

MINUTES
Texas Real Estate Commission
December 1, 2003
Conference Room 235, Texas Real Estate Commission
Austin, Texas

Chairman Mike Brodie called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, December 1, 2003. In addition to Chairman Brodie, members present were Paul Jordan, Larry Jokl, Mick Cantu, Louise Hull and John Walton. Maria Gil and Kay Sutton were absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Linda Bayless, Director of Enforcement; Alan Waters, Director of Staff Services; James Coffman, Programmer, Information Services; and Patricia Holder, Executive Assistant.

Mr. Walton led the attendees in the pledge of allegiance.

Mr. Brodie moved to agenda item two, minutes of the October 13, 2003, Commission meeting. Mr. Jokl, seconded by Mr. Walton, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, monthly staff reports; committee reports. Ms. Hassumani reported that the total number of original applications and applications from late renewals are still increasing. Renewal licenses issued were holding steady. The total number of licensees and registrants is 126,284. There was discussion concerning feedback on the testing service, Psychological Services Inc. (PSI).

Ms. Bayless reported on a new category that had been added to the E1 report, Non-jurisdictional complaints.

Mr. Coffman, filling in for Lyndon Clements, reported on the Information Services Division. Mr. Coffman introduced a new computer operator, Carroll Mixson.

Mr. Waters gave the report for Staff Services and also reported that the Comptroller of Public Accounts notified TREC that they would be conducting a post-payment audit in January.

Mr. Thorburn pointed out that there were two additional reports that will be included in future Staff Reports. These reports referred to the status of the 19 Residential Service Company registrants and the other concerned the 160 Timeshare registrants.

Chairman Brodie moved to agenda item four, general comments from visitors. Mr. Jokl announced that Chairman Brodie was elected Treasurer of the National Association of Realtors at the annual meeting in San Francisco. Ms. Hull was elected as a Region X Regional Vice President of the National Association of Realtors and that Mr. Austin was one of five recipients nation-wide of the Good Neighbor Award presented by the National Association of Realtors.

Mr. Brodie stated that agenda item eight, discussion and possible action to approve the Memorandum of Understanding between the Texas Real Estate Commission and the Texas Appraiser Licensing Certification Board appointing TREC Administrator to serve as Commissioner of TALCB, would be moved forward. Mr. Thorburn presented background information concerning the formation of the Texas Appraiser Licensing Certification Board and its relationship with TREC. He stated that in August both the Commissioner and Deputy Commissioner had retired. After reviewing the situation, the Governor's Office suggested that due to financial constraints, Mr. Thorburn serve as Commissioner for TALCB. Although this would require an

increase of responsibility for Mr. Thorburn, no salary increase would be made. The TALCB would remain a separate entity, but this action would place the of TALCB staff under Mr. Thorburn's authority. Ms. Hull, seconded by Mr. Austin, moved to approve the memorandum.

Chairman Brodie moved to agenda item five, discussion of comments regarding proposed amendments to 22 TAC §§537.11, 537.22, 537.43, 537.47, and new §537.49 concerning Professional Agreements and Standard Contract Forms. Ms. DeHay presented the agenda item for discussion. No action was required on this agenda item.

The Chairman moved to agenda item six, discussion and possible action on report of meeting held November 4, 2003 concerning clarification of broker's responsibility under 22 TAC §535.2. Mr. Jordan presented the report of the meeting held November 4, 2003. Mr. Jordan referred to his memo to the Commission dated November 21, 2003, that was included in the meeting materials provided to the Commissioners. Ms. Hull commented on the agenda item regarding various suggestions that she had received and discussed the law of agency and fiduciary duty. Ron Walker, General Counsel, Texas Association of Realtors (TAR), commented about the November meeting and the current law on contacting a principal who is not your client during a real estate transaction. Aaron Farmer, Texas Discount Brokers, commented on the "Information about Brokerage Services" form and the suggested language for an amendment to the rule. There was further discussion with Mr. Walker concerning a broker's duties to provide certain services. Additional comments were offered by Bob Hale, Houston Association of Realtors, and Minor Peoples, Real Estate School of Corpus Christi. Mr. Farmer spoke again concerning his views on this issue.

Ms. DeHay commented that she had solicited comments concerning the "fee for service business model" from other jurisdiction by e-mail. Ms. DeHay received replies indicating that this business model did exist in other states. Ms. Hull added that other members of other jurisdictions she had spoken with at the ARELLO meeting had indicated that they were waiting to see the outcome of this issue in Texas before taking action themselves.

Commissioner Jordan also made comments after which the Chairman stated that there would probably be another off cycle meeting on this issue. Mr. Thorburn stated that interested individuals should contact TREC by e-mail and written comments.

Chairman Brodie passed the gavel to Vice-Chairman Austin at 10:05. Mr. Austin moved to agenda item seven, discussion and possible action regarding report from TREC staff on implementation of Education Task Force (ETF) recommendations.

Ms. Hassumani presented the report from TREC staff on implementation of the Education Task Force recommendations. Concerning 9 hours of "general" MCE courses, providers would submit the simplified course application with a course title, number of hours requested, a statement describing how the topic relates to real estate, and the requisite fee. These courses would include courses sponsored by nationally recognized trade associations that lead to a designation such as GRI, CCIM, DREI and CREI, etc. The method of approval for 3 hours of mandated "ethics" would remain unchanged. Applicants who wish to teach the "general" and "ethics" would register with TREC via a resume and a brief application which would include questions pertaining to honesty, integrity and trustworthiness, and pay the requisite fee. Given the lead time required to develop the TREC provided 3 hour course and the funding issues involved, this would probably

not be available until January 2006. This would allow enough time to include this item in the TREC strategic plan and budget request.

Ms. Hull and Bob Hale, Houston Association of Realtors, commented on the 3 hour "ethics" course and the NAR required ethics course. Both Ms. Hassumani and Mr. Thorburn spoke concerning possibly including changes to the education requirements in the Strategic Plan.

Charles McMillan, Coldwell Banker Residential Broker, spoke concerning allowing classes to carry over from one licensing period to another. Bob Hale, Houston Association of Realtors, spoke concerning the suggestion for receiving partial credit for a course if the student is tardy. Minor Peeples, Real Estate School of Corpus Christi, spoke concerning the suggestions for receiving partial credit for a course if the student is tardy and spoke about the required ethics course. Lynn Morgan, Austin Institute of Real Estate, spoke concerning the 3 hour course which would be created and presented by TREC. After discussion Mr. Austin announced a break beginning at 10:50 a.m. The meeting resumed at 11:00 a.m.

The Vice-Chairman moved to agenda item nine, discussion regarding revision of TREC salesperson and broker licenses. Mr. Thorburn stated that a new license was being considered that resembled a voter's registration card. Since the requirement to exhibit a license in a licensee's office had been removed by legislation, staff felt this would be an appropriate time for redesigning the licenses. The design suggested would save both money and staff hours.

Vice-Chairman Austin moved to agenda item ten, discussion and possible action to approve recovery fund investment policies under the Public Funds Investment Act, Texas Government Code, §2256.005. Mr. Waters presented the investment policies and stated that the only change would be the addition of the words "trust account" to the title of real estate recovery fund investment policy. The new title would be "Texas Real Estate Commission Real Estate Recovery Trust Account Investment Policy" to match the statute. Mr. Jokl, seconded by Mr. Walton, moved to approve the change. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item eleven, discussion and possible action to approve operating budget for fiscal year 2004. Mr. Waters presented the agenda item for discussion and possible action. Mr. Walton, seconded by Ms. Hull, moved to approve the operating budget for fiscal year 2004 as submitted. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item twelve, discussion and possible action to establish procedure for or to make appointment to the Mortgage Broker Advisory Committee. Mr. Thorburn presented the agenda item for discussion and possible action. Mr. Thorburn recommended that TREC publicize and seek recommendations for the nominees to fill the two positions on the Mortgage Broker Advisory Committee appointed by the Commission and present the nominations at the February meeting. Mr. Jokl, seconded by Mr. Cantu, moved to approve Mr. Thorburn's recommendation. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item thirteen, 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 11:10 a.m. The executive session ended and the open meeting resumed at 11:16 a.m.

Vice-Chairman Austin moved to agenda item fourteen, discussion and possible action to authorize payments from the recovery funds or other action on items considered in executive session. Ms. DeHay

presented the following claims to be paid without contest:

RF 03-004, Thomas Gardner v. Gulf State Properties, Inc., in the amount of \$30,000 in actual damages. Mr. Jokl, seconded by Mr. Cantu, moved to approve payment. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item fifteen, consideration of complaint information. Ms. Bayless requested authorization to initiate an investigation of Leland Kendall Franklin based on information obtained from a consumer and from public records for procuring or attempting to procure a license for the license holder by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license. Mr. Walton, seconded by Ms. Hull, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations on Frank Shawaker, Charles Eldon Reed, Jr., Eric Leeves Campbell, Larry Alexander, Debra Sue Lyons and Steven Lloyd Minchen for failing to complete their Mandatory Continuing Education (MCE) hours and pay the \$200 fee needed to renew a license within the time required by 22 TAC §535.92(f). Ms. Hull, seconded by Mr. Jokl, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Mr. Austin passed the gavel to Mr. Cantu for the hearing of contested cases. Mr. Cantu announced a recess for prehearing conference at 11:26 a.m. The meeting resumed at 11:43 a.m. Mr. Cantu moved to agenda item twenty, Motion to Modify Prior Order in the Matter of Mark Steven Bowles, Hearing No. 03-220-012216.

Ms. Senn, staff attorney, appeared for the Enforcement Division. J. David Dickson appeared for Mr. Bowles. Mr. Dickson presented his motion to modify the prior order and in addition, a motion for rehearing. Ms. Senn presented the Enforcement Division's response to the motions. Mr. Dickson responded to the Enforcement Division's argument against his motion. After discussion, Mr. Cantu called for a vote on the motion to modify the prior order. Mr. Jordan, Ms. Hull, Mr. Cantu and Mr. Austin voted in favor to modify the order. Mr. Jokl and Mr. Walton voted against the motion. The motion was granted.

Mr. Cantu moved at agenda item seventeen, motion for Rehearing in the Matter of Robert D. Cashmer, Sr., Hearing No. 03-209-030642. Scott Guller appeared for Mr. Cashmere and Della Lindquist appeared for the Enforcement Division. Ms. Lindquist presented the Enforcement Division's objections to granting the motion for rehearing. Mr. Guller presented the motion for rehearing. Ms. Lindquist responded to Mr. Guller's motion. After discussion, Mr. Cantu called for a vote on the motion. The motion was denied by unanimous vote. Mr. Cantu returned the gavel to Mr. Austin.

The Vice-Chairman moved to agenda item eighteen, entry of orders in contested cases. One order was presented.

Vice-Chairman Austin moved to agenda item nineteen, scheduling future meetings and adjournment. The next meeting was scheduled for February 9, 2004 at the Houston Association of Realtors' offices in Houston, Texas. After discussion, it was decided that the April meeting would be on April 19, 2004 in Austin. The Chairman adjourned the meeting at 12:30 p.m.

APPROVED this the 9th day of February A.D. 2004.

James N. Austin
Vice-Chairman

ATTEST: _____
Wayne Thorburn
Administrator