

MINUTES
Texas Real Estate Commission
February 9, 2004
Training Room of the Houston Association of Realtors
3693 Southwest Freeway
Houston, TX 77027

Vice-Chairman James Austin called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, February 9, 2004. In addition to Vice-Chairman Austin, members present were Larry Jokl, Mick Cantu, Louise Hull, Maria Gil, Kay Sutton and John Walton. Chairman Brodie and Mr. Jordan were absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Linda Bayless, Director of Enforcement; and Alan Waters, Director of Staff Services.

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

Mr. Austin thanked the Houston Association of Realtors for hosting the meeting. He then moved to agenda item two, minutes of the December 1, 2003, Commission meeting. Mr. Jokl, seconded by Mr. Cantu, moved to approve the minutes as mailed. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item three, election of vice-chairperson and secretary. Mr. Jokl, seconded by Mr. Cantu, moved to elect Ms. Sutton as vice-chairperson. The motion was adopted by unanimous vote. Mr. Walton, seconded by Ms. Sutton, moved to elect Ms. Gil as secretary. The motion was adopted by unanimous vote.

Mr. Austin moved to agenda item four, monthly staff reports; committee reports. Ms. Hassumani gave the report for Education and Licensing and talked about the total number of original applications and the fact that the number of licensees continues to grow. Ms. Hassumani also gave the report for Information Services and reported on web activity, the increased number of TREC e-mail list subscribers and the number of online applications and renewals.

Ms. Bayless reported on the number and type of complaints that were being received in Enforcement.

Mr. Waters gave the report for Staff Services and reported that the Comptroller of Public Accounts indicated a zero percent error rate on the post payment audit they conducted.

Vice-Chairman Austin moved to agenda item five, general comments from visitors. Tom Bazan spoke concerning the approval of the Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law.

After discussion, item eleven on the agenda, discussion and possible action to approve Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards as Required by Federal Law and other matters related to the use of the form was moved forward. Ms. DeHay presented the item for discussion and possible action. Ms. Sutton, seconded by Ms. Gil, moved to approve the form as presented. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item six, discussion and possible action to adopt amendments to 22 TAC §§537.11, 537.22, 537.43, 537.47, and add new § 537.49 concerning Professional Agreements and Standard Contract Forms. Ms. DeHay pointed out two changes to the "Third Party Finance Addendum."

Ms. Sutton, seconded by Ms. Gil, moved to adopt the forms. The motion was adopted by unanimous vote.

Vice-Chairman Austin moved to agenda item seven, discussion and possible action to propose amendments to: (a) 22 TAC §§535.51, concerning requirements for licensure; (b) 22 TAC §§535.65 concerning changes in ownership or operation of school; presentation of courses, advertising, and records; (c) 22 TAC §§535.71, 535.72 concerning mandatory continuing education; (d) 22 TAC §§535.101 concerning fees; (e) 22 TAC §§535.212, 535.218, and 535.223 concerning real estate inspectors.

Ms. DeHay presented agenda items 7 (a) and 7 (d) for discussion and possible action to propose. 7 (a) proposed the revision of four application forms to show an increase in the fee. The fee increase would be \$5 for broker applications and \$2 for sales applications. This increase in fee is required by TexasOnline as a subscription fee for agency participation in an electronic system using the Internet for license applications and renewals. 7(d) proposes an amendment which would increase the fees to the correct amount. The money would be collected by TREC for TexasOnline. Mr. Walton, seconded by Ms. Sutton, moved to approve the proposal of amendments to 7(a) 22 TAC §§535.51 concerning requirements for licensure. The motion was adopted by unanimous vote. Ms. Gil, seconded by Mr. Jokl, moved to approve the proposal of amendments to 7(d) 22 TAC §§535.101 concerning fees. The motion was adopted by unanimous vote.

Ms. DeHay presented 7(b) for discussion and possible action to propose. Mr. Jokl, seconded by Ms. Gil, moved to approve the proposal of 22 TAC §§535.65 concerning changes in ownership or operation of school; presentation of courses, advertising, and records. The motion was adopted by unanimous vote.

Ms. DeHay announced that staff was withdrawing their recommendation to propose the amendments to 7(c) at this time.

Mr. Thorburn presented 7(e) discussion and possible action to propose 22 TAC §§535.212, 535.218, and 535.223 concerning real estate inspectors.

The amendments to §535.212 are proposed in conjunction with the passage of H.B. 1508 by the 78th Legislature (2003), which, in part amended Texas Occupations Code section 1102.111 to increase from 60 to 320 the number of additional classroom hours that the Commission may require of inspector applicants for substitution of additional education in lieu of the number of inspections and previous licensure requirements for licensing. The Real Estate Inspector Committee has recommended that the Commission increase the alternate education requirements for applicants for a professional inspector license under a two-tiered structure that would require 210 alternate education hours for professional inspector applications submitted between September 1, 2004 and August 31, 2005, and 320 alternate education hours for professional inspector applications submitted after September 1, 2005.

Mr. Thorburn stated that staff was proposing to require the entire 320 hours to be effective September 1, 2005 instead of the original two-tiered structure. This would allow time for educators to develop curriculum as required by the new rule. Comments were offered by Jim Havens and Vernon Davis of the Texas Real Estate Inspector Education Sub-committee supporting the committee's original submission. Mr. Thorburn restated his concerns regarding the two-tiered structure for additional inspector education courses.

After discussion, Ms. Hull proposed that the Commission staff proposal be amended with an effective date of September 1, 2004. After further discussion, Ms. Hull amended her motion to make the effective date

January 1, 2005. Mr. Walton seconded the motion. Shavauna Morgenroth and Brian Murphy spoke in favor of implementing the increased education hours as soon as possible. Ms. Hassumani expressed her concern about the aggressive timeline. Mr. Austin called for a vote on the motion. The motion was adopted by unanimous vote.

Ms. DeHay presented the proposed amendments to §535.218 for discussion and possible action. The proposed amendments to §535.218 would permit currently licensed inspectors to use a course approved as an alternate education course to satisfy continuing education requirements as long as the licensee attended the entire course. Ms. Sutton, seconded by Ms. Gil, moved to propose the amendments to §535.218 as recommended by staff. The motion was passed by unanimous vote.

Ms. DeHay presented the proposed amendments to §535.223. The proposed amendments to §535.223 would exempt an inspector licensee who conducts a code compliance inspection of a new home for a builder from using the standard inspection report form if the builder required use of the builder's form and the inspector included a specific disclosure in the alternate form which addresses the differences between a standard inspection and an inspection conducted under the exemption. Ms. Hull, seconded by Ms. Sutton moved to propose the amendments. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item eight, discussion and possible action regarding implementation of Education Task Force(ETF) recommendations on mandatory continuing education. Mr. Thorburn presented the agenda item for discussion and possible action. He stated that there had been discussion concerning the implementation of Task Force recommendation for a required course developed by TREC. Ms. Hull, seconded by Mr. Walton, moved to direct the staff to work out the terms of a memorandum of understanding with the Real Estate Center at Texas A&M regarding development and delivery of a six hour mandatory continuing education course and to prepare draft rules implementing the ETF recommendation for the discussion of both at the April 19, 2004 meeting. Minor Peeples, Real Estate Institute-Corpus Christi, distributed written suggestions that he wished to present. Mr. Austin announced a five minute break at 10:25 a.m. - 10:30 a.m. Ron Walker, general counsel for the Texas Association of Realtors, offered comments concerning TAR's recommendations. Mr. Austin called for a vote on the motion. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item nine, discussion concerning clarification of broker's responsibility under 22 TAC §535.2. Ms. DeHay stated that nothing new had transpired since the last meeting. Don Walden, attorney for Aaron Farmer, d/b/a Texas Discount Brokers, spoke concerning the proposal presented at the last meeting by Commissioner Jordan and a proposal that he had submitted. Ron Walker, general counsel for the Texas Association of Realtors, spoke concerning TAR's proposal. Ted Jones, Chairman of the Board Houston Association of Realtors, spoke in favor of the TAR recommendations. Toni Nelson, Coldwell Banker, spoke of her own experiences dealing with limited services brokers and their clients and spoke in favor of the TAR recommendations. Aaron Farmer, Texas Discount Broker, spoke against TAR's recommendations. Rob Cook, Robert Cook Properties-Houston, offered comments concerning clarification of the current law concerning broker's responsibilities. Dick Hargis, attorney for HAR, spoke concerning fiduciary duties. Gary Bisha, For Sale by Owner, and Steve Malakowski, broker, offered comments concerning limited services agreements. Shad Bogony, ERA Bogony Realtors, spoke on the TAR

recommendations. No action was taken on the agenda item.

Mr. Austin moved to agenda item ten, discussion and possible action to make appointment to the Mortgage Broker Advisory Committee. Mr. Jokl, seconded by Ms. Sutton, moved to appoint J.B. Goodwin to the Mortgage Broker Advisory Committee. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item twelve, discussion regarding revision of TREC salesperson and broker licenses. Mr. Thorburn presented the agenda item for discussion. The new license would be similar to a voter registration card. This would save both staff time and money. The new license would be implemented by June.

Mr. Austin moved to agenda item thirteen, discussion and possible action to approve Strategic Plan for 2005-2009. Mr. Thorburn stated the four public forums were being planned. The dates are: Wednesday, March 3, 2004 in Austin from 2 p.m. until 4 p.m.; Thursday, March 4, 2004, in Harlingen from 2 p.m.-4 p.m.; Friday, March 5, 2004, in Houston from 10 a.m.-12 noon; and, Monday, March 8, 2004 in Dallas from 2 p.m.-4 p.m. Staff will have a draft of the Strategic Plan for discussion and possible action at the April 19, 2004, Commission Meeting.

Vice-Chairman Austin moved to agenda item fourteen, 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 12:00 p.m. The executive session ended and the open meeting resumed at 12:10 p.m.

Vice-Chairman Austin moved to agenda item fifteen, 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:

IRF 04-001, Mary Kirkendall v. Milton L. Bean, in the amount of \$7,500 in actual damages. Ms. Gil, seconded by Mr. Cantu, moved to approve payment. The motion was adopted by unanimous vote.

RF 04-001, Melissa Nucete v. Linda Quintanilla, in the amount of \$34,000 in actual damages and \$9,500 in attorney fees. Mr. Cantu, seconded by Ms. Sutton, moved to approve payment. The motion was adopted by unanimous vote.

RF 04-004, Cedric W. Buchanan v. Martin Charles, in the amount of \$50,000 in actual damages. Mr. Jokl, seconded by Mr. Walton, moved to approve payment. The motion was adopted by unanimous vote.

The Vice-Chairman moved to agenda item sixteen, consideration of complaint information.

Ms. Bayless requested authorization to initiate investigations on Charles Bruce Bujan, John E. Horton and Star of Texas Realty, Inc. for paying a commission to or associating with an unlicensed person in violation of Sections 1104.652(b)(11), (26) and (27) of the Texas Occupations Code. Ms. Sutton, seconded by Mr. Walton, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Ms. Bayless requested authorization to initiate investigations on Theresa Helen Hatcher for failing to complete her 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. Sutton, seconded by Ms. Gil, moved to authorize the investigation as requested. The motion was granted by unanimous vote.

Mr. Austin moved to agenda item seventeen, motion for Modification or Rehearing in the Matter of Joseph Tome Slim, Hearing No. 03-258-032966. No action was taken as the motion had been postponed.

The Vice-Chairman moved to agenda item eighteen, entry of orders in contested cases. No orders were presented.

Vice-Chairman Austin moved to agenda item nineteen, scheduling future meetings and adjournment. The next meeting was scheduled for April 19, 2004 in Austin. The Vice-Chairman adjourned the meeting at 12:37 p.m.

APPROVED this the 19th day of April, A.D. 2004.

John Walton
Chairman

ATTEST: _____
Wayne Thorburn
Administrator