

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**December 2 - 3, 2009**

The Tennessee Real Estate Commission convened on December 2, 2009, at 9:09 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Wendell Alexander, Commissioner Charles Haynes, Commissioner Allen Woods, Commissioner William "Bear" Stephenson and Commissioner David Flitcroft. Commissioner Carol Tate and Commissioner Valerie Joh were absent. Others Present: Eve Maxwell, Executive Director, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the December 2009 Commission meeting. **Commissioner Alexander made a motion to adopt the agenda; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the November 2009 meeting (**Exhibit 2**). **Vice-Chairman Northern made a motion to approve the November 2009 meeting minutes; seconded by Commissioner Woods; vote: 4 yes, 0 no, Commissioner Haynes abstained as he was absent November 5, 2009 and Commissioner Flitcroft abstained as he was absent from the meeting; motion carried.**

**EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

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

- **Complaint Statistics Report (Exhibit 3)** – TREC has a total of **180** open complaints. Of those 180 open complaints, 58 are Errors & Omissions insurance complaints. There are 19 new complaints since the November 2009 meeting. There are 177 complaints in the legal department and 3 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2009-2010 is 251. Total Civil Penalties paid in November 2009 were \$49,920.00.
- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 4**) to the Commission on real estate licenses approved in 2008 & 2009 and the number of licensees as of November 30, 2009. As of November 30, 2009, there were 28,305 active licensees, 2,251 inactive licensees and 10,320 retired licensees. There were 4,472 active firms and 350 retired firms. There were 183 new applications approved in November 2009. Ms. Maxwell also presented statistics on license renewal percentages (i.e. how many sent by month, the number not renewed by the 61<sup>st</sup> day and the percentage of licensees not renewed). She also presented statistics on the number of test takers from 01/2007 – 11/30/2009 and the number of test takers by site from 01/01/2009 – 11/30/2009. Also presented was a comparison of the number of licensees and firms in 2008 and 2009.

There was a brief discussion regarding Errors & Omissions insurance compliance. Ms. Maxwell advised the Commission that although the number does fluctuate from day to day, there are approximately 180 uninsured active licensees.

The 2010 TREC meeting dates were discussed as a conflict was discovered since their prior adoption. Ms. Maxwell presented the following proposed schedule: January 6 – 7, 2010 in Nashville, February 3 – 4, 2010 in Nashville, March 9 – 10, 2010 in Murfreesboro, April 15 – 16, 2010 in Chattanooga, May 13- 14, 2010 in Memphis, June 2 – 3, 2010 in Nashville, July 7 – 8, 2010 in Nashville, August 4 – 5, 2010 in Nashville, September 2 – 3, 2010 in Jackson, October 7 – 8, 2010 in Sevier County, November 3 – 4, 2010 in Nashville and December 1 – 2, 2010 in Nashville. **Commissioner Woods made a motion to adopt the revised schedule as presented by Ms. Maxwell; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**

There was a discussion regarding reciprocity and residency. Ms. Maxwell presented the Commission with a report regarding the Mississippi Real Estate Commission's licensing procedure as it relates to reciprocity. The report included the following information.

*Of the states with whom Tennessee has reciprocity, Mississippi appears to be the only state that unequivocally allows one be a resident of Mississippi (the home state) and to apply for a reciprocal license in that home state. The general requirement is that the person be a non resident and hold an active license in the home state in order to apply for a license by reciprocity in another state. This is what Tennessee requires. One must be a non resident in order to qualify to apply for a license by reciprocity. If an individual licensed in another state moves to Tennessee, then that person is no longer eligible to get a license through reciprocity. Mississippi has two supplements to its application for reciprocity, one is for a "resident" of Mississippi and one is for a "nonresident" of Mississippi. Robert Praytor, the director of the Mississippi Real Estate Commission, states that its statute allows anyone from any state to qualify (with required education and background check) and sit for the licensing exam. Reciprocity in Mississippi is basically identical to reciprocity in Tennessee except for the fact that the Mississippi statute allows a Mississippi resident to become licensed in Mississippi based on their holding a license in another state. Mr. Praytor states that this fact is based upon the ruling by the United States District Court, Southern District of Mississippi, Jackson Division in the action Tennessee Association of Realtors, Inc., A Tennessee Corporation, Charles E. Askew, and Scott P. Ledbetter, Plaintiffs, v. Mississippi Commission, Mary Lib Francis, Elaine Nix, Terry G. Winstead, Daniel L. Bland and Harry J Joachim, Defendants, decided by Agreed Order dated September 21, 1990. This lawsuit was an action by Plaintiffs seeking injunctive and declaratory relief with respect to certain provisions of the Mississippi statutes which required a person to be a resident of Mississippi to obtain a Mississippi real estate license. The Plaintiffs asked the court to enjoin the Mississippi Real Estate Commission and its individual commissioners from enforcing the terms of this statute. The Plaintiffs asked the court to enjoin the Mississippi Real Estate Commission and its individual commissioners from enforcing the terms of this statute. The Plaintiffs requested that the portions of the statute requiring residency be declared unconstitutional and in violation of the Privileges and Immunities Clause of the U. S.*

*Constitution. The Court held that the portions of the Mississippi code which required that a person be a resident of Mississippi and maintain a definite place of business within Mississippi in order to obtain a Mississippi real estate license to be unconstitutional as violative of the Privileges and Immunities Clause of the Constitution of the United States. The Court permanently enjoined MREC and its individual commissioners from enforcing a provision which established a requirement for residency in order to obtain a Mississippi real estate license. The Court further ordered that non resident applicants need not maintain a place of business within Mississippi provided that the non-resident applicant is regularly engaged on active status in the real estate business and maintains a place of business in another state. This Agreed Order handed down by the U.S. District Court in 1990 formed the basis for Mississippi's approach to reciprocity. Mr. Praytor also states that MREC always makes its own determinations regarding the licensing of its residents and any applicant (licensed elsewhere or not) that has a felony conviction must appear before MREC to explain the felony conviction and MREC would then conduct its own investigation and make its decision independent of any other state's decisions. Mr. Praytor notes that MREC, like TREC, scrutinizes applications based on reciprocity just as it would any other application, so that an applicant applying through reciprocity does not get a "rubber stamp" just as a resident applicant would not.*

Commissioner Haynes expressed that he believes reciprocity should be implemented consistently across all states. There was a discussion regarding residency being a requirement of licensure.

**Commissioner Haynes made a motion to discontinue Tennessee's reciprocal agreement with Mississippi to be consistent; seconded by Commissioner Alexander for discussion; opened to discussion; vote was 4 yes (Commissioner Haynes, Commissioner Alexander, Commissioner Stephenson and Commissioner Collins voted yes) and 3 no (Commissioner Woods, Commissioner Flitcroft and Vice-Chairman Northern voted no.); motion carried. Ms. Maxwell confirmed the vote of 4 yes and 3 no to no longer have reciprocity with Mississippi.**

**Commissioner Woods made a motion requesting that the Commission request TREC Staff ask for a formal legal opinion from the Attorney General's office regarding whether the Commission can legally do what they voted on and passed at the November meeting. He stated he as a personal attorney has some questions that he would not raise at that time; seconded by Commissioner Haynes if Commissioner Woods will direct his motion at the federal government because it is the federal government that has imposed this in Mississippi not the State of Tennessee.** Chairman Collins stated that Commissioner Woods is just asking for an opinion if the State can make the decision. Ms. Ryan explained that if the Attorney General's office agrees to take this opinion, they would consider the law we have federally in another state as well as our own laws and would give TREC an opinion regarding if we as a state can do what we are trying to do without violating our state laws or violating any federal laws. **Vice-Chairman Northern called for the question on the motion. Commissioner Woods was asked to restate his motion. Commissioner Woods restated his motion as**

**follows: "we ask staff to ask to for an Attorney General's opinion on whether or not we can make, create or establish a different Tennessee licensing requirement for non-Tennessee residents from states with which we have reciprocity and states with which we do not have reciprocity which he believes is what was passed by motion at the November 2009 meeting. He wants an Attorney General's opinion of whether TREC can legally take that action. The motion was originally seconded by Commissioner Haynes. There was a roll call vote on Commissioner Woods motion; the vote was unanimous with no dissenting votes; motion carried. Commissioner Northern made a motion that since Commissioner Wood's motion passed, then any action should be deferred and revisited once the Attorney General's opinion is received and reviewed by the Commission and Staff; seconded by Commissioner Woods; roll call vote: 4 yes (Chairman Collins, Vice-Chairman Northern, Commissioner Woods and Commissioner Flitcroft voted yes), 3 no (Commissioner Haynes, Commissioner Alexander and Commissioner Stephenson voted no.); motion carried. Commissioner Haynes made a motion to listen to the recordings from the November TREC meeting specifically the portion regarding reciprocity so that those members of the Commission who were not present could hear what was discussed as he believes it would be time well spent; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

#### **INFORMAL CONFERENCE**

**Kelvin Coleman, applicant,** appeared with his principal broker Hollace McKinley to request approval for an affiliate broker license. Mr. Coleman disclosed convictions of Possession of a Weapon in 1994, Reckless Endangerment in 1995 and Weapon – Unlawful Possession in 1998. **Commissioner Stephenson made a motion to approve; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**

Chairman Collins recessed the meeting for lunch at 10:43 a.m. and reconvened at 12:54 p.m.

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

Ms. Maxwell presented courses for Commission evaluation (**Exhibit 3**). **Commissioner Flitcroft made a motion to deny the course (D29) "Reverse Mortgages for Senior Home Owners"; seconded by Commissioner Haynes; unanimous vote; motion carried.** Vice-Chairman Northern had previously reviewed the course "Accredited Staging Professional" online and reported to the Commission. He believes the course to be useful and relative to the real estate industry. Commissioner Alexander suggested the course be deferred another month to give other Commissioners an opportunity to review the course. **Commissioner Haynes made a motion to approve the remaining Courses Presented for Commission Evaluation; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

#### **INSTRUCTOR APPROVAL REQUESTS**

National Business Institute sought approval for David Flitcroft to be approved as an instructor to teach the following approved seminar course: 7 hour Real Estate Law:

Advanced Issues and Answers to be presented on December 8, 2009. **Commissioner Stephenson made a motion to approve the request; seconded by Commissioner Woods; vote: 5 yes, 0 no, Commissioner Flitcroft abstained; motion carried.**

Williamson County Association of Realtors (WCAR) sought approval for Larry Carroll to be approved as an instructor to teach the following approved course: Short Sales and Foreclosures: What Real Estate Professionals Need to Know. **Vice-Chairman Northern made a motion to approve; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

**Ms. Maxwell and Ms. Ryan presented a request by Mr. Patrick Hitt, license #290522.** Mr. Hitt is requesting the Commission accept his successful completion of his MBA program as the completion of the remaining 71 hours of continuing education for his Broker's license. The request was originally presented by Ms. Maxwell at the August 2009 meeting. This was the motion made by Commissioner Flitcroft in August 2009: *Ms. Maxwell presented a request from Patrick Hitt, licensee #290522. Mr. Hitt requested that the Commission accept his successful completion of his MBA program as the completion of the remaining 71 hours of continuing education on his broker's license. Commissioner Flitcroft made a motion to defer until TREC's legal counsel has the opportunity to review the statute in relation to Mr. Hitt's request; seconded by Commissioner Woods; unanimous vote; motion carried.* Robyn Ryan, Assistant General Counsel, has had an opportunity to review the statute in relation to Mr. Hitt's request and reported and discussed the request with the Commission. **Commissioner Woods made a motion to deny the request; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**

#### **INFORMAL CONFERENCE**

**Donna Hicks, applicant,** appeared with her principal broker Kimberley Fram to request approval for an affiliate broker license. Ms. Hicks disclosed convictions of Possession of 70 lbs of Marijuana and four counts of Money Laundering in 1999. **Commissioner Woods made a motion to approve; seconded by Commissioner Flitcroft; vote: 4 yes, 1 no (Commissioner Haynes voted no.), Commissioner Alexander and Commissioner Stephenson abstained; motion carried.**

Prior to lunch, Commissioner Haynes made a motion to listen to the recording from the November TREC meeting specifically the portion regarding reciprocity. The Commission listened to the discussion from the previous month. Any further discussion was deferred until Commissioner Woods returned to the meeting.

Commissioner Woods left the meeting at 2:00 p.m. for a court appearance and returned at 2:47 p.m.

Commissioner Haynes left the meeting at 2:20 p.m. and did not return.

**LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL**

- 1) **2006045161 &**
- 2) **2008000671 &**
- 3) **2008009182 &**
- 4) **2008009181 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 5) **2008012841 – Vice-Chairman Northern made a motion to defer since Commissioner Tate has reviewed the complaint and she is absent from the meeting; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 6) **2007050761 – Commissioner Flitcroft had previously reviewed the complaint. Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$1,000.00 and requiring eight (8) hours in ethics and sixteen (16) hours in contract writing of continuing education and attendance at a two day Commission meeting; motion failed for lack of a second; opened to discussion. After discussion, Commissioner Stephenson made a motion to defer and have Commissioner Alexander review the complaint and hold an informal conference with the respondent; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 7) **2007066161 – Commissioner Woods had previously reviewed the complaint. Because he was temporarily absent from the meeting, the complaint was moved to the end of the docket.**
- 8) **2007085681 – Vice-Chairman Northern made a motion to dismiss and flag the file; seconded by Commissioner Stephenson; unanimous vote; motion carried. Commissioner Alexander made a motion to send an Agreed Citation for a lapse in Errors & Omissions insurance; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 9) **2007088651 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Commissioner Woods rejoined the meeting at 2:47 p.m. Therefore, Ms. Ryan returned to #7.

- 7) **2007066161 – Commissioner Woods recommended the complaint be dismissed. Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Stephenson; vote: 4 yes, 0 no, Commissioner Woods abstained; motion carried.**
- 10) **2007089441 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 11) **2007089081 – Commissioner Woods made a motion to accept legal counsel’s recommendation to send a Letter of Instruction requiring eight (8) hours of continuing education in contract writing; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 12) **2007089071 – Vice-Chairman Northern made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil**

- penalty of \$1,000.00 for violation of Rule 1260-2-.12 (b) and 62-13-312(b)(14); seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 13) 2009021741 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
  - 14) 2007087351 &
  - 15) 2007087352 &
  - 16) 2007087353 &
  - 17) 2007087354 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to send a Letter of Warning to Respondent 1 & 3 regarding Rule 1260-2-.02 and dismiss as to Respondent 2 & 4 and he further included in his motion that eight (8) hours of ethics continuing education be completed by Respondent 1 & 3; seconded by Commissioner Alexander; unanimous vote; motion carried.
  - 18) 2007087951 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to close and flag; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
  - 19) 2007087971 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
  - 20) 2008009561 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
  - 21) 2007089001 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
  - 22) 2007086641 – Commissioner Stephenson made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
  - 23) 2008000641 &
  - 24) 2008000642 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
  - 25) 2008000801 – Vice-Chairman Northern made a motion to hold an informal conference with a Commissioner and the Respondent; seconded by Commissioner Woods; unanimous vote; motion carried.

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

Chairman Collins recessed the meeting Wednesday, December 2, 2009 at 3:51 p.m.

**TENNESSEE REAL ESTATE COMMISSION**  
**December 3, 2009**

The Tennessee Real Estate Commission reconvened on December 3, 2009 at 9:07 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Wendell Alexander, Commissioner Allen Woods, Commissioner William "Bear" Stephenson and Commissioner David Flitcroft. Commissioner Carol Tate, Commissioner Valerie Joh and Commissioner Charles Haynes were absent. Others Present: Eve Maxwell, Executive Director, Robyn Ryan, Assistant General Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.**

The Commission stood in recess at 9:08 a.m. to conduct a formal hearing in the matter of **Ricky Lain, license #232401, Docket # 12.18-103981A and Mark Hamilton, license #277349, Docket # 12.18-103982A.**

In the matter of Ricky Lain, license #232401, Docket # 12.18-103981A, the Commission voted to assess a penalty requiring payment of one-half (1/2) the costs of the formal hearing plus \$500.00, a \$1,000.00 civil penalty, six (6) hours of continuing education in contract writing, four (4) hours of continuing education in ethics and required attendance at a two day Tennessee Real Estate Commission meeting within six month. Mr. Lain's license will be suspended until all of the above penalties are paid and continuing education completed.

In the matter of Mark Hamilton, license #277349, Docket # 12.18-103982A, the Commission voted to assess a penalty requiring payment of one-half (1/2) the costs of the formal hearing less \$500.00, six (6) hours of continuing education in contract writing, four (4) hours of continuing education in ethics and attendance at a two day TREC meeting within six months.

The formal hearing adjourned at 1:47 p.m.

The Commission readdressed the residency and reciprocity issue discussed the first day of the meeting. Ms. Maxwell reviewed the motions made and passed the previous day. She advised it was ultimately decided by the Commission that all decisions regarding the issues of residency and reciprocity be deferred until the Attorney General's opinion is received. Commissioner Woods suggested that the discussion be added to the January 2010 meeting agenda since several Commissioners with opposing views had left the meeting. It was determined that any action be suspended regarding reciprocity and residency therefore current practices will remain status quo at this time.

Chairman Collins adjourned the meeting Thursday, December 3, 2009 at 2:02 p.m.