

TENNESSEE REAL ESTATE COMMISSION MINUTES
January 12, 2012

The Tennessee Real Estate Commission convened on January 12, 2012, at 9:30 a.m., in the 1st Floor Commission Chambers at the Shelby County Administration Building, 160 N. Main Street, Memphis, Tennessee, 38103. The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman William "Bear" Stephenson, Commissioner Grover Collins, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner Janet DiChiara and Commissioner David Flitcroft. Commissioner Valerie Joh and Commissioner Austin McMullen were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green and Kelly McDermott, Administrative Secretary.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the January 2012 Commission meeting. Initially, according to the posted agenda, a formal hearing was scheduled for the meeting but it was continued and therefore changed the agenda. Chairman Northern asked Ms. Maxwell about adding a discussion to the agenda regarding a potential change in fees charged to the licensees for the Education and Recovery Fund. This item was added to the agenda. **Commissioner Alexander made a motion to adopt the amended agenda for the January 2012 agenda; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The next order of business was the approval of the December 2011 minutes (**Exhibit 2**). **Commissioner DiChiara made a motion to approve the December 2011 minutes; seconded by Commissioner Stephenson; unanimous vote; 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 December 31, 2011, TREC had a total of 88 open complaints. Of those 88 open complaints, 19 were Errors & Omissions insurance complaints. There were 26 new complaints in December 2011. There were 78 complaints in the legal department and 10 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 82. Total Civil Penalties paid in December 2011 were \$14,650.00.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of December 2011. As of December 31, 2011, there were 23,896 active licensees, 1603 inactive licensees and 10,185 retired licensees. There were 4,154 active firms and 327 retired firms. There were 131 new applications approved in December 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in both December of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2011, firms closed or retired from 2008 – 2011 and the applications approved from 2008 – 2011.

Ms. Maxwell gave a brief overview of the Errors & Omissions formal hearings that were held in December 2011. She also advised the Commission that any Designated Agent who is not currently licensed under the new law has been put in a "Problem" status.

Ms. Maxwell answered some of the Commission's questions regarding license status. This included explaining the difference between inactive and retired and how long a person may stay in each status. The availability of license status information on the TREC website was discussed. Commissioner Haynes noted that she would like for people to be able to see a license status along with an explanation of what each license status means. Ms. Maxwell advised that she would speak with the Administration and the Information System division regarding having the information added to the website. Chairman Northern stated that compared to other State's website, the Tennessee website seems to be somewhat limited and less easy to navigate. He asked Ms. Maxwell to pass along the Commission's recommendation to pursue improvements in the TREC website.

Ms. Maxwell stated that at the previous month's meeting, Commissioner Alexander had asked about how the 50 mile rule applies to Principal Brokers. Ms. Maxwell presented the Commission with a report on the number and location of Principal Brokers who have an office in Tennessee but they live and reside with a physical/residential address outside the State of Tennessee. She presented the statistics which included a breakdown of Principal Brokers by state as well as Property Management firms. The Commission discussed the 50 mile rule and how it applies to a PB's ability to supervise their affiliates. After discussion, **Commissioner DiChiara made a motion to have Staff look into changing the 50 mile radius rule to incorporate Principal Brokers; seconded by Commissioner Flitcroft; unanimous vote; motion carried.** Commissioner Alexander made reference to the role supervision plays with the availability of such devices as iPhones, iPad or other tablets. He continued to say that he, however, as long as he is a member of the Board, will support the 50 mile rule but that each case should and will be taken under individual advisement by the Board by an informal appearance by the licensee or applicant.

The Commission and Staff discussed the topics that need to be addressed when the Social Media Subcommittee meets. Ms. Maxwell gave an overview of how the topic of Social Media and advertising has been discussed previously by the Commission. She explained that the topic originally came up because of questions about the feed of the MLS into IDEX and into a number of syndicated and aggregated sites and how sellers are to be advised of the flow of information regarding their listing. She also addressed how TREC could consistently enforce that an individual make sure that the information found on the site is accurate, correct and does not constitute a violation of TREC advertising rules. She went on to say that there are so many issues associated with this because the reach of the internet is vast and touched on various forms of social media that can be used for advertising purposes such as Facebook, Twitter or LinkedIn in addition to virtual office websites and the MLS feed into those websites. The subcommittee members feel they need more guidance before the discussions proceed. Commissioner Haynes and Commissioner DiChiara expressed some of their concerns regarding the rules as they stand on regulation of internet advertising. Commissioner DiChiara stated that the Commission needs to address the rules now in place and the penalties for violation of these rules. She went on to say that a level of liability should be established and a licensee would be unable to list the firm information and phone number if a network such as Twitter is being used because of character limitations when posting messages. She stated that TREC needs to move forward to bring our rules closer into line with the realty of today's world. Ms. Maxwell looked at some other state's rules and advised that it appears that the majority of states have adopted a licensing rule that a licensee must include the firm name and phone number in internet advertising. It was discussed

that ARELLO has certain guidelines about firm disclosure and virtual websites. Commissioner DiChiara stated that she sees no way to police everything that occurs on the internet but that TREC law is really very stringent and tight in scope. She contended that the rules need to possibly be adjusted to adhere to changes in the marketplace and technology. Ms. Maxwell did state that an issue on the internet is a bait and switch scheme and that when changing the rules that must also be considered. After some further discussion regarding administrative processes that can be implemented, it was determined that the subcommittee could meet and converse about ideas on regulation of MLS and IDEX and report back to the full Commission. Commissioner Alexander then suggested that it seems to him a good process for handling internet advertising complaints would be to allow TREC's Complaint Coordinator and Executive Director to determine the merit a complaint and whether it is a flagrant violation of TREC rules. Commissioner DiChiara reiterated her suggestion that the rules need to be tweaked. **Commissioner Alexander made a motion that when TREC receives one of these complaints then Ms. Maxwell and the complaint division can review it and make the determination as to whether it goes to the Legal Division or if it lacks merit and should be dismissed because it is not a violation under present day practices of doing business; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Commissioner Stephenson made a motion to recess the meeting for lunch and to move the balance of the morning's agenda to after the informal appearance scheduled immediately following lunch; seconded by Commissioner Haynes; unanimous vote; motion carried.

Chairman Northern recessed the meeting for lunch at 11:34 a.m. and reconvened the meeting at 1:17 p.m.

AFFILIATE BROKER APPLICANT INFORMAL APPEARANCE

Javier "J" Bailey, Sr. appeared with his potential Principal Broker Mark Mayall to request that he be allowed to apply for an Affiliate Broker license. Ms. Maxwell reviewed Mr. Bailey's disciplinary history with the Board of Professional Responsibility which regulates attorneys. Ms. Bailey had several temporary suspensions and/or censures of his law license. **Commissioner Alexander made a motion to approve Mr. Bailey's request to apply for an Affiliate Broker license; seconded by Commissioner Flitcroft; vote: 6 yes, 0 no, 1 recusal (Commissioner Northern); motion carried.**

The Commissioners discussed the Errors & Omissions Request for Proposal (RFP). Mr. Green advised the Commission that Mr. Pugh, General Counsel, had spoken to the Department of Commerce & Insurance's contract review attorney and they had agreed that what was proposed last month (two proposal requests within a single RFP) is acceptable. He stated the only concern is whether OCR (Office of Contract Review) might have a different interpretation of the statute and move slowly through the process of approval. Ms. Maxwell went over what was discussed at last month's meeting regarding the next steps to be taken in the bidding of the E&O RFP. She stated that it would be best if the Board and Staff had the E&O RFP ready to be sent to the Office of Contract Review by the beginning of March because the process takes some time after being submitted. The Commissioners decided to take the information home with them and come back with any final suggestions. **Commissioner Alexander made a motion that Ms. Maxwell sort through the various minutes and motions that have been made throughout the**

months regarding the upcoming E&O RFP and report back next month; seconded by Commissioner Collins; unanimous vote; motion carried.

The Commission had a discussion regarding licensing fees, specifically the \$30.00 paid into the Education and Recovery Fund by licensees at the time of initial licensure. Ms. Maxwell explained to the attendees one purpose of the Education and Recovery Fund. Ms. Maxwell explained that the Statute provides for an Education and Recovery fund and the purpose of the fund is to compensate individuals who have been harmed by the actions of a licensee. She advised that for an individual to qualify for consideration, certain criteria must be met. She explained that under the Education and Recovery Fund, an individual would have to notify the Commission prior to the filing of any lawsuit that they might draw upon the E&R fund and then once they complete the lawsuit, before they can submit a claim, they have to explore and exhaust all possible means of collecting on that judgment in their own right. She went on to explain that at that point Legal would make write up a synopsis and send it to the Attorney General's office and the Attorney General represents the State of Tennessee in any hearings that deal with whether or not a payment will be made out of the E&R fund and that sometimes an individual will be awarded the amount (maximum \$15,000) and sometimes not. She advised that if a claim is paid out, then the licensee (who may have lost their license) who is involved in the claim must pay back the money to the fund plus interest before they would be allowed to reapply for a new license. She explained to the attendees that the Commission has considered lowering the amount that applicants pay into the E&R fund. **Commissioner Haynes made a motion to reduce the fee from \$30.00 to \$10.00 at initial application and if the Commission see that the amount needs to be increased at a later date, then action will be taken to do so and that this change in fees will be effective July 1, 2012; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

It was discussed, at the suggestion of Commissioner Collins, that a possible increase in the cost to transfer a license be considered. It was decided that Ms. Maxwell and the TREC Staff would compile a report of processed transfers, and if administratively possible, determine if a person has transferred multiple times in a short period of time. She will then, after some time compiling data, report back to the Commission.

AFFILIATE BROKER APPLICANT INFORMAL APPEARANCE

Kwane Morris, applicant appeared with his potential Principal Broker Gene E. Adams to request he be allowed to retest and reapply for an Affiliate Broker license. **Commissioner Collins made a motion to approve Mr. Morris' request to retest and reapply for an Affiliate Broker license; seconded by Commissioner DiChiara; vote: 6 yes, 0 no, 1 recusal (Chairman Northern); motion carried.**

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of December 2011 and the requests for Instructor Approval.

Commissioner Collins made a motion to approve the Courses for Commission Evaluation; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Instructor Reviews

1. Tara Herman of Sterling Education Services (#1345) requested the approval of David Canas and Matthew Mattingly for their March 20, 2012, seminar, Landlord Tenant Law (#6149) in Nashville.
2. Donna Wood of GNAR (#1096) requested the approval of Paul Gaddes to teach the Short Sales and Foreclosures Course (#5344).

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

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) **2011017291 – Commissioner Alexander made a motion to let their findings from the previous motion stand which was to issue a Consent Order with a civil penalty of \$3,000.00 and a one year suspension or come before the Board for a Formal Hearing; seconded by Commissioner Flitcroft; vote: 6 yes, 0 no; 1 recusal (Chairman Northern); motion carried.**
- 2) **2011019441 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for one violation of T.C.A. §62-13-312(5)(20) [failure to account for money belonging to another] and further require Respondent to attend a two day TREC meeting within six months; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 3) **2011021011 &**
- 4) **2011021012 &**
- 5) **2011021013 – Commissioner DiChiara made a motion to defer the complaint so that Commissioner Flitcroft can have more time to review it before presenting it to the full Commission; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 6) **2011025421 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Letter of Warning; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 7) **2011026811 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 8) **2011026991 – Commissioner Collins made a motion to issue a Letter of Warning and require attendance at a two day TREC meeting within six months; the motion was rescinded because it was clarified that you cannot send a Letter of Warning and require continuing education with no Consent Order; Commissioner Collins made a motion to issue a Letter of Warning; seconded by Commissioner Haynes; opened to discussion; Commissioner Flitcroft made a motion to amend the motion and require eight (8) hours of continuing education in Ethics and eight (8) hours of continuing education in contract writing plus attendance at a two day Commission meeting within six months; seconded by Commissioner Alexander; vote on amendment; 6 yes, 1 no (Commissioner DiChiara); motion as amended passed.**
- 9) **2011027081 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$200.00 for violation of T.C.A. §62-13-32(b)(14)(20) [conduct which constitutes improper dealing plus attendance at a two day TREC meeting and three (3) additional hours of continuing**

- education in Ethics; all to be completed within six months; seconded Commissioner DiChiara; unanimous vote; motion carried.
- 10) 2011027091 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$2,000.00 for a licensee engaging in conduct through an unlicensed firm in violation of T.C.A. §62-13-312(b)(14)(20), acting as a “Time Share Salesperson” as defined in T.C.A. §62-13-102(15) and working for an unregistered time share company as required by T.C.A. §66-13-122, and for the offering of prizes or promotional offers under T.C.A. §62-13-133 by not offering this in writing and the failing to deliver the same. Additionally, require the Respondent to attend a two day TREC meeting of the Commission and get an additional four (4) hours of ethics continuing education both within six months; seconded by Commissioner Collins; unanimous vote; motion carried.
 - 11) 2011024031 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$3,000.00 for failure to account for earnest money under T.C.A. §62-13-312(b)(5)(14)(20), timely account for funds and deposits under T.C.A. §62-13-403(6) and for failure to respond to a complaint files with the Commission under T.C.A. §62-13-313(2) and additionally attend a two day meeting of the Commission and an additional twelve (12) hours of ethics continuing education within six months; seconded by Commissioner Alexander; unanimous vote; motion carried.
 - 12) 2011027641 – Commissioner Collins made a motion to accept legal counsel’s recommendation send a Letter of Warning regarding interference of a contractual relationship; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 13) 2011027781 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
 - 14) 2011027201 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order with a \$250.00 civil penalty for false and misleading advertising under T.C.A. §62-13-312(b)(4)(14) and \$1,000.00 for failing to take administrative measures under T.C.A. §62-13-312(b)(16). Additionally, attendance of a two day TREC meeting within six months; seconded by Commissioner Collins; unanimous vote; motion carried.
 - 15) 2011026941 &
 - 16) 2011026901 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.

Mr. Green reviewed the Consent Order Log but due to time constraints Commissioner Alexander made a motion that Mr. Green finish his report at the following month’s meeting; seconded by Commissioner Collins; unanimous vote; motion carried.

Commissioner Reports

Each Commissioner and Staff member reported on matters of concern to them and to the Commission and all Commissioners expressed their appreciation to the Memphians for their hospitality during the Commission’s visit.

Vice-Chairman Stephenson adjourned the meeting on January 12, 2012 at 4:35 p.m.