

TENNESSEE REAL ESTATE COMMISSION MINUTES
July 7 - 8, 2010

The Tennessee Real Estate Commission convened on July 7, 2010 at 9:04 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present Chairman Grover Collins, Vice-Chairman Isaac Northern, Commissioner Allen Woods, Commissioner William "Bear" Stephenson, Commissioner Carol Tate, Commissioner Valerie Joh, Commissioner Wendell Alexander and newly appointed Commissioner Michelle Haynes. Commissioner David Flitcroft was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.**

Chairman Collins recognized the Commission's newest member Michelle Haynes. Each Commissioner made introductions to Commissioner Haynes, congratulated and welcomed her to the Commission.

The first order of business was the election of Chairman and Vice-Chairman for the 2010-2011 year. Ms. Maxwell asked for nominations for Chairman. Commissioner Woods nominated Commissioner Isaac Northern for Chairman. **Commissioner Stephenson made a motion that the Commission cease nominations and elect Commissioner Northern Chairman of the Tennessee Real Estate Commission for July 2010 through June 2011; seconded by Commissioner Joh; unanimous vote; motion carried.** Isaac Northern was elected Chairman of the Tennessee Real Estate Commission. Ms. Maxwell asked for nominations for **Vice-Chairman. Commissioner Joh nominated Commissioner Woods for Vice-Chairman. Commissioner Carol Tate moved that nominations be closed and the Commissioner elect Commissioner Woods Vice-Chairman of the Tennessee Real Estate Commission for July 2010 through June 2011; seconded by Commissioner Stephenson; unanimous roll call vote; motion carried.** Commissioner Allen Woods was elected Vice-Chairman of the Tennessee Real Estate Commission.

Commissioner Northern began acting as Chairman of the Tennessee Real Estate Commission and addressed the next order of business which was the adoption of the agenda (**Exhibit 1**) for the July 2010 Commission meeting. **Commissioner Stephenson made a motion to adopt the agenda for the July 2010 meeting; seconded by Vice-Chairman Woods; unanimous votes; motion carried.**

The next order of business was the approval of the minutes from the June 2010 meeting (**Exhibit 2**). **Vice-Chairman Woods made a motion to approve the June 2010 meeting minutes; seconded by Commissioner Collins; 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)** – Ms. Maxwell presented licensing statistics to the Commission. As of June 30, 2010, TREC had a total of 413 open complaints. Of those 413 open complaints, 348 were Errors & Omissions insurance complaints. There were 32 new complaints in June 2010. There are 407 complaints in the legal department and 6 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2009-2010 is 455. Total Civil Penalties paid in June 2010 were \$11,990.00 and civil penalties collected for the entire fiscal year 2009-2010 are \$301,024.00.
- **Licensing Statistics (Exhibit 4)** – Ms. Maxwell presented licensing statistics for the month of June 2010. As of June 30, 2010, there were 27,040 active licensees, 1,461 inactive licensees and 10,629 retired licensees. There were 4,419 active firms and 370 retired firms. There were 228 new applications approved in June 2010. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in 2005, 2006, 2007, 2008, 2009 and 2010. She also presented the number of licenses approved in 2006, 2007, 2008, 2009 and 2010 and the average number of licensees (individuals) issued per month for each year from 2000 - 2010. She reported on the E&O penalty monies collected. The total penalties collected from January 1, 2009 - June 30, 2010 is \$199,150.00. Mr. McDonald, Education Director, presented bar graphs reflecting trends in test taking. The graphs comprised of test taking statistics for June 2007, 2008, 2009 and 2010 and the year to date testing totals.
- **ARELLO Annual Conference** – Ms. Maxwell asked if any of the Commissioners would like Staff to submit a request for them to attend the ARELLO Annual Conference. Chairman Northern and Commissioner Haynes expressed interest in attending the conference. Ms. Maxwell, Mr. McDonald and Ms. Ryan are also interested in attending. Ms. Maxwell advised that the request will be made and she will report back with the outcome of the request.

Ms. Maxwell presented the Commissioners with a copy of the new TREC rules that became effective June 14, 2010 and asked if the Commissioners had any questions. Commissioner Alexander made reference to the amendment made to Rule 1260-02-.09 [Advertising] that allows an "owner agent" to sell their own piece of property without disclosing they are a licensee until a contract is written; thereby making it unnecessary to have the "owner/agent" sign when advertising.

Ms. Maxwell discussed changes made to Rule 1260-02-.02 [Termination of Affiliation] and feedback received from licensees by TREC staff regarding the rule change. She explained that prior to the rule change to 1260-02-.02 (2) that added the language "The licensee shall not engage in any activities defined in §62-13-102 until a change of affiliation is received and processed by the

Commission", the licensee only had to wait until the TREC 1 form was received not processed to begin work at the new firm. She further explained that a licensee who wishes to transfer and has by contract with their old firm the right to take their listings with them to the new firm are the most concerned by the rule change. Under the old rule, the licensee could continue to work without interruption as they were allowed to begin work for the new firm when the TREC 1 form was received by TREC. She advised that those licensees are concerned by the lag time it will take for TREC to process the TREC 1 form for transfer. After discussion, it was the consensus of the Commission that the rule as newly written stands and that information will be sent to all Principal Brokers regarding the new rule and information placed in the TREC News Journal.

Ms. Maxwell addressed the rule change made to two sections of Rule 1260-02-.12 [Advertising]. She explained that there have been concerns from licensees regarding Rule 1260-02-.12(2)(d) which states "no licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced in a statement on the listing agreement or any other written statement signed by the owner". She further advised there are concerns regarding Rule 1260-02-.12(4) [Internet Advertising] which states in part that; a) the listing firm name and telephone number must conspicuously appear on each page of the website; b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited". Ms. Maxwell stated that as the MLS system and IDEX currently operate, it would be difficult for licensees to adhere to this rule because the information is out on the internet and can simply be picked up by other websites. Vice-Chairman Woods stated that licensees should have the seller sign a general release for advertising in the listing agreement if they so wish, so that all advertising scenarios or 3rd party listings are covered. Commissioner Alexander explained that the problem was there was a possibility of a 3rd firm picking up another listing agent's property advertisement and the original listing agent being left out of the equation. It was discussed that if a licensee adheres to Rule 1260-02-.12(4) and provides the information on 3rd party sites as required by the new rule, then the original listing agent would remain connected to their listing directly regardless of on what site the consumer may find it. This concluded the discussion regarding the new rules.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of July 2010. **Commissioner Collins made a motion to approve all Courses for Commission Evaluation; seconded by Commissioner Tate; opened to discussion; unanimous vote; motion carried.**

Mr. Steve McDonald, Education Director, presented the following instructor reviews to the Commission.

- Regina Harvey with Council of Residential Specialists (CRS) requested that Mr. Robert Morris, Jr. be approved as a CRS instructor for their Tennessee approved courses.
- Lori W. Jaynes with SunTrust Mortgage, Inc in Knoxville requested that Mr. Tim Bates, Mr. Mike Rhea, and Mr. John Rhea be approved to teach the Back to Basics of Real Estate Finance course.
- Sally Cummings with TAR requested that Mr. Joe Ward and Mr. Brent Ward be approved to teach the 2009/2010 TREC CORE Course.
- Judy Ransom with GNAR requested that Ms. Tina Daniel be approved to teach the ABR (2723) and REBAC Short Sales and Foreclosures for Buyer Clients (5344).

Commissioner Tate made a motion to approve the above requests for instructor approval; seconded by Commissioner Stephenson; unanimous vote; motion carried.

APPLICANT CONFERENCE

Principal Broker, Troy Elmore of Coldwell Banker On Site Realty & Auction in Athens, Alabama requested a waiver of the 50 mile rule so Steve Sandlin, licensee, 301672, may affiliate with his firm. **Commissioner Collins made a motion to approve Mr. Elmore's request; seconded by Commissioner Joh; unanimous vote; motion carried.**

Chairman Northrn recessed the meeting for lunch at 11:05 a.m. and reconvened at 1:04 p.m.

PRINCIPAL BROKER INFORMAL CONFERENCE

Adam Alexander Green, applicant, appeared to request that he be allowed to apply for a Broker license, upgrade to Principal Broker and open his own firm in Tennessee. Mr. Smith disclosed to the Commission a conviction of Grand Theft in 1989 but adjudication was withheld upon the final payment of restitution. Mr. Green also disclosed a complaint with the Florida Real Estate Commission that stemmed from said conviction. After discussion, **Vice-Chairman Woods made a motion to approve Mr. Green's request to apply for a Broker license, upgrade to Principal Broker and open his own firm in Tennessee; seconded by Commissioner Collins; unanimous vote; motion carried.**

AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE

Carolyn Smith, applicant, 321720, appeared with her potential Principal Broker W. Craig Johnson to request she be approved for an Affiliate Broker license. Ms. Smith disclosed to the Commission a conviction of Possession of a Controlled Substance with Intent to Sell or Deliver in 1980. **Commissioner Stephenson made a motion to approve Ms. Smith's request to be approved for an affiliate broker license; seconded by Commissioner Collins; unanimous vote; motion carried.**

FORMER LICENSEE INFORMAL CONFERENCE

Douglass Smith, revoked licensee, #220100, appeared before the Commission with his potential principal broker Johnny "John" L. Payne to request that he be allowed

to retest and reapply for a Broker license. Mr. Smith was convicted of Filing Fraudulent Claims with a Government Agency and Aiding and Abetting in 1999. He failed to report the conviction to TREC and his license was revoked in 2001. It has been over two years since the expiration of his probation. He wishes to retest and reapply for a Broker license. **Commissioner Collins made a motion that Mr. Smith may reappear before the Commission to be reconsidered for a license when complete restitution is made by Mr. Smith and proof can be obtained from the IRS to that effect; seconded by Commissioner Alexander; opened to discussion; vote: 6 yes, 0 no, Commissioner Tate dissented; motion carried.**

PRINCIPAL BROKER INFORMAL CONFERENCE

Amy E. Frawley, applicant, 321307, appeared to request that she be allowed to apply for a Broker license, upgrade to Principal Broker and open her own firm in Tennessee. Ms. Frawley disclosed to the Commission a conviction for Scheme to Defraud in the First Degree (a Class E Felony) in 1994. The conviction was related to writing bad checks. **Vice-Chairman Woods made a motion to approve Ms. Frawley's request to be approved as a Broker and upgrade to Principal Broker and open her own firm in Tennessee; seconded by Commissioner Joh; vote: 6 yes, 0 no, Commissioner Alexander abstained; motion carried.**

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL

- 1) **2010008051 – Commissioner Collins made a motion to take legal counsel's recommendation to close and flag the complaint pending the outcome of the litigation; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 2) **2008011221 &**
- 3) **2008011222 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 4) **2008004031 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 5) **2009007101 – Commissioner Collins made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for failing to respond; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 6) **2009020031 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 7) **2009006941 &**
- 8) **2009006942 – Vice-Chairman Woods made a motion to accept legal counsel's recommendation to send a Letter of Warning regarding T.C.A. § 62-13-312(8) [concerning copies of contracts] and additionally require both Respondents to attend a two day Commission meeting within six months; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 9) **2009018971 – Commissioner Tate made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

- 10) 2010005001 &
- 11) 2010005002 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 12) 2010011471 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 13) 2010002831 – Commissioner Collins made a motion to dismiss; seconded by Vice-Chairman Woods; unanimous vote; motion carried.
- 14) 2010002801 – Vice-Chairman Woods made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$500.00 for violating T.C.A. § 62-13-312(20) [dishonest dealing]; seconded by Commissioner Collins; Commissioner Alexander offered a friendly amendment to require the Respondent to complete four (4) hours of continuing education within six months; Vice-Chairman Woods accepted the friendly amendment; unanimous vote; motion carried.
- 15) 2010003291 – Commissioner Collins made a motion to dismiss; seconded by Vice-Chairman Woods; unanimous vote; motion carried.
- 16) 2010002471 &
- 17) 2010002472 &
- 18) 2010002473 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss as to all Respondents; seconded by Commissioner Tate; unanimous vote; motion carried.
- 19) 2010003271 – Commissioner Joh made a motion to dismiss; seconded by Vice-Chairman Woods; unanimous vote; motion carried.
- 20) 2010010141 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.
- 21) 2010008341 &
- 22) 2010008342 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss as to Respondent 2 and review the complaint in September 2010 against Respondent 1 concerning the status of the criminal matter; seconded by Vice-Chairman Woods; unanimous vote; motion carried.
- 23) 2010002951 – Commissioner Joh made a motion to accept legal counsel’s recommendation to send a Letter of Instruction regarding T.C.A. § 62-13-312 [making any substantial or willful misrepresentation]; seconded by Commissioner Tate; unanimous vote; motion carried.
- 24) 2010017681 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Woods; unanimous vote; motion carried.
- 25) 2010003111 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000 for violating T.C.A. § 62-13-312(14) [violating any provision of this chapter or rule regarding signs, Rule 1260-2-.03], a \$1,000 civil penalty for violating T.C.A. § 62-13-309(3) [failing to notify of change of address] and a \$1,000 civil penalty for violating

T.C.A. § 62-13-313(2) [failing to respond within ten days to a complaint]; seconded by Vice-Chairman Woods; unanimous vote; motion carried.

- 26) 2010006251 – Commissioner Tate made a motion accept legal counsel’s recommendation to audit the transactions that occurred during the time period in question; seconded by Vice-Chairman Woods; unanimous vote; motion carried.**

There was a brief discussion regarding the upcoming formal hearings for failure to purchase Errors & Omissions insurance in a timely manner. She advised that the hearings will be held August 23, 24 & 25, 2010. Ms. Ryan explained that the Respondent will be assessed the original penalty owed for failure to purchase Errors & Omissions insurance in a timely manner, court costs of a minimum of \$200.00, and a portion of the cost for the Administrative Law Judge and the Court Reporter. She asked if the Commission wished to impose any additional penalties. **Commissioner Tate made a motion that the current assessment of penalties as explained by Ms. Ryan is satisfactory; no second; motion failed for lack of a second.** After discussion, Commissioner Alexander suggested the Respondent be required to attend a two day TREC meeting. **Vice-Chairman Woods made a motion that in addition to assessing the original penalty for failing to purchase Errors & Omissions insurance in a timely manner, the Respondent will be assessed the cost of the hearing, a portion of the costs for the Administrative Law Judge and the Court Reporter and they will be required to attend a two day TREC meeting within six (6) months; seconded by Commissioner Joh; unanimous vote; motion carried.** Ms. Ryan asked if a Respondent agrees to sign an Agreed Order in lieu of a formal hearing, if the Commission wants them to pay the \$200.00 court costs. The Commission agreed that the person would pay the court costs of \$200.00 for opening the docket number. She advised that while some licensees are signing Agreed Orders, there are some licensees that cannot be served or wish to hold the formal hearing. Those formal hearings will be held over the course of the three days and heard by an Administrative Law Judge.

Chairman Northern recessed the meeting Wednesday, July 7, 2010 at 3:28 p.m.

TENNESSEE REAL ESTATE COMMISSION July 7 - 8, 2010

The Tennessee Real Estate Commission convened on July 8, 2010, at 9:08 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present Chairman Isaac Northern, Jr., Vice-Chairman Allen Woods, Commissioner Grover Collins, Commissioner William “Bear” Stephenson, Commissioner Carol Tate, Commissioner Valerie Joh, Commissioner Wendell Alexander and Commissioner Michelle Haynes. Commissioner David Flitcroft was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education**

Director, Robyn Ryan, Assistant General Counsel, Mandy Spencer, Paralegal and Kelly McDermott, Administrative Secretary.

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

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

Ms. Ryan discussed with the Commission proposed rule matters. She advised that the Commission needs to repeal Rule 1260-5-.04 because it is now codified as T.C.A. §62-13-324 and also repeal Rule 1260-5-.11 because it has been codified as T.C.A. §62-13-325. She also addressed Rule 1260-2-.32 [Civil Penalties]. She explained changes that need to be made to the numbering of the language of the rule. The Commission discussed T.C.A. §62-13-314(2) [non-resident firm]. Commissioner Alexander asked Ms. Maxwell to clarify the issue of residency and licensing. Ms. Ryan identified some sections of the Vacation Lodging Service rules that could be discussed for future rulemaking. These areas included: 1) penalties for violations of T.C.A. §62-13-104(b); 2) Qualifications for Lodging Services instructors; 3) Designated agent duties; 4) Fees for applications and licenses; 5) Contribution to the education fund; 6) Introductory course for designated agents; 7) Pro rata license matters and 8) Advertising. It was the consensus of the full Commission that a subcommittee comprised of three Commissioners be formed to discuss these possible Vacation Lodging Service rule changes prior to the next meeting. The subcommittee and Staff will report back to the full Commission at the August 2010 meeting.

COMMISSIONER REPORTS

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

Commissioner Joh made a motion to adjourn the meeting; seconded by Vice-Chairman Woods; unanimous vote; motion carried.

Chairman Northern adjourned the meeting Thursday, July 8, 2010 at 10:28 a.m.