

MINUTES OF THE MEETING OF THE TEXAS REAL ESTATE COMMISSION  
February 14, 2011  
Room 235, 1101 Camino La Costa Austin, Texas

On Monday, February 14, 2011, at 10:04 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum introduced Charles McMillan, the current president of the National Association of Realtors. The Chairman also introduced his wife, Alice Eckstrum, and Louise Hull Patella, a past TREC Commissioner, who were in the audience. The Chairman led the attendees in the pledges of allegiance to the United States and Texas flags. Chairman John Eckstrum presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Eckstrum, Chairman

Troy C. Alley, Jr.

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Tom Mesa

Dona Scurry

Avis Wukasch

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

Chairman Eckstrum moved to agenda item three, election of officers. Upon motion of Ms. Hensley, duly seconded by Mr. Justice, the Commission elected Ms. Wukasch vice-chairman. Upon motion of Ms. Justice, duly seconded by Mr. Day, the Commission elected Ms. Hensley, secretary.

The Chairman moved to agenda item four, discussion and possible action to appoint three Inspector Committee Members. The Chairman brought forward three nominees for the positions on the committee. They were Stephen Rhinehart and Greg Eakin as industry members and Nancy Carroll as the public member. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the nominees were elected as members of the Texas Real Estate Inspector Committee. The Chairman presented former member and Chairman of the Inspector Committee, Larry Foster, with a certificate of appreciation.

The Commission adopted the minutes as presented in the meeting materials by unanimous consent.

Mr. 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 status of the exceptions request to the Legislative Appropriations Requests. He reported the staff's efforts in response to the backlog of paperwork and email. He spoke concerning recent shut downs due to bad weather and rolling blackouts. He reported on a problem with the online functions and the steps being taken to correct it. He introduced Christine Anderson who was replacing Betsy Bird as the Public Information Specialist and Mark Mrnack, the director of the Texas Appraiser Certification and Licensing Board's Standards and Enforcement Services Division. Mr. Oldmixon reported on various speaking engagements during the months since the last meeting,

Lorie DeAnda, Director of Reception and Communications Services spoke concerning the volume of calls and emails being handled by her division. She 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; the L3 report, concerning examination activity and the L4 report concerning the number of improved instructors. She stated that decreases in the numbers contained in the L1 report were due to changes in the way applications are counted and the fact that applications were open longer due to the new education requirements. Mr. Arriaga asked about totals for the reports concerning September through December. There was discussion concerning the current data program's ability to capture data for certain time periods. Ms. Justice asked about the ability to track the number of applicants under the new education requirements. The Chairman asked for verification concerning the security of licensees' information during recent data base problems. Mr. Oldmixon stated that all data was secure and available to staff on the new system.

Kerri Galvin, Director of Standards and Enforcement Services, introduced a new staff attorney, Kyle Smith. Mr. Smith had been employed with the Texas Department Licensing and Regulation and more recently with the Medical Board. He is also a trained mediator. Ms. Galvin presented the case status report, and the case age report. She stated that due to staff in her division helping with the licensing backlog the numbers in these reports were lower than normal.

There was discussion concerning the licensing backlog and how other divisions had been cross trained to assist that department. Mr. Oldmixon stated that the area with the largest backlog was changes of sponsorship and that additional staff was being trained to process them. Also an online change of sponsorship process was being developed.

Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Mr. Watson stated that the low numbers were due to the agency's shutdown of the online application process in September and to the recent problems with access to online functions. He stated that utilization of the website was improving. He also reported that an additional T1 line was being installed and hoped that this would alleviate many of the current problems. There was further discussion concerning the online efficiency and current and future usage of online functions.

Karen Alexander reported on the S1 report showing the financial status as of December 31, 2010. She moved to 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. There was discussion concerning projected payments from the Real Estate Recovery Trust Account. There was additional discussion concerning the trend of increasing claims and claims for larger amounts.

Chairman Eckstrum moved to agenda item seven, report by the Texas Real Estate Inspector Advisory Committee. Mr. Wilcox, Chairman of the Committee, spoke briefly.

Mr. Eckstrum moved to agenda item eight, general comments from visitors on non-agenda items. Comments were offered by Bob Baker, broker from Plano, spoke concerning the recovery fund. Sam Davis, Wimberley, Texas, spoke concerning the problems he had experienced when trying to renew online.

Mr. Eckstrum announced an executive session beginning at 11:22 a.m. to allow the Commission to meet with its attorney on any listed agenda item as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071. The open meeting resumed at 12:02 p.m.

The Chairman moved to agenda item twenty-two (b), discussion and possible action to authorize settlement of recovery fund claims. Ms. Bijansky presented the agenda item for consideration. The following claims were submitted for approval:

RF11-001, Amina Ray v. Gregory Wesley Real Estate, LLC and Susan Gillespie Chastain, actual damages of \$1,500 against the LLC and \$2,500 against Chastain. Upon motion of Ms. Wukach, duly seconded by Ms. Justice, the Commission authorized the payment of \$750 on behalf of the LLC and \$1,250 on behalf of Chastain.

RF11-006, Joshua and Ralitsa Sundquist v. Prime Realtors Property Management, LLC and Michael Duane Cade, actual damages of \$29,925.57 and attorney's fees of \$4,800. Upon motion of Mr. Alley, duly seconded by Mr. Mesa, the Commission authorized staff to make payment as requested.

RF11-007, BPR Shopping Center, LLP v. William Perry Jones and J&B Commercial, LLC, actual damages of \$14,760 and attorney's fees of \$5,000. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-009, Saurabh Argawal, et al v. Bryan Frazier Owens and Stephanie Marie Scott, actual damages of \$153,467.21 and attorney's fees of \$175,000. Upon motion of Ms. Hensley, duly seconded by Mr. Day, the Commission authorized staff to make payment of actual damages and attorney fees up to the statutory cap of \$200,000.

RF11-012, Joanna M. Varenhorst v. Kent W. Hicks, actual damages of \$35,364.92 and attorney's fees that exceed the cap. Upon motion of Ms. Justice, duly seconded by Mr. Mesa, the Commission authorized staff to make payment as requested, with Mr. Arriaga and Mr. Day voting against the motion.

IRF11-001, David and Heather Garecki v. Frank Delph, actual damages of \$3,000. Upon motion of Mr. Day, duly seconded by Ms. Justice, the Commission authorized staff to settle the matter on the best possible terms.

The Chairman moved to agenda item nine, discussion and possible action to: (a) adopt the repeal of 22 TAC §535.154 concerning Misleading Advertising and (b) adopt new 22 TAC §535.154 concerning Advertising. Ms. DeHay presented the agenda items for discussion and possible action Regarding agenda item nine (a), the repeal is necessary because the subject addressed in the section is covered in new amendments to Subchapter N which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission adopted the repeal of 22 TAC §535.154 concerning Misleading Advertising.

Regarding agenda item nine (b), new §535.154 replaces existing §535.154. Subsection (a) provides a definition of "advertisement;" subsection (b) clarifies what types of communications are not considered advertisements for purposes of the Act and Rules. Subsection (c) requires salespersons and brokers to clearly and conspicuously include the broker's name in all advertising and permits the use of a broker's assumed name if it has been filed with the commission. If the broker's name includes the name of a salesperson, the advertisement must include another assumed name of the broker that does not include the salesperson's name or the name of the broker's designated broker. Subsection (d) provides a laundry list of types of advertising that are considered deceptive and misleading; subsection (e) requires brokers to file assumed names with the commission; subsection (f) requires an advertisement to contain a designation such as broker or agent; subsection (g) prohibits advertising that implies that a salesperson is the person responsible for the operation of a real estate brokerage business, or causes someone to believe that an unlicensed person is personally engaged in real estate brokerage; subsection (h) permits a business entity to do business in the name in which it was chartered or registered at the Office of the Secretary of State with certain exceptions; subsection (i) prohibits a licensee from using a copyrighted trade name unless the licensee has the authority to use the name; subsection (j) addresses use of advertisements on the Internet; subsection (k) addresses electronic communications; subsection (l) addresses road signs; subsection (m) addresses advertisements that contain an offer to rebate a portion of a licensee's commission; subsection (n) addresses advertising that recommends or promotes the use of a service provider;

subsection (o) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; subsection (p) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses. The revisions to the rules as adopted would not change the nature or scope so much that they could be deemed different rules. Upon motion of Ms. Wukasch, seconded by Ms. Hensley, the Commission authorized, staff on behalf of this Commission, to submit the repeal of 22 TAC §535.154 concerning Misleading Advertising, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*. Mr. Arriaga voted against the motion. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized staff, on behalf of this Commission, to submit the adoption of new §535.154, regarding Advertising in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the Commission adopted a safe harbor policy for the staff and Enforcement to use in directing licensees as to what might be considered clear and conspicuous in advertising, which would cause the broker's name or assumed name to be at least fifty percent the size of the largest item on contact information on a sign or other advertising media.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Subchapter T regarding Easement or Right of Way Agents as follows: (a) Amend §535.400 regarding Registration of Easement or Right of Way Agents and (b) Amend §535.403 regarding Renewal of Registration. Ms. DeHay presented the agenda item for discussion and possible action. Application forms will no longer be promulgated by the commission, but they will be approved when substantive changes are made. The amendments to §535.403 change the renewal fee from \$83 to \$80 to remove the \$3 fee that registrants are required to pay for TexasOnline fees. Since such fees are adopted by Department of Information Resources Rules, the fee does not need to be separately adopted as a fee by the commission. No comments were received on the rules as proposed. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments to Subchapter T regarding Easement or Right-of-Way; §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration without changes in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable.

Mr. Eckstrum moved to agenda item eleven, discussion and possible action to adopt amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows: (a) Amend §539.61 concerning Applications and Licensing; (b) Amend §539.121 concerning Examinations; and New Subchapter P and new §539.150 concerning Complaints. Ms. DeHay presented the agenda item for discussion and possible action. The amendments revise subsection (a) to add a reference to the TREC website and add new subsection (c) to provide a deadline for applicants to provide information to the commission in connection with an application. There is currently no deadline for responding a request for information. Creating a time certain for termination of an incomplete application will allow the Commission to create a records retention period for TREC to maintain the application and related materials. No comments were received

on the rule as proposed. Upon motion of Mr. Alley, duly seconded by Mr. Mesa, the commission adopted the amendments to 22 TAC §539.61 concerning Applications and Licensing without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The proposed amendments to §539.121 change the examination period from three to five years. Experience with recent examinations has shown that most, if not all, licensees are generally in compliance with the commission's requirements and that examinations may be conducted less frequently without compromising consumer protection. In addition, the significant increase in the number of licensed companies in recent years combined with limited staff and resources further necessitate extending the time between examinations from 3 years to 5 years. No comments were received on the rule as proposed. Upon motion of Ms. Hensley, duly seconded by Mr. Alley, the commission adopted the amendments to 22 TAC §539.121 concerning Examinations without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The proposed new rule, §539.150 concerning Complaints, establishes a complaint procedure for filing complaints against residential service companies licensed by the commission. The new rule establishes a deadline in which complaints may be filed with the commission and established a deadline in which respondents must respond to requests for information from the commission. The procedure and time periods are the same as those established by rule for other licensees subject to the commission's jurisdiction. No comments were received on the rule as proposed. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission adopted the amendments to 22 TAC §539.150 concerning Complaints without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The Chairman moved to agenda item twelve, discussion and possible action to propose amendments to 22 TAC Chapter 533 regarding Practice and Procedure. Ms. DeHay presented the agenda item for discussion and possible action. The proposed amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The proposed amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent's mailing address. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the commission voted to propose the amendments to 22 TAC §533.1 and §533.3 as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action to propose amendments to 22 TAC §535.217 regarding Contact Information. Ms. DeHay presented the agenda item for discussion and possible action. The proposed amendment to §535.217 amends the title of the rule to add "Mailing Address and Other" and deletes the term "permanent" from the rule to make it consistent with other TREC rules. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the commission voted to propose the amendments to 22 TAC §535.217 as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

The Chairman moved to agenda item fourteen, discussion and possible action on 22 TAC §535.148 regarding Receiving an Undisclosed Commission or Rebate. Ms. DeHay presented the agenda item for discussion and possible action. The form adopted by reference in §535.148 at the last meeting contained the phrase “for services provided to buyers and sellers”. This phrase needs to be deleted from the form. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the commission does hereby approve the modifications to RSC-1, Disclosure of Relationship with Residential Service as presented by staff and as previously submitted to *Texas Register*.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action on legislative housekeeping measures and other legislative items. Mr. Oldmixon presented the agenda item for discussion. No action was necessary.

Chairman Eckstrum moved to agenda item sixteen, discussion and possible action to approve modifications to Legislative Appropriations Request. Mr. Oldmixon presented the agenda item for discussion and possible action. This agenda item calls for the withdrawal of the “Exceptional Items Request” and the submission of a Supplemental Appropriations Request. Upon motion of Mr. Mesa, duly seconded by Ms. Wukasch, the commission approved the withdrawal of the “Exceptional Items Request” and the submission of a Supplemental Appropriations Request as presented by staff.

The Chairman moved to agenda item seventeen, discussion and possible action to approve updates to required Legal and Ethics MCE courses. 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 update to the required Legal and Ethics courses to address the recent amendments to the contract forms and recent amendments to Chapter 535 as presented by staff.

Chairman Eckstrum moved to agenda item eighteen, (a) discussion and possible action regarding TREC Standard Contract Form No. 20-9 and (b) discussion and possible action to take emergency rulemaking action to adopt amendments to the following rules and forms adopted by reference: (i) §537.20 concerning Standard Contract Form TREC No. 9-8, (ii) §537.28 concerning Standard Contract Form TREC No. 20-9, (iii) §537.30 concerning Standard Contract Form TREC No. 23-10, (iv) §537.31 concerning Standard Contract Form TREC No. 24-10, (v) §537.32 concerning Standard Contract Form TREC No. 25-7, and (vi) §537.37 concerning Standard Contract Form TREC No. 30-8. Ms. DeHay presented the agenda item for discussion and possible action. This agenda item adopts on an emergency basis amendments to §537.20, concerning TREC No. 9-7, Unimproved Property Contract; §537.28, concerning TREC No. 20-8, One to Four Family Residential Contract (Resale); §537.30, concerning TREC No. 23-9, New Home Contract (Incomplete Construction); §537.31, concerning TREC No. 24-9, New Home Contract (Completed Construction); §537.32, concerning TREC No. 25-6, Farm and Ranch Contract; and §537.37, concerning TREC No. 30-7, Residential Condominium Contract Resale).

The amendments are adopted on an emergency basis to eliminate from the contracts subparagraph 15B which requires a party to the contract to file suit for specific performance within 45 days of the closing date of the contract. Comments were offered by Bob Baker regarding the information on page nine of the contracts. Upon motion of Ms. Wukasch, duly

seconded by Mr. Day, the commission adopted amendments to §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, (iv) §537.31 concerning Standard Contract Form TREC No. 24-10, §537.32 concerning Standard Contract Form TREC No. 25-7, and §537.37 concerning Standard Contract Form TREC No. 30-8.

The Chairman moved to agenda item nineteen, discussion and possible action to approve proposed 2.5% budget reduction. Mr. Oldmixon presented the agenda item for discussion and possible action. In December 6, 2010, the agency had received a request from state leadership to identify an additional 2.5% of the adjusted base general revenue as reduction of our expenditures for 2011. He reported that the material in the meeting book contained the reductions suggested by staff. Upon motion of Ms. Justice, seconded by Mr. Arriaga, the Commission approved the plan as presented and previously submitted by staff to the appropriate entities to reduce the budget by 2.5% of the general revenue and general revenue-dedicated appropriations for FY 2011 pursuant to the request from Texas Leadership dated December 6, 2010. There was discussion concerning the reduction

Mr. Eckstrum moved to agenda item twenty, discussion and possible action to approve updated policy for prioritization of complaint cases filed with the Standards and Enforcement Services Division. Ms. Galvin presented the agenda item for discussion and possible action. She stated that the policy was a revision of a previous policy adopted in 2007. The proposed prioritization emphasized issues involving loss of money or property with a value of \$10,000 or more, involve personal safety issues or unlicensed activity issues. Upon motion of Ms. Hensley, duly seconded by Mr. Day, the Commission approved the modifications to the TREC Policy for Prioritization of Complaint Cases Filed with the Standards and Enforcement Services Division as presented by staff. Fred Wilcox, Inspector Committee, stated that the Committee had not seen the policy or been consulted concerning it.

At 1:10 p.m. the gavel was passed to Mr. Day, as the Presiding Member for contested cases. Mr. Day moved to agenda item twenty-one (a), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-10-4249, REC., In the Matter of John Christopher Crawford. Ms. Galvin presented the agenda item. Mr. Crawford did not appear. The staff of the Texas Real Estate Commission brought this action against Mr. Crawford seeking to revoke his real estate salesperson license, and seeking to impose administrative penalties totaling \$30,000. The Administrative Law Judge (ALJ) recommends that Mr. Crawford's license be revoked and that he be assessed an administrative penalty totaling \$13,000. Standards and Enforcement Services agrees with the ALJ. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasz, the Commission approved the proposal as submitted.

Mr. Day moved to agenda item twenty-one (b), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-10-5173, REC., In the Matter of Rene L. Hernandez. Ms. Galvin presented the agenda item for consideration. Mr. Hernandez appeared pro se. Staff brought the action against

Rene L. Hernandez to deny his application for a real estate salesperson license for failing to disclose pending criminal charges at the time of his application and for being convicted of a crime that directly related to the duties and responsibilities of real estate salesperson. Staff asserts that Mr. Hernandez's actions have demonstrated that he is unable to represent the interest of another person with honesty, trustworthiness, and integrity. The ALJ agrees with Staff and recommends denial of the Application. Staff agrees with the ALJ's recommendation. Ms. Galvin presented the facts of the case. Mr. Hernandez responded. After discussion, upon motion of Mr. Arriaga, duly seconded by Mr. Eckstrum, the Commission approved the proposal as submitted.

Mr. Day moved to agenda item twenty-one (c), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-11-0448, REC., In the Matter of Robin J. Muir. Ms. Galvin stated that this item would be postponed until the next commission meeting because of insufficient notice.

Mr. Day moved to agenda item twenty-one (d), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-11-0449.REC. In the Matter of Travis Matthew Grochoske. Ms. Galvin presented the agenda item for consideration. The staff of the Texas Real Estate Commission proposed to deny the application of Travis Matthew Grochoske for an inactive real estate salesperson license. Basis for the denial was failure to demonstrate honesty, trustworthiness, and integrity as demonstrated by applicant's plea of guilty to the state jail felony offense of theft, sentence of deferred adjudication for a term of five years and assessment of \$500 fine. Mr. Grochoske did not appear at the hearing and the ALJ granted a default judgment. Staff agrees with the ruling of the ALJ. Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the proposal as submitted.

The Chairman moved to agenda item twenty-two, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for May 2, 2011 and August 15, 2011 at 10:00 a.m. The Chairman adjourned the meeting at 1:30 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 2nd day of May, 2011.

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John Eckstrum Chairman

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ATTEST: Douglas E. Oldmixon Administrator