

MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION

November 15, 2010

Room 235, 1101 Camino La Costa

Austin, Texas

On Monday, November 15, 2010, at 10:04 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order. The Chairman asked Commissioner Wukasch to lead 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

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 two, approval of minutes of August 9, 2010 Commission meeting. The Commission adopted the minutes as presented in the meeting materials by unanimous consent.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. Upon motion of Ms. Hensley, seconded by Mr. Day, the absences of Tom Mesa and Dona Scurry were excused.

Chairman Eckstrum moved to agenda item four, 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 database conversion. He also reported on various speaking engagements since the last commission meeting, the new employees hired and current staff vacancies.

Lorie Deanda, Director of Reception and Communications Services introduced three new members of her staff, Sha'Nerry Showells, Edward Elizondo and Lori Hoskins. She presented the C1 report concerning Customer Service Statistics. Ms. Deanda stated that since the conversion it was taking longer to handle calls, but she expected this to improve once the computer customization piece was in place. Gwen Jackson, Director of Education and Licensing Services introduced two new employees, Christy Grimberg and

Andrea Guana. Ms. Jackson 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.. Kerri Galvin, Director of Standards and Enforcement Services, presented the case status report, and the case age report. She reported that in February the reports would have different and more detailed information. Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Karen Alexander introduced a new employee Naisha Chapman. She presented the end of year budget report. There was discussion concerning the Benefit Replacement Fee portion of the budget and the Fingerprint and Subsequent Background Check Fee. She also reported on 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.

Chairman Eckstrum moved to agenda item five, report by the Texas Real Estate Inspector Advisory Committee. Mr. Oldmixon, administrator, presented a brief report concerning the activities of the committee.

Mr. Eckstrum moved back to agenda item six, general comments from visitors on nn-agenda items. No comments were presented.

The Chairman moved to agenda item seven, discussion and possible action to adopt amendments to or take other action on 22 TAC Chapter 535 as follows: (a) Subchapter A. General Provisions Relating to the Requirement of Licensure: (i) Rename Subchapter heading to "Definitions", (ii) New §535.1, concerning Definitions and (iii) Repeal §535.1 concerning License Required; (b) Subchapter B. Definitions: (i) Rename Subchapter heading to "General Provisions Relating to the Requirement of Licensure", (ii) Amend §535.2, concerning Broker Responsibility, (iii) Amend §535.3, concerning Compensation to or paid by a Salesperson, (iv) New §535.4, concerning License Required, (v) New §535.5, concerning License Not Required, (vi) Repeal §535.12, concerning General, (vii) Repeal §535.13, concerning Dispositions of Real Estate, (viii) Repeal §535.15, concerning Negotiations, (ix) Amend §535.16, concerning Listing, (x) Amend §535.17, concerning Appraisals, (xi) Repeal §535.19, concerning Locating Property, (xii) Amend §535.20, concerning Procuring Prospects, and (xiii) Repeal §535.21, concerning Unimproved Lot Sales; Listing Publications; and (c) Subchapter C. Exemptions to Requirements of Licensure: (i) Amend §535.31, concerning Attorneys at Law, (ii) Amend §535.32, concerning Exemptions: Attorneys in Fact, (iii) Amend §535.34, concerning Salespersons Employed by an Owner of Land and Structures Erected by the Owner and (iv) Repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate and (d) Subchapter D. The Commission: (i) Amend §535.42, concerning Jurisdiction and Authority. Ms. DeHay presented these agenda items for discussion and possible action. She stated that no comments had been received. Bob Baker of Plano offered comments concerning the length of time a licensee should keep documents concerning a transaction as addressed under agenda item seven (b)(ii) in Section 535.2, concerning Broker Responsibility. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the commission adopted the amendments and new rules under Subchapter A. concerning Definitions, Subchapter B. concerning General Provisions Relating to the Requirements to of Licensure, Subchapter C. concerning Exemptions to Requirements of Licensure and Subchapter D. concerning The Commission as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (e) Subchapter E. Requirements for Licensure: (i) New §535.50, concerning Definitions, (ii) Amend §535.53 concerning Corporations

and Limited Liability Companies, (iii) New §535.54, concerning General Provisions Regarding Education and Experience Requirements for a License, (iv) New §535.55, concerning Education Requirements for a Salesperson License, (v) New §535.56, concerning Education and Experience Requirements for a Broker License and (vi) New §535.57, concerning Examination Requirements for a License. She presented the item for discussion and possible action. The differences between the rules as proposed and the rules as finally adopted are as follows: In new §535.56(b)(3), “eight-year” is changed to “six-year” to provide consistency with the change from six years to four years as detailed below; §535.54 is changed to clarify that a bachelor’s degree from an accredited college or university counts towards all the related education requirements for a salesperson or broker license, and the proposed amendment regarding acceptance of associate’s degrees is deleted. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (f) Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License” (i) Amend §535.61, concerning Examinations, (ii) Amend §535.62, concerning Acceptable Courses of Study, (iii) Repeal §535.63, concerning Education and Experience Requirements for a License, (iv) New §535.63, concerning Accreditation of Core Education Schools, (v) Repeal §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors, (vi) New §535.64, concerning Obtaining approval to offer a course, (vii) Repeal §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses; Advertising; and Records, (viii) New §535.65, concerning Operation of Core Education Schools, (iv) Repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions, (v) New §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions, (vi) New §535.67, concerning Approval of Instructors, and (vii) New §535.68, concerning Additional Information related to an application. She presented the agenda item for discussion and possible action. The differences between the rule as proposed and the rule as finally adopted are as follows: Section 535.65(4) clarifies that a school may rely on published objective information such as pass rates in advertising regarding the school’s course of instruction; §535.65(10) is changed to require schools to use, at a minimum, course and instructor evaluation criteria established by the commission, rather than requiring schools to use evaluation forms approved by the commission; and §535.65(9)(D) regarding records retention is clarified to address records that are maintained in an electronic format. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (g) Subchapter G. Mandatory Continuing Education (i) Amend §535.71, concerning Mandatory Continuing Education; Approval of Providers, Courses, and Instructors, (ii) Amend §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records (iii) Amend §535.73, concerning Compliance and Enforcement, and (iv) New §535.74, concerning Additional Information related to an application. The differences between the rules as proposed and the rules as finally adopted are as follows: §535.72(i) is changed to require schools to use, at a minimum, course and instructor evaluation criteria established by the commission, rather than requiring schools to use evaluation forms approved by the commission. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (h) Subchapter I. Licenses: (i) Amend §535.91, concerning Renewal Notices, (ii) Amend §535.92, concerning Renewal: Time for Filing;

Satisfaction of Mandatory Continuing Education Requirements, (iii) Amend §535.94, concerning Hearing on Application Disapproval: Probationary Licenses, and (iv) New §535.96, concerning Permanent Mailing Address and other Contact Information; (i) Subchapter L. Termination of Salesperson's Association with Sponsoring Broker: (i) Amend §535.121, concerning Inactive License, (ii) Amend §535.122, concerning Reactivation of License and (iii) Amend §535.123, concerning Inactive Broker Status; (j) Subchapter M. Non-residents: (i) Amend §535.131, concerning Unlawful Conduct; Splitting Fees and (ii) Amend §535.132, concerning Eligibility of Licensure. Upon motion of Ms. Hensley, duly seconded by Ms. Justice, the commission adopted the amendments and new rules without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (k) Subchapter N. Suspension and Revocation of Licensure: (i) Amend §535.141, concerning Initiation of Investigation, (ii) Amend §535.143, concerning Fraudulent Procurement of License, (iii) Amend §535.144, concerning When Acquiring or Disposing of Own Property, (iv) Amend §535.145, concerning False Promise, (v) Amend §535.146, concerning Failure to Properly Account for Money; Commingling, (vi) Amend §535.147, concerning Splitting Fee with Unlicensed Person, (vii) Amend §535.148, concerning Receiving an Undisclosed Commission or Rebate, (viii) Amend §535.149, concerning Lottery or Deceptive Trade Practice, (ix) Amend §535.153, concerning Violating an Exclusive Agency, (x) §535.154, concerning Misleading Advertising, (xi) New §535.154, concerning Advertising, (xii) Amend §535.159, concerning Failing To Properly Deposit Escrow Monies, (xiii) Amend §535.160, concerning Failing to Properly Disburse Escrow Money and (xiv) Amend §535.161, concerning Failing to Provide Information. Staff recommended that the Commission adopt the amendments to the rules and new rules with the following changes: postpone making any changes to §535.154 and that the Commission not take final action to repeal existing §535.154. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules as follows: §535.141, concerning Initiation of Investigation, §535.143, concerning Fraudulent Procurement of License, §535.144, concerning When Acquiring or Disposing of Own Property, §535.145, concerning False Promise, §535.146, concerning Failure to Properly Account for Money; Commingling, §535.147, concerning Splitting Fee with Unlicensed Person, §535.148, concerning Receiving an Undisclosed Commission or Rebate, §535.149, concerning Lottery or Deceptive Trade Practice, (ix) §535.153, concerning Violating an Exclusive Agency, §535.159, concerning Failing To Properly Deposit Escrow Monies, §535.160, concerning Failing to Properly Disburse Escrow Money and §535.161, concerning Failing to Provide Information without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (l) Subchapter O. Hearing on Suspension or Revocation of Licensure: (i) Amend §535.171, concerning Hearing: Subpoenas and Fees; (m) Subchapter P. Penalty for Unlicensed Activities: (i) Amend §535.181, concerning Penalty; (n) Subchapter Q. Administrative Penalties: (i) Amend §535.191, concerning Schedule of Administrative Penalties, (p) Subchapter S. Residential Rental Locators: (i) Amend §535.300, concerning Advertising by Residential Rental Locators. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission adopted the amendments and new rules to Subsections O. regarding Hearing on Suspension or Revocation of Licensure, P. regarding Penalty for Unlicensed Activities, Q. regarding Administrative Penalties and S. regarding Residential Rental Locators without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. Bijansky moved back to agenda item seven (o), Subchapter R. Real Estate Inspectors: (i) New §535.201, concerning Definitions, (ii) Amend §535.206, concerning The Texas Real Estate Inspector Committee, (iii) New §535.209, concerning Examinations, (iv) Repeal §535.212., concerning Education and Experience Requirements for an Inspector License, (v) New Amend §535.212, concerning Education and Experience for an Inspector License, (vi) Repeal §535.213, concerning Schools and Courses of Study in Real Estate Inspection, (vii) New §535.213, concerning Approval of Courses in Real Estate Inspection, (viii) Repeal §535.214, concerning Examinations, (ix) New §535.214, concerning Providers of Real Estate Inspection Courses, (x) Amend §535.215, concerning Inactive Inspector Status, (xi) Amend §535.216, concerning Renewal of License or Registration, (xii) New §535.217, concerning Contact Information, (xiii) Amend §535.218, concerning Continuing Education, (xiv) Amend §535.221, concerning Advertisements, (xv) Amend §535.222, concerning Inspection Reports, and (xvi) Amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors. Five comments had been received. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the commission adopted the amendments and new rules to Subsections R. regarding Real Estate Inspectors without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay clarified that the effective date for all items adopted under agenda item seven would be January 1, 2011.

Chairman Eckstrum moved to agenda item eight. discussion and possible action to adopt amendments to or take other action on 22 TAC Chapter 537 as follows: (a) Amend §537.20 concerning Standard Contract Form TREC No. 9-8; (b) Amend §537.28 concerning Standard Contract Form TREC No. 20-9; (c) Amend §537.30 concerning Standard Contract Form TREC No. 23-10; (d) Amend §537.31 concerning Standard Contract Form TREC No. 24-10; (e) Amend §537.32 concerning Standard Contract Form TREC No. 25-7; (f) Amend §537.37 concerning Standard Contract Form TREC No. 30-8; (g) Amend §537.43 concerning Standard Contract Form TREC No. 36-6 and (h) Amend §537.47 concerning Standard Contract Form TREC No. 40-4.

Ms. DeHay presented the agenda items for discussion and possible action to adopt. The difference between the rules and forms as proposed and those adopted are as follows: the proposed new §537.53 concerning Standard Contract form No. 46-0 entitled Non-Realty Items Addenda is not adopted; the title of form No. 40-4 is changed to Third Party Financing Condition Addendum for Credit Approval; references to the title of form No. 40-4 are changed in all relevant forms; the reference to "affidavit" in paragraph 6.C.(1) of all relevant forms is changed to "T-47 Affidavit"; proposed 6.C.(4) "No survey required" is deleted from all relevant forms except for the Farm and Ranch Form; paragraph 6.E(2) in all relevant forms is amended to provide notice that the property may be subject to more than one property owners associations if applicable; "if any" is deleted from paragraph 7.D(2) in all relevant forms; paragraph 15.B in all relevant forms is changed to provide for waiver of buyer's or seller's right to enforce specific performance if the party fails to file a petition for such and provide notice to the escrow agent within 45 days of the closing date; paragraph 22 of all relevant forms is corrected for typographical errors; conforming title changes to relevant forms and to delete the reference to the non-realty items addendum are made; the reference to "broker or designee" on page eight of all relevant forms is changed to "licensed supervisor of associate"; paragraph A.2 of Addendum for Property Subject to Mandatory Membership in a Property Owners Association is rewritten for additional clarification.

Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch the Commission approved the adoption of the amendments as proposed with changes to the proposal and as presented at the meeting with technical and non-substantive changes as deemed necessary

by staff with an effective date of March 1, 2011 with Ms. Wukasch voting against the motion. Bob Baker of Plano spoke against the change of the terms “Financing Approval” to “Credit Approval”.

Chairman Eckstrum moved to agenda item nine, discussion and possible action to propose amendments to 22 TAC §535.400 concerning Easement or Right-of-Way Agents. Ms. DeHay presented the agenda item for discussion and possible action. The Commission proposed amendments to Subchapter T regarding Easement or Right-of-Way Agents; §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration. 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. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission proposed the amendments to §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration as presented at the meeting with technical and non-substantive changes as deemed necessary by staff to be published in the *Texas Register*.

The Chairman moved to agenda item ten, discussion and possible action to propose amendments to 22 TAC Chapter 537 as follows: (a) Amend §537.45 concerning Standard Contract Form TREC No. 38-2 and (b) Amend §537.46 concerning Standard Contract Form TREC No. 39-7. Ms. DeHay presented the agenda item for discussion and possible action. The amendments to §537.45 propose to adopt by reference Standard Contract Form TREC No. 38-3, Notice of Buyer’s Termination of Contract. Paragraph 2 of the notice would be amended to read: “(2) Buyer cannot obtain Credit Approval in accordance with the Third Party Financing Addendum for Credit Approval to the contract” to be consistent with a recent change to the title of TREC Form No. 40-4 Third Party Financing Condition Addendum for Credit Approval. The amendments to §537.46 propose to adopt by reference Standard Contract Form TREC No. 39-7, Amendment to Contract. An admonishment would be added to Paragraph 3 of the form as follows: “(Note: Failure to deliver this amendment to escrow agent may affect the parties’ rights to specific performance.)” to be consistent with recent changes to paragraph 15.B of the TREC contract forms. Upon motion of Ms. Hensley, seconded by Ms. Justice, the Commission authorized staff to submit amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer’s Termination of Contract, and §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract and the two revised contract forms proposed for adoption by reference in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

Chairman Eckstrum moved to agenda item eleven, discussion and possible action to propose 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 (c) New Subchapter P concerning Complaints and new §539.150 concerning Complaints. Ms. DeHay presented the agenda items for discussion and possible action.

The amendments to §539.61 concerning Application and Licensing revises 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.

The amendments to §539.121 concerning Examinations 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.

New Subchapter P regarding complaints and new §539.150 concerning complaints establish 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.

Upon motion of Mr. Alley, duly seconded by Mr. Day, the Commission authorized staff to propose amendments to 22 TAC Chapter 539 regarding §539.61 concerning Applications and Licensing, §539.121 concerning Examinations, and New Subchapter P concerning Complaints and new §539.150 concerning Complaints with non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to adopt the review of 22 TAC Chapter 535. Upon motion of Mr. Day, duly seconded by Mr. Alley, the Commission authorized staff to submit the adoption of the review of 22 TAC Chapter 535, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action on legislative housekeeping measures. Mr. Oldmixon presented the agenda item for discussion and stated that no action was needed on this agenda item.

Mr. Eckstrum moved to agenda item fourteen, discussion and possible action to approve changes to home inspector license application forms and miscellaneous inspector-related forms. Ms. Jackson presented the agenda item for discussion and possible action. The proposed changes are as follows: Update fees on applications to reflect incorporation of \$30 ed eval fee; Update references to certificate of insurance form (8-0 is no longer current form); Incorporate background history form (like broker/sales forms); Eliminate the fields, such as date of birth, that are not captured in Versa (like broker/sales forms); and Update header and formatting as necessary to match other forms. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the Commission authorized staff to change the Inspector forms as requested.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms. Ms. Jackson referred to the meeting material for a detail of the changes. Upon motion of Ms. Hensley, duly seconded by Mr. Alley, the Commission authorized staff to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms as requested.

Chairman Eckstrum moved to agenda item sixteen, discussion and possible action to approve changes to school, provider, course and instructor forms, and miscellaneous education related forms. Ms. Jackson presented the agenda item for discussion and possible action. The proposed changes are as follows: to remove the agency 1-800 number from MCE 10-2 – MCE Credit Request for an Out of State Course, MCE 12-2 – Individual MCE Elective Credit Request for State Bar Course, MCE 15-0 – Individual

MCE Elective Credit Request for Professional Designation Course, ED4-2 – Top of Instructions page for Instructor Application-Core, Legal Update, and Ethics Courses, and ED 7-1 – Top Coversheet for Instructor Manual Guidelines for Core Real Estate and Real Estate Related Courses. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission approved the changes to the forms as requested. There was discussion concerning the course and instructor evaluation form.

The Chairman moved to agenda item seventeen, discussion and possible action to approve the Non-Realty Items Addendum. This form had originally been proposed for adoption at the August meeting, but the Broker-Lawyer Committee withdrew the proposal and suggested the form be approved for voluntary use. Upon motion of Mr. Alley, duly seconded by Ms. Hensley, the Commission approved the addendum for voluntary use.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to approve fiscal year 2011 budget. Ms. Alexander presented the agenda item for discussion and possible action. There was discussion concerning the budget and future budget cuts. There was further discussion concerning moving expenses. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the fiscal year 2011 budget.

Chairman Eckstrum moved to agenda item nineteen, discussion and possible action to approve the real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission approved the investment policies as submitted.

The Chairman moved to agenda item twenty, discussion and possible action regarding Ethics Commission opinion EAO-492 (2010). The item was presented by Ms. DeHay for informational purposes. The Ethics Commission had ruled that “A member of the Texas Board of Professional Land Surveying should not serve as an expert witness to testify on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the board.” There was discussion concerning the ruling and its impact on members of the Commission.

Chairman Eckstrum moved to agenda item twenty-one, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of Andrew K. Mills, SOAH Docket NO. 329-10-3251. Ms. Galvin presented the agenda item for consideration and possible action. Mr. Mills did not appear. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Andrew K. Mills, SOAH Docket NO. 329-10-3251.

The Chairman moved to agenda item twenty-two, recovery fund matters. Mr. Eckstrum announced an executive session beginning at 12:20 p.m. to discuss pending litigation pursuant to Texas Government Code §551.071. The open meeting resumed at 12:49 p.m. Ms. DeHay asked the Commission to return to agenda item seven (a)-(n) and (p). Staff was recommending an effective date of January 1, 2011 for all these items except (k)(vii) §535.148, concerning Receiving an Undisclosed Commission or Rebate, paragraph (e) which would have an effective date of March 1, 2011. Upon motion of Ms. Wukasch, seconded by Mr. Alley, the Commission approved the effective dates as requested.

Ms. Bijansky presented agenda item twenty-two (b), discussion and possible action to authorize settlement of recovery fund claims for consideration.

The following claims were submitted for approval:

RF10-018, Tara Griffin and Richard Samudia v. Mindy Guitterez, actual damages of \$29,398.19 and attorney fees in the amount of \$24,384.04. Upon motion of Mr. Arriaga, duly seconded by Mr. Day, the Commission authorized staff to negotiate for the best terms possible concerning both actual damages and attorney fees.

RF11-002, ALBAM Investments v. Brokerage Services Solutions, Inc., actual damages of \$8,543.10. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-003, Robert Montes v. Paul Garza., actual damages of \$50,000. Upon motion of Mr. Day, duly seconded by Ms. Justice, the Commission authorized staff to make payment as requested.

RF11-004, Robert Robles and Diana Guerra v. Paul Garza., actual damages of \$50,000. Upon motion of Mr. Day, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-008, Dipaoalo, LLC v. Prime Realtors Property Management, LLC and Michael Duane Cade, actual damages of \$35,124.58 and attorney fees in the amount of \$8,698.92. Upon motion of Mr. Alley, duly seconded by Ms. Justice, the Commission authorized staff to make payment as requested

The Chairman moved to agenda item twenty-four, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for February 14, 2011 and May 2, 2011 at 10:00 a.m.

The Chairman adjourned the meeting at 1:00 p.m.

Patricia Holder, Secretary for the Meeting

APPROVED this the 14th day of February, 2011.

John Eckstrum
Chairman

ATTEST:

Douglas E. Oldmixon
Administrator