; John Franklin Grice, Jr.; Elizabeth Anne Grice; Lyndi Rachael Locker; and James Leo Ward. Ms. Lindquist presented Sharon Watkins, mother of Tywuan P. Watkins, who had a statement to present to the Commission. Ms. Watkins read a letter written by her son concerning the proposal for decision in his case. Ms. Lindquist referred the Commission to the Finding of Facts and Conclusions of Law regarding Mr. Watkins.

There was discussion concerning discussing the cases individually. Mr. Day asked if there were questions concerning the Proposal for Decision; Docket No. 329-08-1514, In the Matter of Tywuan P. Watkins. There was discussion concerning the process of reapplying if an individual's initial application was denied. There was further discussion about

the time period involved in reapplying and whether or not the application states clearly that there is a background search made by DPS.

Mr. Day asked about the Proposal for Decision; Docket No. 329-08-2268, In the Matter of Lyndi Rachael Locker, in which the SOAH judge overruled the adverse determination by the Enforcement Division that she lacked the honesty, integrity, and trustworthiness to hold a license issued by the Commission. Ms. Lindquist stated that being on felony probation does not automatically disqualify an applicant for licensure. John Goehrs, staff attorney, stated that at the hearing Ms. Locker presented that she was rehabilitated. Mr. Day stated that according to the documentation Ms. Locker was originally placed on deferred adjudication and subsequently was placed on straight probation because of a conviction for possession of a controlled substance. Mr. Goehrs stated that the judge felt that Ms. Locker was on such stringent probation that any misstep would lead to revocation of probation and jail time. After further discussion, Ms. Leal, duly seconded by Mr. Arriaga, moved to approve the proposal for decision in the matter of Lyndi Rachael Locker, Docket No. 329-08-2268. There was discussion concerning the motion and the effects of a negative vote. Ms. Leal and Ms. Wukasch voted in favor of the motion. Mr. Eckstrum abstained. Mr. Arriaga, Ms. Bursleson, Mr. Day and Mr. Mesa voted against the motion citing abuse of discretion by the ALJ as the reason for overruling the proposal. Ms. Leal exited the meeting at 11:15 a.m.

The presiding officer directed staff to prepare an order for his signature reflecting the commissioners' concern that the Applicant was still on felony probation for a criminal offense involving fraud; that the criminal offense directly related to the duties and responsibilities of a real estate salesperson; that insufficient time had elapsed since the Applicant engaged in criminal activity.

Mr. Day called for agenda item nineteen: (a) Docket No. 329-08-1480, In the Matter of Leslie J. Rodriguez; (b) Docket No. 329-08-1514, In the Matter of Tywuan P. Watkins; (c) Docket No. 329-08-1752, In the Matter of Eloy Deanda; (d) Docket No. 329-08-2197, In the Matter of John Franklin Grice, Jr.; (e) Docket No. 329-08-2198, In the Matter of Elizabeth Anne Grice; and (g) Docket No. 329-08-2279, In the Matter of James Leo Ward. There were no comments or discussion on the above proposals for decision. Mr. Arriaga, duly seconded by Mr. Mesa, moved to approve the proposals for decision as submitted by the State Office of Administrative Hearings. The motion carried by unanimous vote.

The Chairman moved to agenda item twenty, scheduling future meetings and adjourn. The next meetings are scheduled for August 18, 2008, and October 27, 2008, in Austin. The Chairman adjourned the meeting at 11:35 a.m.

APPROVED this the 18<sup>th</sup> day of August, 2008.

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Patricia Holder, Secretary for the Meeting

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John Eckstrum  
Chairman

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