

TENNESSEE REAL ESTATE COMMISSION MINUTES
June 3 - 4, 2009

The Tennessee Real Estate Commission convened on June 3, 2009, at 9:23 a.m. at the Sumner County Administration Building, 355 N. Belvedere Drive, Gallatin, TN 37066. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Grover Collins, Commissioner Wendell Alexander, and Commissioner Isaac Northern. Commissioner Carol Tate joined the meeting at 9:29 a.m. Commissioner David Flitcroft 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 June 2009 Commission meeting. **Commissioner Alexander made a motion to adopt the agenda; seconded by Commissioner Joh; unanimous vote; motion carried.**

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

Kathryn Wiseman, Chief Legal Counsel introduced Robyn Ryan. Ms. Ryan will be the Tennessee Real Estate Commission's new attorney. The Commissioner individually introduced themselves to Ms. Ryan.

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 **291** open complaints. There are 17 new complaints since the May 2009 meeting. There are 285 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 216. Total Civil Penalties paid in May 2009 were \$17,130.00.
- **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 June 1, 2009. As of June 1, 2009, there were 28,981 active licensees, 3,793 inactive licensees and 10,001 retired licensees. There were 4,484 active firms and 326 retired firms. There were 277 new applications approved in May 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, a daily list of the number of uninsured licensees and copies of the letters

recently sent to principal brokers and uninsured licensees (Exhibit 5). The policy regarding penalties to licensees for failure to obtain Errors & Omissions insurance was discussed. There was discussion about when the formal hearings will begin. Ms. Wiseman advised that it would probably be September before formal hearings can begin. It was determined that the 110 principal brokers without Errors and Omissions insurance would be given priority for formal hearings. **Commissioner Alexander made a motion that if a notice is not accepted or returned, then an auditor will hand deliver the letter or citation to the firm; seconded by Commissioner Northern; vote: 7 yes, 1 no (Commissioner Woods voted no.); motion carried.**

- **TREC News Journal** – Ms. Maxwell advised the Commission she is working on the approval of the summer issue of the TREC News Journal. She explained that she is working with the administration to determine if the News Journal can be bid by a Request for Proposal or if it can be bid by Invitation to Bid. She explained the differences between bidding by RFP and Invitation to Bid. Chairman Haynes suggested a cookie cutter format be used for the News Journal to simplify the process to bid. Additionally, topics for the next newsletter were discussed.
- (Exhibit 6) There was a discussion involving a provision of TCA 62-13-303(d) which states: (d) Each applicant who passes the examination shall submit an application for the appropriate license to the commission. If such application is not filed within six (6) months after the date of the examination passed, the applicant must retake and pass the examination in order to be eligible for a license. On the day that an applicant takes the test and passes, the applicant receives a confirmation (on security paper) that the applicant passed the exam and the date the exam was taken. TREC has traditionally counted the 6 months from the date that the applicant passed the exam. That is the date listed on their confirmation that is received by the applicant before they leave the testing center. Ms. Maxwell explained that there was a question raised about whether the 6 months, which is statutory, should start on the date that the exam results are given or whether the six months should begin on the day after the results are given. It was the consensus of the Commission that the 6 months should begin on the day after the results are given. **Commissioner Woods made a motion that the Commission adopt the interpretation of TCA 62-13-303(d) for the purpose of totaling the 6 month time period to submit the application for the license, that the 6 months start the day after the applicant receives notice that they passed the exam; seconded by Commissioner Northern; unanimous vote; motion carried.**
- **ARELLO** – Ms. Maxwell discussed with the Commission the upcoming ARELLO District 2 Meeting on June 25 – 27, 2009 in Louisville, Kentucky.

There was a discussion regarding testing sites. **Commissioner Alexander made a motion that Dyersburg be deleted as a test site; seconded by Commissioner Woods; opened to discussion; Commissioner Alexander withdrew his motion.**

Ms. Wiseman asked the Commission for their opinion regarding whether a real estate agent can receive a referral fee from a builder. She presented the following scenario. An agent represents someone in the purchase of a lot. Then the purchaser asks the agent to be referred to someone in that area who could build a home on that lot. The agent refers their client to a builder and that builder then pays the agent a referral fee. Ms. Wiseman asked if this was an acceptable practice. **After discussion, it was the consensus of the Commission that it is acceptable for an agent to receive a referral fee from a builder, but it has to be disclosed and paid through the broker.**

Chairman Haynes recessed the meeting for lunch at 11:22 a.m. The meeting reconvened at 1:13 p.m.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented courses for Commission evaluation **(Exhibit 7). Commissioner Joh made a motion to approve pages 1 – 11 of the report of courses for Commission evaluation; seconded by Commissioner Collins; unanimous vote; motion carried.** Ms. Maxwell presented a course requiring discussion. **Vice-Chairman Stephenson made a motion to defer the course "Mastering the Art of Telephone Prospecting – Not Just Cold Calling"; seconded by Commissioner Joh; unanimous vote; motion carried.**

Instructor Reviews (Exhibit 8)

- The Tennessee Association of Realtors requested that Mr. Steve Champion be approved to teach the TREC Core 09/10 course.
- Sterling Education Services requested that David Blaylock, Clayton C. Purdom, Richard Spore, III and Joshua Lawhead be approved as teachers for the approved course, Negotiating Commercial Leases, to be taught in Memphis on September 15, 2009.

Commissioner Joh made a motion to approve Steve Champion, David Blaylock, Clayton C. Purdom, Richard Spore, III and Joshua Lawhead to teach the courses as requested; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Joh made a motion to give Chairman Haynes the authority to get a plaque for the Lobbyist of the Year at not cost to the State of Tennessee; seconded by Commissioner Alexander; unanimous vote; motion carried.

At the May 2009 Commission meeting, Commissioner Alexander made a motion that carried unanimously to defer a discussion regarding the course review process for education courses to provide the Commission the opportunity to listen to the past recordings regarding the education review process at the June meeting. It was decided

that the Commission need not listen to the recordings. Ms. Maxwell asked the Commission to clarify the process for course review. She asked if the schools have to turn in just the new applications or the new applications with all course materials. She also inquired about the existence of a September 30, 2009 deadline and if the applications are due 120 days prior to that date or if the 120 days is not applicable.

Chairman Haynes asked if TAR got legislation passed to cap the cost of the courses. **Commissioner Collins made a motion to suspend the rules to allow Chris Sexton, Director of Governmental Affairs for the Tennessee Association of Realtors to address the Commission; seconded by Commissioner Alexander; unanimous vote; motion carried.** Chris Sexton, Director of Governmental Affairs for the Tennessee Association of Realtors gave the Commission a legislative update on Public Chapter No. 287, House Bill No. 1742 (substituted for Senate Bill No. 1176).

The discussion returned to the course review process. It was the consensus of the Commission that the new course and instructor applications must be submitted by June 30, 2009 and the Commission will make every effort to review the applications by September 30, 2009.

COMMISSIONER REPORTS

Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Grover Collins, Commissioner Carol Tate, Commissioner Wendell Alexander, and Commissioner Isaac Northern reported on matters of concern to them and to the Commission.

Assistant Commissioner of Regulatory Boards Steve Majchrzak addressed the Commission. Mr. Majchrzak discussed the expectations of the Commission regarding the review by Staff of course and instructor applications. He discussed that the Commission by a previous action had asked for an amended form to secure additional information for courses and instructors that previously went through the approval process. The new forms were not meant as a reapplication process but as an amendment to the original applications. He further understood that the schools do not need to send all of the course materials with the exception of additional information on instructors. Staff will review the new applications and in light of past discussions among the Commission or sensitivities of the Commission will bring back those courses or instructors that raise questions about the substance of the curriculum or qualifications of the instructor. The Commission could then review the courses and withdraw approval or confirm the original approval. He also explained that he now has a clear idea of the expectations for the Education Director position. The options to fill the position are being analyzed. He further explained the process for hiring a new Education Director.

Chairman Haynes addressed the assembly, publication and delivery of the TREC News Journal. He suggested that the Commission could save a sizable amount of money if the contract is bid to an outside vendor. Assistant Commissioner Majchrzak advised the Commission that all publications are required to get approval from the Administration of the Department of General Services. A publication request from must be completed and it is good for one calendar year.

Chairman Haynes explained that the staggering of renewals has created a problem with licensees staying in compliance with the Errors & Omissions insurance requirement. He asked if it is possible to have legislation proposed to allow the Commission to take faster action against violators. Assistant Commissioner Majchrzak advised that to revoke a license, there must be due process and a hearing.

Assistant Commissioner Majchrzak addressed the processing of complaints. He advised that within the next three to six months changes will be made to allow for a better capacity to handle issues and keep track of caseloads.

Chairman Haynes recessed the meeting Wednesday, June 3, 2009 at 3:41 p.m.

TENNESSEE REAL ESTATE COMMISSION
June 3 - 4, 2009

The Tennessee Real Estate Commission reconvened on June 4, 2009 at 9:11 a.m. at the Sumner County Administration Building, 355 N. Belvedere Drive, Gallatin, TN 37066.

The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Grover Collins, Commissioner Carol Tate, Commissioner Wendell Alexander, and Commissioner Isaac Northern. Commissioner David Flitcroft was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Legal Counsel and Kelly McDermott, Administrative Secretary.

Legal Report, Kathryn Wiseman, Legal Counsel (Exhibit 9)

- 1) 2009004031 &
- 2) 2009004032 &
- 3) 2008008901 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 4) 2009000501 – Vice-Chairman Stephenson made a motion to defer to the July Commission meeting; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 5) 2007070442 – Commissioner Alexander made a motion to let the decision reached at the October 2008 Commission meeting regarding this complaint stand; seconded by Vice-Chairman Stephenson; roll call vote: 7 yes, 0 no; Commissioner Woods abstained as he had previously reviewed the complaint; motion carried.
- 6) 2007080001 &
- 7) 2007080002 – Commissioner Collins made a motion to accept legal counsel's recommendation to close and flag complaint # 2007080001 and the respondent must appear before the Commission if he applies for licensure and dismiss complaint # 2007080002; seconded by Commissioner Woods
- 8) 2007049881– Vice-Chairman Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.

- 9) **2007078291 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**
- 10) **2007087261 &**
- 11) **2007070711 – Commissioner Northern made a motion to accept legal counsel’s recommendation to close with a Letter of Warning; seconded by Commissioner Tate; unanimous vote; motion carried.**

Ms. Wiseman reviewed the Legal File Summary and Consent Order Log with the Commission. **Commissioner Alexander made a motion to have counsel request the purchase date of Errors & Omissions insurance from Rice Insurance when preparing for the filing of charges in respect to E&O.** Ms. Wiseman advised that Staff secures this information currently. There was a brief discussion regarding the advantage to using auditors instead of investigators.

Ms. Wiseman presented the Commission with a legislative update (Exhibit 10) 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 attendees were presented certificates for attending the Commission meeting.

Chairman Haynes adjourned the meeting Thursday, June 4, 2009 at 10:29 a.m.