

TENNESSEE REAL ESTATE COMMISSION MINUTES
January 7 – 8, 2009

The Tennessee Real Estate Commission convened on January 7, 2009, at 9:11 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Wendell Alexander and Commissioner Isaac Northern. Commissioner Valerie Joh and Commissioner Carol Tate were absent. Commissioner Grover Collins joined the meeting at 9:56 a.m. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the January 2009 Commission meeting. **Commissioner Alexander made a motion to approve the agenda; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

The next order of business was the approval of the December 2008 minutes (**Exhibit 2**). **Commissioner Flitcroft made a motion to approve the December 2008 minutes; seconded by Commissioner Woods; unanimous vote; motion carried.**

Cindy Rice-Grissom, CEO, Rice Insurance Company met with the Commission regarding Errors & Omissions insurance. There was a discussion regarding the number of licensees who have renewed their Errors & Omissions insurance with Rice Insurance. The Commission also discussed the creation of a policy statement regarding penalties for licensees who fail to renew their E&O insurance. Ms. Rice-Grissom discussed some of the new endorsements available to licensees as well as group policies and duplicate coverage. **Commissioner Flitcroft made a motion that whenever a TREC auditor audits a firm they should request that the principal broker create a list of all insured licensees in that firm; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Commissioner Grover Collins joined the meeting at 9:56 a.m.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- o **Complaint Statistics Report (Exhibit 3)** – TREC has a total of **328** open complaints. Two of the 328 open complaints were staff generated Agreed Citations and three are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 21 new complaints since the December meeting. There are 326 complaints in the legal department and 7 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 151. Total Civil Penalties paid in December were \$1,900.00.

- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 4**) to the Commission on real estate licenses approved in 2008 and the number of licensees as of January 5, 2009. As of January 5, 2009, there were 31,715 active licensees, 2,968 inactive licensees and 9,628 retired licensees. There were 4,645 active firms and 309 retired firms. There were 147 new applications approved in December 2008.

Commissioner Flitcroft made a motion that Ms. Maxwell, as part of her report, provide the Commission with a status report as to the progress that has been made in implementing various motions that the Commission has passed; seconded by Commissioner Alexander; unanimous vote; motion carried.

The discussion returned to establishing a policy statement for licensees who have not renewed their Errors & Omissions insurance.

Commissioner Flitcroft made a motion stating that every licensee must have Errors & Omissions insurance by January 1, 2009 and if they fail to do so within the first 30 day period, the licensee and principal broker will be penalized \$50.00. If the licensee does not have coverage by February 1, 2009, the penalty to the licensee and principal broker will be doubled to \$100.00. If the licensee does not have coverage by March 1, 2009, the penalty to the licensee and principal broker will be doubled again to \$200.00; seconded by Commissioner Collins; unanimous vote; motion carried. Commissioner Alexander made a motion that if a licensee does not have E&O insurance by April 1, 2009, they may surrender their license or appear for a formal hearing and the motions will be implemented by policy and then rule; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.

- **Jackson Meeting** – Ms. Maxwell reported to the Commission information regarding the meeting room and hotel accommodations in Jackson for the March 5-6, 2009 meeting.

Commissioner Flitcroft advised Ms. Maxwell that it was time to complete her performance review with himself, Commissioner Grover Collins and Commissioner Wendell Alexander, and he requested the performance review be noticed by staff for the February 2009 meeting.

J.A. Bucy, Director of Governmental Affairs, Tennessee Association of Realtors, addressed the Commission regarding the Tennessee Association of Realtors' legislative agenda. There was also a brief discussion regarding the approval by TREC of education courses.

Chairman Haynes recessed the meeting for lunch at 11:31 a.m. and the meeting reconvened at 1:30 p.m.

LICENSEE REQUEST

Harry E. Concklin, III, revoked licensee, 223886, appeared before the Commission with his principal broker Tony Fletcher to request permission to retest and reapply for a license. Mr. Concklin's license was revoked pursuant to T.C.A. § 62-13-312(f). Ms. Wiseman, Assistant General Counsel, advised the Commission that a complaint was opened against Mr. Concklin in 2006 and at the June 2007 Commission meeting the Commission passed the following motion: Commissioner Alexander made a motion for revocation and a \$5,000.00 fine, respondent may retest/reapply and appear before the Commission for approval for an affiliate broker license. **Commissioner Alexander made a motion that the previous motion from the June 2007 Commission meeting stand; seconded by Commissioner Flitcroft; roll call vote: 6 yes, 0 no; Commissioner Woods abstained; motion carried.**

INFORMAL APPLICANT CONFERENCE

Kenneth E. Collins, applicant, appeared with his principal broker Tony Fletcher to request approval for an Affiliate Broker license. Mr. Collins disclosed convictions of Reckless Endangerment & Possession of a Weapon in 2001, Harassment & Stalking and Theft of Services in 2004. **Commissioner Alexander made a motion to approve; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Stephen "Steve" S. Taylor, applicant, appeared with his principal broker Robie T. Hensley, Jr. to request approval for an Affiliate Broker license. Mr. Taylor disclosed convictions of Sale of Schedule VI Drugs & Possession of Drug Paraphernalia in 2000, DUI in 2001 and Reckless Driving in 2003. **Commissioner Alexander made a motion to approve; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Ms. Wiseman reviewed the Legal File Summary and the Consent Order Log with the Commission. Commissioner Alexander requested that Ms. Wiseman add a column to the Consent Order Log outlining the terms of any pay plans. Regarding complaint 2007065651, Mr. Wiseman asked for permission to refer the case to the respondent's district attorney. **Commissioner Collins made a motion to refer complaint 2007065651 to the respondent's district attorney; seconded by Commissioner Woods; unanimous vote; motion carried.**

RULEMAKING

Commissioner Collins made a motion to approve the proposed rule changes (Exhibit 6) as presented; seconded by Commissioner Woods; unanimous vote; motion carried.

COMMISSIONER REPORTS

Commissioner Woods, Commissioner Flitcroft, Commissioner Alexander, Commissioner Northern, Commissioner Collins, Vice-Chairman Stephenson and Chairman Haynes reported on matters of concern or interest to the Commission.

There was a brief discussion regarding education course renewal.

Chairman Haynes recessed the meeting Wednesday, January 7, 2009 at 4:14 p.m.

TENNESSEE REAL ESTATE COMMISSION
Thursday, January 8, 2009

The Tennessee Real Estate Commission reconvened on January 8, 2009 at 9:12 a.m., in the 3rd Floor Conference Room, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner Valerie Joh and Commissioner Carol Tate were absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

Steve Majchrzak, Assistant Commissioner, Regulatory Boards, discussed with the Commission the process of staggering renewals, the Regulatory Board's computer system and the potential of sending renewal notices to the firm, home and email addresses.

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 5)

- 1) 2007070751 &
- 2) 2005040401 &
- 3) 2005040402 &
- 4) 2008025051 &
- 5) 2008025052 &
- 6) 2007071121 &
- 7) 2007071101 &
- 8) 2007061991 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 9) 2007068851 – Commissioner Woods made a motion to dismiss; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.
- 10) 2005034851 – Commissioner Joh had previously reviewed the complaint. Commissioner Joh was absent so the complaint was deferred.
- 11) 2006003451 &
- 12) 2006001091- Commissioner Northern had previously reviewed the complaint. Commissioner Northern made a recommendation to dismiss. Commissioner Woods made a motion to dismiss; seconded by Commissioner Flitcroft; vote: 5 yes, 0 no, Commissioner Northern abstained; motion carried.

- 13) 2006024231 – Commissioner Joh had previously reviewed the complaint. Commissioner Joh was absent so the complaint was deferred.
- 14) 2005034161 – Commissioner Northern had previously reviewed the complaint. Commissioner Woods made a motion to issue a Consent Order with a civil penalty of \$900.00; Commissioner Flitcroft offered a friendly amendment to require the respondent to attend eight (8) hours of continuing education in ethics and contract preparation to be completed within six (6) months; seconded by Commissioner Alexander; opened to discussion; Vice-Chairman Stephenson made a motion to amend and reduce the penalty from \$900.00 to \$500.00; seconded by Commissioner Collins; roll call vote on amendment: 5 yes, 1 no, Commissioner Northern abstained; amendment carried; vote on motion as amendment: 5 yes, 0 no, Commissioner Northern abstained; motion as amended carried. Commissioner Flitcroft made a motion to open a complaint against the respondent's principal broker; Commissioner Flitcroft withdrew his motion.
- 15) 2005042991 – Commissioner Tate had previously reviewed the complaint. Commissioner Tate was absent so the complaint was deferred.
- 16) 2006029971 – Commissioner Tate had previously reviewed the complaint. Commissioner Tate was absent so the complaint was deferred.

EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR

Dr. Riggs provided the Commissioners with an overview of all current TREC approved courses. She advised the Commission that at the end of 2008 there were 2,472 approved courses and only 1,311 (53%) of those courses were renewed for the next education period. Dr. Riggs explained the process customarily used for course renewal. After discussion, the Commission determined that they did not believe the courses could be administratively renewed. Therefore, all courses were sunset. The Commission asked if the ethics course provided by the Knoxville Area Association of Realtors had been renewed and if so when. Dr. Riggs did not have that information so she left the meeting to get the information.

During Dr. Riggs' absence, Chairman Haynes called for comments from the attendees. Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

After returning to the meeting, Dr. Riggs advised the Commission that the ethics course provided by the Knoxville Area Association of Realtors was reviewed on September 18, 2008. The Commission discussed options for review and approval of the courses.

Commissioner Collins presented to the Commission a list of possible changes to the application for course approval. He provided the Commission with the following list of possible changes to the application:

- 1) An outline of the course
- 2) The purpose of the course
- 3) A statement of how it would improve professionalism
- 4) A time line of the course included in all packets
- 5) A copy of their current Real Estate license in all packets
- 6) What other professions they are getting this course approved for
- 7) Exit statement or grade indicating how they know the course is taken if offered online
- 8) A statement whether the applicant or instructor has any pending complaints or judgments
- 9) A statement explaining whether the course is for all practitioners of Real Estate and, if not, its relevance to the targeted group
- 10) Instructor should agree to supply TREC feedback as to the number of participants in each course.

The Commission further discussed options for review and approval of the courses. It was suggested that courses be approved for a short period of time allowing the Commission time to review all courses. All providers would be required to reapply with the new criteria. There was a discussion regarding the fees charged for course review. Dr. Riggs advised the Commission that the current fees for application for course review are \$25.00 for eight (8) hours or less, \$50.00 for 9 – 30 hours and \$100.00 for courses 30 hours or more. There was discussion of increasing the fees and charging an instructor fee by rule change.

Commissioner Alexander made a motion to adopt all 10 proposed changes to the application presented by Commissioner Collins and additionally requiring that 1) instructor approval be separated from the approval of the course; 2) a new application be adopted based on either the Appraisers or Auctioneers application; and 3) any current professional license must be included in the application packet; seconded by Commissioner Northern; unanimous vote; motion carried.

Commissioner Alexander made a motion to change Rule 1260-5-.16(1) from a four year review cycle to a two year review cycle; seconded by Commissioner Collins; unanimous vote; motion carried.

Vice-Chairman Stephenson made a motion to increase the fees for application for course review to \$50.00 for eight (8) hours or less, \$100.00 for 9 – 30 hours and \$200.00 for courses 30 hours or more; seconded by Commissioner Woods; unanimous vote; motion carried.

Commissioner Alexander made a motion to charge a fee of \$200.00 for application for instructor review; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Northern made a motion to amend that an instructor not be charged this fee if there is no fee for attending the course; seconded by Commissioner Collins; vote on amendment: unanimous vote; motion carried; vote on motion as amended; unanimous vote; motion carried.

It was determined by the Commission that if an instructor wishes to teach several areas of real estate study (i.e. ethics, contract writing, earnest money), they will send a resume along with their application for review detailing their experience in those fields of study and will be charged the \$200.00 fee once for the specified time frame for those areas itemized on the application. If the instructor later wishes to teach in a different area of real estate study, they must submit a new application and resume for review and pay another \$200.00 fee.

Commissioner Woods made a motion that the Commission approve the 1,311 courses that have previously submitted for renewal for a period up until and through the period of December 31, 2009; seconded by Flitcroft; opened to discussion; Vice-Chairman Stephenson made a motion to amend to change the date from December 31, 2009 to September 30, 2009; seconded by Commissioner Northern; vote on amendment: 5 yes, 1 no; amendment carried; roll call vote on motion as amended: 5 yes, 2 no; motion carried.

Dr. Riggs' presented deferred Courses Presented for Commission Evaluation for the months of November 2008 (Exhibit 7), December 2008 (Exhibit 8) and January 2009 (Exhibit 9).

Commissioner Flitcroft made a motion to not approve the course "Managing the Risks of Using Your Home or Car for Business" from the November 2008 report; seconded by Commissioner Collins; unanimous vote; motion carried.

Commissioner Collins made a motion to not approve the course "TREC Core 09/10" from the November 2008 report; seconded by Commissioner Alexander; unanimous vote; motion carried. Vice-Chairman Stephenson made a motion to rescind the previous motion; seconded by Commissioner Woods; unanimous vote; motion carried.

Commissioner Northern made a motion to not approve the course "Real Estate Personality Puzzle" from the November 2008 report; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to not approve the course "Reverse Mortgages for Senior Homeowners" from the November 2008 report; seconded by Commissioner Woods; unanimous vote; motion carried.

Commissioner Northern made a motion to approve the remaining courses on the November 2008 report; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to not approve the course "Law of Easements: Legal Issues and Practical Considerations" from the December 2008 report; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Collins had concerns about the course "The e-Buyer" from the December 2008 report. Attendee Judy Ransom, Vice-President and Education Director of the Greater Nashville Association of Realtors, asked to address the Commission. **Commissioner Woods made a motion to suspend the rules of the meeting to allow Ms. Ransom to speak; seconded by Commissioner Northern; unanimous vote; motion carried.** Ms. Ransom spoke to the Commission regarding the course "The e-Buyer".

Commissioner Flitcroft made a motion to not approve the course "Reverse Mortgages for Senior Homeowners" from the December 2008 report; seconded by Commissioner Woods; unanimous vote; motion carried.

Vice-Chairman Stephenson made a motion to approve the remaining courses on the December 2008 report; seconded by Commissioner Woods; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to not approve the course "Reverse Mortgages & You" from the January 2009 report; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Flitcroft made a motion to approve all remaining courses on the January 2009 report except the courses "Reverse Mortgages & You", "Grievance & Professional Standards Training" and "Board of Directors Training"; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

Commissioner Woods made a motion that the Commission adopt a rule change for the increases to fees on the course renewal application but defer until the next rule making hearing the changes to the rules regarding fees to instructors; seconded by Commissioner Northern; opened to discussion; roll call vote: 2 yes; 5 no; motion failed.

Chairman Haynes adjourned the meeting Thursday, January 8, 2009 at 1:06 p.m.