

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

May 17, 2010

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, May 17, 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 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. Allen, Jr.

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Tom C. Mesa

Dona Scury

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 two, discussion and possible action to recognize past commissioners. Upon motion of Mr. Mesa, duly seconded by Ms. Justice, the Commission recognized and adopted resolutions honoring former Commissioners Mary Frances Burleson, William H. Flores and Elizabeth Leal for their service.

Mr. Eckstrum moved to agenda item three, discussion and possible action to recognize licensees with 50 years of licensure. The Chairman stated that one of which was Benny McMahan, executive director of the Texas Association of Realtors. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice the Commission approved the recognition of the 167 listed licensees for 50 years of licensure. Mr. McMahan was presented with a framed certificate and spoke briefly concerning his career in the real estate industry.

The Chairman moved to agenda item four, approval of the minutes of February 8, 2010 Commission meeting. Upon motion of Ms.; Justice, duly seconded by Ms. Wukasch, the Commission adopted the minutes as submitted.

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

Chairman Eckstrum moved to agenda item six, reports by administrator, general counsel, and division directors which may include reports of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, 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 commissioners for additional information or reports from staff; and introduction of new employees

Douglas Oldmixon, administrator, spoke concerning the Broker's Responsibility Working Group and Education Working Group. He announced that the Commission had received applications for two openings on inspector committee for public members; that the Commission would be moving to the Stephen F. Austin building on 17<sup>th</sup> Street after the end of the Legislative Session in 2011. He reported on the strategic planning forums. He also announced that the Commission had begun delivering licenses electronically. This was well accepted and licensees were able to retain a print option. In late April the pass rate was posted; also the analysis of exam topics was posted with PSI assistance.

Lorie Deanda, Director of Reception and Communications Services presented the C1 report concerning Customer Service Statistics. Gwen Jackson, Director of Education and Licensing Services presented the L1 report concerning fiscal year comparisons regarding the number of applications and license renewals received by the Commission; the L2 report concerning licensee and registrant status; and the L3 report, concerning examination activity. Kerri Galvin, Director of Standards and Enforcement Services, presented the case status report, the case age report requested by Commissioner Arriaga, a report of the Residential Service Company report and a report concerning Timeshare registrations. Scott Milo, systems analyst, presented the I1 report concerning electronic outlet services statistics for Tom Watson, Director of Information and Technology Services. Karen Alexander presented the S1 report concerning the Agency Financial Report; the S2 report concerning the Real Estate Recovery Trust Account No. 971 Investments, Current Securities; the S3 report, concerning the Real Estate Recovery Trust Account No. 971 Investments, Payments and Repayments; and the S4 report concerning the Real Estate Inspector Recovery Fund.

Chairman Eckstrum moved to agenda item seven, reports of, and discussion and possible action regarding: (a) Broker Responsibility Working Group; (b) Education Working Group including Recommendations from 2009 Education Task Force; (c) Texas Real Estate Inspector Advisory Committee and (d) the Broker Lawyer Committee.

Commissioner Avis Wukasch presented the report from the Broker Responsibility Working Group contained in the meeting materials. She stated that the major recommendations were for managers of real estate

offices to be licensed; team leaders should be brokers; the creation of 3 hour broker responsibility class and that every person with a broker's license be required to take a broker responsibility class whether exempt or not. Also, yard signs should require broker's name and phone number; that an LLC or corporate entity receiving a commission would be required to have a license. There was discussion concerning signs and font sizes on yard signs. Comments and questions were received from Henry Santamaria, Champion Real Estate Schools and Lynn Morgan, Austin School of Real Estate concerning the broker responsibility class.

Joanne Justice presented the report from the Education Working Group. Some of the suggestions contained in the report were:

- (1) licensees who are subject to MCE be required to complete a minimum number of MCE hours annually, regardless of the licensee's renewal period;
- (2) establish by rule if possible or request that the legislature change Texas Occupations Code Chapter 1101 as follows: (a). brokers who are currently exempt from MCE requirements, the exemption ends if the broker allows their license to expire; (b). brokers who are currently exempt from MCE requirements, the exemption ends if the broker allows the license to go inactive; or (c) the Commission should request that the legislature change Texas Occupations Code Chapter 1101 to repeal the MCE exemption in its entirety.
- (3) establish by rule if possible or request that the legislature change Texas Occupations Code Chapter 1101 so that all brokers, and any salespersons who have been delegated by their sponsoring brokers the responsibility of oversight or management of a group, team or office, be required to take an additional 3 hour real estate brokerage course as a condition of renewal of their license.
- (4) seek legislative authority to establish a permanent standing "Education Curriculum Standards Committee" to look at what real estate licensees need to know today and what they need to know in the future to complete real estate transactions that satisfy the needs of consumers
- (5) request that the legislature change Texas Occupations Code Chapter 1101 so that to move from salesperson to broker status, a minimum standard must be set forth by TREC to show competency.

The Chair stated that the suggestions would be referred to staff to determine which areas are subject to legislative change; which can be handled by rules changes and which can be changed by policy. Staff would present their recommendations at the August meeting.

Fred Willcox presented the report from the Texas Real Estate Inspector Committee. Areas presented in the report included the pass score for the professional inspector license and online classes. Commissioner Mesa recognized the committee for their diligence, time and effort. Mr. Oldmixon informed the Commission that a committee meeting was scheduled for June 7, 2010. The committee had invited educators invited to attend as the inspector rules are contained in the rule review to be proposed at this meeting. Staff has been directed to

assist committee in whatever manner needed. The Standard of Practice Request for Interpretation has begun and a number of the issues were answered. These have gone to the full committee.

The Chair thanked the Real Estate Center at Texas A&M for their assistance in facilitating recent meetings.

Ms. DeHay stated that the Broker-Lawyer Committee has been working on six contracts and four addenda. The committee hoped to put the draft contracts on the web site for comments from the licensees and public. They plan to present the drafts for proposal to the full commission at the August meeting. There was discussion concerning the SAFE Act and whether or not it was being considered during the revision period.

Mr. Eckstrum moved to agenda item twenty-one, discussion and possible action to approve annual audit plan. Rene Gonzalez and Richard Galindo presented the agenda item for discussion and possible action.. Upon motion of Mr. Arriaga, seconded by Ms. Scurry, the Commission approved the annual audit plan as presented.

Chairman Eckstrum moved back to agenda item eight, general comments from visitors. Comments were offered by Jim Oat, Building Officials of the State of Texas, concerning the standards of practice for real estate inspectors. Fred Willcox, Texas Real Estate Inspector Committee and Jim Hemsell, inspector from Denton, replied to concerns raised by Mr. Oat. Ed Martin, Texas Inspector Trade Council, spoke concerning their formation and their purpose. The Chairman directed the committee to respond in writing to Jim Oat's comments.

The Chairman moved to agenda item nine, 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 11:55 a.m. The meeting returned to open session at 12:37 p.m.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to authorize settlement of recovery fund claims or take other action on items considered in executive session. Ms. Bijansky presented the following recovery fund claims for discussion and possible action.

RF 09-015, Rose Abbs and Janice Thomas v. Ronald Wayne Brown, in the amount of \$3,000 in actual damages and up to \$1,000 in attorney fees. Upon motion of Mr. Arriaga, duly seconded by Ms. Scurry, the Commission approved payment.

RF 10-055, Vance and Cherie Morris v. Robin Hauck, in the amount of \$6,000 in actual damages and \$9,500 in attorney fees. Upon motion of Ms. Wukasch, duly seconded by Mr. Day, the Commission approved payment.

RF 10-008, Gordon and Martha Bryan v. Stephen Lobue, in the amount of \$12,337 in actual damages and \$5,487.78 in attorney fees. Upon motion of Mr. Mesa, duly seconded by Mr. Day, the Commission approved payment.

The Chairman moved to agenda item twenty-three, discussion and possible action to extend the contract for examination services with PSI Services, LLC. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission extended the contract for examination services.

Mr. Eckstrum moved to agenda item eleven, discussion and possible action to adopt amendments to: (a) 22 TAC §534.1 Charges for copies of Public Information; (b) 22 TAC §534.4 Historically Underutilized Businesses Program; (c) c. 22 TAC §534.5 Bid Opening and Tabulation. After discussion, upon motion of Mr. Mesa, duly seconded by Ms. Wukasch, the Commission adopted the amendments as submitted by staff

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to adopt amendments to: (a) 22 TAC §539.41, 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. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission adopted the amendments to 22 TAC § 539.41, Disclosures with an effective date of September 1, 2010. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments to 22 TAC §539.51, Employee Defined with an effective date of September 1, 2010. Upon motion of Ms. Hensley, duly seconded by Ms. Wukasch, the commission adopted the amendments to 22 TAC §539.61, Employee Defined , with changes to the form adopted by reference and an effective date of September 1, 2010. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the commission adopted the amendments to 22 TAC §539.71, Miscellaneous Forms, with changes to the form adopted by reference and an effective date of September 1, 2010. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments to §539.91, Annual Report Form RSC 6-2, with changes to the form adopted by reference and an effective date of September 1, 2010. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission adopted the amendments to §539.137, Semiannual Report, with changes to the form adopted by reference and an effective date of September 1, 2010.

Ms. DeHay presented agenda item twelve, for discussion and possible action to propose amendments to (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; (d) 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53; (e) 22 TAC §535.51, General Requirements; (f) 22 TAC §535.101, Fees; (g) 22 TAC §535.208, Application for a License & (h) 22 TAC §535.210, Fees .

Upon motion of Ms. Hensley, duly seconded by Mr. Arriaga, the Commission authorized staff to submit the amendments to Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees for publication in the *Texas Register* and for comment. Upon motion of Mr. Alley, duly seconded by Ms. Hensley, the Commission authorized staff to submit the amendments to Chapter 533, Practice and Procedure; for

publication in the *Texas Register* and for comment. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission authorized staff to submit the amendments to Chapter 537, Professional Agreements and Standard Contracts, for publication in the *Texas Register* and for comment. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission authorized staff to submit the amendments to Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53 for publication in the *Texas Register* and for comment. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized staff to submit the amendments to 22 TAC §535.51, General Requirements for publication in the *Texas Register* and for comment. Upon motion of Ms. Justice, duly seconded by Ms. Scurry, the Commission authorized staff to submit the amendments to 22 TAC §535.101, Fees for publication in the *Texas Register* and for comment. Upon motion of Ms. Wukasch, duly seconded by Ms. Mesa, the Commission authorized staff to submit the amendments 22 TAC §535.208, Application for a License & 22 TAC §535.210, Fees for publication in the *Texas Register* and for comment.

Mr. Eckstrum moved to agenda item fourteen, discussion regarding comments on 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; (d) 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53. No comments had been received.

Chairman Eckstrum moved to agenda item fifteen, discussion and possible action to adopt 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. Upon motion of Ms. Justice, duly seconded by Mr. Mesa the Commission adopted the review.

The Chairman moved to agenda item sixteen, discussion and possible action to propose the review of Chapter 535 regarding General Provisions. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa the Commission proposed the review of Chapter 535.

The Chairman moved to agenda item seventeen, discussion and possible action regarding 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. Mr. Oldmixon presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, seconded by Ms. Wukasch, the Commission adopted the plan.

Chairman Eckstrum moved to agenda item eighteen, discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for fiscal years 2011-2015. After discussion, upon motion of Ms.

Wukasch, seconded by Mr. Arriaga, the Commission approved the Strategic Plan as submitted by staff reserving the right for minor revisions and corrections as approved by the Chairman.

The Chairman moved to agenda item nineteen, discussion and possible action to approve Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board regarding administrative services provided by TREC. Upon motion by Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the Memorandum of Understanding as submitted by staff.

Mr. Eckstrum moved to agenda item twenty, discussion and possible action to request an Ethics Commission opinion regarding Commissioners or staff teaching certain Mandatory Continuing Education courses. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission authorized staff to submit the request for an Ethics Commission opinion as submitted by staff with the addition of a request for a ruling on teaching outside the state or country.

Chairman Eckstrum moved to agenda item twenty-two, discussion and possible action to appoint members to the Texas Real Estate Inspector Committee. Upon motion of Mr. Mesa, duly seconded by Ms. Hensley, the Commission appointed Ms. Linda S. Robicheaux and Ms. Nancy J. Schriedel as public members of the Texas Real Estate Commission Inspector Committee.

The Chairman moved to agenda item twenty-four, discussion and possible action to adopt changes to existing policy statements regarding: (a) Commissioner Travel Expenses and Per Diem Policy and (b) MCE Exemption if eligible broker allows license to expire for over 364 days. Upon motion of Ms. Wukasch, seconded by Mr. Arriaga, the Commission adopted the addition of "If the Administrator/Commissioner certifies that sufficient travel funds are clearly available, the Commission/Board may designate additional Commissioners/Board Members to attend and represent the agency at such meetings." to the current policy statement regarding Commissioner Travel Expenses and Per Diem.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposed language as follows be added to the current MCE Exemption Policy. "The MCE exemption is good only for the duration of an uninterrupted broker license. A late renewal – after 364 days – is not a renewal, it is an application for licensure. Renewing a license connotes that a broker has held an uninterrupted license; a late renewal is an application in that the broker has allowed their license to expire and is coming back after an interruption in licensure. If that break exceeds the 364 days currently allowed by statute, the broker must comply with the current MCE to return to active status, but thereafter maintains the exemption on subsequent renewals in active status."

Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved the proposed language as follows be added to the current MCE Exemption Policy, "A broker with the MCE exemption who maintains

an inactive license must comply with the current MCE to return to active status, but thereafter maintains the exemption on subsequent renewals in active status.” with Ms.Wukasch voting against the motion.

Mr. Eckstrum moved to agenda item twenty-five, discussion of Chairman Eckstrum’s appointment of new member(s) to disciplinary panel under Texas Occupations Code, §1101.662. The Chairman appointed Commissioners Wukasch and Justice and reappointed Commission Day to the disciplinary panel.

Chairman Eckstrum announced a break from 2:40 p.m. until 3:00 p.m. Upon calling the meeting back to order Chairman Eckstrum relinquished the gavel to Mr. Day for agenda item twenty-six, consideration and possible action regarding proposals for decisions from the State Office of Administrative Hearings.

Mr. Day called SOAH Docket No. 329-10-1578.REC, in the Matter of John B. Austin. The Administrative Law Judge (ALJ) recommended that the Respondent be granted a probationary license on such terms as the Commission deemed appropriate. After hearing the Standards and Enforcement Division and Mr. Austin, and upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the proposal for decision with the addition of standard terms and conditions.

Mr. Day called SOAH Docket No. 329-10-2384.REC, in the matter of Paul A. Garcia. The ALJ recommended that Respondent’s license be revoked. The Standards and Enforcement Division agreed with the ALJ’s decision. After the presentation by the Standards and Enforcement Division, upon motion of Mr. Alley, duly seconded by Mr. Mesa, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-10-4740.REC, in the Matter of Marcus M. Norton. The ALJ recommended the assessment of an administrative penalty in the total amount of \$3,000. The Standards and Enforcement Division concurs with the ALJ’s findings. After discussion, upon motion of Mr. Arriaga , duly seconded by Mr. Alley, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-10-1402.REC, in the Matter of Wyndee Lynn Rodriguez. The ALJ recommended that Respondent’s license be revoked. The Standards and Enforcement Division concurred with the ALJ. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal for decision as submitted.

Mr. Day called SOAH Docket No. 329-10-6222.REC, in the matter of Jim S. Hicks. The Standard and Enforcement Division requested this item be tabled as a response to their exceptions had not been received. The matter was tabled.

Mr. Day called for the Motion for Rehearing in the Matter of Stephen Melvin King, Jr., SOAH Hearing No. 10-108-090784. The Standards and Enforcement Division presented its answer to the Motion. The Commission voted to deny the motion.

Mr. Day called for the Motion for Rehearing in the Matter of John Christopher Crawford, SOAH Hearing No. 10-114-093171. Mr. Crawford presented his motion pro se. Virginia Fields, staff attorney, presented the Standards and Enforcement Division's answer to the Motion.

The Chairman requested an executive session. The session began at 3:22 p.m. The meeting was called back to order at 3:35 p.m. Mr. Day called for a vote on the motion for rehearing. The motion passed with Mr. Eckstrum and Mr. Arriaga voting against the motion.

The Chairman moved to agenda item twenty-eight, discussion and possible action to schedule future meetings. After discussion, the next meetings remain scheduled for August 9, 2010 and November 15, 2010. All meetings scheduled would begin at 10:00 a.m.

Chairman Eckstrum moved to agenda item twenty-nine, discussion and possible action regarding distribution of meeting materials to commissioners. There was discussion concerning receiving the materials electronically.

The Chairman adjourned the meeting at 4:18 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 9th day of August, 2010.

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John Eckstrum  
Chairman

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