

TENNESSEE REAL ESTATE COMMISSION MINUTES
May 7 – 8, 2009

The Tennessee Real Estate Commission convened on May 7, 2009, at 9:14 a.m., in the 1st Floor Commission Chambers at the Shelby County Administration Building, 160 N, Main Street, Memphis, Tennessee, 38103. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Legal Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the May 2009 Commission meeting. **Commissioner Tate made a motion to adopt the May 2009 agenda; seconded by Commissioner Joh; unanimous vote; motion carried.**

The next order of business was the approval of the April 2009 minutes (**Exhibit 2**). **Commissioner Tate made a motion to approve the April 2009 minutes; seconded by Commissioner Joh; 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 **291** open complaints. One of the 291 open complaints is a staff generated Agreed Citation. There are 22 new complaints since the April 2009 meeting. There are 284 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 205. Total Civil Penalties paid in April 2009 were \$35,040.00.
- **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 April 30, 2009. As of April 30, 2009, there were 28,979 active licensees, 3,871 inactive licensees, 9,980 retired licensees and 2,616 in broker release status. There were 4,513 active firms and 325 retired firms. There were 169 new applications approved in April 2009. Ms. Maxwell also provided statistics on the licensee renewal percentage, number of test takers and the number of test takers by site.

Commissioner Flitcroft expressed concern about the number of licensees in broker release status. Ms. Maxwell explained that she has been working with the Information Systems division to create a system for tracking the number of licensees in broker release and automatically expiring licensees in broker release on the 61st day after their

expiration date. Chairman Haynes requested an Executive Service representative of the Information Systems division attend the next Commission meeting to answer questions.

Commissioner Alexander made a motion to suspend the rules to allow principal broker Ms. Fontaine Taylor to speak; seconded by Commissioner Tate; unanimous vote; motion carried. Ms. Fontaine addressed the Commission regarding notification to principal brokers when an affiliate is uninsured.

Chris Sexton, Director of Governmental Affairs for the Tennessee Association of Realtors introduced himself to the Commission. Mr. Sexton has replaced J.A. Bucy as Director of Governmental Affairs for TAR.

- **Errors & Omissions Insurance** – Ms. Maxwell presented to the Commission a time line (Exhibit 5) of all administrative measures taken to help licensees come into compliance for failure to purchase Errors & Omissions insurance and a daily list of the number of uninsured licensees. Ms. Maxwell explained the administrative process being implemented to send the letters and agreed citations to the uninsured and their principal broker. It was determined that letters and citations will be sent first to licensees who were uninsured as of May 1, 2009 and agreed citations to principal brokers with uninsured affiliates as of May 1, 2009. After these letters and citations are sent, Staff will send agreed citations to licensees who obtained insurance before the May 1, 2009 deadline. Ms. Maxwell asked the Commission how they would like to handle requests for medical waivers of the E&O policy. Chairman Haynes prefers for the licensees to appear before the Commission for appeals. There was discussion regarding whether informal hearings can be held instead of formal hearing. **Commissioner Northern made a motion to have legal counsel send a letter or approach the Attorney General's office to get clarification on what the Commission can do to resolve the issue of fining the licensees without going through the process of a formal hearing; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.**

Chairman Haynes recessed the meeting for lunch at 11:25 a.m. and the meeting reconvened at 1:26 p.m.

APPLICANT CONFERENCE

Richard Neel, applicant, 319570, appeared with his principal broker Joseph P. Godfrey, III to request a waiver of the 50 mile rule. **Commissioner Joh made a motion to approve the request for a waiver of the 50 mile rule and Mr. Neel may apply by reciprocity; seconded by Commissioner Woods; roll call vote: 6 yes, 3 no; motion carried.**

- **TREC Newsletter** – **Commissioner Alexander made a motion to have an RFP bid for the assembly, printing and distribution of the TREC newsletter; seconded by Commissioner Flitcroft; unanimous vote; motion carried. Vice-Chairman Stephenson made a motion to print the June newsletter using the State's resources; seconded by**

Commissioner Alexander; unanimous vote; motion carried. The Commission briefly discussed possible articles for the upcoming newsletter. Ms. Maxwell presented the Commission with a list of possible newsletter articles (Exhibit 6) and the Commission prioritized the importance and relevance of the proposed articles.

- **Administrative Motion Log** – Ms. Maxwell presented the Administrative Motion Log and asked if they had any topics they would like to address. The Commission and Ms. Maxwell briefly discussed the log.

Aubrie Kobernus, Governmental Affairs Director for the Memphis Area Association of Realtors addressed the Commission regarding a local scrap metal ordinance that they worked with other organizations to establish.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

At the April meeting, the following classes offered by the Memphis Area Association of Realtors were deferred for more information: "10 Must Have Characteristics for a Web-Site", "Introduction to Blogging for Real Estate" and "Introduction to Social Media for Real Estate". Commissioner Tate went to the Association and met with the instructor and reviewed the curriculum of the courses. She believes the courses are very valuable because of the relevance of the topics in today's real estate marketplace.

Commissioner Tate made a motion to approve the courses "10 Must Have Characteristics for a Web-Site", "Introduction to Blogging for Real Estate" and "Introduction to Social Media for Real Estate"; seconded by Vice-Chairman Stephenson; opened to discussion; vote: 8 yes, 1 no (Commissioner Woods voted no.); motion carried.

Commissioner Carol Tate left the meeting at 2:54 p.m.

Ms. Maxwell presented Courses for Commission Evaluation and Courses Requiring Discussion (Exhibit 7). **Commissioner Collins made a motion to not approve the courses "Residential Site Evaluation and Cost Approach", "Basic Appraisal Procedures", Residential Sales Comparison & Income Approach" and "Basic Appraisal Principals"; seconded by Commissioner Flitcroft; vote: 8 yes, 1 no (Commissioner Alexander voted no.); motion carried. Commissioner Collins made a motion to not approve the courses "Farming & Marketing 101", "Title Insurance 101" and "The Process for Closing a R.E. Transaction"; seconded by Commissioner Joh; after discussion, Commissioner Collins withdrew his motion and Commissioner Joh withdrew her second. Commissioner Joh made a motion to reduce the credit hours from three to two for the course "Title Insurance 101"; seconded by Commissioner Collins; roll call vote: 5 yes, 3 no (Commissioners Stephenson, Alexander and Haynes voted no.); motion carried. Commissioner Alexander made a motion approve the remaining courses; seconded by Commissioner Collins; roll call vote: 7 yes, 1 no (Commissioner Haynes voted no.); motion carried.**

Instructor Reviews

Middle Tennessee Association of Realtors (MTAR) is seeking approval for Marty Calfee to be approved as an instructor to teach the course "Accredited Buyers Representative (ABR) Designation Course" and Williamson County Association of Realtors (WCAR) is seeking approval for her to teach the approved courses: "Effective Negotiating for the Real Estate Professional" and the "TREC Core 2009/2010" (Exhibit 8). **Commissioner Woods made a motion to approve the requests by MTAR and WCAR; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Middle Tennessee Association of Realtors (MTAR) is seeking approval for Robert Morris, Jr. to be approved as an instructor to teach the course "Accredited Buyers Representative (ABR) Designation Course". **Commissioner Joh made a motion to approve; seconded by Commissioner Woods; unanimous vote; motion carried.**

There was a discussion regarding the course approval process for education courses. After discussion, **Commissioner Alexander made a motion to defer the discussion and listen to the past recordings regarding the education approval process at the June meeting; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Commissioner Flitcroft made a motion to contact Assistant Commissioner Steve Majchrzak to discuss expediting the filling of the position of Education Director within the bounds of the State of Tennessee's civil service procedures; seconded by Commissioner Woods; unanimous vote; motion carried.

Vice-Chairman Stephenson reported on industry trends and issues discussed at the ARELLO Mid-Year Conference which he attended in Asheville, NC on April 26 – 29, 2009.

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

Chairman Haynes recessed the meeting Thursday, May 7, 2009 at 3:47 p.m.

TENNESSEE REAL ESTATE COMMISSION Friday, May 8, 2009

The Tennessee Real Estate Commission reconvened on May 8, 2009, at 9:06 a.m., in the 1st Floor Commission Chambers at the Shelby County Administration Building, 160 N, Main Street, Memphis, Tennessee, 38103. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac**

Northern. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Legal Counsel, and Kelly McDermott, Administrative Secretary.

LEGAL REPORT, KATHRYN WISEMAN, ASSISTANT GENERAL COUNSEL

Ms. Wiseman presented the Commission with a legislative update (Exhibit 10) on bills she thought may be of interest to the Commission.

Ms. Wiseman reviewed the Legal File Summary and Consent Order Log with the Commission. Ms. Wiseman addressed the Commission regarding complaints 2007050681, 2007069481 and 2007049121. **Commissioner Collins made a motion to refer the complaints to the proper authorities and close the complaints; seconded by Commissioner Woods; unanimous vote; motion carried.**

The Commission stood in recess at 9:33 a.m. to conduct a formal hearing in the matter of Alex L. Walker, licensee 24571, Docket # 12.8-101071A.

The Commission voted to issue a Consent Order with a civil penalty of \$200.00 to Alex L. Walker, licensee 24571, Docket # 12-18-101071A.

The formal hearing concluded at 10:38 a.m.

Commissioner Alexander made a motion to move any possible hearings for Alex L. Walker or his uninsured affiliate to the forefront of the hearings; seconded by Commissioner Northern; opened to discussion; after discussion, Commissioner Alexander withdrew his motion and Commissioner Northern withdrew his second.

Commissioner Flitcroft made a motion to have legal counsel include in the Legal Report any Errors & Omissions installment payments that the respondent may be paying; seconded by Commissioner Joh; unanimous vote; motion carried.

LEGAL REPORT, KATHRYN WISEMAN, ASSISTANT GENERAL COUNSEL

(continued)

- 1) 2009006171 &
- 2) 2007068801 &
- 3) 2008002771 &
- 4) 2007066691 &
- 5) 2007065681 &
- 6) 2007066401 &
- 7) 2007066402 &
- 8) 2007069991 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Woods; unanimous; motion carried.

- 9) 2007049971 &
- 10) 2007049972 &
- 11) 2007049973 &
- 12) 2007049974 – Commissioner Alexander had previously reviewed the complaint. He recommended the Buyer's Agent attend a four (4) hour class in Buyer

Representation and a four (4) hour class in Risk Management. He further recommended that the Listing Agent and the Listing Agent's Principal Broker each attend 16 hours worth of classes in Contract Writing. **Commissioner Woods made a motion to accept Commissioner Alexander's recommendation; seconded by Commissioner Flitcroft; vote: 8 yes, 0 no, Commissioner Alexander abstained; motion carried.**

13) 2008020601 – Ms. Wiseman recommended the issuance of a Consent Order with a civil penalty of \$500.00. Commissioner Woods made a motion to accept legal counsel's recommendation; seconded by Commissioner Joh; unanimous vote; motion carried.

14) 2009000501 – Commissioner Flitcroft made a motion to defer and have Chairman Haynes review the complaint; seconded by Vice-Chairman Stephenson; roll call vote: 7 yes, 2 no (Commissioners Woods and Joh voted no.); motion carried.

Ms. Maxwell reported that there are 1,508 total courses, 368 (24.4%) distance courses are ARELLO approved. There are 309 courses that are readily identifiable as courses that have the same curriculum, the method of delivery, the instructor or the venue is different. She advised that since 1999 Pearson-Vue has reviewed the Insurance Division's courses. In 2008, they reviewed 1,217 courses for the Insurance Division. The turnaround for course review is typically eight to ten business days.

Ms. Wiseman advised the Commission that PSI won the contract for testing.

COMMENTS FROM ATTENDEES

Chairman Haynes called for comments from the attendees.

Licenses 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.

The attendees were presented certificates for attending the Commission meeting.

Chairman Haynes adjourned the meeting May 8, 2009 at 11:10 a.m.