

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**September 1 – 2, 2010**

The Tennessee Real Estate Commission convened on September 1, 2010 at 9:17 a.m. in the George A. Smith Meeting Room at City Hall, 107 E. Main Street, Suite 107, Jackson, TN 38301. **The following Commission Members were present Chairman Isaac Northern, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Michelle Haynes and Commissioner David Flitcroft. Vice-Chairman Woods and Commissioner Valerie Joh were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education 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 2010 Commission meeting. **Commissioner Collins made a motion to adopt the agenda for the September 2010 meeting; seconded by Commissioner Tate; unanimous votes; motion carried**

The next order of business was the approval of the minutes from the August 2010 meeting (**Exhibit 2**). **Commissioner Flitcroft made a motion to amend the August 2010 minutes to include a reference to the Commission directing the Staff to prepare proposed new rules for Vacation Lodging Services; seconded by Commissioner Collins; amendment passed unanimously; Commissioner Collins made a motion to approve the minutes as amended; seconded by Commissioner Flitcroft; motion carried unanimously.**

**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 August 31, 2010, TREC had a total of 258 open complaints. Of those 258 open complaints, 203 were Errors & Omissions insurance complaints. There were 45 new complaints in August 2010. There are 246 complaints in the legal department and 12 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 34. Total Civil Penalties paid in August 2010 were \$38,050.00.

During the complaint statistic report, a discussion began regarding the Errors & Omissions insurance hearings but it was determined that the discussion would be tabled until later in the meeting for the Errors & Omissions discussion scheduled on the agenda. Ms. Maxwell did report that from January 2009 to August 27, 2010, licensees have paid a total of \$247,850.00 in penalties for not obtaining Errors and Omissions insurance in a timely manner.

- **Licensing Statistics (Exhibit 4)** – Ms. Maxwell presented licensing statistics for the month of August 2010. As of August 31, 2010, there were 26,979 active licensees, 1,402 inactive licensees and 10,480 retired licensees. There were 4,389 active firms and 354 retired firms. There were 219 new applications approved in August 2010. Further, she presented a detailed report on licensee renewal percentages from November 2008 through June 2010. She also presented a chart comparison of total licensees for individuals (active, retired and inactive) and firms in 2005, 2006, 2007, 2008, 2009 and 2010. She also presented the number of licenses approved in 2006, 2007, 2008, 2009 and 2010 and the average number of licensees (individuals) issued per month for each year from 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 Brokers, Brokers, Timeshare Salesperson and Acquisition Agents.

Mr. McDonald reported that 14 schools have stopped offering courses and that some universities such as Memphis State University and Middle Tennessee State University are cutting courses when course enrollment drops to a level less than can sustain a classroom. Chairman Northern expressed concern about institutions of higher learning not offering courses. He asked if it might be the time to make an effort to contact the universities regarding their discontinuing of courses in real estate continuing education. The Commission expressed a desire to know how many schools offer real estate education through non-credit courses versus requiring students to be enrolled at the University and the relative costs of both practices. Chairman Northern expressed his concern that recent changes implemented by the Commission may have impacted the loss of courses being taught by schools. It was also discussed that the loss of courses could be directly dictated by the current state of the real estate market.

Ms. Maxwell discussed with the Commission an ongoing conversation she is having with a principal broker regarding the rule change to Rule 1260-02-.02(2) which concerns change in affiliation and transfer effective dates. Ms. Maxwell explained that Mr. Privette and other concerned licensees are hesitant about the amount of time it will take for a transfer to be in effect officially with TREC. She advised that under the old rule a transfer was effective when the TREC 1 form and transfer fee were transmitted but under the new rule a transfer will not take effect until TREC processes the TREC 1 form. She explained that Mr. Privette has concerns that the new rule will put licensees in a situation where they cannot service their clients because in the past the transition was more seamless but under the new rule there would be a break in affiliation and that would affect closings. Ms. Maxwell explained the standard operating procedure for the processing of the mail, payments, deposits and eventual receiving of the TREC 1 form at the TREC office. In response to inquiries by the Commissioners, she advised that currently it is about a three day process but that is subject to change if circumstances change within the mail, cashier or processing operations. She discussed with the Commission other possible effects the rule change could have on licensees depending on their situation. She explained that if a licensee is with a firm that has an Alternate Errors & Omissions insurance policy and that licensee transfers to a firm that requires they purchase State insurance, then that person would be briefly unaffiliated and

uninsured. She also stated that the change could cause issues with service of mail as charges from the legal department are sent to the last address of record for a licensee and that licensee may not receive those charges if they are not immediately transferred so that they will receive their mail at the new firm. The Commission and Ms. Maxwell weighed the pros and cons of the rule change and it was ultimately decided that the situation definitely needs to be monitored to ensure that the processing time does not become excessive. There was also discussion regarding the State of Tennessee's ability to process transfers online as they do with renewals. This practice would make the transfer effective immediately upon online submission and payment and therefore remedy the situation. The Commission and Staff as well as Mr. Private, per his emails to Ms. Maxwell, support this conclusion. It was the consensus of the Commission that they go on record as supporting technology improvements to allow online transfers and requested that Ms. Maxwell compose a letter to that effect. **Commissioner Collins made a motion to direct Ms. Maxwell to compose a letter on behalf of the Commission expressing their desire to have online transfers and renewals and inquire as to the possibility of this practice being put into use; seconded by Commissioner Tate; unanimous vote; motion carried.**

#### **EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR**

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Discussion for the month of September 2010. Courses Requiring Discussion included two courses taught by the American Society of Farm Managers and Rural Appraisers titled "Animal Agriculture Seminar" and "Financial Management Seminar" which he feels are both reasonably related to the practice of real estate under Rule 1260-5-.03(1)(a). He asked for the Commissions input on whether they believe these courses to meet TREC's requirements for continuing education. He explained that secondarily ASFMRA has not submitted a roster to the Commission office in a substantial amount of time but they still go through the motions of having their courses approved by TREC. He asked if, out of equal respect to their part of the real estate industry, the Commission approve the courses being discussed. **Commissioner Collins made a motion that the Commission not approve anything until ASFMRA has met the same qualifications as other courses submitted by providers; no second; motion failed for lack of a second.** Commissioner Alexander stated that he believes the Commission would be remiss to not approve the courses as long as they submit all required documents and meet the requirements of TREC for approval. He expressed that he believes the subject matter is relevant to the real estate industry. Mr. McDonald advised the Commission that ASFMRA has submitted all materials required for review but he is unsure as to where in the 17 acceptable topics set forth in the law manual these two courses apply. **Commissioner Alexander made a motion to approve the courses submitted by ASFMRA "Animal Agriculture Seminar" (S18) and Financial Management Seminar" (S19); seconded by Commissioner Stephenson; opened to discussion; unanimous vote; motion carried.** Mr. McDonald advised that he has incomplete information on the course "Rising to the Top" and the instructor being submitted for approval by Wells Fargo Home Mortgage. It was the consensus of the Commission that if the information is incomplete there is no need to discuss the course further until all necessary requirements are met. The Commission turned its attention back to the Courses for Commission Evaluation which includes courses that Mr. McDonald has reviewed and recommends for approval if the

Commission so deems appropriate. **Commissioner Stephenson made a motion to approve all of the Courses for Commission Evaluation (S1 – S17); seconded by Commissioner Tate; unanimous vote; motion carried.**

Mr. McDonald presented Course Renewals for Commission Evaluation. He explained he has reviewed all submitted materials for these courses and recommends them for renewal. He explained to the Commission that there were 184 providers and 14 of those have voided their courses. He provided a list of schools that will no longer offer courses for continuing education and a list of 18 providers who have complied with Rule 1260-5-.16(3) but he has not had the opportunity to review all materials because of the quantity of information. He explained he did, however, wish for those 18 schools to be read into the record to confirm they have complied with the TREC requirements under Rule 1260-5-.16(3) but he is still in the process of reviewing the accompanying materials. Mr. McDonald advised the Commission that 25% of providers have complied with the rule. It was discussed that those who have not complied with the deadline for submitting course materials for renewal will not be renewed by the Commission. Ms. Maxwell asked if the 75% of providers who have not submitted courses must start over and begin the process for approval as with any new course. **Commissioner Alexander made a motion to grant Mr. McDonald permission to have until December 31, 2010 to review the courses submitted for which proper credentials are in hand but have not been reviewed and that those courses be renewed unless Mr. McDonald finds fault with them. He further moved that if he finds fault then those courses should be brought back to the Commission for evaluation and additionally, Mr. McDonald should review them in the order they are received; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried. Commissioner Stephenson made a motion that those 75% of schools from which TREC has not heard regarding renewal be granted an extension to submit all required materials until October 31, 2010; seconded by Commissioner Flitcroft; opened to discussion.** There was some discussion as to the fairness of extending the deadline when other schools made a conscientious decision to submit their materials on time. Commissioner Stephenson said that the Commission has to consider that statutorily licensees are required to complete continuing education and the Commission must approve an adequate number so they can complete that requirement. Ms. Maxwell reviewed the events that occurred in rulemaking, the public hearing and legislation. She stated that cost is not an issue when providers renew instead of begin anew. She explained that the advantage to renewal as opposed to reapplying is a time advantage for being able to teach the class. **Commissioner Alexander amended Commissioner Stephenson's motion to assess a \$150.00 penalty for late application within the first 30 days of the September 3, 2010 deadline for submission; call for the roll call vote; vote on amendment: 3 yes, 4 no; motion failed. Commissioner Stephenson restated his motion that Commissioner Flitcroft seconded. Commissioner Alexander made a motion to amend to assess a civil penalty of \$150.00 if they do not comply by the proposed October 31, 2010 deadline; seconded by Commissioner Collins; 6 yes, 1 no; amendment passed. Commissioner Alexander called for the question on the motion as amended. Ms. Maxwell clarified that the motion as amended states that if a provider has not gotten their application in by September 3, 2010 then they are granted an**

**extension to comply by October 31, 2010 with the rule and those who do not comply by October 31, 2010 will have a civil penalty levied of \$150.00. The vote on the motion as amended carried unanimously.**

Mr. McDonald, Education Director, presented the following instructor reviews to the Commission.

- Sally Cummings with TAR requests that Gary Blume and Marlene Rakow be approved to teach the REBAC/ Real Estate Marketing Reboot Course #6396. Both instructors are previously approved by the commission.
- Gary Blume, Broker license 50337, has been in the industry since 1973. He has numerous years of sales and teaching experience in Real Estate.
- Shannon Ward of StagedHomes.com (#1382) requests that Trish Pachak, Jennie Norris, Jeannie Berger be approved to teach the Accredited Staging Professional Course (#4478).

**Commissioner Stephenson made a motion to approve the above requests for instructor approval; seconded by Commissioner Tate; unanimous vote; motion carried.**

**Commissioner Flitcroft made a motion to defer the discussion regarding the ARELLO Correspondence Course change in certification; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Mr. McDonald advised the Commission that on August 11, 2010 the rosters and course evaluations from TREC's schools that offer classroom pre-licensing courses were requested. He reported that of those 17 schools, only six (6) have communicated with the commission and of those that have communicated, three (3) have submitted their rosters and course evaluations. There was discussion regarding how to bring those who are non-compliant into compliance. Commissioner Tate suggested a penalty and Commissioner Haynes suggested a Letter of Warning be sent regarding possible penalties or probation. **Commissioner Alexander made a motion that Chairman Northern and the Education Director create a letter to send the schools to notify them they must come into compliance or face possible penalties or probation; seconded by Tate; unanimous vote; motion carried.**

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

Ms. Ryan reviewed the below proposed legislation with the Commission. The Commission recently received an Attorney General's opinion regarding requiring residency as a requirement for licensure. The AG opinion states that TREC cannot make a residency requirement. Therefore, Ms. Ryan suggested the following modifications be made to the statute.

- Modify to remove: §62-13-314(4) **The commission may, in its discretion, refuse to issue, renew, or reinstates a broker's , affiliate broker's or time share salesperson's license if the applicant for, or holder of, such license is not a resident of this state.**
- Modify to remove: T.C.A. §62-13-303(e)(2)(B) **[Has been a resident of this state for a least forty-five (45) days];** T.C.A. §66-13-303 (f)(2)(B) **[Has been a resident**

of this state for at least forty-five (45) days]; and T.C.A. §66-13-303(j)(2)(B) [A resident of this state]

Ms. Ryan also advised that a correction needs to be made to the following statute to change the word "Buyer" to "Seller".

- Modify to correct: §66-4-210 Disclosure Form:

D. Certification: I/ We certify that the information herein, concerning the real property located at \_\_\_\_\_, is true and correct to the best of my/our knowledge as of the date signed. Should any of these conditions change prior to conveyance of title to this property, these changes will be disclosed in addendum to this document.

Transferor (Buyer) Seller

Date

Ms. Ryan also discussed with the Commission an issue of requirements for service of registered mail. Ms. Ryan explained that TREC does not have the phrase "return receipt" in our statute and that this caused some issue with the E&O default hearings held in August. She advised that without the phrase return receipt the administrative laws require a supreme amount of extra work and effort on the State's part as far as service when there is an issue of a default hearing. She explained that if the State gets a document back from registered mail and there have been attempts made and the person has not picked it up, then Legal cannot go forward with any type of hearing without showing they have made phone calls and done a number of other actions pursuant to the administrative law rules. Therefore, she went on to say that the Commission may want to consider modifying the section TCA §62-13-313(b) to read that the State can do personal service, registered mail, return receipt. She explained that this would give the State a little more power to do a lot less regarding service on the issue of default hearings.

**Commissioner Stephenson made a motion to take Legal Staff's recommendation regarding the above proposed legislative changes; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Ms. Ryan asked if the Commission had any objections or needed clarification regarding the Attorney General's opinion on residency requirements. Commissioner Stephenson asked Ms. Ryan if she had any suggestions as to how the Commission should respond. She stated that she thinks the Commission need only to modify the statutes discussed and approved in the previous conversation regarding legislative changes.

Chairman Northern recessed the meeting for lunch at 11:47 a.m. and reconvened at 1:12 p.m.

#### **AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE**

**Jackie Bell, applicant, appeared with her potential Principal Broker Dee Fields Pritchett to request he be approved for an Affiliate Broker license. Ms. Bell disclosed to the Commission a conviction of Conspiracy to Manufacture Methamphetamine in early 2004. Commissioner Collins made a motion to approve; seconded by Commissioner Stephenson; vote: 7 yes, 0 no; Commissioner Alexander abstained because he knows the parties involved and he spoke on Ms. Bell's behalf; motion carried.**

### **AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE**

**Kelly Byrd, applicant, appeared with his potential Principal Broker Sylvia M. Reed to request he be approved for an Affiliate Broker license. Mr. Byrd disclosed to the Commission a conviction of Possession of a Controlled Substance with Intent to Deliver in 1990. Commissioner Flitcroft made a motion to approve; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

**Commissioner Alexander made a motion to amend the agenda to add the applicant Lawrence Wyatt for an informal conference; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

### **LICENSEE REQUEST CONFERENCE**

**Eric "Ric" Bowman, Principal Broker #226975, requested a blanket waiver of the 50 mile rule for the licensees/applicants of the referral firm Weichert Referral Associates, #258371. Commissioner Alexander made a motion to deny Mr. Bowman's request for a blanket waiver of the 50 mile waiver; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

### **LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL (continued)**

- 1) 2009004891 &
- 2) 2009006161 – Commissioner Stephenson made motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000 per complaint for a total of \$2,000.00 for failure to respond to either complaint; seconded by Commissioner Collins; unanimous vote; motion carried.
- 3) 2010008341 – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to close and flag the file; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 4) 2010003591 – Commissioner Alexander made a motion to accept legal counsel's recommendation to close and flag the file; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 5) 2010003571 – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to close and flag the file; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 6) 2009022981 – Commissioner Alexander 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. §62-13-312(5) [failing to within a reasonable time to account for moneys belongings to others]; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 7) 2010018671 – Commissioner Alexander made a motion accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for failing to respond and an additional \$1,000.00 for failing to complete administrative measures within ten days; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 8) 2010022581 &

- 9) **2010022582 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 10) **2010024351 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 and requiring attendance at a two day Commission meeting within six months for failing to maintain Errors & Omissions insurance; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 11) **2010021161 &**
- 12) **2010021162 – Commissioner Collins made a motion to accept legal counsel’s recommendation to send a Letter of Warning regarding advertising in a misleading manner and Commissioner Alexander added a friendly amendment to require Respondent 1 to complete four hours of continuing education in contract writing within six (6) months; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 13) **2010020841 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 14) **2010020761 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to file for a formal hearing for revocation and advise the Respondent that he/she may voluntarily surrender their license; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 15) **2010021002 &**
- 16) **2010021001 – Commissioner Collins made a motion to accept legal counsel’s recommendation to file for a formal hearing for revocation and advise the Respondent that he/she may voluntarily surrender their license; seconded by Commissioner Alexander; unanimous vote; motion carried. Commissioner Alexander requested that before the next meeting, Staff should review the files for complaints 2010020761, 2010021001 & 2010021001 and report back to the Commission at the October meeting with a recommendation based on all the facts of the complaints and the principal brokers’ (retired and current) involvement.**

Ms. Ryan gave the Commission a report on the Errors & Omissions insurance hearings held on August 24, 25 & 26, 2010. She detailed the dispositions of the formal hearings.

Ms. Ryan reviewed the Legal File Summary and the Consent Order Log with the Commission. **Commissioner Collins made a motion to approve the Legal File Summary as presented; seconded by Commissioner Stephenson; unanimous vote; motion carried. Commissioner Collins made a motion to approve the Consent Order Log as presented; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

**Commission Alexander made a motion to at the point hear the informal conference for Mr. Lawrence Wyatt; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

**AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE**

**Lawrence Wyatt, applicant, appeared with his potential Principal Broker Byron C. Golden to request he be approved for an Affiliate Broker license. Mr. Wyatt disclosed to the Commission convictions for Conspiracy to Commit Aggravated Robbery & Facilitation of Aggravated Robbery in 1999. Commissioner Collins made a motion approve; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Chairman Northern recessed the meeting Wednesday, September 1, 2010 at 2:47 p.m.

The Errors & Omissions subcommittee meeting convened at 3:03 p.m. and was attended by Commissioner Flitcroft (Chair of subcommittee), Commissioner Alexander, Commissioner Stephenson, Executive Director Eve Maxwell, Assistant General Counsel Robyn Ryan, Chief Legal Counsel Kathryn Wiseman and Administrative Secretary Kelly McDermott. The committee discussed possible administrative measures that may be implemented to help the process of renewing Errors & Omissions insurance go more smoothly. Penalties for non-compliance were also discussed. The subcommittee will report back to the full Commission at a future meeting. The E&O subcommittee adjourned at 4:16 p.m.

**TENNESSEE REAL ESTATE COMMISSION  
September 1 – 2, 2010**

The Tennessee Real Estate Commission convened on September 2, 2010 at 9:22 a.m. in the George A. Smith Meeting Room at City Hall, 107 E. Main Street, Suite 107, Jackson, TN 38301. **The following Commission Members were present Chairman Isaac Northern, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Michelle Haynes and Commissioner David Flitcroft. Vice-Chairman Woods and Commissioner Valerie Joh were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.**

The Formal Hearing for Mr. David Moore, license #255944, complaint #2009004831, Docket # 12.18-107886A and Mr. Charles Moore, license #52602, complaint #2009004832, Docket # 12.18-107887A convened at 9:23 a.m.

**In the matter of Charles Moore, license #52602, Docket # 12.18-107887A, the Commission voted to issue a Consent Order with a civil penalty of \$5,000.00. Additionally, they voted to require Mr. Charles Moore to complete 12 hours of continuing education in contract writing and ethics and pay one-half the cost of the formal hearing.**

**In the matter of David Moore, license #255944, Docket # 12.18-107886A, the Commission voted to issue a Consent Order with a civil penalty of \$2,500.00. Additionally, Mr. David Moore will be downgraded from Broker to Affiliate Broker and his Affiliate Broker license will be immediately suspended for one (1) year. He is further required to complete four (4) hours of continuing education in ethics and pay one-half the cost of the formal hearing.**

The formal hearing for Mr. Charles and David Moore recessed on Thursday, September 2 at 6:06 p.m.

Chairman Northern adjourned the meeting Thursday, September 2, 2010 at 6:07 p.m.