

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

February 8, 2010

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, February 8, 2010, at 10:10 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 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

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Tom C. Mesa

Avis Wukasch

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

Chairman Eckstrum moved to agenda item four, discussion and possible action to excuse commissioner absence(s), if any. Upon motion of Mr. Mesa, duly seconded by Mr. Arriaga, the absences of Commissioners Troy Alley and Dona Scurry were excused.

Mr. Eckstrum moved to agenda item three, approval of minutes of the December 14, 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 two, election of officers. Upon motion of Joanne Justice, duly seconded by Mr. Mesa, the Commission elected Avis Wukasch as vice-chair. Upon motion of Avis Wukasch, duly seconded by Mr. Day, the Commission elected Joanne Justice as secretary.

Chairman Eckstrum moved to agenda item five, 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 that since the December meeting the agency had hired three new staff members. All staff job descriptions were updated by December 31, 2009 and a new performance review and schedule were put in place. Eleven employees received recognition at the holiday party for longevity of five years or more in multiples of five. The agency received recognition for the highest percentage of participation among agencies of the same size in the State Employee Charitable Campaign for 2009. The Standards and Enforcement Division was restructured into regional teams and a new team concerning Standards and Alternative Dispute Resolutions was established. An Enforcement Conference was held with all field investigators in attendance. Mr. Oldmixon presented further information concerning actions taken during the time since the last meeting of the Commission.

Ms. DeAnda, Director of Reception and Communication Services presented a report concerning the number of walk-ins, phone calls and e-mails during the month of December. There was discussion concerning the wait time on phone calls received by the commission. Ms. DeAnda stated that the fingerprinting regulations had caused an increase in the number of calls received, but that the number seemed to be leveling out. There was also discussion concerning the number of calls received before eight a.m. and after 5 p.m.

Ms. Jackson, Director of Education and Licensing Services, introduced two new employees, Kristy Dubec and Sandra Teneyuque, both of whom will be working in the Licensing Department. Ms. Jackson stated that there was a 7.83% increase in the number of applications received and 5.94% increase in licenses issued from original applications for the month of December. She stated that Education and Licensing Services had met or exceeded all its performance measures for the first quarter.

Ms. Galvin, Director of Standards and Enforcement Services, introduced a new attorney in her division, Mary Winston. Ms. Galvin reported that the division was down to 757 open cases. She stated that she expected to level out at around 750 which is a manageable level for the division. Ms. Galvin reported that the division was still working on the backlog of cases and that this did affect the measures. She summarized a recent joint action between TREC and the Attorney General's Office against an unlicensed residential service company. Although the agency prevailed in the suit, the company's assets had been seized by New York State Attorney General and the company filed bankruptcy, so recovery of the claim was doubtful. There was discussion concerning the number of cases open over 750 days and some of the reasons behind this backlog. There was further discussion concerning the way the performance measures are written and what the targets are. Mr. Arriaga asked for an updated report showing age ranges for the case.

Mr. Watson, Director of Information and Technology Services, reported on the I1 report. There was discussion concerning a hardware failure that had impacted the online transactions over the first weekend in

February. There was discussion concerning the “back-up” procedures and the preventative measures that ITS is taking to prevent such a problem from occurring again. There was discussion concerning the transition to the VERSA System which is scheduled to be completed September 1, 2010. Mr. Watson reported on the penetration tests performed by the Department of Information Resources (DIR). Although DIR made recommendations, Mr. Watson had not yet had the opportunity to study them and determine if implementation was feasible. There was discussion concerning the number of SAE renewals on the I1 report.

Ms. Alexander, Director of Staff and Support Services, reported concerning the Internal Audit Risk Assessment on March 8 & 9, 2010 and stated that the internal auditors would be presenting their audit plan at the May meeting. Mr. Oldmixon explained that the State Auditor’s audit which had been postponed dealt with the computer system and Human Resources and was not a financial audit. Ms. Alexander stated that a security would be maturing on February 15. There was discussion concerning the two recovery funds and estimated payments concerning them. There was discussion concerning the investment of securities including the employees designated to perform this function and the financial institutions involved.

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 general counsel on posted agenda items under Texas Government Code, §§551.071. The executive session began at 11:08 a.m. The meeting returned to open session at 11:37 a.m.

The Chairman moved to agenda item nine, discussion and possible action regarding the schedule of rule review for 2010. Ms. DeHay presented the agenda item for discussion and possible action. At the December meeting of the Commission staff submitted a rule review schedule for the upcoming year. It was approved. Staff has amended the schedule to allow the review of all rules during 2010. Staff is seeking approval for the revised review schedule. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the revised rule review schedule submitted by staff with the allowance for staff to change a date if a Commission meeting changes.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to propose the review of (a) 22 TAC Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; (b) 22 TAC Chapter 533, Practice and Procedure; (c) 22 TAC Chapter 537, Professional Agreements and Standard Contracts and (d) 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53. Ms. DeHay presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the review of Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; Chapter 533, Practice and Procedure; Chapter 537, Professional Agreements

and Standard Contracts and Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53, as submitted by staff.

Chairman Eckstrum moved to agenda item eleven, discussion regarding comments on the review of: (a) 22 TAC Chapter 534, General Administration; (b) 22 TAC Chapter 539, Provisions of the Residential Service Company Act and (c) 22 TAC Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act. Ms. DeHay stated that staff had not received any comments at this time.

The Chairman moved to agenda item twelve, discussion and possible action to propose amendments to (a) 22 TAC § 534.1, Charges for Copies of Public Information; (b) 22 TAC § 534.4, Historically Underutilized Businesses Program and (c) 22 TAC § 534.5, Bid Opening and Tabulation. Ms. DeHay presented the agenda items for discussion and possible action. The proposed amendments update the references to the rules promulgated by other state agencies that are adopted by reference by the commission. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission authorized staff to submit the amendments to §534.1, concerning Charges for Copies of Public Information, §534.4, concerning Historically Underutilized Businesses Program, and §534.5, Bid Opening and Tabulation in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable for publication in the *Texas Register* and for comment.

Mr. Eckstrum moved to agenda item thirteen, discussion and possible action to propose amendments to: (a) 22 TAC §539.4, Disclosures; (b) 22 TAC §539.51, Employee Defined; (c) 22 TAC §539.61, Application and Licensing; (d) 22 TAC §539.71, Miscellaneous Forms; (e) 22 TAC §539.91, Annual Report Form RSC 6-2 and (f) 22 TAC §539.137, Semiannual Report.

Ms. DeHay presented agenda item thirteen (a) for discussion and possible action. This agenda item proposes an amended title for 22 TAC Chapter 539, new Subchapter E, concerning Disclosures, and new §539.4 concerning Disclosures. The new rule would require a licensed residential service company to include a disclosure in its residential service contracts if the company pays persons other than a residential service company employee for the sale, advertising, inspection or processing of a residential service contract. After discussion, upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized staff to submit the amended title, new Subchapter and new rule in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Ms. DeHay presented agenda item thirteen (b) for discussion and possible action. This agenda item proposes amendments to Chapter 539, Subchapter F, §539.51 concerning “Employed by” Defined. The proposed amendment corrects typographical errors in the existing rule to better reflect the statutory reference.

Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission authorized staff to submit the amendments to Chapter 539, Subchapter F, §539.51 concerning “Employed by” Defined, in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Ms. DeHay presented agenda item thirteen (c) for discussion and possible action. This agenda item proposes amendments to Subchapter G, §539.61 concerning Application and Licensing. The amended rule adopts by reference a revised application form. The revised form is streamlined and changed to provide consistency with other TREC forms.

Upon motion of Ms. Hensley, duly seconded by Mr. Arriaga, the Commission authorized staff to submit the amendments to Chapter 539, Subchapter G, §539.61 concerning Application and Licensing and the revised form adopted by reference, in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Ms. DeHay presented agenda item thirteen (d) for discussion and possible action. This agenda item proposes amendments to Subchapter H., §539.71 concerning Miscellaneous Forms. The amended rule adopts by reference a revised Residential Service Company Bond form and Application to approve Evidence of Coverage/Schedule of Charges form. The forms are revised to maintain consistency with other TREC forms.

Upon motion of Ms. Justice, duly seconded by Mr. Mesa, the Commission authorized staff to submit the amendments to Chapter 539, Subchapter H., §539.71 concerning Miscellaneous Forms and the two revised forms adopted by reference, in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Ms. DeHay presented agenda item thirteen (e) for discussion and possible action. This agenda item proposes amendments to Subchapter J, §539.91 concerning Annual Report. The proposed rule adopts by reference a revised annual report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, the form is changed to detail payments to real estate brokers, insurance agents, mobile home dealers or non-RSC employees for selling, advertising, inspection, or processing of residential service contracts.

Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasz, the Commission authorized staff to submit the amendments to Chapter 539, Subchapter J, §539.91 concerning Annual Report and the revised form adopted by reference, in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Ms. DeHay presented agenda item thirteen (f) for discussion and possible action. This agenda item proposes amendments to Subchapter N, §539.137 concerning Mid-year Report. The proposed rule adopts by reference a revised and renamed mid-year report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, the form is changed to detail payments to real estate brokers, insurance agents, mobile home dealers or non-RSC employees for selling, advertising, inspection, or processing of residential service contracts.

Upon motion of Ms. Hensley, duly seconded by Mr. Mesa, the Commission authorized staff to submit the amendments to Chapter 539, Subchapter N, §539.137 concerning Mid-year Report and the revised form adopted by reference, in substantially the form presented at the meeting, with technical, non-substantive corrections staff deems necessary or advisable for publication in the *Texas Register* and for comment.

Chairman Eckstrum moved to agenda item fourteen, discussion and possible action to adopt amendments to: (a) 22 TAC §535.61, Examinations; (b) 22 TAC §535.62, Accreditation of Schools and Approval of Courses and Instructors and (c) 22 TAC §535.64, Payment of Annual Fee, Audits, Investigations and Enforcement Actions. Ms. DeHay presented the agenda items for discussion and possible action.

The amendment to §535.61 as adopted establishes a pre-license examination pass rate for brokers at 75% and for salespersons at 70%. The difference between the rule as originally proposed and the rule as adopted is the 75% pass rate applies to the broker examinations and the 70% pass rate applies to salesperson examinations. The amendments to §535.62 and §535.64 define how TREC-approved proprietary schools' passage rates are calculated and published by the commission and 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 amendments 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 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. Six comments had been received.

Ms. Justice, duly seconded by Ms. Wukasch, moved to authorize staff to submit the amendments to §535.61, §535.62 and §535.64 in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, in the *Texas Register* for adoption with an

effective date of September 1, 2010. Mr. Arriaga requested an explanation of the changes staff was suggesting to 22 TAC § 535.61. Mr. Oldmixon explained the research that TREC had received concerning the proposed increase effect on the pass rate for brokers. There was further discussion concerning the pass rates and cut scores and the difference between the two.

Mr. Arriaga asked to amend the motion to postpone action on the agenda item for six months. The Chairman asked the maker of the motion to amend to allow further comments on the original motion. Rick Knowles, Capital Real Estate School, spoke concerning the certificate based programs that were referred to under §535.62 and requested clarification how this affects certificate based programs and degree based programs. Mr. Oldmixon addressed his concerns. There was further discussion concerning marketing companies versus approved schools. Mr. Knowles stated that he was in favor of the amendments as revised.

Richard Whitsett, Show and Tell Inspections, stated concerns as a home inspector training school that did not offer pre-licensing education, but did offer pre-licensing experience, as to how the 55% accreditation rule would affect his school.

After discussion, Mr. Arriaga moved to sever 22 TAC § 535.61, Examination, from the original motion so that it could be voted on separately from §535.62 and §535.64. The motion failed for lack of a second.

The Chairman called the question on the original motion. The Commission authorized staff to submit the amendments to §535.61, §535.62 and §535.64 in substantially the form presented at the meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, in the *Texas Register* for adoption with an effective date of September 1, 2010. Mr. Arriaga voted against the motion.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to adopt new §535.93, Late Renewal Applications. Ms. DeHay presented the agenda item for discussion and possible action to adopt. The rule allows a licensee whose license has been expired for not more than a year to renew the license by paying an increased fee depending on how long the license has been expired. New §535.93 permits 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 requires 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 must provide certification of sponsorship for the period from the day after the license expired to the day the license issued, and for the period beginning on the day after the renewal license is issued, and otherwise comply with the section. 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 must pay a \$200 MCE deferral 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 must 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, and for the period beginning on the day after the renewal license is issued. No comments were received.

Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission authorized staff to submit new §535.93 concerning Late Renewal Applications, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable in the *Texas Register* for adoption with an effective date of September 1, 2010.

Chairman Eckstrum moved to agenda item sixteen, discussion and possible action to adopt amendments to §535.208, Application for Licensure as an Inspector. Ms. Bijansky presented the agenda item for discussion and possible action. This agenda item adopts an amendment to §535.208, Application for a License, without changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 27). The amendment better implements the statutory requirement that applicants for inspector licenses who fail the examination three times must wait six months before reapplying. Prior to this amendment, applicants were able to circumvent the six-month wait requirement by filing a new application after the second failure, so that a third failure would be registered in the agency's licensing database as occurring under a different application. The amendment will prevent applicants from filing a new application while another application is pending.

Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission authorized staff to submit the amendments to §535.208, Application for a License, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, to the *Texas Register* for adoption with an effective date of September 1, 2010. Henry Santamaria, Champions School of Real Estate, spoke against the motion, suggesting that additional education be required, and asked that the item be tabled until this rule was under rule review. Ms. Jackson, Education and Licensing Services, spoke concerning the current procedure when an inspector applicant fails the test three times and calls the Commission. Richard Whitsett spoke concerning the cost of courses for inspectors. Rebecca Ray, Kaplan University, spoke against adopting the rule as written and suggested tabling further action until the agenda item was examined under rule review.

Mr. Oldmixon asked for clarification on the effective date, which should have been 20 days from filing instead of September 1, 2010. Also, Mr. Oldmixon pointed out that the requirement to wait six months after failing the inspector test was statutory and could not be changed without Legislative action. Fred Buck, inspector, spoke in favor of the amendment. The Chairman called the question. The motion passed by unanimous vote.

Mr. Oldmixon again asked for clarification on the effective date. Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission authorized staff to submit the amendments to §535.208, Application for a License, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, to the *Texas Register* for adoption.

The Chairman moved to agenda item seventeen, discussion regarding appointments to the Broker Responsibility Committee and agenda item eighteen, discussion regarding appointments to the Education Committee.

Chairman Eckstrum appointed the following members to the Broker Responsibility Work Group: Robert Doggett; Cameron Hill; Suzanne Jackson Corbin; Tom Branch; Ana Ochoa; Dan Odom; Barbara Tarin; George Stephens; Beth Thomas; Bill Jones; John Horton; Judy McKee; Helen Perry and Avis Wukasch as Commission Liaison.

Mr. Eckstrum appointed the following members to the Education Work Group: Louise Hull; Rick Albers; Dave Dalzell; Debbie Watson; Susan Jones; Rebecca Ray; Rita Santamaria; Rick Knowles; Deb Waldman; David Rosow; Pat Strong; Denise Whisenant; Brenda Webb; Bill Evans; Rene Figliozzi; Alvin Collins; Bill Gottfried and Joanne Justice as Commission Liaison.

The Chairman moved to agenda item nineteen, discussion and possible action regarding self-executing clauses in agreed orders. Ms. DeHay explained the concept of self-executing clauses. A self-executing clause is a condition in an agreed order that would automatically implement the original penalty, such as a suspension or revocation, if the respondent/licensee failed to timely comply with certain specified terms and conditions, such as payment of a fee or completion of agreed education. The staff of Standards and Enforcement Services had begun using this tool and staff was now asking the endorsement of the Commission. She stated that the self-executing clause provided for more efficiency and in every case the licensee agrees to it by signing the agreed order. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission endorsed the use of language in agreed orders that provides for automatic disciplinary action, such as, suspension or revocation for failing to comply with specific objectives or terms of the order, such as payment of an administrative penalty or completion of additional education by a specified deadline. The Commission also endorses the use of automatic disciplinary actions in agreed orders for failing to comply with specific objective terms or conditions as contained within the language provided.

Chairman Eckstrum moved to agenda item twenty, discussion and possible action to approve a plan to identify savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-11 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry, Lieutenant Governor David Dewhurst, and Speaker of the House Joe Straus. Ms. Alexander

presented the agenda item for discussion and possible action. Ms. Alexander referred to an exhibit which had been distributed before the meeting containing an updated schedule of proposed savings dated February 8, 2010 which would minimize impact to services provided by the Texas Real Estate Commission. She stated that part of the money the reductions are based on are funds that are strictly pass through and are held by TREC for Texas Online, DPS and the FBI. Upon motion of Ms. Justice, duly seconded by Ms. Arriaga, the Commission authorized staff on behalf of the Commission to submit to the required entities the 5% budget reduction plan in essentially the form presented at this meeting which identifies savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-2011 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry. Staff is hereby authorized to amend the plan with approval of the Chair. There was discussion concerning the impact the reductions would have on the industry.

Mr. Eckstrum moved to agenda item twenty-one, discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for fiscal years 2011-2015. After discussion, upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Strategic Plan concept and tentative schedule as submitted by staff.

Mr. Eckstrum moved to agenda item twenty-two, discussion and possible action to schedule future meetings. After discussion, the next meetings remain scheduled for 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 1:18 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 17th day of May, 2010.

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John Eckstrum  
Chairman

ATTEST:

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Douglas E. Oldmixon  
Administrator