

TENNESSEE REAL ESTATE COMMISSION MINUTES
December 7, 2011

The Tennessee Real Estate Commission convened on December 7, 2011 at 9:14 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 Bear Stephenson, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Michelle Haynes, Commissioner Janet DiChiara, Commissioner David Flitcroft and Commissioner Austin McMullen. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

The Commission voted on adopting the agenda (Exhibit 1) for the December 2011 meeting. **Commissioner Stephenson made a motion to adopt the agenda as presented for the December 2011 meeting; seconded by Commissioner DiChiara; unanimous votes; motion carried.**

The Commission voted on the approval of the minutes from the November 2011 meeting (Exhibit 2). **Commissioner DiChiara made a motion to approve the November 2011 meeting minutes; seconded by Commissioner McMullen; 7 yes, 0 no, Commissioner Flitcroft abstained as he was absent from the November meeting; motion carried.**

Commissioner Haynes joined the meeting at 9:27 a.m.

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, 2011, TREC had a total of 122 open complaints. Of those 122 open complaints, 54 were Errors & Omissions insurance complaints. There were 43 new complaints in November 2011. There were 110 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 2011-2012 is 70. Total Civil Penalties paid in November 2011 were \$13,370.00. Ms. Maxwell presented the Commission with a pie chart outlining the nature of all open complaints with and without Errors & Omissions complaints included in the chart.

Since they were present as attendees, the Commission asked Bill Stewart, Mike Loy and Johnny Kidd, TREC Auditors, to come forward and have a discussion with the Commission. There was a discussion regarding unlicensed activity and the trend of firms

going paperless. Commissioner Alexander says he would like, by the end of 2012, for new policies to be created that lay out the procedures for auditing firms who have converted to paperless file keeping. **Commissioner Alexander made a motion that by the end of 2012, the Staff should draw up some policies, in regard to auditing procedures, to recognize paperless transactions; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

- Licensing Statistics (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of November 2011. As of November 30, 2011, there were 24,181 active licensees, 1,613 inactive licensees and 10,134 retired licensees. There were 4,166 active firms and 328 retired firms. There were 156 new applications approved in November 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in November of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the number of licenses approved in 2009 and 2010, individual licensees lost and gained from 2000 – 2011 and the average number of licensees (individuals) issued per month for each year from 2000 - 2011.

The Commission and Staff discussed the upcoming meeting in January 2012 in Memphis. Staff explained the details of the trip. Ms. Maxwell advised the Commission that a justification for funds had been sent to the Administration for consideration regarding the presentation of the Bill C. Tune, Jr. Award to Jules Wade in Memphis. She advised that as of the meeting day, there had been no response but that one was expected soon.

Ms. Robyn Ryan, Assistant General Counsel and TREC's Litigator, discussed the upcoming scheduled formal hearing for January.

Commissioner Flitcroft, who was the Chair of the E&O subcommittee, reported to the Commission on the findings of the subcommittee who had met the previous afternoon. He said that it was the consensus of the subcommittee to request a bid for a quote for a policy that would expire on the license expiration date (1/1/2013 – license expiration date) and a quote for a full two year policy (1/1/2013 – 1/1/2015). He proposed that the Commission adopt these ideas for the E&O RFP. Mr. Flitcroft then read into the record *T.C.A. §62-13-112 which states in its entirety - Errors and omissions insurance. — (a) Each licensee who is licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all activities contemplated under this chapter. The requirements of this section shall not apply to acquisition agents. (b) Effective December 31, 1992, it is not mandatory that a person who has been issued a firm license obtain errors and omissions insurance in the name of the firm. Persons issued a firm license by the Tennessee real estate commission shall have the option of obtaining errors and omissions coverage in the name of the firm, in addition to the*

mandatory individual coverage for the brokers and affiliate brokers within the firm. (c) The commission shall make the insurance required under this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with title 12, chapter 3.(d) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee, other than as set forth by the commission and in compliance with § 56-7-1803.(e) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission. (f) The commission shall determine the terms and conditions of coverage required under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and the permissible exemptions. (g) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the licensee's renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission. (h) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, in such amount as determined by the commission, the requirement of insurance coverage under this section shall be void during the applicable contract period. (i) The errors and omissions insurance coverage required by this section shall become effective as a condition of license granting or renewal on December 31, 1990. If practical, the commission may offer the coverage on a voluntary basis before such date.

Ms. Maxwell outlined how the renewal of a license and the renewal of E&O at the same time would be handled administratively. Ms. Maxwell explained that for the first 60 days after a licensee's license expired, the statute has built into it a "grace period" during which the individual can renew their license for a late payment plus the \$80.00 renewal fee for every 30 days delinquent or portion thereof and on the 61st day, the licensee would fall under the reinstatement policy. She explained that the licensee's license does expire on the date of expiration and if E&O was not in place upon renewal, then the license would not renew. At which point she explained the licensee would have the 60 day "grace period" to also renew and pay any penalties.

Commissioner Flitcroft made a motion that the Request for Proposal (RFP) should include a "short period" quote, in addition to the two year period with the short period running from 1/1/2012 until license renewal and the second quote being for the entire two year period of 1/1/2013 – 1/1/2015; seconded by Commissioner Collins; opened to discussion. Chairman Northern asked that if per T.C.A. §62-13-112(h), that was read earlier into the record, TREC cannot get coverage at a reasonable cost then the requirement for E&O would be void for that two year period. Mr. Mark

Green, Assistant General Counsel, explained that for the two year period, if there was no bid or there was a bid that in the Commission's opinion is not affordable then for that period of time there would be no E&O coverage requirement. The logistics of how policies would have to be prorated were discussed. Commissioner Alexander expressed some concerns regarding a licensee's need for gap coverage. Mr. Green clarified the issue for the Commission. He stated that a licensee would not have to go without coverage and they could voluntarily obtain coverage. He reiterated that if TREC had no bid for a policy or a bid that was not affordable or reasonably priced; then the Commission has met their legal obligations to the public according to the statute because there was no one bid or a bid reasonably priced. He stated if this were ultimately the case with this RFP process, then E&O is not a requirement during that period of time. He went on to say again, however, that a licensee can voluntarily renew and continue their E&O policy or option for another carrier as an alternative. The remainder of the discussion was deferred until after lunch.

Chairman Northern recessed the meeting for lunch at 10:43 a.m. and reconvened at 1:38 p.m.

Wayne Pugh, General Counsel, appeared before the Commission to discuss several topics. Firstly, he spoke to the Commission about the rules from the Rulemaking Hearing from February 2011 and how they are held up in the Attorney General's office because there is a discussion about whether the Commission has the authority to enforce the portion of the rule involving Designated Agents with a history of criminal convictions. He explained that this meant that, as of now, no rule has been promulgated to implement issuance of a Designated Agent license. He stated that it was also his understanding that some licenses had already been issued under the "fees rule" but that before any disciplinary actions are taken regarding non-compliance, the Commission needs to make sure they are on solid ground legally. Mr. Pugh advised the Commission that he had just become aware of the issue earlier in the week and that he wants to take time and meet with Assistant General Counsel about the matter. Commissioner Alexander stated that most of the rules were created by the Vacation Lodging Services organizations and TREC has merely tweaked them and agreed to them. Mr. Pugh advised the Commission that he will get involved in the process.

Commissioner Flitcroft shifted the discussion to the E&O matters at hand. Mr. Pugh stated that he does believe that TREC will get bids that are reasonable but, if push came to shove, then the provision of T.C.A. §62-13-112(h) exists. Commissioner Haynes asked how "reasonably priced" is determined. It was explained that the Commission would be presented all bids, without any named parties, and the Commission would determine then if a bid, in their opinion, is reasonable.

Next, Mr. Pugh discussed with the Commission the issue of suspending a license for non-E&O compliance. He explained that if someone has a license, then they have a

property right and therefore, according to the U.S. Constitution, have the right to due process. He stated that for the Commission to have the authority to suspend without a contested case/formal hearing, a statutory change would have to be made by the legislature.

Commissioner McMullen expressed his concern with the E&O insurance renewing with the license. He stated that this change would most likely pass any increase in costs to the provider along to the licensees. Making reference to a portion of T.C.A. §62-13-112 [Errors & Omissions Insurance], he stated that the legislature had deemed it necessary for a licensee to have insurance to protect the public. Commissioner McMullen proposed that TREC submit the RFP with two proposals. He stated that one proposal would be for four more years of fixed insurance and one would be for the staggered renewal per the subcommittee recommendation. He explained that if done that way, then it would give the Commission a cost differential and the Commission will be able to see exactly what costs will be passed along to the licensees if E&O renewals are staggered. He continued that once the Commission knew the amount, then they could compare that to what would be the administrative costs to the State if TREC were to go back to a fixed license expiration date at the same time, every year, for everybody. Mr. Pugh advised that TREC may not indeed have the final say on when the licenses would renew or how the bid can be offered and further stated that he would have to talk to the Administration and explore the options. It was also discussed that the Commission, when bidding the RFP should explore changes to the exclusions in the policy. Mr. Pugh advised the Commission that he would consult with the Contracting Division of the State regarding these matters.

Commissioner Flitcroft restated his motion from earlier in the day prior to the lunch break. **Commissioner Flitcroft restated the motion that the Request for Proposal (RFP) include a short period quote in addition to the two year period with the short period running from 1/1/2012 until license renewal and the second quote being for the entire two year period of 1/1/2013 – 1/1/2015; seconded by Commissioner Collins with a friendly amendment that it be designated that this would be an individual policy and not a master policy. After some additional discussion regarding costs to the licensee and to the provider, Commissioner McMullen made a motion to table the discussion and Commissioner Flitcroft's motion for one more month so TREC can get more information; seconded by Commissioner Collins; after further discussion about the feasibility of moving forward immediately, Commissioner McMullen withdrew his motion and made a new motion. Commissioner McMullen made a motion to amend Commissioner Flitcroft's motion to request in the RFP that the provider also include a proposal for providing insurance for a fixed four year term; seconded by Commissioner Alexander; motion as amended carried unanimously.**

Chairman Northern raised an issue regarding legislation and T.C.A. §62-13-110 [Penalties]. Mr. Pugh advised the Commission that the legal staff works for the

Administration and that the Governor's office has its own legislative agenda. He explained that one offense that can get an attorney fired by the State of Tennessee is bootlegging legislation. That being said, he noted that does not mean the Commission cannot go out on their own and pursue other avenues but that the Legal Division's position is the Governor's position regarding legislation. He stated a Commissioner would have to find a sponsor on their own but reminded the Commission that any proposed legislation that might have an adverse effect on businesses would be frowned upon; such as an increase in fees.

Chairman Northern asked Mr. Pugh about a couple of outstanding requests for an Attorney General's opinion regarding several pending matters and Mr. Pugh said he would follow up with the AG's office. Chairman Northern also asked for some input on the Education and Recovery Fund, specifically the part of the licensing fee that applicants contribute to the Education & Recovery Fund, and made reference to the following statute: *T.C.A. § 62-13-208 (a) & (b) & (c)- [Real estate education and recovery account] — (a) There is hereby established within the general fund a real estate education and recovery account, hereinafter the "account." All funds received by the commission under this section shall be deposited into the account and held solely for the purposes of this section. The commission shall maintain a minimum balance of five hundred thousand dollars (\$500,000) in the account. (b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of § 9-4-603 for the sole benefit of the account. (c)(1) When any individual applies for an original license as a broker, affiliate broker or time-share salesperson, the applicant shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit into the account. If the commission refuses to issue a license, this fee shall be returned to the applicant.* Chairman Northern stated that, as he sees it, as long as TREC keeps the minimum required amount in the account, then the amount of fees charged to licensees for the Education and Recovery Fund could be amended. Mr. Pugh confirmed that the Commission does have that authority. Chairman Northern also asked Mr. Pugh about the Commission's several requests regarding giving Ms. Maxwell a raise in her compensation. Mr. Pugh stated he would also follow up on that matter.

Commissioner Alexander raised the issue of the 50 mile rule and affiliate supervision and whether the 50 mile rule also applies to Principal Brokers. Ms. Maxwell did confirm that there are Principal Brokers who live more than 50 miles from their firm or out of the state entirely. Commissioner Alexander asked that a discussion regarding potential legislation regarding the matter be added to the January 2012 meeting agenda.

Mr. Pugh, at this time, left the meeting and a scheduled informal appearance began.

INFORMAL APPEARANCE

Lisa Marie Wallace, applicant appeared with her potential Principal Broker, Patrick “Pat” J. Rey to request to be approved for an Affiliate Broker license. Ms. Wallace disclosed to the Commission the following misdemeanor convictions: Simple Possession & Unlawful Paraphernalia in 1992, Public Intoxication in 1993, Violation of Probation in 1994, DUI and Driving on Revoked License in 1997, Contempt of Court & Leaving the Scene of an Accident in 1999, Worthless Check in 2000 and Reckless Driving in 2007. **Commissioner Collins made a motion to approve Ms. Wallace’s request to apply for an Affiliate Broker license; seconded by Commissioner McMullen; unanimous vote; motion carried.**

After the informal appearance, the discussion returned to E&O insurance.

Commissioner Collins made a motion that when the RFP is bid it should specify that, in addition to the standard coverage offered currently, the providers should also provide a quote for limits of up to \$1,000,000 and not as an endorsement; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Ms. Maxwell continued on with her prepared report on E&O insurance and addressed Exclusions. She gave the Commissioners a list of the exclusions currently included in the standard Rice policy. As the exclusions are quite numerous, Chairman Northern asked if the policy as priced at \$236.00 every two years is a reasonable rate. Commissioner Alexander suggested that if the exclusions are to be included in the policy then higher deductibles should be made available to offset costs as some licensees are willing to pay more out of pocket in the event of a claim. Commissioner DiChiara stated that licensees have very little coverage with the Rice Insurance policy because of the existing exclusions. Ms. Ryan, Assistant General Counsel, suggested that the Commission might want to consider selecting exclusions to be removed from the policy when bid. Assistant General Counsel Green stated that those changes would ultimately affect the premiums. It was ultimately agreed that the Legal Division can work together with one Commissioner and the Staff to attempt to formulate some ideas on how to handle the many exclusions in the upcoming bid.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of November 2011. **Commissioner Stephenson made a motion to approve the Courses for Commission Evaluation (D1-D16); seconded by Commissioner Collins; unanimous vote; motion carried.**

Request for Instructor Approval

- Sally Cummings of TAR (#1110) requested the approval of Terry Atkinson to teach the TREC Core course (#6520) and Transaction Desk Basic (#5747)
- Sally Cummings of TAR (#1110) requested the approval of Brent Maybank to teach the BPOR – The Agent’s Role in the Valuation Process (#6712)
- Tracye Davis-Rhea of IREM (#1089) requested the approval of Natalie Brecher to teach the Ethics for the Real Estate Manager ETH 800 course (#6771)
- Randall Bedwell of Real Estate Leadership School (#1459) requested the approval of Jayson Harris Campbell to teach the “Builders Are From Mars, Realtors Are From Venus” course (#6775) and Jack Wicker to teach Short Sales – Tall Order course (#6774)

Commissioner DiChiara made a motion to approve the instructor requests; seconded by Commissioner Collins; unanimous vote; motion carried.

Chairman Northern recessed the meeting on Wednesday, December 7, 2011 at 3:30 p.m.

TENNESSEE REAL ESTATE COMMISSION MINUTES December 8, 2011

The Tennessee Real Estate Commission convened on December 8, 2011, 2011 at 9:19 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 Bear Stephenson, Commissioner Wendell Alexander, Commissioner Michelle Haynes, Commissioner Janet DiChiara and Commissioner David Flitcroft. Commissioner Valerie Joh, Commissioner Austin McMullen and Commissioner Grover Collins were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) **2011019931** – Commissioner Alexander had previously reviewed the case and presented his findings to the Commission. **Commissioner Alexander recommended a Consent Order with a civil penalty of \$5,000.00 to be paid within six (6) months; also requiring the Respondent complete a four (4) hour approved course in Ethics, a 30 hour approved course in Contract Writing and also require attendance for eight (8) hours of continuing education at a regularly scheduled two day meeting of the Commission; all education to be completed within nine months. He went on to state that if the Respondent does not agree to the Consent Order then it should be moved forward to a Formal Hearing; seconded by Commissioner DiChiara; vote; 5 yes, 0 no,**

- Commissioner Alexander recused himself; motion carried. Following are the statutes violated as read into the record by Mr. Green: T.C.A. §62-13-312(b)(1) [unlawful misrepresentation], T.C.A. §62-13-312(b)(2) [misrepresentation] T.C.A. §62-13-312(b)(7) [acting for more than one party without disclosure], T.C.A. §62-13-312(b)(14) [failure to disclose] and T.C.A. §62-13-312(b)(20) [violating any provision of this chapter]. Each violation of each statute constitutes a separate violation. The Commission then discussed the Respondent's Principal Broker (remained anonymous) and what role they may or may not have played in the transaction. The Legal Division advised that a complaint has been opened against the Principal Broker but the response was received that morning so therefore it is not on the December Legal Report. The complaint will be heard at a future meeting. **Commissioner Alexander noted that the Commission has the right to require an audit be conducted at any time and therefore he made the following motion: Commissioner Alexander made a motion that an audit be performed by three of the TREC Auditors of 18 files total (six by each auditor, of which three should be paper and three should be paperless) and that the audit encompass the previous 12 months preceding the audit and the audits are to be conducted within six months; seconded by Collins; unanimous vote; motion carried.**
- 2) **2011019441** – Mr. Green advised the Commission that at a previous meeting the Commission had moved to suspend the Respondent's license. However, after discussion with other Legal Staff, it was determined that the Respondent must be given an opportunity to correct their situation or ask for a hearing. He also advised that new information has been received by the Legal Division regarding the complaint. Mr. Green's recommendation was to keep the complaint on the Legal Report until he has the opportunity to review the new information and he will represent it at the January meeting. **Commissioner Alexander made a motion to accept legal counsel's recommendation to defer the complaint; seconded by Commissioner Haynes; unanimous vote; motion carried.**
 - 3) **2011021011 &**
 - 4) **2011021012 &**
 - 5) **2011021013 &**
 - 6) **2011021051** – Commissioner Alexander made a motion that the complaints be deferred to allow Commissioner Flitcroft to review them and report back at a future meeting; seconded by Commissioner Haynes; unanimous vote; motion carried.
 - 7) **2011023031 &**
 - 8) **2011023032** – Commissioner DiChiara had previously reviewed the complaint and she recommended it be dismissed. Commissioner Haynes made a motion to dismiss; seconded by Commissioner Stephenson; vote: 5 yes, 0 no, Commissioner DiChiara recused herself; motion carried.
 - 9) **2010034931** – Commissioner Stephenson made a motion to accept legal counsel's recommendation to close and flag the file and assess the previously

- determined penalty upon renewal of the license; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 10) 2011023941 – Commissioner Haynes made a motion to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
 - 11) 2011023961 – Commissioner Flitcroft made a motion to send a Letter of Warning; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 12) 2011023981 – Commissioner Flitcroft made a motion to send a Letter of Warning; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 13) 2011024271 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to close the complaint pending the outcome of litigation with a copy of the final order to be submitted to TREC on the issues; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 14) 2011024411 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.
 - 15) 2011024481 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 each for the following violations totaling \$5,000.00 plus mandatory four (4) hours of continuing education in Ethics and attendance of a regularly scheduled two (2) day meeting of the Commission all to be completed within six (6) months: for violation of T.C.A. §62-12-102 [unlicensed firm conducting business as a broker], T.C.A. §62-12-301 [License Requirements], T.C.A. §62-13-312(1) [misrepresentation] T.C.A. §62-13-312(3) [continued flagrant course of misrepresentation and Rule 1260-2-.02(1) [administrative measures] and Rule 1260-2-.11 [failure to disclose true position]; seconded by Commissioner Flitcroft; unanimous vote; motion carried. At this point Vice-Chairman Stephenson began acting as Chair because Chairman Northern had to briefly leave the meeting room.
 - 16) 2011025361 – Commissioner DiChiara made a motion to dismiss; seconded by Commissioner Haynes; opened to discussion; Commissioner Flitcroft called for a friendly amendment to require continuing education; Commissioner DiChiara did not accept the friendly amendment because she believes the Respondent did not have a violation; Counsel Green advised that the complaint cannot be both dismissed and require continuing education so he recommended a Letter of Warning requiring continuing education. Commissioner Alexander made a motion to issue a Letter of Warning requiring the Respondent complete eight (8) hours of continuing education by attendance of a regularly scheduled TREC meeting within six (6) months; seconded by Commissioner Flitcroft; after further discussion and clarification by Assistant General Counsel Green and Ryan, Commissioner Alexander withdrew his motion and Commissioner Flitcroft withdrew his second; Commissioner Alexander then made a motion to

- issue a Consent Order requiring the Respondent complete eight (8) hours of continuing education by attendance of a regularly scheduled Commission meeting within six (6) months; seconded by Commissioner Flitcroft; Vote on Amendment: 2 yes, 3 no, Commissioner Northern abstained as he was absent from the meeting room and did not hear the full discussion; amendment failed; motion to dismiss as originally made by Commissioner DiChiara carried unanimously.**
- 17) 2011026321 – Commissioner Northern made a motion to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 18) 2011026391 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**

Mr. Green reviewed the Consent Order Log with the Commission. There was a discussion regarding the administrative process if someone does not pay or complete the terms of a Consent Order to which they have agreed. Mr. Green advised that if the licensee does not pay then it is referred to the Attorney General's Office, as all collection attempts must be made through the AG's office. Commissioner Northern asked Mr. Green to address an issue that came up in the Legal Report. He noted that there were two cases presented that referenced a licensee who is conducting business as an unlicensed real estate investment firm. He stated that, as Commissioner Alexander had also pointed out also, he is not aware of a way a licensee could "remove their hat" as a licensee and operate in a different mode. Ms. Maxwell explained that this is an issue that is a common thread in the ongoing discussion of unlicensed activity. She detailed the situation she has observed. She stated that some licensees are operating within the realm of a licensed firm but are also operating another company outside that firm (i.e. property management, flipping investment homes) and holding themselves out where the public would think they were doing business with a different company while the licensee is actually conducting real estate activities under their licensed firm. She explained that some of these secondary companies have the Principal Broker's home address or they have created letterhead for the other company on a home word processing program or they have an active website for Property Management or Investment Properties. Commissioner Alexander asked if it is not correct that if you flip back and forth then you have to disclose that you are an agent. He stated that he has partners with whom he has another company that does investment property business, but that anytime they buy or sell, they disclose they have a personal interest. He asked if that is not the requirement. Ms. Maxwell stated that she believes they do have a duty to disclose. She explained that if a person were to walk up to some of these firms, he or she would actually think they were doing business with a licensee. She stated that if they are operating outside the realm of their licensed firm, then they must disclose. Chairman Northern asked about publishing the information and it was agreed that it would be included in the next issue of the TREC News Journal as a precautionary measure to licensees so they are aware that there is a potential problem with these activities before it becomes an issue for the Commission. Ms.

Maxwell stated that the issue had been addressed at all of the Education Seminars but that, of course, only benefited those in attendance. It was the consensus of Commission and Staff that the information will be presented to the licensees in a more far reaching manner such as the News Journal.

The Commissioners then reported on matters of concern to them or the Commission, thanked all present licensees for attending, thanked the Staff for all of their hard work throughout the year and stated they were looking forward to the next month's meeting and the Tune Award presentation in Memphis.

This concluded the business of the meeting. Chairman Northern adjourned the meeting on Thursday, December 8, 2011 at 11:32 a.m.