

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**October 13, 2011**

The Tennessee Real Estate Commission convened on October 13, 2011 at 9:22 a.m. in the 1<sup>st</sup> Floor Auditorium of the Center for Higher Education, 300 Market Street, Kingsport, Tennessee. **The following Commission Members were present: Vice-Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Wendell Alexander and Commissioner Janet DiChiara. Chairman Isaac Northern was present by teleconference for the call to order of the meeting and the formal hearing. Commissioner David Flitcroft, Commissioner Grover Collins, Commissioner Austin McMullen and Commissioner Michelle Haynes 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.**

Chairman Northern, attending telephonically, called the meeting to order and explained to the attendees and others that he is sorry he was unable to attend in person but that he appreciates Kingsport welcoming the Tennessee Real Estate Commission. Chairman Northern's presence established a quorum as well. He took part in the formal hearing. Chairman Northern turned the meeting over to Vice-Chairman Stephenson.

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

Because the minutes were not included in the Commissioners meeting books because of a clerical issue, the Commission voted to defer the approval of the minutes from the September 2011 minutes. **Commissioner Alexander made a motion to defer the approval of minutes until later in the meeting; seconded by Commissioner Joh; unanimous vote; motion carried.**

The formal hearing TREC v. Magical Mountain Cabins, LLC through Robert Newpoff, Complaint # 2011010402, 2011010401, Docket # 12.8-113664A convened at 9:29 a.m. Mr. Robert Newpoff was not present at the hearing so a default hearing was held.

**In the matter of TREC v. Magical Mountain Cabins, LLC through Robert Newpoff, Docket # 12.8-113664A, it was ordered, adjudged and decreed that the license for Respondent, Magical Mountain Cabins, LLC is revoked. It was further ordered, adjudged and decreed that Respondent, Magical Mountain Cabins, LLC shall be assessed a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) and Respondent shall pay all court costs in this matter including all costs of the Administrative Law Judge in the amount of One Thousand Eight Hundred Ten Dollars (\$1,810.00) and shall pay this amount within thirty days of the date of the order, October 21, 2011.**

The formal hearing adjourned at 10:45 a.m. at which point the regular business of the meeting began. Chairman Northern ended his telephonic attendance at the adjournment of the formal hearing.

### **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

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

- **Complaint Statistics Report** – Ms. Maxwell presented licensing statistics to the Commission. As of September 30, 2011, TREC had a total of 167 open complaints. Of those 167 open complaints, 99 were Errors & Omissions insurance complaints and seven were Agreed Citations. There were 19 new complaints in September 2011. There were 149 complaints in the legal department and 18 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2011-2012 is 44. Total Civil Penalties paid in September 2011 were \$18,545.00. Ms. Maxwell presented the Commission with pie charts detailing the number and nature of all open complaints with and without E&O complaints included.
- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of September 2011. As of September 30, 2011, there were 24,577 active licensees, 1,843 inactive licensees and 10,168 retired licensees. There were 4,167 active firms and 331 retired firms. There were 216 new applications approved in September 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in September of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the number of licenses approved in 2009, 2010 and 2011, individual licensees lost and gained from 2000 – 2011 and the average number of licensees (individuals) issued per month for each year from 2000 - 2011.

Ms. Maxwell reported to the Commission on the efforts that are being continually made by working with the Legal Division of the Regulatory Boards to address the issue of E&O non-compliance and the collection of civil penalties levied for non-compliance. Ms. Maxwell detailed the following information in a timeline to the Commissioners:

- By June 6, 2011, Conell House, TREC's Complaint Coordinator, finished opening complaints against all of the uninsured licensees in active status (total 229 comprised of 166 affiliates and brokers and 63 Principal Brokers) and against the Principal Brokers with uninsured affiliates (144 Principal Brokers with one or more uninsured affiliates.) Most Principal Brokers have only one uninsured affiliate, but several have two or three uninsured affiliates. The next group to be addressed is the uninsured broker release licensees.
- In the first part of June, 244 Consent Orders were sent from the legal department. The Consent Orders were sent by certified mail, to the address listed with TREC.

- As of 7/5/2011, the dispositions of the 244 Consent Orders (per legal records) were:
  - 39 were returned by the USPS (no pick up, cannot forward)
  - 80 were closed/satisfied, broken down as follows:
    - 17 surrendered
    - 54 purchased or had insurance (4 bought on 12/21/2010, some bought after 3/31/2011)
    - 5 satisfied by payment of penalty
    - 2 payment plan
    - 2 medical waivers
    - 71 have not responded
    - 33 have expired or will expire from now through 9/2011 (flagged)
    - 21 have been in contact with legal
  
- As of 8/5/2011, a total of 325 Consent Orders were sent to licensees by certified mail to the address on record with TREC. Some have been returned unclaimed or with a forwarding address and have been re-sent; usually by regular mail. The disposition of the 325 Consent Orders per Legal follow:
  - 58 returned by the USPS-no pick up, no forward, unclaimed
  - 122 have been closed/satisfied
    - Of the 122 closed and satisfied
      - 20 surrendered license
      - 6 expired
      - 2 deceased
      - 13 paid in full
      - 4 retired
      - 42 affiliates had or got E&O
      - 30 PB's had or got E&O
      - 5 requested medical waiver
      - 8 signed Consent Order and on pay plan
      - 83 have not responded
      - 29 will expire before 9/2011(all expired files flagged)
      - 25 have contacted legal

Ms. Maxwell advised the Commission that the E&O process is monitored daily and the files of licensees are flagged if the license has expired, is expiring or if the license is voluntarily surrendered and notes are placed in the files of licensees to indicate other action which has been taken.

### **Vacation Lodging Services Update Discussion**

There was a discussion regarding whether the Vacation Lodging Service (VLS) firms have complied with the new statutes affecting their industry. Ms. Maxwell explained that some have complied but there are still VLS firms without a licensed Designated Agent despite repeated attempts by Staff and the Commission to encourage industry members to comply and an extension of the deadline by the Commission at the September meeting. Ms. Maxwell detailed in a report the statistics regarding the process as of October 10, 2011:

Number of licensed active VLS firms: (98 in Sevier County; 38 spread throughout 17 other counties)	136
Number of licensed Designated Agents: (25 in Sevier County; 11 in other counties)	36
Designated Agent Applications Pending: (application lacks some required supporting documents or fee – all have been contacted by phone, letter and/or email)	21
VLS firms w/o licensed Designated Agent: (placed in Problem status in system)	100
Number of licensed Real Estate firms that may be engaged in VLS	15

The Commission discussed how to proceed with the process. Attorney Green advised the Commission that his recommendation at the September meeting was to give them more time to comply after receiving the previously sent correspondence. However, he stated that a month had passed and there are still industry members not in compliance so the Commission may want to execute a plan to expedite compliance. Commissioner Alexander asked Ms. Maxwell to review the structure of the E&O civil penalties and stated the Commission could possibly use a similar remedy for non-compliant VLS industry members. There was discussion about possible penalties to be levied against non-compliant industry members.

**Commissioner Alexander made a motion that effective November 1, 2011, any Vacation Lodging Service firm or Designated Agent that does not have a license be assessed a \$2,000.00 civil penalty (\$1,000.00 assessed to the firm and \$1,000.00 assessed to the Designated Agent) and if they have not complied by December 1, 2011, then TREC will open a formal complaint for revocation; seconded by Commissioner Joh; unanimous vote; motion carried.**

Vice-Chairman Stephenson recessed the meeting for lunch at 11:28 a.m. and the meeting reconvened at 1:08 p.m.

Mr. Michael Allen, Principal Broker (#248455) of ERA Top Producers, Inc. and Realty Investors, LLC in Knoxville, Tennessee appeared before the Commission to express his thoughts on the Errors & Omissions penalty process. Ms. Maxwell gave the Commission a brief overview of Mr. Allen's reason for appearing. She explained that Mr. Allen's wife was issued a Consent Order with a civil penalty of \$1,000.00 for failing to obtain E&O insurance in a timely manner and Mr. Allen, as Principal Broker, was also issued a Consent Order with a \$1,000.00 civil penalty for failure to supervise his affiliate. She stated that when Mr. Allen initially requested to appear before the Commission, his request could not be granted because he wanted to address matters which were the subject of outstanding E&O Consent Orders. Ms. Maxwell advised Mr. Allen that the Administrative Procedures Act established that the proper procedure to appeal a Consent Order is through a formal hearing. Mr. Allen decided to pay the Consent Orders plus the \$200.00 fee for the filing of charges for a total of \$2,200.00 in order to resolve these outstanding Consent Orders, negating the need for a formal hearing. With these matters resolved, Mr. Allen appeared before the Commission. Vice-Chairman Stephenson called Mr. Allen to speak and advised him that he had 15 minutes to address the Commission. Mr. Allen began by stating that he had read the last year's

official minutes and the TREC Rules and that he is angry and disgusted by some of the processes he has been through as he has never had a reprimand before this one. Mr. Allen stated that his wife, who did not obtain E&O until June 2011, is the Controller of the office and is only licensed so that she can have access to the Knoxville MLS and that she has never sold a house or had a showing. He said that in his dealings over the years with TREC, he has had mail lost, phone calls unreturned and spoken to counsel several times. Mr. Allen said that legal service in the State of Tennessee represents a certified letter which his wife received on May 26, 2011. He said he purchased Errors & Omissions insurance for his wife immediately following the Memorial Day Holiday on June 2, 2011. He contends that Rice would have backdated his wife/affiliate's policy. He stated that he was never told of a possibility of being assessed a civil penalty. He stated that in the December minutes, Commissioner Alexander recommended that a fine also be imposed upon the Principal Brokers for failure to supervise. He stated that "TREC is supposed to notify a Broker legally first". He stated that he had no "legal notification" until September 23, 2011. He alleged that there is no way to know if Rice Insurance actually sent an email blast to licensees. He also said that TREC says it has mailed many letters which he says he did not receive. He stated that the Commission adopted the E&O Policy in June 2011 even though the violation occurred in January 2011. He contends that he immediately rectified the delinquency (E&O for his wife was purchased in June 2011). He read the content of a TREC Rule: "In determining the amount of a civil penalty the Commission may consider such factors as the following: will the amount imposed be a substantial economic deterrent to the violation". He stated that TREC could definitely say that it did since they had increased E&O penalties 333% since the previous renewal cycle. He said that was stronger than any other division of the regulatory boards. He stated that he did not get the opportunity to explain the circumstances that led to his violation. He said he was told by the Legal Division of the Regulatory Boards the State of Tennessee could not afford to send out a certified letter. He stated that TREC had broken down offenders by groups (delinquent 1-30 days, 31-60 days, 61-90 days and "all others"). He quoted Robyn Ryan, Assistant General Counsel, by saying she said "she would vigorously pursue those people over 120 days and also vigorously pursue the Principal Brokers. He argued that even though the PBs were to be vigorously pursued, they were the last to be notified. He stated that in the past, TREC had notified the Principal Brokers at the same time they notified the Affiliate. He adamantly stated that "TREC cannot hold him responsible for an agent, even if this one is his wife, without giving me proper notification in a timely fashion at the same time TREC notified his wife/affiliate." He again stated that he got his first notification legally on September 23, 2011. He said he could understand a reasonable "fee" but nothing in the December meeting justified raising the fee 333%. He stated that from August to August, \$80,000.00 in civil penalties had been collected from E&O but that now \$180,000.00 would be collected. He stated that at the February 2011 meeting, Ms. Eve Maxwell, Executive Director, reported that compliance was up at that time. He asked why, if compliance was up, the Commission would decide to raise the penalty other than a way to raise revenue. He stated that he wants to "know where the revenues go and what they are spent for" since he just paid \$2,200.00 and was told by the legal division, that the State of Tennessee cannot afford certified mail. He stated that if the State mails three certified letters "it spends \$15.00 so TREC makes \$1,000.00". He stated that Commissioner Alexander made a motion at the December 2010 meeting that he wanted to include the Principal Brokers. He stated that

"sometimes a Principal Broker does not know things if TREC does notify him". He stated that the severity of a violation is to be determined by the risk/harm to the public. He said he is not a risk to the public and his violation was not intentional and that he has had a clear record. He stated that the circumstances that led to the violations were not considered by TREC and the legal division. He contended that he paid \$2,200.00 for 15 minutes on the microphone and that legal department had "blackmailed" him by telling him that if he proceeded to a formal hearing, he could be charged up to \$1,000.00 a day. He argued that no Circuit Court Judge would uphold it as that level of a penalty would be on par with the penalty for murder. He stated that if he can't talk to the Commissioners because they would have to recuse themselves (stated this was not actually true) and he could not get anyone on the phone at the TREC office that it is discrimination to have classes of offenders. He said the Ms. Ryan's job as Assistant Counsel would be to pursue all violation equally. He said that the statement that "appalled him the most" is that TREC's mission is to solely protect the interests of the public. He said that he believed the mission of TREC is to work to protect the public through the education of licensees and cooperation of licensees in the State. He mentioned the 1.6% raise received by State employees this year and stated that Realtors® did not receive a raise. He said that in a time when Realtors® were "hurting", TREC had doubled their collected fees in a year in which real estate was devastated. He stated he does not see the justification for a 333% raise in penalties especially since Ms. Maxwell had reported to them at the February meeting that compliance was up. He stated that he paid an extra \$200.00 in court fees which he says is not what it costs to file charges. He said he believes that imposing the maximum fines every chance TREC gets, because they can, is unconscionable. He stated that he believes that the Commission members, who are grandfathered, should also be required to complete continuing education. He also questioned why TAR did not oppose the penalties. He stated the notification process is flawed. He said it seems to be the intent to maximize the fines rather than educate and compared the State to a "Watchdog Police State". He stated that he does not believe that the mission of TREC is to protect the public or at least it was not in the past. He stated that he had seen motions made to lock in the future ability of Commissions to change the policy. He stated that he believes his penalty should be reduced. He said he is angry to be put in a category and be notified last. He said the process seems backwards and he plans to review the minutes again and also look the TREC rules. He stated that the licensee should be able to review. He also stated that he did not understand how the Commission continues to vote unanimously on any motion regarding the penalties. He asked if legal counsel wished to challenge him under oath. Vice-Chairman Stephenson read into the record the content of T.C.A. § 62-13-112(a). He read "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". He stated that every licensee in the State of Tennessee is statutorily required to have E&O insurance and the TREC is charged with ensuring the Statutes are upheld. He asked Mr. Allen when he paid his E&O, why he did not also renew his wife's E&O policy. Mr. Allen stated he was on "automatic renewal" and therefore must have renewed in January 2011. He said that he does concede that not renewing is wife's E&O was an oversight. Commissioner Joh said that as a Principal Broker he is required to have E&O and he is required to make sure all of his affiliates have E&O insurance and that it is a violation to not supervise affiliated licensees. Commissioner DiChiara commented that as a Principal Broker she knows she

is responsible for her affiliate's actions. She pointed out that TAR sent notifications warning of the increase in E&O penalties. She stated that she somewhat resented being lumped into an "uneducated" category. She stated that all Commissioners attend an Ethics class to meet the NAR requirement. She stated that it is, in fact, the mission of the TREC to protect the public and the Commission is not trying to make the jobs of PBs more difficult. However, she went on to say that it is futile for TREC to continuously have to pursue uninsured licensees. Mr. Allen retorted that not every Principal Broker is going to know everything their affiliates do. Mr. Allen again brought up the Principal Brokers are the last to know. Vice-Chairman Stephenson told Mr. Allen that his comments would be looked into and discussed at a future meeting of the TREC. Assistant General Counsel Robyn Ryan clarified that a licensee can request a formal hearing if there is an action pending instead of paying a civil penalty that has been assessed to them. She explained that the appearance by Mr. Allen is an unusual situation where the request was made to address the Commission. She stated that the only way that legal staff thought this appearance could be done ethically was if he did not have a pending Consent Order. She explained that there is no formal process for an automatic request for a licensee to request an appearance. She stated that the Commission does not have a history of holding informal appearances. Mr. Allen again stated that he considers the penalties to be excessive and made a reference to the penalty being comparable to a penalty for a co-mingling funds (what he considers a more serious offense) and the process needs to be better and should be examined further.

#### **Informal Timeshare Salesperson Applicant Appearance**

Terry Lee Dale, applicant appeared with his potential principal broker Phyllis Sissum to request he be approved for a Timeshare Salesperson license. Mr. Dale disclosed a 1997 conviction of Possession of Marijuana and a 2010 conviction of Petit/Simple Larceny (which involved removing some granite rocks from what he believed was public property). **Commissioner Alexander made a motion to approve Mr. Dale's request; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

#### **LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL**

- 1) **2011017291** – Attorney Green advised the Commission regarding this complaint that was heard at the previous month's meeting when the Commission voted to authorize a formal hearing. Mr. Green stated that under T.C.A. § 4-5-320(c), the Commission must give the Respondent an opportunity to remedy the allegations (i.e. voluntarily surrender the license, pay a civil penalty, suspension of the license) before notice of charges can be sent. **Commission DiChiara made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$3,000.00 and a one year suspension of his license as an offer to comply; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 2) **2010032091** – Commissioner Joh made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

- 3) 2011017401 &
- 4) 2011017402 &
- 5) 2011017403 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 6) 2011009941 – Commissioner Joh made a motion to accept legal counsel’s recommendation to close the complaint pending the outcome of litigation; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 7) 2011020101 – Commissioner Joh made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$500.00 for violation of each of the following statutes: T.C.A. § 62-13-312(b)(1)(2), T.C.A. § 62-13-403(1)(2), T.C.A. § 62-13-404(2), T.C.A. § 62-13-312(b)(7) and T.C.A. § 62-13-405(b) for a total civil penalty of \$2,500.00 plus attendance of a two day meeting of the Commission within six months and additionally require Respondent to complete four (4) hours of continuing education in Ethics and four (4) hours of continuing education in Contracts within six (6) months; seconded by Commissioner Alexander; unanimous vote; motion carried. Commissioner Alexander made a motion to open a complaint against the Respondent’s Principal Broker for failure to supervise; seconded by Commissioner DiChiara; vote: 3 yes, 1 no (Commissioner Joh voted no); motion carried.
- 8) 2011019821 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 9) 2011019781 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 10) 20110100061 – Commissioner DiChiara made a motion to dismiss the complaint with TREC and refer it to the Tennessee Auctioneer Commission; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 11) 20110178711 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty in the amount of \$750.00 for each violation of the following statutes and rules: T.C.A. § 62-13-312(b)(14), T.C.A. § 62-13-312(b)(16), Rule 1260-2-.01, Rule 1260-2-.02, T.C.A. § 62-13-309(a)(1)(A) and T.C.A. § 62-13-309(a)(3) for a total civil penalty of \$3,000 plus attendance of a two day meeting of the Commission within six (6) months; seconded by Commissioner Joh; unanimous vote; motion carried.
- 12) 2011019931 – After discussion, Commissioner Joh made a motion to defer the complaint so Commissioner Alexander may review the file and report back to the Commission at a future meeting; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

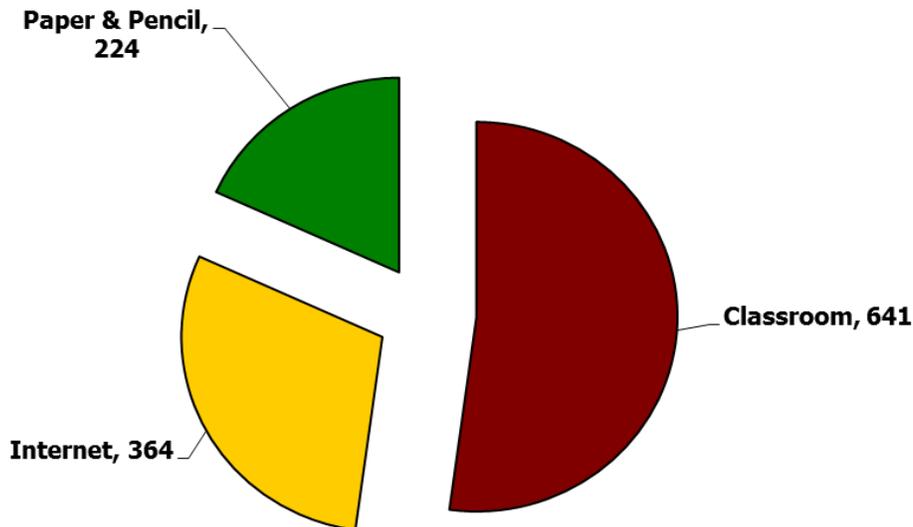
Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Discussion for the month of September 2011. **Commissioner DiChiara made a motion to approve all of the courses (O1-O29) as presented; seconded by Commissioner Joh; unanimous vote; motion carried.**

**Request for Instructor Approval**

- Sally Cummings of TAR (1110) requested the approval of Bobby Wood to teach NAR Ethics 2009-2012 Course (#6256).
- Sally Cummings of TAR (1110) requested the approval of Monica Neubauer to teach Generation Buy Course (#6697) and e-PRO Day One Course (#6665).
- Sally Cummings of TAR (1110) requested the approval of Randall Fly to teach the TREC Core Course (#6520).

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

Mr. McDonald presented the Commission with the following pie chart detailing the October 2011 (before October 2011 Education Report approvals) course delivery totals of pre-licensing and continuing education courses.



Mr. McDonald advised the Commission that he conducted a survey via surveymonkey.com of the local associations and presented the following questions that were asked and the responses from 1,004 individuals.

1. Do you read the TREC News-Journal?

Yes, I find it online.	60%
No, I have not received it in the mail.	40%

2. Should Principal Brokers have a required education course to complete within their licensing period?

Yes	68%
No	32%

3. Do you think the "grandfather" modifier should be removed and all licensees take continuing education?

Yes	73%
No	27%

4. How would you prefer your Errors & Omissions Insurance to expire and renew?

With the renewal and expiry of my real estate license.	65%
With my birth date.	2%
December 31 of every two years.	32%
None of the above.	1%

The Commission revisited the approval of the September 2011 minutes. **Commissioner Alexander made a motion to approve the September 2011 minutes as presented; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

**Commissioner Reports**

Each Commission member thanked the attendees and the citizens of Kingsport for their hospitality during the meeting and offered comments on matters of concern to them as it relates to the industry and Commission. Commissioner Joh specifically addressed Mr. Allen's comments from earlier in the day by reading into the record information regarding correspondence sent from TREC to licensees per Ms. Maxwell's E&O timeline report. That information is as follows:

- On 9/30/2010, TREC sent a letter to all active licensees (approximately 27,000) and the News Journal was posted on the web with the names of current uninsured licensees.
- On 10/18/2010, Rice Insurance Company (RISC) sent out 27,054 renewal notices to 4,470 Principal Brokers and 22,584 affiliates, timeshare salespersons and brokers.
- On 12/14/2010, TREC sent a letter to 4,792 Principal Brokers reminding them to get E&O and to check to make sure that affiliated licensees have E&O. The letter generates much response to TREC and E&O carriers.

- On 12/22/2010, RISC sent an email blast to 15, 323 licensees who had not yet renewed their 2009 policy
- On 1/28/2011, TREC sent a letter to 1,975 licensees who remained on list as uninsured. The letter generated many calls, emails, faxes and certificates of E&O. TREC continued to verify the information and remove these licensees from the list to be published.
- On 5/31/2011, the first set of letters and Consent Orders were sent to active uninsured licensees. There were 314 uninsured active licensees. That group was the first to be sent the letter and Consent Order. Next to receive letters and Consent Orders would be the Principal Brokers with uninsured affiliated licensees.

Vice-Chairman Stephenson adjourned the meeting on Wednesday, October 13, 2011 at 3:45 p.m.