

TEXAS REAL ESTATE COMMISSION  
December 14, 2009  
Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, December 14, 2009, at 10:02 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order. The Chairman asked Commissioner Justice 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

Dona Scurry

Avis Wukasch

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

The Chairman moved to agenda item two, approval of minutes of the October 19, 2009, Commission meeting. The Chairman asked if there were any corrections, additions or deletions to the minutes as read; hearing none, the Commission approved the minutes by unanimous consent.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the absence of Commissioner Tom Mesa was excused.

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 activity 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 that the new employee manual went into effect on November 1, 2009. In conjunction with the release of the manual, core hours for staff were established and further reorganization was implemented. The Reception and Communication Services Division was established, with Lorie DeAnda promoted to Director of this division. Kerri Galvin was hired to fill the position of Director of Standards and Enforcement Services. Betsy Bird joined the Administration and Management Services division as the new Public Affairs Specialist. Mr. Oldmixon presented an update on the VERSA conversion, the NEUBUS scanning project and the testing of the electronic delivery system of licenses. He reported that the agency was going through a Bottom Up Review (BUR) and over 200 suggestions had been received from staff. The Commissioners discussed Mr. Oldmixon's report.

Ms. Jackson, Director of Education and Licensing Services, stated that although the number of applications received in the reporting month of October 2009 was significantly lower than in 2008, there was a 3.18% increase in broker licenses issued from an original application. There was an increase in the total number of licensees for the month of October by 31 licenses over September. Over 350 instructors had taken the "Train the Trainer" course for the updated Legal and Ethics Courses offered by the Real Estate Center. There was discussion concerning the approval of an application to teach the Legal and Ethics Courses as a stand alone course and the approval if the courses were incorporated into another course. There was discussion concerning the current pass rate for examinations and the possibility of changes to this pass rate. Ms. Jackson reported that at this time staff was seeking further information and clarification concerning pass rate percentages. There was discussion concerning the decrease in the number of first year salespersons.

Ms. Galvin, Director of Standards and Enforcement Services, stated that due to information coming out of the BUR, her division would undergo a complete reorganization. Three different teams would handle complaints from different geographical areas: Dallas/Fort Worth, Houston, and South/Central/West Texas. A fourth team would be responsible for all application and moral character determination cases, as well as alternative dispute resolution of some cases. Each team would consist of one or more attorneys, legal assistants, administrative personnel and three investigators. There was discussion concerning setting standards for application review and how subsequent renewals would be handled. Ms. Galvin reported on the current case activity and the projections for the immediate future, which would be affected by the closing of older, more complicated cases that are the current focus of the division. There was discussion concerning the hearing process before the State Office of Administrative Hearings and the agency processes in handling contested cases.

Mr. Watson, Director of Information and Technology Services, reported on the I1 report and the number of online transactions on applications which showed a marked increase. There was discussion concerning the

implementation of the new data system. Mr. Watson stated that the imaging project was in production on a limited scale. There was discussion concerning this issue.

Ms. Alexander, Director of Staff and Support Services, reported on projected payments from the Recovery Trust Account. There was discussion regarding the interest of one of the securities in the report and the process used to purchase securities.

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

Ms. DeHay, General Counsel and Deputy Administrator, updated the Commission on the Attorney General Opinion recently received, GA 0748 (2009). She also reported on the ARELLO conference she had attended in Miami, Florida, in October.

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 11:20 a.m. The meeting returned to open session at 11:45 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:

RF09-016, Robert McCarthy v. Daryl Claiborne, in the amount of \$40,000 in actual damages and \$10,000 in attorney fees. Mr. Day, seconded by Ms. Wukasch, moved to contest payment. The motion was adopted by unanimous vote.

RF09-024, Steven Santos v. Angelita Garza, in the amount of \$36,635.85 in actual damages and \$9,500 in attorney fees. Ms. Hensley, seconded by Mr. Arriaga, moved to authorize payment. The motion was adopted by unanimous vote.

RF10-002, Martha Malone v. Christopher L. Bodey, in the amount of \$9,691 in actual damages and \$400 in attorney fees. Mr. Alley, seconded by Mr. Arriaga, moved to authorize payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to propose new 22 TAC §535.93, regarding late applications. Ms. DeHay presented the agenda item for discussion and possible action. New §535.93 would permit a person with an expired salesperson or broker license to retroactively renew the previous license if the application to renew was filed less than one year from the expiration of the previous license. The new rule would require the commission to renew the license in an active status except as provided by the section. In order to retroactively renew a salesperson's license on active status, a salesperson applicant would have to provide certification of sponsorship for the period beginning on the day after the renewal license

is issued, and otherwise comply with the section. If a salesperson desires to show continuous coverage, he or she would complete a form with sponsor's signature indicating coverage from expiration through renewal issuance. If Mandatory Continuing Education (MCE) requirements are not met prior to the previous license expiration date, an applicant who wishes to renew the license on active status would be required to pay an additional \$200 fee and complete the MCE not later than the 60<sup>th</sup> day after the expiration of the previous license. If the application to renew is filed more than 60 days but less than one year after the previous license expired and MCE requirements were not met before the license expired, the applicant would be required to pay a \$200 MCE deferral fee, a \$250 late reporting fee, complete the MCE, and, if a salesperson, provide certification of sponsorship for the period in which the license was expired to the day the license issued (optional), and for the period beginning on the day after the renewal license is issued (required). Ms. DeHay stated that this rule was to clarify the late renewal rules in response to recent litigation filed against the Commission in district court.

After discussion, upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the new rule for proposal and publication in the *Texas Register*. Mr. Arriaga voted against the motion.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act.

Ms. DeHay presented the amendments and forms for discussion and possible adoption. The amendments to §543.4 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. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the Commission approved the forms and rules for adoption and submission to the *Texas Register*.

The Chairman moved to agenda item nine, discussion and possible action to propose amendments to §535.208 regarding application for licensure as an inspector.

Ms. Bijansky presented agenda item nine for discussion and possible action. The amendments would better implement the statutory requirement that applicants for inspector licenses who fail the examination three times

must wait six months before reapplying. Currently, applicants may circumvent the six-month wait requirement by filing a new application after the second failure, so that a third failure is registered as occurring under a different application. The proposed amendment would prevent applicants from filing a new application while another application is pending. Mr. Willcox, Inspector Committee, provided information concerning the history of the rule. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the amendments to §535.208 for proposal and publication in the *Texas Register*.

The Chairman moved to agenda item eleven, discussion and possible action to adopt: (a) 22 TAC §535.61 regarding Examinations; (b) 22 TAC §535.62 regarding Accreditation of Schools and Approval of Courses and Instructors; and (c) 22 TAC §535.64 regarding Payment of Annual Fee, Audits, Investigations and Enforcement Actions. The Chairman referred to previous discussion concerning postponing this agenda item to obtain information from additional research. Chairman Eckstrum stated that further action would be postponed until additional information was available.

Chairman Eckstrum moved to agenda items twelve, discussion and possible action regarding recommendations from the Broker Responsibility Committee; and thirteen, discussion and possible action regarding recommendations from the Education Committee. Mr. Eckstrum restated that he would be accepting recommendations for individuals who wished to serve on either of the two committees.

Mr. Eckstrum moved to agenda item fourteen, discussion and possible action to approve the recovery trust account and inspection recovery fund investment policies under the Public Funds Investment Act. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Hensley, duly seconded by Ms. Wukasch, the Commission approved the recovery trust account and inspection recovery fund investment policies under the Public Funds Investment Act as presented by staff.

Chairman Eckstrum moved to agenda item fifteen, discussion and possible action to approve amendments to the Seller's Disclosure Notice. Ms. DeHay presented the agenda item for discussion and possible action. The 81<sup>st</sup> Legislature amended this form under amendments to the Property Code §5.008 effective January 1, 2010. Staff recommended changes to the form consistent with the legislative changes to §5.008. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the amended form for voluntary use.

The Chairman moved to agenda item sixteen, discussion and possible action regarding rule review for 2010. Ms. DeHay presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved the scheduled rule review as submitted by staff.

Chairman Eckstrum moved to agenda item seventeen, discussion and possible action to propose the review of: (a) Chapter 534, General Administration; (b) Chapter 539, Provisions of the Residential Service Company Act; and (c) Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act in accordance with the Texas Government Code, §2001.039. Ms. DeHay presented the agenda item for discussion and possible action.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal.

Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission approved the posting of the notice of intent to review these chapters in the *Texas Register*.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to schedule future meetings. After discussion, the next meetings of the Commission were scheduled for 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 12:31 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 8th day of February, 2010.

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John Eckstrum  
Chairman

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