

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

August 9, 2010

Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, August 9, 2010, at 10:04 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. The chairman recognized Gary Maler, Real Estate Center at Texas A&M, former commissioner, Don Harvey; and Lori Levy, Texas Association of Realtors. The Chairman informed the audience that the public comment section of the agenda was designated for discussion items not on the agenda. Mr. Oldmixon explained that comment slips were available; those in support or against a particular item could fill out a slip to that effect and their comment would be read into the record. Those wishing to speak on any agenda item should fill out the slip indicating their wish to speak. All slips should be given to the recording secretary.

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 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, approval of minutes of May 17, 2010 Commission meeting. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the Commission adopted the minutes as presented in the meeting materials.

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

Chairman Eckstrum moved to agenda item four, 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 length of the agenda and that the reports from Broker's Responsibility Working Group and Education Working Group would not be presented in detail since most of the items contained in those reports had been incorporated into proposed rules and legislative items. He stated that the LBB and Governor's office had denied the request for an exemption from the 5% reduction for the pass through fees collected by the agency. This meant that the agency was forced to reduce its budget by almost 7.5%. The toll free lines had been eliminated as planned in June. Mr. Oldmixon also reported on various speaking engagements and meeting that had occurred since the last meeting. He reported that the Strategic Plan had been filed. There had been several training sessions for employees regarding the VERSA implementation and functions. He stated that the VERSA implementation had been postponed until September so that further testing could be performed. Mr. Oldmixon introduced Laura Pittman, a new employee in the Staff and Support Services Division. He recognized Diane Fletcher who was retiring after 25 years with the agency and Carol Taylor who was retiring after 27 years.

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 between 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. She also reported on current staffing actions and implementation of a new program regarding Administrative Decisions. Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. 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 five, 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. The Chairman moved to agenda item 5(c).

Larry Foster, Chairman of the Texas Real Estate Inspector Committee, presented his report. Areas presented in the report included concerned the members of the committee, the newly formed commentary committee and its Chair Jill Frankel, and the committee's work on the proposed changes to the inspector rules.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to approve annual audit report. Rene Gonzalez presented the agenda item for discussion and possible action.. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the Commission approved the annual audit report as presented.

The Chairman moved to agenda item sixteen, discussion and possible action to appoint an internal auditor. Ms. Alexander stated that staff was recommending that Garza Gonzales and Associates be appointed as the internal auditor for the agency. Upon motion of Mr. Mesa, duly seconded by Ms. Justice, the Commission appointed Garza Gonzales and Associates as the internal auditor.

Mr. Eckstrum moved back to agenda item six, general comments from visitors on nn-agenda items. No comments were presented.

The Chairman moved to agenda item seven, discussion and possible action to adopt 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, and (h) 22 TAC §535.210, Fees.

Ms. DeHay presented the agenda items for discussion and possible action to adopt. Upon motion of Mr. Day, duly seconded by Mr. Mesa, agenda item 7(a) was adopted with the addition of a reference to the TREC web site. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, agenda item 7(b) was adopted as presented. Upon motion of Ms. Justice, duly seconded by Mr. Alley, agenda item 7(c) was adopted as presented. Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, agenda item 7(d) was adopted as presented. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, agenda item 7(e) was adopted as presented. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, agenda item 7(f) was adopted as presented. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, agenda items 7(g) and (h) were adopted as presented.

Chairman Eckstrum moved to agenda item eight, discussion and possible action to propose changes to 22 TAC Chapter 535. Ms. DeHay presented the agenda items for discussion and possible action to propose.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice the Commission approved the proposal of amendments to Subchapter A. General Provisions Relating to the Requirement of Licensure as follows: repeal the Subchapter heading and §535.1 concerning License Required; propose new Subchapter heading A. Definitions and new §535.1, concerning Definitions with the addition of explanatory language detailing that definitions in this section refer to chapter 535 only.

Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter B. Definitions as follows: the repeal Subchapter heading and proposal of new Subchapter heading B. General Provisions Relating to the Requirement of Licensure; amendments to §535.2, concerning Broker Responsibility (removing the deletion of the phrase “authorized acts”) and §535.3, concerning Compensation to or paid by a Salesperson; new §535.4, concerning License

Required and new §535.5, concerning License Not Required; the repeal §535.12, concerning General, repeal §535.13, concerning Dispositions of Real Estate and repeal §535.15, concerning Negotiations; amendments to §535.16, concerning Listing and §535.17, concerning Appraisals (with the relettering of subsections (a)-(e)); the repeal of §535.19, concerning Locating Property; amendments to §535.20, concerning Procuring Prospects; and the repeal of §535.21, concerning Unimproved Lot Sales; Listing Publications.

Upon motion of Ms. Wukash, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter C. Exemptions to Requirements of Licensure as follows: the amendments to §535.31, concerning Attorneys at Law, §535.32, concerning Exemptions: Attorneys in Fact, and §535.34, concerning Salespersons Employed by an Owner of Land and Structures Erected by the Owner; and the repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter D. the Commission, amending §535.42, concerning Jurisdiction and Authority.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter E. Requirements for Licensure as follows: new §535.50, concerning Definitions; amendments to §535.53 concerning Corporations and Limited Liability Companies; new §535.54, concerning General Provisions Regarding Education and Experience Requirements for a License, new §535.55, concerning Education Requirements for a Salesperson License, new §535.56, concerning Education and Experience Requirements for a Broker License (with corrected paragraph lettering), and new §535.57, concerning Examination Requirements for a License.

Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, the Commission approved the proposal of amendments to Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License as follows: amendments to §535.61, concerning Examinations, §535.62, concerning Acceptable Courses of Study (removing the deletion of the word "professional"); the repeal §535.63, concerning Education and Experience Requirements for a License; new §535.63, concerning Accreditation of Core Education Schools (showing the change of approval from 2 years to 4 years on courses (core), and schools); the repeal §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors; new §535.64, concerning Obtaining approval to offer a course; the repeal §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses; Advertising; and Records; new §535.65, concerning Operation of Core Education Schools; the repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions; and new §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions, §535.67, concerning Approval of Instructors and §535.68, concerning Additional Information related to an application.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved

the proposal of amendments to Subchapter G. Mandatory Continuing Education as follows: amend §535.71, concerning Mandatory Continuing Education; Approval of Providers, Courses, and Instructors, §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records and §535.73, concerning Compliance and Enforcement; and new §535.74, concerning Additional Information related to an application.

Upon motion of Ms. Hensley, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter I. Licenses as follows: amend §535.91, concerning Renewal Notices, §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements, §535.94, concerning Hearing on Application Disapproval: Probationary Licenses; and new §535.96, concerning Permanent Mailing Address and other Contact Information.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter L. Termination of Salesperson's Association with Sponsoring Broker as follows: amend §535.121, concerning Inactive License, §535.122, concerning Reactivation of License and §535.123, concerning Inactive Broker Status.

Upon motion of Mr. Alley, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter M. Non-residents as follows: amend §535.131, concerning Unlawful Conduct; Splitting Fees and §535.132, concerning Eligibility of Licensure.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter N. Suspension and Revocation of Licensure approval as follows: amend §535.141, concerning Initiation of Investigation, §535.143, concerning Fraudulent Procurement of License, §535.144, concerning When Acquiring or Disposing of Own Property, §535.145, concerning False Promise, §535.146, concerning Failure to Properly Account for Money; Commingling, §535.147, concerning Splitting Fee with Unlicensed Person, §535.148, concerning Receiving an Undisclosed Commission or Rebate and the form adopted by reference, §535.149, concerning Lottery or Deceptive Trade Practice, and §535.153, concerning Violating an Exclusive Agency; the repeal of §535.154, concerning Misleading Advertising; new §535.154, concerning Advertising; and amend §535.159, concerning Failing To Properly Deposit Escrow Monies, §535.160, concerning Failing to Properly Disburse Escrow Money, and §535.161, concerning Failing to Provide Information.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter O. Hearing on Suspension or Revocation of Licensure amending §535.171, concerning Hearing: Subpoenas and Fees.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter P. Penalty for Unlicensed Activities amending §535.181, concerning Penalty.

Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission approved the proposal of amendments to Subchapter Q. Administrative Penalties amending 535.191, concerning Schedule of Administrative Penalties.

The Chairman called for 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 12:30 p.m. The meeting returned to open session at 1:31 p.m.

Ms. Bijansky presented agenda item eight (o) concerning Real Estate Inspectors for discussion and possible action to propose. Comments were offered by Larry Foster, concerning the procedure for the committee offering its opinion when it was in opposition to staff's recommendations, receiving materials in advance of the meeting and comments against the lowering of the pass rate for inspector examinations. Fred Willcox, and Scott Emerson spoke in favor of lowering the pass rate on the inspector examinations. Mr. Emerson also commented on the advertising rules concerning social media and the three day delivery of inspection reports. Mike Cothron spoke in opposition to the lowering of the pass rate for inspector examinations. Upon motion Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of Subchapter R. Real Estate Inspectors as follows: new §535.201, concerning Definitions; amend §535.206, concerning The Texas Real Estate Inspector Committee as presented in Ms. Bijansky's memo presented at the meeting; new §535.209, concerning Examinations with the determination that the subject matter would be revisited after the upcoming legislative session; the repeal §535.212., concerning Education and Experience Requirements for an Inspector License; new §535.212, concerning Education and Experience for an Inspector License; repeal §535.213, concerning Schools and Courses of Study in Real Estate Inspection; new §535.213, concerning Approval of Courses in Real Estate Inspection; repeal §535.214, concerning Examinations; new §535.214, concerning Providers of Real Estate Inspection Courses; amend §535.215, concerning Inactive Inspector Status; amend §535.216, concerning Renewal of License or Registration; new §535.217, concerning Contact Information; amend §535.218, concerning Continuing Education; amend §535.221, concerning Advertisements; amend §535.222, concerning Inspection Reports; and amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors.

Upon motion Ms. Hensley, duly seconded by Mr. Mesa, the Commission approved the proposal of Subchapter S. Residential Rental Locators as follows amending §535.300, concerning Advertising by Residential Rental Locators.

Upon motion Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission approved the proposal of amendments to 22 TAC Chapter 537 as follows changing the references in the contracts from "garage" to "garage doors" where appropriate. Amend §537.20 concerning Standard Contract Form TREC No. 9-8, §537.28 concerning Standard Contract Form TREC No. 20-9, §537.30 concerning Standard Contract Form TREC No. 23-10, §537.31 concerning Standard Contract Form TREC No. 24-10, amend §537.32 concerning Standard Contract Form TREC No. 25-7, amend §537.37 concerning Standard Contract Form TREC No. 30-8, amend §537.43 concerning Standard Contract

Form TREC No. 36-6, amend §537.47 concerning Standard Contract Form TREC No. 40-4 and new 22 TAC §537.53 concerning Standard Contract Form TREC No. 46-0.

Chairman Eckstrum moved to agenda item nine, discussion regarding comments on the review of 22 TAC Chapter 535. No comments had been received.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to adopt 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. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission adopted the review.

The Chairman moved to agenda item eleven, discussion and possible action regarding Ethics Commission opinion regarding commissioners or staff teaching certain Mandatory Continuing Education. Mr. Oldmixon presented the agenda item for discussion and possible action. The Ethics Commission stated that its opinion had not changed and commissioners or staff were not allowed to teach Mandatory Continuing Education as stated in their previous opinion. No action was needed.

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to approve license application and renewal forms. Ms. Jackson presented the agenda item for discussion and possible action. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the license application and renewal forms as submitted.

Mr. Eckstrum moved to agenda item thirteen, discussion and possible action to approve Legislative Appropriations Request for Fiscal Years 2012-2013. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the Commission approved the Legislative Appropriations Request as submitted.

The Chairman moved to agenda item fourteen, discussion and possible action on legislative housekeeping measures. Mr. Oldmixon presented the agenda item for discussion and possible action. Mike Cothron spoke concerning inspector issues. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the list of legislative suggestions as submitted.

Chairman Eckstrum moved to agenda item seventeen, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings. Mr. Day presided over this agenda item.

Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the Proposal for Decision In the Matter of Emily Ann Mattox, SOAH Docket No. 329-10-1577.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of James Edward McCune, Jr., SOAH Docket No. 329-10-2606.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jason A Hunt, SOAH Docket No. 329-10-3250, REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Sonia Keeton-Griffin, SOAH Docket No. 329-10-3572.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jovan Property Management LLC. SOAH Docket No. 329-10-3573.REC.

Lewis Lector, attorney for Mr. Hix spoke concerning the matter. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jim S. Hicks, SOAH Docket No. 329-10-6222.REC granting him a five year probationary license, standard terms and conditions, corrections to conclusion of law number four to correctly reflect the pertinent agency rule and that Mr. Hix not transport passengers while performing his duties as a licensee.

The Chairman moved to agenda item nineteen, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for November 15, 2010 and February 14, 2011 at 10:00 a.m.

The Chairman adjourned the meeting at 3:36 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 15th day of November, 2010.

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John Eckstrum  
Chairman

ATTEST:

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Douglas E. Oldmixon  
Administrator