

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**April 1 – 2, 2009**

The Tennessee Real Estate Commission convened on April 1, 2009, at 9:07 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Legal Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the April 2009 Commission meeting. **Chairman Haynes advised the Commission that Assistant Commissioner Steve Majchrzak will address the Commission. Vice-Chairman Stephenson made a motion to adopt the agenda; seconded by Commissioner Alexander; unanimous vote; motion carried.**

The next order of business was the approval of the March 2009 minutes (**Exhibit 2**). **Commissioner Alexander made a motion to approve the March 2009 minutes; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

**INFORMAL CONFERENCE**

**Brian Greer, applicant,** appeared with his principal broker Clyde Hampton to request approval for an Affiliate Broker license. Mr. Greer disclosed convictions of Aggravated Burglary and Burglary in 1996, Misdemeanor Theft and Misdemeanor Possession of Burglary Tools in 1997, Violation of Probation in 2000 & 2001, DUI in 2001, Assault in 2001 and DUI in 2004. **Commissioner Alexander made a motion to approve; seconded by Commissioner Flitcroft; roll call vote: 5 yes, 3 no; motion carried. After discussion, Commissioner Collins changed his vote to no. Therefore the vote was 4 yes, 4 no; motion failed for lack of a majority. Mr. Greer's request was denied.**

**EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

Ms. Maxwell asked the Commissioners for input regarding locations and dates for the upcoming education seminars presented by TREC across the State of Tennessee. After discussion, it was decided that in light of there not being an Education Director in place a discussion should be held with Assistant Commissioner Steve Majchrzak before any decision are made regarding education seminars.

Chairman Haynes asked Ms. Maxwell for the cost to outsource course approval to ARELLO. Ms. Maxwell temporarily left the meeting to retrieve the information from the TREC office.

Assistant Commissioner of Regulatory Boards Steve Majchrzak addressed the Commission regarding the appointment of a new Education Director, the possibility of outsourcing the review of education courses and the effect that change in procedure

would have on the duties of the Education Director. He explained that when a decision is reached regarding outsourcing the review of courses, the duties of the Education Director can be redefined and the process to fill the position can begin.

Chairman Haynes addressed the Commission and Assistant Commissioner Majchrzak regarding a motion made at the March 2009 meeting. Per the March 2009 minutes, Commissioner Northern made a motion to authorize Chairman Haynes to send a letter referencing the dilemma the Commission is in regarding their ability to function and that such correspondence be disseminated among the legislators; seconded by Commissioner Tate; opened to discussion; Commissioner Woods made a motion to amend to send the letter with the approval of the administration. Ms. Wiseman advised the Commission that the administration does not have an objection to sending the letter on Tennessee Real Estate Commission letterhead. Commissioner Woods withdrew his motion to amend. Commissioner Woods offered a friendly amendment to Commissioner Northern's motion to circulate the letter to the members of the Commission for feedback before it is sent to the legislators. Commissioner Northern accepted Commissioner Wood's friendly amendment. The vote on the motion as amended was unanimous and the motion carried. After a discussion with Assistant Commissioner Majchrzak following the March 2009 meeting, Chairman Haynes feels the issue has been addressed.

**Commissioner Alexander made a motion to not send the letter to the legislators; seconded by Commissioner Northern; unanimous vote; motion carried.** Assistant Commissioner Majchrzak briefly discussed the Edison budget process and the Tennessee Real Estate Commission's incoming revenues. The discussion returned to the review of education courses. Assistant Commissioner Majchrzak discussed the various methods currently in use among the regulatory boards for course review. Ms. Maxwell presented the costs for ARELLO certification of courses depending on the number of course hours and the method of delivery. She further explained that instructors must pass two courses at \$200.00 a piece if they wish to submit a course for review. She also advised the Commission of costs associated with Pearson-Vue reviewing courses depending on the number of course hours and method of review. It was determined that the Commission has several options for course review. 1) They could not approve any course that doesn't come through ARELLO; 2) it could be a staff function with set criteria or; 3) a sub-committee or an advisory board could be formed to review courses. The discussion turned to licensees who do not have Errors & Omissions insurance. Commissioner Alexander expressed his concern to Assistant Commissioner Majchrzak regarding the delinquencies. He wished to make him aware of the issue lest the administration of the regulatory boards need to get involved to achieve a resolution.

Ms. Maxwell presented Courses for Commission Evaluation (**Exhibit 3**).

**Commissioner Collins made a motion to approve pages 1 – 10 of the Courses Presented for Commission Evaluation; seconded by Commissioner Alexander; opened to discussion.** Commissioner Woods noted that the instructor for the courses on page 10 (listed below) of the report is not licensed in Tennessee. **After discussion, Commissioner Collins made a motion to revise his previous motion to approve page 1 – 9 of the Courses Presented for Commission Evaluation; seconded by Commissioner Woods; unanimous vote; motion carried. There was discussion regarding the courses, "Legal Update", "Divorce, Death and Bankruptcy",**

**“Navigating the Ethics of Agency” and “Contracts: How to Negotiate, Make, Amend and Terminate Them”.** Ms. Wiseman read from the TREC law manual the qualifications to teach a real estate law class [1260-5-.04(e) - Qualifications for Instructors] which states the instructor must have graduated from a law school accredited by the American Bar Association or approved by the State Board of Law Examiners. Commissioner Woods withdrew his objection. **Commissioner Northern made a motion to accept the courses “Legal Update”, “Divorce, Death and Bankruptcy”, “Navigating the Ethics of Agency” and “Contracts: How to Negotiate, Make, Amend and Terminate Them; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Ms. Maxwell presented Courses Requiring Discussion. **Commissioner Woods made a motion to deny the courses “10 Must Have Characteristics for a Web-Site”, “Introduction to Blogging for Real Estate”, “Introduction to Social Media for Real Estate” and “Social Media Lab”; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Tate made a motion to defer to allow Staff to obtain more information regarding the content of the classes; seconded by Commissioner Northern; vote: 6 yes, 1 no; motion carried. Commissioner Woods withdrew his motion.**

Ms. Maxwell presented Courses for Possible Credit Hour Reductions. **Commissioner Collins made a motion to reduce the number of credit hours for the course “Multicultural Sales Techniques and Strategies” from eight (8) hours to four (4) hours and reduce the number of credit hours for the course “The Power of Staging” from six (6) hours to three (3) hours; seconded by Commissioner Woods; unanimous vote; motion carried.**

Ms. Maxwell presented an Instructor Review (Exhibit 4). Mr. Steven M. Champion is requesting he be approved to teach the course “RESPA Really Matters”. **Commissioner Northern made a motion to approve Mr. Champion’s request; seconded by Commissioner Collins; unanimous vote; motion carried.**

Chairman Haynes recessed the meeting for lunch at 11:26 a.m. and the meeting reconvened at 1:24 p.m.

At the February 2009 meeting, the Personnel sub-committee met to hold a performance evaluation of Executive Director Eve Maxwell. The sub-committee which consists of Commissioner Wendell Alexander, Commissioner David Flitcroft and Commissioner Grover Collins, reported on the matters discussed at the review meeting. The other Commissioners made comments regarding Ms. Maxwell’s performance as Executive Director.

### **EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 5)** – TREC has a total of **299** open complaints. One of the 299 open complaints is a staff generated Agreed

Citation. There are 24 new complaints since the March 2009 meeting. There are 294 complaints in the legal department and 6 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 197. Total Civil Penalties paid in March 2009 were \$10,160.00.

- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 6**) to the Commission on real estate licenses approved in 2008 & 2009 and the number of licensees as of March 31, 2009. As of March 31, 2009, there were 29,290 active licensees, 3,959 inactive licensees and 10,018 retired licensees. There were 4,554 active firms and 333 retired firms. There were 229 new applications approved in March 2009.
- **Errors & Omissions Insurance** – Ms. Maxwell presented to the Commission a time line of all administrative measures taken to help licensees come into compliance for failure to purchase Errors & Omissions insurance and a daily list of the number of uninsured licensees. The policy regarding penalties to licensees for failure to obtain Errors & Omissions insurance was discussed. It was reiterated that license revocation proceedings will begin for licensees who do not secure Errors & Omissions insurance by May 1, 2009. This penalty applies to licensees in active and broker release status. Commissioner Alexander suggested the Commission propose legislation to immediately suspend licensees without an E&O policy in place. It was reiterated that principal brokers may unilaterally broker release uninsured affiliates before May 1, 2009 and the principal broker's penalty will be waived.
- **ARELLO** – Ms. Maxwell discussed with the Commission the upcoming ARELLO District 2 Meeting on June 25 – 27, 2009 in Louisville, Kentucky.

There was discussion regarding the assembly, printing and distribution of the TREC newsletter which will be sent to licensees this summer. There was also discussion of outsourcing the production of the newsletter to an outside vendor to save money. Staff will inquire of the Administration if this is a possibility.

**LEGAL REPORT, KATHRYN WISEMAN, ASSISTANT GENERAL COUNSEL (Exhibit 7)**

- 1) **2007051131 &**
- 2) **2007050781 &**
- 3) **2007069561 &**
- 4) **2007066551 &**
- 5) **2007066711 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 6) **2007057461 – Commissioner Flitcroft had previously reviewed the complaint. He recommended the Commission accept legal counsel's recommendation to send a Cease & Desist letter and refer the complaint to the appropriate authorities. Commissioner Woods made a**

**motion to accept legal counsel's recommendation to send a Cease & Desist letter and refer the complaint to the appropriate authorities; seconded by Commissioner Collins; vote: 6 yes, 0 no; Commissioner Flitcroft abstained; motion carried.**

**7) 2007068181 &**

**8) 2007068182 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**

**9) 2007049971 &**

**10) 2007049972 &**

**11) 2007049973 &**

**12) 2007049974 – Commissioner Flitcroft made a motion to defer the complaint and have Commissioner Alexander review it; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Ms. Wiseman reviewed the Legal File Summary and Consent Order Log with the Commission.

Ms. Wiseman presented the Commission with a legislative update (Exhibit 8) on bills she thought may be of interest to the Commission.

#### **COMMENTS FROM ATTENDEES**

Chairman Haynes called for comments from the attendees.

Licenses who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

The discussion briefly returned to the appointment of an Education Director for TREC. Staff was asked to report at the next meeting how many approved courses are ARELLO approved. The Commissioners gave their various opinions regarding the possibility of outsourcing course review and approval.

Commissioner Northern asked that a representative from Memphis Area Association of Realtors be added to the agenda to address the Commission the next morning regarding the classes offered by MAAR that were deferred during the course review portion of the Education Report.

Chairman Haynes recessed the meeting Wednesday, April 1, 2009 at 3:55 p.m.

**TENNESSEE REAL ESTATE COMMISSION**  
**Thursday, April 2, 2009**

The Tennessee Real Estate Commission reconvened on April 2, 2009 at 9:10 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Legal Counsel, and Kelly McDermott, Administrative Secretary.**

**Nicci Lundquist, Education Manager of the Memphis Area Association of Realtors**, addressed the Commission regarding the courses "10 Must Have Characteristics for a Web-Site", "Introduction to Blogging for Real Estate" and "Introduction to Social Media for Real Estate" which were deferred during the Education Report the previous day of the meeting. After discussion, **Vice-Chairman Stephenson made a motion to defer review of the courses until the May 2009 meeting providing time for Ms. Lundquist to send Ms. Maxwell more information regarding the courses; seconded by Commissioner Alexander; unanimous vote; motion carried.**

**RULEMAKING HEARING (Notice – Exhibit 9)**

At 9:20 a.m., Chairman Haynes called the Rule Making Hearing to order. The following Commissioners were present: Chairman Charles Haynes, Vice-Chairman William "Bear" Stephenson, Commissioner Isaac Northern, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Carol Tate, Commissioner David Flitcroft and Commissioner Allen Woods.

Kathryn Wiseman, Legal Counsel for the Tennessee Real Estate Commission, explained the procedures for the Rulemaking Hearing.

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-05-.15 [Fee for Educational Course Application]**. The following members of the public addressed the Commission with oral comments:

- Jules Wade, Executive Vice President of the Memphis Area Association of Realtors
- Mike Nichols, President of the Board of the Directors of the Greater Nashville Area Association of Realtors
- Jim Gibbs, owner of the Career Institute
- Alice Walker, licensee and Regulatory Affairs Chairperson of the Tennessee Association of Realtors
- Ms. Wiseman read into the record a letter from Richard J. Clemmer, President of D&D School of Real Estate.
- Ray Boudier, owner of Ray Boudier Schools of Real Estate

**Commissioner Alexander made a motion to delete the changes to Rule 1260-05-.15; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Collins made a motion to amend the language of 1260-05-.15(4) to read "A twenty five dollar (\$25.00) fee shall be paid for each course instructor; seconded by Vice-Chairman Stephenson; amendment passed unanimously; motion as amended passed unanimously.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-05-.16 [Course Approval Periods]**. The following members of the public addressed the Commission with oral comments:

- Jules Wade, Executive Vice President of the Memphis Area Association of Realtors
- Theresa Wilson, Executive Vice President of Williamson County Association of Realtors
- Jim Gibbs, owner of Career Institute
- J.A. Bucy, representing the Tennessee Association of Realtors
- Ms. Wiseman stated the letter read into the record from Richard J. Clemmer, President of D&D School of Real Estate also applies to Rule 1260-05-.16.

**Commissioner Woods made a motion to delete the changes to Rule 1260-05-.16; motion failed for lack of a second. Commissioner Alexander made a motion to accept the proposed changes to Rule 1260-05-.16; seconded by Commissioner Collins; vote: 7 yes, 1 no (Commissioner Woods voted no); motion carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-05-.17 [Course Intermission]**. The following member of the public addressed the Commission with oral comments:

- Ray Boudier, owner of Ray Boudier Schools of Real Estate

**Commissioner Flitcroft made a motion to repeal Rule 1260-05-.17; seconded by Commissioner Tate; unanimous vote; motion carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-02-.02 [Termination of Affiliation]**. The following members of the public addressed the Commission with oral comments:

- Ray Boudier, owner of Ray Boudier Schools of Real Estate
- Jim Gibbs, Principal Broker of Ideal Realty
- Russ Farrar, Legal Counsel for the Tennessee Association of Realtors
- Ms. Wiseman read into the record written comments from Richard J. Clemmer, President of D&D School of Real Estate.

**Commissioner Woods made a motion to adopt the proposed rule changes to Rule 1260-02-.02 as read into the record by Ms. Wiseman; seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-02-.09 [Deposits and Earnest Money]**. The following members of the public addressed the Commission with oral comments:

- Ms. Wiseman read into the record written comments from Richard J. Clemmer, President of D&D School of Real Estate.
- Alice Walker, licensee and Regulatory Affairs Chairperson of the Tennessee Association of Realtors
- Richard "Price" Lechleiter, Principal Broker of Zeitlin & Company, Realtors (firm license #58989)
- Ray Boudier, owner of Ray Boudier Schools of Real Estate
- Russ Farrar, Legal Counsel for the Tennessee Association of Realtors

**Commissioner Flitcroft made a motion to accept the proposed changes to Rule 1260-02-.09 provided the following amendments be made to the language. Language stating that rental deposits must be placed in a separate account should be added to 1260-02-.09(1) and the words "business days" should be substituted for the words "calendar days" in 260-02-.09(7). Commissioner Northern requested that the two parts of the motion be separated for clarity. The motion died for a lack of a second. Commissioner Flitcroft made a motion to accept the proposed changes to Rule 1260-02-.09 provided language be added to 1260-02-.09(1) stating that rental deposits must be placed in a separate account; seconded by Commissioner Alexander; Commissioner Northern offered a friendly amendment that the language state the rental deposits must be placed in a separate account in accordance with the Tennessee Landlord/Tenant Act. Commissioner Flitcroft and Commissioner Alexander accepted the friendly amendment by Commissioner Northern. The motion was opened to discussion. Ms. Wiseman advised the Commission that by including the language "in accordance with the Landlord/Tenant Act", it would obligate the Tennessee Real Estate Commission to monitor and enforce the Landlord/Tenant Act. Commissioner Northern withdrew his friendly amendment. Commissioner Alexander made a motion to amend to change the language of 1260-02-.09(7) to reflect 21 calendar days instead of 15 calendar days; seconded by Commissioner Tate; opened to discussion; roll call vote on amendment: 4 yes, 4 no; motion failed for lack of a majority. Commissioner Collins made a motion to accept the proposed rule changes to Rule 1260-02-.09 as written; seconded by Vice-Chairman Stephenson. There was no vote on Commissioner Collins motion because of a misunderstanding regarding the vote on the amendment. The amendment was re-voted; roll call vote on amendment: 5 yes, 3 no; amendment passed. Commissioner Flitcroft restated the motion as amended. The motion as amended accepted the proposed changes to Rule 1260-02-.09 provided language be added to 1260-02-.09(1) stating that rental deposits must be placed in a separate account and changing the language of 1260-02-.09(7) to reflect 21 calendar days instead of 15 calendar days; seconded by Commissioner Alexander; vote on motion as amended; 7 yes, 1 no; motion as amended carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-02-.12 [Advertising]**. The following members of the public addressed the Commission with oral comments:

- Ms. Wiseman read into the record written comments from Richard J. Clemmer, President of D&D School of Real Estate.
- Alice Walker, licensee and Regulatory Affairs Chairperson of the Tennessee Association of Realtors
- Jules Wade, Executive Vice President of the Memphis Area Association of Realtors
- Colleen Edwards, Association Executive of the Upper Cumberland Association of Realtors
- Lucy Smith, Affiliate Broker at Fridrich and Clark Realty (firm #256447)

**Commissioner Flitcroft made a motion to accept the proposed changes to Rule 1260-02-.12 provided the following changes are made to the language of the Rule. Rule 1260-02-.12(2)c) should be changed to read "No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease without written authorization from the owner of the advertised property of the owner's agent". In Rule 1260-02-.12(5)(a), the word "superlatives" should be omitted and the rule should read "Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited." The motion was seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-05-.12 [Current Title: Affiliate Brokers, Proposed Title: Continuing Education]**. The following members of the public addressed the Commission with oral comments:

- Ms. Wiseman read into the record written comments from Richard J. Clemmer, President of D&D School of Real Estate.
- Ray Boudier, owner of Ray Boudier Schools of Real Estate

**Commissioner Flitcroft made a motion to approve the proposed rule change to Rule 1260-05-.12; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

M. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-06-.04 [Disclosure of Rescission Rights]**.

**Commissioner Flitcroft made a motion to approve the proposed rule change to Rule 1260-06-.04; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Ms. Wiseman read into the record the substance of the proposed rule change to **Rule 1260-06-.11 [Renewal of Registration]**.

**Vice-Chairman Stephenson made a motion to approve the proposed rule change to Rule 1260-06-.11; seconded by Commissioner Northern; unanimous vote; motion carried.**

Ms. Wiseman addressed the Commission regarding the Economic Impact Statement previously discussed and voted on by the Commission. Regarding the type of small businesses directly affected by the proposed rule changes, Commissioner Northern submitted that the rules proposed and voted on during the hearing affect real estate schools and associations who offer education to licensees. He further submitted that the changes made at the hearing have no negative effect on the schools when comparing them to the rule changes as originally proposed. Commissioner Woods submitted that the proposed rules as amended at the hearing will have an impact on companies that employ or contract with TREC licensees (i.e. firms). Regarding a brief statement regarding the impact on said businesses, Ms. Wiseman suggested that there is a minimal impact on the businesses. **Commissioner Tate made a motion that counsel's wording as "minimal" is sufficient; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried. Regarding if there are alternative means that could accomplish the objectives of the proposed rules, Commissioner Flitcroft made a motion that no alternative means are readily available which accomplish TREC's goals as well as the proposed rule changes; seconded by Commissioner Tate; unanimous vote; motion carried.**

The Rulemaking Hearing adjourned at 12:18 p.m.

Chairman Haynes requested that Commissioner Collins, Vice-Chairman Stephenson and Commissioner Flitcroft act as a sub-committee to discuss the review of education courses and the appointment of a new Education Director.

#### **COMMISSIONER REPORTS**

Commissioner Woods, Commissioner Flitcroft, Commissioner Tate, Commissioner Alexander, Commissioner Northern, Commissioner Collins, Vice-Chairman Stephenson and Chairman Haynes reported on matters of concern or interest to the Commission.

Chairman Haynes addressed the need to adjourn the March 2009 meeting which was recessed and not adjourned. **Commissioner Northern made a motion to adjourn the March 2009 meeting; seconded by Commissioner Alexander; vote: 7 yes, 0 no; Commissioner Flitcroft abstained; motion carried.**

The attendees were presented certificates for attending the Commission meeting.

**Vice-Chairman Stephenson made a motion to adjourn; seconded by Commissioner Northern; unanimous vote; motion carried.**

Chairman Haynes adjourned the meeting April 2, 2009 at 12:29 p.m.