

MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION

February 23, 2009

Room 235, 1101 Camino La Costa
Austin, Texas

On Monday, February 23, 2009, at 3:00 p.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Vice-chair Troy Alley, Jr. called the meeting to order at 3:00 p.m. and asked Commissioner Leal to lead the attendees in the pledges of allegiance to the United States and Texas flags. At 3:08 p.m., Mr. Alley announced that the meeting would recess until the Chair and staff returned from the Senate Finance Committee.

Chairman Eckstrum called the meeting to order at 3:12 p.m. 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

Elizabeth Leal

Tom Mesa

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

The Chairman moved to agenda item two, the election of officers. Upon the motion of Ms. Burleson, duly seconded by Mr. Mesa, the Commission selected Avis Wukasch as Vice-Chair. Upon the motion of Ms. Leal, duly seconded by Ms. Burleson, the Commission selected Adrian A. Arriaga as Secretary.

Mr. Eckstrum moved to agenda item three, recognition of John Walton for his service to the Texas Real Estate Commission and the State of Texas. Mr. Eckstrum presented former Chairman Walton with a plaque, gavel and resolution recognizing him for his service as a Commissioner and as Chair of the Texas Real Estate Commission. The Chairman read the following resolution for the record.

WHEREAS, on March 8, 2004, John Walton was appointed by Governor Rick Perry to serve as the Chairman of the Texas Real Estate Commission and he served in that capacity until March 28, 2008, when Governor Perry appointed his successor, and

WHEREAS, John Walton brought to the position of Chairman an incomparable array of skills, talents and experience, having established a large and highly successful real estate practice in Lubbock, having served in a number of important roles with the Texas Association of Realtors, including serving as its Chairman in 1999, and having served as a Director of the National Association of Realtors from 1998 to 2005, and

WHEREAS, in his role as Chairman of the Texas Real Estate Commission, John Walton worked tirelessly and diligently, learning many of the intricacies of the Commission's day-to-day operations in order that he might effectively guide the Commission through the Sunset process and major legislative changes, and

WHEREAS, through his unswerving commitment to consumer protection, transparent operation, respect for diversity of views, and efficient state government, John Walton was able to preside over Commission meetings in which complex issues were considered and addressed thoroughly and controversial issues were addressed with balance, fairness, deliberateness, and timely resolution, and

WHEREAS, through his leadership and example John Walton brought out the best in his fellow Commissioner and the Commission's staff and left an indelible print on them by forging a clear and common purpose.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Texas Real Estate Commission recognizes John Walton for his immeasurable contributions, both as Commissioner and as Chair, to the Texas Real Estate Commission, to the government and citizens of the State of Texas, and to the real estate profession, and extends its deepest thanks to him for his generosity of time, talent, and passion, and

FURTHER RESOLVED, that the Commission extends to John Walton a sincere request for his continued involvement in the activities of the Commission as an advocate for consumer protection in the real estate profession and efficiency in state government.

Upon motion of Mr. Day, duly seconded by Ms. Leal, the Commission adopted the resolution. Mr. Walton spoke briefly concerning his time on the Commission and expressed his gratitude for the recognition.

Mr. Eckstrum moved to agenda item four, approval of minutes of the December 15, 2008, Commission meeting. Upon motion of Mr. Mesa, duly seconded by Ms. Leal, the Commission unanimously approved the minutes of the meeting as presented.

Chairman Eckstrum moved to agenda item number five, discussion and possible action to excuse commissioner absence(s). Upon motion of Mr. Flores, seconded by Mr. Mesa, the Commission unanimously excused the absence of Commissioner Wukasch.

The Chairman moved to agenda item six, reports by Interim Administrator and Division Directors which may include reports of monthly activities and statistical data for licensing, education, enforcement, technology usage, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by Commissioners to Division Directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by the Commission for additional information or reports from staff; and introduction of new employees.

Ms. DeHay spoke concerning the February 23, 2009, Senate Finance Subcommittee meeting that the Chairman and several members of the staff had attended that morning. She also spoke concerning the various House and Senate committees that she would be attending in the upcoming months as a representative of TREC.

Ms. Jackson reported on the number of licenses being issued. She stated that the number of individuals applying for salespersons licenses and those renewing their salespersons licenses were decreasing. Ms. Jackson

stated that the number of individuals applying for brokers licenses was showing a slight increase and the number renewing was remaining constant.

Ms. Lindquist reported on the Enforcement reports in the meeting packet. She spoke concerning the disposition of the backlogged cases. Ms. Lindquist also reported on the progress concerning closing older cases. There were questions concerning benchmarks set for staff. Ms. Lindquist stated that ultimately she hoped to have cases in line with the measure which requires that 85% of jurisdictional cases be closed within 180 days. There was further discussion concerning how complainants and respondents were notified or updated during the complaint process. There was discussion concerning the number of cases that go before an administrative law judge at the State Office of Administrative Hearings.

Mr. Watson reported on the Technology Services reports. The web page access counts were down by approximately 5%. He stated that the online renewals and applications were down by 6% but well within the parameters for the measures.

Ms. Alexander reported on the budget status. She spoke concerning the securities that had matured during the report period and the reinvestment of those funds. Ms. Alexander reported on the Recovery Trust Account payments and Inspector Recovery Fund payments.

Chairman Eckstrum moved to agenda item seven, general comments from visitors. Jay Maizel spoke concerning his complaint against an inspector which had been closed by the Enforcement Division. The Chairman explained that since this item was not on the agenda for consideration, it could not be discussed or acted upon at this time. He requested that Mr. Maizel present his concerns to the Administrator. Mr. Maizel requested that his concern be placed on the agenda for the next meeting. There was discussion concerning the procedure to request an item be placed on an agenda.

The Chairman moved to agenda item eight, 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 4:18 p.m. The meeting was back in open session at 4:42 p.m.

Chairman Eckstrum moved to agenda item nine, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. Ms. Bijansky presented the following recovery fund cases for consideration and possible payment:

RF09-005, James and Margarita Allen v. Robert Louis Brown, in the amount of \$11,282 in actual damages and \$3,900 in attorney fees. Mr. Flores, seconded by Ms. Leal, moved to make the payment as requested and requested that the Enforcement division look into problems with the broker in this case. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item ten, discussion and possible action to propose amendments to 22 TAC §535.206 concerning the Texas Real Estate Inspector Committee. Ms. Bijansky asked that this item be deferred until after the Commission considered agenda item nineteen, discussion and possible action to appoint members to the Texas Real Estate Inspector Committee as the decisions made on agenda item nineteen would have a direct affect on agenda item ten.

The Chairman moved to agenda item eleven, discussion and possible action to propose amendments to 22 TAC §535.212(a)(5)(J)(i) regarding Education and Experience Requirements for an Inspector License. Ms. Bijansky presented the agenda item for discussion and possible action. The amendment updates a reference to the recently revised standard inspection report form, which was not changed when the REI 7A-0 form was replaced by the REI 7A-1, effective February 1, 2009. Upon motion of Mr. Flores, duly seconded by Ms. Leal, the Commission unanimously approved the proposal of the amendment to 22 TAC §535.212(a)(5)(J)(i).

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to adopt amendments to 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors. Ms. Bijansky presented the agenda item for discussion and possible action. The amendments adopt by reference a revised course application form without changes to the proposed text and form as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 25). Form ED 3-1, Course Application, has been revised to obtain additional information regarding the type of course, the provider's contact information, the delivery format, a sample course completion certificate, approval from the Distance Learning Certification Center for online courses, and a permission letter for courses using another provider's materials. The amendments also update a reference to Form ED 7-1, Instructor Manual Guidelines, which erroneously referred to an outdated version of the form, and a reference to the instructor approval requirements, which was not updated when the lettering of the subsections changed at the time of previous amendments to the section.

Ms. Leal, duly seconded by Mr. Flores, moved to adopt the amendments to §535.64 and the form as presented by staff. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action to approve staff recommendation for TREC licensing and information system vendor and update on Request for Offers for TREC's licensing and information system. Mr. Watson presented this information for discussion. He updated the Commission on staff's progress with the recommendation and stated that he was obtaining additional information from interested vendors. There was discussion concerning the projected timeline for the completion of the project.

Mr. Flores requested that agenda item eighteen be moved forward. The Chairman moved to agenda item eighteen, the report on the DIR penetration test. Mr. Watson presented the report and explained the purpose of the test.

Mr. Eckstrum moved to agenda item fourteen, legislative update. Ms. Bijansky presented a written update on bills that had been filed subsequent to the last report in December. She described S.B. 862 which contains some of the housekeeping items from TREC's Strategic Plan process. She also reported on H.B. 1405 which would establish a licensure process for landmen under TREC's regulation, and H.B. 1356 which would create an exemption to licensure for employees of management companies showing and leasing properties who are hired by the condominium association. There was discussion concerning the definition of landmen.

Chairman Eckstrum moved to agenda item fifteen, discussion and possible action regarding the job description, job posting, selection criteria and selection process for the TREC administrator position. The Chairman stated that there would not be any discussion of this item at this time.

Mr. Eckstrum moved to agenda items sixteen, discussion and possible action regarding any changes to the Legislative Appropriations Request pursuant to an October 13, 2008, letter from Governor Rick Perry; and, seventeen, discussion and possible action regarding a letter from Lieutenant Governor Dewhurst and Speaker Straus concerning a 2.5% budget reduction proposal for FY 2009.

Ms. DeHay presented these items for discussion and possible action. She stated that item sixteen was placed on the agenda so that the Commission could consider any changes to the exceptional items and the prioritization of the items. There was discussion concerning moving item four, an additional staff attorney to item three. After discussion, upon motion of Mr. Flores, duly seconded by Mr. Mesa, the Commission unanimously authorized Ms. DeHay and the Chairman the ability to work with the LBB and the various House

and Senate Finance committees when asked if TREC has any flexibility.

Ms. DeHay reported that if the agency was required to reduce the FY 2009 budget by 2.5%, staff recommended that the money be taken from funds dedicated to the imaging project. Upon motion of Mr. Flores, duly seconded by Mr. Mesa, the Commission approved using the money set aside to begin the imaging process in FY 2009 to meet the 2.5% reduction request if necessary.

Mr. Eckstrum moved to agenda item nineteen, discussion and possible action to appoint members to the Texas Real Estate Inspector Committee. Ms. Bijansky stated that there were 13 applications for the two inspector members and two applications for the public member position. One of the two applicants for the public member appointment is ineligible under 22 TAC §535.206 because the applicant is licensed in a related field. Ms. Bijansky raised agenda item ten, amendment of 22 TAC §535.206 to propose to change the public member requirements if the Commission so desired due to the lack of eligible applicants. There was discussion concerning amending the rule to allow the public members to be real estate licensees. Mr. Foster, Texas Real Estate Inspector Advisory Committee Chairman, spoke against amendment of the rule and in favor of reappointing Brian Murphy and Fred Willcox, the two inspector members whose terms were expiring.

Upon motion of Ms. Leal, seconded by Mr. Mesa, the Commission reappointed Brian Murphy and Fred Willcox to six year terms on the Texas Real Estate Inspector Advisory Committee. The Commission took no action to fill the public member position or to amend the rule.

The Chairman moved to agenda item twenty, discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, §2256.007(d). Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Mr. Mesa, seconded by Mr. Flores, the Commission approved the training for the TREC investment officers as requested.

Chairman Eckstrum moved to agenda item twenty one, consideration and possible action regarding Proposals for Decision from the State Office of Administrative Hearings: (a) Proposal for Decision in the Matter of Delani Angulo, SOAH Docket No. 329-08-4287; (b) Proposal for Decision in the Matter of Brizeida Balderas, SOAH Docket No. 329-08-3661; (c) Proposal for Decision in the Matter of Olin Jeffries Nelson, SOAH Docket No. 329-09-0287; (d) Proposal for Decision in the Matter of Kevin Allan Smith, SOAH Docket No. 329-09-0678; and (e) Proposal for Decision in the Matter of Unique R. Walker, SOAH Docket No. 329-08-4418.

Mr. Day presided over this agenda item and called SOAH Docket No. 329-08-4287, Texas Real Estate Commission vs. Delani Angulo. Delani Angulo was not present. Ms. Lindquist presented the proposal for decision denying the application of Delani Angulo for a real estate salesperson license. Upon motion of Mr. Flores, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-08-3661, Texas Real Estate Commission vs. Brizeida Balderas. Brizeida Balderas was not present. Ms. Lindquist presented the proposal for decision denying the application of Brizeida Balderas for real estate salesperson license. Virginia Field, TREC staff attorney, presented a summary of the facts from the hearing. After discussion, upon motion of Mr. Flores, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-09-0287, Texas Real Estate Commission vs. Olin Jeffries Nelson. Mr. Nelson was in attendance. Ms. Lindquist presented the proposal for decision granting Mr. Nelson a

probationary license. TREC staff had proposed to deny the application pursuant to Texas Occupations Code §1101.351. The Administrative Law Judge recommended that the applicant be granted a probationary license with a term of twelve months and including the following condition: that Respondent shall comply with the Real Estate License Act and with the rules of the Commission, and that Respondent fully cooperate with the enforcement division of the Commission in the investigation of any complaint filed against Respondent. Both, Mr. Nelson and Ms. Lindquist spoke in response to questions from the Commission members. Upon motion of Mr. Arriaga, duly seconded by Ms. Leal, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-09-0678, Texas Real Estate Commission vs. Kevin Allan Smith. Mr. Smith was not present. Ms. Lindquist presented the proposal for decision revoking Mr. Smith's broker license due to the Commission making a payment from the Real Estate Recovery Trust Account to satisfy all or part of a judgment against the licensee. Upon motion of Mr. Mesa, duly seconded by Ms. Burleson, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-08-4418, Texas Real Estate Commission vs. Unique R. Walker. Ms. Walker was not present. Ms. Lindquist presented the proposal for decision denying the moral character determination based on Ms. Walker's criminal history and failure to make full disclosure on her application. Upon motion of Mr. Flores, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as submitted.

The Chairman moved to agenda item twenty-two, schedule future meetings. After discussion, the next meeting of the Commission was scheduled for May 26, 2009 at 1:00 p.m., tentatively for August 17, 2009 at 11:00 a.m. The Chairman adjourned the meeting at 5:35 p.m.

Patricia Holder, Secretary for the Meeting

APPROVED this the 26th day of May, 2009.

John Eckstrum
Chairman

ATTEST: _____

Loretta R. DeHay
Interim Administrator