

TENNESSEE REAL ESTATE COMMISSION MINUTES
December 1 – 2, 2010

The Tennessee Real Estate Commission convened on December 1, 2010 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 Isaac Northern, Vice-Chairman Allen Woods, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Wendell Alexander, Commissioner Michelle Haynes and Commissioner David Flitcroft. Commissioner Carol Tate was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Alex Dickerson, Assistant General Counsel, Kathryn Wiseman, Chief Legal Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the December 2010 Commission meeting. Chairman Northern asked if there were any proposed changes to the agenda. Commissioner Flitcroft advised that a performance review for Ms. Maxwell will be held later in the day and he wished to suggest a subcommittee report on Thursday time permitting. Assistant General Counsel Alex Dickerson asked if the discussion on Rulemaking could be moved to earlier in the day so Chief Legal Counsel Kathryn Wiseman could be present. **Commissioner Collins made a motion to adopt the amended agenda for the December 2010 meeting; seconded by Commissioner Woods; unanimous votes; motion carried.**

The next order of business was the approval of the minutes from the November 2010 meeting (**Exhibit 2**). **Commissioner Collins made a motion to approve the November 2010 meeting minutes; seconded by Commissioner Woods; vote: 7 yes, 0 no, Commissioner Flitcroft abstained as he was absent from the November 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)** – Ms. Maxwell presented licensing statistics to the Commission. As of November 30, 2010, TREC had a total of 85 open complaints. Of those 85 open complaints, 25 were Errors & Omissions insurance complaints. There were 23 new complaints in November 2010. There are 71 complaints in the legal department and 14 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 64. Total Civil Penalties paid in November 2010 were \$21,570.00.

Ms. Maxwell advised the Commission that formal hearings are set to be held every month and that those hearings will be held on the first day of the monthly meeting.

Commissioner Alexander asked Staff if Billy Featherstone, Sr. and Billy Featherstone, Jr. have ceased to operate their real estate business upon the suspension of their licenses until their formal hearing. TREC Auditor Bill Stewart was present as an attendee of the meeting and was asked to address the Commission regarding his recent visit the Featherstone's office building. Mr. Stewart stated that the firm name was still on the building directory and advised that there are 15-20 other businesses operating in Suite 500 (5th floor of the office building). Mr. Stewart said he spoke to the receptionist and left his card for Mr. Featherstone, Sr. and later that day Mr. Featherstone, Sr. called him and stated that they were not practicing real estate out of the office. Mr. Featherstone, Sr. advised Mr. Stewart that he would be contacting Ms. Maxwell. Ms. Maxwell advised the Commission that she had referred Mr. Featherstone's email to the legal division and in turn the legal division reviewed the legal agreement with Mr. Featherstone, Sr. Ms. Maxwell advised that Mr. Featherstone, Sr. and Jr. have retained an attorney and that attorney had been in touch with the legal division. Chairman Northern asked that any affiliates of the Featherstone firm be notified of the suspension. Vice-Chairman Woods confirmed with Staff that there would be no amended charges heard at the continued formal hearing. Ms. Maxwell asked the Commission to clarify the suspensions. She asked if it was the will of the Commission that the suspensions stay in place until the formal hearing even if a continuance was granted. It was the consensus of the Commission that any suspensions, regardless of continuances, would stand until the formal hearing.

- **Licensing Statistics (Exhibit 4)** – Ms. Maxwell presented licensing statistics for the month of November 2010. As of November 30, 2010, there were 26,625 active licensees, 1,548 inactive licensees and 10,382 retired licensees. There were 4,349 active firms and 338 retired firms. There were 172 new applications approved in November 2010. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in 2006, 2007, 2008, 2009 and 2010. She also presented license renewal percentages and the number of licenses approved in 2006, 2007, 2008, 2009 and 2010, individual licensees lost and gained from 2000 – 2010 and the average number of licensees (individuals) issued per month based on the calendar year for years 2000 – 2010. Mr. McDonald, Education Director, presented bar graphs reflecting trends in test taking. The graphs were comprised of test taking statistics for 2007, 2008, 2009 and 2010 and the year to date testing totals and trends for Affiliate Broker, Broker, Timeshare Salesperson and Acquisition Agent. Mr. McDonald further advised the Commission that from 2007 to 2010, testing has decreased by 53% and from 2009 to 2010 has decreased by 18%.

There was a discussion regarding the upcoming renewal of Errors & Omissions insurance. Ms. Maxwell advised that as of December 1, 28% of active licensees have already renewed their insurance with Rice Insurance. She explained that as of October 1, 2010, the TREC system will not renew a license unless the individual has an insurance policy into the future. She explained that alternate policies expire at various times throughout the year, so when looking at the E&O renewal numbers, about 20% of the licensees do not have an E&O policy which is nearing its expiration date. She advised that Rice Insurance will send out an email blast to all licensees who have not renewed and that the TREC website has

the information regarding E&O renewal posted and it has been emphasized at every education seminar.

Policy Review Discussion

At the November 2010 meeting, the Commission reviewed all policies and voted to keep, delete or defer action on all policies. The following policies were deferred for further study by Staff to be re-presented at the December meeting.

- **2009-CPS-008 Delinquent Errors and Omissions Insurance Penalty**
- **2007-CPS-002 Lapsed Errors and Omissions Insurance**
- **2001-CPS-004 Principal Brokers Employed Outside Real Estate Profession Who Engage Affiliates**
- **2000-CPS-007 Vacation Lodging Services**
- **1994-CPS-003 Instructor Course**

The Commissioners were presented with a draft of a new policy for expiration of Errors & Omissions insurance. The Commission reviewed the policy and discussed it.

Commissioner Flitcroft made a motion to adopt the proposed E&O policy and that it supersede Policy 2009-CPS-008 [Delinquent Errors and Omissions Insurance Penalty] and 2007-CPS-002 [Lapsed Errors and Omissions Insurance]; seconded by Commissioner Alexander for discussion. It was discussed that the policy is meant as incentive for licensees to renew their Errors & Omissions insurance before expiration. After discussion regarding penalties, **Commissioner Woods offered a friendly amendment to delete the words "possible revocation" in paragraph four of the proposed policy.** Ms. Kathryn Wiseman, Chief Legal Counsel, stated that the policy is designed to take care of the bulk of licensees who do not renew for a short period of time because, as a matter of public policy, the backdating of E&O policies protect the public. She also explained that the policy gives the Commission the discretion and latitude to determine penalties later instead of setting forth a set penalty amount for each month of delinquency.

Commissioner Flitcroft brought forth the issue of the costs associated with enforcement and collection of penalties versus the actual penalties collected and stated that it appears that when you print a licensee's name in a public forum, it motivates them to purchase or pay penalties. Ms. Maxwell agreed that yes, licensees do not like to see their name in print in a negative light and it does drive them to take action.

Commissioner Woods made a motion to amend to delete the words "and possible revocation"; seconded by Commissioner Alexander. However Commissioner Alexander also wishes for the financial penalty for the licensee's principal broker to be included in the policy. Commissioner Woods, taking all recommendations of the Commissioners into account, reworded and restated his amendment. Commissioner Woods amended the language of the policy to read as follows: "If a licensee fails to renew an errors and omissions insurance policy prior to expiration date, and also fails to renew by the 91st day after the expiration date, the Commission will issue an Agreed Citation requiring the following disciplinary sanctions: payment of civil penalties in the amount of one thousand dollars (\$1000.00) to be assessed against the licensee and the licensee's principal broker, attendance at a two day Commission meeting by both the affiliated licensee and the affiliated

licensee's principal broker." Commissioner Collins made a motion to delete the phrase "and also fails to renew by the 91st day after the expiration date"; seconded by Commissioner Joh; opened to discussion. Ms. Wiseman suggested some possible language that would rectify any confusion about backdating and penalties. She stated that perhaps the proposed E&O policy could state "If an E&O policy is renewed and backdated to the date of expiration then at the Commission's discretion that licensee may not be subject to penalty." Instead of voting on any the previous motion as amended, it was the consensus of the Commission to ask legal to draft a new policy with the Commission's proposed changes and bring it back for review after lunch. Legal Counsel agreed that was possible and the matter was deferred.

Chairman Northern recessed the meeting for lunch at 10:45 a.m. and reconvened at 1:24 p.m.

AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE

James Ethan Hodge, applicant, appeared with his potential Principal Broker James L. Hodge to request he be approved to apply for an Affiliate Broker license. Mr. Hodge disclosed to the Commission a conviction of Conspiracy to Distribute Methylenedioxymethamphetamine (MDMA/Ecstasy) in 2005. **Commissioner Joh made a motion to approve Mr. Hodges' request to be approved to apply for an affiliate broker license; seconded by Commissioner Haynes; unanimous vote; motion carried.**

AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE

James Ramangkoun, applicant, appeared with his potential Principal Broker David "Dave" Patton to request he be approved to apply for an Affiliate Broker license. Mr. Ramangkoun disclosed to the Commission a conviction of Attempted Possession with Intent to Distribute Methylenedioxymethamphetamine (MDMA/Ecstasy) in 2004. **Commissioner Collins made a motion to approve Mr. Ramangkoun's request to be approved to apply for an affiliate broker license; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

LICENSEE REQUEST INFORMAL CONFERENCE

David Patton, principal broker license # 280425 of Reliant Realty in Murfreesboro, Tennessee, requested a waiver of the 50 mile rule for Barbara Nelson, license # 296050. Commissioner Joh made a motion to approve Mr. Patton's request for a waiver of the 50 mile rule for Ms. Barbara Nelson, license #296050; seconded by Commissioner Haynes; vote: 5 yes. 2 no (Commissioner Alexander and Commissioner Stephenson voted no.); motion carried.

Ms. Wiseman reviewed the revised E&O policy that the legal counsel drafted during the break. Commissioner Woods stated that the policy appears to be a statement of what TREC can already do and he does not believe the policy gives the Commission a more effective way to handle licensee E&O delinquencies. Ms. Wiseman advised that by creating the policy it puts the licensees on notice if they are unaware of the statute. It

was discussed that at the subcommittee meeting in September 2010, discussion was held regarding how to create a mechanism to prevent a repeat of past renewal expiration cycles. Ms. Maxwell stated that it appears that the intent and will of the subcommittee's recommendation was to give the Commission more latitude when assessing penalties. She stated that the licensees who fought penalties the hardest were people who had their policies backdated thereby closing the gap in coverage. Ms. Maxwell stated that the creation of the policy takes the E&O provision and put it in one spot so a licensee can review it and know all rules and laws that are applicable. Ms. Wiseman stated that the policy as written has three goals. She outlined the goals as 1) the policy creates notice to communicate to licensees what they are facing if they choose to fail to renew their E&O insurance; 2) make it an efficient process for Staff, Commission and Licensees during the renewal process; and 3) minimize the number of complaints that need to be processed by Staff and heard by the Commission. She advised that TREC would be educating licensees as an incentive to not break the law regarding E&O insurance. She further explained that the policy creates a framework in which some of the violations are considered minimal to the extent that they don't need to be prosecuted by the Commission. She also stated that another option not discussed is issuing a Letter of Warning to the licensee so the letter will be on their record. Commissioner Alexander reiterated that it is the mission of the Commission to protect the public not the licensee and that if a policy is backdated then the public is protected. Commissioner Haynes concurred. It was suggested by several Commissioners that perhaps the policy is unnecessary and TREC should just post the information on the website, News Journal and disseminate the information to the Tennessee Associations of REALTORS®. Commissioner Alexander stated that he was inclined to agree except not having a policy does not give staff some guidance and authority to deal with delinquencies and penalties. **Commissioner Flitcroft made a motion to approve the proposed revision of the rule as presented/stated by legal counsel as well as delete Policy 2009-CPS-008 and Policy 2007-CPS-002; seconded by Commissioner Stephenson; vote: 6 yes, 1 no (Commissioner Woods voted no); motion carried.** The policy will be prepared by legal counsel for review/approval by the Commission before posting.

The policy review continued with the following three policies.

Commissioner Alexander made a motion to delete the policy 2001-CPS-004 [Principal Brokers Employed Outside Real Estate Profession Who Engage Affiliates] as it is now a rule; seconded by Commissioner Collins; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to delete those portions of the policy 2000-CPS-007 [Vacation Lodging Services] that have been overridden by current statute and delay deletion of the remainder of the policy; seconded by Commissioner Collins; unanimous vote; motion carried.

Commissioner Stephenson made a motion to defer action on Policy 1994-CPS-003 [Instructor Course] to allow Ms. Maxwell and Mr. McDonald time to review the policy together and report back to the Commission; seconded by Commissioner Haynes; unanimous vote; motion carried.

The Commission turned their attention to the Rulemaking process. Mr. Dickerson presented the Commission with a series of proposed rules and rule modifications for consideration. They included a second draft of the new VLS rules, the agreed modification of the existing fee rule and a rule regarding the death of a principal broker, enacted as policy at the November meeting. He explained that with respect to those rules, he had three issues that he needed to discuss with the Commission. He explained that in order to meet the July 1, 2011 deadline for the new VLS statute, Ms. Maxwell and he felt it important to vote on the language of the VLS rules at the January Commission meeting thereby ensuring that there is time for notice and comment, the public hearing, the opinion of the Attorney General and the approval of the Secretary of State. He went on to explain that so Staff may be prepared any important alterations that need to be made to the rules should be discussed at the current meeting. He advised the Commission that the non-VLS rules do not have to be voted on with the VLS rules but it would be convenient to do so. He suggested presenting them all together. He advised the Commission that when considering the deadlines it is important to remember that especially controversial rules may significantly hold up the process of approval at the Attorney General's office. He went on to say that the inclusion of even a small controversial provision can delay the enactment of a large set of rules. He advised the Commission that he has been informed by the attorney for the Smoky Mountain Lodging Association Matt Scanlon that his group would be challenging the legality of the proposed surety provision. He stated that given the importance of providing basic educational, advertising rules for VLS operations after July 1, 2011, it seemed likely that the inclusion of the surety bond provision would significantly delay the enactment of the rest of the rules – possibly past the July 1, 2011 deadline. Mr. Dickerson advised that that Matt Scanlon, attorney for the Smoky Mountain Lodging Association was present at the meeting and is available to address the Commission. The Commission recognized Mr. Scanlon and an open discussion was held regarding concerns regarding the proposed rule changes. Mr. Scanlon explained that he wished to address the legality of requiring a surety bond as it is not allowable by statute and the proposed advertising rule changes. He suggested that all VLS firms register with the Commission every trade name so if a complaint is filed, TREC would know who to pursue therefore minimizing the impact on the VLS industry. It was discussed that the role of the Commission is to protect the consumers of Tennessee and it was pointed out that numerous complaints are filed by consumers against the VLS industry. When asked by the Commission, Kathryn Wiseman, Chief Legal Counsel, advised the Commission that the opinion of the legal department is that the Commission does not have the authority to require a bond of these licensees and that it is not something granted to the Commission when the statute was passed. Chairman Northern asked if it is the Legal Staff's opinion that the Commission eliminate the controversial part of the proposed rules. Ms. Wiseman suggested that the controversial changes be removed from the initial rulemaking and that an Attorney General's opinion be requested. Regarding the concerns for advertising, Mr. Dickerson stated that he believes he can work with Mr. Scanlon regarding the industry's objections to the proposed alternations to the advertising rules and Mr. Scanlon agreed that he believes a compromise is attainable given time. **Commissioner Alexander moved to request an Attorney General's opinion regarding the legality of requiring a surety bond; seconded by Commissioner Haynes for discussion; there was open discussion and then a roll call vote was held on**

the motion. The roll call vote was 4 yes, 3 no and Commissioner Collins passed as he was absent from the room for a portion of the discussion. There was discussion as to whether the motion passed with Commissioner Collins 'pass' vote. It was the ultimate consensus of the Commission to ask for the AG's opinion.

Commissioner Woods stated that the Commission must still address the issues the association has with the proposed changes to the advertising rules for VLS. **Commissioner Woods made a motion to direct staff to work on revising the advertising rules so, at the very least, the name of the firm as registered with the Commission has to appear on all advertising; seconded by Commissioner Flitcroft; after discussion Chairman Northern restated the motion before the vote. Chairman Northern stated that he understood the motion as made was to eliminate the previously proposed advertising requirements to list all DBAs and to replace that with the recommendation that the firm name as registered with TREC be included in all advertisements. There was a unanimous vote and the motion carried.**

Ms. Wiseman asked that if it is the consensus of the Commission that they please vote on extracting the surety bond requirement from the proposed rules and hold the rulemaking hearing on all other matters. **Commissioner Woods made a motion to move forward with the rulemaking process for all proposed rules except for the rules dealing with advertising and subsection (1)(b) of the Designated Agent's Responsibilities; no second; there was discussion regarding the content of the previous motion made by Commissioner Woods. It was his intent with the previous motion to direct staff to work with Mr. Scanlon and agree on proposed rules of advertising. The vote was deferred and it was determined that legal counsel would revise the proposed rules and re-present to the Commission the following day.**

LEGAL REPORT, ALEX DICKERSON, ASSISTANT GENERAL COUNSEL

- 1) 2010031281 &**
- 2) 2010031282 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 3) 2010030711 – Commissioner Woods made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for violating T.C.A. § 62-13-313(a)(21) [failure to file an answer within ten days]; seconded by Commissioner Collins; Commissioner Alexander made a friendly amendment to have the Respondent attend a two day TREC meeting within six months; Commissioner Woods accepted the friendly amendment; unanimous vote; motion carried. Commissioner Flitcroft made a motion to initiate a complaint against the Respondent's principal broker; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 4) 2010030751 – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$250.00 for failing to follow administrative measures; seconded by Commissioner Collins; opened to discussion; Commissioner Alexander**

made a motion to amend the civil penalty to \$750.00 plus require attendance at a two day TREC meeting within six months; seconded by Commissioner Joh; amendment carried unanimously; motion as amended carried.

- 5) 2010032591 &
- 6) 2010032592 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Consent Order to each Respondent with a civil penalty of \$1,000.00 for violating T.C.A.§ 62-13-403(6) [failure to account for trust fund deposits] and he further moved to require both Respondents to complete four hours of continuing education in Ethics within six months; seconded by Commissioner Joh with the friendly amendment to also require both Respondents to complete four hours of continuing education in Contact Writing within six months; unanimous vote; motion carried as amended.
- 7) 2010031481 &
- 8) 2010031482 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss with a Letter of Warning to both Respondents; seconded by Commissioner Woods; unanimous vote; motion carried.
- 9) 2010032091 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$750.00 for violating T.C.A. § 62-13-313(a)(2) [failure to respond within ten days; seconded by Commissioner Collins; unanimous vote; motion carried.
- 10) 2010026951 &
- 11) 2010026971 &
- 12) 2010026981 &
- 13) 2010026991 &
- 14) 2010027021 &
- 15) 2010027061 &
- 16) 2010026811 &
- 17) 2010026831 &
- 18) 2010026841 &
- 19) 2010026851 &
- 20) 2010026901 &
- 21) 2010027551 – Commissioner Flitcroft made a motion to reaffirm their original decisions regarding complaints #10 through #21; seconded by Commissioner Woods; unanimous vote; motion carried.

Mr. Dickerson presented the Commission with the final typed copy of the E&O policy with the words “affiliated broker” changed to “affiliated licensee” per Ms. Maxwell’s request. **Commissioner Collins made a motion to approve the policy as presented; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Courses Requiring Discussion for the month of December 2010. Mr. McDonald advised the Commission that instructor Ken Barnes from Professional School of Real Estate has requested the Course for Discussion "Property Management" be certified as acceptable to fulfill the requirements for the VLS CORE course. The course will introduce the basic fundamentals and responsibilities of property management. Chairman Northern asked Mr. McDonald if he had an outline of the course because VLS and Property Management are two different areas. **Commissioner Stephenson made a motion to defer any action regarding the course "Property Management" until the January meeting to allow Mr. McDonald to get an outline of the course from Mr. Barnes and to approve all of the other Courses for Commission Evaluation; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Flitcroft asked Mr. McDonald about the content of the course "Reverse Mortgages for Senior Home Owners" at both Career Professional School of Real Estate as well as the Chattanooga Association of REALTORS®. Commissioner Flitcroft stated he believes, philosophically, reverse mortgages do not apply to the sale of property therefore he made a motion to amend the previous motion and not approve the course for either provider; seconded by Commissioner Alexander for discussion; unanimous vote; motion as amended carried.**

Mr. McDonald presented the Commission with a bar graph detailing the number and method of delivery of all 60 hour Pre-licensing Courses, Course for New Affiliates, Office Broker Management and the TREC Core. The graph reflected the number of courses available to licensees as of the first of the year.

Mr. McDonald advised the Commission that 43% of providers renewed their courses. He asked for guidance from the Commission regarding people who have sent in fees but have piecemealed their other renewal information. It was the consensus of the Commission to be consistent and treat everyone the same meaning if all requirements were not met by the deadline then the course or courses are not renewed.

Mr. McDonald presented the following instructors for review.

- Karen Czarnecki of Williamson County Association of REALTORS® requested that Krystal Grebner be approved to instruct course #6340 "Unethical or Bad Judgment".
- Sally Cummings of Tennessee Association of REALTORS® requested that Marlene Rakow be approved to teach course #4668 "GRI-6 E Class" and Melissa Hayes be approved to instruct the course #4338 "GRI 5 E Class".

Commissioner Joh made a motion to approve all of the above instructors; seconded by Commissioner Woods; unanimous vote; motion carried.

Mr. McDonald presented a request from Joyce Bea Sterling of Career Development Center, Inc in Loudon, Kentucky. Ms. Loudon is asking the Commission to consider approving the course "Virtual Classroom". She explained in her request that with software the class is taught in real time over the internet via web cam and that the

instructors are able to see and communicate with each other as if they were in a physical classroom. After discussion, **Commissioner Flitcroft made a motion to invite Ms. Sterling to a meeting to demo her system and answer any questions the Commission may have regarding course content or proctoring; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Mr. McDonald discussed with the Commission issues with the Ray Boudier School of Real Estate in Memphis. He explained that TREC had an audit early last year in which providers were asked for student evaluations and class rosters. Furthermore, all providers were informed that in future classes the evaluations were to be part of the curriculum. Mr. McDonald advised the Commission of several issues that have come up regarding Mr. Boudier and his school. He stated that Mr. Boudier had returned mail with no forwarding address, he turned in an incomplete renewal packet and the school has had two informal complaints regarding sexual harassment by an instructor (Complainant has since corrected from sexual to "extremely unprofessional, condescending and demeaning.") He further explained that a licensee did not get CE credit for an unapproved course she took at Ray Boudier School of Real Estate therefore causing her license to expire at which point she contacted the Commission. It was also discussed that Mr. Boudier was only approved as a provider through the end of 2010 yet he was advertising courses for 2011 on his website. It was further explained that Mr. Boudier was advertising the TREC Core course though the school has not been approved to teach the Core for the past two years. Mr. McDonald advised the Commission that part of the issue with the licensee's license expiring involved a referral arrangement with D&D School of Real Estate in Kingsport. After discussion of Mr. Boudier's ongoing issues, it was the consensus of the Commission that an informal conference be held with Mr. Boudier and Mr. Clemmer. **Commissioner Alexander made a motion that Chairman Northern and Mr. McDonald invite the two providers to come to Nashville and speak to the Commission regarding the issues discussed and that Mr. Boudier should cease offering or advertising any unapproved courses; seconded by Commissioner Stephenson; opened to discussion; Commissioner Joh expressed that she felt it unnecessary for Mr. Clemmer to drive five hours to Nashville when he can be reached via teleconference. The vote on the motion was 6 yes, 1 no (Commissioner Joh voted no.); motion as amended carried.**

Commissioner Haynes made a motion to have Staff check all the websites of schools that failed to renew for 2011 and ensure they too are not advertising unapproved courses; seconded by Commissioner Collins; unanimous vote; motion carried.

Commissioner Collins made a motion to post a notice on the TREC website and in the TREC News Journal advising that some schools have not been approved and they should check the TREC website to confirm if a school is approved before taking education with that provider; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Mr. McDonald advised the Commission that the next TREC News Journal would be out in January 2011.

Chairman Northern adjourned the regular business meeting of the Tennessee Real Estate Commission on Wednesday, December 1, 2010 at 4:45 p.m.

The Chairman of the subcommittee to evaluate Ms. Maxwell, Commissioner Flitcroft, called the subcommittee meeting to order. Others present were Commissioners Stephenson, Alexander, Haynes and Joh as well as Ms. Maxwell and Kelly McDermott, Administrative Secretary for TREC. The committee reviewed Ms. Maxwell's 2009 evaluation results and Ms. Maxwell read her MBO statements for 2010 and outlined her goals for the coming year of 2011. The Commissioners each addressed their experiences with Ms. Maxwell and her performance overall. They all agreed that Ms. Maxwell does an excellent job, works tirelessly, has an excellent relationship with her Staff and communicates well with all Commissioners. There was a discussion regarding Ms. Maxwell's compensation and how it compares to other Regulatory Board Directors. **Commissioner Collins made a motion to give Ms. Maxwell a raise of \$15,000 which would increase her annual salary to \$75,000; seconded by Commissioner Joh; unanimous vote; motion carried.**

Chairman of the subcommittee, Commissioner Flitcroft adjourned the committee meeting on Wednesday, December 1, 2010 at 5:15 p.m.

TENNESSEE REAL ESTATE COMMISSION December 1 – 2, 2010

The Tennessee Real Estate Commission convened on December 2, 2010 at 9:08 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman Allen Woods, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Wendell Alexander, Commissioner Michelle Haynes and Commissioner David Flitcroft. Commissioner Carol Tate was absent. Others Present:, Robyn Ryan, Assistant General Counsel (Litigation), Alex Dickerson, Assistant General Counsel, Mandy Spencer, Paralegal, Eve Maxwell, Executive Director, Steve McDonald, Education Director and Kelly McDermott, Administrative Secretary.**

The Formal Hearing for Stephen H. Warner, licensee #24313, complaint #2010010161, Docket #12.18-109487A convened at 9:09 a.m.

The Commission's decision follows: Respondent, Mr. Warner shall be assessed a civil penalty in the amount of Two Thousand, Five Hundred Dollars (\$2,500.00), he shall take four (4) hours of approved continuing education in Contract Writing, four (4) hours of approved continuing education in Ethics, and eight (8) hours of approved continuing education in Property Management all of which must be completed within twelve (12) months of the date of this order, he shall cooperate with a full and complete audit of his real estate firm and he shall pay all court costs in the matter including all costs of the Administrative Law Judge five hundred and sixty dollars

(\$560.00), and court reporter fees of one hundred and forty dollars (\$140.00) for a total of seven hundred dollars (\$700.00) within thirty (30) days of the date of this order.

The formal hearing adjourned at 12:23 p.m. and the regular meeting reconvened at 12:38 p.m.

Alex Dickerson, Assistant General Counsel, presented the Commission with a revised copy of the proposed rules including the changes recommended by the Commission at the previous day's meeting. He advised that he had removed the portions involving surety bonds and VLS advertising. He explained that if the Commission presents four rules that are not objectionable, then TREC has a better chance of getting the rest of the proposed rules in place by July 1, 2011 which is when the new VLS statute takes effect. He advised that the Commission could further address VLS advertising in a future rulemaking session. There was open discussion regarding the content and submission of the proposed rules. Commissioner Alexander suggested that the legislature be approached and asked if VLS can be removed from the regulatory jurisdiction of the Tennessee Real Estate Commission. **Commissioner Woods made a motion to instruct staff to continue to work with representatives of the VLS industry or their shareholders but come back in January with advertising rules incorporating the proposed changes the Commission made yesterday and that the Commission vote on all of the proposed rules at that time; seconded by Commissioner Alexander; opened to discussion; after discussion, Commissioner Woods rescinded his motion.** During the discussion Ms. Maxwell advised the Commission that due to time requirements for having the rules posted prior to the rulemaking hearing, the hearing would have to be held in either February or April as there was not sufficient time prior to January and the March and April meetings are not being held in Nashville. It was the consensus of the Commission that the legislature can be approached regarding requiring surety bonds and the rulemaking process move forward. **Commissioner Flitcroft made a motion to revise the proposed rules presented today to include the advertising statement that the Commission recommended at the previous day's meeting and referred to the language set forth by legal counsel for Rule 1260-07-.05; seconded by Commissioner Alexander; opened to discussion; unanimous vote; motion carried.** The content of the new proposed Rule 1260-07-.05 states

"(1) All advertising, regardless of its nature or medium, promoting vacation lodging service rentals shall prominently display the following information: (a) The firm name of the vacation lodging service, as registered with the Commission; (b) The telephone number of the vacation lodging service firm office; and (c) the vacation lodging service firm license number. (2) All internet advertising must include the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number on each page of the website." **Commissioner Flitcroft made a motion to instruct staff to prepare for a legislation submission regarding surety bonds or the creation of some measure to protect the public when they put money into the VLS industry; seconded by Commissioner Alexander; unanimous vote; motion carried.** Mr. Dickerson asked if the Commission still wished to get an Attorney General's opinion regarding the legality of a surety bond provision for VLS. It was the consensus of the Commission that they do wish to request an AG's

opinion regarding the matter. Mr. Dickerson asked if the Commission was also comfortable with including in the rulemaking hearing the other two matters previously discussed regarding that passing of a principal broker and civil penalties. **Commissioner Woods made a motion to move forward with the rulemaking process on the other proposed rules as well; seconded by Commissioner Collins; unanimous vote; motion carried.** A copy of the notice of rulemaking is to be posted to the TREC website in its entirety.

The Commission discussed the findings of the subcommittee who evaluated Ms. Maxwell's performance the previous day. Commissioner Flitcroft explained that a formal report will be compiled but it is the definite opinion of the Commission that Ms. Maxwell is grossly underpaid compared to other directors who are in comparable positions or even positions where the person has less responsibility and work fewer hours. Commissioner Flitcroft advised that in the subcommittee's assessment it was determined that Ms. Maxwell should be given a \$15,000 raise. **Commissioner Woods made a motion to accept the recommendation of the subcommittee and take whatever measures necessary to increase Ms. Maxwell's salary by \$15,000 a year from \$60,000 to \$75,000; seconded by Commissioner Collins; opened to discussion; during discussion, Commissioner Stephenson read into the record the content of T.C.A. § 62-13-207 which states: "Executive director — Director of education — Qualifications. — (a) The commission shall have an executive director, who shall have passed the broker's examination for the state of Tennessee. The commission shall set all other qualifications necessary for the position of executive director. The executive director shall be appointed by the commission, with the approval of the commissioner of personnel. The term of the executive director shall be four (4) years, and such executive director shall be eligible for reappointment. The commission shall also retain an administrator and such other staff members as the commission may deem necessary and proper. The commission shall fix the compensation to be paid to the executive director, the administrator and staff of the commission, subject to applicable rules, regulations and law." Chairman Northern stated that if this recommendation for the raise be met with opposition by the Administration that the matter be brought back before the Commission for further action and it was determined necessary that the Chairman would go to the Administration to discuss the matter; there was a unanimous vote and the motion carried.**

Mr. Dickerson updated the Commission after speaking to Assistant General Counsel Robyn Ryan regarding the formal hearing of Billy Featherstone, Sr. and Billy Featherstone, Jr. He relayed the information that the Featherstones had retained an attorney and that attorney would be submitting discovery but that no continuance had been requested at that time.

Commissioner Alexander made a motion to adjourn the meeting; seconded by Commissioner Flitcroft; unanimous vote; motion carried,

Chairman Northern adjourned the meeting Thursday, December 2, 2010 at 1:06 p.m.