

TENNESSEE REAL ESTATE COMMISSION MINUTES
June 8 – 9, 2011

The Tennessee Real Estate Commission convened on June 8, 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 Allen Woods, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Wendell Alexander, Commissioner Michelle Haynes and Commissioner Carol Tate. Commissioner David Flitcroft and Commissioner Valerie Joh were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Patricia Appleton, Administrative Support.

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

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

Chairman Northern turned over the meeting to Vice-Chairman Woods at 9:23 a.m.

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 May 31, 2011, TREC had a total of 314 open complaints. Of those 314 open complaints, 256 were Errors & Omissions insurance complaints. There were 27 new complaints in May 2011. There were 309 complaints in the legal department and 5 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 139. Total Civil Penalties paid in May 2011 were \$2,870.00. Commissioner Haynes asked Ms. Maxwell to explain the complaint process and Ms. Maxwell did step by step detail the process for the Commission.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of May 2011. As of May 31, 2011, there were 24,729 active licensees, 2,409 inactive licensees and 10,235 retired licensees. There were 4,179 active firms and 333 retired firms. There were 198 new applications approved in May 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in May of 2008, 2009, 2010 and 2011. 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.

Commissioner Stephenson shared with everyone information from an interview he saw by an economist on CNBC with the economist stating that it could be 20 years before the real estate market stabilizes again and there is growth. This discussion transitioned into a discussion regarding foreclosures and short sales. The Commission talked about factors that may affect the licensee count in the near future. The costs of association dues may increase and those who are not selling homes may decide to leave the profession.

Ms. Maxwell presented the Commission with a pie chart of the types of complaints and a breakdown of the percentage of each. The Commission also discussed that the complaint numbers may be down because of the market. Commissioner Woods suggested that Staff, if they have ample time, track the types of complaints the Commission hears and the penalties it levies against the Respondent(s).

Ms. Maxwell next discussed Errors & Omissions insurance with the Commission. She presented a time line of all action taken regarding the renewal of E&O at the end of 2010. She detailed exactly what correspondence was sent to licensees and their principal brokers and when it was sent. She provided the Commission with statistics on the licensees who were still uninsured and advised that there were 229 Active Uninsured licensees of which 166 were affiliates and 63 were principal brokers. She further advised the Commission that some licensees who have received Consent Orders from the legal division have sent proof of insurance purchased prior to 3/31/11 and the complaints have been administratively closed. Ms. Maxwell touched on what measures other states, such as Colorado, take to address E&O delinquency. Commissioner Stephenson asked Ms. Maxwell to create a synopsis of the other states practices in yhr event the Commission needs to approach the legislature and suggest statutory changes to better address the issue. Commissioner Alexander asked if of the 63 principal brokers, if some of them are habitually delinquent with the purchase of their E&O insurance. Ms. Maxwell confirmed that some principal brokers that are uninsured appear to have a pattern of habitually not renewing in a timely manner. She explained that one can look at many of the licensee's paper files and find evidence of repeated delinquency since Errors & Omission became a requirement.

Ms. Robyn Ryan, Assistant General Counsel and TREC's litigation attorney, updated the Commission on pending litigation to be heard in the coming months. She advised the Commission that there will be hearings for licensees who will not pay the penalty as well as licensees who TREC will not be able to locate. She asked if the Commission potentially wants an Administrative Law Judge to preside over the formal hearings. A determination was made later in the meeting regarding the use of an ALJ. She also updated the Commission on other upcoming formal hearings that are scheduled for the rest of the year. She advised the Commission that the only month there will not be a formal hearing is at the September meeting. Ms. Ryan explained that when a Respondent settles a formal hearing, before the hearing but after the charges have been filed, they are held responsible for the court costs associated with complaint(s). She further explained that if a judgment is made and the Respondent does not pay their

assessed penalty, the matter is referred to the Attorney General's office for action. Commissioner Northern suggested that there may need to be a time limit requiring a Respondent to pay within a certain time period or their license will be automatically revoked and the Commissioners appeared to agree that the practice may prove helpful in getting Respondents to pay/complete their penalties. This concluded Ms. Ryan's report on litigation.

Vice-Chairman Woods recessed the meeting for lunch at 11:18 a.m. and reconvened the meeting at 1:32 p.m.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

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

Request for Instructor Approval

Sally Cummings of TAR (#1110) requests Frank Mears to be approved to teach the course Real Estate Marketing Reboot (#6396). Mr. Mears is a previously approved instructor. **Commissioner Collins made a motion to approve; seconded by Commissioner Tate; unanimous vote; motion carried.**

Mr. McDonald, at the previous month's meeting, was asked to breakdown the types of courses taught, the provider name, the credit hours and the method of delivery. He presented the Commission with a comprehensive report of all courses broken down into the following course categories: Agency, Basic Principles, Course for New Affiliates, Commercial, Contract, TREC Core, Ethics, Fair Housing, Foreclosure, Short Sales and REO, Office Broker Management, Property Management and Taxation.

Commissioner Stephenson asked for comparison of the number of approved providers from now and a few years ago. Mr. McDonald stated that when he joined the Commission in early 2010 there were 198 providers and that currently there are 144 providers. He advised that in early 2010, there were 1,549 approved courses and at the present time there are 1,135.

Mr. McDonald presented the Commission with the numbers of courses taught in each category and the method of delivery. Following are the types of courses, their total count each and their delivery method.

(next page)

Type of Course	Class room	Correspondence	Internet	Total
Agency	59	21	31	111
Basic Principles	16	7	17	40
CNA	10	10	12	32
Commercial	27	27	11	65
Contract	64	19	30	113
Ethics	31	29	9	69
TREC Core	10	9	12	31
Fair Housing	12	7	19	38
Foreclosures, Short Sales, REO	15	3	10	28
Office Broker Management	11	7	0	18
Property Management	5	14	14	33
Taxation	13	13	23	49

During the discussion of the above statistics, Commissioner Alexander asked that the reports presented be sorted by numbers of credit hours from the most to the least. He asked that the information be placed in the Commissioner's meeting books so that they may reference it during the legal report deliberations. Commissioner Collins suggested that the information provided also be provided to the licensees via a link on the TREC webpage. Mr. McDonald confirmed he would fulfill Commissioner Collins' request to have the information placed on the TREC webpage. **Commissioner Alexander made a motion that Mr. McDonald and Mr. Mark Green, TREC's Assistant General Counsel, meet and decide which courses would best benefit the Commission when they are determining penalties during the legal report; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Mr. McDonald asked the Commission about making any additions or deletions to Rule 1260-5-.03(5)(a)(1-17) which is the section of the manual that identifies the specific course content that must be taught. Ms. Ryan, Assistant General Counsel addressed the Commission regarding the need for rulemaking in order to discuss or change this rule. Commissioner Woods restated Mr. Ryan's comments for the record. He stated that Legal Counsel for the department, Mr. Ryan, had alerted the Commission that information being discussed may be subject to a formal rulemaking process and require formal notice which has not yet been provided. Commissioner Woods suggested the Commission take counsel's advice and take the proper steps to properly notice the discussion. There was a discussion as to whether the Commission could make a policy statement and by doing so suggest to the providers what specific topics should be addressed in courses. The Commission also discussed the minimum number of hours they believe necessary to cover a particular subject (i.e. it should take at least six hours to teach a contract course). Commissioner Alexander concurred and stated that it is his opinion that any CE course that is two, three or four hours, should be a refresher course. Ultimately, **Commissioner Collins made a motion to defer discussion of the issue and other education course related questions until the July 2011 meeting; seconded by Commissioner Tate; unanimous vote; motion carried.**

Commissioner Stephenson made a motion to adhere to the meetings agenda and recess for the day; seconded by Commissioner Alexander; vote: 5 yes, 1 no (Commissioner Collins voted no); motion carried.

Commissioner Woods, acting Chairman, recessed the meeting Wednesday, June 8, 2011 at 2:20 p.m.

June 8 - 9, 2011

The Commission reconvened on June 9, 2011 at 9:14 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 Wendell Alexander, Commissioner Michelle Haynes and Commissioner Carol Tate. Commissioner David Flitcroft and Commissioner Valerie Joh 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.

Vice-Chairman Woods turned the meeting back over to Commissioner Northern and he acted as Chair.

Chairman Northern advised the Commissioners and Staff that he was, as they knew, called out the meeting the prior afternoon to meet with Deputy Commissioner Steve Majchrzak, Assistant Commissioner of Regulatory Boards Bill Gianinni and General Counsel Wayne Pugh regarding Errors & Omissions insurance. He explained that they discussed three main concerns: 1) had TREC given adequate notice after the E&O expiration date of 12/31/2010; 2) the amount of the penalty imposed (\$1,000); and 3) does the imposition of such penalty put licensees in a situation in which they do not want to put forth any further effort and surrender their license or close their firm. Chairman Northern advised that he reviewed the E&O time line created by Ms. Maxwell with all parties and established that TREC has in fact sent additional notice to licensees after the expiration date of 12/31/2010. He also advised the Commission that all of the steps taken that led the Commission to issue Consent Orders in the amount of \$1,000.00.

There was a discussion regarding Consent Order that were sent in error when the licensee was insured and Chairman Northern asked who provided the information regarding uninsured licensees. Ms. Maxwell explained the process that was taken to compile the list which included working with the department's Information Systems division and the insurance providers. She explained that after analysis the determination was made that if any difference in name or license number exists between TREC's name or license number of record and the insurance provider's information then the E&O insurance will not download properly. She went on to explain that the TREC staff does receive an error report and works to match up any incorrect information and correct the licensee's file in the computer system. She also explained that some policies simply do no download for any discernible reason and that conformity

policies for out of state licensees do not download automatically. She advised that the E&O list was scrubbed several times before any complaints were opened and Information Systems analyzed the list to try and determine the major issues with information not downloading properly. Ms. Maxwell told the Commission that she had spoken with Rice Insurance's owner and staff and had asked them to please work with TREC in the future to avoid any miscommunication between their computer system and ours. She explained in detail why anyone who received an incorrect Consent Order received it. She also explained that there were a few issues with the date of purchase listed on the CRES policy versus the date printed and that Staff will go back and review all certificates and confirm the purchase date. Ms. Robyn Ryan, Assistant General Counsel, suggested that perhaps the existing issues could be addressed during the bidding of the new Request for Proposal for the E&O contract. Chairman Northern asked what steps can be taken to prevent future issues. Ms. Ryan stated that the information coming into TREC needs to be better and more accurate information. Ms. Maxwell stated that she had Information Systems and Rice Insurance check the list before any additional citations are issued. She further stated that she and Cindy Rice Grissom agreed that after the initial rush of getting complaints opened and getting uninsured licensees insured, they should sit down together and attempt to determine what is causing the errors.

Ms. Ryan advised the Commission that of the licensees to whom she has spoken, none have indicated they were giving up their license because of the amount of the penalty and that most were surrendering their licenses because they had not been active in the real estate market in several years. She also advised the Commission that the legal division has offered payment plans to licensees who wish to pay the penalty. Chairman Northern asked if the list can be analyzed again before any additional complaints are opened and Ms. Ryan stated that the list could be reviewed again but that she did not believe that all of the information on record is accurate. She explained that all these Consent Orders preceded the filing of any formal charges so the Commission did not incur the expense of filing (\$200.00).

Chairman Northern stated that the E&O time line had been very beneficial when meeting the prior day with Mr. Giannini, Mr. Majchrzak and Mr. Pugh. He asked Ms. McDermott to include the time line in the minutes. The timeline follows the minutes and is part of the official record of the meeting. Chairman Northern asked that Staff make certain that nobody's file is erroneously flagged for being in violation when there were not and that he trusts that the Staff will take the necessary steps to resolve the issues with downloads. Ms. Maxwell assured Chairman Northern that the issues will be addressed for solutions. Chairman Northern advised that General Counsel Pugh has asked that the Commission determine and vote on whether the formal hearings for E&O could be heard by an ALJ. Mr. Green, Assistant General Counsel, advised the Commission that after speaking with Mr. Pugh the day prior, he had made the slight adjustment to the approved policy 2011-CPS-001 to include wording that the hearings may be heard by an ALJ and that the policy will carry forward into future renewal cycles. Commissioner Alexander stated that he was vehemently opposed to changing the assessed penalties at this point in the process. Mr. Green then passed the revised policy including the language regarding the use of an Administrative Law Judge and the policy carrying forward into future E&O renewal cycles to the Commissioners and they took time to

review it in its entirety. **Commissioner Alexander made a motion to adopt Policy 2011-CPS-001 as revised; seconded by Commissioner Stephenson; unanimous vote; motion carried. The revised, approved E&O policy will also be attached to the official minutes. It was suggested that an E&O subcommittee be formed to discuss the upcoming RFP. Chairman Northern appointed to the subcommittee Commissioners Collins, Woods and Haynes and Eve Maxwell, Mark Green and Robyn Ryan.**

There was a brief discussion regarding the Education and Recovery Fund for TREC. It was asked how much money had been paid out, to whom and for how much. Ms. Maxwell will compile a report on this information and report back to the Commission at a future meeting.

Chairman Northern noted that the Commission would like to honor former Commission member Frances Albany, who passed away recently. Ms. Maxwell wrote a resolution in honor of Ms. Albany and in appreciation of her service to the Tennessee Real Estate Commission for many years. **Commissioner Michelle Haynes read the following resolution into the record and the Commission voted unanimously on a motion made by Commissioner Stephenson to adopt the resolution and take it to the family of Ms. Albany with the Commission's sincere condolences. The motion was seconded by Commissioner Tate and carried. Following is the resolution honoring Ms. Albany.**

TENNESSEE REAL ESTATE COMMISSION
HONORS and REMEMBERS

FRANCES ALMANY

for her contributions to the real estate profession for over forty two years. Frances was instrumental in establishing a solid foundation for current and future licensees and she exemplified an unwavering love and devotion to the real estate profession. Frances proudly represented the state as a Commissioner of the Tennessee Real Estate Commission for over ten years, serving six as Vice Chairman and one as Chairman. Each person whose life Frances touched was honored and delighted to have shared and experienced her enthusiasm for life and for real estate. She will long be remember by those in the Real Estate Profession for her intelligence, her keen insight and her loyalty to her many friends, the profession and to the Commission. This Resolution made and adopted by the

Tennessee Real Estate Commission this 9th day of June, 2011.

Chairman Northern turned the meeting over to Vice-Chairman Woods to run throughout the discussion of the 40 year plus longevity breakfast and the legal report.

The Commission discussed the 40 plus year longevity breakfast to honor licensees who have achieved 40 plus years of service as a licensee since the breakfast that was

previously held in 2008. The Commission addressed the logistics of the room reservation, sponsorship, whom to invite, whether the TREC meeting for November should possibly be held in Gallatin and the final date of November 10, 2011 for the event. Commissioner Collins suggested that the associations be invited but be required to pay for the meal for themselves and any of their guests.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1. 2010036481 - Commissioner Alexander made a motion for legal counsel to contact the billboard company and determine if the Respondent has renewed their contract set to expire in September 2011; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 2. 2011001101 &**
- 3. 2010036741 – Commissioner Northern made a motion that the Respondent who was unable to attend his informal conference in Memphis the previous month be allowed to come to Nashville to meet for an informal conference; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 4. 2010036431 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 5. 2011002251 – The complaint was previously reviewed by Commissioner Collins and he recommended dismissal. Commissioner Northern made a motion to accept Commissioner Collins’ recommendation to dismiss; seconded by Commissioner Alexander; vote: 5 yes, 0 no, Commissioner Collins abstained; motion carried.**
- 6. 2011003171 – Commissioner Stephenson had previously reviewed the complaint and recommended dismissal. Commissioner Alexander made a motion to accept Commissioner Stephenson’s recommendation to dismiss the complaint; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 7. 2011007581 &**
- 8. 2011007582 &**
- 9. 2011007583 &**
- 10. 2011007584 – Commissioner Collins made a motion accept legal counsel’s recommendation and dismiss as to all four Respondents; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 11. 2011005001 &**
- 12. 2011005002 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue the following Consent Orders: Regarding complaint #201005002, against the principal broker, for revocation of his license and a civil penalty of \$750.00 for violation of T.C.A. § 62-13-301 [failure to license his firm], \$750.00 for violation of T.C.A. § 62-13-312 [employment of unlicensed brokers], \$1,000.00 for violation of T.C.A. § 62-13-312(b)(5) [failure to account for money belonging to another] and \$1,000 for violation of T.C.A. § 62-13-313(a)(2)[failure to respond to the complaint] and Regarding**

- Complaint #2010005001, against the affiliate broker, issue a Consent Order for \$1,000.00 for violation of T.C.A. § 62-13-312(b)(5) [failure to account for money belonging to another] for violation of T.C.A. § 62-13-313(a)(2) [failure to respond to the complaint within ten days]; seconded by Commissioner Alexander for discussion; opened to discussion; after discussion, motion carried unanimously.**
- 13. 2011008731 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**
 - 14. 2011010811 – Commissioner Northern made a motion to request an Attorney General’s opinion; seconded by Commissioner Alexander; unanimous vote; motion carried.**
 - 15. 2010006651 – Commissioner Northern made a motion to request an Attorney General’s opinion; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
 - 16. 2011003151 &**
 - 17. 2010003152 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
 - 18. 2011009831 – Commissioner Northern made a motion to accept legal counsel’s recommendation to issue a formal Letter of Warning; seconded by Commissioner Alexander; unanimous vote; motion carried.**
 - 19. 2011003241 &**
 - 20. 2011003242 &**
 - 21. 2011003243 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Mr. Green reviewed the Consent Order Log with the Commission and answered any questions they had regarding open Consent Orders.

Vice-Chairman Woods turned the gavel back over to Chairman Northern to conduct the remainder of the meeting.

Chairman Northern acknowledged that the meeting concluded Commissioner Tate’s appointed term to the Commission. Each Commissioner spoke of Commissioner’s Tate’s incredible contribution to the Commission throughout her term and of her compassion and generosity in life.

The final order of business for the June 2011 meeting was the election of the Chairman and Vice-Chairman for the 2011 – 2012 term. Chairman Northern turned the meeting over to Ms. Maxwell so she could accept nominations for Chairman and Vice-Chairman.

Commissioner Alexander nominated Commissioner Northern for Chairman. Commissioner Collins nominated Commissioner Woods for Chairman. Commissioner Woods declined the nomination therefore Commissioner Collins made a motion to elect Commissioner Northern Chairman for the 2011

– 2012 term by acclimation; seconded by Commissioner Alexander; roll call vote: 6 yes, 0 no, Commissioner Northern abstained; motion carried. Chairman Northern will continue as Chairman of the Tennessee Real Estate Commission for 2011 – 2012.

Next, Ms. Maxwell called for nominations for Vice-Chairman for the 2011 – 2012 term.

Commissioner Haynes nominated Commissioner Stephenson for Vice-Chairman; seconded by Commissioner Collins; Commissioner Alexander made a motion to elect Commissioner Stephenson Vice-Chairman for the 2011 – 2012 term; seconded by Commissioner Tate; roll call vote: 6 yes, 0 no; Commissioner Stephenson abstained; motion carried. Commissioner Stephenson will be the Vice-Chairman of the Tennessee Real Estate Commission for 2011 – 2012.

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

Chairman Northern adjourned the meeting on Thursday, June 9, 2011 at 11:47 a.m.

Attachments: Errors & Omissions time line and Policy 2011-CPS-001 approved and adopted by the Commission.

E & O TIMELINE

As of 6-6-2011

- **9/28/2010** List of Active Licensees with home and business addresses, license number, PB, PB license number, type of insurance requested from IS
- **9/29/2010** IS returns list as requested. TREC letter to licensees written and approximately 27,000 printed and readied for state postal pick up for mailing to home
- **9/29/2010** IS list sent to RISC after several discussions re joint timeline.
- **9/30/2010** RISC integrates information into RISC system
- **9/30/2010** TREC letter to all active licensees picked up by state postal for mailing. News Journal posted on web with names of current uninsured licensees.
- **10/4/2010** TREC licensees begin to receive renewal reminders
- **10/8/2010** RISC has enrollment form, broker letter and brochure ready to send to PBs and enrollment form ready to send to all other licensees.
- **10/11/2010** RISC online renewal system for 1/1/2011 fully operational to take renewals with all licensee information properly reflected.
- **10/18/2010** RISC sends out 27, 054 renewal notices to 4,470 PBs and 22,584 affiliates, timeshare salespersons and brokers.
- **11/2/2010** 1,897 licensees have bought RISC insurance for period 1/1/2011-1/1/2013.
- **11/30/2010** 7,550 licensees have bought RISC insurance.

- **12/14/2010** TREC sends letter to 4,792 PBs reminding PB to get E&O and to check to make sure that affiliated licensees have E&O. Letter generates much response to TREC and E&O carriers.
- **12/20/2010** Approximately 12,000 licensees have bought RISC E&O.
- **12/22/2010** RISC sends email blast to 15, 323 licensees who have not renewed their 2009 policy.
- **12/30-1/4/2011** RISC working to verify information and process all E&O purchases made during this time.
- **1/1/2011-1/20/2011** TREC receives many TREC 1 forms with broker release, transfer and retirement requests. TREC works to get all of these entered onto the computer system so that proper status of licensees is reflected on list to be run by IS.
- **1/20/2011** IS runs list of licensees without E&O. List has 2,186 names on it.
- **1/20/2011 to present** TREC continues to receive E&O information and removes names of licensees who have proof of purchase of E&O. TREC wants to make sure that list that is published with Newsletter and on website is as accurate as possible.
- **1/28/2011** TREC sends a letter to 1,975 licensees who remain on list as uninsured. This letter generated many calls, emails, faxes and certificates of E&O. TREC has continued to verify the information and remove these licensees from the list to be published
- **2/8/2011** Final copy for TREC Newsletter with E&O list sent to printing for publication on TREC website. E&O list has 1,520 names on it.
- **4/1/2011** There are 488 active licensees who appear to be uninsured.
- **4/13/2011** Commission adopts policy regarding implementation of December 1, 2010 Policy on Lapsed E&O Insurance. On this day, there were 435 active uninsured licensees and 527 uninsured licensees in broker release status.

- **5/5/2011** List of active uninsured licensees, PBs and PBs of licensees completed.
- **5/6/2011** Initial complaints opened by Conell House and information transmitted to legal to be opened in legal.
- **5/31/2011** First set of letters and Consent Orders are sent out to active uninsured licensees. There are 314 uninsured active licensees. This group is the first to be sent the letter and Consent Order. Next will be the PBs with uninsured affiliated licensees. There are approximately 150 PBs, but some licensees have already shown proof of E&O, so it is anticipated that this number will drop. Conell House has already begun opening complaints against the PBs for failure to supervise affiliates who were uninsured after the Commission deadline.
- **6/1/2011** The legal department anticipates that a batch of letters and Consent Orders will be sent out every Monday until all have been sent. Both TREC and the legal department have received many calls and emails from licensees in response to the letter and CO. Many that contact our offices and the legal department are very angry.
- **6/3/2011** It is anticipated that there will be about 301 licensees in broker release status who do not have E&O. A number of those have expiry dates in June and July, 2011. A license will not renew in a broker release status and the licensee cannot affiliate with a firm prior to expiration without obtaining E&O and without sending TREC the required paper work and fee. It is possible that complaints will be opened and scheduled for formal hearings against 675 licensees. (144 PBs with uninsured affiliates; 229 uninsured active licensees; 301 uninsured broker release licensees).
- **6/6/2011** Conell House has finished opening complaints against all of the uninsured licensees in active status (total 229 comprised of 166 affiliates and brokers and 63 PBs) and against the PBs with uninsured affiliates (144 PBs with one or more uninsured affiliates.) Most PBs have only one uninsured affiliate, but several have two or three uninsured affiliates. The next group to be addressed is the uninsured broker release licensees.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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COMMISSION POLICY STATEMENT
NUMBER: 2011-CPS-001
EFFECTIVE DATE: April 14, 2011

POLICY ON LAPSED E&O INSURANCE

1. Policy 2010-CPS-003 [Policy on Lapsed Errors & Omissions Insurance] is hereby amended to include all of the changes made April 14, 2011 as below and shall continue forth applicable upon the 91st day after the renewal due date of the E&O Insurance covered by this policy amending 2010-CPS-003 herein into future renewable cycles;
2. A licensee who has failed to comply with the Commission's requirement to be insured in the first 91 days of the renewal cycle but as of April 14, 2011 has insurance, will be offered an authorized consent order with a civil penalty of \$500.00 and completion of four (4) hours of continuing education in Ethics within three (3) months;
3. A licensee who purchased E&O insurance between the 91st day and the 104th day (meeting day of April 14, 2011) will be offered an authorized consent order with a civil penalty of \$500.00 and completion of four (4) hours of continuing education in Ethics within three (3) months;
4. Amending Policy Number 2010-CPS-003 to include: If a licensee fails to renew an Errors & Omissions insurance policy prior to expiration, that licensee may be subject to a consent order authorized with a civil penalty of up to one thousand dollars (\$1,000.00) per day for each day that licensee remains uninsured or other discipline including license suspension or revocation. A Principal Broker who fails to ensure each affiliated licensee maintains Errors & Omissions insurance may be subject to an authorized consent order with a civil penalty of one thousand dollars (\$1,000.00) per uninsured licensee;

5. A Principal Broker with a licensee or licensees that are not currently insured as of April 14, 2011 be offered an authorized consent order with a civil penalty of one thousand dollars (\$1,000.00) per uninsured affiliate and completion of four (4) hours of continuing education in Ethics within three (3) months;

6. Where any authorized consent order offered a licensee is not accepted by the licensee and requires a formal hearing on the matter discussed in this policy and amendments the Commission hereby authorizes it be done before an Administrative Law Judge who has the authority to hear and decide the matter per the Uniform Administrative Procedures Act, Tenn. Code Ann. Title 4, Chapter 5.

ADOPTED BY THE COMMISSION JUNE 9, 2011.

Chairman Isaac Northern

Signed copy on file at TREC