

TENNESSEE REAL ESTATE COMMISSION MINUTES
March 21 - 22, 2011

The Tennessee Real Estate Commission convened on March 21, 2011 at 9:09 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 Allen Woods, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner David Flitcroft, Commissioner Michelle Haynes and Commissioner Carol Tate. Commissioner Wendell Alexander was absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the March 2011 Commission meeting. **Commissioner Stephenson made a motion to adopt the agenda for the March 2011 meeting; seconded by Commissioner Joh; unanimous votes; motion carried.**

The next order of business was the approval of the minutes from the February 2011 meeting (**Exhibit 2**). **Commissioner Joh made a motion to approve the February 2011 meeting minutes; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Due to a miscommunication regarding the court reporter, the Rulemaking Hearing was postponed until the court reporter arrived.

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 February 28, 2011, TREC had a total of 57 open complaints. Of those 57 open complaints, none were Errors & Omissions insurance complaints. There were 22 new complaints in February 2011. There were 46 complaints in the legal department and 11 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 92. Total Civil Penalties paid in February 2011 were \$19,110.
- Licensing Statistics (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of February 2011. As of February 28, 2011, there were 24,729 active licensees, 2,609 inactive licensees and 10,497 retired licensees. There were 4,238 active firms and 347 retired firms. There were 191 new applications approved in February 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in both December and January of 2005, 2006, 2007, 2008, 2009 and 2010. She also presented license renewal percentages and the number of licenses approved in 2009 and 2010, individual licensees lost and gained from 2000 – 2011 and the average number of licensees (individuals) issued per

month for each year from 2000 -2011. Mr. McDonald, Education Director, presented bar graphs reflecting trends in test taking. The graphs were comprised of test taking statistics for 2007, 2008, 2009, 2010, and 2011 and the year to date testing totals and trends for Affiliate Brokers, Brokers, Timeshare Salesperson and Acquisition Agents.

Ms. Maxwell discussed with the Commission the process for contacting a licensee when they have been broker released and the licensee's responsibility once broker released. She also explained TREC Staff's standard operating procedure for the handling of returned mail. She advised the Commission that when a licensee is broker released the firm affiliation is removed from their file and the licensee is sent a letter advising them they have been broker released. She explained that the letter advises the licensee that they must take action within 10 days (such as retirement, transfer or voluntarily terminate) regarding their broker released license and a TREC 1 form is enclosed with the letter. If someone tries to renew and they have not taken action, they will not be able to renew. She also explained that if a licensee is in broker release and they attempt to transfer or make another status change and they have been in a broker release status for a long period of time, the licensing department gives the licensee's information to the responsible staff member and a penalty of \$250.00 is assessed for failure to follow administrative measures.

Commissioner Joh made a motion that if a licensee is in a broker release status and want to take action on their license and they do not have E&O insurance, the licensee, in addition to the \$250 fine for failure to follow administrative measures, will also be responsible for any applicable Errors & Omissions penalties; seconded by Commissioner Tate; unanimous vote; motion carried.

Ms. Maxwell discussed the statistics regarding Errors & Omissions delinquency. She presented the Commission with a comparison of the number of uninsured licensees in 2009 and in the new 2011 renewal cycle. She noted that there has been a large improvement in the number of licensees in compliance as compared to 2009.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of March 2011. **Commissioner Joh made a motion to approve the Courses for Commission Evaluation as presented; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Chairman Northern discussed with the Commission that he had been contacted by licensees regarding commercial real estate courses. He explained that Brokers who are completing their 120 hours of continuing education have expressed an interest in the creation of more commercial real estate courses. Mr. McDonald stated that he would make contact with the providers via the Share Line in an effort to encourage schools to offer more commercial real estate courses.

Requests for Instructor Approval

Sally Cummings of TAR (1110) requested the following instructors be approved to teach the specified course(s).

- Brent Maybank be approved to teach Transaction Desk Basic (Course 5747), Transaction Desk Advanced (Course #5748), and Agency in Tennessee (Course 6257).
- Nathaniel Brown and Betty Weaver be approved to teach the 2011-2012 TREC Core Course.

Commissioner Collins made a motion to approve; seconded by Commissioner Woods; unanimous vote; motion carried.

Candy Roberts Joyce of MTAR (1141) requested the following instructors be approved to teach the specified course.

- Chris Garrett and Kay Petty be approved to instruct Fair Housing for Today's Real Estate Professional (Course 3415).

Commissioner Collins made a motion to approve; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Shell Brodnax, President/CEO of Real Estate Staging Assn (1510) requested the following instructor be approved to teach the specified course.

- Carol Bass be approved to instruct Real Estate Staging 101- The Consumer's Guide to Real Estate Staging (6437).

Commissioner Joh made a motion to approve; seconded by Commissioner Woods; vote: 7 yes, 1 no; motion carried.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

1. **2010031531 &**
2. **2010031532 – Commissioner Flitcroft made a motion to defer the complaint so Commissioner Tate may review it and report back to the Commission at a future meeting; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
3. **2010028871 &**
4. **2010028872 &**
5. **2010028873 &**
6. **2010028874 – Commissioner Collins made a motion to accept legal counsel's recommendation and send a Letter of Warning to all four Respondents; seconded by Commissioner Tate; unanimous vote; motion carried.**
7. **2010032981 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
8. **2010034001 – Commissioner Tate made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**

- 9. 2010036081&**
- 10. 2010036082 - These complaints were deferred to allow legal counsel time to obtain additional information and then the complaints will be presented at a future Commission meeting.**
- 11. 2010036321 - Commissioner Flitcroft made a motion to accept legal counsel's recommendation to authorize a formal hearing and in lieu of a formal hearing issue a Consent Order with a civil penalty of \$1,000.00 for each lessee security deposit unaccounted for or \$2,000.00 total for violation of T.C.A. §62-13-312(1)(5); seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 12. 2010034931 – Commissioner Flitcroft made a motion to issue a Consent Order as recommended by legal counsel with a total civil penalty of \$2,000.00, \$1,000.00 for violation of T.C.A. §62-13-312(b)(14) and Rule 1260-02-.03 [failure to maintain a place of business with the Commission] and \$1,000.00 for violation of T.C.A. §62-13-312(1)(2)(3)(5) [misrepresentation] but defer any action regarding authorizing a formal hearing until the Commission considers the matter at the time of reapplication by the expired Respondent; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 13. 2010035741 &**
- 14. 2010034742 – Commissioner Stephenson made a motion to defer the complaint so Commissioner Tate can review the complaint and report back to the Commission at a future Commission meeting; seconded by Commissioner Flitcroft; vote: 7 yes, 1 no; motion carried.**
- 15. 2010036611 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 16. 2010035891 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**

At 11:18 a.m., the presentation of the legal report ceased to be continued later in the meeting and the Rulemaking Hearing was called to order by Chairman Northern. Mark Green, Assistant General Counsel read the rulemaking procedures and the content of the proposed rule change into the record and explained that the time for comments on Rule 1260-07-.05 had been extended pursuant to a motion adopted by the Commission on February 9, 2011. He stated that the purpose of the rulemaking hearing is to solicit comments from the public on the proposed rule that the Commission duly filed and posted. Mr. Green advised that members of the public wishing to speak had signed a sign in sheet and those members who have signed in would be permitted to speak before the Commission in reference to Rule 1260-07-.05.

The rule being addressed follows:

Rule 1260-07-.05 [Advertising] -

(1) All advertising, regardless of its nature or medium, promoting vacation lodging service rentals shall prominently display the following information:

- (a) The firm name of the vacation lodging service, as registered with the Commission;
- (b) The telephone number of the vacation lodging service firm office; and
- (c) The vacation lodging service firm license number.

(2) All internet advertising must include the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number on each page of the website.

The Chairman called for comments from the attendees who signed up to address the Commission regarding the proposed rules.

The following members of the public addressed the Commission regarding the rules:

- Matt Scanlan, attorney/representative for the Smoky Mountain Vacation Lodging Association
- Brad Ivens of Eagle Property Management and President of the Smoky Mountain Vacation Lodging Association

Ms. Kathryn Wiseman, Chief Legal Counsel was in attendance at the meeting and was asked to participate by the Chairman.

Commissioner Collins made a motion to move forward with the proposed rule change as originally proposed; seconded by Commissioner Tate; roll call: vote: 8 yes, 1 absent; motion carried.

After some discussion, however, Ms. Wiseman suggested that all public written comments be read into the record. She advised the Commission that she would review the public comments over the lunch break and either summarize or read them into the record when the Rulemaking Hearing reconvened.

Commissioner Woods made a motion that the formal Rulemaking Hearing reconvene at 1:30 p.m. but if that time is inconvenient to Mr. Ivens and Mr. Scanlon then their comments be heard before lunch; seconded by Commissioner Joh; unanimous vote; motion carried.

Mr. Scanlon and Mr. Ivens agreed to reconvene the formal Rulemaking Hearing at 1:30 p.m. and that they would make their comments at that time.

Chairman Northern recessed the meeting for lunch at 12:07 p.m. and reconvened the meeting at 1:15 p.m.

Upon return from lunch at 1:15 p.m., an informal applicant conference was attended to by the Commission before the Rulemaking Hearing reconvened at 1:30 p.m.

AFFILIATE BROKER APPLICANT INFORMAL CONFERENCE

Wayne Russell Brandon, applicant, appeared with his potential Principal Broker Anita Brandon to request he be approved to apply for an Affiliate Broker license. Mr. Brandon disclosed to the Commission a conviction of Importation of a Controlled Substance to the United States in 1975. **Commissioner Stephenson made a motion to approve Mr. Brandon's request to be approved to apply for an affiliate broker license; seconded by Commissioner Collins; unanimous vote; motion carried.**

Commissioner Collins made a statement regarding licensed real estate broker George Kangles. He advised that Mr. Kangles sadly passed away recently and spoke of his contributions to the industry. Ms. Maxwell read a tribute statement written by Mr. Robert Nodes, Governmental Affairs Director for the Greater Chattanooga Area Association of REALTORS®. He affirmed the sentiments of the Commission that Mr. Kangles will be sorely missed in the real estate industry.

Commissioner Stephenson made a motion that at end of the day (Monday) attendees would be excused and not be required to attend the next day's Q&A at the TAR conference to receive their continuing education hours; seconded by Commissioner Woods; unanimous vote; motion carried.

RULEMAKING HEARING

The Rulemaking Hearing reconvened at 1:30 p.m. and Vice-Chairman Woods acted as Chairman. After discussion with Mr. Brad Ivens and Mr. Matt Scanlon regarding the proposed rule changes to VLS advertising requirements, the Commission voted on the content and progression of the proposed rule change.

Ms. Wiseman read into the record the public written comments. These comments are available at the TREC office by contacting Kelly McDermott, Administrative Secretary.

Commissioner Collins made a motion to move forward with the proposed rule change as originally proposed; no second; reopened to discussion.

There was a discussion among the Commissioners, Staff and Mr. Scanlon and Mr. Ivens regarding the effect the proposed rule change would have on the VLS industry and members of the public.

Commissioner Flitcroft made a motion to adopt the VLS advertising subsection with the following amendments: 1) delete from Section 1 Part B; 2) renumber C to B; and add new language for C that any non-internet advertising rules will go into effect on July 1, 2013 and Section 2 in its present form be adopted; seconded by Commissioner Woods; discussion; Commissioner Joh made a friendly amendment to exclude Section 2 from the motion and Commissioner Flitcroft accepted her friendly amendment. Commissioner Stephenson made a motion to amend and remove any

reference to Section 2 from the previous motion; seconded by Commissioner Joh; after discussion and for the sake of clarity, Commissioner Flitcroft withdrew his motion and Commissioner Joh withdrew her second.

Chairman Northern called for a new motion. Commissioner Joh made a motion to 1) delete from Section 1 Part B; 2) change C to B; and create new language stating the new rule will go into effect on July 1, 2013; seconded by Commissioner Flitcroft; Commissioner Tate offered a friendly amendment that the effective date be changed to July 1, 2012; seconded by Commissioner Collins; opened to discussion; Commissioner Wood offered a second friendly amendment to move the effective date to the header of Section 1; seconded by Commissioner Collins; Commissioner Woods amendment passed unanimously and thus negated Commissioner Tate's first friendly amendment; motion as amended roll call vote: 6 yes, 2 no, 1 absent; motion as amended carried.

The Commission then discussed Section 2 of the proposed rule. Commissioner Stephenson made a motion that in Section 2 state (2) All internet advertising must include on the homepage or confirmation rental agreement the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number; seconded by Commissioner Joh; Commissioner Woods proposed a friendly amendment to Commissioner Stephenson's motion.

Commissioner Wood's made a friendly amendment that Section 2 read: "Notwithstanding the requirements of Rule 1260-07-.05(1) all internet home pages and confirmation pages shall display the Vacation Lodging Service firm name as registered with the Commission and the Vacation Lodging Service license number; Commissioner Flitcroft offered a second friendly amendment that the effective date of the change will be July 1, 2011.

Commissioner Woods proposed the following language for Section 2: Effective July 1, 2011, all internet home pages and confirmation pages for Vacation Lodging Service firms shall prominently display the Vacation License firm name as registered with the Commission and the Vacation Lodging Service firm license number. No other requirement of Rule 1260-07-.05(1) shall apply to internet advertising and the legal division may reword the language but it will not be a substantial change; seconded by Commissioner Collins; roll call vote on the motion as restated by Commissioner Woods: 8 yes, 0 no, 1 absent; motion carried.

Chairman Northern concluded the discussion of the proposed advertising rule and called for any comments from the VLS industry members. Mr. Scanlon stated that the provisions of Section 1 are still objectionable but that he appreciates the Commission working with them on the internet advertising.

As part of the rulemaking process for any proposed rule that may have an impact on small businesses, each agency shall prepare and economic statement as an addendum

for each rule that is deemed to affect small business (T.C.A. § 4-5-403). The statement shall include the following economic concerns. The Commission began the discussion regarding the Economic Impact Statement so as to lessen the impact on small businesses in Tennessee by the proposed rules.

Mr. Green presented specific recommendations

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost or directly benefit from the proposed rule.
 - All small business Vacation Lodging firms will be affected by rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule.
 - The VLS advertising rules were designed to establish reporting, recordkeeping and other administrative costs that are necessary for the health and safety of the citizens of the State of Tennessee by ensuring there is proper information on file with the Commission and there is accountability for any improper activity by licensees.
3. A statement of the probable effect on impacted small businesses and consumers.
 - The change will have a significant effect on small VLS firms and VLS firms in general by requiring them to adhere to qualifications with regard to advertising but the requirement is necessary to ensure the health and safety of the citizens of the State of Tennessee.
4. A description of any less burdensome, less intensive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist and to what extent the alternative means might be less burdensome to small business.
 - While less burdensome, less intensive and less costly methods may exist, there are none that will provide the same protection to the citizens of the State of Tennessee with regard to advertising.
5. Compare these rule changes to those of other State and Federal counterparts. Are they consistent or repetitive?
 - The rules are essentially identical to rules for other real estate licensees and in other states.
6. Can a small business be exempt from the rule? And if so then what outcome:
 - Regarding small VLS firms and VLS firms in general, if these firms were exempt it would offer less protection to the citizens of the State of Tennessee.

Chairman Northern concluded the recommendations for the Economic Impact Statement requirement. He called for comments from the Commission. Commissioner Flitcroft stated that he is of the opinion that the rule changes will protect small businesses.

Commissioner Stephenson made a motion to adopt the Economic Impact Statement as read by legal counsel; seconded by Commissioner Tate; vote: 8 yes, 0 no, 1 absent; motion carried.

Chairman Northern concluded the Rulemaking Hearing at 3:25 p.m.

Vice-Chairman Woods acted as Chairman for the remainder of the legal report.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL (continued)

- 17. 2010036431 – Commissioner Collins made a motion to accept legal counsel’s recommendation to authorize a formal hearing or in lieu of a formal hearing issue a Consent Order with a civil penalty of \$1,000.00 for violation of T.C.A. §62-13-312(b)(3)(20) and T.C.A. §62-13-403(4) [fraudulent conduct]; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 18. 2010036421 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Tate; vote: 6 yes, 0 no, 1 abstained (Chairman Northern abstained); motion carried.**
- 19. 2010006251 &**
- 20. 2010035831 – Commissioner Collins made a motion to accept legal counsel’s recommendation to send an investigator to determine the whereabouts of Respondents and correct the Consent Order for Respondent 2010006251 agreeing to a civil penalty of \$1,000.00 for violation of T.C.A. §62-13-312(b)(14), T.C.A. §62-13-309 and Rule 1260-02-.03 [failure to change address with the Commission within ten days] and further issue a Consent Order to Respondent 2010035831 agreeing to a civil penalty of \$1,000.00 for violation of T.C.A. §62-13-309, T.C.A. §62-13-312(b)(14) and Rule 1260-02-.03 [failure to provide a sign outside the firm address and failure to notify the Commission of a change of address within ten days] and proceed with a formal hearing; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 21. 2010036481 – Commissioner Collins made a motion to accept legal counsel’s recommendation to authorize for a formal hearing or in lieu of a formal hearing Respondent may agree to a Consent Order with a civil penalty of \$1,000.00 for each month the advertisement remains in place beginning March of 2011; seconded by Commissioner Flitcroft and he further offered a friendly amendment to require eight (8) hours of continuing education in ethics to be completed within six (6) months; Commissioner Collins accepted Commissioner Flitcroft’s friendly amendment and the motion as amended passed unanimously.**

22. **2010036791 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**
23. **2010034971 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to authorize a formal hearing or in lieu of a formal hearing Respondent will agree to a Consent Order with a civil penalty of \$500.00 and additionally require Respondent to complete eight (8) hours of continuing education in ethics to be completed within six (6) months; seconded by Commissioner Tate; unanimous vote; motion carried.**

Mr. Green advised the Commission that he had passed out a list of each consent order and the status of each. He explained that since he is new to being TREC’s attorney and he needs to work on the formal spreadsheet for future meetings. **Commissioner Collins made a motion to approve the items as listed by Mr. Green regarding consent orders; seconded by Commissioner Joh; unanimous vote; motion carried.**

Commissioner Reports

Each Commissioner present reported on matters of concern to them and to the Commission. At the conclusion of the comments, Vice-Chairman Woods stopped acting as chair and Chairman Northern began acting as chair. Chairman Northern made various comments regarding the next day’s Q&A and miscellaneous matters.

Chairman Northern recessed the meeting Wednesday, March 21, 2011 at 4:06 p.m.

March 22, 2011

The Commission reconvened on March 22, 2011 at 11:02 a.m. at the Franklin Marriott Cool Springs at 700 Cool Springs Blvd, Franklin, Tennessee, 37067 for a Question and Answer period at the Tennessee Association of REALTORS® Mid-Year Conference. The Commission and staff answered question from members of TAR. Chairman Northern adjourned the meeting at 11:53 a.m.