

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

October 19, 2009

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, October 19, 2009, at 10:00 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order and welcomed Gary Maler from the Real Estate Center at Texas A&M; Henry Santamaria a former member of the Texas Real Estate Commission and Lori Levy of the Texas Association of Realtors. The Chairman asked Commissioner Hensley 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  
Jaime Hensley  
Joanne Justice  
Tom Mesa  
Dona Scurry  
Avis Wukasch

Staff present included Karen Alexander, Devon Bijansky, Loretta DeHay, Gwen Jackson, Douglas Oldmixon, Beverly Rabenberg, and Tom Watson.

The Chairman moved to agenda item two, approval of minutes of the August 17, 2009, Commission meeting. The Chairman asked if there were any corrections, additions or deletions to the minutes as read, hearing none, upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission approved the minutes as submitted by staff.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. There were no absences.

The Chairman moved to agenda item four, reports by the 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.

Douglas Oldmixon, Administrator, reported on his first forty-eight days at TREC. He stated that during this time the Employee Handbook had been updated. Also, beginning on October 19, 2009, the Communications department would be answering phones from seven a.m. to six p.m. Mr. Oldmixon stated that there had been reorganization of staff to ensure that services are provided as efficiently as possible.

Ms. Jackson, Director of Licensing and Education Services, stated that her department had received 13,068 applications for FY 2009. This was 23.87% less than FY 2008. Ms. Jackson also reported that the number of broker applications for FY 2009 was 2,625, only 241 less than received in FY 2008. The number of salespersons renewing after their first year of licensure continued to decrease. A total of 8,879 renewed in FY 2009, 54.5% less than FY 2008. FY 2009 closed with a total of 101,183 salesperson licenses and 43,036 broker

licenses for a total of 144,219 real estate licensees. There was discussion concerning the number of inspector licenses at the end of FY 2009 compared to FY 2008. Ms. Jackson stated that the number of inspectors had dropped by approximately 500 from FY 2008. During FY 2009 there were 18,998 examinations administered by PSI with a 53.8% pass rate for salespersons; a 64.3% pass rate for brokers; a 33.3% pass rate for real estate inspectors; and a 38.8% pass rate for professional inspectors.

Ms. Rabenberg, Interim Director of Enforcement, stated that at the end of FY 2009 there was a total of 1030 open cases, 1,000 less than at the end of FY 2008. She stated that the filing of complaints was cyclical usually peaking in August and September. Ms. Justice congratulated the division on closing more cases than were opened during the year. There was discussion concerning the hiring of the new director. Mr. Oldmixon stated that five interviews were scheduled for the next week and that once the new director is in place he or she will be hiring a new attorney to fill the vacant position.

Mr. Watson reported on the Technology Services reports. He reported that the total number of hits on the TREC web site has decreased by about 25% from last year. There was discussion concerning credit card transactions on the web and that Chairman Eckstrum received a comment from a licensee who did not receive a confirmation on their transaction. Mr. Oldmixon stated that persons experiencing such problems should contact TREC for assistance.

Ms. Alexander reported on the budget status. She stated that at the end of FY 2009 TREC had used all but about \$70,000 appropriated to it. Ms. Alexander explained the variance. She spoke concerning the security that had matured during the report period and explained that the amount had not been reinvested because of a large amount pending on recovery fund claims.

Chairman Eckstrum moved to agenda item five, general comments from visitors. No comments were offered.

The Chairman 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 general counsel on posted agenda items under Texas Government Code, §551.071. The executive session began at 10:29 a.m. The meeting returned to open session at 11:18 a.m.

The Chairman moved to agenda item seven, 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:

RF08-014, John Pounds, Russell Pounds and Vickie Pounds v. Norman K. Warner II, in the amount of \$41,733.71 in actual damages and \$6,000 in attorneys fees. Mr. Mesa, seconded by Ms. Wukasch, moved to authorize payment. The motion was adopted by unanimous vote.

RF09-012, Steven Payne and Kennon Sellers v. Debora Toolan, in the amount of \$50,000 in actual damages. Mr. Arriaga, seconded by Mr. Day, moved to allow staff to negotiate the settlement of payment. The motion was adopted by unanimous vote.

RF09-023, Redfin1488 Development Co. v. Christopher Alan Claiborne and Mesa Realty Group, in the amount of \$10,461 in interest and \$1,500 in attorney fees. Ms. Wukasch, seconded by Mr. Mesa, moved to authorize payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to propose amendments to 22 TAC Chapter 543 regarding Rules Relating to the Provisions of the Texas Timeshare Act. Ms. DeHay presented the agenda item for discussion and possible action. The amendments to §543.4 would adopt by reference four amended forms, TSR 1-5, 2-5, 3-3, and 8-1. The changes to the forms correct typographical errors, and TSR 1-5 is amended to be consistent with recent amendments to the Texas Timeshare Act, Chapter 221, Texas

Property Code enacted under SB 1036 during the 81st Legislative Session. The revisions remove references to the name and address of the person who prepared the operating budget, and remove language that used to be required in the contract of purchase but is no longer required under SB 1036. The amendment to §543.5 adds to the list of material violations failure to properly comply with requirements for filing an assumed name. The amendment to §543.12 adds subsection (d) to provide a 60-day time period in which a developer must respond to a request for additional information from TREC in connection with an application to renew a timeshare plan. New §543.13 provides a process and time period for which developers must file assumed names with the commission to comply with changes to the Timeshare Act made by SB 1036. After discussion, upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the amendments and forms for proposal and publication in the *Texas Register*.

The Chairman moved to agenda item nine, discussion and possible action to propose amendments or take other action on matters related to: (a) 22 TAC §35.61 regarding Examinations, (b) 22 TAC §35.62 regarding Accreditation of Schools and Approval of Courses and Instructors and (c) 22 TAC §35.64 regarding Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

Ms. DeHay presented agenda item nine (a) for discussion and possible action. The amendment to §35.61 would establish the pre-license examination pass rate for salespersons and brokers at 75%. The current pass rate is 70% and Ms. DeHay recommended that any change to the pass rate be adopted by rule. There was discussion concerning the reason for the increase in the pass rate. Mr. Oldmixon stated that of the twenty-one states surveyed, sixteen had recently raised their pass rate to 75% and that the increase is in line with the mission of the Real Estate Commission to provide knowledgeable licensees. Upon motion of Mr. Alley, duly seconded by Mr. Day, the Commission approved the amendment to §35.61 for proposal and publication in the *Texas Register*.

Ms. Bijansky presented agenda items nine (b) and (c) for discussion and possible action. The amendments to §35.62 and §35.64 would define how TREC-approved proprietary schools' passage rates are calculated and published by the commission and would implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. In response to comments to previously proposed amendments to these rules, the proposed amendments would allow schools that offer correspondence courses in association with accredited colleges or universities to issue certificates of completion in the name of the TREC-approved school and to count the examination passage rates of students in those courses toward the school's overall passage rates. The proposed amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and universities, do not require Commission approval because all such courses must comply with the college or university's curriculum accreditation standards. Upon motion of Mr. Alley, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to §35.62 and §35.64 for publication and comment in the *Texas Register*.

Chairman Eckstrum moved to agenda item ten, discussion and possible action to adopt: (a) Amendments to 22 TAC §37.30 regarding Standard Contract Form TREC No. 23-8, (b) Amendments to 22 TAC §37.31 regarding Standard Contract Form TREC No. 24-8 and (c) Repeal of 22 TAC §37.50 regarding Standard Contract Form TREC No. 43-1.

Ms. Bijansky presented the agenda items ten (a) and (b) for discussion and possible action. The agenda item allows for the adoption of amendments to §37.30, Standard Contract Form TREC No. 23-9 (New Home Contract (Incomplete Construction)) and §37.31, Standard Contract Form TREC No. 24-9 (New Home Contract (Complete Construction)) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6278). The amendments eliminate from the new home contracts provisions required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that are

no longer appropriate after the September 1, 2009, expiration of the Act. In §537.30 and .31, Standard Contract Forms TREC Nos. 23-9 and 24-9 are amended to delete from Paragraph 22 the references to the Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code, which is being repealed. These amendments were adopted on an emergency basis at the August 17, 2009, commission meeting, as published in the September 11, 2009, issue of the Texas Register. No comments were received regarding the amendments as proposed. Upon motion of Ms. Justice, duly seconded by Mr. Day, the Commission adopted the amendments with an effective date of December 1, 2009.

Ms. Bijansky presented the agenda item ten (c) for discussion and possible action. The agenda item allows for the repeal of §537.50, Standard Contract Form TREC No. 43-0 (Addendum Containing Required Notices under §5.016, §420.001 and §420.002, Texas Property Code), without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6278). The repeal of §537.50, Standard Contract Form TREC No. 43-0, repeals the Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code, which is longer required to be provided to buyers of new homes. This repeal was adopted on an emergency basis at the August 17, 2009, commission meeting, as published in the September 11, 2009, issue of the Texas Register. No comments were received regarding the repeal as proposed. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission adopted the repeal with an effective date of December 1, 2009.

Mr. Eckstrum moved to agenda item eleven, discussion and possible action regarding Broker Responsibility Committee recommendations and objectives.

Mr. Oldmixon spoke concerning agenda item eleven, agenda item twelve, discussion and possible action regarding Education Committee recommendations and objectives, and agenda item fourteen, discussion and possible action regarding TREC policy on licensing requirements for corporations and limited liability companies. Mr. Oldmixon requested permission to pose specific questions to both the Broker Responsibility Committee and the Education Committee for consideration and possible rule amendments. There was discussion concerning the content of the questions and how they would be distributed to the Commission and members of the two committees. There was further discussion concerning the time line for dissemination of the questions and any areas of concern. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission approved the request from the TREC administrator to distribute new questions to the two committees for discussion and possible action.

The Chairman moved to agenda item thirteen, discussion and possible action to appoint members to the Broker Lawyer Committee. The Chairman stated that two members of the committee, Michael Bray of El Paso and Bob Baker of Plano, had terms expiring in August 2009. An interview committee had been appointed and had met to conduct the interviews of applicants for those two positions. Upon motion of Ms. Hensley, duly seconded by Ms. Justice, the Commission appointed Patrick Noon of Longview and Dan Odom of Fort Worth to the Broker Lawyer Committee with terms to expire August 31, 2015.

Chairman Eckstrum moved to agenda item fifteen, discussion and possible action to approve required Legal and Ethics MCE materials. Ms. DeHay presented the agenda item for discussion and possible action. Ms. Justice commended Denise Whisenant and the task force that updated the material for their excellent work. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the required Legal and Ethics MCE materials as submitted.

Mr. Eckstrum moved to agenda item sixteen, discussion and possible action to authorize Douglas Oldmixon to approve expenditures. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, the Commission authorized Douglas Oldmixon, Administrator, to approve expenditures.

The Chairman moved to agenda item seventeen, discussion and possible action to authorize the TREC

administrator to designate employees that may approve expenditures and payroll. Ms. Alexander presented the agenda item for discussion and possible action. She stated that this item would designate the TREC administrator, whoever that might be, to designate employees to approve expenditures and payroll. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized the TREC administrator to designate employees to approve expenditures and payroll.

Chairman Eckstrum moved to agenda item eighteen, discussion and possible action to approve or take other action on a Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board regarding administrative services provided by TREC staff. Mr. Oldmixon presented the agenda item for discussion and possible action. This document outlined the services that the Commission provides to the Board and the charges for those services. It had been presented to and approved by the Texas Appraiser Licensing and Certification Board on October 16, 2009. There was discussion concerning the costs of the services provided by TREC to TALCB. Upon motion of Mr. Mesa, duly seconded by Ms. Justice, the Commission approved the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board.

Mr. Eckstrum moved to agenda item nineteen, consideration and possible action regarding Proposals for Decision from State Office of Administrative Hearings: (a) In the Matter of George Edward Durell, SOAH Docket No. 329-09-3916.REC; (b) In the Matter of Deborah L. Gonzales, SOAH Docket No. 329-09-5442.REC; (c) In the Matter of Philip Perez Romo, SOAH Docket No. 329-09-4070.REC and (d) In the Matter of Seung M. Santillan, SOAH Docket No. 329-09-2018.REC.

The Chairman passed the gavel to Mr. Day to act as presiding officer for this agenda item. Ms. Wukasch requested that the Commission go to executive session to receive legal advice. The Chairman announced an executive session to discuss pending litigation pursuant to Texas Government Code §51.071 and if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §51.071. The executive session began at 12:07 p.m. The meeting returned to open session at 12:21 p.m.

Ms. Rabenberg presented the proposal for decision in the matter of George Edward Durell, SOAH Docket No. 329-09-3916.REC. No exceptions were filed and Mr. Durell did not appear. The administrative law judge recommended revocation of the Mr. Durell's license and payment of \$1,500 in administrative penalties for failure to comply with MCE requirements. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as recommended by the administrative law judge.

Ms. Rabenberg presented the proposal for decision in the matter of Deborah L. Gonzales, SOAH Docket No. 329-09-5442.REC. The administrative law judge recommended revocation of Ms. Gonzales' license due to failure to pay administrative penalties as agreed. No exceptions were filed and Ms. Gonzales did not appear. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as recommended by the administrative law judge.

Ms. Rabenberg presented the proposal for decision in the matter of Philip Perez Romo, SOAH Docket No. 329-09-4070.REC. The administrative law judge recommended denial of a late license application. No exceptions were filed and Mr. Romo appeared pro se. Mr. Romo spoke concerning the reasons for his failure to appear at the hearing at SOAH. Mr. Day expressed his concern regarding Mr. Romo's default at the hearing. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission approved the proposal for decision as recommended by the administrative law judge, with Mr. Day voting against the motion.

Ms. Rabenberg presented the proposal for decision in the matter of Seung M. Santillan, SOAH Docket No. 329-09-2018.REC. The administrative law judge recommended revocation of the license due to a felony conviction concerning fraud and the failure to report the conviction as required by law. No exceptions were filed and Ms. Santillan did not appear. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal for decision as recommended by the administrative law judge.

Chairman Eckstrum moved to agenda item twenty, consideration and possible action regarding Motion for

Rehearing in the Matter of Erasmo Garcia, SOAH Docket Number 329-09-1334.REC/TREC Hearing Number 09-88-053590. Mr. Garcia appeared by his attorney, Matthew Coward, and in person. Mr. Coward gave background information concerning the problems Mr. Garcia had with prior counsel. He also presented his argument for granting a rehearing. Ms. Rabenberg responded to Mr. Coward's arguments. She stated the lack of representation issue was not presented at the hearing Mr. Garcia attended and no exceptions had been filed. Ms. Rabenberg further stated that if the motion for rehearing was denied, Mr. Garcia could take the case to district court.

After discussion, the Commission denied the motion for rehearing.

The Chairman moved to agenda item twenty-one, schedule future meetings. After discussion, the next meetings of the Commission were scheduled for December 14, 2009, February 8, 2010, May 17, 2010, August 9, 2010 and November 15, 2010. All meetings scheduled would begin at 10:00 a.m. The Chairman adjourned the meeting at 12:46 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 14th day of December, 2009.

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John Eckstrum  
Chairman

ATTEST: \_\_\_\_\_  
Douglas E. Oldmixon  
Administrator