

TENNESSEE REAL ESTATE COMMISSION MINUTES
November 9, 2011

The Tennessee Real Estate Commission convened on November 9, 2011, 2011 at 9:13 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 Valerie Joh, Commissioner Janet DiChiara and Commissioner Austin McMullen. Commissioner David Flitcroft 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.

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

The Commission voted on the approval of the minutes from the October 2011 meeting (**Exhibit 2**). **Commissioner Joh made a motion to approve the October 2011 meeting minutes; seconded by Commissioner DiChiara; 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 October 31, 2011, TREC had a total of 139 open complaints. Of those 139 open complaints, 60 were Errors & Omissions insurance complaints. There were 31 new complaints in October 2011. There were 127 complaints in the legal department and 12 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2011-2012 is 58. Total Civil Penalties paid in October 2011 were \$51,040.00. Ms. Maxwell presented the Commission with a pie chart outlining the nature of all open complaints with and without Errors & Omissions complaints included in the chart.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of October 2011. As of October 31, 2011, there were 24,396 active licensees, 1,752 inactive licensees and 10,145 retired licensees. There were 4,181 active firms and 329 retired firms. There were 184 new applications approved in October 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in October 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.

Assistant General Counsel Robyn Ryan advised the Commission that the E&O hearings will be held on December 12 – 13, 2011 and a total of 32 formal hearings are scheduled. She told the Commission that these Respondents have been advised that they have until December 1, 2011 to comply and pay their penalty and court costs and if they do not comply then the legal division will move forward with the formal hearing process. She assured the Commission that Paralegal Mandy Spencer has called each Respondent so there are not issues with service. She stated that the Administrative Law Judge will be Judge Lynn England and further Ms. Ryan will be asking, at the hearings, for the additional education requirement of attending a two day Commission meeting for each Respondent be included in the judgment. She advised, however, that the decision lies with the ALJ. She explained that when the Consent Orders were sent the education component was inadvertently not included. She asked the Commission how they wish to handle the Consent Orders that have been sent and satisfied.

Commissioner McMullen made a motion to ratify the Consent Orders that have already been entered without the educational component; seconded by Commissioner Haynes; unanimous vote; motion carried.

Ms. Ryan said she would move forward handling the Consent Orders that are still outstanding and ask that the educational component be included. She did advise the Commission that the decision would ultimately, however, be Judge England's decision.

Ms. Maxwell reported to the Commission on how others states handle unlicensed activity. She stated that at the ARELLO Annual Conference there was much discussion about how to pursue unlicensed individuals. She advised that the Real Estate Commission in Oklahoma imposes a penalty of \$5,000.00 or more, the order is legal and binding and gives the Commission the right to execute Liens and Garnishments thereby giving them more authority and allow for better enforcement. Commissioner Haynes, who was also in attendance at the Annual ARELLO meeting, suggested that perhaps the Commission could contact the Tennessee Association of Realtors® and discuss possible solutions to enforce Tennessee statutes regarding unlicensed activity. Commissioner Haynes also proposed that the legislature be approached but Assistant General Counsel Mark Green advised that it would be difficult to get anything accomplished in this current legislative session. Commissioner Haynes asked Ms. Maxwell to research how other professions handle unlicensed activity.

Ms. Maxwell touched base with the Commission regarding the progress being made with the Vacation Lodging Services firms and the licensing of their Designated Agents. She explained that TREC was making small amounts of progress. She said that of the 134 VLS firms, 60 have a Designated Agent or are in the process of getting their Designated Agent licensed (they are only lacking missing information to be licensed). She made reference to the motion made by Commissioner Alexander at the October 2011 meeting in which he moved that the firm and Designated Agent be issued a Consent Order with a civil penalty of \$1,000.00 for both. Ms. Maxwell clarified that, at this point, TREC can only penalize the firm as those not in compliance do not have a licensed DA. Opening a

complaint against the firms was discussed with Mr. Green, Assistant General Counsel and Robyn Ryan, TREC's Litigation Attorney. Ms. Ryan advised that it would most likely be next fall before the formal hearings could be held as she is currently litigating the E&O formal hearings. Commissioner Alexander made the comment that TREC did not introduce the legislation and that an outside organization went to the legislature and worked to get it passed. He stated that because the VLS industry is under TREC's jurisdiction, then TREC is charged with enforcing the new statute. He stated that he will abide by what the Commission as a whole decides may be a solution but stated that he wanted to go on record that he is not in favor of changing his motion passed at the October meeting. Commissioner Alexander also made reference to the fact that TREC has licensed real estate firms that work in the VLS industry who fall under the Brokers Act. Chairman Northern stated that the Staff needs direction on how to proceed. Mr. Green advised the Commission that they have two choices; to either proceed with the penalties approved in last month's motion or to rescind the motion. **Commissioner DiChiara made a motion that TREC move forward with the penalty determined at the October meeting but that the \$1,000.00 penalty only apply to the firm because the designated agent is not applicable; seconded by Commissioner Collins; Commissioner Joh made a friendly amendment to approve that an Administrative Law Judge be used to hear any formal hearings related to this issue of VLS compliance; Commissioners DiChiara and Collins accepted the friendly amendment and the motion as amended was passed unanimously.**

Ms. Maxwell advised the Commission that progress is being made in the planning of the Tune Award presentation and reception for Jules Wade, former President of the Memphis Area Association of Realtors®. Chairman Northern advised that he has been working with some former TREC Commissioners in arranging the event. He stated that Mr. Wade will be presented the award during the meeting on Thursday, January 12, 2012 and that an informal celebration and reception will be held after the meeting recesses on Thursday at a separate facility. Chairman Northern advised the Commission that a justification for the release of funds from the Education and Recovery fund needs to be given to the department administration immediately. He stated that as of that day the amount was not definite from the event manager. He proposed that the Commission approve an amount of money that can be sent to the Administration for consideration. **Commissioner Stephenson made a motion to request from the Administration a \$2,000.00 budget for the event; seconded by Commissioner Alexander; Commissioner Collins offered a friendly amendment to increase the amount requested to \$3,000.00; Commissioner Stephenson and Commissioner Alexander accepted the friendly amendment and the motion as amended passed unanimously.**

It was discussed that the funds for the event would be paid out of the TREC Education and Recovery Fund. Chairman Northern asked Ms. Maxwell to detail the amount of money in each part of the fund. Ms. Maxwell stated that there was \$197,000 in the fund but after it was swept that only approximately \$25,000 remains and that the "Big Fund" has \$3.8 million dollars. She advised that TREC only has access to the interest part of the fund. Commissioner Alexander suggested that Ms. Maxwell explain, for the benefit of the new Commission members and the attendees, the purpose of the

Education and Recovery Fund. Ms. Maxwell said that the Education and Recovery Fund was set up in 1973 and since that time \$30.00 of each new application fee goes into the E&R fund and that the E&R fund is set up for individuals who are harmed by a licensee and who meet certain criteria set forth in the E&R fund. She explained that the biggest hurdle for consumers who wish to make a claim on the E&R fund is that TREC must be given notice of the issue prior to any other action, such as a civil case, being initiated. She stated that the body of the fund is made up of the \$30.00 from each new application and the Commission cannot access those funds because they are to be used only for an individual who meets all of the requirements of the E&R Fund. She stated that the interest on the fund can be used by the Commission for the betterment and education of all licensees across the State of Tennessee; for example Education Seminars. She advised that the Tune Award would be paid out of the interest part of the E&R fund but that ARELLO conference trips are not paid through E&R because it is not considered a benefit for licensees in the entire State of Tennessee.

Ms. Maxwell advised the Commission that the previous week she had met for several days with all four TREC Auditors as a group at the TREC office. She stated that they discussed issues that they face as auditors and went through the audit form to narrow down info that is beneficial to both the TREC and the firm. She also stated that online submission of audits is being pursued as an option for expediency. She stated that Attorney Robyn Ryan also talked with the Auditors about what information is useful in an investigation or a formal hearing situation.

Chairman Northern asked Ms. Maxwell what the process was for a firm to close down its operations. Ms. Maxwell stated that usually it is found by the auditors if they go by the business and it is closed or the firm advises TREC that the firm is closing. She stated that usually a firm will just allow their firm license to expire and TREC will find out by accident because a complaint comes through that might involve a closed firm. Ms. Maxwell advised that she was going to create a form to put on the TREC website so that firms can send in notice of the closing of their firms in a formal manner. Commissioner Alexander reminded the attendees that a licensee must keep their files for three years or five years if they are contested but stated that many people, him included, keep all files regardless of time because a licensee may buy or sell the same house more than one time over the years. Commissioner Haynes asked Ms. Ryan if other boards have to have a reason to audit or can they just drop in to audit. Ms. Ryan touched on what other boards use as a procedure for audits and investigations.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of October 2011. **Commissioner Stephenson made a motion to approve the Courses for Commission Evaluation (N1-N18); seconded by Commissioner Joh; unanimous vote; motion carried.**

Mr. McDonald then presented a Course for Commission Discussion. He asked that the Commission discuss the course "Short Sales for Realtors (and Attorneys) from a Loss Mitigation Perspective" to be offered by National Loan Resolution Services, LLC (N19 on report). He advised the Commission that a complaint was heard at the August 2011 meeting that involved the instructor and resulted in a civil penalty of \$500.00. He said

he believed the board should make a determination regarding this course and instructor because the provider is currently advertising the course as if it is already approved. After discussion, **Commissioner DiChiara made a motion to not approve the course "Short Sales for Realtors (and Attorneys) from a Loss Mitigation Perspective" or the instructor Melanie Riekema; seconded by Commissioner Collins; unanimous vote; motion carried. Commissioner Stephenson made a motion that the violation by the instructor be investigated and appropriate action be taken by Staff; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Request for Instructor Approval

- Sally Cummings of TAR (#1110) requested the approval of Brenda E Brewster to teach Contracts 101 (#6711).
- Jenn Schutt of McKissock, LP (#1338) requested the approval of Roseann Farrow to teach the Current Issues in Fair Housing course (#6802).
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Commissioner Collins made a motion to approve the instructor requests; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Chairman Northern recessed the meeting for lunch at 11:18 a.m. and reconvened at 1:15 p.m.

Informal Appearance

Mr. Ronnie L. Phillips, former licensee #272400 and current applicant for a Broker's license in Tennessee, appeared before the Commission to request they find he has fulfilled the following requirement to be licensed as a Broker: "Any person who desires a broker's license shall submit an application for examination, [which] shall be accompanied by certification of satisfactory completion by the applicant [of] thirty classroom hours covering office or broker management" The applicable Statute is T.C.A. § 62-13-303(c)(2) [Qualifications — Prerequisites for licensing] and the applicable Rule is 1260-5-.03(4) [Requirements for Courses]. After discussion, **Commissioner McMullen made a motion to not approve Mr. Phillips' request; seconded by Commissioner Joh; vote 7 yes to not approve; Commissioner Stephenson abstained; motion carried.**

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) 2011004371 &
- 2) 2011036321 – **Commissioner Joh made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 3) 2011010911 – **This complaint was deferred to give Attorney Green an opportunity to obtain additional information.**
- 4) 2011020181 – **Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss as to the Respondent and open a complaint against the Complainant; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

- 5) **2011020211** – Commissioner DiChiara made a motion to issue a Consent Order with a civil penalty of \$1,000.00 and further require the Respondent to complete four (4) hours of approved continuing education in Office Management as well as attend a two day TREC meeting within six months; seconded by Commissioner Collins; unanimous vote; motion carried.
- 6) **2011020891** – Commissioner Collins made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.
- 7) **2011021711** &
- 8) **2011021712** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for unlicensed activity; seconded by Commissioner Collins; Commissioner Joh made a motion to amend the civil penalty to \$2,000.00; seconded by Commissioner Haynes; amendment passed unanimously; motion as amended passed unanimously.
- 9) **2011020881**&
- 10) **2011021481** – Commissioner Joh made a motion to accept legal counsel’s recommendation to issue a Consent Order seeking a voluntarily surrender and a civil penalty of \$4,000.00 for two counts of failure to remit property belonging to another and two counts for failure to respond to a TREC complaint but to also omit the portion of legal counsel’s recommendation to order the repayment of all monies owed to Complainants as that is a civil matter; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 11) **2011023241** – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to close pending an Attorney General’s opinion; seconded by Commissioner Collins; unanimous vote; motion carried.
- 12) **2011021011** &
- 13) **2011021012** &
- 14) **2011021013** &
- 15) **2011021051** – Commissioner Alexander made a motion to defer these four complaints to allow Attorney Green an opportunity to obtain additional information needed for a thorough review; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 16) **2011023051** – Commissioner Joh 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 TCA § 66-32-101 [failing to register a Timeshare Program] and further Commissioner Joh added to the motion that the Respondent be required to attend a two day TREC meeting within six months; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 17) **2011022731** – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; vote: 7 yes, 1 no (Commissioner Alexander voted no); motion carried.

- 18) **2011023031 &**
19) **2011023032 – Commissioner Alexander made a motion to defer the complaint to allow Commissioner DiChiara an opportunity to review the file and report back to the full Commission on her findings; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
20) **2011022491 – Commissioner Joh made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$3,000.00, require Respondent to complete four (4) hours of approved continuing education in Property Management and four (4) hours of approved continuing education in Ethics plus require Respondent attend a two day TREC meeting within four (4) months for violation of T.C.A. §62-13-312(b)(5) [failing to properly account for funds], T.C.A. §62-13-403(6) [timely accounting for funds] and TREC Rule 1260-2-.09 [Deposits and Earnest Money]; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

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

Chairman Northern passed around a letter to his fellow Commission members for their signature regarding compensation for Executive Director Eve Maxwell. He stated that the Commission voted in January 2011 to recommend an increase in salary from \$60,000.00 per year to \$75,000.00 per year for Ms. Maxwell and to renew her four year contract. He advised that thus far no action has been taken by the Administration subsequent to the motion for an increase in the salary. Chairman Northern referenced in the letter the statute TCA § 62-13-207 which gives the Commission the authority to hire and fire and determine the compensation of the Executive Director. Commissioner Alexander further noted that the compensation should be made retroactive. **Commissioner Alexander made a motion to submit a written request to the Administration to honor the request of the full Commission for a pay increase of \$15,000.00 annually (\$60,000 current salary to \$75,000 with increase) to be retroactive to the expiration of her prior contract and to further approve renewal of her contract. He also moved that if the Administration will not honor the request then the matter should be referred to the Attorney General’s office for an interpretation of TCA 62-13-207 which states that the Executive Director of TREC is an employee of the Board and the Board, as a whole, may determine his/her salary; seconded by Commissioner Stephenson; vote: 7 yes, 0 no; Commissioner McMullen abstained; motion carried.**

The Commission and Staff briefly discussed the upcoming 40 year Longevity Breakfast being held the following morning from 8:00 – 10:00 a.m.

Chairman Northern asked Kimberly Whaley, Accountant 3 in the office of the Regulatory Boards Administration and Assistant Commissioner, who was present, to explain the progress being made to have meeting material presented during a meeting via iPad instead of the large binders that are currently used for meetings. Ms. Whaley explained

that the Department is in the process of transitioning to iPad use for meetings and the various boards will share the devices which will be wiped clean and reloaded for each meeting with that particular board's information. She advised that training will be done with the Commissioners so they will become familiar with the iPad tablet.

Ms. Maxwell advised the Commission that a conflict has been identified between the April 2012 meeting in Chattanooga and the Mid-Year ARELLO conference. She stated that the current dates of April 12-13, 2012 will coincide with the ARELLO conference. It was determined that Ms. Maxwell will contact the Chattanooga Association of Realtors® and discuss their plans for their 100 year anniversary celebration and determine if there is any flexibility as to when the Commission will hold their meeting in Chattanooga. **Commissioner Stephenson made a motion to defer the discussion to give Ms. Maxwell the opportunity to contact the association; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Chairman Northern adjourned the meeting on Wednesday, November 9, 2011 at 2:53 p.m.