

MINUTES OF THE MEETING OF THE TEXAS REAL ESTATE COMMISSION

August 1, 2011

Room 170, 1700 N. Congress Ave., Austin, Texas

On Monday, August 1, 2011, at 10:02 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Commissioner Jones led the attendees in the pledges of allegiance to the United States and Texas flags. Chairman Avis Wukasch presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

Avis Wukasch, Chair

Troy C. Alley, Jr.

Adrian Arriaga

Jaime Hensley

Bill Jones

Joanne Justice

Weston Martinez

Dona Scurry

The Chairman moved to agenda item two, discussion and possible action to excuse Commissioner absence(s), if any. There were no absences.

The Chair recognized the two new commissioners: Bill Jones from Temple, Texas and Weston Martinez from San Antonio. She also recognized members of the audience: Dwight Hale, Travis Kessler, Lori Levy, Deb Waldman and Mark Lehman from the Texas Association of Realtors and Gary Maylor from the Real Estate Center at Texas A&M.

Chairman Wukasch moved to agenda item three, election of vice-chair. Upon motion of Ms. Hensley, duly seconded by Ms. Scurry, Commissioner Justice was elected vice-chair.

Ms. Wukasch moved to agenda item four, approval of the minutes of the May 2, 2011 meeting. Upon motion of Ms. Hensley, seconded by Ms. Justice, the Commission approved minutes of May 2, 2011, Commission Meeting.

Staff present included Karen Alexander, Devon Bijansky, Lorie DeAnda, Loretta DeHay, Kerri Galvin, Gwen Jackson, Douglas Oldmixon and Tom Watson.

Chairman Wukasch moved to agenda item five, 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, welcomed the commissioners to the new offices and meeting room of Texas Real Estate Commission in the Stephen F. Austin building in the Capitol complex. He reported on the passage of SB 1000 and its effect on the agency. Mr. Oldmixon and the Commissioners thanked the staff for the seamless move to the new location. He stated that special thanks was due to Sandy Jones the move coordinator and Tom Watson and the Information and Technology Services division for their efforts in making the move work so well.

Lorie DeAnda, Director of Reception and Communications Services (RCS) presented the C1 report concerning Customer Service Statistics. There was discussion concerning the number of walk-ins and the services provided at the reception desk. Mr. Martinez requested a breakdown of the types of emails received by RCS.

Gwen Jackson, Director of Education and Licensing Services (ELS) 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. Ms. Jackson stated that changes in the way some of the reported measures were calculated had caused the numbers to fluctuate from what was previously reported. There was discussion concerning the peak year for the number of licensees. There was also discussion concerning the pass rate for persons taking the licensing exam for the first time.

Kerri Galvin, Director of Standards and Enforcement Services (SES), presented the case status report, and the open case age report. Ms. Galvin explained the process used to prepare the case age report and the actual numbers the percentages represented. After discussion, Mr. Martinez requested that in the future the reports include the actual number of cases being reported along with the percentage.

Tom Watson, Director in Information and Technology Services, introduced a new systems analyst, Sunny Sun. He then presented the I1 report concerning electronic outlet services statistics. Mr. Watson stated that online renewal numbers were comparable with the numbers before the system conversion, but that online application numbers were still low. There was discussion concerning simplifying the registration process to access online services. There was further discussion concerning a scheduled trial run of the new online processes. There was discussion concerning the purging, prepping and scanning of the licensing records. Mr. Watson reported on the status of the imaging project. There was discussion concerning the upgrade in the hardware that was available with the move to the new location.

Karen Alexander reported on the S1 report showing the financial status as of June 30, 2011. There was discussion concerning funding received and the status of the budget for the end of the fiscal year. She moved to 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. She reported that FY 2011 would be a record year for payments from the Real Estate Recovery Trust Account. There was discussion concerning the types and size of the judgments being obtained against licensees. There was discussion concerning the balance in the trust account and how replenishment of the fund would be accomplished if needed.

Chairman Wukasch moved to agenda item six, report by the Texas Real Estate Inspector Advisory Committee. Mr. Willcox, Chairman of the Committee, reported on the last meeting of the Committee. There was discussion concerning items the Committee had voted on for the Commission to consider. After discussion, it was decided that these items would be placed on the agenda for the October meeting.

Ms. Wukasch moved to agenda item nineteen discussion and possible action to approve annual internal audit report. Rene Gonzales, Garza-Gonzales and Associates, the internal auditor for the agency, presented his report, referencing the material contained in the meeting packet. There was discussion concerning the figures in the HUB reporting and the percentage of HUBs. Upon motion of Ms. Scurry, duly seconded by Mr. Arriaga, the Commission approved the annual internal audit report.

Ms. Wukasch moved to agenda item seven, general comments from visitors on non-agenda items. No comments were offered.

The Chair moved to agenda item eight, discussion and possible action to adopt amendments to 22 TAC §535.191 regarding Schedule of Administrative Penalties. Ms. DeHay presented the agenda items for discussion and possible action. Section 535.191 adopts additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range. Upon motion of Ms. Justice, duly seconded by Mr. Jones, the Commission authorized staff, on behalf of the Commission, to submit the amendments to §535.191 regarding Schedule of Administrative Penalties, as presented at the meeting, with any non-substantive changes as staff may deem necessary or advisable for adoption to the *Texas Register*.

The Chairman moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Chapter 537 as follows: a. §537.20 concerning Standard Contract Form TREC No. 9-9; b. §537.28 concerning Standard Contract Form TREC No. 20-10; c. §537.30 concerning Standard Contract Form TREC No. 23-11; d. §537.31 concerning Standard Contract Form TREC No. 24-11; e. §537.32 concerning Standard Contract Form TREC No. 25-8 and f. §537.37 concerning Standard Contract Form TREC No. 30-9 with changes to the forms as submitted to the *Texas Register* consisting of the updating of the web address and phone number on the forms. The amendments adopt by reference six revised contract forms for use by Texas real estate licensees. Ms. DeHay presented the agenda item for discussion and possible action.

Upon motion of Ms. Hensely, duly seconded by Mr. Alley, the commission authorized, on behalf of the Commission, to submit the amendments and forms adopted by reference to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract, with changes as presented at this meeting and any non-substantive changes as staff may deem necessary or advisable for adoption to the *Texas Register*.

Chairman Wukasch moved to agenda item nine, discussion and possible action to adopt amendments to 22 TAC §535.219 regarding Schedule of Administrative Penalties. Ms. Bijansky presented the agenda item for discussion and possible action. The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. Twelve comments were received during the notice and comment period. Mr. Jones, seconded by Ms. Justice, moved that the Commission authorize staff, to submit the amendments to §535.219 regarding Schedule of Administrative Penalties, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for adoption to the *Texas Register*. Comments were offered by Mark Eberwine, Texas Association of Real Estate Inspectors, and Mike Cothran, Texas Professional Real Estate Inspectors Association, against the motion. There was discussion concerning the penalty matrix and the severity of the fine amount. Fred Willcox, Chair of the Texas Real Estate Inspector Committee, spoke in favor of the motion. The Chair called for a vote on the motion. The motion passed unanimously.

Chairman Wukasch moved to agenda item eleven, discussion and possible action to take emergency action to adopt amendments to 22 TAC Chapter 535 as follows: a. Subchapter B, §535.17 concerning Appraisals; b. Subchapter C, §535.31 concerning Attorneys at Law; c. Subchapter E, Requirements for Licensure as follows: i. §535.50 concerning Definitions, ii. §535.51 concerning General Requirements and iii. §535.53 concerning Corporations and Limited Liability Companies; d. Subchapter I, §535.93 concerning Late Renewals; e. Subchapter I, §535.93 concerning Late Renewals; f. Subchapter J, §535.101 concerning Fees; g. Subchapter M, §535.132 concerning Eligibility for Licensure; and h. Subchapter N, §535.141 concerning Initiation of Investigation.

Ms. DeHay presented agenda item eleven a. for discussion and possible action. This agenda item would adopt on an emergency basis amendments to 22 TAC §535.17 regarding Appraisals. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Session, Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas

Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage. In addition SB 747 added a new item to the list regarding broker price opinions.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule. Upon motion of Ms. Hensley, seconded by Mr. Arriaga, the Commission authorized staff , on behalf of the Commission, to submit the amendments to 22 TAC §535.17 regarding Broker Price Opinion or Comparative Market Analysis as presented at the meeting for emergency adoption, with any non-substantive changes as staff may deem necessary or advisable.

Ms. DeHay presented agenda item eleven b for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.31 regarding Attorneys at Law. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In part, SB 747 amends Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas. Upon motion of Mr. Arriaga, duly seconded by Mr. Martinez, the Commission authorized staff to submit the emergency amendments to §535.31 concerning Attorneys at Law, with any non-substantive changes as staff may deem necessary or advisable for emergency adoption to the *Texas Register*.

Ms. DeHay stated that the effective date for all of these amendments would be September 1, 2011. Ms. DeHay presented agenda item eleven c for discussion and possible action. This agenda item would adopt amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies on an emergency basis. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for

business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.50, §535.51, and §535.53 to be consistent with SB 747.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity and to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Upon motion of Ms. Justice, duly seconded by Mr. Jones, the Commission authorized staff to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register* effective as of September 1, 2011.

Ms. DeHay presented agenda item eleven d for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.93 regarding Late Renewal Applications. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

Upon motion of Mr. Jones, duly seconded by Ms. Justice, the Commission authorized staff to submit the amendments to 22 TAC §535.93 regarding Late Renewal Applications with any non-

substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Ms. DeHay presented agenda item eleven e for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC §535.101 regarding Fees. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.101 change to six months the reference to the one year period for filing a late renewal in subsection (b)(11)

Upon motion of Mr. Alley, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

Ms. DeHay presented agenda item eleven f for discussion and possible action. This agenda item would adopt on an emergency basis amendments to 22 TAC §535.132 Eligibility for Licensure. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.132, to be consistent with SB 747. The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

Upon motion of Mr. Arriaga, duly seconded by Mr. Martinez, staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.132 Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

Ms. DeHay presented eleven g for discussion and possible action. This agenda item adopts on an emergency basis amendments to 22 TAC Subchapter E, §535.141 regarding Initiation of Investigation. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date

of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.5141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

Upon motion of Mr. Day, duly seconded by Mr. Arriaga, staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the Texas Register.

The Chair moved to agenda item twelve, discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows: a. Subchapter B §535.17 concerning Appraisals; b. Subchapter C, §535.31 concerning Attorneys at Law; c. Subchapter E, Requirements for Licensure as follows: i. §535.50 concerning Definitions; ii. §535.51 concerning General Requirements; iii. §535.53 concerning Corporations and Limited Liability Companies; iv. §535.55 concerning Education Requirements for a Salesperson License; and v. §535.56 concerning Education and Experience Requirements for a Broker License; d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools; e. Subchapter G, Mandatory Continuing Education as follows: i. §535.71 concerning Approval of Providers, Courses and Instructors and ii. §535.72 concerning Presentation of Courses, Advertising and Records; f. Subchapter I, Licenses as follows: i. §535.91 concerning Renewal Notices; ii. §535.93 concerning Late Renewal Applications; and iii. §535.96 concerning Mailing Address and Other Contact Information; g. Subchapter J, §535.101 concerning Fees; h. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows: i. §535.121 concerning Inactive License and ii. §535.122 concerning Reactivation of License; i. Subchapter M, §535.132 concerning Eligibility for Licensure; and j. Subchapter N, §535.141 concerning Initiation of Investigation. Ms. DeHay stated that the rule amendments in agenda item twelve were identical to the amendments adopted by emergency action in agenda item eleven. This agenda item allows the Commission to propose these amendments for permanent adoption.

Upon motion of Ms. Justice, duly seconded by Mr. Alley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.17 regarding Appraisals with any non-

substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Upon motion of Mr. Day, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.31 regarding Attorneys at Law with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay explained that agenda item twelve c not only begins the permanent adoption process regarding amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, but also amends §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is simultaneously being taken to amend §535.50, §535.51, and §535.53 to be consistent with SB 747 because the effective date of those provisions is September 1, 2011.

Regarding the amendments to §§535.55 and .56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in the preceding six years and otherwise meets the requirements of the section. The proposed amendment to §535.55 would change the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding MCE could apply for a salesperson license. Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The proposed rule would change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 would add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker

license under §1101.356 and §1101.357 of the Act. An applicant would be required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions would be worth a certain number of points and the applicant would be required to use the forms adopted by reference in the rule to summarize the transactions. An applicant would be able to continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted would be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant would be required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant would be required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. Finally, the rule would give the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and §535.56.

Mr. Jones spoke concerning the Broker Responsibility Working Groups part in recommending these amendments. After discussion, which included the Chair's thanks for the groups hard work, upon motion of Mr. Martinez, duly seconded by Ms. Scurry, staff is authorized, on behalf of this Commission, to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay presented agenda item twelve d for discussion and possible action. This agenda item proposes amendments to §535.63, Accreditation of Core Education Schools. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.301 to require the commission to adopt rules setting an examination passage rate benchmark for each category of license issued under Chapter 1101 and Chapter 1102, Texas Occupations Code.

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747. Upon motion of Mr. Alley, duly seconded by Mr. Jones, staff is authorized, on behalf of this Commission, to submit the amendments to §535.63, Accreditation of Core Education Schools with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item 12 e. The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it deals with the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

Upon motion of Mr. Jones, duly seconded by Mr. Arriaga, staff is authorized, on behalf of this Commission, to submit the amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

At 12:15 p.m. the Chair announced an executive session so that the Texas Real Estate Commission could meet with its attorney in executive session on any item listed on the agenda as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071. The meeting resumed at 2:00 p.m.

Ms. DeHay moved to agenda item twelve f. The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal. The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve h. The amendments to §535.121 makes conforming changes to be consistent with other rules that are being simultaneously proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements.

Upon motion of Ms. Justice, duly seconded by Ms. Hensley, staff is authorized, on behalf of this Commission, to submit the amendments to §535.121, Inactive License, and §535.122, Reactivation of License with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve i. The amendments to §535.132 make conforming changes to be consistent with proposed changes to §§535.55 and .56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to be consistent with the statutory text amended by SB 747.

Upon motion of Ms. Hensley, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.132 regarding Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

Ms. DeHay moved to agenda item twelve j. The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747. Upon motion of Mr. Jones, duly seconded by Ms. Justice, staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment.

The Chair stated that items twelve g and k would be taken up later in the meeting. Ms. Wukasch moved to agenda item thirteen, discussion regarding legislative housekeeping measures and other legislative items. There was no discussion on this item.

Chairman Wukasch moved to agenda item fourteen, discussion and possible action to adopt a code of conduct for members of advisory committees and working groups. Mr. Oldmixon presented this agenda item for discussion and possible action. Mr. Martinez, duly seconded by Mr. Alley, moved that the Commission approve the code of conduct for members of advisory committees and working groups as submitted under the agenda item. Mr. Willcox, spoke against adoption of the code of conduct. After discussion, Mr. Arriaga, seconded by Mr. Martinez, moved to table the previous motion. The motion passed by unanimous vote.

The Chair moved to agenda item fifteen, discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 Under Senate Bill 747, 82<sup>nd</sup> Texas Legislature, Regular Session (2011). Ms. DeHay presented the agenda item for discussion and possible action.

Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved all the changes to the applications for a license for a corporation, limited liability company or partnership and change of designated officer, manager or managing partner form and the changes to all application forms concerning the one year expiration period for applications and the six month period for filing a late renewal effective September 1, 2011, to reflect changes to Texas Occupations Code, Chapter 1101, under SB 747, as submitted under this agenda item.

Ms. Wukasch moved to agenda item sixteen, discussion and possible action on Broker Responsibility working group recommendations on experience requirements for a broker license. No action required under this agenda item.

Chairman Wukasch moved to agenda item seventeen, discussion and possible action to approve amendments to the Seller's Disclosure of Property Condition Form, TREC No. OP-H. Upon motion of Mr. Alley, duly seconded by Ms. Hensley, the Commission approved the

amendments made to the Seller's Disclosure of Property Condition Form, TREC No. OP-H effective September 1, 2011, as submitted under this agenda item.

The Chair moved to agenda item eighteen, discussion and possible action to appoint two members to the Broker-Lawyer Committee. Ms. Wukasch thanked the members of the committee, Ms. Justice, Ms. Hensley and Mr. Arriaga, for their work. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, recommended that the Commission appoint Charlie Still and Greg Glen to the Broker-Lawyer Committee for terms of six years each. The Commission approved the recommendation by unanimous vote.

The Chair moved to agenda item twenty-five, recovery fund matters: a. executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and b. discussion and possible action to authorize settlement of recovery fund claims.

Ms. Bijansky presented the following claims against the recovery fund for possible action:

IRF 11-004, Jonathan and Veronica Deats v. Samuel Ryan Tanner, actual damages in the amount of \$18,370 and attorney fees in the amount of \$6,500. Mr. Arriaga, seconded by Ms. Hensley, moved to approve payment of \$12,500 in actual damages, provided that the judgment is final and no appeals are pending. The motion was adopted by unanimous vote.

RF 11-015, Bill and Theresa Hooper, Hooperville Inc and Alton and Iralee Haley (cross-plaintiffs) v. R.D. Harris, actual damages in the amount of \$200,000 for the Hoopers and \$427,900 for the Haleys, attorneys fees of \$100,255.53 for the Hoopers and \$117,658 for the Haleys. Ms. Justice, seconded by Mr. Alley, moved to approve payment up to the statutory limits. The motion was adopted by unanimous vote.

RF 11-021, Sangeeta and Chad Lerma v. Lonnie Paul Pruett and Justin Gibson, actual damages in the amount of \$7,400 and \$4,850 in attorney fees. Mr. Alley, seconded by Ms. Hensley, moved to approve payment of \$7,400 in actual damages and \$4,850 in attorney fees. The motion was adopted by unanimous vote.

RF 11-026, Leonard and Lois Nufer v. Cynthia Lynn Hickman, actual damages in the amount of \$100,000 and \$23,616.05 in attorney fees. Ms. Hensley, seconded by Mr. Jones, moved to approve payment of \$37,630 in actual damages and \$5,267.29 in attorney fees. The motion was adopted by unanimous vote.

RF 11-028, Gregory Potts v. Barry Powell, actual damages in the amount of \$25,136.39 and \$10,566.46 in attorney fees. Mr. Day, seconded by Mr. Alley, moved to approve payment of \$13,114.56 in actual damages and \$10,566.46 in attorney fees. The motion was adopted by unanimous vote.

RF 11-031, Ayotunde Fasoro v. Michael Duane Cade, actual damages in the amount of \$18,022.64 and \$8,250 in attorney fees. Ms. Scurry, seconded by Ms. Hensley, moved to authorize staff to settle this case on the best possible terms once the other claim is formally filed and all necessary documentation. The motion was adopted with Ms. Justice abstaining from the vote.

RF 11-033, Tina Watson v. Rachael Adams, actual damages in the amount of \$75,500. Mr. Jones, seconded by Ms. Hensley, moved to settle this case on the best possible terms. The motion was adopted by unanimous vote.

RF 11-034, Julian Torres v. Jose Fernando Hernandez, actual damages in the amount of \$43,253 and attorney fees in the amount of \$7,500; and RF 11-035, Pablo Ocampo v. Jose Fernando Hernandez, actual damages in the amount of \$35,300 and attorney fees in the amount of \$6,500; and 11-036, State of Texas v. Jose Fernando Hernandez, actual damages in the amount of \$100,000 and attorney fees of \$300,000. Mr. Martinez, seconded by Mr. Jones, moved to approve payment of \$100,000 in conjunction with 11-034, 11-035, and 11-036 and authorize staff to seek and consolidate these three cases into one proceeding to ensure that a proper allocation is made of all the monies available from the fund; and to interplead \$100,000 into the bankruptcy court to allow the court to properly allocate the funds to the said victims. The motion was adopted by unanimous vote.

RF 11-037, Raymond T. Malkowski v. Richard H. Cook, actual damages in the amount of \$3,464. Ms. Justice, seconded by Mr. Arriaga, moved to approve payment of \$3,464 in actual. The motion was adopted by unanimous vote.

The Chair moved to agenda item twenty, executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074 and announced an executive session at 2:30. Open meeting resumed at 2:47 p.m. Ms. Wukasch appointed Mr. Martinez, Ms. Hensley and Ms. Scurry to create a process and a form for the review of the executive director's performance and for that report to be given at the December 5, 2011 meeting of the Commission. She asked that the record show that the Commissioners take the charge from the Legislature to follow the processes of an independent agency very seriously.

Ms. Wukasch moved to agenda item twenty-two, discussion and possible action to establish policies related to self directed semi-independent status, including: a. Operating reserves; b. Technology replacement reserves and c. A target reserve balance in excess of which the agency may reduce fees. Mr. Oldmixon presented the agenda item for discussion and possible action. There was discussion concerning operating reserves and a target reserve balance in excess of which the agency may reduce fees.

Mr. Oldmixon presented agenda item twelve g for discussion and possible action to propose amendments to §535.101 regarding Fees. The amendments would increase the salesperson and broker application fees from \$105 to \$119, the annual renewal fees for brokers and salespersons from \$34 to \$41; the late renewal fee from \$51 to \$61.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from \$68 to \$82 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination. Mr. Hale, Texas Association of Realtors, offered comments concerning financing the agency. Ms. Justice, duly seconded by Mr. Arriaga, the Commission moved that the Commission authorized staff to submit the amendments to §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

After discussion, Mr. Jones, seconded by Mr. Martinez, moved that the motion on the floor be amended in a manner that would make the \$4 fee for the electronic delivery for the *TREC*Advisor continues to be an optional choice for licensees. Ms. Justice spoke against the amendment to the motion.

After further discussion, the Chair called the question. The amendment to the motion was approved by unanimous vote. Ms. Wukasch called for a vote on the amended motion which would propose the new fees without including a fee for the *Trec*Advisor. This additional \$2 per year fee would remain optional. The motion as amended was adopted by unanimous vote.

Mr. Oldmixon presented agenda item twelve k for discussion and possible action to propose amendments to §535.210 regarding Inspector Fees. Ms. Hensely moved, seconded by Mr. Arriaga that staff be authorized, on behalf of the Commission, to submit the amendments to §535.210 regarding Inspector Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the Texas Register and for public comment. Mr. Willcox, chairman of the Inspector Committee, spoke concerning the motion. Mr. Jones moved to amend the motion to make the \$4 fee for the electronic delivery for the agency newsletter continue to be an optional choice for inspectors. The amendment to the motion was adopted. The motion as amended was adopted.

Chairman Wukasch moved to agenda item twenty-three, discussion and possible action to adopt a budget. Mr. Oldmixon, administrator, presented agenda item twenty-three for discussion and possible action. After discussion, Ms. Justice, seconded by Mr. Arriaga, moved to adopt the budget as submitted by staff under this agenda item. The motion was adopted by unanimous vote.

The Chair moved to agenda item twenty-four, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH DOCKET NO. 329-10-3045.REC. After discussion and upon motion of Mr. Jones, duly seconded by Ms. Justice, the Commission approved the proposal to revoke the license of Melvin James, as submitted.

Ms.Wukasch moved to agenda item twenty-six, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for October 10, 2011 at 9:00 a.m. and December 5, 2011 at 10:00 a.m. The Chair adjourned the meeting at 4:30 p.m.



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Patricia Holder, Secretary for the Meeting

APPROVED this the 10<sup>th</sup> day of October, 2011.

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John Eckstrum Chairman

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ATTEST: Douglas E. Oldmixon Administrator