

TENNESSEE REAL ESTATE COMMISSION MINUTES
August 10 -11, 2011

The Tennessee Real Estate Commission convened on August 10, 2011 at 9:10 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, Vice-Chairman Bear Stephenson, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Michelle Haynes, Commissioner Austin McMullen, Commissioner Janet DiChiara and Commissioner David Flitcroft. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary, Judge Lynn England and the court reporter.

The formal hearing scheduled at 9:00 a.m. for Billy Don Featherstone, Jr. was temporarily postponed because the Respondent is traveling from Memphis and there was a bad traffic tie up on the interstate. The Chairman called to order the regular business of the meeting.

The Commission voted on adopting the agenda **(Exhibit 1)** for the August 2011 meeting. **Commissioner Alexander made a motion to adopt the agenda as presented for the August 2011 meeting; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

The Commission voted on the approval of the minutes from the July 2011 meeting **(Exhibit 2)**. **Commissioner Stephenson made a motion to approve the July 2011 meeting minutes; seconded by Commissioner Alexander; 5 yes, 0 no, 2 abstained (Commissioners DiChiara and McMullen as they were not present at the July meeting); motion carried.**

The Chairman welcomed newly appointed Commissioners Austin McMullen of Nashville and Janet DiChiara of Jackson. Commissioner McMullen and Commissioner DiChiara introduced themselves and told the other members and staff about their life and their background.

Robyn Ryan, Assistant General Counsel and the TREC litigation attorney, addressed the Commission regarding the portions of the Administrative Procedures Act that apply to options available to a Respondent after a formal hearing. She explained that after a hearing the Respondent has a right to an appeal but that appeal must be filed within six days of the date of the final order and that the appeal then goes to Chancery Court in Davidson County. She advised that the judge then will review the case and make a determination as to whether the Commission had the power to make the decision they made in the final order. She explained that if the Respondent or the Commission is unhappy with the judge's decision, then they may appeal to the Tennessee Court of Appeals and that the appeal must be made within 60 days of the final order.

She advised that prior to any of the above a person may ask for a Stay which is a request that the Commission will not enforce their decision pending a decision on an appeal of the final order. She stated that the Respondent can also file a Motion for Reconsideration, meaning the Respondent would like for the Commission to look at the case again and that that Motion for Reconsideration must be filed within 15 days of the final order. She advised that the Respondent must state the specific grounds they want reviewed and if there will be any new evidence or testimony presented. Ms. Ryan explained that the Commission has three options when presented with a Motion for Reconsideration: 1) take no action and after 20 days then it is considered a denial; 2) deny; or 3) give the Respondent the opportunity for the case to be reheard and if nothing is done within 60 days of the final order, then the ruling stands. Ms. Ryan advised that currently two final orders are being appealed in Chancery Court.

Chairman Northern advised the Commission that when he contacted directly by a Respondent following a formal hearing, he contacts Ms. Maxwell and the legal division so they may address the appeal process with the Respondent. Administrative Law Judge Lynn England, who was present for the hearings, advised the Commission that they are obligated to notify the Staff if they are contacted by a Respondent and that if the Commissioner has any doubt about their ability to be objective they may recuse themselves from the case. She explained that the Commissioners decide for themselves whether they can hear the case or if the process would be tainted and recuse themselves.

Chairman Northern noted that the Respondent for the formal hearing was still not present and stated that the regular business of the meeting continue to be heard. It was determined that Mr. McDonald, Education Director, would give his report to the Commission.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Discussion for the month of August 2011. After discussion, **Commissioner Flitcroft made a motion to approve all of the courses (A1-A39) as presented and approve Ben Brychta as the instructor of the course "Vacation Lodging Pre-license" (A39); seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Request for Instructor Approval

- Lorie Jaynes of SunTrust Mortgage (#1500), requested the approval of Pamela Jani Perkins to teach the Back to Basics Real Estate Finance course (#6206).
- Faye Ellis of Middle Tennessee Chapter of CCIM (#1298) requested approval of the following instructors for their course, Economic Outlook (#6502): Frank Simpson, David Penn, Ph.D., John Silvia and Janet Miller.
- Karen Lowe of Eastern Middle Tennessee Association of REALTORS (#1144) requested approval of Michael Leach to teach the Ethics and Fair Housing Course (#5882).

Commissioner DiChiara made a motion to approve the instructor requests; seconded by Commissioner Collins; unanimous vote; motion carried.

Mr. McDonald directed the Commission to a report in their meeting books listing all of the available courses broken down by content and credit hours. He further addressed the Commission's request at the previous month's meeting to have he and Mr. Green to work together to recommend courses for penalty education. Mr. McDonald stated that he and Mr. Green will work together to find the course that specifically meets what licensees need for a certain number of hours for penalty education. Ms. Maxwell advised the Commission that it would, however, not be the practice of TREC staff to recommend one specific course or provider over another. The Commissioners asked for Staff to explain the process for following up to ensure that the licensee/Respondent has completed the required education. Ms. Maxwell assured the Commission that the TREC office staff does follow up on the completion of penalty education as part of the follow up of the monthly legal report. Ms. Maxwell explained that if a Respondent does not comply then the complaint would be sent to litigation attorney Robyn Ryan.

Commissioner Alexander made a motion that whenever disciplinary action is levied by the Commission and it includes both a fine and/or education that it be tracked and followed and that particular file will not be completely closed until all aspects of the penalty have been met and the course assignment suggested to the Respondent is approved by the Commission. He also moved that the legal department be responsible for tracking the information; seconded by Commission Flitcroft; unanimous vote; motion carried.

Commissioner Stephenson made a motion that any CE hours imposed as a penalty is in addition to those required to maintain a license; seconded by Commissioner Alexander; unanimous vote; motion carried. After discussion it was determined that a Respondent would be offered a list of courses from which they may choose that fall within the content field ordered by the Commission. It was reiterated that it is the legal division's responsibility to ensure Respondents send certificates of course completion and that the disposition of the Commission is fulfilled by the Respondent. Chairman Northern asked Ms. Maxwell to prepare a flow chart of the process outlining who is responsible for what action when it comes to tracking.

The Formal Hearing TREC v. Billy Don Featherstone, Jr., licensee #258552, Docket #12.18-112839A convened at 10:36 a.m. The Respondent, nor counsel for the Respondent was present.

It was ordered that the license of Billy Don Featherstone, Jr., license #258552 is revoked and Respondent shall pay all court costs in the matter including all costs of the Administrative Law Judge, three hundred twenty dollars (\$320.00), and court reporter fees of three hundred and fifty two dollars and fifty cents (\$352.50) for a total of six hundred seventy two dollars and fifty cents (\$672.50) within thirty (30) days of the date of the final order.

The formal hearing adjourned at 11:50 a.m.

Chairman Northern recessed the meeting for lunch at 11:53 a.m. and reconvened at 1:13 p.m.

The Formal Hearing for Billy Don Featherstone, Sr., licensee #24313, Docket #12.18-112840A convened at 1:14 p.m.

It was ordered that the license of Billy Don Featherstone, Sr., license #24313 is revoked and Respondent shall pay all court costs in the matter including all costs of the Administrative Law Judge, three hundred twenty dollars (\$320.00), and court reporter fees of three hundred and fifty two dollars and fifty cents (\$352.50) for a total of six hundred seventy two dollars and fifty cents (\$672.50) within thirty (30) days of the date of the final order.

The formal hearing adjourned at 2:03 p.m. and the regular meeting reconvened at 2:20 p.m.

The Commission discussed the 40 year longevity breakfast to be held in Middle Tennessee in November 2011. Commissioner Haynes and Commissioner Collins and Ms. Maxwell updated the entire Commission on the progress made regarding the breakfast. Commissioner Haynes advised that Commissioner Collins had secured a sponsor, Realtracs and that they were currently seeking an organization to create and send the invitations. Ms. Maxwell reviewed, for the benefit of the newly appointed members and the attendees, the details of the longevity breakfast as discussed at the previous meetings. She explained that those licensees who achieved 40 years of service in the last three years (since the 2008 breakfast) would be invited and that also the former honorees would be invited. She went on to say that if the former honorees were unable to attend or were not honored at the 2008 breakfast then they would be honored at the 2011 breakfast. It was determined that the invitation should be sent out six weeks before the event and the R.S.V.P. date be at least two week prior to the date of the breakfast. Commissioner Haynes stated that, if needed, phone calls would be made to the new honorees. Commissioner Collins stated that TREC should impress upon every local association how important their support is in honoring these long serving licensees. Commissioner Alexander encouraged that the spouses of the honorees be invited to breakfast as well free of charge for their meal. Commissioner Haynes stated that, if possible, the team organizing the effort will have a sponsor to prepare the invites and know how many attendees are being invited and the cost of the breakfast by the next meeting in September.

Mr. McDermott reviewed with the Commission and Staff the arrangements for the September 8-9, 2011 meeting in Chattanooga and the October 13-14, 2011 meeting in Kingsport.

Chairman Northern recessed the meeting on Wednesday, August 10, 2011 at 2:45 p.m. and the Errors & Omissions subcommittee meeting convened at 2:46 p.m. and adjourned at 3:55 p.m.

**TENNESSEE REAL ESTATE COMMISSION MINUTES
August 11, 2011**

The Tennessee Real Estate Commission reconvened on August 11, 2011 at 9:16 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, Vice-Chairman Bear Stephenson, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Austin McMullen, Commissioner Janet DiChiara and Commissioner David Flitcroft. Commissioner Valerie Joh and Commissioner Michelle Haynes were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

Cindy Rice Grissom, CEO of Rice Insurance Company (RISC), addressed the Commission regarding Errors and Omissions insurance. She gave the Commission an overview of the company and discussed with them issues with the downloading of information to TREC's information system and the efforts being made between the staff of RISC and TREC to remedy those issues. She also reviewed a claims analysis and discussed the logistics of staggering the E&O renewals so they would expire with the TREC license. She stated that she did not know if this option was possible but it could possibly be explored if needed. There was a discussion regarding the TAR contract and TAR members. Ms. Rice Grissom assured the Commission that one contract is not recommended over another by RISC and that the licensee is encouraged to use the most up to date contract available to them at their firm.

Informal Applicant Appearance

Zach McKinney, applicant, appeared with his potential Principal Broker Harold "Lucky" Luecke to be approved for an Affiliate Broker license. Mr. McKinney disclosed to the Commission a conviction of Theft of Property - \$500.00 or less in 2006. **Commissioner Collins made a motion to approve Mr. McKinney to take the Affiliate Broker examination and if he passes and meets all other requirements to be licensed, he be approved for an Affiliate Broker license; seconded by Commissioner 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** – Ms. Maxwell presented licensing statistics to the Commission. As of July 31, 2011, TREC had a total of 333 open complaints. Of those 333 open complaints, 247 were Errors & Omissions insurance complaints and four were Agreed Citations. There were 28 new complaints in July 2011. There were 320 complaints in the legal department and 13 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2011-2012 is 14. Total Civil Penalties paid in July 2011 were \$18,840.00.
- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of July 2011. As of July 31, 2011, there were 24,670 active licensees, 2,194 inactive licensees and 10,156 retired licensees. There were 4,161 active firms and 331 retired firms. There were 179 new applications

approved in July 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in June of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the number of licenses approved in 2009, 2010 and 2011, individual licensees lost and gained from 2000 – 2011 and the average number of licensees (individuals) issued per month for each year from 2000 - 2011.

There was a discussion regarding whether the Vacation Lodging Services (VLS) industry have complied with the new statutes affecting their industry. Ms. Maxwell explained that while a few have complied that by and all most had not complied. Commissioner Collins suggested that names of the firms in non-compliance be placed on the website therefore encouraging them to comply. **Commissioner Collins made a motion to place the names of the VLS firms who have not complied on the TREC website and also send a letter to each firm requesting compliance and informing the industry that if they do not comply then future disciplinary action may be taken by the Commission; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Ms. Maxwell reported to the Commission on the efforts that are being continually made to address the issue of E&O non-compliance. She also presented them with the following statistics regarding outstanding Consent Orders. Of 325 Consent Orders sent to licensees (active uninsured affiliates and principal brokers), 58 were returned by the USPS, 141 have been Closed/Satisfied, 8 have signed the Consent Order and are on a payment plan, 83 have not responded at all, 29 have a license that is set to expire prior to the end of September 2011 and 25 have contacted Legal. She went on to state that there are approximately 400 licensees in Broker Release status that are uninsured but that the initial attempts of the Legal Division have been directed toward those licensees who are active and uninsured and working in the industry. Ms. Ryan advised that because that is legal division's priority the Consent Orders have not yet been sent to any principal broker for their failure to supervise.

Ms. Maxwell discussed the Request for Proposal (RFP) for the E&O contract with the Commission. This issue was directly addressed by the Chair of the E&O subcommittee meeting Commissioner Flitcroft. He recapped some of the matters discussed in the meeting. He stated that staggering the E&O renewal dates to coincide with the license expiration date had been discussed but prior to Ms. Rice Grissom's presentation that morning stating she was unsure of the capability to stagger the E&O expiration. Commissioner Flitcroft explained that he had spoken with General Counsel Wayne Pugh about the matter and advised that these ideas would be tweaked and a discussion would be held between Mr. Pugh and the Commission. Commissioner Flitcroft also touched on possible proposed rulemaking that would require that anytime a licensee signs a buyer's or seller's agreement with a party they be required to include in that contract their license number, their principal broker's license number and the firm license number. He stated this would possibly help with the issue of unlicensed activity. He further advised that a statutory change was discussed that would allow suspension of a license for being uninsured. Ms. Maxwell, upon request of Commissioner Alexander, reviewed the possibility of proposed legislation. She stated that the Commission discussed the possibility of introducing legislation that would allow for an automatic

suspension of a license if an individual did not have E&O insurance and also if their principal broker does not have E&O insurance then some action may be taken to address the affiliates of that firm and their license standing. It was expressed that the Commission hopes that TAR would support them in proposing this legislation to suspend licenses until E&O insurance is secured by a licensee. Ms. Maxwell stated that as a staff member of TREC, she cannot propose legislation but that she can prepare the information the Commission needs to do so themselves. Chris Sexton, Director of Governmental Affairs for TAR, who was present at the meeting, agreed that TAR is always willing to work with the TREC and that it is apparent that E&O compliance is a major issue. Commissioner Northern asked Mr. Maxwell to keep Commissioner Flitcroft informed about any discussions held with General Counsel Wayne Pugh.

Staff and the Commission reviewed the proposed 2012 TREC meeting schedule. Commissioner DiChiara stated that she would like very much to have the Commission return for a meeting in Jackson because it is good for the membership of the local association and the licensees of the region to witness what occurs at a TREC meeting. **Commissioner Alexander made a motion to hold the September 2012 meeting in Jackson on Thursday, September 13 and Friday, September 14, 2011; seconded by Commissioner Collins; unanimous vote; motion carried.**

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) **2010036741 &**
- 2) **2011001101** – Mr. Green advised the Commission that he has made multiple attempts to reach the Respondent, including unreturned certified mail, to arrange an informal conference. He stated that he will attempt to reach the Respondent again to hold a conference in September in Chattanooga but that if he does not appear, he is going to ask the Commission to authorize a Consent Order for the Respondent to voluntarily surrender his license or appear for a formal hearing.
- 3) **2010036081 &**
- 4) **2010036082** – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 5)
 - a. **2010029501** - Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
 - b. **2011010811** – No action pending Attorney General's opinion
- 6) **2011006651** - No action pending Attorney General's opinion
- 7) **2011001271** – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; vote; 5 yes, 1 no (Commissioner Alexander voted no); motion carried.
- 8) **2011037051** - Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Stephenson; vote; 5 yes, 1 no (Commissioner Alexander voted no); motion carried.
- 9) **2011010013 &**

- 10) 20110010012 &
- 11) 20110100111 – Commissioner Collins made a motion to dismiss; no second; motion fails for lack of a second. Commissioner Flitcroft made a motion to refer the complaint to Consumer Affairs because it does not fall under TREC’s jurisdiction; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 12) 2011004961 – Commissioner Stephenson made a motion to take no action pending the Attorney General’s opinion; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 13) 2011002381 – 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 violation of T.C.A. §62-13-312(5) and (20) [failure to account for money belonging to another] and \$500.00 for violation of T.C.A. §62-13-309(a)(3) [failure to notify the Commission of a change of address] and to further require Respondent to take four hours of continuing education in Ethics and the 30 hour Office Broker Management course; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 14) 2011010881 &
- 15) 2011010882 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to send a Letter of Warning to Respondent 2011010881 and as to Respondent 2011010882 issue a Consent Order with a civil penalty of \$1,000.00 for violation of T.C.A. §62-13-312(5) and (20) [failure to account for money belonging to another], \$500.00 for violation of T.C.A. §62-13-309(a)(3) [failure to notify the Commission of a change of address] and \$1,000.00 for violation of T.C.A. §62-13-312(2)[failing to answer a complaint within 10 days] plus require Respondent 2011010882 to attend a two day TREC meeting within six months; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 16) 2011010911 – 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 violation of T.C.A. §62-13-312(5) and (20) [failure to account for money belonging to another] and require Respondent to attend a two day TREC meeting within six months; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 17) 20110175011 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 18) 20110108611 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty for violation of T.C.A. §62-13-312(5) and (20) [failure to account for money belonging to another], \$1,000.00 for violation of T.C.A. §69-32-122(a) [failing to register a time share program with the Commission], \$1,000.00 violating T.C.A. §66-32-137(2) [accepting money in a re-sale of a time share prior to closing, \$1,000.00 for violation of T.C.A. §62-13-312(2)[failure to file an answer to a complaint within 10 days] and in addition refer the complaint to the

- District Attorney's office within the jurisdiction where the Respondent is located. Commissioner Collins also moved that the Respondent attend a two day TREC meeting within six months; all seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 19) 2011010361 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 20) 2011010891 &**
- 21) 2011010892 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Mr. Green reviewed the Consent Order Log with the Commission.

Commissioner Collins made a motion to adjourn; seconded by Commissioner Alexander; unanimous vote; motion carried.

Chairman Northern adjourned the meeting on Thursday, August 11, 2011 at 12:40 p.m.