

MINUTES
Texas Real Estate Commission
September 27, 2006
Texas Real Estate Commission
Rio Grande Ballroom Center
Hyatt Regency Hotel
123 Losoya Street
San Antonio, TX

Chairman John Walton called the regularly scheduled meeting of the Texas Real Estate Commission to order at 10:30 a.m., Wednesday, September 27, 2006. In addition to Chairman Walton, members present were Larry Jokl, James Austin, Louise Hull, Elizabeth Leal and Paul Jordan. Ramon Cantu, Bill Flores and Mary Frances Burleson were absent. Mr. Flores' absence was granted excused.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Loretta DeHay, General Counsel; Karen Alexander, Chief Accountant; Tom Watson, Director of Information Services and Patricia Holder, Executive Assistant.

Commissioner Leal led the attendees in the Texas pledge of allegiance.

Mr. Walton called for agenda item two, minutes of the August 7, 2006, 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 reported on the L1 and L2 reports. She stated that as of the end of July there was a total of 152,319 licensees. Ms. Hassumani reported that September was the first month for the new renewal notices that asked licensees to renew online. So far there had not been any complaints about the new renewal process. There was discussion concerning the increase in the number of education evaluations processed and the number of licensees in relation to the cut in staff and the amount of appropriations allowed the Commission.

Ms. DeHay, General Counsel, presented the Enforcement Division's report for Ms. Lindquist. Four hundred and eighty-one cases were opened in the month of July and four hundred and seventy-nine cases were closed. Mr. Thorburn explained that Ms. Lindquist was at the TREC Enforcement Conference which was also being held in the hotel.

Mr. Watson, Director of Information Services, presented the I1 report.

Ms. Alexander, Chief Accountant, presented the staff services report. She stated that the Annual Report would be available after October 2, 2006.

The Chairman moved to agenda item four, general comments from visitors. No comments were offered.

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 10:45 a.m. The meeting was called back to order at 11:05 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:

IRF 06-007, Jacqueline Moranty v. William Fallwell, in the amount of \$12,500 in actual damages. Mr. Austin, seconded by Mr. Jokl, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-023, Lillian Green v. J. Walter Dudley, in the amount of \$25,000 in actual damages. Ms. Leal, seconded by Ms. Hull, moved to approve payment. The motion was adopted by unanimous vote.

RF 06-024, Leonard and Itohan Lawani v. Doristine Lawani, in the amount of \$17,000 in actual damages and \$4,500 in attorney fees. Mr. Austin, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

RF 07-001, Melinda Lee v. Luc Heusdain, in the amount of \$50,000 in actual damages. Ms. Hull, seconded by Ms. Leal, moved to approve payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item seven, discussion and possible action to adopt amendments to 22 TAC §535.61 concerning Examinations. Ms. DeHay presented agenda item eight for discussion and possible action. Ms. DeHay explained that Section 535.61 authorizes the commission to waive the national portion of the examination for an applicant who has passed a comparable national examination that has been certified by a nationally recognized real estate regulator association. The amendment to §535.61 clarifies that the waiver would only apply to an applicant who has a current license equivalent to the license being applied for. No comments had been received concerning this rule. Mr. Jokl, seconded by Mr. Austin, moved to adopt the amendment as presented. The motion was adopted by unanimous vote.

Chairman Walton moved to agenda item eight, discussion and possible action to propose amendments to 22 TAC Chapter 537 concerning Professional Agreement and Standard Contracts. Ms. DeHay stated that the amendments would adopt by reference three addenda and one revised contract form to be used by Texas real estate licensees and would restructure and clarify the rules by removing redundant provisions.

The amendment to §537.11 would delete the text in subsection (a). The amendments to §§537.20-.23, 537.26-.28, 537.30-.33, 537.35, 537.37, 537.39-.41, and 537.43-.49 would include the text deleted from §537.11(a) as appropriate for each section and form so that the description of each form would be included in the section that adopts the form by reference. In addition, the

amendments to each section would include a reference to the commission's website as another means by which a person may obtain the form.

The amendments to §537.26 would adopt by reference Standard Contract Form TREC No. 15-4, Seller's Temporary Lease and §537.27 would adopt by reference Standard Contract Form TREC No. 16-4, Buyer's Temporary Lease. In both forms, paragraph 12 would be revised to require the tenant to provide the landlord with door keys and access codes to allow access to the property during the term of the lease; paragraph 24 would be revised to include a blank for e-mail addresses; and the blank line for the execution date would be removed as the execution date is provided for in the contract to which the lease is attached. Also, paragraph 14 in the Buyer's Temporary Lease would be revised to add equipment and appliances to the list of specific expenses of repairing, replacing and maintaining the property that the buyer/tenant will bear.

§537.33 would adopt by reference Standard Contract Form TREC No. 26-5, Seller Financing Condition Addendum. In this form proposed revisions to paragraph C include a blank line for the interest rate of the note; a provision addressing the interest rate of matured unpaid amount; and, subparagraphs (2) and (3) provide for a choice of monthly installments rather than an option to fill in the blanks on the type of installment. A note is added to subparagraph D(1) which states that the buyer's liability to pay the note will continue unless the buyer obtains a release of liability from the Seller; and subparagraph D(2)(a) is revised by adding "ad valorem" before "taxes" .

§537.37 would adopt by reference Standard Contract Form TREC No. 30-6, Residential Condominium Contract (Resale). The change to the form would fix a typographical error in paragraph 7.F.

After discussion, Ms. Hull, seconded by Mr. Jokl, moved to propose the amendments and forms as presented by staff. The motion was adopted by unanimous vote.

The Chairman moved to agenda item nine, discussion of comments on the proposed review of: (a) 22 TAC Chapter 534 concerning General Administration and (b) 22 TAC Chapter 537 concerning Professional Agreements and Standard Contracts. Ms. DeHay stated that no comments had been received.

Mr. Walton moved to agenda item ten, discussion and possible action on proposed legislative housekeeping bills and other anticipated legislation that may impact the real estate industry. Mr. Thorburn presented the agenda item. Mr. Thorburn explained that there were three proposed draft bills under this agenda item. He explained that items contained in these draft bills were required to reference back to the agency Strategic Plan. The areas of change for Chapter 1101 are:

1. Section 1101.005(5) to provide that a person acting under a court order or under the authority of a will or trust instrument to conduct a real estate transaction is not subject to the Real Estate License Act to make clear that a person operating under such authority may not engage in the regular business of real estate brokerage without a real estate license.

2. Subsection (a), Section 1101.051(a), Occupations Code to remove the “illness or disability” clause from the list of reasons for removal of a member from the Commission. Thus a member may be removed for failing to discharge the member’s duties for a substantial part of the member’s term, regardless of whether the reason for such failure is based on illness or disability.
3. Amends Subsection (g)(4), Section 1101.204, to permit a Commission employee to open a complaint when a person fails to pay the \$200 late MCE fee, fails to timely complete required late MCE, or fails to both pay the fee and complete the education. Currently the provision only permits staff to open a complaint when a person fails to timely complete the late MCE. Amends subsection (g)(6) to permit agency staff to open a complaint when a person fails to timely provide information relating to a criminal conviction or plea as required by Subsection 1101.652(a)(9).
4. Amends Subsection (b), Section 1101.302, to increase the surety bond requirement for an educational institution authorized by the Commission to offer a real estate or real estate inspector education program or course of study from \$10,000 to \$20,000
5. SECTION 5. Amends Subsection (a), Section 1101.356, to require an applicant for a broker license to complete 2 semester hours (30 clock hours) of real estate brokerage as part of the 18 semester hours (270 clock hours) of core real estate courses required for a broker’s license.
6. Amends Subsection (a), Section 1101.652, to permit the Commission to take disciplinary action against a license holder if he or she fails to timely notify the Commission, that he or she has entered a guilty plea to a felony or a criminal offense involving fraud.
7. Amends Subsection (a), Section 1101.655, Occupations Code, to permit the Commission to revoke any license, approval, or registration issued by the Commission that a real estate licensee holds upon payment from the real estate recovery trust account on behalf of that licensee.

The areas of change for Chapter 1102 are:

1. Section 1102.054(a), Occupations Code, to remove the clause “because of illness or disability” from the provision that permits the Commission to remove an Inspector Committee member if the member cannot fulfill his or her duties for a substantial period of time. Thus a member may be removed for failing to discharge the member’s duties for a substantial part of the member’s term, regardless of whether the reason for such failure is based on illness or disability.
2. Amends Section 1102.111(a) to authorize the Commission to provide for the substitution of education and relevant experience in lieu of the number of inspections and previous licensure requirements for licensing; rules adopted under this section may not require more than 7 years of relevant experience and 320 of additional education.

3. Amends Section 1102.402, to permit the Commission to revoke any license issued by the Commission that an inspector holds upon payment from the inspector recovery fund on behalf of that inspector; a person is unable to obtain an inspector license, regardless of whether the license was revoked or expired, until the person has repaid in full the amount paid from the fund on the person's account, plus interest at the legal rate.
4. Amends Section 1102.1035 by repealing the licensing requirements for corporations and limited liability companies.
5. Amends Section 1102.2051 by repealing the renewal requirements for corporations and limited liability companies.

The area of change for Chapter 1303 amends subsections (a) and (b) of Section 1303.302, Occupations Code to include the buyer's agent to the list of persons subject to Section 1303.302 to provide (i) that a seller of residential property, the seller's agent and the buyer's agent may not require that the buyer purchase a residential service contract as a condition of the purchase of residential property, and (ii) that such persons must provide a clear and conspicuous statement that the purchase of a residential service contract is optional and that similar coverage can be purchased through another residential service company or insurance company that is authorized to do business in this state.

After discussion, Ms. Leal, seconded by Mr. Austin, moved to approve that the three draft bills begin the legislative process. The motion was adopted by unanimous vote.

Mr. Thorburn stated that other legislation which would impact the industry included the Sunset bill and possibly another bill that would be introduced to require additional security requirements concerning license applicants, such as fingerprints and FBI checks.

Chairman Walton moved to agenda item eleven, annual review of fees and estimated revenues. Ms. Alexander reported on the agenda item. There was discussion among the members concerning the fees collected and the needs of the Commission concerning financing. No action was required on this agenda item.

Chairman Walton moved to agenda item twelve, discussion and possible action to establish procedure for or to make appointment to the Mortgage Broker Advisory Committee. After discussion, Mr. Jordan, seconded by Mr. Austin, moved to issue an announcement of this pending appointment so that interested parties may submit a request to be considered by the Commission for this appointment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item thirteen, consideration of complaint information. Ms. DeHay requested permission to open complaints against the following individuals:

- Peter Glen Gay for conduct which constitutes dishonest dealings, bad faith, or untrustworthiness in violation of section 1101.652(b)(2) of the Texas Occupations Code.
- FL Marketing and Noel Riddle for unlicensed brokerage activity, in violation of sections 1101.351 and 1101.758 of the Texas Occupations Code.

- Sandion, Ltd and Richard Alan Smith (Designated Officer) for allowing a salesperson to continue to do brokerage business after the salesperson's license expired, in violation of sections 1101.652(b)(1), (11), and (26) of the Texas Occupations Code.

Mr. Austin, seconded by Ms. Leal, moved to grant permission to open investigations as requested. The motion was adopted by unanimous vote.

Mr. Walton moved to agenda item fourteen, motion for Rehearing in the Matter of Milton Steven Bolgiano, Hearing No. 06-293-041062. The Chairman turned the gavel to Commissioner Paul Jordan. Devon Bijansky, staff attorney, appeared for the Enforcement Division. Ms. Bijansky stated that she had prepared an agreed order in this matter and that Mr. Bolgiano would not be appearing.

After discussion, Mr. Jordan called for consideration of the motion for rehearing. The motion was denied by unanimous vote. Mr. Jordan called for consideration of the agreed order in lieu of the motion for modification. The agreed order was granted by unanimous vote.

The Chairman 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. Mr. Walton stated that it was possible that there would be three new Commissioners at the next meeting of the Commission. Mr. Austin, Mr. Jokl and Mr. Cantu (not in attendance) have completed their terms. Mr. Austin and Mr. Jokl spoke concerning the past eight years on the Commission. Chairman Walton led the audience in a round of applause thanking them. The next meetings are scheduled for December 4, 2006 in Austin and tentatively for February 26, 2007 in Austin. The Chairman adjourned the meeting at 12:06 p.m.

APPROVED this the 4th day of December, A.D. 2006.

John Walton
Chairman

ATTEST: _____

Wayne Thorburn
Administrator