

TENNESSEE REAL ESTATE COMMISSION MINUTES
April 15 – 16, 2010

The Tennessee Real Estate Commission convened on April 15, 2010, at 9:04 a.m. in the First Floor Conference Room 1A at the Developmental Resource Building at 1250 Market Street, Chattanooga, Tennessee, 37402. **The following Commission Members were present: Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Wendell Alexander, Commissioner William "Bear" Stephenson and Commissioner Allen Woods. Commissioner Charles Haynes, Commissioner Valerie Joh, Commissioner David Flitcroft and Commissioner Carol Tate were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the April 2010 Commission meeting. **Vice-Chairman Northern made a motion to adopt the agenda; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the March 2010 meeting (**Exhibit 2**). **Commissioner Stephenson made a motion to approve the March 2010 meeting minutes; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell spoke to the Commission regarding a request by the Administration to open every complaint submitted, assign it a number for tracking purposes and review it to determine if the complaint has merit or if the Commission has jurisdiction. She explained that if the complaint has no merit, then the staff administratively closes the complaint. She asked for confirmation that the Commission accepts that process as the standard operating procedure. **Commissioner Alexander made a motion that if a complaint does not violate the Tennessee Broker's Act, then Staff be given the authority to open the complaint and close it administratively; seconded by Commissioner Woods; unanimous vote; motion carried.**

There was some discussion regarding the format of the Legal Report in that Ms. Ryan lists all prior complaints against a Respondent. The concern being that complaints with no merit being listed and considered when the Legal Report is presented may affect the disposition of the current complaint. The Commission agreed that complaints that are closed because they have no merit or complaints in which there is not disciplinary action by the Commission should not be included in the licensee complaint history on the Legal Report. **Commissioner Woods made a motion to direct Staff to only list on the Legal Report prior complaints against licensees where it was found that they violated the Tennessee Real Estate Broker's Act; seconded by Commissioner Alexander; unanimous vote; motion carried.**

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

- **Complaint Statistics Report (Exhibit 3)** – Ms Maxwell presented licensing statistics to the Commission. As of March 31, 2010, TREC had a total of 299 open complaints. Of those 299 open complaints, 215 are Errors & Omissions insurance complaints. There were 26 new complaints in March 2010. There are 292 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 2009-2010 is 392. Total Civil Penalties paid in March 2010 were \$14,525.00.
- **Licensing Statistics (Exhibit 4)** – Ms. Maxwell presented licensing statistics for the month of March 2010. As of March 31, 2010, there were 27,124 active licensees, 2,016 inactive licensees and 10,670 retired licensees. There were 4,460 active firms and 357 retired firms. There were 249 new applications approved in March 2010. She presented additional statistics outlining and comparing licensee counts for 1999, 2008, 2009 & 2010. She also presented statistics on license renewal percentages (i.e. how many sent by month, the number not renewed by the 61st day and the percentage of licensees not renewed).

Course Approval Periods – Ms. Maxwell discussed the pending rule change to Rule 1260-05-.16 that could go into effect June 14, 2010 and the impact it has on the renewal period for courses. The new proposed Rule 1260-05-.16 [Course Approval Periods] states “(1) The Commission will approve courses based upon a two (2) year review cycle of all courses. Each cycle will end on December 31 of the second year. The first period of approval will end December 31, 2010; 2) Each course approval shall remain effective until the end of the review cycle, notwithstanding the date upon which it was approved; 3) All course providers shall be required to resubmit their courses for approval at least one hundred twenty days (120) prior to the applicable expiration date. Failure to meet this deadline may result in non-approval of a course.” She stated that if the Rules are effective June 14, 2010, it would only give the schools six weeks to evaluate, gather, copy and transmit all of their course and instructor information. The schools will have to complete and submit new instructor applications (with all back up materials) and new course applications (with all back up written materials, timed outlines) before September 3, 2010. She offered for Commission consideration that this does not allow the schools much time to complete the requirements for renewal. Ms Maxwell also advised that if the new rules become effective, all 1558 approved courses will expire on 12/31/2010. There was a discussion regarding offering an extension for providers to prepare for renewal. **Commissioner Alexander made a motion to adhere to the new proposed rule change and keep the expiration date as 12/31/2010 without offering extensions and the new courses will begin 1/1/2011; seconded by Commissioner Stephenson for discussion; opened to discussion.** There was discussion regarding the feasibility of the Staff being able to review and present all the courses seeking renewal. After some discussion, it was determined that it would be helpful for the Staff to meet and report back to the Commission at the May meeting with suggestions for a possible procedure for efficiently processing course renewals. **Commissioner Alexander made a motion to defer**

his motion to allow the Staff to meet and present suggestions to the Commission at the May meeting; seconded by Vice-Chairman Northern; unanimous vote; motion carried.

There was a short discussion regarding fines being assessed to licensees for failure to complete continuing education in a timely manner or by expiration. Ms. Maxwell advised the Commission that a penalty of \$50.00 per month for up to 12 months can be issued to a Broker who is in the process of completing their 120 hours post broker continuing education after the deadline. She also advised that not completing continuing education falls under the umbrella of the reinstatement policy and that a person must pay their renewal fee, have E&O insurance and complete all of their required continuing education prior to expiration to renew. Reinstatement penalties apply to failure to complete continuing education before expiration.

Mr. Steve McDonald, Education Director, presented statistics in chart form detailing the content of courses, the method of delivery and the school to class ratio. He also presented graphs outlining the number of test takers by testing site by year and by month. These graphs reflect the current trends in the real estate industry.

- **TREC Core Content** – Ms. Maxwell asked the Commission for suggestions for the next TREC Core course. Some suggestions by the Commission were Principal Broker supervising duties, risk management, TREC law, rule, and policy update and earnest money. Commissioner Stephenson asked Ms. Robyn Ryan, Assistant General Counsel, to also make some suggestions at a future meeting regarding the issues that precipitate the filing of a complaint against a licensee. It was determined that by June, the Commission will have a more defined list of possible TREC Core course content.
- **Errors & Omissions Term Extension** – Per the E&O contract, the State of Tennessee reserves the right to extend the Contract for one (1) additional two (2) year period provided that such an extension of the contract term is effected prior to the current contract expiration date by means of an amendment to the Contract. The amendment to the Contract shall be based upon the same fees and rates provided in the original Contract. **Commissioner Stephenson made a motion to exercise the option to extend the current State E&O insurance contract with Rice Insurance for one (1) additional two (2) year period or 1/1/2011 – 12/31/2012; seconded by Vice-Chairman Northern; opened to discussion; Vice-Chairman Northern offered an amendment to allow TREC Staff to continue to negotiate with Rice Insurance to come up with the best program we can possibly offer without making material changes to the original contract established by RFP; seconded by Commissioner Alexander; amendment passed unanimously; motion as amended passed unanimously.**
- **ARELLO Mid-Year Meeting report** – Chairman Collins, Ms. Maxwell and Mr. McDonald attended the ARELLO Mid-Year meeting in April in Colorado Springs and reported on matters of interest from the meeting for TREC and spoke of the course content and forum topics.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

- Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and a Course Requiring Discussion (Exhibit 8). **Commissioner Stephenson made a motion to defer the Course Requiring Discussion "Creating Opportunities in a Changing Market" until the May meeting to allow Staff to obtain more information from the provider regarding the course; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Woods made a motion to approve all of the remaining Courses for Commission Evaluation except course A3 "The Meditative Approach to Resolving Conflict"; seconded by Vice-Chairman Northern; unanimous vote; motion carried.** After discussion, it was determined that the course title for course A3 "Meditative Approach to Resolving Conflict" was a typographical error and the course actually concerns the "Mediation Approach to Resolving Conflict". **Therefore the Commission reconsidered and Commissioner Stephenson made a motion to approve the course A3 "Mediation Approach to Resolving Conflict"; seconded by Commissioner Woods; unanimous vote; motion carried.**

- Mr. McDonald presented the following instructor reviews to the Commission.
 - Sally Cummings of TAR requests that John C. Greiss, III be approved to teach the Commercial Core Course #6334.

 - Sally Cummings of TAR requests that Ruth Fennell be approved to instruct the REBAC- At Home with Diversity 7 hour course, #2656.

 - Dottie Oslin of Tennessee Real Estate Educational Systems, Inc. (TREES, INC) would like to submit Mr. Mark Johnson to be an approved instructor for these courses:
 - Course #1627 - Affiliate Broker Pre-License 60 hour
 - Course #1571 - Course for New Affiliates 30 hour
 - Course #335 - Broker Management
 - Course #6069 - TREC Core 2009/2010
 - Course #2395- Effective Buyer Representation (ABR)

 - Dottie Oslin of Tennessee Real Estate Educational Systems, Inc. (TREES, INC) is seeking the approval of Paul Gaddes, Bruce Lynn, and Ed Matthews to teach the following courses.
 - Course #2395- Effective Buyer Representation (ABR)
Paul Gaddes, Bruce Lynn, Ed Matthews
 - Course #3535- E-Buyer
Paul Gaddes, Bruce Lynn, Ed Matthews
 - Course #3536- Innovative Marketing
Paul Gaddes, Bruce Lynn, Ed Matthews
 - Course #3872- Senior Real Estate Housing Specialist
Paul Gaddes, Bruce Lynn
 - Course #4619- Seller Representative Specialist

- Paul Gaddes, Bruce Lynn
- Course #6068- NAR's Green Residential Elective
Paul Gaddes, Bruce Lynn, Ed Matthews
- Course #6069- TREC Core Course 2009/2010
Paul Gaddes
- Course #6070- NAR's Green Designation Core
Paul Gaddes, Bruce Lynn, Ed Matthews

Commissioner Stephenson made a motion to approve all of the above instructors for the specified courses; seconded by Vice-Chairman Northern; unanimous vote; motion carried.

- **2010 Education Seminars** – Mr. McDonald presented a proposed schedule for the 2010 Education Seminars to be held in all areas of Tennessee. Mr. McDonald advised that two (2) hours of continuing education credit will be offered to attendees of the seminar. **Vice-Chairman Northern made a motion to approve the proposed schedule for the 2010 Education Seminars; seconded by Commissioner Woods; unanimous vote; motion carried.**

Following is the schedule for the 2010 Education Seminars:

Date	Time	Association/Facility	City
6/24/2010	9 – 11 a.m.	Southern Middle Tennessee Association of REALTORS * at Columbia State Community College	Lewisburg
8/19/2010	9 – 11 a.m. 1 – 3 p.m.	@ Upper Cumberland Association of REALTORS	Cookeville
8/20/2010	9 – 11 a.m. 1 – 3 p.m.	@ Chattanooga Association of REALTORS	Chattanooga
9/21/2010	1 – 3 p.m. 5 – 7 p.m.	@ Memphis Area Association of REALTORS	Memphis
9/22/2010	9 – 11 a.m. 1 – 3 p.m.	@ Central West Tennessee Association of REALTORS	Jackson
10/22/2010	9 – 11 a.m. 1 – 3 p.m.	@ Greater Nashville Association of REALTORS	Nashville
11/18/2010	9 – 11 a.m. 1 – 3 p.m.	@ Northeast Tennessee Association of REALTORS	Gray
11/19/2010	9 – 11 a.m. 1 – 3 p.m.	@ Knoxville Area Association of REALTORS	Knoxville

- **Renewal Postcard/TREC News Journal** – Mr. McDonald presented a sample of the revised renewal postcard. He also provided the Commission with an overview of the articles to be included in the Spring TREC News Journal.

Vice-Chairman Northern asked that in regards to the proposed article regarding retiring a license that mention be made of the bill put forth by Representative Campfield regarding continuing education. This bill was discussed at the March meeting. The discussion centered around the content of the bill and the effect it would have on licensees. Ms. Maxwell advised that the bill is tied to TREC's Sunset Bill which extends the operation of TREC so it will most likely pass. She explained the content of the proposed bill. She stated that the bill proposes that prior to coming out of retirement, a licensee must complete the required 16 hours of continuing education within the year immediately preceding the date they wish to reactivate their license. In other words, they must plan ahead. This example was offered in explanation. If a licensee is retired for five years, then they would need to get their 16 hours of continuing education within year four to five to come out of retirement at the end of year five. Vice-Chairman Northern expressed that it may be beneficial to a licensee to require them to learn the most recent rules, trends, etc. He explained that if a licensee must take their required CE prior to being retired, then the information could possibly be out of date when they return to work. He stated that this bill would put licensees in a position to learn the newest information in the classroom. It was discussed that if it passes, it will effectively do away with inactive status. There was also discussion regarding how the bill affects licensees who are grandfathered and who are currently inactive. Since the bill does not address these issues specifically, Ms. Ryan's legal opinion is she believes it could be applied across the board. It was the consensus of the Commission that those details are not clear in the bill as presented. Ms. Maxwell stated she believes there may be a decision on the bill very soon and it would become effective immediately if it passes.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL

- **Student Loan Default Suspensions** – Ms. Ryan advised the Commission that as Staff, we are required to automatically suspend the license of licensees who have not paid and have defaulted on their student loan. The lists of licensees are sent to TREC by the appropriate agency and by law TREC is required to suspend the license. Ms. Ryan explained that there are a few circumstances when a license can be automatically suspended such as not paying child support, taxes or student loans.
- **Request from licensee to amend language of T.C.A. §62-13-312 and Rule 1260-2-.08** – Ms. Ryan presented a request that was sent to Vice-Chairman Northern by a licensee. The licensee wishes to add the word "legible" to T.C.A. §62-13-312 and Rule 1260-2-.08. Ms. Ryan advised that it is implied that legibility is required. She further advised the word "legible" is subjective and also the Commission cannot amend statute. Commissioner Woods asked Ms. Ryan to contact the licensee and advise them they need to contact their state representative or senator.
- **Request for approval of Marie Murphy as judge for the E&O hearings for failure to pay fines – Commissioner Woods made a motion to approve Marie Murphy as judge for the E&O hearings for failure to pay the agreed citations for failure to obtain E&O insurance in a timely manner; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Chairman Collins recessed the meeting for lunch at 11:31 a.m. and reconvened at 1:04 p.m.

TIMESHARE SALESPERSON INFORMAL CONFERENCE

William "Chad" Roberts appeared with his potential Principal Broker Sue Deaton, to request approval for a Timeshare Salesperson license. Mr. Roberts disclosed a conviction of Forgery under \$500.00 in 2005. Commissioner Stephenson made a motion to approve Mr. Robert's request; seconded by Vice-Chairman Northern; unanimous vote; motion carried.

BROKER INFORMAL CONFERENCE

John Lafayette Wheeler, Jr. appeared with his potential Principal Broker Robert "Bob" DeCamara, to request approval for a Broker license. Mr. Wheeler disclosed convictions of Concealing Stolen Property over \$1000.00 and Burglary in 1968, Misdemeanor Possession of Marijuana and Possession and Sale of Marijuana in 1971, Violating the Georgia Controlled Substance Act in 1975, Misdemeanor Escape from Workhouse in 1976 and a Federal Firearms Violation in 1982. Commissioner Alexander made a motion to approve Mr. Wheeler's request; seconded by Commissioner Woods; unanimous vote; motion carried.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL (continued)

- **Rule making discussion** – Ms. Ryan asked the Commission to be thinking about any potential rule changes they may want to address at the next Rule making hearing. She presented a couple of suggestions that were made by TREC's former Assistant General Counsel Kathryn Wiseman. Commissioner Woods asked Ms. Ryan to meet with Ms. Wiseman to discuss her suggestions and report back to the Commission at a future meeting.
- **Declaratory Order pursuant to T.C.A. § 4-5-223** – Ms. Ryan presented the Commission with a request for a Declaratory Order pursuant to T.C.A. § 4-5-223. She explained that the Commission has the power to decide to hear this matter in a formal hearing, to deny the request or if the Commission does not make a determination, the request will be considered denied. She explained that if the declaratory order is denied, the Petitioner can then ask the Chancery Court for a declaratory judgment. There was some discussion of the content of the request. **Commissioner Alexander made a motion that the Commission take no action in regard to the request therefore making the Petitioners recourse to go to Chancery Court and ask for a declaratory judgment; seconded by Commissioner Woods; opened to discussion; unanimous vote; motion carried.**

LEGAL REPORT (complaints)

- 1) **2008010231 &**
- 2) **2008011111 &**
- 3) **2010002891 &**
- 4) **2010002892 &**
- 5) **2007079101 &**
- 6) **2007079102 &**
- 7) **2007079103 &**

- 8) **2007048191 – Commissioner Woods made a motion to accept legal counsel’s recommendation to close and flag the file pending the outcome of the litigation; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 9) **2008020761 – Commissioner Alexander made a motion to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 10) **2008022981 &**
- 11) **2008022982 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 12) **2008027431 &**
- 13) **2008027432 &**
- 14) **2008027433 &**
- 15) **2008027434 – Vice-Chairman Northern made a motion to accept legal counsel’s recommendation to dismiss against all Respondents; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 16) **2008024921 &**
- 17) **2008024922 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss against both Respondents; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 18) **2009012201 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for failure to respond and he moved to additionally require four (4) hours of continuing education in contract writing within 12 months, four (4) hours of continuing education in ethics within 12 months and attendance at a two day TREC meeting within six months; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 19) **20100002451 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for failure to respond; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 20) **2009012161 – Vice-Chairman Northern made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for failure to respond; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 21) **2009011291 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent order with a civil penalty of \$1,000.00 for violating T.C.A. § 62-13-312(5) [Failing to account or remit moneys belonging to others] and issue a Consent Order with a civil penalty of \$800.00 for violating T.C.A. § 62-13-312(8) [Failing to furnish a copy of sales contract] and require four (4) hours continuing education in ethics to be completed within 12 months and he moved to additionally require attendance at a two day TREC meeting within 6 months; seconded by Commissioner Woods; unanimous vote; motion carried.**

- 22) **2009018951 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for violating T.C.A. § 62-13-312(5) [Failing to account or remit moneys belonging to others] and also require eight (8) hours of continuing education in contract writing within 12 months; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 23) **2008017291 &**
- 24) **2008017292 – Commissioner Alexander made a motion to dismiss as to both Respondents; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 25) **2008000911 &**
- 26) **2008000912 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 27) **2008008171 – Vice-Chairman Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 28) **2008024341 – Commissioner Woods made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 29) **Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Northern for discussion; opened to discussion; unanimous vote; motion carried.**
- 30) **Commissioner Woods made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Northern; unanimous vote; motion carried.**
- 31) **2009007811 - Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Woods; opened to discussion; unanimous vote; motion carried.**
- 32) **Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Woods; opened to discussion; unanimous vote; motion carried.**
- 33) **2008006191 – Commissioner Woods made a motion to issue a Consent Order requiring four hours (4) of continuing education in ethics and four (4) hours of continuing education in contract writing within 12 months and attendance at a two day TREC meeting within six months; seconded by Commissioner Stephenson; vote: 3 yes, 0 no; Chairman Collins recused himself as he was briefly out of the meeting room for the discussion of the complaint and Vice-Chairman Northern acted as Chairman in his absence so he also did not vote; motion carried.**
- 34) **2008017831 &**
- 35) **2008017832 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss as to Respondent 1 and send a Letter of Warning to Respondent 2 regarding Rule 1260-2-**

.11 [failing to disclose licensee status to buyers]; seconded by Commissioner Alexander; unanimous vote; motion carried.

Ms. Ryan reviewed the Legal File Summary, Consent Order Log and the E&O Lapse Log with the Commission.

Chairman Collins recessed the meeting Thursday, April 15, 2010 at 2:49 p.m.

**TENNESSEE REAL ESTATE COMMISSION
April 16, 2010**

The Tennessee Real Estate Commission convened on April 16, 2010, at 9:08 a.m in the First Floor Conference Room 1A at the Developmental Resource Building at 1250 Market Street, Chattanooga, Tennessee, 37402. **The following Commission Members were present: Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Wendell Alexander, Commissioner William "Bear" Stephenson and Commissioner Allen Woods. Commissioner Charles Haynes, Commissioner Valerie Joh, Commissioner David Flitcroft and Commissioner Carol Tate were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.**

The Commission stood in recess at 9:09 a.m. for a formal hearing in the matter of Juan Jackson, licensee # 287492, Docket # 12.18-104593A.

The Commission ordered the revocation of the license of Juan Jackson, licensee # 287492, Docket # 12.18-104593A for failure to obtain Errors & Omissions insurance. The Commission further ordered a Consent Order with a civil penalty of \$1,000.00. The Commission further ordered that Mr. Jackson be assessed the cost of the formal hearing.

The formal hearing adjourned at 9:53 a.m.

COMMISSIONER REPORTS

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

Chairman Collins adjourned the meeting Friday, April 16, 2010 at 10:04 a.m.