

TENNESSEE REAL ESTATE COMMISSION MINUTES
March 7 – 8, 2012

The Tennessee Real Estate Commission convened on March 7, 2012, at 9:19 a.m., in the Davy Crockett Building at 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman William “Bear” Stephenson, Commissioner Grover Collins, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner David Flitcroft, Commissioner Janet DiChiara and Commissioner Austin McMullen were present. Others present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Assistant General Counsel Mark Green, Robyn Ryan and Julie Cropp and Kelly McDermott, Administrative Secretary.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the March 2012 Commission meeting. Chairman Northern advised the Commission members that Mr. Wayne Pugh, General Counsel for the Division of Regulatory Boards, was present to address the Commission at that time. **Commissioner DiChiara made a motion to adopt the agenda for the February 2012 agenda; seconded by Commissioner Haynes; unanimous vote; motion carried.**

The next order of business was the approval of the February 2012 minutes (**Exhibit 2**). **Commissioner Collins made a motion to approve the February 2012 minutes; seconded by Commissioner Stephenson; vote: yes, 0 no; Commissioner Flitcroft abstained as he was absent from the February 2012 meeting; motion carried.**

Mr. Wayne Pugh, General Counsel for the Division of Regulatory Boards, addressed the Commission. Mr. Pugh discussed the VLS rules for TREC that went through the Rulemaking Hearing in February 2011 and adopted certain rules that went to the Attorney General’s office. He stated that it has been brought to his attention that TREC did not review the Regulatory Flexibility Act when adopting those rules. He explained that there are two stages to the Regulatory Flexibility Act process. He advised that first prior to the initiation of the Rulemaking process, you have to go through an analysis that consists of seven questions that the code sets out that need to be considered and discussed by the Board prior to the initiation of the Rulemaking Hearing and; secondly the Economic Impact Statement has to be done at the actual Rulemaking Hearing. He advised that the Economic Impact Statement was done but when all recordings and minutes were reviewed there is no indication that the Regulatory Flexibility Act analysis was completed prior to the Notice of Rulemaking. He reiterated that it should be done twice; once when the Board is thinking about making the rule change and then again after the Board gets the comments from the public at the actual Rulemaking Hearing. He further explained that there is an Attorney General’s opinion that says if the Regulatory Flexibility Act analysis is not completed then the info can be deemed invalid and therefore the rule needs to be re-reviewed at that time. Mr. Pugh advised the Commission that Assistant General Counsel Cropp has two Notices of a Rulemaking Hearing; 1) a notice regarding reducing the Education and Recovery Fund licensee contribution amount from \$30.00 to \$10.00 upon initial application for a license and; 2) the VLS rules have also been brought back to discuss to perform the analysis and get it on the record.

Mr. Pugh went back over the VLS rules and advised that the Attorney General’s office also has concerns about the way the rule is worded regarding applicants for a Designated Agent license

with a criminal background. He explained that the rule is contradictory because its wording states that an applicant for DA cannot have a criminal background but then makes reference to the ability of the Board to waive it. He suggested that this section be dropped because it is already in the VLS statute just as it is stated in the statute for Affiliate Broker and Broker applicants. He suggested that the Commission just handle the situations with an applicant for DA the same way they do with Affiliate Brokers and Brokers.

Commissioner Haynes asked Mr. Pugh an additional question regarding criminal backgrounds of applicants. She asked if it possible for felonies over 10 years of age (for example) could be reviewed by the Executive Director and TREC Legal Counsel instead of automatically being brought before the Board. Mr. Pugh advised that to change the procedure a rule change would be required and further suggested the Board may want to consider, as part of that rule change, to grant the Executive Director the authority to make a determination in these situations.

Commissioner Collins asked Mr. Pugh for his views on the Errors & Omissions insurance issues the Commission has experienced regarding non-compliance and changes to the RFP. Mr. Pugh stated the problem with non-compliance began approximately six years ago since the beginning of the staggering of license renewals. He stated that because the E&O policies are written under a Master Policy, all of the licensees' policies expire at the same time. He went on to say if the Master policy was discontinued and an individual policy was written instead, then the Board could do a two year individual policy that could expire with the license as used to be the practice of TREC. He stated that by making this change, then a policy must be in place at the time of renewal for the licensee to be able to renew and that this will motivate licensees to purchase their insurance because they want to renew.

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 complaint statistics to the Commission. As of February 29, 2012, TREC had a total of 88 open complaints. Of those 88 open complaints, 1 was an Errors & Omissions insurance complaint. There were 22 new complaints in February 2012. 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 2011-2012 is 112. Total Civil Penalties paid in February 2012 were \$16,160.00.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of March 2012. As of February 29, 2012, there were 23,354 active licensees, 1,566 inactive licensees and 10,208 retired licensees. There were 4,124 active firms and 331 retired firms. There were 198 new applications approved in February 2012. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in February 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 – 2012, firms closed or retired from 2008 – 2012 and the applications approved from 2008 – 2012.

Ms. Maxwell discussed the renewal of the PSI, TREC's testing vendor, contact. She advised that the Board has a couple of one year amendments they can add to carry on the contract for one more year and they would have another year if the Commission then wanted to extend it again. Ms. Maxwell went over the testing site locations and the number of test takers at each location. She also reviewed how the test questions are chosen, the cost to applicants for testing and the time required between exam attempts when an applicant fails all or part of the exam.

Commissioner Alexander made a motion to extend the contract with PSI for one more year; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Ms. Maxwell presented the new requirements of the State of North Carolina for reciprocal licensing. She advised the Commission that the North Carolina Real Estate Commission is abolishing their reciprocity programs. She explained that previously the TREC Commission had stated that if any state did away with their reciprocity agreement, then Tennessee would also do away with theirs. She stated that the change became effective on March 1, 2012.

Commissioner Flitcroft made a motion to revoke Tennessee's reciprocity agreement with North Carolina, effective March 1, 2012; seconded by Commissioner Collins; unanimous vote; motion carried.

Chairman Northern asked Ms. Maxwell if she knew if there was a great difference in the state portion of the exam in other states. Ms. Maxwell explained that all states have certain nuances to their laws but that they all have the same basic structure but the rules promulgated do vary by state. Mr. McDonald advised the Commission that he works closely with Staff when determining someone's eligibility for reciprocity. He stated that the pre-licensing requirements are vast and different from state to state and therefore TREC having a system in place where people are taking the state exam would simplify the process. It was discussed that the Staff would research the different requirements state to state and report back to the Board. Ms. Maxwell stated that, in respect to Tennessee, there are two main points to discuss regarding reciprocity: 1) Are we going to test or require a course in order to get a license by limited licensing recognition? And; 2) are we going to require that people who got their license by means of reciprocity to do required Continuing Education? It was decided that Mr. McDonald would invite a delegate of TAR to come and discuss these issues with the Board at a future Commission meeting. Assistant General Counsel Mark Green did explain to the Commission that when someone holds a license then they have a property right in that license. He stated that the Commission cannot make it more difficult on a person just because they live over the Tennessee state line. Commissioner Alexander explained that any changes would not be retroactive.

Ms. Maxwell reported to the Commission on an exemption present in Nebraska's law regarding the sale of HUD properties. She explained that the Nebraska Real Estate Commission has a statute giving individuals an exemption who are dealing with HUD and some of the governmental agencies so their Commission does not need to hear complaints regarding those issues. She advised that all matters in these cases are done according to federal standards not state standards. She included in her report the Nebraska statute and an excerpt from Alabama where the issue has been discussed as it related to earnest money as well as some information from Kansas where their Board has discussed HUD and VA transactions. The Commission determined that it wants to discuss a policy or guidelines so individuals who are dealing with these federal agencies and asset managers have some direction on whether or not the way they

are preceding under the federal contracts would be considered to be a violation under the TREC rules and statues. Chairman Northern stated that last month the Commission agreed that licensees who are dealing with foreclosures and short sales are subject to some strict requirements by the institutions they are working with that may or may not fall in line with TREC's licensing laws, rules and policies. Ms. Cropp had drafted a proposed policy and presented it to the Commission. The policy read as follows:

POLICY ON DISCLOSURES

The necessary provisions promulgated within the Rules of the Tennessee Real Estate Commission, which pertain to disclosure information and its mode of transmission, may not be applicable where Federal law, regulations, and/or practice are not consistent as it relates to foreclosure transactions.

The Commission discussed the content of the policy. Commissioner Alexander explained the relationship with asset managers and FHA foreclosed homes as he works with these issues in his real estate practice. He advised of the process for working with asset managers and logistically how issues could arise (i.e. disclosures, earnest money, with whom you are contacting). Commissioner Alexander suggested that Staff could review these complaints and determine if there is a flagrant violation. Mr. Green, Assistant General Counsel, stated that the Legal division cannot draft a policy specific enough to address all of the agencies and that the intent of the policy should be to address federal laws trumping state laws. Commissioner Alexander suggested that the policy be tweaked and represented at the April meeting.

Ms. Maxwell discussed with the Commission the Sunset Audit of TREC. She advised that the process has begun and she has met with the state auditor and given her requested documentation and that the process will be ongoing for six to eight more months.

Ms. Maxwell discussed with the Commission changes in the processes for processing transfers via a TREC 1 form. She explained that a couple of years ago when the new rules were effective on June 14, 2010, the language for the rule for processing transfers was changed. She advised the Commission that the Administration has put into test practice a system where a Principal Broker can go online to the TREC site to pay for someone to transfer. She advised that when the rule changed in 2010, the language regarding transfers stated that the transfer form and the fee of \$25.00 had to be received and processed before the transfer would be complete. She advised that at that time there was a discussion regarding transfers being done online to expedite the process and reduce lag time. Therefore, she advised that the Administration has put into test stage a program whereby the Principal Broker can go online and they will be able to pay to have someone transfer and that info will be transmitted to the TREC office. She stated that the transfer will not be entered into the RBS licensing system and take effect until the fee is paid by credit card and entered by the cashier's office at which time the information will be transmitted to TREC so that we may effectuate the transfer. She went on to say that if the TREC office does not receive the actual paper document for the transfer within 5 business days then the transfer will be void from the start and the transfer would not be valid. She explained that the PB will sign a statement online agreeing to the process for transferring licensees into his or her firm. She advised that this will speed up the process but that the project is still in the test phase.

Chairman Northern asked that an article regarding this process and also a licensee's ability to change their home address online be included in the next TREC News Journal.

Chairman Northern recessed the meeting for lunch at 11:25 a.m. and reconvened the meeting at 1:05 p.m. at which point Vice-Chairman Northern took over as Chair for the remainder of the meeting.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for March 2012. After some discussion regarding a few of the presented courses, **Commissioner McMullen made a motion to approve the Courses for Commission Evaluation; seconded by Commissioner Northern ; unanimous vote; motion carried.**

Mr. McDonald presented the following Instructor Reviews for the month of March 2012:

- Tracey McCartney of Tennessee Fair Housing Council (1517) requested the following speakers to be approved for their upcoming Fair Housing Matters Conference:
 - Dr. Deborah Burris-Kitchen-Department Head, Criminal Justice Department at Tennessee State University. Dr. Kitchen will be speaking on discrimination and criminal records role in Fair Housing.
 - Sara Pratt is the Deputy Assistant Secretary for Enforcement and Programs at HUD's Office of Fair Housing and Equal Opportunity in Washington DC. Ms. Pratt is a member of the Kentucky Bar Association. She will be the opening speaker.
 - Tony Blaize is a Special Investigator with the Office of the Inspector General in Louisville, KY. He has served on the National Alliance of Mental Health and Kentucky Fair Housing Council. Currently, Mr. Blaize oversees fraud investigations with Food Stamps, Medicaid, Child Care subsidies and fraud in public benefits programs. He earned his Bachelor's and Master's Degrees in Communication and Public Administration. He will be speaking on Fair Housing 101.
 - Terica Smith is a member of the Tennessee Bar Association. She is the staff attorney for West Tennessee Legal Services and Adjunct Faculty at Union University teaching in the area of Business Law. She will be speaking on Domestic Violence and Fair Housing.
 - Brian Zralek is the Program Director for the Community Food Advocates. He has a Bachelor's and Master's Degree in Psychology and Social Work. He will be speaking on Racial Segregation and Nutrition.
 - Tim Matheson is a member of the Tennessee Bar Association. He is a staff attorney for Legal Aid of East Tennessee. He is a member of the National Housing Law Project and has served on the Kingsport Community Housing Resource Board. He will be speaking on Discrimination Protection.
 - Joan Randall is the Assistant Professor on Medical Education and Administration and the Administrative Director for the Institute for Obesity and Metabolism at Vanderbilt University Medical Center. She has a Master's Degree in Public Health. She will be speaking on Racial Segregation and Nutrition.

- Robin Kimbrough is Legal Counsel for the Tennessee Coalition to End Domestic and Sexual Violence. She is a member of the Tennessee Bar Association. She will be speaking on Criminal Records and Fair Housing.

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

- Tracye Davis Rhea of IREM (#1089) requested the approval of Mr. John Warthman to teach Investment Real Estate: Financial Tools FIN 402 (#6832). Mr. Warthman is a licensed broker in Florida, Georgia, North Carolina, South Carolina, and retired Broker in Tennessee (234081). He has 42 years of property management experience as well as receivership, consulting and training services. He holds CPM and CCIM designations. Business degree from University of Wisconsin-Madison.

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

Mr. McDonald discussed with the Commission the proposed curriculum for the 2013 – 2014 TREC Core Course because, as he explained, the providers need guidance so they can properly prepare their course. He presented the Board with an outline of topics for the proposed topics covered in the TREC Core course. Mr. McDonald also presented the Commission with a Course Audit Checklist that the Commissioners and Staff can use when auditing a course on behalf of the Tennessee Real Estate Commission. **Commissioner Northern made a motion to adopt the TREC Core course outline as presented and to also approve the new Course Audit Checklist format; seconded by Commissioner Haynes; unanimous vote; motion carried.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

Assistant General Counsel Cropp advised the Board that she would like to get clarification on some matters before she proceeded as the new attorney for TREC. Ms. Cropp stated that it is her understanding that if a Consent Order is sent by the Commission, then the Respondent has 30 days to sign it and pay or complete the penalty. She went on to say that she understands that, after those 30 days, if the person has not complied, then the Legal division is authorized to move forward to a formal hearing without being brought back to the full Commission again. She also asked that if someone needs to be set up on a payment plan, for whatever reason, does she have the Commission's authorization to facilitate the payment plan. Ms. Cropp explained that in a meeting of the Legal Division, it was discussed how each board handled the administration of payment plans and the issue of whether the Legal Division can impose an automatic revocation if a person does not comply with a payment plan. Commissioner Haynes asked if that is under the authority of the Commission. Mr. Green explained that if a Consent Order specifically states that if the Respondent does not comply, then his or her license will be revoked, then the Commission does not need to approve the revocation. Legal Counsel was asking if the Commission would approve for that language to be put into a Consent Order. The Commission, specifically Commissioner Haynes and Chairman Northern, stated they were uncomfortable with that insertion in a Consent Order because they don't take lightly removing someone's ability to make a living by a technicality. Commissioner Alexander suggested that the Consent Order could read that the Commission, not Staff, would have the legal authority to revoke without a formal hearing. Ms. Cropp offered the following proposed language: "If the terms of the

payment plan are not complied with, then this matter shall go before the TREC Board to conduct proceedings for a possible revocation.” Commissioner McMullen offered the following suggestion for discussion: If the Respondent fails to make a payment then he or she would be automatically suspended until he or she makes the payment as opposed to a revocation. Counsel Green advised that he does not recommend that course of action. **Commissioner Alexander made a motion that if a Respondent is on a payment plan and he or she does not make a payment then the Commission has the right to revoke but that the Respondent must come before the Board for an appearance; seconded by Commissioner Flitcroft; opened to discussion.** It was decided that this gives the Commission some flexibility if someone has not been able to comply for a substantial or legitimate reason. The Board again discussed suspension. **Commissioner McMullen made a motion to amend the motion that in addition to consenting to a possible revocation upon a default under a Consent Order that they would also be automatically suspended and be reinstated once they make the issue right; seconded by Commissioner Northern; amendment carried; motion as amended carried.**

Ms. Cropp presented to the Commission a revised policy on Internet Advertising (as follows):

POLICY ON INTERNET ADVERTISING

Application of Tennessee Real Estate Commission Rule 1260-02-.12(4)(c), which requires that listing information be kept current and accurate, applies to “First Generation” advertising as it is placed by the licensee and does not refer to such advertising that may be syndicated advertising of the original, which is done by third parties outside of the licensee’s control and ability to monitor.

Commissioner McMullen made a motion to adopt the policy as presented; seconded by Commissioner Haynes; unanimous vote; motion carried.

RULEMAKING DISCUSSION

Ms. Cropp presented proposed rules to the Commission. Below is an outline of all rules discussed and the analysis of the Regulatory Flexibility Act for each proposed rule.

Rule 1260-01-.12 Fees is amended by adding the following language as a new subsection (4):

1260-01-.12 Fees

(4) 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 the amount of ten dollars (\$10.00) for deposit into the real estate education and recovery account.

The Commission agreed that no changes were required to the proposed rule and to move forward with the analysis of the rule for the Regulatory Flexibility Act as detailed below.

Regulatory Flexibility Act: Pursuant to the Regulatory Flexibility Act (T.C.A. § 4-5-401 et seq.), prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small

businesses

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - Commissioner Northern made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.

- (2) Clarity, conciseness, and lack of ambiguity in the rule**
 - Commissioner Northern made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner Haynes; unanimous vote; motion carried.

- (3) The establishment of flexible compliance and reporting requirements for small businesses**
 - Commissioner Northern made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner Haynes; unanimous vote; motion carried.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - Commissioner Northern made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner Haynes; unanimous vote; motion carried.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses**
 - Commissioner Northern made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner Haynes; unanimous vote; motion carried.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - Commissioner Northern made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Haynes; unanimous vote; motion carried.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs**
 - Commissioner Northern made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner Haynes; unanimous vote; motion carried.

Rule 1260-02-.32 Civil Penalties is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

1260-02-.32 Civil Penalties

(1) The Commission may, in a lawful proceeding against any person required to be licensed by the commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

Violation	Penalty
T.C.A. § 62-13-103(b)	\$ 50 ---- 1000
T.C.A. § 62-13-301	50 ---- 1000
T.C.A. § 62-13-312(b)	
(1)	250 ---- 1000
(2)	200 ---- 1000
(3)	300 ---- 1000
(4)	100 ---- 1000
(5)	300 ---- 1000
(6)	200 ---- 1000
(7)	300 ---- 1000
(8)	100 ---- 1000
(9)	200 ---- 1000
(10)	300 ---- 1000
(11)	250 ---- 1000
(12)	300 ---- 1000
(13)	300 ---- 1000
(14)	50 ---- 1000
(15)	250 ---- 1000
(16)	250 ---- 1000
(17)	200 ---- 1000
(18)	250 ---- 1000
(19)	250 ---- 1000
(20)	200 ---- 1000
(21)	100 ---- 1000
T.C.A. § 62-25-103(a)	50 ---- 1000
T.C.A. § 62-25-107(b)	
(1)	250 ---- 1000
(2)	250 ---- 1000
(3)	300 ---- 1000
(4)	50 ---- 1000
T.C.A. § 66-32-121(f)	
(1)	250 ---- 1000
(2)	100 ---- 1000
(3)	200 ---- 1000
(4)	300 ---- 1000
(5)	250 ---- 1000
(6)	250 ---- 1000
(7)	400 ---- 1000

(8)	350 ---- 1000
(9)	400 ---- 1000
(10)	250 ---- 1000
Any Commission Rule Order	50 ---- 1000

(2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-13-102	\$1000
T.C.A. § 62-13-103	\$1000
T.C.A. § 62-13-105	\$1000
T.C.A. § 62-13-109	\$1000
T.C.A. § 62-13-110	\$1000
T.C.A. § 62-13-301	\$1000
T.C.A. § 62-13-312	\$1000

(3) Each day of a continued violation may constitute a separate violation.

(4) In determining the amount of a civil penalty, the Commission may consider such factors as the following:

- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
- (b) the circumstances leading to the violation;
- (c) the severity of the violation and the risk of harm to the public;
- (d) the economic benefits gained by the violator as a result of non-compliance; and
- (e) the interest of the public.

The Commission agreed that no changes were required to the proposed rule and to move forward with the analysis of the rule for the Regulatory Flexibility Act as detailed below.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

1. **The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - **Commissioner Flitcroft made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
2. **Clarity, conciseness, and lack of ambiguity in the rule**
 - **Commissioner Flitcroft made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner DiChiara; unanimous vote; motion**

carried.

3. **The establishment of flexible compliance and reporting requirements for small businesses**
 - **Commissioner Flitcroft made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.**
4. **The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - **Commissioner Flitcroft made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.**
5. **The consolidation or simplification of compliance or reporting requirements for small businesses**
 - **Commissioner Flitcroft made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.**
6. **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - **Commissioner Flitcroft made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
7. **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs**
 - **Commissioner Flitcroft made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Rule 1260-02-.38 Civil Penalties is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

1260-02-.38 Death or Extended Absence of Principal Broker

- (1) The Commission must be notified within five (5) days of the death, resignation, termination, or incapacity of a principal broker. In the event of an unexplained extended absence of a principal broker, the Commission must be notified within a reasonable time period.
- (2) The Commission may, in its discretion, based on the merits and circumstances of each case, permit a real estate firm to continue operating without a principal broker for a period of time not to exceed sixty (60) days, subject to conditions imposed by the Commission. A new

principal broker must be in place no later than the sixty-first (61st) day of any continued operation period granted by the Commission.

Commissioner Haynes made a motion to change five (5) days to ten (10) days in section one (1); seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Commissioner DiChiara had concerns about letting a business operate 60 days without a broker in place. Ms. Maxwell explained that a firm must set forth a plan for how the absence will be handled until the Principal Broker is replaced. Commissioner Stephenson asked how long it takes to get a TREC auditor out to the firm after we receive notice of the absence of the PB. Ms. Maxwell responded that it could be 60 days but that we could send an auditor after 30 days if that is what the Board deems necessary. Commissioner McMullen asked from what date the 60 days is counted and also stated that there is no reference in the rule regarding what happens after the 60 days if the firm does not have a PB in place. Ms. Maxwell advised that she puts the firm in Problem status but that does not keep them from operating and that further Staff does not have the authority to suspend a license. Commissioner Haynes expressed that a firm needs time to organize their business and find a new PB; especially after the unexpected passing of the PB. Ms. Maxwell clarified that the rule does not only apply to the death of a PB but also the disappearance or stepping down of a PB for other reasons. Commissioner McMullen stated that Legal might want to add a provision for what happens after the 61st day. Commissioner DiChiara stated that some firms might take advantage of the situation because the rule is not specific enough and they may push their limits right up until the 60th day. Commissioner Alexander suggested that the plan of action required from firms be put in writing and sent to the firm when TREC is notified of the absence of a PB. Commissioner Northern suggested that if a firm were to come up with an acceptable plan within 30 days, then perhaps they could receive an extension to 60 days to implement that plan of action. Commissioner Alexander suggested the rule be deferred until the April meeting to allow Legal the opportunity to revise the rule. Counsel Green suggested that the entire notice, including the previous two rules, be deferred until all of the rules are decided upon at the next meeting. It was the consensus of the Commission that this is the best way to proceed regarding Rule 1260-02-.38.

1260-07-.02 Designated Agent Qualifications

- (1) To obtain a designated agent license, applicants must meet the following prerequisites:
 - (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and
 - (c) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement.
- (2) If an applicant fails to meet the requirements of subsection (1)(c), he or she may appear before the Commission to seek a waiver of this requirement.

Counsel Green stated that the rule should be consistent with how the Commission handles past criminal convictions for Affiliate Broker and Broker applicants.

It was determined that Section Two (2) should be deleted from the proposed rule and at that point the Commission moved forward with the analysis of the Regulatory Flexibility Act.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- 1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - Commissioner DiChiara made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 2. Clarity, conciseness, and lack of ambiguity in the rule**
 - Commissioner DiChiara made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 3. The establishment of flexible compliance and reporting requirements for small businesses**
 - Commissioner DiChiara made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - Commissioner DiChiara made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 5. The consolidation or simplification of compliance or reporting requirements for small businesses**
 - Commissioner DiChiara made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - Commissioner DiChiara made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs**
 - Commissioner DiChiara made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or

increase costs; seconded by Commissioner Haynes; unanimous vote; motion carried.

1260-07-.03 Designated Agent Responsibilities

- (1) The designated agent shall be responsible for supervising all employees of the firm.
- (2) Designated agents shall be reasonably available to manage and supervise each vacation lodging service office during regular business hours.
- (3) The designated agent shall maintain the vacation lodging service escrow account.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- 1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - Commissioner Haynes made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 2. Clarity, conciseness, and lack of ambiguity in the rule**
 - Commissioner Haynes made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 3. The establishment of flexible compliance and reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 5. The consolidation or simplification of compliance or reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - Commissioner Haynes made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Dichiara;

unanimous vote; motion carried.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs

- **Commissioner Haynes made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

1260-07-.04 Civil Penalties. The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

Violation	Penalty
T.C.A. § 62-13-104(b)(3)(C)	\$ 200 ---- 1000
T.C.A. § 62-13-104(b)(3)(D)(i)	200 ---- 1000
T.C.A. § 62-13-104(b)(7)(B)	
(i)	250 ---- 1000
(ii)	250 ---- 1000
(iii)	300 ---- 1000
(iv)	100 ---- 1000
(v)	300 ---- 1000
(vi)	200 ---- 1000
(vii)	100 ---- 1000
(viii)	200 ---- 1000
(ix)	300 ---- 1000
(x)	300 ---- 1000
(xi)	50 ---- 1000
(xii)	250 ---- 1000
(xiii)	200 ---- 1000
T.C.A. § 62-13-104(b)(8)(A)(i)	200 ---- 1000
T.C.A. § 62-13-104(b)(10) (A)	25 ---- 1000
(B)	25 ---- 1000
Any Commission Rule or Order	50 ---- 1000

Commissioner Alexander stated that the rule needs to include language that says the penalties can accrue for each day of a violation. **Commissioner Flitcroft made a motion to add language about per occurrence violations; seconded by Commissioner Alexander; Commissioner McMullen made a friendly amendment to include in the language of this rule the same language used in Rule 1260-02-.32(3) and (4) which states that:**

(3) Each day of a continued violation may constitute a separate violation.

(4) In determining the amount of a civil penalty, the Commission may consider such factors as the following:

- (a) whether the amount imposed will be a substantial economic deterrent to the violation;**
- (b) the circumstances leading to the violation;**
- (c) the severity of the violation and the risk of harm to the public;**
- (d) the economic benefits gained by the violator as a result of non-compliance; and**
- (e) the interest of the public.**

The friendly amendment was accepted by Commissioner Flitcroft and Commissioner Alexander and carried unanimously; motion as amended carried unanimously.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- 1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - Commissioner Haynes made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 2. Clarity, conciseness, and lack of ambiguity in the rule**
 - Commissioner Haynes made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 3. The establishment of flexible compliance and reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 5. The consolidation or simplification of compliance or reporting requirements for small businesses**
 - Commissioner Haynes made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - Commissioner Haynes made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Dichiara; unanimous vote; motion carried.**

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs

- **Commissioner Haynes made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

1260-07-.05 Advertising

- (1) All advertising, regardless of its nature or medium, promoting vacation lodging service rentals shall prominently display the following information:
- (a) The firm name of the vacation lodging service, as registered with the Commission;
 - (b) The telephone number of the vacation lodging service firm office; and
 - (c) The vacation lodging service firm license number.
- (2) All internet advertising must include the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number on each page of the website.

After some discussion regarding the content of the rule, Commissioner Alexander made a motion to defer the rule for revision; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

1260-07-.06 Vacation Lodging Services Instructor Qualifications

- (1) To obtain certification as an instructor of vacation lodging services, applicants must meet the following prerequisites:
- (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement;
 - (c) Applicants must also:
 - 1. hold a license as a designated agent under the Vacation Lodging Services Act; or
 - 2. possess a minimum of three (3) years experience in vacation lodging services.
 - i. If a course concerns any other field in which a degree, certification, or other recognized designation is commonly awarded then the instructor must have earned that degree or designation, or have at least three (3) years of relevant experience in the field.

- (2) The Commission may charge a fee of twenty-five dollars (\$25) for each instructor in an education cycle, in order to review that instructor's qualifications.

The Commission agreed no changes are needed for the presented rule and they would proceed with the analysis of the Regulatory Flexibility Act.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- 1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - Commissioner Flitcroft made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 2. Clarity, conciseness, and lack of ambiguity in the rule**
 - Commissioner Flitcroft made a motion that the rule is clear, concise and lacks ambiguity; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 3. The establishment of flexible compliance and reporting requirements for small businesses**
 - Commissioner Flitcroft made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**
 - Commissioner Flitcroft made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 5. The consolidation or simplification of compliance or reporting requirements for small businesses**
 - Commissioner Flitcroft made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**
 - Commissioner Flitcroft made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs**
 - Commissioner Flitcroft made a motion that the rule does not create entry

barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner Alexander; unanimous vote; motion carried.

1260-07-.07 Fees.

The following fees shall apply:

- (1) For the issuance of an original vacation lodging service firm or original designated agent license, a fee to be paid to the Commission of one hundred dollars (\$100.00);
- (2) For each renewal of a license, a fee to be paid to the Commission of eighty dollars (\$80.00);
- (3) A fee to be paid to the Commission for the following:
 - (a) Change of firm address, fifty dollars (\$50.00);
 - (b) Change of Designated Agent, twenty-five dollars (\$25.00);
 - (c) Commission manual, ten dollars (\$10.00);
 - (d) Certified copies, one dollar (\$1.00) per page;
 - (e) Copies, twenty-five cents (\$0.25) per page;
 - (f) Printouts of licensee information, charges will be based upon the cost of producing the printout;
 - (g) Certification of licensure, twenty-five dollars (\$25.00);
 - (h) Change of name, ten dollars (\$10.00);
 - (i) Duplicate license, ten dollars (\$10.00);
 - (j) Bad checks must be made good within five (5) days after the licensee is notified. Any bad check not made good within sixty (60) days of the notification will be subject to a one hundred dollar (\$100.00) fee for collection.

Regulatory Flexibility Analysis: (from T.C.A. § 4-5-402(b))

- 1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules**
 - **Commissioner Flitcroft made a motion that the rule does not overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 2. Clarity, conciseness, and lack of ambiguity in the rule**
 - **Commissioner Flitcroft made a motion that the rule is clear, concise and lacks**

ambiguity; seconded by Commissioner Alexander; unanimous vote; motion carried.

3. The establishment of flexible compliance and reporting requirements for small businesses
 - Commissioner Flitcroft made a motion that the rule establishes flexible compliance and reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses
 - Commissioner Flitcroft made a motion that the rule establishes friendly schedules or deadlines for compliance and reporting for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
5. The consolidation or simplification of compliance or reporting requirements for small businesses
 - Commissioner Flitcroft made a motion that the rule consolidates or simplifies compliance or reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.
6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.
 - Commissioner Flitcroft made a motion that the rule establishes performance standards for small businesses as opposed to design or operational standards required in the proposed rule; seconded by Commissioner Alexander; unanimous vote; motion carried.
7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs
 - Commissioner Flitcroft made a motion that the rule does not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs; seconded by Commissioner Alexander; unanimous vote; motion carried.

Ms. Cropp discussed with the Commission the Attorney General's Opinion that has been received, upon the Commission's request, regarding whether they have the authority to require a surety bond of VLS applicants and licensees. It is the opinion of the AG that TREC does not have the authority by statute to expressly provide for the action of requiring a surety bond. **Commissioner Northern made a motion to withdraw the Commission's efforts to require the surety bond of VLS firms and licensees; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Chris Sexton, Director of Governmental Affairs for TAR, addressed the Commission regarding Proposed legislation that TAR is monitoring and he agreed to send the Board members and Ms. Maxwell a link to all of the specific proposed legislation.

Vice-Chairman Stephenson recessed the meeting on Wednesday, March 7, 2012 at 4:10 p.m.

March 8, 2012

The Tennessee Real Estate Commission reconvened on March 8, 2012, at 9:12 a.m., in the Davy Crockett Building at 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman William “Bear” Stephenson, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner Janet DiChiara and Commissioner David Flitcroft. Commissioner Grover Collins and Commissioner Austin McMullen were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Assistant General Counsel Mark Green, Robyn Ryan and Julie Cropp and Kelly McDermott, Administrative Secretary.

Motion for Reconsideration

Assistant General Counsel Robyn Ryan advised the Commission that the Respondent from the February 2012 formal hearing, Donna Bobo, has filed a Motion for Reconsideration of her final order. Ms. Maxwell went over the Commission’s different options for addressing the Motion for Reconsideration. She advised them they could grant the petition, deny the petition or choose to not take any action at all. She also gave each of the Commissioners a copy of the Motion for Reconsideration. The Commission members took time to review the entire document before rendering any kind of decision regarding the matter. **After discussion and deliberation, Commissioner DiChiara made a motion to take no action on the matter and continue on with the agenda; seconded by Commissioner Haynes; roll call vote: 5 yes, 0 no; Commissioner Flitcroft abstained; motion carried.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL (continued)

Assistant General Counsel Cropp read into the record the following statement regarding the dispositions of the following legal report items: “Any consent order approved by the Commission must be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter will proceed to a formal hearing.”

- 1) **2011021011 &**
- 2) **2011021012 &**
- 3) **2011021013 – The complaints were previously reviewed by Commissioner Flitcroft and he recommended the complaints be dismissed. Commissioner Northern made a motion to accept Commissioner Flitcroft’s recommendation to dismiss; seconded by Commissioner Alexander; vote: 5 yes, 0 no, Commissioner Flitcroft abstained; motion carried.**
- 4) **2011021051 – The complaint was previously reviewed by Commissioner Flitcroft and he recommended the complaint be dismissed. Commissioner Northern made a motion to accept Commissioner Flitcroft’s recommendation to dismiss; seconded by Commissioner DiChiara; vote: 5 yes, 0 no, Commissioner Flitcroft abstained; motion carried.**

- 5) 2011027691 – Commissioner Northern made a motion to have Commissioner Haynes review the complaint file and return with a recommendation for the full Commission; seconded by Commissioner DiChiara; after some discussion, Commissioner Northern rescinded his motion and Commissioner DiChiara rescinded her second; Commissioner Northern made a motion to defer the complaint until the next complaint, #6, is heard; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 6) 2012001361 – After discussion regarding addressing complaints separately, Commissioner DiChiara made a motion to have Commissioner Haynes review the complaints in #5 and #6 and report back to the full Commission with a recommendation; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 7) 2011030851 &
- 8) 2011030852 – Commissioner Northern made a motion to accept legal counsel's recommendation to issue a Consent order for misleading or untruthful advertising in violation of T.C.A. § 62-13-312(4) with a civil penalty of \$500.00 per Respondent and attendance by both Respondents at a two day meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 9) 2011030871 &
- 10) 2011030872 – Commissioner Northern made a motion to issue a Consent order for operating an unlicensed firm in violation of T.C.A. § 62-13-312(14)(20) and advertising in a false, misleading, or deceptive manner in violation of Tennessee Real Estate Commission Rule 1260-02-.12 with a civil penalty of \$1,000.00 per Respondent. Additionally, require both Respondents to attend a two-day meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 11) 2011026531 – Commissioner Alexander 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)(3)(4)(14). Additionally, attendance of a two day regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 12) 2011026541 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to issue a Consent order with a \$250.00 civil penalty for failing to exercise adequate supervision over the activities of licensed brokers and affiliate brokers under T.C.A. § 62-13-312(b)(14)(15). Additionally, attendance of a two day regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 13) 2011029611 – Commissioner Alexander made a motion to issue a Consent order for operating an unlicensed firm in violation of T.C.A. § 62-13-312(14)(20) with a civil penalty of \$1,000.00 in addition to attendance at a two-day meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 14) 2011030721 – Legal counsel advised the Commission that since the creation of the legal report, the Respondent has since paid his/her civil penalty and she

- recommended dismissal. Commissioner Northern made a motion to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 15) 2011031391 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 16) 2011031401 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 17) 2011030811 &
- 18) 2011030812 – Commissioner Northern made a motion to accept legal counsel’s recommendation to close and flag file as to Respondent #17. As to Respondent # 18, consent order for failing to obtain a vacation lodging service firm license and failure to designate an agent for the vacation lodging service firm in violation of T.C.A § 62-13-104(b)(2) and (b)(3)(B)(i) with a civil penalty of \$1,000.00; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 19) 2011032241 &
- 20) 2011032242 – Commissioner Northern made a motion to accept legal counsel’s recommendation to refer to district attorney for continuing to act as licensees after license has been revoked and consent order for engaging in the conduct of a real estate broker without a license in violation of T.C.A. § 62-13-301 with a civil penalty of \$1,000.00 per Respondent; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 21) 2012000501 &
- 22) 2012000502 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to refer to district attorney for continuing to act as licensees after license has been revoked and consent order for engaging in the conduct of a real estate broker without a license in violation of § 62-13-301 with a civil penalty of \$1,000.00 per Respondent; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 23) 2011031661 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Consent order for failing, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others, in violation of T.C.A. § 62-13-312(b)(5)(20) with a civil penalty of \$1,000.00, failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. § 62-13-403(6) with a civil penalty of \$1,000.00, improper handling of deposit received by licensee in violation of T.C.A. § 62-13-312(b)(14) and Tennessee Real Estate Commission Rule 1260-02-.09 with a civil penalty of \$1,000.00, and failure to respond to a complaint filed with the Commission under T.C.A. § 62-13-313(a)(2) with a civil penalty of \$1,000.00 for a total civil penalty of \$4,000.00. Additionally, require the Respondent to attend a two-day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Alexander; opened to discussion; Commissioner Flitcroft withdrew his motion and Commissioner Alexander withdrew his second; Commissioner Alexander made a motion to defer the complaint to allow legal counsel an opportunity to obtain additional information; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 24) 2011031711 &

- 25) 2011031712 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent order for failing, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others, in violation of TCA § 62-13-312(b)(5)(14)(20) with a civil penalty of \$500.00 per Respondent, failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of § 62-13-403(6) with a civil penalty of \$500.00 per Respondent, improper handling of deposit received by licensee in violation of § 62-13-312(b)(14) and Tennessee Real Estate Commission Rule 1260-02-.09 with a civil penalty of \$500.00 per Respondent, and failure to respond to a complaint filed with the Commission under § 62-13-313(a)(2) with a civil penalty of \$500.00 per Respondent for a total civil penalty of \$2,000.00 for each Respondent. Additionally, require Respondent #24 to attend a two-day meeting of the Commission within one hundred eighty (180) days of Respondent #24’s execution of Consent Order; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 26) 2011031771 &
- 27) 2011031772 – Commissioner DiChiara made a motion to issue a Consent order for failing, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others, in violation of TCA § 62-13-312(b)(5)(14)(20) with a civil penalty of \$500.00 per Respondent, failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of § 62-13-403(6) with a civil penalty of \$500.00 per Respondent, improper handling of deposit received by licensee in violation of § 62-13-312(b)(14) and Tennessee Real Estate Commission Rule 1260-02-.09 with a civil penalty of \$500.00 per Respondent, and failure to respond to a complaint filed with the Commission under § 62-13-313(a)(2) with a civil penalty of \$500.00 per Respondent for a total civil penalty of \$2,000.00 for both Respondents. Additionally, require Respondent #26 to attend a two-day meeting of the Commission within one hundred eighty (180) days of Respondent #26’s execution of Consent Order; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 28) 2011031621 &
- 29) 2011031622 &
- 30) 2011031623 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 31) 2011032321 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 32) 2011032271 &
- 33) 2011032272 &
- 34) 2011032273 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent order for misleading or untruthful advertising in violation of § 62-13-104(b)(7)(B)(i)(iv) with a civil penalty of \$500.00 for Respondent #33, for misleading or untruthful advertising in violation of § 62-13-312(b)(1)(4)(14) with a civil penalty of \$500.00 for both Respondent #32 and #34 for a total civil penalty of \$500.00 for each Respondent. Additionally, require Respondent #33 and Respondent #34 to attend a two-day meeting of the Commission within one hundred

- eighty (180) days of Respondents' execution of Consent Order; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 35) 2011032251 – Commissioner Haynes made a motion to dismiss; seconded by Commissioner Flitcroft for discussion; opened to discussion; Commissioner DiChiara made a motion to amend the motion to send a Letter of Instruction; no second; motion failed for lack of a second; roll call vote on original motion: 4 yes, 2 no; motion carried.
- 36) 2012004681 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner DiChiara; opened to discussion; after discussion, unanimous vote; motion carried.
- 37) 2011028171 &
- 38) 2011028172 – Commissioner Northern made a motion to accept legal counsel's recommendation that in light of inability to obtain an address at which to affect service upon Respondents, refer to District Attorney's office; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Assistant General Counsel Green reviewed the Consent Order log with the Commission. **Commissioner Alexander made a motion to accept the Consent Order Log as presented; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Each Commissioner made commendations or addressed concerns of importance to them or the other members of the Commission and Staff.

Vice-Chairman Stephenson adjourned the meeting on Thursday, March 8, 2012 at 11:42 a.m.