

TENNESSEE REAL ESTATE COMMISSION MINUTES
September 2, 2009

The Tennessee Real Estate Commission convened on September 2, 2009, at 9:11 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 David Flitcroft, Commissioner Charles Haynes, Commissioner William "Bear" Stephenson, Commissioner Carol Tate and Commissioner Allen Woods. Commissioner Valerie Joh was 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 September 2009 Commission meeting. **Commissioner Alexander made a motion to adopt the agenda; seconded by Commissioner Woods; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the August 2009 meeting (**Exhibit 2**). **Commissioner Tate made a motion to approve the August 2009 meeting minutes; seconded by Commissioner Woods; vote: 6 yes, 0 no, Commissioner Flitcroft abstained as he was absent from the meeting August 13, 2009; motion carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

There was a brief discussion regarding enacting legislation to stop the staggering of licenses. Additional discussion was deferred.

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

- **Complaint Statistics Report (Exhibit 3)** – TREC has a total of **307** open complaints. Of those 307 open complaints, 84 are Errors & Omissions insurance complaints. There are 25 new complaints since the August 2009 meeting. There are 306 complaints in the legal department and 1 open complaint in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2009-2010 is 73. Total Civil Penalties paid in August 2009 were \$7,005.00.
- **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 August 31, 2009. As of August 31, 2009, there were 28,784 active licensees, 3,062 inactive licensees and 10,079 retired licensees. There were 4,458 active firms and 346 retired firms. There were 221 new applications approved in August 2009. Ms. Maxwell also presented statistics on license renewal percentages (i.e. how many sent by month, the number not renewed by the 61st day and the percentage of licensees not renewed). She also presented statistics on the number of test takers from 08/01/2005-

08/30/2009 and the number of test takers by site from 01/01/2009 – 08/30/2009.

- **Single Licensure** – Ms. Maxwell reported to the Commission on the licensing structure of single licensure (Exhibit 5). She explained single licensure is a structure in which all real estate licensees have the same designation. She further explained that it eliminates the two tier system of salespersons and brokers and makes every licensee more responsible for their own acts. She advised that Colorado, Oregon, South Dakota and North Carolina have adopted single licensure. There was discussion among the Commissioners regarding the characteristics, advantages and drawbacks of single licensure.
- **Errors & Omissions Insurance** – Ms. Maxwell presented a report on Errors & Omissions noncompliance from 2003 to 2009 by quarter. She also presented statistics regarding the cost of Errors & Omissions enforcement. There was further discussion regarding how Errors & Omissions compliance was enforced historically. Commissioner Haynes reiterated that he suggests legislation be proposed to discontinue the staggering of licenses.

APPLICANT/LICENSEE CONFERENCE

Thomas P. Lynch, revoked licensee, license # 14784 appeared with his potential principal broker Pam Peck to request he be reconsidered for an affiliate broker license. Mr. Lynch agreed to revocation of his license on 01/05/2000 (effective 01/01/2000) in lieu of any previous penalties assessed by the Commission. **Commissioner Flitcroft made a motion to approve contingent upon Mr. Lynch retaking the pre-licensing courses, passing the affiliate broker examination, a letter being placed in the file from the principal broker regarding his appearance and his past actions and any time an auditor audits the firm it should be confirmed Mr. Lynch is only doing referrals; seconded by Commissioner Tate; vote: 3 yes, 5 no; motion failed. Mr. Lynch's request that he be reconsidered for an affiliate broker license was denied.**

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented courses for Commission evaluation (**Exhibit 6**). **Commissioner Stephenson made a motion to approve the course "How to Build a Web Site for four (4) hours; seconded by Commissioner Haynes; unanimous vote; motion carried. Commissioner Woods made a motion to approve the remaining courses presented for Commission evaluation; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Ms. Maxwell presented the following instructors who have submitted their information on the new Instructor Form (Exhibit 7). She has reviewed the Instructor Forms and the accompanying back up certificates, licenses and documents. She believes that the following individuals are currently qualified to teach the courses/disciplines for which they have sought approval from the Commission and based upon her review, she recommended that they be approved, if that is what the Commission decides.

- 1) Candy Roberts Joyce
- 2) Connie Shelton

- 3) Mike Stubblefield
- 4) Carey Peacock
- 5) David Carroll
- 6) Debbie Garvin
- 7) Brenda Akin
- 8) Blaine Little
- 9) Jack Dugger
- 10) Michael Wrathner
- 11) Joseph Swanson
- 12) James Yates
- 13) Curtis Hall
- 14) Bruce Ayt
- 15) Dave Floyd
- 16) Gene Trowbridge
- 17) John Reilly
- 18) Camille Wade
- 19) Melanie McLane
- 20) Paul Gaddes
- 21) Bill Schlueter
- 22) Tom Lundstedt
- 23) John Rochford
- 24) Zan Monroe
- 25) Elizabeth D. Morgan

Vice-Chairman Northern made a motion to approve the above 25 instructors; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Chairman Collins recessed the meeting for lunch at 10:56 a.m. The meeting reconvened at 1:17 p.m.

INFORMAL CONFERENCES

Tiffani R. Metzger, applicant, appeared before the Commission with her potential Principal Broker Larry Chappell to seek approval for an affiliate broker license. Ms. Metzger disclosed convictions of Battery Resulting in Bodily Injury and Resisting Law Enforcement in 2002 and Resisting Law Enforcement, Disorderly Conduct and Public Intoxication in 2006. **Commissioner Haynes made a motion to approve; seconded by Commissioner Stephenson; unanimous vote; motion carried**

Jeff M. Carroll, applicant, appeared before the Commission with his potential Principal Broker Colene Dooley to seek approval for an affiliate broker license. Mr. Carroll disclosed convictions of Reckless Driving and DUI in 2002 and Possession/Casual Exchange and Sale of Marijuana in 2005. **Commissioner Northern made a motion to approve; seconded by Commissioner Stephenson; unanimous vote; motion carried**

LEGAL REPORT, ROBYN RYAN, GENERAL COUNSEL (EXHIBIT 8)

Ms. Ryan discussed with the Commission that numerous licensees, upon receipt of the Errors & Omissions violation notice, sent on May 22, 2009, came into compliance and obtained the required Errors & Omissions policy prior to any action from the legal division. There was discussion regarding possible alternatives to formal hearings for revocation such as a monetary civil penalty. **Commissioner Stephenson made a motion to assess a civil penalty of \$800.00 in lieu of a formal hearing for revocation; seconded by Vice-Chairman Northern; opened to discussion; Commissioner Alexander made a motion to amend the civil penalty to \$1,000.00; seconded by Commissioner Haynes; vote on amendment: 5 yes, 2 no, Commissioner Woods abstained; amendment passed; vote on motion as amended: 7 yes, 1 no (Commissioner Stephenson voted no.); motion as amended carried.** There was a discussion regarding whether the \$300.00 penalty for failure to purchase Errors & Omissions insurance from 4/1/09 – 04/30/2009 also applied to those whose license was subject to revocation. After discussion, it was the consensus of the Commission that the \$1000.00 penalty is inclusive of the \$300.00 penalty. **Commissioner Alexander made a motion that the agreed upon \$1,000.00 penalty be inclusive of the \$300.00 penalty; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Commissioner Haynes left the meeting at 1:59 p.m. and returned at 2:01 p.m.
Chairman Collins left the meeting at 1:59 p.m. and returned at 2:02 p.m.
Vice-Chairman Northern acted as Chairman from 1:59 p.m. to 2:06 p.m.

- 1) 2007080631 &
- 2) 2007079391 &
- 3) 2007079392 &
- 4) 2007980071 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
- 5) No complaint on report – inadvertently skipped
- 6) 2007050091 – Commissioner Stephenson had previously reviewed the complaint and recommended it be dismissed. Commissioner Woods made a motion to dismiss; seconded by Commissioner Tate; vote: 5 yes, 0 no; Commissioner Stephenson and Commissioner Haynes abstained; motion carried.
- 7) 2007065271 – Commissioner Alexander had previously reviewed the complaint and he recommended it be dismissed. Commissioner Haynes made a motion to dismiss; seconded by Commissioner Tate; vote: 6 yes, Commissioner Alexander abstained; unanimous vote; motion carried.

Commissioner Flitcroft left the meeting at 2:05 p.m. and returned at 2:07 p.m.

- 8) 2008022961 –
- 9) 2008022962 &
- 10) 2008022891 &
- 11) 2008022892 – Vice-Chairman Northern had previously reviewed the complaint and recommended it be dismissed. Commissioner Haynes made a motion to dismiss; seconded by Commissioner Tate; vote: 6 yes, Vice-Chairman Northern abstained; motion carried.

- 12) **2007066161 –The complaint was deferred.**
 - 13) **2008012841 – The complaint was deferred until the October meeting.**
 - 14) **2007080031 &**
 - 15) **2007080032 – Commissioner Stephenson made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
 - 16) **2009004891 &**
 - 17) **2009006161 – Commissioner Stephenson made a motion to take legal counsel’s recommendation to defer the complaint until the January 2010 for full review if not resolved in Criminal Court; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
 - 18) **2007068641 – Commissioner Tate made a motion to take legal counsel’s recommendation to issue a Consent Order requiring respondent to complete 10 hours of continuing education in contract writing; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Flitcroft made a motion to initiate a complaint against the respondent’s principal broker for failure to supervise; seconded by Commissioner Haynes; opened to discussion; Vice-Chairman Northern made a motion to audit the firm to determine if the principal broker was involved; Commissioner Flitcroft withdrew his motion; seconded by Commissioner Haynes; unanimous vote; motion carried.**
 - 19) **2007070851 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.**
 - 20) **2007070681 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to close the complaint with a Letter of Warning; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
 - 21) **2007072081 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
 - 22) **2007076701 – Commissioner Woods made a motion to issue a Consent Order with a civil penalty of \$500.00 and requiring eight (8) hours of continuing education in ethics within 12 months; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Haynes made a motion to amend the civil penalty to \$1,000.00; seconded by Commissioner Alexander; amendment passed unanimously; motion as amended passed unanimously.**
- Commissioner Haynes left the meeting at 2:30 p.m. and returned at 2:35 p.m.
- 23) **2007071931 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
 - 24) **2007078151 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
 - 25) **2007071581 – Vice-Chairman Northern made a motion to accept legal counsel’s recommendation to send a Letter of Warning regarding Rule 1250-2-12; seconded by Commissioner Woods; unanimous vote; motion carried.**

- 26) **2007077891 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 27) **2006038971 – Commissioner Flitcroft made a motion to refer the complaint to the county district attorney; seconded by Vice-Chairman Northern; unanimous vote; motion carried. Commissioner Alexander made a motion to audit the successor firm in existence now; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 28) **2007078311 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 29) **2007074851 &**
- 30) **2007074852 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 31) **2007078261 &**
- 32) **2007078262 &**
- 33) **2007078263 &**
- 34) **2007078264 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 35) **2007078551 &**
- 36) **2007078552 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Commissioner Haynes left the meeting at 3:02 p.m. and did not return.

- 37) **2007078781 &**
- 38) **2007078782 – Commissioner Alexander made a motion to issue a Consent Order requiring the respondents to complete eight (8) hours of continuing education in Ethics and attend a two day Commission meeting; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 39) **Commissioner Woods made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 40) **2009007981 &**
- 41) **2009007982 – Commissioner Woods made a motion to issue a Consent Order requiring the respondents complete 20 hours of continuing in Contract Writing, 10 hours in Ethics and attend a two day Commission meeting all to be completed within 12 months; seconded by Commissioner Stephenson for discussion; opened to discussion; Commissioner Stephenson made a motion to reduce the number of required continuing education hours to 10 hours in Contract Writing and four (4) hours in Ethics; no second; motion failed for lack of a second; opened to discussion; Commissioner Alexander made a motion to also assess a \$1,000.00 civil penalty; seconded by Commissioner Flitcroft; amendment passed unanimously; motion as amended passed unanimously. Commissioner Flitcroft made a motion to open a complaint against the true principal broker; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Chairman Collins left the meeting at 3:23 p.m. and Vice-Chairman Northern acted as Chairman. He returned to the meeting at 3:28 p.m. However, Vice-Chairman Northern continued to act as Chairman until the presentation of complaint # 2007077921.

- 42) **2007077951 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 43) **2007077881 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Tate; opened to discussion; Commissioner Woods made a friendly amendment to dismiss with a Letter of Warning; Commissioner Alexander accepted Commissioner Wood’s friendly amendment; motion as amended passed unanimously.**
- 44) **2007080111 – Commissioner Woods made a motion to accept legal counsel’s recommendation to close and flag; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 45) **2007080551 &**
- 46) **2007080552 – Chairman Collins made a motion to accept legal counsel’s recommendation to send a Letter of Warning and issue a Consent Order requiring the respondents to complete 10 hours of continuing education; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 47) **2007077941 – Chairman Collins made a motion to accept legal counsel’s recommendation to send a Letter of Instruction for 10 hours of continuing education in Contract Writing; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 48) **2007077921 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 49) **2007072281 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 50) **2007062211 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to send a Letter of Warning and also flag the file; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 51) **2007058031 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 52) **2008017471 &**
- 53) **2008017472 – Commissioner Woods made a motion to accept legal counsel’s recommendation to dismiss against both respondents and open a complaint against respondent 2 for failure to complete administrative measures; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 54) **2008019151 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue respondent 1 a Consent order with a civil penalty of \$500.00 and requiring 10 hours of continuing education in Ethics and dismiss as to respondent 2; seconded by Commissioner Alexander; unanimous vote; motion carried.**

- 55) 2007079731 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 56) 2007079791 – Commissioner Stephenson made a motion to take legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
- 57) 2007079701 – Commissioner Stephenson made a motion accept legal counsel’s recommendation to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.
- 58) 2007079301 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.
- 59) 2007080051 &
- 60) 2007080052 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
- 61) 2007079581 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.
- 62) 2007062631 – Vice-Chairman Northern made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
- 63) 2007062632 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to close and flag the file; seconded by Commissioner Woods; unanimous vote; motion carried.
- 64) 2007080091 – Commissioner Woods made a motion to accept legal counsel’s recommendation to close and flag the file; seconded by Vice-Chairman Northern; unanimous vote; motion carried.
- 65) 2008025451 – Commissioner Woods made a motion to accept legal counsel’s recommendation to close and flag; seconded by Vice-Chairman Northern; unanimous vote; motion carried.

COMMISSIONER REPORTS

Chairman Grover Collins, Vice Chairman Isaac Northern, Commissioner David Flitcroft, Commission Wendell Alexander, Commissioner William “Bear” Stephenson, Commissioner Carol Tate and Commissioner Allen Woods reported on matters of concern or interest to the Commission

Vice-Chairman Northern made a motion to give Staff have the authority to approve medical waivers for Errors & Omissions insurance penalties in the same manner they review documentation and approve medical waivers for reinstatement; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Commissioner Stephenson made a motion to adjourn; seconded by Commissioner Tate; unanimous vote; motion carried.

Chairman Collins adjourned the meeting Wednesday, September 2, 2009 at 4:14 p.m.