

TENNESSEE REAL ESTATE COMMISSION MINUTES
March 5 – 6, 2009

The Tennessee Real Estate Commission convened on Thursday, March 5, 2009, at 9:15 a.m., at the George A. Smith Meeting Room at City Hall at 107 East Main Street, Suite 107, Jackson, TN 38301. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner David Flitcroft was absent. 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 March 2009 Commission meeting. **Commissioner Alexander made a motion to adopt the agenda; seconded by Commissioner Northern; unanimous vote; motion carried.**

The next order of business was the approval of the February 2009 minutes (**Exhibit 2**). **Commissioner Alexander made a motion to approve the February 2009 minutes; seconded by Vice-Chairman 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)** – TREC has a total of **301** open complaints. One of the 301 open complaints is a staff generated Agreed Citation. There are 17 new complaints since the February meeting. There are 298 complaints in the legal department and 3 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 191. Total Civil Penalties paid in February 2009 were \$21,460.00.
- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 4**) to the Commission on real estate licenses approved in 2008 & 2009 and the number of licensees as of March 2, 2009. As of March 2, 2009, there were 29,528 active licensees, 4,006 inactive licensees and 10,006 retired licensees. There were 4,580 active firms and 335 retired firms. There were 204 new applications approved in February 2009.

There was a discussion regarding the method used to track licensees that are in broker release status. Commissioner Alexander asked Ms. Maxwell to present statistics at the March meeting regarding how many of the 2,425 licensees in broker release status have been in that status for more than six months.

- **Administrative Motion Log** – Ms. Maxwell presented the Commission with a log of all administrative motions made since January 2008 and their outcomes.

Ms. Maxwell reported to the Commission on licensees who do not currently have Errors & Omissions insurance. As of March 5, 2009, there were 1,864 licensees without Errors & Omissions insurance. Ms. Maxwell presented the Commission with a letter from CEO of Rice Insurance Cindy Rice-Grissom regarding Rice Insurance's procedures for renewal of licensees' Errors & Omissions insurance. The Commission discussed amending the motion regarding penalties for licensees without Errors & Omissions insurance. **Commissioner Alexander made a motion that if a licensee is without Errors & Omissions insurance for more than 120 days, revocation proceedings should begin against the licensee and the principal broker. His motion further stated that if a licensee secures Errors & Omissions insurance from April 1, 2009 to April 30, 2009, they will be penalized \$300.00; seconded by Vice-Chairman Stephenson for discussion; opened to discussion; Commissioner Alexander made a motion to amend stating that revocation not be pursued against the principal broker, but after 120 days a penalty of \$1,000.00 per uninsured affiliate will be assessed; opened to discussion; Commissioner Woods made a motion to defer until the afternoon; seconded by Commissioner Tate; unanimous vote. Commissioner Collins made a motion to send a list of principal brokers with affiliates without Errors & Omissions insurance to Rice Insurance and have Rice Insurance notify the principal brokers that they or their affiliates are without Errors & Omissions insurance. His motion further stated that notification should be posted on the TREC and/or TAR website stating that a principal broker may broker release an affiliate and not be penalized; seconded by Commissioner Northern; opened to discussion; unanimous vote; motion carried.**

There was a discussion regarding the creation and mailing of the TREC newsletter. Chairman Haynes asked if any interest had accrued in the Education and Recovery Fund. As part of a budgetary update, Ms. Maxwell read an email from Chief of Fiscal Services Robert Wright to Assistant Commissioner of Regulatory Boards Steve Majchrzak regarding at what point the interest will be credited to the Education and Recovery Fund. Chairman Haynes asked his fellow Commissioners if they thought the email should be distributed to the legislators for review. **Commissioner Alexander made a motion to send the email to the legislators; seconded by Commissioner Northern; opened to discussion; Commissioner Collins made a motion to defer until the afternoon; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Ms. Maxwell presented the Commission with reports on the work plan budget. She suggested the Commission review the reports and ask any questions to Assistant Commissioner of Regulatory Boards Steve Majchrzak at a future Commission meeting. There was some discussion regarding whether the budget would affect the Commission traveling to other regions within Tennessee and the presentation of education seminars. Ms. Maxwell advised that she did believe the travel for Commission meetings and educational seminars would be approved. Chairman Haynes asked Ms. Maxwell to

discuss with Assistant Commissioner Majchrzak the sending of the TREC newsletter. There was a discussion regarding the new TREC manuals being mailed to licensees. Commissioner Northern asked about a possible budget expansion. Ms. Maxwell suggested that Assistant Commissioner Majchrzak address any questions regarding a budget expansion.

Chairman Haynes recessed the meeting for lunch at 11:21 a.m. and the meeting reconvened at 1:12 p.m.

INFORMAL CONFERENCE

John Sylvester, educator, appeared before the Commission to appeal the decision by the Commission at the February 2009 meeting to not approve his courses "Executive Agent Training (Assessing Your Organization for High Performance)", "Change Management (Thriving in Chaos)", "Power of Persuasion: Getting to Yes", "Competing to Win" and "Trust Factor (Honestly Making More)". The Commission advised Mr. Sylvester he was welcome to reappear with additional information concerning his courses. The Commission asked for him to bring information concerning whether or not his courses are approved in other states and if so which states. The Commission also advised Mr. Sylvester that he needs to show that his courses are directly related the topics set forth in Rule 1260-5-.03(a)(5) #1 – 17.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell addressed the Commission regarding the potential for outsourcing course review. She presented a cost comparison between ARELLO and Pearson-Vue's fees for course and instructor review. The Commission compared the cost and services offered by the two vendors. Chairman Haynes asked that Ms. Maxwell request a sample analysis from the vendors. There was a discussion regarding who is going to replace outgoing Education Director Kathy Riggs. There was a discussion regarding outsourcing some of the duties of the Education Director. It was determined that in order to outsource the review of courses a RFP would be required. Chairman Haynes suggested that Kelly McDermott, Administrative Secretary of TREC, be considered to fill the position of Interim Education Director. **Commissioner Alexander made a motion that the Commission recommend Kelly McDermott be considered or appointed Interim Education Director and be considered for the position permanently; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Ms. Maxwell presented Courses for Commission Evaluation (**Exhibit 5**). **Commissioner Woods made a motion to approve the Courses for Commission Evaluation as presented; seconded by Commissioner Joh; opened to discussion; unanimous vote; motion carried.**

Ms. Maxwell presented a report (Exhibit 6) of the number of Core courses and Pre-licensing courses taught by the primary schools in 2008. She also reported that the number of test takers in February 2009 was 231 and in February 2008 it was 529.

The Commission returned to the discussion of the Errors & Omissions penalty. **The Commission restated the motion made by Commissioner Alexander earlier in the day. The motion stated that a \$300.00 penalty would be assessed to**

uninsured licensees who secure Errors & Omissions insurance from April 1 – April 30, 2009, a \$1,000 penalty will be assessed to the principal broker after 120 days per uninsured affiliate, and after 120 days revocation of the licensee's license will be pursued or the licensee may voluntarily surrender their license and their file will be flagged for reapplication. Commissioner Alexander suggested an amendment to the motion to require the affiliate and the principal broker to attend a two day TREC meeting after 120 days. It was further clarified that the principal broker cannot release their uninsured licensee(s) after 120 days. Vice-Chairman Stephenson suggested that the principal brokers should be notified there are uninsured licensees in their firm. Commissioner Alexander suggested an amendment to the motion to send a letter to principal brokers listing all uninsured licensees in their firm. It was clarified that a principal broker may broker release the uninsured licensee prior to 120 days and be relieved of their liability. There was a unanimous vote and the motion carried.

The discussion returned to sending an email from Chief of Fiscal Services Robert Wright to Assistant Commissioner Steve Majchrzak to the legislators. The Commission wished to inform the legislators that there are no funds available to send out TREC manuals and newsletters so that the Commission may communicate effectively with the licensees. **Earlier in the day, Commissioner Alexander made a motion to send the email to the legislators; seconded by Commissioner Northern and it was opened to discussion and which point it was deferred until the afternoon. After the afternoon discussion, the Commission voted on the motion. The vote was 3 yes and 5 no. The motion failed.**

Chairman Haynes recessed the meeting Thursday, March 5, at 3:25 p.m.

**TENNESSEE REAL ESTATE COMMISSION
Friday, March 6, 2009**

The Tennessee Real Estate Commission reconvened on Friday, March 6, 2009, at 9:14 a.m., at the George A. Smith Meeting Room at City Hall at 107 East Main Street, Suite 107, Jackson, TN 38301. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner David Flitcroft was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

LEGAL REPORT, KATHRYN WISEMAN, ASSISTANT GENERAL COUNSEL(Exhibit 7)

1) 2007074991 – Commissioner Tate had previously reviewed the complaint. Commissioner Tate recommended the complaint be dismissed. Commissioner Collins made a motion to dismiss; seconded by Commissioner Woods; vote: 6 yes, 0 no; Commissioner Tate abstained; motion carried.

2) 2007057461 – Commissioner Flitcroft had previously reviewed the complaint. The complaint was deferred because Commissioner Flitcroft was absent from the meeting.

3) 2007049751 &

4) 2007049752 – Ms. Wiseman recommended the complaint be closed with a Letter of Warning. Commissioner Collins made a motion to accept Ms. Wiseman’s recommendation and close with a Letter of Warning; seconded by Commissioner Northern; vote: 7 yes, 1 no; motion carried.

5) 2007062281 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.

Ms. Wiseman reviewed the Legal File Summary and Consent Order Log with the Commission.

Ms. Wiseman presented to the Commission a memorandum regarding the Regulatory Flexibility Act, Public Chapter 464 and a Regulatory Flexibility Analysis. The public chapter requires that “each agency shall employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business.” Ms. Wiseman presented the following Regulatory Flexibility Analysis (Method of Reducing Impact of Rules on Small Businesses):

- 1) Overlap, duplicate, or conflict with other federal, state and local governmental rules:
There is no overlap, duplication, or conflict with federal state or local governmental rules.
- 2) Clarity, conciseness and lack of ambiguity in the rule or rules:
The proposed amendments are clear, concise and unambiguous.
- 3) Flexible compliance and/or reporting requirements for small businesses:
Any compliance or reporting requirements for small businesses as a result of these rules are mandated by statute.
- 4) Friendly schedules or deadlines for compliance and/or reporting requirements:
Any schedules or deadlines for compliance and reporting requirements are mandated by statute.
- 5) Consolidation or simplification of compliance or reporting requirements:
Any compliance or reporting requirements are mandated by statute.
- 6) Performances standards for small businesses:
There are no performance standards for small businesses as a result of these amendments.

7) Barriers or other effects that stifle entrepreneurial activity curb innovation or increase costs:

The amendments to Rules 1260-05-.15 Fee for Educational Course Application and 1260-05-.16 Course Approval Periods effectively quadruple the cost of offering continuing real estate education in the State of Tennessee. A new two hundred dollar (\$200.00) fee for course instructors has also been added.

Commissioner Woods made a motion to adopt legal counsel's recommended answers to the seven (7) above questions; however, he wished to add language to the answer for question #7 to indicate that the fees and increasing of fees are the result of the Commission's analysis that the increase will not stifle entrepreneurial activity and many of the fees have not been increased in two decades and considering those factors, the Commission considers the fee increases reasonable; seconded by Commissioner Northern; unanimous vote; motion carried.

Ms. Wiseman provided a legislative update of proposed bills that may be of interest to the Commission. The Commission went through the proposed bills and voted if they wished to support or oppose a bill.

- **HB 0049/SB 1676** [Negotiation period for owner-occupied single family homes] – The Commission decided by consensus to neither support or oppose HB 0049/SB 1676.
- **HB 0128/SB 0247** [Seller of real property to provide buyer with energy audit] - **Vice-Chairman Stephenson made a motion to oppose HB0128/SB 0247; seconded by Commissioner Northern; vote: 6 yes, 0 no; Commissioner Woods indicated that he did not think it is the proper role of the commission to comment on proposed legislation not directly affecting our licensees and, thus, abstained; motion carried.**
- **SB 0198/HB0425** [Administrative Procedure – UAPA] – The Commission decided by consensus to neither support or oppose SB 0198/HB 0425.
- **HB0380/SB 0324** [Real Property] – **Commissioner Northern made a motion to support the HB0380/SB 0324; seconded by Commissioner Tate; vote: 6 yes, 0 no; Commissioner Woods indicated that he did not think it is the proper role of the commission to comment on proposed legislation not directly affecting our licensees and, thus, abstained; motion carried.**
- **SB 0429/HB 0598** [Real Property] – The Commission decided by consensus to neither support or oppose SB 0429/HB 0598.
- **SB 0993/HB 0888** [Property] – The Commission decided by consensus to neither support or oppose SB 0993/HB 0888.
- **SB 1374/HB 1273** [Administrative Procedure – UAPA] – The Commission decided by consensus to neither support or oppose SB 1374/HB 1273.
- **SB 1373/HB 1227** [Administrative Procedure – UAPA] – The Commission decided by consensus to neither support or oppose SB 1373/HB 1227.
- **SB 1388/HB1815** [Administrative Procedure – UDAPA] – The Commission decided by consensus to neither support or oppose SB 1388/HB 1815.

- **SB 1463/HB 2144** [Real Estate Agents and Brokers] – **Commissioner Alexander made a motion to oppose SB1463/HB 2144; seconded by Commissioner Joh; unanimous vote; motion carried.**
- **SB 1389/HB 1553** [Real Estate Agents and Brokers] – **Commissioner Tate made a motion to oppose SB 1389/HB 1553; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- **SB 2103/HB 2025** [Real Estate Agents and Brokers] – **Commissioner Tate made a motion to support SB 2103/HB 2025; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- **SB 1172/HB 2012** [Property] – **The Commission decided by consensus to neither support or oppose SB 1172/HB 2012.**
- **SB 1367/HB 1703** [Real Estate Agents and Brokers] – **The Commission decided by consensus to neither support or oppose SB 1367/HB 1703.**
- **SB 1176/HB 1742** [Real Estate Agents and Brokers] – **Commissioner Alexander made a motion to oppose SB1176/HB 1742; Commissioner Alexander withdrew his motion. Commissioner Woods made a motion to authorize legal counsel to work with the sponsors of the bill to clarify the definition of a “knowledgeable instructor” and “interaction” and further moved to authorize Chairman Haynes to select a member of the Commission to discuss the instructor fee with the sponsors of the bill. Chairman Haynes selected Commissioner Alexander to work with the sponsors of the bill. Commissioner Woods accepted the friendly amendment; seconded by Commissioner Northern; opened to discussion; Commissioner Collins made a motion to suspend the rules and allow Mr. Jim Gibbs to address the Commission; seconded by Commissioner Alexander; unanimous vote; motion carried. Mr. Jim Gibbs, principal broker and real estate educator, expressed his opposition to SB 1176/HB 1742 and spoke about the Regulatory Flexibility Act. Commissioner Woods made a motion to call the meeting back into session; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Commissioner Northern made a motion to discuss the email from Chief of Fiscal Services Robert Wright to Assistant Commissioner Steve Majchrzak; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Northern made a motion to authorize Chairman Haynes to send a letter referencing the dilemma the Commission is in regarding their ability to function and that such correspondence be disseminated among the legislators; seconded by Commissioner Tate; opened to discussion; Commissioner Woods made a motion to amend to send the letter with the approval of the administration. Ms. Wiseman advised the Commission that the administration does not have an objection to sending the letter on Tennessee Real Estate Commission letterhead. Commissioner Woods withdrew his motion to amend. Commissioner Woods offered a friendly amendment to Commissioner Northern’s motion to circulate the letter to the members of the Commission for feedback before it is sent to the legislators. Commissioner Northern accepted Commissioner Wood’s friendly amendment. The vote on the motion as amended was unanimous and the motion carried. Commissioner Alexander made a motion to recess the meeting instead of

adjourning the meeting because a teleconference of the Commission may be necessary; seconded by Commissioner Tate; unanimous vote; motion carried.

COMMISSIONER REPORTS

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

Commissioner Tate made a motion to have the Commission send a letter of commendation to Dr. Kathy Riggs honoring her for her years of service to the Tennessee Real Estate Commission; seconded by Commissioner Collins; unanimous vote; motion carried.

COMMENTS FROM ATTENDEES

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.

Chairman Haynes recessed the meeting March 6, 2009 at 11:28 a.m.