

MINUTES
Texas Real Estate Commission
December 5, 2005
Texas Real Estate Commission
Room 235, 1101 Camino La Costa
Austin, Texas

Chairman John Walton called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, December 5, 2005. In addition to Chairman Walton, members present were Larry Jokl, Mary Frances Burleson, James Austin, Bill Flores, Paul Jordan, and Elizabeth Leal. Louise Hull and Ramon Cantu were absent.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Della Lindquist, Director of Enforcement; Alan Waters, Director of Staff Services; and Tom Watson, Director of Information Services.

Commissioner Jokl led the attendees in the pledge of allegiance.

Mr. Walton called for agenda item two, minutes of October 17, 2005, Commission meeting. Mr. Jokl, seconded by Mr. Austin, moved to approve the minutes as written. The motion was adopted by unanimous vote.

The Chairman moved to agenda item three, staff reports; committee reports. Ms. Hassumani presented the reports for the Licensing, Communications and Education Division. She introduced Alicia Thomas, a new employee in the Education department. Ms. Hassumani reported that original applications were up by 23% and late renewals were up by 16%. At the end of the report month, there was a total of 144,232 licensees and registrants. The Education department evaluated 8,679 transcripts in the first three months of FY 2006. During those three months, a total of 6,617 exams were administered by the testing company, PSI Inc.

Ms. Lindquist, Director of Enforcement, reported that in October 2005 a total of 465 complaint cases had been opened and 373 cases closed. She stated that two staff positions were open at this time, one for an attorney position and another for a legal assistant position.

Tom Watson, Director of Information Services, reported that the total online application transaction volume had increased by 45% over the same time last year. He also reported that the system upgrade had been implemented.

Mr. Waters, Director of Staff Services, reported that his department had just completed the electronic submission of the operating budget at the LBB website. The department was now working on the non-financial data for the Annual Financial

Report; the financial portion had been submitted earlier. The completed Annual Financial Report would be on the website in January.

Ms. DeHay, general counsel, reported that the Attorney General's Office had issued an opinion concerning TREC's request as to whether the Texas Real Estate Inspector Committee (TREIC) could meet by teleconference under the Open Meetings Act. The Attorney General concluded that TREIC was not an advisory board as defined by the Act and could not meet by teleconference unless an emergency situation existed.

Mr. Thorburn reported that TREC had been in a number of meetings with the Department of Savings and Mortgage Lending and the Appraiser Licensing and Certification Board concerning mortgage fraud. Mr. Thorburn and Danny Payne, director of the Department of Savings and Mortgage Lending, would be issuing a press release later in December concerning their efforts on the task force.

John Cahill, Texas Real Estate Inspector Committee chairman, reported on recent activities of the committee. Mr. Cahill also stated that he planned to issue written reports to the Commission in the future.

Mr. Walton moved to agenda item four, general comments from visitors. No comments were presented.

Chairman Walton moved to agenda item five, 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. Executive session began at 9:35 a.m. The meeting was called back to order at 10:00 a.m.

Chairman Walton moved to agenda item six, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. Ms. DeHay presented the following recovery fund claims for possible action:

RF 05-016, Silvia and Carlos Rivera v. Luis Escobedo, in the amount of \$5,000 in actual damages. Ms. Leal, seconded by Ms. Burleson, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-004, Michelle Shamblin v. John J. Caperton, in the amount of \$45,000 in actual damages and \$55,000 in attorney fees. Mr. Flores, seconded by Ms. Leal, moved to oppose payment. The motion was adopted by unanimous vote.

RF 06-005, Smita Khadkikar v. Guardian 2000, Inc., in the amount of \$5,000 in actual damages and \$2,000 in attorney fees. Mr. Jokl, seconded by Ms. Burleson moved to approve payment. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item seven, discussion and possible action to adopt amendments to or to take other action concerning: (a) 22 TAC §535.210 concerning Fees for Inspector Licenses; (b) 22 TAC §535.216 concerning Renewal of License or Registration; (c) 22 TAC §535.218 concerning Inspector Continuing Education and (d) 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act.

Ms. DeHay presented seven (a) 22 TAC §535.210 concerning Fees for Inspector Licenses; (b) 22 TAC §535.216 concerning Renewal of License or Registration and (c) 22 TAC §535.218 concerning Inspector Continuing Education together for discussion and possible action to adopt.

The amendments to §535.210 add a \$10 fee to be charged corporations and limited liability companies applying for a Texas professional inspector license, and clarify that the \$100 Inspector Recovery Fund fee does not apply to corporations and limited liability companies that apply for a professional inspector license.

The amendments to §535.216 clarify that in order to renew a professional inspector license issued to a corporation or limited liability company, the entity must designate an officer, manager, or employee of the entity who meets the requirements of Chapter 1102, including continuing education requirements.

The amendments to Section 535.218 clarify that a licensed apprentice, real estate or professional inspector must take the required hours of continuing education within the term of the current license, and further clarifies that the commission may not give continuing education course credit twice for the same course taken by a licensee within a 2-year period. The commission was given authority under HB 1508 during the 78th Legislative Session to issue or renew an inspector license for a period not to exceed 24 months. Given this authority, the commission plans to implement the 2-year renewal program for licenses expiring in April 2006 and after. The amendments to §535.218 change the references from a 1-year period to a 2-year period for completion of continuing education to parallel the 2-year license.

No comments had been submitted on the rules as proposed. Mr. Austin, seconded by Ms. Burleson, moved to adopt the amendments as recommended. The motion was adopted by unanimous vote.

Ms. DeHay presented seven (d), 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act for discussion and possible action to adopt.

The amendments conform the sections to the language used in other TREC rules, and adopt by reference two revised and four new forms to be used by timeshare developers when registering a timeshare plan, amending a registration, obtaining authorization to conduct pre-sales of timeshares, and registering under an abbreviated registration process under limited circumstances.

Comments were received from the American Resort Development Association (ARDA) in response to the proposed rules and forms. Changes were made to the rules and forms to correct various non-substantive typographical errors and spacing in the forms, and to include multiple suggestions based on ARDA's comments. Ms. Leal, seconded by Mr. Austin, moved to adopt the amendments as presented. The motion was adopted by unanimous vote.

Ms. DeHay presented agenda item eight, discussion and possible action to propose amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30, 537.31, 537.32, 537.37, 537.43, 537.44, 537.46, and 537.47 concerning standard contract forms.

The amendments propose to adopt by reference 6 revised contract forms and 4 addenda. The contract forms that are revised are TREC Form No. 9-6, Unimproved Contract Form; TREC Form No. 20-7, One to Four Family Residential Contract (Resale); TREC Form No. 23-6, New Home Contract (Incomplete construction); TREC Form No. 24-6, New Home Contract (Complete construction); TREC Form No. 25-5, Farm and Ranch Contract; and TREC Form No. 30-5, Residential Condominium (Resale). The addenda are TREC Form No. 36-4, Addendum for Property Subject to Mandatory Membership in an Owners' Association; TREC Form No. 37-2, Subdivision Information, Including resale certificate for Property Subject to Mandatory Membership in an Owners' Association; TREC Form No. 39-6, Amendment; and TREC Form No. 40-2, Third Party Financing Condition Addendum.

There was discussion concerning the major changes in the forms. Bill Jones, Broker-Lawyer Committee, spoke concerning the committee's reasoning concerning various changes.

Ms. DeHay stated that the Broker-Lawyer Committee would be meeting the first week of February to look at any written comments submitted concerning the proposed rules and forms. The amendments and forms could be adopted as early as the February meeting of the Commission. If adopted in February, Ms. DeHay suggested a mandatory use date of May 1, 2006.

After discussion, Mr. Flores, seconded by Mr. Jokl, moved to propose the rule amendments. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion and possible action to renew for an additional 60-day period emergency rules concerning: (a) 22 TAC §535.63 regarding Education and Experience Requirements for a License (extension of time for salespersons impacted by Hurricane Rita to complete annual education requirements); (b) 22 TAC §535.92 regarding Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements (extension of time for brokers and salespersons impacted by Hurricane Rita to complete mandatory continuing requirements); (c) 22 TAC §535.216 regarding Renewal of License (extension of time for licensed home inspectors impacted by Hurricane Rita and Katrina to complete continuing education requirements); (d) 22 TAC §535.4 regarding Temporary Emergency Real Estate Licenses for salespersons and brokers licensed in Louisiana, Mississippi, and Alabama who are unable to continue to practice or reside in the areas of those states impacted by Hurricane Katrina; and (e) 22 TAC §535.211 regarding Temporary Emergency Real Estate Inspector Licenses for home inspectors licensed in Louisiana, Mississippi, and Alabama who are unable to continue to practice or reside in the areas of those states impacted by Hurricane Katrina.

Ms. DeHay stated that all sub-sections of the agenda item could be voted on together. After discussion, Mr. Jokl, seconded by Mr. Austin, moved to renew the emergency rules for an additional 60-day period. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item ten, discussion and possible action to adopt the rule review on 22 TAC Chapter 543 concerning Rules Relating to the Provisions of the Texas Timeshare Act (§§543.1- 543.6). Ms. DeHay presented the agenda item for discussion and possible action to adopt. Ms. Leal, seconded by Mr. Austin, moved to adopt the rule review. The motion was adopted by unanimous vote.

Mr. Walton asked for a motion to excuse the absences of Commissioners Ramon Cantu and Louise Hull. The motion was adopted by unanimous consent.

The Chairman moved to agenda item eleven, 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 agenda item for discussion and possible action. Mr. Flores, seconded by Ms. Leal, moved to approve the policies as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item twelve, discussion and possible action to approve staff request to Legislative Budget Board for additional FTE's for FY2006-

2007. Mr. Thorburn presented the agenda item for discussion and possible action. Although, the Appropriations Act had increased TREC's funding to pay for the two positions it had neglected to increase the cap on employees to allow the additional FTEs. If granted, the request would allow the agency to exceed its FTE count for FY06 and FY07 by no more than two additional FTEs. After discussion, Mr. Flores, seconded by Ms. Leal, moved to approve the staff request to the Legislative Budget Board.

The Chairman moved to agenda item thirteen, consideration of complaint information concerning: Texas Creative Financial, Noyes Weldon Roberts, Cynthia Dudley Renfro, Carma Baggett Smith, Collin T. Bond., Jr. Ms. Lindquist presented the agenda item for consideration.

Mr. Jokl, seconded by Mr. Austin, moved to approve the initialization of investigations as requested. The motion was adopted by unanimous vote.

Chairman Walton relinquished the gavel to Mr. Jordan for agenda item fourteen, motion for rehearing in the matter of Tiffany Tia Thompson.

J. Richard Hargis appeared for Ms. Thompson. Mr. Hargis introduced his client, Ms. Thompson and her sponsoring broker, Debbie Miller. Mr. Hargis presented the motion for rehearing or motion to modify and extend order dated August 9, 2005.

Staff attorney, Beverly Rabenberg appeared for the Enforcement division. Ms. Rabenberg presented the Enforcement division's answer to the motions.

Mr. Hargis presented his response. There were questions from the dais directed to Ms. Thompson.

After discussion, Mr. Flores requested that the presiding officer, Mr. Jordan call the question and they vote on the motion for rehearing. Mr. Jordan took a vote on calling the question. There was no objection to taking a vote on the motion.

The commission voted on the motion for rehearing. The motion was defeated by unanimous vote.

Mr. Jordan called for a vote on the motion to modify the order. There was discussion concerning the Commission's options according to the statute.

The movant's motion to modify the order would allow the licensee to receive a probationary license with the following terms:

- 1) Movant shall report regularly to the commission on the matters that are the basis of the probation;
- 2) Movant shall refrain from handling trust funds (although this will not affect Movant's sponsoring broker from doing so in transactions in which Movant is involved);
- 3) Movant shall not apply for a broker's license;

- 4) Movant's sponsoring broker shall give written notice to the Commission acknowledging that Movant is on probation within thirty (30) days of the Order granting such probation.

Mr. Jokl, seconded by Ms. Leal, moved to amend the original motion to add that the probationary period would last for five years and that the Movant shall report to the Enforcement division regularly. After discussion, Mr. Jokl amended his motion to revise the reporting period to once every six months and include that the sponsoring broker should verify any written report sent to the Enforcement division.

Mr. Jordan called for a vote on the amendment to the amendment. The amendment to the amendment was passed with Mr. Walton voting against it.

Mr. Jordan called for a vote on the amended amendment to the motion to modify. The amended amendment to the motion to modify passed with Mr. Walton voting against it.

After discussion, Ms. Rabenberg stated that the legal staff was opposed to the proposed amended motion to modify.

Mr. Jordan called for a vote on the motion to modify as amended. Mr. Austin, Mr. Jokl and Ms. Burleson voted in favor of the motion. Mr. Walton, Ms. Leal, Mr. Flores and Mr. Jordan voted against the motion. The motion was denied.

Mr. Walton moved to agenda item fifteen, entry of orders in contested cases. No orders were presented.

The Chairman moved to agenda item sixteen, scheduling future meetings and adjournment. The next meetings were scheduled for February 13, 2006 and April 3, 2006 in Austin. The Chairman adjourned the meeting at 11:40 a.m.

APPROVED this the 13th day of February, A.D. 2006.

John Walton
Chairman

ATTEST: _____

Wayne Thorburn
Administrator

