

TENNESSEE REAL ESTATE COMMISSION MINUTES
June 13 – 14, 2012

The Tennessee Real Estate Commission convened on June 13, 2012, at 9:16 a.m., in the Davy Crockett Building at 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman William “Bear” Stephenson, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Michelle Haynes, Commissioner Wendell Alexander and Commissioner David Flitcroft were present. Commissioner Austin McMullen was absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly McDermott.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the June 2012 Commission meeting. Chairman Northern called for any changes to the agenda. Commissioner Griess asked to add a general discussion on the topic of who can pay a licensee. **Commissioner Alexander made a motion to adopt the agenda, with the addition of said discussion, for the June 2012 meeting; seconded by Commissioner DiChiara; unanimous vote; motion carried. Commissioner Collins made a motion to not add any other additional matters to the agenda because of the already heavy content of the agenda; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

The next order of business was the approval of the May 2012 minutes (**Exhibit 2**). **Commissioner Collins made a motion to approve the May 2012 minutes; seconded by Commissioner Alexander; vote: 6 yes, 0 no; 2 abstained (Commissioner Alexander and Commissioner Flitcroft abstained because they were absent from the May meeting); motion carried.**

The next order of business was the election of Chairman and Vice-Chairman for the 2012-2013 fiscal year. Ms. Maxwell asked for nominations for Chairman. **Commissioner Alexander nominated Commissioner William “Bear” Stephenson for Chairman of the Tennessee Real Estate Commission for July 1, 2012 through June 30, 2013; the nomination was seconded by Commissioner DiChiara; Commissioner Alexander then called for nominations to cease and for Commissioner Stephenson to be elected Chairman by acclamation; roll call vote: 8 yes, 0 no; motion carried.** William “Bear” Stephenson was elected Chairman of the Tennessee Real Estate Commission. Ms. Maxwell asked for nominations for Vice-Chairman. **Commissioner DiChiara nominated Commissioner Michelle Haynes for Vice-Chairman of the Tennessee Real Estate Commission for July 1, 2012 through June 30, 2013; seconded by Commissioner Flitcroft; roll call vote: 8 yes, 0 no; motion carried.** Commissioner Michelle Haynes was elected Vice-Chairman of the Tennessee Real Estate Commission.

INFORMAL APPLICANT APPEARANCE

Jimmy Douglas Dixon, applicant appeared with his potential Principal Broker Richard Butts of Wyndham Vacation Resorts in Fairfield Glade to request he be approved to apply for a Timeshare Salesperson license. Mr. Dixon disclosed to the Commission the following convictions: DWI in 2000, Bad Check, DUI and Public Intoxication in 2004, Fraud, two DUIs, Theft

with Check and Forgery in 2005 and two counts of Driving on No License/Revoked License in 2010. After discussion, **Commissioner Collins made a motion to approve Mr. Dixon's request to apply for a Timeshare Salesperson license; seconded by Commissioner Alexander; vote: 7 yes, 1 no (Commissioner Northern voted no); motion carried.**

INFORMAL APPLICANT APPEARANCE

Felix H. Valdes, expired Timeshare license #314535 and Affiliate Broker applicant appeared with his potential Principal Broker Ralph Minnick of Timeshare Wholesalers of Pigeon Forge in Sevierville to request he be approved to apply for an Affiliate Broker license. Mr. Valdes disclosed to the Commission the following convictions: Concealed Firearm in 1986 and Distribution of Cocaine in 1988 and two complaints (one was dismissed and one resulted in a Letter of Warning) filed against him in 2011 after his Timeshare license had expired. **Commissioner Stephenson made a motion to approve Mr. Valdes' request to apply for an Affiliate Broker license; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

INFORMAL APPLICANT APPEARANCE

Michael Dioguardi, applicant, appeared with his potential Principal Broker Thomas Andrews of Andrews and Associates in Nashville to request he be approved to apply for an Affiliate Broker license. Mr. Dioguardi disclosed to the Commission the following conviction: Attempt to Provide Obscene Material to a Minor. **Commissioner Flitcroft made a motion to approve Mr. Dioguardi's request to apply for an Affiliate Broker license; seconded by Commissioner Collins; unanimous vote; motion carried.**

Commissioner Griess' explained to the Commission that some brokers have come to him with a question regarding payment to affiliates. He stated that it was his understanding that the principal broker is the only person who may pay an affiliate of their firm. He asked the Commission to clarify their stance on this issue for the record. Ms. Cropp, Assistant General Counsel, referenced the statute regarding payment to affiliates. Said statute reads: T.C.A. §62-13-312(b) "The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of (11) Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom the licensee is affiliated." It was the general consensus of the board members is that it is true that the principal broker is the only person who can pay their affiliates but Commissioner Griess stated that he is not entirely sure that is the practice of some licensees. **Commissioner Griess made a motion to notify principal brokers that they alone are who can pay their affiliates; seconded by Commissioner Alexander; Commissioner Haynes suggested the information be put in the TREC News Journal; motion carried unanimously.**

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 complaint statistics to the Commission. As of May 31, 2012, TREC had a total of 130 open complaints.

There were 58 new complaints in May 2012. There were 107 complaints in the legal department and 23 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2011-2012 is 184. Total Civil Penalties paid in May 2012 were \$19,100.00.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of June 2012. As of May 31, 2012, there were 23,580 active licensees, 1,062 inactive licensees and 10,046 retired licensees. There were 4,125 active firms and 327 retired firms. There were 219 new applications approved in May 2012. 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 average number of licenses issued per month in 1997 and 2000 – 2012, firms closed or retired from 2008 – 2012 and the applications approved from 2008 – 2012.

ERRORS & OMISSIONS RFP

Chairman Northern opened the discussion of the E&O RFP. He recognized the presence of visitors who wished to address the Commission regarding the proposed RFP and the existence of a letter submitted to the Board/TREC from Sue Turner, President of TAR. Ms. Maxwell briefed the Commission on where the Office of Contract Review was in the process of writing the RFP in accordance with what the Commission had voted on the previous month. Ms. Cropp advised the Board that she had met with the Department's contract contact, Dan Birdwell, both individually and with Counsel Wayne Pugh and she reviewed the terms previously discussed and approved by the Board.

Russ Farrar, counsel for TAR, addressed the following issues regarding the E&O RFP: 1) cost to licensees/TAR members; 2) Principal Brokers having problems tracking compliance of their affiliates when all of their licenses and E&O are staggered; 3) Principal Brokers having difficulty providing proof to outside entities who have insurance requirements; 4) Ability to obtain excess coverage; 5) Concerns about the state plan failing; 6) The Limits of Coverage; and 7) Future issues the staggering of E&O renewal could cause. Chairman Northern addressed why the proposed changes were being made to the RFP. Mr. Farrar said that there may be well intentioned but unexpected consequences to TREC actions regarding the changes to the RFP. Commissioner Stephenson asked Mr. Farrar what TAR plans to do to ensure their members comply with the E&O requirement. Mr. Farrar stated that he thinks he can speak for TAR when he says they would work with whatever suggestions TREC made to educate their members regarding the important need to renew their insurance including addressing it all meetings and in the TAR Digest. He assured the Board that TAR would work with TREC to solve the problems. Commissioner Collins asked Mr. Farrar about whether they would be willing to take a bill to the legislature saying that TREC could suspend the license of those who do not renew their insurance. Mr. Farrar said that he did not want to speak for TAR right then but he thinks there is an excellent chance of TAR supporting that legislation.

Cindy Rice Grissom, CEO of Rice Insurance, addressed the Commission as well regarding the potential changes to the RFP. Specifically she concentrated on the proposed coverage limits of

\$1,000,000.00. She stated that such a limit is not commercially available in the market. Chairman Northern confirmed, for the record, that the RFP has not been officially bid so they Board has no conflict with allowing the current contract holder address them.

Assistant Commissioner Bill Giannini addressed the Commission regarding the E&O RFP and the Administration's understanding of the requested RFP content. He stated that the Administration is charged with administering the will of the Commission. He advised that his concern is that the division staff is under instruction of the Board to construct a RFP with certain criteria. He stated that he wants to confirm the exact expectation of the Commission. He suggested to the members of the Board that they make clear the intent because the division is under a significant time crunch to get the RFP written and it is paramount that the persons writing the RFP understand the Board's expectations. He explained that he became involved with the process about six weeks earlier and that the official position of the Administration is that they feel strongly that it would be beneficial to the staff of TREC to stagger the renewal and have insurance that ran with the renewal date of the license and as a requirement to renew. He went on to say that, having said that, he agrees with Mr. Farrar that Tennessee does have the lowest premiums for E&O insurance and changes could affect the rate, but the State is not in the insurance business. He once again asked the Board to make sure they are clear on their expectations for the RFP because the last thing the Administration wants is to end up with an RFP that does not reflect the intentions and expectation of the Commission.

Chairman Northern asked if the Commission would like to deviate from its proposed plan for the RFP. **Commissioner Griess made a motion to have the RFP, as proposed most recently, amended to reflect coverage amounts as they stand now instead of requesting the \$1,000,000.00 coverage (in other words, keep it as it is now); seconded by Commissioner Alexander for discussion.** Commissioner Alexander asked Mr. Farrar again about TAR's willingness to take a bill to the legislature to allow TREC to suspend the license of a licensee who fails to renew their E&O insurance in a timely manner. Mr. Farrar said that there are no guarantees but he sees that as something TAR would most likely be willing to do. Commissioner Alexander reiterated that if TREC had the authority to suspend it would help take the burden of compliance off the staff. **Commissioner Alexander offered a friendly amendment to this effect. It was determined that it would be best to separate Commissioner Griess' motion and Commissioner Alexander's amendment. Therefore, Commissioner Griess restated his motion to keep the limits as they currently are now; seconded by Commissioner Alexander; vote: 6 yes, 1 no (Commissioner Collins voted no); motion carried. Commissioner Alexander made a motion for TREC to ask TAR to introduce a bill to the legislature that if a licensee does not renew his/her E&O insurance then his/her license can be automatically suspended without a formal hearing or a Consent Order and that the E&O not be changed to renew on a staggered basis but stay the same as it is now (end of the calendar year, every two years); seconded by Commissioner Collins; unanimous vote; motion carried.** Chairman Northern reiterated that we are sending out an RFP that mirrors what we have now in terms of coverage limits and time of renewal.

Chairman Northern recessed the meeting at 12:20 for lunch and the meeting was reconvened at 2:18 p.m.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented Courses for Commission Evaluation for June 2012. **Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Mr. McDonald presented the following Instructor Reviews for the month of June 2012:

- Candy Joyce of Middle Tennessee Association of REALTORS® (#1141) requested the approval of Bruce Simms to teach the Safety Training for Real Estate Professionals Course (#3416).
- Karen Czarnecki of Williamson County Association of REALTORS® (1135) requested the approval of Chip Kerr to teach “Your Offer is Binding...Now What?”(#6339).

Commissioner Collins made a motion to approve the above instructors; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Mr. McDonald had been asked at the previous month’s meeting to gather and report on the number of candidates for examination who had taken the examination four or more times in the past year. He advised that PSI had sent over those statistics and he had reviewed them. He reported that there are seven candidates for Affiliate Broker and two candidates for Broker that have taken the State and National portions of the exam four times or more and failed. The discussion was being held because Ms. Maxwell and Mr. McDonald had asked if the Commission would like to, in any way, alter the manner in which the current retesting policy is worded in the PSI Examination Handbook. As of now the conditions for retesting are as follow: *“For affiliate broker and broker examinations candidates who fail the first attempt at the examination may retake it as soon as they want (however you cannot schedule until the day after you took the examination). Those who make a third attempt at the examination must wait thirty (30) days after the second. Those who fail the third attempt must obtain an additional twelve (12) hours of approved education and wait thirty (30) days before making a fourth attempt. After the fourth attempt, any subsequent exams may be scheduled immediately with no waiting period.”* Ms. Maxwell explained that PSI does have a provision for accommodating test takers with special needs (with proof). It was ultimately determined that the discussion would be put back on the agenda of a future meeting for further review.

Mr. McDonald also presented the Commission with a non-passing report sheet given to an affiliate broker testing candidate. He explained that the topics are listed by number of questions asked per topic and numbers missed on a topic. He suggested that perhaps a 12 hour refresher course required of candidates who fail the exam the third time could be written to detail these topics and could cover the tested topics of Property Ownership, Land Use Controls and Regulations, Valuation and Market Analysis, Financing, Laws of Agency, Mandated Disclosures, Contracts, Transfer of Title, Practice of Real Estate, Real Estate Calculations and other specialty areas. He went on to say that the course would not be given for education credit but could be helpful to those candidates that are retesting and required to take the course suggested or candidates that have been out of the business for a period and would benefit from such a course. Mr. McDonald asked the Commission if we want to ask the instructors to develop

such a course. Commissioner DiChiara stated that it would be difficult to develop such a course as these discussed seven candidates who have tested and failed four or more times all missed different questions, in different specific areas, of the examination. She went on to say that this is a minimal number of people and they are scattered throughout the state and asked if it is worth it to spend the amount of time required for class development for such a small number of candidates. Chairman Northern agreed that it is not possible to tailor a course to meeting everyone's needs. Mr. McDonald thanked the Commission for its guidance.

Mr. McDonald discussed with the Commission an Instructor Training Course and the statute that makes reference to the requirement for such a course. He explained that the following Rule is not currently being enforced because of a lack of availability of instructor courses being offered for the remainder of the year. The Rule reads: "Rule 1260-5-.04 - QUALIFICATIONS FOR INSTRUCTORS (1) In order to be eligible for approval by the Commission, a course in real estate designed to meet the educational requirements established in T.C.A. § 62-13-303 shall be under the personal and direct supervision of an instructor who: (a) effective January 1, 1995, has completed a Tennessee Real Estate Commission approved course in instructor training." Mr. McDonald stated that he had spoken with Commissioner DiChiara about this matter and asked for her input. Mr. McDonald stated that his concern is how does TREC assure that instructors have the ability to take this course. Commissioner DiChiara stated that we do not want them to take the instructor course online because teachers must be able to interact and if a course is done online then there is no interaction. She stated that she has taken the 16 hour instructor course and it is two days of intense training. She stated that if they do not have that kind of training then they should not be teaching. Mr. McDonald also stated that the rule does not address certifications from organizations as ARELLO, IDEC and CDEC. Mr. McDonald stated that the real issue is how are we going to actually offer a course that is required by rule. Chairman Northern stated that we are facing the same issue with this course as we do some other courses that are not readily available. He stated that if we are going to require something then we need to make sure it is readily available even if that means we will have to conduct it and develop our own course. He suggested that we could look into using the resources of the Education and Recovery Fund to develop our own courses. He also suggested that, if possible, TREC could underwrite these courses, where if a provider does not make any money, then we have underwritten it to the point of it being paid for in the end.

Mr. McDonald stated that included in the rules promulgated in 2010 there was a portion that if you are going to teach, for example, Agency or CORE, then they must take that actual course before you teach it. He also stated that, to his knowledge, the TAR instructor training course, does not address anything about TREC rules, laws or regulations and that it is instead set up to teach instructors how to teach adults. Chairman Northern asked Mr. McDonald if he is in a position where he can develop a course and teach it around the State of Tennessee. Mr. McDonald stated that yes he would say that is in a position to do so but is not sure if the Administration would allow him to do so. He stated that they do have his willingness to put the course together if deemed appropriate by the Administration. Chairman Northern asked if he had the credentials to teach. Mr. McDonald stated that he has taught college courses since 2003. Ms. Maxwell stated that Staff is in the process of rewriting all job plans for all employees and they are written with a fairly broad goal range. She stated the big issue is how would it be

funded and the logistics of putting it together but that using the E&R fund could be examined. Ms. Maxwell also said that Mr. McDonald is certainly qualified and capable of putting together and teaching the course and doing an excellent job. Commissioner DiChiara explained that the TAR instructor course has nothing to do with a specific topic but it strictly about teaching instructors how to teach.

Commissioner Collins asked again about TREC creating an instructor workshop like exists in Alabama. Chairman Northern asked Ms. Maxwell and Mr. McDonald to start putting the pieces together to possibly make this happen. Ms. Maxwell clarified that we are talking about developing a course that not only teaches how to teach but would also address matters that would differ between TREC and TAR. Commissioner DiChiara stated that it would probably take Mr. McDonald at least a month to develop and write a 16 hour course. Chairman Northern stated that he believes a course outline should be created that any instructor can teach. Commissioner DiChiara stated that if Mr. McDonald develops a course then Rule 1260-5-.04(1)(e) – “if such course concerns the law of real estate, has graduated from a law school accredited by the American Bar Association or approved by the State Board of Law Examiners” does not apply. The discussion was deferred for further research and development by Staff.

Mr. McDonald brought before the Commission an issue involving sponsored courses. He explained that a provider upon initial approval is given a copy of the TREC education rules and is specifically made aware of the rules of soliciting during continuing education. He advised that it has become standard practice for approved continuing education providers who have courses in more niche topics to seek a sponsor to cover the costs associated with the continuing education class and even offering enticements for attendance from the sponsor. He stated that currently, the rule speaks to the relationship with brokers and the promotion of a course without Commission approval but does not address the trend addressed before you. He presented them with examples of advertisements for TREC approved continuing education with sponsors. He asked the Commissioners if they believe this trend needs further attention in the form of the creation of a policy or other means. He stated that the firms in the examples are offering giveaways or incentives for attendance. He asked if the Commission finds it acceptable for people to come into this course, who are not approved sponsors, to offer incentives just to increase attendance. He also clarified that there are no sponsor presentations being made during the presentation of the course content. Chairman Northern stated that is a person chooses to stay after class to speak to a representative from an outside sponsor then we, as TREC, have no control over that action. Mr. McDonald stated that he wishes to know what to tell providers and sponsors when they ask if it is acceptable. Chairman Northern reiterated that as long as the promotion does not violate current policy, meaning it does not interfere with the course, then he finds it acceptable. This was also the consensus of the Commission.

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

At the beginning of the text of each legal report the following text is inserted and Ms. Cropp read the statement into the record: “Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.”

- 1) 2011031711 &
- 2) 2011031712 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 3) 2011031771 &
- 4) 2011031772 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 5) 2011032241 &
- 6) 2011032242 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to close and flag as to both Respondents; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 7) 2012000501 &
- 8) 2012000502 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to close and flag as to both Respondents; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 9) 2011024031 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,500.00 for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others in violation of T.C.A. § 62-13-312(b)(5)(14) and T.C.A. § 62-13-403(6) and for failure to respond to a complaint filed with the Commission within ten (10) days in violation of T.C.A. § 62-13-313(a)(2) plus attendance at a two day meeting of the Commission within 180 days of Respondent’s execution of Consent Order; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 10) 2011032711 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 11) 2012002581 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 12) 2012002621 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to send a Letter of Instruction; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 13) 2012004901 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to send a Letter of Instruction; seconded by Commissioner DiChiara; vote: 6 yes, 2 no (Commissioners Haynes and Alexander voted no); motion carried.

After discussion by the Board of what should be included in the Letters of Instruction, Commissioner Flitcroft made a motion to hold off on issuing the Letters of Instruction for Respondent 12) 2012002621 and Respondent 13) 2012004901 to allow for further discussion and review; seconded by Commissioner Griess; unanimous vote; motion carried.

- 14) 2012003311 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 15) 2012003341 &
- 16) 2012003342 &
- 17) 2012003343 &
- 18) 2012003351 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 19) 2012003371 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order for \$2,000.00 for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-313(a)(2), failure to timely complete administrative measures as required by the Commission for either change of affiliation or retirement in violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.02(2) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order. Additionally, refer to securities division for review; seconded by Commissioner Collins; unanimous vote; motion carried.
- 20) 2012003401 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 21) 2012004361 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue Consent Order for \$500.00 for failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. § 62-13-403(6) and failing to disburse funds in an escrow account without unreasonable delay in violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.09(7) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Stephenson; vote: 6 yes, 2 no (Commissioners Northern and Haynes voted no); motion carried.
- 22) 2012004441 – Commissioner Flitcroft made a motion to dismiss the complaint so that it is not on the Respondent’s record but to follow up with the recommended Letter of Instruction regarding T.C.A. § 62-13-102(4)(A) and (B) which defines “broker” and T.C.A. § 62-13-312(b)(11) which prohibits an affiliate from accepting commission or consideration for performance of any act specified in chapter from any person other than broker; seconded by Commissioner Collins; unanimous vote; motion carried.
- 23) 2012004451 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.
- 24) 2012005121 &
- 25) 2012005122 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

- 26) 2012005341 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to close and flag; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 27) 2012005151&
- 28) 2012005152 &
- 29) 2012005153 – Commissioner Stephenson made a motion to dismiss as to Respondent 1 and Respondent 2 and close and flag Respondent 3’s file due to apparent failure to take administrative steps; seconded by Commissioner DiChiara ; unanimous vote; motion carried.
- 30) 2012004931 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Vice-Chairman Stephenson stepped in to act as Chairman as Chairman Northern had to step out of the meeting room.

- 31) 2012005321 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 32) 2012005701 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 33) 2012005351 &
- 34) 2012005352 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation but it failed for lack of a second. Commissioner Haynes made a motion to dismiss the complaint so it will not be on Respondents’ record but to follow up with a Letter of Instruction to Respondents regarding duty of diligently exercising reasonable skill and care to parties in a transaction and duty of loyalty to client; seconded by Commissioner DiChiara; vote: 7 yes, 0 no; Commissioner Northern abstained as he was absent from the room for the discussion; motion carried.
- 35) 2012005581 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order for \$2,000.00 for failure to exercise adequate supervision over the activities of a licensed affiliate broker in violation of T.C.A. § 62-13-312(b)(15) and failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and T.C.A. §62-13-313(a)(2) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Northern; unanimous vote; motion carried.
- 36) 2012005991 – Commissioner Griess made a motion to accept legal counsel’s recommendation to issue a Consent Order for \$1,000.00 for unlicensed activity in violation of T.C.A. § 62-13-104(b)(2); seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 37) 2012006011 – Commissioner DiChiara made a motion to perform a follow up audit in 60 days and to issue a Consent Order for \$1,500.00 for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to

others in violation of T.C.A. § 62-13-312(b)(5), failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. § 62-13-403(6) and failure to properly disburse funds from an escrow account in violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.09(1)(6) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Chairman Northern recessed the meeting on Wednesday, June 13, 2012 at 5:15 p.m.

June 14, 2012

The Tennessee Real Estate Commission reconvened on June 14, 2012, at 9:14 a.m., in the Davy Crockett Building at 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman Isaac Northern, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Michelle Haynes, Commissioner Wendell Alexander and Commissioner David Flitcroft were present. Commissioner Austin McMullen and Vice-Chairman William "Bear" Stephenson were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly McDermott.

The Rulemaking Hearing for Chapter 1260-01 – Licensing convened at 9:16 a.m. The following rules were voted on and the Economic Impact Statements were reviewed and also voted on during the hearing. All rules were adopted. A summary of all motions will be compiled upon the receipt of the court reporter transcript delivery to staff.

- Rule 1260-02-12 [Fees]
- Rule 1260-02-.32 [Civil Penalties]
- Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]

The Rulemaking Hearing for this chapter and rules adjourned at 9:40 a.m.

Assistant General Counsel Robyn Ryan came back before the Commission for some clarification regarding the previous day's action on the E&O RFP. The Commission clarified for Ms. Ryan that they wish to only change the limits back to as they were and not include the staggering and that all of the other proposed changes, including the exclusions (outlined on Page 5 – 6 of the official TREC minutes of the February 2012 meeting). **Commissioner Collins made a motion to proceed with the most recent proposed E&O RFP with two exceptions: 1) the limits of coverage will stay the same as they are now and 2) there will not be a staggering of the E&O renewals; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR (continued)

Ms. Maxwell reported on an update of the Education and Recovery Fund. She advised the Commission that the Comptroller's office has been doing an internal audit in anticipation of the upcoming Sunset Audit in 2013. She stated that one of the auditors has done a great job of studying the E&R fund and corresponding statute and those statutes of other states to see if there is a way for TREC to access some of the moneys that are in the bigger part of the E&R

fund. She explained to the Commissioners that the Education and Recovery Fund consists of two accounts: 1) the body of the account that holds all of the money paid in from applications and 2) the interest off the large fund plus the education course and instructor fees. She explained that the large fund has about \$3.8 million dollars in it and the interest fund has around \$43,300.00. She stated that the auditor from the Comptroller's office had asked for suggestions from the board for things that could possibly be funded by the large portion of the fund. She stated that, in turn, the board members made some suggestions which she in turn gave the auditor. She stated that hopefully some of the suggestions will be able to be implemented and some of the money can be used to help benefit the licensees and further protect the public of the state. She outlined some of the suggestions and they follow:

- Try to endow a Chair.
- Putting up on scholarships
- Can the money be used for conference travel and seminars; such as ARELLO
- Upgrade the meeting room so we can live stream our meetings
- Work with other agencies around the state that work with low income housing and support counseling regarding low income housing

Ms. Maxwell went on to explain that the auditors will make a final report that will be presented to the Government Operations Committee of the Legislature and then it would be presented to the Legislature. She stated that she is hopeful through that process; some of the \$3.8 million will be released for use by TREC to benefit the licensees and the public on an ongoing basis. Chairman Northern stated that he knows the auditors are trying to get the package together soon but asked Ms. Maxwell to please advise them of the matters discussed the previous day regarding the development of an instructor training course created and taught by Mr. McDonald. Ms. Maxwell advised that they are trying to wrap up the audits and reports and get them presented to the Government Ops Committee in late August or early September. She explained that it is a slow process because the auditors have to do a draft, send it to the Administration who will send it back from revisions, and so on.

Ms. Maxwell reported on the 40 year longevity breakfast to be held in East Tennessee. She explained that Staff had pulled a report of the number of honorees for the next possible breakfast in East Tennessee. She advised that the new honorees are those people who were first licensed between the years of 1968 to 1972. She explained that the list also included those licensees honored at the 2008 breakfast. She advised that Knox County has the largest number of new and old honorees followed by Hamilton and Hamblen. There was a question regarding if were to hold the breakfast in Chattanooga in October 2012 would we be able to reach the largest number of honorees or whether we should look at having the breakfast in East Tennessee another year when we are having our meeting in Knoxville. She advised that there are a total of 255 names and of those there are 140 who have hit the 40 year mark since the last breakfast. Commissioner Griess stated that he believes in makes sense to have the breakfast in a location where the maximum number of honorees can attend because it is centrally located. Ms. Maxwell reminded the Board that TREC cannot pay for the breakfast because anything that TREC pays for has to be open to all licensees; therefore a sponsor or sponsors would be needed to fund the event. She explained that the sponsor would have to be responsible for the design and printing of invitations and programs and awards, the food and venue, etc... She advised that the cost of the Middle Tennessee breakfast for the food and venue was around \$1,278.00 and

45 people attended. Commissioner DiChiara asked if doing an afternoon reception instead of a breakfast had been considered. After some brief additional discussion, it was determined that the item could be placed on the next month's or future month's agenda for further discussion.

Ms. Maxwell reviewed the conference travel budget information with the Board members. She stated that since the Commissioners and staff were unable to attend the ARELLO meeting in June, she looked into different conferences later this year. She reported to the Commissioners on the upcoming CLEAR Annual Conference. She stated that there seems to be a great deal of valuable information and panels on regulation. She advised that if they wish to attend, then the request will need to be submitted to the Administration and the Fiscal Division prior to the July 2012 Commission meeting. It was decided that Commissioner DiChiara and Commissioner Stephenson (if he wishes to attend) and Commissioner Northern (as an alternate) be sent up for consideration.

Commissioner Haynes asked that someone look into having TREC's name submitted for some of the ARELLO awards given out yearly. Mr. McDonald agreed he would definitely do so.

Ms. Maxwell discussed the ceasing of reciprocity. She presented the Commission with a copy of the letter that the Staff sent the other states. She also stated that she and Assistant General Counsel Cropp have been working on revising the website and the necessary forms. She stated that we should probably give the other states at least 30 days notice to disseminate the information and to allow for new applicants. **Commissioner Alexander made a motion to allow 60 days for the hard deadline for the elimination of reciprocity. However, Commissioner Haynes then made a motion to extend the deadline to 90 days; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Mr. McDonald, upon the request of the Commissioners, reviewed the dates and locations of the upcoming Education Seminars for the remainder of 2012.

Chairman Northern brought up the issue of the requested raise for Ms. Maxwell. He stated that the board has made numerous attempts to request the increase and have received no written feedback. He stated that he has had verbal exchanges with Assistant Commissioner Giannini, Deputy Commissioner Majchrzak and Commissioner McPeak regarding the matter. The board holds to the contention that Ms. Maxwell's salary should be increased to match that of those directors who do comparable work. Commissioner Alexander and Commissioner Flitcroft commended Ms. Maxwell again for the excellent work she does on a daily basis. Commissioner Alexander stated that it is his understanding that all state employees are receiving a 2.5% pay increase in July. **Commissioner Alexander made a motion that a letter be written and signed by the Chairman requesting that Ms. Maxwell's salary be increased by \$10,000.00 in addition to the new 2.5% step raise; seconded by Commissioner Haynes; Commissioner Griess stated that the effective date should be more specific than immediately and should be a date certain; the motion was amended to state the increase should be effective June 1, 2012; unanimous vote; motion carried.**

Chairman Northern recessed the meeting at 11:22 a.m. for lunch and the meeting was reconvened at 1:08 p.m.

The Rulemaking Hearing for Chapter 1260-07 – Vacation Lodging Services convened at 1:09 p.m. The following rules were voted on and the Economic Impact Statements were reviewed and also voted on during the hearing. All rules were adopted with the exception of the rule regarding advertising. A summary of all motions will be compiled upon the receipt of the court reporter transcript delivery to staff.

- Rule 1260-07-.01 [Scope]
- Rule 1260-07-.02 [Designated Agent Qualifications]
- Rule 1260-07-.03 [Designated Agent Responsibilities]
- Rule 1260-07-.04 [Civil Penalties]
- Rule 1260-07-.05 [Advertising]
- Rule 1260-07-.06 [Instructor Fees]
- Rule 1260-07-.07 [Fees]

The Rulemaking Hearing for this chapter and rules adjourned at 2:49 p.m.

Chairman Northern adjourned the meeting on Thursday, June 14, 2012 at 2:50 p.m.