

TENNESSEE REAL ESTATE COMMISSION MINUTES
December 3 – 4, 2008

The Tennessee Real Estate Commission convened on December 3, 2008, at 9:13 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William “Bear” Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the December 2008 Commission meeting. An applicant request by Sheena Ramsey was added to the agenda. **Commissioner Alexander made a motion to adopt the amended agenda; seconded by Commissioner Collins; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the November 2008 meeting. **Commissioner Alexander made a motion to approve; seconded by Commissioner Northern; unanimous vote; motion carried.**

The Commission met with the Tennessee Real Estate Commission auditors. Auditors present were Mike Loy, William Stewart, Eddie Sneed and Donnie Bates. The discussion included a discussion about new trends in the industry, property management firms, unlicensed activity and Vacation Lodging Services.

Steve Majchrzak, Assistant Commissioner, Regulatory Boards, discussed with the Commission budget issues, the license renewal process and the TREC newsletter.

Chairman Haynes recessed the meeting for lunch at 10:48 a.m. and the meeting reconvened at 12:21 p.m.

DISCUSSION OF RENEWAL/REINSTATEMENT PROCESS

Ms. Maxwell presented the Commission with a report on the estimated cost of sending renewal postcards to the home and the office of licensees and a report on renewal and reinstatement options for the Tennessee Real Estate Commission. Chairman Haynes called for comments from the attendees. Attendees Teresa Buehler, Rick Hollis and James Watts made comments regarding the renewal and reinstatement process. The Commission and staff discussed possible alternative processes to improve the renewal and reinstatement process. Chairman Haynes requested that a representative from the Information System’s division address the Commission at the January meeting.

Commissioner Alexander made a motion beginning immediately 1) a license renewal will be sent to the principal broker; 2) a license renewal will be sent to the licensee's home address; 3) if an email is available, a renewal notice will be emailed to the principal broker; 4) if an email is available, a renewal notice will be emailed to the licensee; 5) if the licensee does not renew by expiration, the principal broker will be fined instead of the licensee; seconded by Commissioner Flitcroft; opened to discussion. Commissioner Collins made a motion to amend to fine the principal broker \$2.00 if their licensee becomes delinquent; seconded by Commissioner Joh; roll call vote on amendment: 4 yes, 4 no; Commissioner Woods abstained; motion failed for lack of a majority. After discussion, Commissioner Alexander revised and restated his original motion to state effective in 30 days 1) a license renewal will be sent to the principal broker; 2) a license renewal will be sent to the licensee's home address; 3) if an email is available, a renewal notice will be emailed to the principal broker; 4) if an email is available, a renewal notice will be emailed to the licensee; 5) if the licensee does not renew before expiration, the principal broker will be fined the same penalty as the licensee; 6) if the agent's affiliation with the firm is terminated, the principal broker is no longer responsible for the penalty; seconded by Commissioner Flitcroft and he added a friendly amendment that the renewal notice sent to the principal broker also tell the principal broker that if the licensee does not comply, they will also be fined; opened to discussion; Commissioner Woods made a motion to table the vote on the motion; motion failed for lack of a second; roll call on Commissioner Alexander's motion: 6 yes, 3 no; motion carried. Commissioner Alexander made a motion that the motion be implemented by policy; seconded by Commissioner Flitcroft; unanimous vote; motion carried. Commissioner Flitcroft made a motion that every time an auditor audits a firm, they should counsel the principal broker regarding every licensee that has expired or will expire within two months; seconded by Commissioner Alexander; unanimous vote; motion carried.

LICENSEE REQUEST

Sherrye Donald, licensee, 300661, appeared before the Commission to request reinstatement with penalty of her license although she has been expired for longer than the 12 month period covered by the reinstatement policy. **Commissioner Northern made a motion to approve Ms. Donald's request to reinstate her license with a penalty of \$1,850.00; seconded by Commissioner Collins; opened to discussion; Vice-Chairman Stephenson made a motion to amend to require Ms. Donald to take eight (8) hours of contract writing continuing education; seconded by Commissioner Flitcroft; roll call vote on amendment: 5 yes, 4 no; amendment passed; Chairman Haynes made a motion that the \$1,850.00 penalty be reduced to \$1,250.00; seconded by Commissioner Flitcroft; Commissioner Collins made a motion to amend that Ms. Donald's attendance at the two day Commission meeting be counted as her eight (8) hours of continuing education; no second on the amendment; amendment failed for lack of a second; vote on motion as amended: unanimous vote; motion carried.**

Steve Neff, Principal Broker for TN Recreational Properties, requested the following exceptions from the Commission for TN Recreational Properties Corp: 1) For people inside of the State - they will be allowed to place their license under Mr. Neff, even though they live outside of the 50 mile limits, given that they are working on his behalf for a specific development project that they have been hired to assist in the sale of property; 2) For people outside of the State - they will be allowed to attain a reciprocal license as allowed by TREC, even though they are outside of the 50 mile limit of Mr. Neff or their Broker, given they hang their license under Mr. Neff, and they solely work on his behalf when in Tennessee for a specific development project that they have been hired to assist in the sale of property. Mr. Neff will be directly responsible for their actions as their Principal Broker while in the State of Tennessee. Mr. Neff requested the Commission grant the waiver of the 50 mile rule for any Affiliates or future Affiliates of TN Recreational Properties Corp. that follow the constraints outlined above, and further requests the Commission provide a letter outlining the waiver that may be submitted with each TREC 1 Form application for affiliation with TN Recreational Properties Corp. Inland Mgmt. Corp. d/b/a/ TN Land and Lakes will be notified that the waiver granted by the Commission in November 2006 for Inland Mgmt. Corp. d/b/a TN Land and Lakes affiliates will be withdrawn once Mr. Neff is no longer the principal broker of that firm .

Vice Chairman Stephenson made a motion to grant Mr. Neff's request for a waiver of the 50 mile rule; seconded by Commissioner Collins; opened to discussion; vote: 7 yes, 0 no; Commissioner Flitcroft abstained; motion carried.

Vice-Chairman Stephenson made a motion regarding Ms. Sherrye Donald, licensee, 300661, who appeared earlier in the meeting. He made a motion to reduce her required eight (8) hours of contract writing continuing education to four (4) hours of contract writing continuing education; seconded by Commissioner Woods; unanimous vote; motion carried.

Russ Farrar, attorney, addressed the Commission regarding a request of his client Sheena Ramsey. Ms. Ramsey graduated with a minor in Real Estate at ETSU and is requesting she be allowed to sit for the affiliate broker examination without taking the 60 hour pre-licensing course based on her prior real estate education at ETSU.

Commissioner Collins made a motion to approve Ms. Ramsey's request; seconded by Commissioner Alexander; unanimous vote; motion carried.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

- Ms. Maxwell presented Courses for Commission Evaluation and Courses Requiring Discussion (**Exhibit 3**) and an Instructor Review request (**Exhibit 4**). Tom Dorsey and Joshua Purvis of @ Home Prep addressed the Commission regarding education submitted for review by their school. **Commissioner Alexander made a motion to defer the Courses for Commission Evaluation and Courses Requiring Discussion and the Instructor Review until the January 2009 meeting; seconded by Commissioner Joh; opened to discussion; vote: 7 yes, 1 no; motion carried.**

There was a brief discussion regarding requiring instructor education and certification and whether to approve courses provided by organizations that restrict membership. J.A. Bucy, Director of Governmental Affairs of the Tennessee Association of Realtors, addressed the Commission regarding instructor education and certification. There was also a brief discussion regarding courses offered by the Tennessee Association of Realtors and the availability of those courses to TAR members and non-members. Tom Dorsey and Joshua Purvis of @ Home Prep readdressed the Commission regarding courses they submitted for review.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 4)** – TREC has a total of **348** open complaints. Two of the 348 open complaints were staff generated Agreed Citations and four are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 18 new complaints since the November meeting. There are 341 complaints in the legal department and 7 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 134. Total Civil Penalties paid in August were \$16,856.00.
- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 5**) to the Commission on real estate licenses approved in 2008 and the number of licensees as of November 27, 2008. As of November 27, 2008, there were 32,672 active licensees, 2,477 inactive licensees and 9,471 retired licensees. There were 4,653 active firms and 299 retired firms. There were 197 new applications approved in November 2008.
- **Instructor Education and Training** – Ms. Maxwell presented a report outlining the Continuing Education instructor education and training and course curriculum requirements in different jurisdictions (excluding pre-licensing courses). There was a discussion regarding the possibility of implementing instructor education and training in Tennessee. Chairman Haynes requested a list of all approved instructors and their resumes.

- **Reciprocity Agreements with Nebraska and Oklahoma** – Ms. Maxwell presented the Commission with correspondence from the Nebraska Real Estate Commission (**Exhibit 7**) and the Oklahoma Real Estate Commission (**Exhibit 8**) outlining addendums to their existing reciprocity agreements with the Tennessee Real Estate Commission. **Commissioner Flitcroft made a motion to no longer have a reciprocity agreement with the Nebraska Real Estate Commission and the Oklahoma Real Estate Commission; seconded by Commissioner Joh; unanimous vote; motion carried.**

DISCUSSION OF POTENTIAL RULE CHANGES

Any action taken regarding rule making was done by consensus vote.

Discussions were held regarding the following statutes or rules (**Exhibit 9**):

- **Rule 1260-2-.12(2)(d) [Advertising]** – Ms. Wiseman, Assistant General Counsel, presented revised language that read, “No licensee shall advertise property listed by another licensee without written authorization from the listing broker and the property owner.” Chairman Haynes suggested the language be changed to read, “No licensee shall advertise property listed by another licensee without written authorization from the property owner on the listing agreement.” After discussion, **Commissioner Flitcroft made a motion to amend the language to read, “No licensee shall advertise property listed by another licensee without written authorization from the property owner and written authorization will be evidenced by a statement on the listing agreement or any other written statement signed by the owner.”; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

Commissioner Flitcroft made a motion that subject to the language of Rule 1260-2-.12(2)(d) being amended, the draft of the proposed rules provided by Ms. Wiseman should be adopted; seconded by Commissioner Collins; opened to discussion; Commissioner Woods addressed Rule 1260-2-.09(7) which proposed language reads, “Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay. Funds should be disbursed or interplead within fifteen (15) calendar days from the date of receipt of a written request for disbursement of earnest money.”

Commissioner Woods made a motion that language be added as to where the parties need to interplead such as in the court of jurisdiction where the property is located. Ms. Wiseman advised Commissioner Woods that Rule 1260-2-.34 [Interpleader Form] states the parties may interplead in General Sessions Court pursuant to T.C.A. 16-15-731. It was decided any changes to Rule 1260-2-.09(7) would be deferred. Commissioner Woods made a motion to amend the language of 1260-2-.12(5)(b) to read, “Any offer, guaranty, warranty or the like, made to induce any individual to enter into an agency relationship or contract must be made in writing and must disclose all

pertinent details on the face of such offer or advertisement"; seconded by Commissioner Joh; unanimous vote; motion carried. It was decided to defer the vote on adoption of the proposed rule changes until the next business day.

Chairman Haynes recessed the meeting Wednesday, December 3, 2008 at 4:09 p.m.

**TENNESSEE REAL ESTATE COMMISSION
Thursday, December 4, 2008**

The Tennessee Real Estate Commission reconvened on December 4, 2008 at 9:07 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Allen Woods, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner David Flitcroft was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

DISCUSSION OF POTENTIAL RULE CHANGES (continued)

Commissioner Woods withdrew his motion from the previous day regarding Rule 1260-2-.09(7).

The Commission voted on the following motion made the previous day: Commissioner Flitcroft made a motion that subject to the language of Rule 1260-2-.12(2)(d) being amended, the draft of the proposed rules provided by Ms. Wiseman should be adopted; seconded by Commissioner Collins. The vote was unanimous; motion carried.

Steve Majchrzak, Assistant Commissioner, Regulatory Boards, discussed with the Commission budget issues, the TREC newsletter, distribution of the TREC law manuals, instructor education, options for sending renewal notices, and the Division of Regulatory Boards' computer operating system.

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 10)

- 1) 2007064291 &
- 2) 2007054931 &
- 3) 2008012491 &
- 4) 2008012041 &
- 5) 2007054871 &
- 6) 2007054631 &
- 7) 2007060731 &
- 8) 2007062621 &
- 9) 2007062941 &

- 10) 2007062622 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Northern; 6 yes, 0 no; Commissioner Alexander abstained; motion carried.
- 11) 2007068851 – Commissioner Woods made a motion to issue a Consent Order requiring the respondent to take eight (8) hours of continuing education within six months; opened to discussion; Commissioner Woods withdrew his motion. Commissioner Alexander made a motion to let stand the previous month's decision to issue a Consent Order with civil penalty of \$1,000.00 and requiring the respondent to attend a two day Commission meeting; motion failed for lack of second; Commissioner Woods made a motion to defer until the January meeting; seconded by Vice-Chairman Stephenson; opened to discussion; unanimous vote; motion carried.
- 12) 2006010181 – Commissioner Northern previously reviewed the complaint. He recommended the complaint be dismissed with a Letter of Warning because he saw no harm to the development as the result of the advertising. Commissioner Collins made a motion to accept Commissioner Northern's recommendation and dismiss with a Letter of Warning; seconded by Commissioner Joh; vote: 6 yes, 0 no; Commissioner Northern abstained; motion carried.
- 13) 2008023191 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Joh; opened to discussion; roll call vote: 5 yes, 2 no; Commissioner Woods abstained; motion carried.
- 14) 2005030121 – Commissioner Alexander previously reviewed the complaint. It was the decision of the Commission at the September 6, 2006 meeting to issue a Consent Order with a civil penalty of \$5,000.00 to the Principal Broker, \$1,500.00 to the Team Leader and \$2,500.00 to the Affiliate. The Respondents offered the following settlement: \$3,500.00 plus 16 hours of continuing education to the Principal Broker, \$1,500.00 to the Team Leader and \$1,500.00 plus 16 hours of continuing education to the Affiliate. Commissioner Collins made a motion to accept the negotiated settlement; seconded by Commissioner Joh with the amendment that the Team Leader will also attend 16 hours of continuing education in addition to the \$1,500.00 civil penalty; vote on the amendment: 6 yes, 0 no; Commissioner Alexander abstained; amendment passed; roll call vote on the motion as amended: 5 yes, 2 no; Commissioner Alexander abstained; motion carried.

Vice-Chairman Stephenson acted as Chairman of the meeting beginning at 11:16 a.m. until the meeting adjourned.

Chairman Haynes made a motion to direct the Tennessee Real Estate Commission's Assistant General Counsel that if the Commission renders a decision on a complaint and a monetary fine is rendered and the Respondent offers a settlement, legal counsel should advise the respondent they can adhere to the decision of the Commission or have a formal hearing; seconded by Commissioner Alexander; unanimous vote; motion carried.

- 15) 2007058491 – Chairman Haynes made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**

Vice-Chairman Stephenson suspended the legal report and called for comments from the attendees. Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Legal Report, Kathryn Wiseman, Staff Attorney (continued)

- 16) 2007062121 – Commissioner Joh made a motion to Close with a Letter of Warning; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 17) 2007066661 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 18) 2005034851 – Chairman Haynes made a motion to defer and have Commissioner Joh review the complaint; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 19) 2007089151 – Commissioner Northern made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 20) 2006003451 &**
- 21) 2006001091 – Commissioner Alexander made a motion to defer and have Commissioner Northern to review the complaint; seconded by Chairman Haynes; unanimous vote; motion carried.**
- 22) 2007055141 – Chairman Haynes made a motion to defer and secure a copy of the listing agreement; opened to discuss; Commissioner Joh made a motion to dismiss; seconded by Commissioner Wood; Chairman Haynes made a friendly amendment to send a letter to the buyer telling them that they might have recourse against the seller; Commissioner Joh accepted Chairman Haynes friendly amendment; unanimous vote; motion carried.**

- 23) 2006024231 – Chairman Haynes made a motion to defer and have Commissioner Joh to review the complaint; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 24) 2005034161 – Commissioner Alexander made a motion to defer and have Commissioner Northern to review the complaint; seconded by Chairman Haynes; unanimous vote; motion carried.

COMMISSIONER REPORTS

Commissioner Joh, Commissioner Woods, Commissioner Tate, Commissioner Alexander, Chairman Haynes, Commissioner Northern, Commissioner Collins and Vice-Chairman Stephenson reported on matters of concern or interest to the Commission.

Vice-Chairman Stephenson adjourned the meeting Thursday, December 4, 2008 at 12:06 p.m.