

TENNESSEE REAL ESTATE COMMISSION MINUTES
November 5-6, 2008

The Tennessee Real Estate Commission convened on November 5, 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 Allen Woods, Commissioner David Flitcroft, Commissioner Wendell Alexander and Commissioner Grover Collins. Commissioner Valerie Joh and Commissioner Carol Tate were absent. Commissioner Isaac Northern joined the meeting at 10:25 a.m. 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 November 2008 Commission meeting. **Commissioner Alexander made a motion to move the adoption of the minutes (Exhibit 2) from the previous month until later in the meeting; seconded by Commission Collins; unanimous vote; motion carried. Commissioner Flitcroft made a motion to approve the amended agenda; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

INFORMAL APPLICANT CONFERENCE

Brian Greer, candidate, appeared with his principal broker Clyde Hampton to request approval for an Affiliate Broker license. Mr. Greer disclosed convictions of Aggravated Burglary and Burglary in 1996, Misdemeanor Theft and Misdemeanor Possession of Burglary Tools in 1997, Violation of Probation in 2000 & 2001, DUI in 2001, Assault in 2001 and DUI in 2004. **Commissioner Alexander made a motion to approve; seconded by Commissioner Flitcroft; opened to discussion; roll call vote: 2 yes, 3 no; Commissioner Alexander abstained; motion failed.**

There was a discussion regarding the new endorsements available for the Rice Insurance policy. Ms. Maxwell explained the aspects of the various endorsements. Chairman Haynes asked that Cindy Rice-Grissom, CEO of Rice Insurance, come to a Commission meeting to discuss the endorsements.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

- o Ms. Maxwell presented *Courses for Commission Evaluation* and *Courses Requiring Discussion (Exhibit 3)*. **Commissioner Collins made a motion to defer all courses; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Commissioner Alexander made a motion to have Ms. Maxwell send a letter to all Tennessee real estate associations and boards requesting they approve four hours of ethics credit for licensees who attend the Commission meeting

the day of the legal report and the associations should respond in writing; seconded by Commissioner Flitcroft; 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 4)** – TREC has a total of **360** open complaints. Two of the 360 open complaints were staff generated Agreed Citations and eight are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 27 new complaints since the October meeting. There are 351 complaints in the legal department and 9 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 107. Total Civil Penalties paid in August were \$12,100.00.

Commissioner Isaac Northern joined the meeting at 10:25 a.m.

- **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 October 31, 2008. As of October 31, 2008, there were 33,101 active licensees, 2,355 inactive licensees and 9,424 retired licensees. There were 4,655 active firms and 296 retired firms. There were 282 new applications approved in October 2008.
- **PSI Subject Matter Expert Team** - Maxwell reported to the Commission on the PSI Subject Matter Expert Team meeting held October 28, 2008. There was a discussion regarding the participants and the processes involved in the meeting.
- **Adoption of the revised 2009 meeting schedule – Commissioner Collins made a motion to approve the updated meeting schedule (Exhibit 6); seconded by Commissioner Northern; opened to discussion; Commissioner Collins made a motion to change the May meeting to May 14 – 15, 2009; seconded by Commissioner Northern; unanimous vote; motion carried; vote on original motion: 5 yes, 0 no, Commissioner Alexander passed and Chairman Haynes abstained; motion carried.** All meetings are held at the Davy Crockett Tower, Room 160, 500 James Robertson Parkway, Nashville, Tennessee unless otherwise noted. Following is the meeting schedule for 2009: January 7 – 8, 2009, February 11 – 12, 2009, March 5 – 6, 2009 [Jackson], April 1 – 2, 2009, May 14 – 15, 2009 [Memphis], June 3 – 4, 2009, July 8 – 9, 2009, August 12 – 13, 2009, September 2 – 3, 2009, October 1 – 2, 2009 [Kingsport], November 4 – 5, 2009, December 2 – 3, 2009.
- **TREC law manuals** – Ms. Maxwell advised the Commission the new TREC law manuals will be available before the next meeting. Commissioner Flitcroft asked that a sub-committee meeting to review the manual content and laws be placed on the agenda for December 2008.

TESTING CONTRACT DISCUSSION

- **Testing Locations and Exam Statistics** - Ms. Maxwell presented the Commission with a map of Tennessee outlining where test takers resided for the period of July 1, 2008 – September 30, 2008 (**Exhibit 7**). There was a discussion regarding frequency of tests given and number of locations. **Vice-Chairman Stephenson made a motion to add a test site in Cookeville; seconded by Commissioner Collins; opened to discussion; Vice-Chairman Stephenson withdrew his motion; Commissioner Collins withdrew his second. Vice-Chairman Stephenson made a motion to reaffirm last month's decision to offer the examination in Nashville, Knoxville, Memphis, Chattanooga, Cookeville, Jackson, Clarksville, Johnson City, Dyersburg and Lewisburg; seconded by Commissioner Collins; opened to discussion; Commissioner Flitcroft made a motion to amend to offer the examination six days a week in Nashville, Knoxville and Memphis and one day a week in Chattanooga, Cookeville, Jackson, Clarksville, Johnson City, Dyersburg and Lewisburg; seconded by Commissioner Collins; amendment passed unanimously; roll call vote on motion as amended: 7 yes, 0 no; motion passed unanimously. After discussion, Commissioner Flitcroft made a motion to offer the examination two times a week in Chattanooga; seconded by Commissioner Northern; unanimous vote; motion carried.**
- **Contract for Testing (Exhibit 8)** - There was a discussion of certain provisions the Commission would like to have included in the testing RFP. The PSI Examination Candidate Information Bulletin was also reviewed (**Exhibit 9**). **Commissioner Alexander made a motion that a candidate who fails the examination a third time must take 12 hours of education and wait 30 days before testing for a fourth time instead of the current 90 days waiting period; seconded by Commissioner Northern; Commissioner Flitcroft noted the same motion was passed at the October meeting.**

Chairman Haynes recessed the meeting for lunch at 11:31 a.m. and the meeting reconvened at 1:05 p.m.

TESTING CONTRACT DISCUSSION (CONTINUED)

- **Broker Testing Simulation (Exhibit 10)** – The Commissioners, staff and attendees participated in a simulation of a broker examination. After the demonstration, there was a brief discussion concerning the simulation process.
- Ms. Maxwell presented information on which testing vendor is used by each Tennessee Regulatory Board.
- There was a brief discussion of a narrative testing scenario.

Chairman Haynes and Vice-Chairman Stephenson discussed some of the issues presented at the recent ARELLO Annual Conference.

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 11**):

- **1260-2-.12 [Advertising]** – Commissioner Alexander asked Ms. Wiseman if the motion he made the previous month that a licensee does not need to have “owner/agent” on any sign had been incorporated into the revised rules. Ms. Wiseman confirmed she deleted 1260-2-.12(3) which reads “A licensee is exempt from paragraph (2) of this rule if the licensee’s advertising includes the designation “owner/agent” and the property is not listed.”
- **1260-2-.02 [Termination of Affiliation]** – Commissioner Flitcroft wished to amend 1260-2-.02(1) to further state the broker must forward the TREC 1 form within 10 days of request from the licensee. After discussion, Chairman Haynes suggested a section (7) be added stating the broker may at any time send in a license for any cause without the licensee signing the release.

Attendees Leneiva Head and Sharon Horton-Jenkins addressed the Commission regarding 1260-2-.02(6). Attendee Lisa Crocker addressed the Commission regarding the renewal and reinstatement process and disputed her paid penalty. The Commission explained they could not grant a waiver of her penalty. Ms. Maxwell gave an overview of the renewal process. There was a discussion regarding how the renewal process could possibly be improved. Attendee David E. Bilbrey made suggestions on how to improve the renewal process.

- **1260-2-.09(3) [Deposits and Earnest Money]** – Commissioner Flitcroft suggested 1260-2-.09(3) which reads “Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, regardless of whether such funds are actually held by some other person or firm.” be amended to read “Brokers are responsible at all times for deposits or earnest money accepted by them or their affiliate brokers.” Commissioner Northern suggested the revised rule should include reference to the contract. Ms. Wiseman suggested the words “in accordance with the terms of the contract” be added to the suggested changes.
- **1260-2-.09(4) [Deposits and Earnest Money]** – Ms. Wiseman presented amended wording of 1260-2-.09(4) which read “Where a contract authorizes an individual other than either broker to hold funds in an escrow or trustee account, the broker will be relieved of responsibility for the funds upon receipt of the funds by the specified escrow agent.” Commissioner Woods suggested the revised rule be changed to read “Where a contract authorizes an individual or entity other than either broker to hold funds in an escrow or trustee account, the broker will be relieved of responsibility for the funds upon receipt of the funds by the specified escrow agent.” **Commissioner Alexander made a motion to adopt this verbiage by policy until it is put into rule which removes the liability of the broker immediately; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Northern suggested any such policy that is put into place should have provisions for notification of the policy to the brokers. It was decided a notification would be**

placed in the next TREC newsletter and on TREC's website; roll call vote: unanimous vote; motion carried.

Commissioner Flitcroft moved the motion as amended (page 4 of 10 of the October minutes) that stated the current rule be deleted and replaced with the following proposed changes: "(3) Brokers are responsible at all times for deposits and earnest money accepted as pursuant to the contract by them or their affiliate broker. (4) Where a contract authorizes and individual other than the either broker to hold funds in an escrow or trustee account, the parties shall enter into a written agreement which relieves the broker of the obligation to deposit the funds into the firm's escrow account." be passed; seconded by Commissioner Collins; unanimous vote; motion carried.

- **1260-2-.09(6) [Deposits and Earnest Money]** – Ms. Wiseman presented the revised rule that read "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." **The Commission agreed by consensus that this language is acceptable.**
- **1260-2-.12(1) [Advertising]** – After discussion, Ms. Wiseman suggested the rule be amended to read "All advertising which promotes the sell or lease of real property or the services of any licensee regardless of its nature and the medium in which it appears shall conform to the requirements of all applicable provisions of this chapter in addition to any other applicable Tennessee state or federal laws and regulations." **The Commission agreed by consensus to accept the revised wording of the rule.**

Commissioner Flitcroft moved to renew the original motion (from page 6 of 10 of the October minutes) made by Commissioner Woods to "require that the option be disclosed to the owner" and adopt the language as amended; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.

- **1260-2-.12(4) [Internet Advertising]** – It was the consensus of the Commission that 1260-2-.12(4)(a) should be amended to read "The listing firm name and telephone number must conspicuously appear on each page of the website."

Chairman Haynes recessed the meeting Wednesday, November 5, 2008 at 4:06 p.m.

TENNESSEE REAL ESTATE COMMISSION
Thursday, November 6, 2008

The Tennessee Real Estate Commission reconvened on November 6, 2008 at 9:09 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 Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins and Commissioner Isaac Northern. Commissioner Valerie Joh was absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

The Commission stood in recess at 9:10 a.m. to conduct formal hearings in the matter of Cynthia Medley, Docket # 12.18-098769A and Tonya Miller Docket # 12.18-100117A.

The Commission voted to revoke the license of Cynthia Medley, Docket #12.18-098769A, and issue a Consent Order with a civil penalty of \$1000.00 and requiring the respondent to pay the court costs of the formal hearing.

The Commission voted to dismiss all charges against Tonya Miller, Docket #12.18-100117A.

The Commission reconvened at 10:58 a.m. for regular business at the conclusion of the formal hearings.

During the formal hearing it was determined that Tonya Miller had paid her reinstatement penalty but had not attended a Commission meeting pursuant to the reinstatement policy [2008-CPS-001]. **Commissioner Flitcroft made a motion to have staff inform Tonya Miller she needs to attend the May meeting in Memphis; seconded by Commissioner Northern; unanimous vote; motion carried.**

Donn S. Claiborne, Jr., applicant, appeared with his principal broker Paula Thomas to request approval for an Affiliate Broker license. Mr. Claiborne disclosed convictions of four counts of Vehicular Homicide. **Commissioner Flitcroft made a motion to approve; seconded by Vice-Chairman Stephenson; unanimous vote; roll call vote: unanimous; motion carried.**

Vice-Chairman Stephenson stood in as Chairman from 11:16 a.m. until the meeting adjourned.

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit 12)

- 1) 2007055501 &
- 2) 2007060811 &
- 3) 2008009551 &
- 4) 2008009051 &

- 5) 2007083221 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 6) 2007068851 – Commissioner Northern made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000.00; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Alexander made a motion to amend requiring the respondent to attend a two day Commission meeting; seconded by Commissioner Collins; vote on amendment: unanimous vote; motion carried; vote on motion as amended: unanimous vote; motion carried.
- 7) 2007068171 – Chairman Haynes made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 8) 2007088071 &
- 9) 2007088072 – Commissioner Flitcroft made a motion to dismiss; seconded by Chairman Haynes; unanimous vote; motion carried.
- 10) 2008009581 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 11) 2008002541 – Commissioner Collins made a motion to dismiss; seconded by Chairman Haynes; unanimous vote; motion carried.
- 12) 2007048301 – Commissioner Flitcroft previously reviewed the case. Commissioner Flitcroft made a motion to issue a Consent Order with a civil penalty of \$1,000.00 and requiring eight (8) hours of approved continuing education and two days of attendance at a Commission meeting; seconded by Commissioner Woods; vote: 6 yes, 0 no; Commissioner Flitcroft abstained. Chairman Haynes made a motion to open a complaint against the respondent's principal broker; seconded by Commissioner Flitcroft; vote: 6 yes, 0 no; Commissioner Flitcroft abstained.
- 13) 2007059991 &
- 14) 2007059992 – Commissioner Flitcroft previously reviewed the case and an informal conference was held with the respondents at the October meeting. Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Alexander; vote: 6 yes, 0 no; Commissioner Flitcroft abstained; motion carried.
- 15) 2008010251 – Chairman Haynes made a motion to let the previous month's ruling stand; seconded by Commissioner Flitcroft; opened to discussion; roll call vote: 4 yes, 4 no; motion failed. Commissioner Collins made a motion to accept legal counsel's

recommendation to close with a Letter of Warning and 8 hours of Continuing Education instead of the ruling from the previous month; seconded by Commissioner Northern; roll call vote: 4 yes, 4 no; motion failed.

- 16) 2007048501 (Respondent I) &
- 17) 2007048502 (Respondent II) &
- 18) 2007048503 (Respondent III) – Chairman Haynes made a motion to issue a Consent Order with a civil penalty of \$1,000.00 and requiring 8 hours of continuing education at a two day Commission meeting to Respondent II; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$1,000.00 and requiring 8 hours of continuing education at a two day Commission meeting to Respondent III; seconded by Chairman Haynes; unanimous vote; motion carried.

- 19) 2008012331 &
- 20) 2008012332 – Commissioner Woods made a motion to dismiss; seconded by Chairman Haynes; unanimous vote; motion carried.

- 21) 2007057961 &
- 22) 2007057962 – Commissioner Northern made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.

Ms. Wiseman reviewed the Legal File Review and the Consent Order Log with the Commission.

From the Consent Order Log, Ms. Wiseman addressed the following complaints:

- 2007074991 – Chairman Haynes made a motion to have a State Investigator serve the respondent; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 2007054891 – Chairman Haynes made a motion to hold a formal hearing; seconded by Commissioner Alexander. It was determined the Commission had previously voted to hold a formal hearing.
- 2007071201 – Chairman Haynes made a motion to flag the file and the respondent cannot retest until the \$650.00 penalty is paid; seconded by Commissioner Northern; unanimous vote; motion carried.
- 2006000901 – Commissioner Collins made a motion to close and flag the file and the respondent cannot retest until he comes before the Commission; seconded by Commissioner Tate; unanimous vote; motion carried.

From the Legal File Review, Ms. Wiseman addressed the following complaints:

- 2005034161, 2005034851, 2006001091, 2006003461 & 2006024231 – Ms. Wiseman advised she would present these complaints at the December meeting.
- 2006010181 – Commissioner Northern will review the file.

Ms. Wiseman addressed the Commission regarding complaint # 2008010251. **Chairman Haynes made a motion to not meet with the respondent and if the respondent does not comply with the Consent Order a formal hearing will be held; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Commissioner Woods left the meeting at 12:39 p.m.

DISCUSSION OF POTENTIAL RULE CHANGES (continued)

- **1260-2-.12(5)(a)** – Ms. Wiseman presented revised wording for this rule. **Commissioner Flitcroft made a motion to exclude the wording “Examples include: “Your House Sold in 90 days”; seconded by Chairman Haynes; unanimous vote; motion carried.**
- **1260-2-.12(5)(b)** – Commissioner Collins made a motion to keep the revised wording **“Any offer, guaranty, warranty or the like, made to induce any individual to enter into an agency relationship or contract, must be in writing and must disclose all pertinent details.”; seconded by Chairman Haynes; unanimous vote; motion carried.**
- **1260-5-.12(3)(b)** – Commissioner Collins made a motion to approve the rule change as written which states, **“ A broker whose licensee was originally issued on or after January 1, 2005, will not be eligible for renewal for the license unless, during the immediately preceding two-year license period, such broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. The subparagraph shall not apply to a broker who license was temporarily retired in accordance with T.C.A. 62-13-318 for the entire immediately preceding two-year license period.”; seconded by Commissioner Flitcroft; opened to discussion; unanimous vote; motion carried.**
- **1260-5-.12(3)(c)** – Commissioner Collins made a motion to accept the rule change as written which states **“A licensee will not receive continuing education credit for classroom hours completed prior to licensure, or during a prior license period”;** seconded by Commissioner Flitcroft; opened to discussion; Chairman Haynes made a motion to amend the rule change to read that any classroom hours completed the calendar year of licensure be counted as continuing education prior to licensure; seconded by Commissioner Collins; opened to discussion; Commissioner Northern made a friendly amendment to use the wording **“12 months”** instead of **“calendar year”**; Chairman Haynes and Commissioner Collins accepted this change as a friendly amendment to their motion; opened to discussion; amendment passed unanimously; motion as amended passed unanimously.

- **1260-5-.17 – Chairman Haynes made a motion to accept the deletion of Rule 1260-5-.17 in its entirety; seconded by Commissioner Collins; unanimous vote; motion carried.**
- **1260-6-.04 – Commissioner Collins made a motion to accept the rule change as presented which states, “The following statement shall appear in boldface and conspicuous type in: (1) Every public offering statement; and, (2) Every contract for the sale of a timeshare interval, immediately above the space reserved for the signature of the purchaser. “You May Cancel a Contract to Purchase a Time-Share Interval within Ten (10) Days from the Date of Contract, Where You Have Made an On-Site Inspection of the Time-Share Project Before Signing the Contract, AND, if You Have Not Made Such An Inspection, within Fifteen (15) Days from the Date of the Contract. If You Elect to Cancel, You May Do So by Hand Delivering Notice to the Seller at [INSERT PHYSICAL ADDRESS] within the Designated Period, or by Mailing Notice to the Seller (or His Agent for Service of Process) by Prepaid United States Mail at [INSERT MAILING ADDRESS] Any Time within the Designated Period.”; seconded by Chairman Haynes; unanimous vote; motion carried.**
- **1260-6-.11 – Commissioner Collins made a motion to accept the rule change as presented which states, “All registrations of time-share programs shall expire one (1) year from the date the registration was approved, and shall be invalid after that date unless renewed.”; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Commissioner Collins made a motion to approve the revised October 2008 minutes (Exhibit 2); seconded by Commissioner Flitcroft; unanimous vote; motion carried.

COMMISSIONER REPORTS

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

Commissioner Alexander made a motion to place on the December agenda a discussion of the renewal and reinstatement procedure; seconded by Commissioner Northern; unanimous vote; motion carried.

Comments from Attendees

Chairman Haynes called for comments from the attendees.

Licenses 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.

Commissioner Alexander made a motion to approve Jim West’s eight hours of continuing education for attending the Commission meeting; seconded by Commissioner Collins; unanimous vote; motion carried.

Vice-Chairman Stephenson adjourned the meeting Thursday, November 6, 2008 at 1:58 p.m.