

MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION

August 18, 2008

Room 235, 1101 Camino La Costa
Austin, Texas

On Monday, August 18, 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 C. Alley, Jr.

Adrian Arriaga

Mary Frances Burleson

Chris Day

Bill Flores

Tom Mesa

Avis Wukasch

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

Chairman Eckstrum asked Commissioner Day to lead the attendees in the pledges of allegiance to the United States and Texas flags.

The Chairman moved to agenda item two, minutes of June 30, 2008, Commission meeting. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission unanimously approved the minutes of the previous meeting as presented. The Chairman acknowledged and welcomed Lori Levy (Texas Association of Realtors); Gary Maler (Research Center at Texas A&M); and Kristen Alley, the daughter of Commissioner Alley.

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 absence of Commissioner Leal. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission unanimously excused the absence of Commissioner Leal.

The Chairman moved to agenda item four, staff reports; committee reports. Ms. Jackson stated that there was a 28% decrease in the number of licenses issued from original applications. There was discussion concerning the high percentage of salesperson's late renewals, the decreasing number of licensees, and the fingerprint process and various concerns regarding it.

Ms. Lindquist, Director of Enforcement, reported on the division's activities. There was discussion concerning complaints filed against education providers and/or schools. There was discussion concerning the increase in the number of complaints filed and the geographical areas involved. There was additional discussion concerning administrative complaints, the amount of time spent to close a complaint, and whether or not the

agency was in compliance with performance measures. Ms. Lindquist introduced a new legal assistant, Nikkol Camarillo.

Mr. Watson, Director of Technology Services, reported that the number of web pages viewed remains high and that the percentage of online renewals continues to grow. There was discussion concerning the Information Resources Deployment Review.

Ms. Alexander, Director of Staff Services, reported on the current status of the budget and the end of year balances. Ms. Alexander reported that a security had matured and that her division would complete a cash flow projection to determine whether and when the funds would be reinvested. She reported on the number of recovery fund applications and the amount of money that had been paid during fiscal year 2008.

The Chairman moved to agenda item twenty-two, discussion and possible action to approve the Legislative Appropriations Request (LAR) for FY 2010-2011. Mr. Irvine explained the appropriations process and the purpose of the LAR for TREC. He summarized the LAR for FY 2010-2011 referring to the draft document contained in the Commission meeting material. Mr. Irvine presented each of the exceptional items contained in the LAR for TREC and the exceptional items that had been approved by the Texas Appraiser Certification and Licensing Board (an independent subdivision of TREC) at its meeting on August 15, 2008. Mr. Irvine also gave an overview of the revenue projections for FY 2010-2011.

There was discussion concerning the amount of revenue collected versus the cost of operating the agency. Ms. Alexander explained the various pass-through fees that TREC collects for the General Revenue Fund, the Research Center at Texas A&M and TexasOnline. There was further discussion concerning the baseline budget, exceptional items and the handling of employee benefits within the budget. After discussion, upon motion of Ms. Wukasch, duly seconded by Mr. Flores, the Commission unanimously approved the Legislative Appropriations Request for FY 2010-2011.

Mr. Eckstrum moved to agenda item six, executive session, to discuss pending litigation pursuant to Texas Government Code, §551.071 and if necessary, to receive legal advice from counsel on posted agenda items. The Executive session began at 9:48 a.m. The meeting was back in open session at 10:19 a.m.

Chairman Eckstrum moved to agenda item seven, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. No recovery fund claims were presented for discussion or possible action.

The Chairman moved to agenda item eight, discussion and possible action to withdraw the proposed repeal of: (a) 22 TAC §535.223 concerning Standard Inspection Report Forms and (b) 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors. Ms. Bijansky stated she would be presenting agenda items eight, nine, ten and eleven together. Agenda item eight concerned the withdrawal of the proposed repeal of 22 TAC §535.223 concerning Standard Inspection Reports and 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors as approved at the April 2008 meeting. Agenda item nine concerned the withdrawal of the proposed new 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors, 22 TAC §535.222 concerning Inspection Reports, and 22 TAC §535.223 concerning Standard Inspection Report Form as approved at that same meeting.

Agenda item ten concerned the re-proposal of the repeal of 22 TAC §535.223 concerning Standard Inspection Reports and 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors. Agenda item eleven concerns the proposal of new 22 TAC §§535.227-535.233 concerning Standards of Practice for Inspectors, 22 TAC §535.222 concerning Inspection Reports and 22 TAC §535.223 concerning Standard Inspection Report Form.

Ms. Bijansky presented the agenda item for discussion and possible action. Ms. Bijansky stated that the rules as proposed at the April meeting had been substantively changed due to comments received after the rules were published in the May 16, 2008 issue of the *Texas Register*. The changes were so extensive that the initial proposals needed to be withdrawn and the changed text proposed to comply with the laws regarding rule making.

Agenda item eight provides for the withdrawal of the repeals of the current rules §535.223 and §§535.227-535.231, while agenda item ten initiated the proposal of the repeals of these rules again. This was necessary to ensure that the appropriate amount of time was available during the consideration of the rules. Agenda item nine provides for the withdrawal of the proposed rules from the April meeting and agenda item eleven proposed the rewritten new rules.

Upon motion of Mr. Mesa, duly seconded by Ms. Wukasch, the Commission unanimously approved the action to withdraw the proposed repeal of 22 TAC §535.223 concerning Standard Inspection Reports and 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors as presented under agenda item eight.

Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission unanimously approved the action to withdraw proposed new 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors, 22 TAC §535.222 concerning Inspection Reports and 22 TAC §535.223 concerning Standard Inspection Report Form as presented under agenda item nine.

Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission unanimously approved the proposed repeal of 22 TAC §535.223 concerning Standard Inspection Reports and 22 TAC §§535.227-535.231 concerning Standards of Practice for Inspectors as presented under agenda item ten.

Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission unanimously approved proposed new 22 TAC §§535.227-535.233 concerning Standards of Practice for Inspectors as presented under agenda item eleven (a).

Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission unanimously approved proposed new 22 TAC §535.222 concerning Inspection Reports and 22 TAC §535.223 concerning Standard Inspection Report Form as presented under agenda item eleven (b) and (c).

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to propose amendments to: (a) 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors, (b) 22 TAC §535.101 concerning Real Estate Salesperson and Broker Fees and (c) 22 TAC §535.210 concerning Home Inspector Fees.

Ms. DeHay presented agenda item twelve (a), amendments to 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors, for discussion and possible action. The amendments to §535.64 address the requirements of new §1101.304, Texas Occupations Code regarding examination passage rate data for graduates of accredited educational programs. Staff proposed the amendment to clarify that the last course taken for purposes of the data to be collected is the last core course taken from an accredited provider within 5 years of the date the person filed an application with the Commission. Courses taken at non-accredited providers will not be collected or counted. Comments were offered by Minor Peeples of Corpus Christi concerning the pass rate requirements. Comments were offered by Jim Hemsell concerning the manner in which the pass rate will be determined. Mr. Flores, duly seconded by Ms. Burlison, moved to publish the amendments to §535.64 for comment changing the period from five years to two years. There was discussion concerning the change from five years to two years. The motion was adopted with Mr. Arriaga abstaining.

Ms. DeHay presented twelve (b), amendments to 22 TAC §535.101 concerning Real Estate Salesperson and Broker Fees, for discussion and possible action. The proposed amendments increase the examination fee for salesperson and broker applicants from \$59 to \$61. The proposed amendment modifies the examination fee to reflect the cost under the new contract for examination administration services which will be effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency. Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission unanimously approved the proposal of amendments to 22 TAC §535.101 concerning Real Estate Salesperson and Broker Fees as presented under agenda item twelve(b).

Ms. DeHay presented twelve (c), amendments to 22 TAC §535.210 concerning Home Inspector Fees, for discussion and possible action. The proposed amendments increase the examination fee for home inspector applicants from \$59 to \$61. The proposed amendment modifies the examination fee to reflect the cost under the new contract for examination administration services which will be effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission unanimously approved the proposal of amendments to 22 TAC §535.210 concerning Home Inspector Fees as presented under agenda item twelve(c).

Chairman Eckstrum moved to agenda thirteen, discussion and possible action to propose amendments to: (a) 22 TAC §537.21 concerning Addendum for Sale of Other Property by Buyer, (b) 22 TAC §537.22 concerning Addendum for "Back-Up" Contract, (c) 22 TAC §537.23 concerning Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement, (d) 22 TAC §537.26 concerning Seller's Temporary Residential Lease, (e) 22 TAC §537.27 concerning Buyer's Temporary Residential Lease, (f) 22 TAC §537.33 concerning Seller Financing Addendum, (g) 22 TAC §537.35 concerning Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum, (h) 22 TAC §537.40 concerning Addendum for Coastal Area Property, (i) 22 TAC §537.46 concerning Amendment to Contract, and (j) 22 TAC §537.48 concerning Loan Assumption Addendum.

Ms. DeHay presented agenda item thirteen for discussion and possible action. The amendments to 22 TAC

§§537.21-.23, §537.26-.27, §537.33, §537.35, §537.40, §537.46, and §537.48 correct the agency web address from www.state.tx.us to www.trec.state.tx.us where the incorrect web address appears in the rules. Ms. Wukasch, duly seconded by Mr. Mesa, moved to propose the amendments to §§537.21-.23, §537.26-.27, §537.33, §537.35, §537.40, §537.46, and §537.48 for publication in the *Texas Register* as presented. The motion was adopted by unanimous vote.

The Chairman moved to agenda item fourteen, discussion and possible action to propose new 22 TAC §537.51 concerning Addendum for Reservation of Oil, Gas, and Other Minerals. The amendment proposes to adopt by reference a new TREC addendum for reservation of oil, gas, and other minerals. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission unanimously approved the proposal of amendments to 22 TAC §537.51 concerning Addendum for Reservation of Oil, Gas, and Other Minerals and the form adopted by reference as presented under agenda item fourteen.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to adopt amendments or take other action on 22 TAC §535.208 concerning Application for a License (Certificate of Insurance for Home Inspectors). Ms. Bijansky presented the agenda item for discussion and possible action. The 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 the time period within which insurers must notify TREC of canceled or non-renewed policies from 10 days to 30 days. No comments had been received on the proposed amendment and form. Upon motion of Mr. Alley, duly seconded by Mr. Flores, the Commission unanimously approved the adoption of the amendment and form adopted by reference contained in 22 TAC §535.208 concerning Application for a License (Certificate of Insurance for Home Inspectors).as presented.

Chairman Eckstrum moved to agenda item sixteen, discussion regarding comments received on the review of 22 TAC Chapter 525 General Provision (§§535.91-.403). Ms. DeHay stated that no comments had been received at this time.

Chairman Eckstrum moved to agenda item seventeen, discussion regarding revised form OP-I, Texas Real Estate Consumer Notice Concerning Hazards or Deficiencies. Ms. Bijansky presented the agenda item for discussion only. The form is approved for voluntary use and does not require rule making to revise it.

Mr. Eckstrum moved to agenda item eighteen, update on procurement of vendors for TREC's licensing and information system. Mr. Watson reported on the responses TREC had received to its "Request for Information" or RFI on obtaining a new licensing and information system. He stated that after review of the RFIs staff had requested two of the vendors to present information concerning their applications to aid staff in the process of developing and defining requirements of a replacement system. Mr. Watson reported that the Department of Information Resources (DIR) had recently completed the RFO process for a statewide licensing program and that TREC is monitoring DIRs approvals under their RFO to see if they presented possible licensing management system solutions.

Chairman Eckstrum moved to agenda item nineteen, discussion and possible action regarding Chairman's report on appointment of members to the broker responsibility advisory committee. The Chairman stated that the following people had been appointed to the committee:

Robert Doggett	Texas Rio Grande Legal Aid	Austin
Cameron Hill	REALM Real Estate Professionals	Houston
Susan Jackson Corbin	Sandcastles Realty	Galveston
Randy Jeffers	Coldwell Banker First Equity	Amarillo
Ana Ochoa	Coldwell Banker Ana Ochoa	Laredo
Dan Odom	Award Co., Realtors and Property Mgmt.	Ft. Worth
Barbara Tarin	Tarin Real Estate	San Antonio
George Stephens	ERA Stephens Properties	Houston
Beth Thomas	Real Estate Center, TX A&M	College Station
Harry Wolff	Cox & Smith	San Antonio
Tom Branch	Realty Revolution	Plano
Michael Levitin	HTown Property Management	Houston
Avis Wukasch	TREC Liaison/Commissioner	Round Rock

The committee's purpose is to develop information and recommendations regarding the proposal of rules defining the specific responsibilities of a broker.

The Chairman moved to agenda item twenty, discussion and possible action regarding Chairman's report on appointment of members to the education advisory committee. The Chairman stated that the purpose of this committee will be 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 members of this committee are:

Lousie Hull	Cornerstone Properties	Victoria
Rick Albers	Kuperman, Orr & Albers, PC	Austin
Dave Dalzell	Dalzell Realtors	Abilene
Debbie Watson	Ebby Halliday Realtors	Dallas
Susan Jones	Century 21 Accent	Temple
Rebecca Ray	Kaplan Professional Schools	Carrollton
Rita Santamaria	Champions School of Real Estate	Houston
Rick Knowles	Capital Real Estate Training	Austin
Deb Walman	Texas Association of Realtors	Austin
Virginia Parras	Houston Association of Realtors	Houston
David Rosow	Coldwell Banker D'Ann Harper	San Antonio
Denise Whisenant	Real Estate Center, TX A&M	College Station
Adrian Arriaga	TREC Liaison/Commissioner	McAllen

Chairman Eckstrum moved to agenda item twenty-one, discussion and possible action to approve the annual internal audit report. Mr. Irvine stated that the agency had not yet received the report and the Chairman moved to agenda item twenty-three as agenda item twenty-two had been considered previously.

Agenda item twenty-three is the discussion and possible action to approve a Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board (TALCB). This Memorandum of Understanding states the services provided to TALCB by TREC staff, determines the supervision of staff, and states the costs of TREC-provided support services and TALCB's responsibility for those costs. After discussion, upon motion of Mr. Mesa, duly seconded by Mr. Arriaga, the Commission unanimously approved the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board as submitted by staff.

The Chairman moved to agenda item twenty-four, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings on: (a) Docket No. 329-08-1355, In the Matter of Theron Carmichael; (b) Docket No. 329-08-2267, In the Matter of Best O. Ejereonyeoku; and (c) Docket No. 329-08-2787, In the Matter of Marvin Earl Jackson, III. Mr. Eckstrum relinquished the gavel to Commissioner Day to serve as presiding officer for this agenda item.

Mr. Day called for consideration and possible action regarding the proposal for decision from the State Office of Administrative Hearings (SOAH) on Docket No. 329-08-1355, in the Matter of Theron Carmichael. Mr. Carmichael was not present. Ms. Lindquist stated that Mr. Carmichael had applied for a moral character determination which staff proposed to deny. The Administrative Law Judge issued the Proposal for Decision denying the moral character determination application. There was discussion concerning the basis for the denial. Upon motion of Ms. Wukasch, duly seconded by Ms. Burleson, the Commission unanimously approved the Proposal for Decision as submitted by SOAH on Docket No. 329-08-1355, in the Matter of Theron Carmichael.

Mr. Day called for consideration and possible action regarding proposal for decision from the State Office of Administrative Hearings (SOAH) on Docket No. 329-08-2267, In the Matter of Best O. Ejereonyeoku. Mr. Ejereonyeoku was not present. Upon motion of Ms. Flores, duly seconded by Mr. Mesa, the Commission unanimously approved the Proposal for Decision as submitted by SOAH on Docket No. 329-08-2267, in the Matter of Best O. Ejereonyeoku which found that he was not in violation of the MCE requirements for the renewal of his license and should not be sanctioned.

Mr. Day called for consideration and possible action regarding proposal for decision from the State Office of Administrative Hearings (SOAH) on Docket No. 329-08-2787, in the Matter of Marvin Earl Jackson, III. Mr. Jackson was not present. Ms. Lindquist presented a proposed order which listed terms and conditions of probation which the Enforcement Division considered appropriate. There was discussion concerning the facts of the case which included Mr. Jackson's criminal history; the terms and conditions of probation; and the process that would be followed to revoke the probated license if necessary. There was discussion concerning the Enforcement Division's decision not to oppose the proposed order issuing a probationary license. Virginia Fields, staff attorney, spoke facts presented at the hearing before the Administrative Law Judge. After further discussion, upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission approved the Proposal for Decision as submitted by SOAH on Docket No. 329-08-2267, in the Matter of Marvin Earl Jackson, III., which found that he should be issued a probationary license as a real estate salesperson with the terms and conditions proposed by TREC staff. Mr. Day and Mrs. Burleson voted against the motion.

The Chairman moved to agenda item twenty-five, scheduling future meetings and adjourn. The next meetings are scheduled for October 27, 2008, and December 15, 2008. The Commission tentatively set meetings for the fourth Monday of February, April, June, and August of 2009 in Austin. The Chairman adjourned the meeting at 11:30 a.m.

Patricia Holder, Secretary for the Meeting

APPROVED this the 27th day of October, 2008.

John Eckstrum
Chairman

ATTEST: _____
Timothy K. Irvine
Administrator