

MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION

May 26, 2009

Room 235, 1101 Camino La Costa
Austin, Texas

On Tuesday, May 26, 2009, at 1:00 p.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order at 1:04 p.m. and asked Commissioner Wukasch to lead the attendees in the pledges of allegiance to the United States and Texas flags. 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

Chris Day

Avis Wukasch

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, introduction and welcome of new commissioners. The Chairman welcomed Joanne Justice of Arlington and Jaime Hensley of Lufkin who were in attendance. He stated that although the new commissioners had been appointed they had not yet been confirmed and would be unable to vote at this meeting. The third new member is Dona Scurry of El Paso, who was unable to attend the meeting. Upon the motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission excused the absence of Mr. Mesa.

Mr. Eckstrum moved to agenda item three, approval of minutes of the February 23, 2009, Commission meeting. Upon motion of Mr. Arriaga, duly seconded by Mr. Day, the Commission unanimously approved the minutes of the meeting as presented.

The Chairman moved to agenda item five, 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 Legislative session and various appropriation issues.

Ms. Jackson reported on the number of licenses being issued and other licensing issues. There was discussion concerning the types of telephone calls being handled in the Communications department and possibly tracking them.

Ms. Lindquist presented Enforcement's Staff Report and gave updates on the progress of the reduction in the backlog. Additionally, Ms. Lindquist introduced Michael Molloy, the newest staff attorney in Enforcement. Mr. Molloy was not able to be present at the meeting.

Mr. Watson reported on the Technology Services reports.

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 six, general comments from visitors. No comments were offered.

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 and employment law, and to discuss personnel matters regarding administrator position under Texas Government Code, §§551.071 and 551.074. The Executive session began at 1:25 p.m. The meeting was back in open session at 2:43 p.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 presented the following recovery fund cases for consideration and possible payment:

RF09-003, Sherri Carter v. Texas Apartment Locator, Inc., in the amount of \$5,000 in actual damages. Mr. Arriaga, seconded by Mr. Day, moved to make the payment as requested. The motion was adopted by unanimous vote.

RF09-007, Elizabeth Tanzer Legler v. Roberto L. Flores, in the amount of \$6,332 in actual damages. Mr. Alley, seconded by Ms. Wukasch, moved to make the payment as requested. The motion was adopted by unanimous vote.

Chairman Eckstrum moved to agenda item nine, discussion and possible action regarding selection of the TREC administrator. The Chairman stated that this agenda item would be postponed until the next meeting on June 11, 2009 at 1:00 p.m.

Chairman Eckstrum moved to agenda item twenty, discussion and possible action to approve the annual audit plan. Rene Gonzales of Garza/Gonzales and Associates presented the agenda item for discussion and possible action to approve. Upon the motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission approved the annual audit plan as presented.

The Chairman moved to agenda item ten, discussion and possible action to propose amendments to: a. 22 TAC §535.64 regarding Accreditation of Schools and Approval of Courses and Instructors, and b. 22 TAC §535.66 regarding Payment of Annual Fee, Audits, Investigations and Enforcement Actions. Ms. Bijansky presented the agenda item for discussion and possible action. The proposed amendments to §535.64, Accreditation of Schools and Approval of Courses and Instructors, and §535.66 Payment of Annual Fee, Audits, Investigations and Enforcement Actions, reduce the period of accreditation of schools from five years to two years in order to better implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. The proposed rules also define how a school's passage rate will be calculated and published by the commission and clarify that the commission will consider a number of factors in determining whether to renew the accreditation of a school with a pass rate below 55%. The amendments also update the Education Provider Application form ED 1-0 to form ED 1-1 to reflect a revised fee for a two-year accreditation instead of a 5-year accreditation plus annual fees. Upon motion of Ms. Wukasch, duly seconded by Mr. Day, the Commission unanimously approved the proposal of the amendments to 22 TAC §535.64 and §535.66.

Mr. Eckstrum moved to agenda item eleven, discussion and possible action to propose amendments to: a. 22 TAC §535.101 concerning Fees and b. 22 TAC §535.210 concerning Fees (Inspectors). Ms. DeHay presented the agenda item for discussion and possible action. The amendments would increase the salesperson and broker renewal fees by \$8 for a 2 year renewal. The justification for the amendments is to generate sufficient revenue to fund appropriations by the 81st Legislature (2009). In addition, the amendments would change the accreditation fee for education programs from \$400 to \$560 and repeal the \$200 renewal fee for education programs to better implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. The fees are adjusted for a two-year accreditation instead of a 5-year accreditation plus annual fees. The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections. The amendments would permit TREC to raise the necessary revenue to offset the additional costs incurred by the commission to implement new programs required by laws passed by the 81st Legislature. After discussion and upon the motion of Mr. Alley, duly seconded by Ms. Wukasch, the Commission unanimously approved the amendments to 22 TAC §535.101.

Ms. DeHay stated that staff was withdrawing the amendments to 22 TAC §535.210 at this time.

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to: a. propose amendments to 22 TAC §535.51 concerning General Requirements and b. adopt amendments to 22 TAC §535.51 concerning General Requirements on an emergency basis. Ms. Bijansky presented the agenda item for discussion and possible action. Under agenda item twelve (a) the amendments to §535.51, General Requirements, would correct and clarify the requirements for obtaining an education evaluation and submitting an application for licensure. The proposed amendments also include stylistic changes to improve readability and restore to subsection (e) (relettered as subsection (f)) text that was inadvertently omitted at the time of the last amendments to this section.

The proposed amendments also change the fee schedule on the late renewal application forms adopted by reference to reflect an increase in late renewal fees from \$45 to \$51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from \$60 to \$68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year. The fee increases are concurrently being proposed in amendments to §535.101 under agenda Item 11. The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections.

The proposed amendments also change the fee schedule on the salesperson original application, late renewal application forms, and the broker step down application form adopted by reference to reflect an increase in the fee paid by such applicants to the Real Estate Center from \$17.50 to \$20.00. The fee was increased during the 81st Legislative Session, Regular Session, by Senate Bill 862 which amended Texas Occupations Code §1101.152. Upon motion of Ms. Wukasch, seconded by Mr. Day, the Commission approved the publication of the amendments and forms for comment as presented by staff.

Under agenda item twelve (b) the amendments adopt on an emergency basis revisions to §535.51 concerning General Requirements and adopt by reference three revised forms. The amendments are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code Chapter 1101 during the 81st Legislative Session, Regular Session, by Senate Bill 562. The effective date of SB 862 is May 11, 2007. The adoption of the amendments permits TREC to comply with the effective date required by the bill. The amendments adopt by reference revised forms to reflect increased fees to be paid to the Real

Estate Research Center at Texas A&M University for three application types for a salesperson license as SB 862 provides for such increase in fees. Upon motion of Ms. Wukasch, seconded by Mr. Alley, the Commission approved the emergency adoption of the amendments and forms as presented by staff.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action to propose amendments to or take other action on: a. 22 TAC §535.206 concerning The Texas Real Estate Inspector Committee, b. 22 TAC §535.212(a)(5)(J)(i) regarding Education and Experience Requirements for an Inspector License, and c. 22 TAC §535.223 regarding standard inspection report form. Ms. Bijansky presented the agenda item for discussion and possible action. She requested agenda item thirteen (c) be presented first. The amendments to §535.223 concerning standard inspection report forms would adopt by reference a revised standard inspection report form. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997). To create a grace period during which inspectors may use either the new form, REI 7-2 or the old form, REI 7A-1, the rule will require inspectors to use either the 7-2 form or the 7A-1 form for inspections of one-to-four family residential properties. The amended form corrects the rule reference on the first page of the form, modifies the header on pages 3-6 to indicate that “D=Deficient” (instead of “D=Deficiency”) and makes minor stylistic revisions to the form. The proposed amendments have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, resulting from revisions to the inspector standards of practice that became effective on February 1, 2009. Upon motion of Ms. Wukasch, seconded by Mr. Day, the Commission approved the proposal of the amendments and form as presented by staff.

Ms. Bijansky presented agenda item thirteen (b). The Texas amendment to §535.212 concerning Education and Experience Requirements for an Inspector License 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, and adds a reference to form REI 7-2, concurrently being proposed as an amendment to 22 TAC §535.223. Upon motion of Mr. Arriaga, seconded by Ms. Wukasch, the Commission approved the proposal of the amendments and form as presented by staff.

The Chairman moved to agenda item fifteen, discussion and possible action to appoint a public member to the Texas Real Estate Inspector Committee. This item would be considered before agenda item thirteen (a), 22 TAC §535.206 concerning The Texas Real Estate Inspector Committee. After discussion, the Commission appointed Denise Robbins as a public member of the Texas Real Estate Inspector Committee. No action was taken on agenda item thirteen (a).

Mr. Eckstrum moved to agenda item sixteen, discussion and possible action regarding recommendations, if any, from the Education Committee. After discussion, Ms. Wukasch, seconded by Mr. Alley, moved to sever the first suggestion of the committee from the list of suggestions and act upon that item only. The motion was adopted. Ms. Wukasch, seconded by Mr. Ally, moved to postpone action on the remaining items until after the next Broker Responsibility meeting. The motion was adopted. Ms. Wukasch, seconded by Mr. Arriaga, moved that staff prepare rule amendments that would require instructors for the mandatory legal and ethics MCE courses be approved under requirements equal to the requirements for Core instructors of Principals, Law of Agency and Law of Contracts in addition to taking the Train the Trainer course before being approved to teach the mandated TREC courses. The motion was adopted.

The Chairman moved back to agenda item fourteen, discussion and possible action to: a. Select TREC Licensing and Information System vendor, and b. authorize the Administrator to sign a contract with the selected vendor. Mr. Watson presented the agenda item for discussion. The Selection Team considered a

number of different approaches including a custom application written by Technology Services staff, a vendor supplied "Commercial Off-The-Shelf" (COTS) system, and a conversion of the existing product to an alternate platform. After considering each of the approaches and the costs and time involved with each, the team decided that purchasing a COTS system with the flexibility for customizations as necessary would be most appropriate for the Agency. After evaluating all the information and considering the constraints of the project, the selection team recommends the Versa Systems proposal. The planned go-live date for the new system is July 2010. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the Commission, by unanimous vote, authorized the administrator, on behalf of the Commission, to enter into an agreement with Versa Systems to provide a licensing management system for the Texas Real Estate Commission.

Chairman Eckstrum moved to agenda item seventeen, legislative update. Ms. Bijansky presented a written report on bills that affected persons licensed by the Texas Real Estate Commission.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to request an opinion from the Office of the Attorney General regarding the scope of the Commission's jurisdiction over licensed home inspectors who inspect a home for someone other than a traditional buyer or a seller of real property. Ms. DeHay presented the agenda item for discussion and possible action. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission directed staff to request the opinion from the Office of the Attorney General.

The Chairman moved to agenda item nineteen, discussion and possible action to adopt recommendations of the Real Estate Inspector Committee regarding inspector examination questions. Ms. Bijansky presented the agenda item for discussion and possible action. After discussion and upon motion of Mr. Alley, duly seconded by Mr. Day, the Commission adopted the recommendations of the Real Estate Inspector Committee regarding inspector examination questions.

Chairman Eckstrum moved to agenda item twenty-one (a) consideration and possible action regarding proposals for decision from the State Office of Administrative Hearings, SOAH Docket No. 329-09-0644, in the matter of Omar Borges Husein. The Chairman passed the gavel to Mr. Day, who would act as presiding officer for this agenda item. The proposal and an amended proposal which allowed Mr. Husein to receive a salesperson's license were presented by Ms. Lindquist. Ms. Field, staff attorney, spoke concerning the facts presented at the hearing. Mr. Husein spoke in response to questions from the Commissioners.

Mr. Day announced that the Commission would go into 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 4:01 p.m. The meeting was back in open session at 4:15 p.m.

The Commission modified the Administrative Law Judge's Amended Finding of Fact No. 28 and Amended Conclusions of Law Nos. 6, 7, and 8 in the Amended Proposal for Decision dated March 13, 2009 based on the following reasons. The Administrative Law Judge did not properly apply an appropriate weight to 22 TAC §541.1 factors in the Findings of Fact and Conclusions of Law in the Amended Proposal for Decision dated March 13, 2009. Specifically, the judge found that the crime was a serious crime of moral turpitude under 22 TAC §541.1(a)(5), yet he failed to properly apply the factors under 22 TAC §541.1(b) regarding the nature of the crime and relationship of the crime to the purposes for requiring a license to engage in the real estate occupation. The Commission ordered that the application of a real estate salesperson license filed by Omar Borges Husein be denied. The order was adopted by unanimous vote.

Ms. Lindquist presented agenda item twenty-one (b) Consideration and possible action regarding Proposals for Decision from State Office of Administrative Hearings, SOAH Docket No. 329-09-1221.REC, in the matter

of Robert Nelson, for consideration. The proposal recommended that the Commission issue Mr. Nelson a probationary license with a term of two years and included the following conditions. First, Mr. Nelson must comply with the Real Estate License Act and with the rules of the Commission. Second, Mr. Nelson must fully cooperate with the enforcement division of the Commission in the investigation of any complaint filed against him. Third, Mr. Nelson must file a quarterly report with the Commission listing all real estate closings in which he is either the listing agent or buyer's agent. Finally, Mr. Nelson must file a monthly statement with the Commission indicating who his real estate employer(s) (his broker agent) is. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission adopted the proposal as presented.

Ms. Lindquist presented agenda item twenty-one (c) Consideration and possible action regarding Proposals for Decision from State Office of Administrative Hearings, SOAH Docket No. 329-09-0855.REC, in the matter of Elfrin L. Patten for consideration. The proposal recommended that based upon the record in this case the ALJ recommended that the Commission deny the Respondent's application for licensure at this time. Upon motion of Mr. Alley, duly seconded by Ms. Wukasch, the Commission adopted the proposal as presented.

Ms. Lindquist presented agenda item twenty-one (d) Consideration and possible action regarding Proposals for Decision from the State Office of Administrative Hearings, SOAH Docket No. 329-09-0678/Hearing Number 09-54-083248, in the matter of Kevin Allen Smith. Mr. Smith requested a rehearing on the revocation of his license for payment out of the Recovery Trust Account. Upon consideration of his request, the motion for rehearing was overruled.

The Chairman moved to agenda item twenty-two, schedule future meetings. After discussion, the next meeting of the Commission was scheduled for June 11, 2009 at 1 p.m., and tentatively for August 17, 2009 at 11:00 a.m. The Chairman adjourned the meeting at 4:35 p.m.

Patricia Holder, Secretary for the Meeting

APPROVED this the 17th day of August, 2009.

John Eckstrum
Chairman

ATTEST: _____

Loretta R. DeHay
Interim Administrator