

TENNESSEE REAL ESTATE COMMISSION MINUTES
September 8 – 9, 2011

The Tennessee Real Estate Commission convened on September 8, 2011 at 9:25 a.m at the Developmental Resource Building, 1250 Market Street, First Floor Conference Room 1A, Chattanooga, Tennessee 37402. 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 Austin McMullen, Commissioner Janet DiChiara and Commissioner David Flitcroft. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.

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

The Commission voted on the approval of the minutes from the August 2011 meeting (**Exhibit 2**). **Commissioner Stephenson made a motion to approve the August 2011 meeting minutes; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The Chairman addressed the attendees and stated that it was a pleasure to again be holding the monthly TREC meeting in Chattanooga.

Informal Applicant Appearance

Patrick Landers, VLS Designated Agent and VLS firm applicant, appeared to request he be approved to hold a Designated Agent license and open a Vacation Lodging Service (VLS) firm. Mr. Landers appeared before the Commission because he was previously involved with a VLS firm that abruptly ceased operations in early 2011. He was one of several partners who owned the now closed VLS. Mr. Landers was not the day to day manager during the four months prior to closure but he did operate the VLS for several years prior to his departure from the day to day manager position. Mr. Landers was named specifically as the Respondent in five of the 26 complaints filed by consumers who have alleged that their deposits were not returned and that their cabin rentals were summarily cancelled. Several parties involved are also involved in pending civil litigation. After discussion, **Commissioner DiChiara made a motion to grant a VLS Designated Agent license and a VLS firm license; seconded by Commissioner Joh; Commissioner Alexander made a motion to amend that if Mr. Landers is found guilty of the charges then his license will be automatically and permanently revoked; vote on amendment: 7 yes, 0 no, 1 abstained (Commissioner Alexander); amendment carried; vote on motion as amended: 7 yes, 0 no, 1 abstained (Commissioner Alexander); motion as amended 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 August 31, 2011, TREC had a total of 240 open complaints. Of those 240 open complaints, 184 were Errors & Omissions insurance complaints and two were Agreed Citations. There were 37 new complaints in August 2011. There were 234 complaints in the legal department and 6 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2011-2012 is 34. Total Civil Penalties paid in August 2011 were \$27,800.00.
- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of August 2011. As of August 31, 2011, there were 24,622 active licensees, 2,029, inactive licensees and 10,136 retired licensees. There were 4,164 active firms and 332 retired firms. There were 225 new applications approved in August 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in August 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.

Ms. Maxwell presented the Commission with a flowchart outlining the system for penalty education tracking. She also gave the Commissioners and Staff an overview of the meeting plans for the October 13-14, 2011 meeting in Kingsport.

The Commission reviewed and discussed the meeting schedule for 2012. Potential changes to the 2012 schedule were discussed. Commissioner Alexander recommended that the schedule be altered so TREC can award the Tune Award to Jules Wade of MAAR. He suggested that if Commissioners would like to attend the TAR Q&A then they may travel on their own to attend. Ms. McDermott, having taken note of all suggestions, stated she would work on revising the schedule and re-present it to the Commission later in the meeting.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Discussion for the month of September 2011. **Commissioner Joh made a motion to approve all of the courses (S1-S14) as presented; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Request for Instructor Approval

- Randall Isaacson (#1366) requested the approval of David Mason to teach the course "Understanding Mold Restoration (#4227).
- Turner Publishing Company (#1527) requested the approval of Richard Courtney to teach the course "Business Wisdom of the Beatles (#6654).

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

Mr. McDonald presented a list of all scheduled 2012 Education Seminars.

Chairman Northern recessed the meeting for lunch 11:26 a.m. and reconvened at 1:09 p.m.

The person scheduled to appear at 1:00 p.m. did not show so the Commission moved ahead on the agenda and began the legal report while they were waiting for a 2:00 p.m. informal applicant appearance.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) 2010036741 &**
- 2) 2011001101 – Commissioner Alexander moved to accept legal counsel’s recommendation to proceed to a Formal Hearing because of non-response from Respondent; seconded by Commissioner McMullen; unanimous vote; motion carried.**
- 3) 2011015071 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 4) 2011018811 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to send a Letter of Warning regarding TCA §62-13-403(2) [licensee is required to disclose to each party to the transaction any adverse facts of which the licensee has actual notice or knowledge] and to additionally require Respondent to complete eight (8) hours of continuing education in Ethics within six months (in addition to required CE for renewal); seconded by Commissioner Joh; unanimous vote; motion carried.**
- 5) 2011010411 – Commissioner Collins made a motion to accept legal counsel’s recommendation; motion failed for lack of a second. Commissioner Flitcroft made a motion to issue a Consent Order with a civil penalty of \$3,000.00 for violation of TCA §62-13-312(b)(5)[failure to remit monies belonging to another], TCA §62-13-312(b)(11)[accepting a commission from anyone other than the principal broker] and TCA §62-13-312(b)(20) [conduct constituting improper, fraudulent or dishonest dealing]. He further moved to require the Respondent to complete eight (8) hours of continuing education in Ethics within three (3) months and attend a two day TREC meeting within six (6) months; seconded by Commissioner McMullen; unanimous vote; motion carried. Commissioner Alexander made a motion to open a complaint against the Respondent’s principal broker for failure to supervise; seconded by Commissioner Flitcroft; vote: 7 yes, 1 no (Commissioner Joh voted no); motion carried.**
- 6) 2011018931 &**
- 7) 2011018932 – Commissioner McMullen made a motion to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 8) 2011017851 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**

- 9) 2011017291 – Chairman Northern recused himself from the discussion and the vote and Commissioner Stephenson acted as Chairman during the duration of the complaint. Commissioner DiChiara made a motion to move forward with a formal hearing; seconded by Commissioner Collins; vote: 7 yes, 0 no, 1 abstained/recused (Chairman Northern).
- 10) Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$5,000.00 and for the suspension of Respondent’s license for 12 months and further require the Respondent to attend a complete two day TREC meeting within six months for violations of TCA §62-13-312(b)(2)(3)(5) and (20)[making a promise intended to induce without intent or ability to follow through, pursuing a course of flagrant misrepresentation, failing to remit or account for money belonging to another and improper conduct for violation of TCA §62-13-404(1)(2) [owing a duty of representing the best interests of a client; seconded by Commissioner DiChiara; unanimous vote; motion carried. Commissioner Flitcroft made a motion to open a complaint against Respondent’s principal broker; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 11) 2011019971 &
- 12) 2011024061 - Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$5,000.00 and for the suspension of Respondent’s license for 12 months and further require the Respondent to attend a complete two day TREC meeting within six months for violations of TCA §62-13-312(5) and (20)[multiple (5) violations of failing to account for and remit money belonging to another and for improper conduct]; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 13) 2011019441 - Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$2,000.00 and for the suspension of Respondent’s license for 12 months and further require the Respondent to attend a complete two day TREC meeting within six months for violations of TCA §62-13-312(5) and (20)[multiple (5) violations of failing to account for and remit money belonging to another and for improper conduct]; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Informal Applicant Appearance

Sean Keith Hornbeck, applicant appeared with his principal broker Aaron Bryan and his legal representative Allen Woods to request he be approved to be licensed as a Timeshare Salesperson license. Mr. Hornbeck appeared because he holds a law license that is temporarily suspended. **Commissioner Collins made a motion to approve Mr. Hornbeck’s request; seconded by Commissioner Stephenson; vote: 7 yes, 1 no (Commissioner McMullen voted no.); motion carried.**

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

Commissioner Flitcroft (Chair of the Errors & Omissions subcommittee) addressed the Commission regarding E&O insurance. He advised the Commission that Mr. Wayne Pugh, General Counsel for the Division of Regulatory Boards, would address the Commission the next morning regarding potential modifications to the Request for Proposal (RFP) when next bidding the E&O contract. The Commission discussed various options for encouraging E&O compliance such as staggering the renewal of E&O to run with the license renewal date for each individual licensee or require specific license numbers and a copy of a certificate if E&O insurance with all contracts.

Upon the Commission's request, Mr. Green presented the following proposed rule change: **Note: Proposed new language is in bold.**

Rule 1260-1-.04 LICENSES

- (1) No Principal Broker shall permit a broker, affiliate broker or time-share salesperson under his supervision to engage in the real estate business unless the broker, affiliate broker or timeshare salesperson has been issued a valid license and is covered by an errors and omissions insurance policy.
- (2) **At the time of renewal of the errors and omissions insurance policy a certification shall be affixed to the license evidencing that the current license is covered by a current errors and omissions policy in the name of the licensee. The license and errors and omissions policy shall be prominently displayed in the place of business of the licensee's principal broker.**
- (3) **The Commission through the Office of the Tennessee Real Estate Commission shall issue the certification to the licensee upon receipt of verification that the licensee is covered by a current and valid errors and omissions policy.**
- (4) Each licensee is individually responsible for satisfying all legal requirements for retention of his license, including, but not limited to, paying appropriate fees, completing real estate education; **and ensuring their principal broker affixes certification of current errors and omissions policy to their current license.**
- (5) Each licensee in a firm must obtain any desired change of affiliation or status through the firm's principal broker.
- (6) All Tennessee licensees holding nonresident licenses issued in other states shall file copies of such licenses in the Office of the Tennessee Real Estate Commission and with their principal broker.
- (7) A time-share sales person will only participate in time-share transactions when he is affiliated with a firm which is affiliated with a time-share project.

Commissioner Flitcroft made a motion to take no action to modify Rule 1260-1-.04 until General Counsel Wayne Pugh has the opportunity to address the Commission regarding the RFP for E&O; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Commissioner Flitcroft made a motion that the draft as presented by Counsel Green be modified to state the required information (license number, firm number, principal broker's license number) must be included only on the contract and listing agreement and to also require a (d) E&O policy number; seconded by Commissioner Collins; after some discussion, Commissioner Alexander made a motion to table the motion until Staff can return with more suggestions; seconded by Commissioner Haynes; vote: 4 yes, 3 no; motion carried. Motion was tabled.

Commissioner Joh made a motion to open the discussion up to attendees so that they may give a five minute or less opinion on the E&O discussion; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Attendees made comments and suggestions for the Commission to take under advisement when making decisions about any potential rule changes to improve E&O compliance.

The Commission returned to a matter that was deferred from earlier in the agenda. Ms. Tracy Rhea of IREM did not ever show up for her appearance before the Board as scheduled. Therefore, **Commissioner Alexander made a motion that since Ms. Rhea of IREM did not appear then the matter not be discussed; seconded by Commissioner McMullen; unanimous vote; motion carried.**

Chairman Northern recessed the meeting on Thursday, September 8, 2011 at 3:43 p.m.

TENNESSEE REAL ESTATE COMMISSION MINUTES September 8 – 9, 2011

The Tennessee Real Estate Commission reconvened on September 9, 2011 at 9: 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, and Kelly McDermott, Administrative Secretary.

The Commission continued their discussion regarding the proposed 2012 TREC meeting schedule. Chairman Northern read into the record a letter received via email from Francie Ryder, Executive Officer of the Greater Chattanooga Association of Realtors®. In the letter, Ms. Ryder invited the Commission to return to Chattanooga on April 12-13 for the 100 year anniversary celebration of GCAR. **Commissioner Alexander made a motion to accept the gracious invitation and to hold the April TREC meeting in**

Chattanooga on April 12-13, 2012; second by Commissioner DiChiara; unanimous vote; motion carried. Commissioner DiChiara made a motion to hold the meeting in Jackson in July instead of September 2011; seconded by Commissioner Alexander; unanimous vote; motion carried.

Ms. McDermott read into the record the following proposed meeting dates and location for 2012:

- Thursday, January 12 and Friday, January 13, 2012 in Memphis
- Wednesday, February 8 and Thursday, February 9, 2012 in Nashville
- Wednesday, March 7 and Thursday, March 8, 2012 in Nashville
- Thursday, April 12 & Friday, April 13, 2012 in Chattanooga
- Wednesday, May 9 & Thursday, May 10, 2012 in Nashville
- Wednesday, June 6 & Thursday, June 7, 2012 in Nashville
- Thursday, July 12 & Friday, July 13 in Jackson
- Wednesday, August 8 & Thursday, August 9, 2012 in Nashville
- Wednesday, September 12 & Thursday, September 13, 2012 in Nashville
- Thursday, October 11 & Friday, October 12, 2012 in a tbd East TN location
- Wednesday, November 7 and Thursday, November 8, 2012 in Nashville
- Wednesday, December 5 and Thursday, December 6, 2012 in Nashville

Commissioner DiChiara made a motion to adopt the 2012 TREC meeting schedule as proposed by Ms. McDermott; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Chairman Northern made note for the record that several attempts have been made by the Commission for a pay increase for Eve Maxwell, Executive Director of TREC, to be approved and implemented. He advised that he would be sending a letter to the Administration and will be sending the letter around to the various Commissioners to be signed by each.

The Commissioner reported on matters of concern to them and the Commission. All agreed that coming to Chattanooga is always a pleasure and that they are happy to be returning in the near future.

Mr. Wayne Pugh, General Counsel for the Division of Regulatory Boards in the Department of Commerce and Insurance addressed the Commission regarding the RFP for the E&O contract. He and the Commissioners had a detailed conversation about potential modifications that could be made to the RFP that would assist in compliance by licensees. He explained that when you have a master insurance policy, the time limit of each individual policy cannot exceed that of the master policy. Mr. Pugh suggested to the Commission that by doing away with a master policy, the individual policy renewals may be able to run with the renewal of the license. He explained that the Commission, per statute, sets the parameters of the RFP and what they request will be included in the bid. Ms. Maxwell reviewed with the Commission some "RFP Discussion Points" and also read a letter from Cindy Rice Grissom, CEO of Rice Insurance, expressing some of their concern's regarding changing the manner in which the current policy renews. Commissioner Alexander noted that there are many exclusions in the current policy and that since TREC is charged with protecting the public, those exclusions should be

addressed when bidding the RFP. Chairman Northern said that he is concerned with Rice Insurance's concern that the administrative costs of a change would be passed along to licensees through increased premiums and that the changes could have an impact on principal brokers. Mr. Pugh reiterated that the Commission has the authority to set terms, such as exclusions. He explained that if the State mandates that a licensee must have E&O insurance and they offer licensees an option (through a State contracted provider), then they have no excuse and must obtain E&O through that provider or an alternate provider. It was determined that it would be a good idea to explore an RFP where the provider insures a licensee individually and not under a master policy. **Commissioner Haynes made a motion that the Commission pursue the prospect of moving away from a master policy and instead require an individual policy that would expire with the licensee's TREC license; seconded by Commissioner DiChiara. The floor was opened back up for discussion before the vote on the motion.** The Commissioners agreed that they all needed to time to take the information (policy, contract) provided and study it before any definitive measures are taken. It was agreed that the matter would again be discussed at the November meeting. It was suggested that Commissioner Collins spearhead a subcommittee to make recommendations to the full board at that meeting. The timing of the renewals of both E&O and licenses was discussed as it relates to the staggering of license renewals. Ms. Maxwell was asked to investigate the logistics of the computer system to handle a change of this manner. It was also decided that the Commission would discuss certain endorsements to the policy such as an endorsement for Real Estate Appraisers. **The ultimate vote, after the discussion on Commissioner Hayes motion was unanimous and the motion carried.**

The Commission briefly discussed where the 2012 Staff Christmas luncheon will be held. **Commissioner Stephenson made a motion that the Christmas luncheon again be held at Maggiano's, to be paid for by the Commission members, to thank the Staff for their ongoing work; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Commissioner Collins made a motion to adjourn the meetings; seconded by Commissioners McMullen; unanimous vote; motion carried.

Chairman Northern adjourned the meeting on Friday, September 9, 2011 at 10:55 a.m.