

TENNESSEE REAL ESTATE COMMISSION MINUTES
October 1 – 2, 2008

The Tennessee Real Estate Commission convened on October 1, 2008, at 9:10 a.m., at the Supreme Court Appellate Building, 505 Main Street, 2nd Floor Courtroom, Knoxville, TN. **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 September 2008 Commission meeting. **Commissioner Alexander made a motion to adopt the October agenda; seconded by Commissioner Joh; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the September 2008 meeting (**Exhibit 2**). Vice-Chairman Stephenson wished to allow John Griess, member of the Board of Directors of the Knoxville Area Association of Realtors, to address the Commission.

John Griess, member of the Board of Directors of the Knoxville Area Association of Realtors, briefly addressed the Commission.

INFORMAL APPLICANT CONFERENCE

Timothy Knapp, applicant, appeared with his principal broker Jenny Frost to request approval for an Affiliate Broker license. Mr. Knapp disclosed a conviction of Felonious Driving in 1988. **Commissioner Collins made a motion to approve; seconded by Commissioner Northern; unanimous vote; motion carried.**

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

- Ms. Maxwell presented *Courses for Commission Evaluation* (**Exhibit 3**). **Commissioner Flitcroft made a motion to approve all *Courses for Commission Evaluation*; seconded by Commissioner Joh; 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 **380** open complaints. Five of the 380 open complaints were staff generated Agreed Citations and 8 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 12 new complaints since

the September meeting. There are 370 complaints in the legal department and 10 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 85. Total Civil Penalties paid in August were \$13,060.00.

- **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 September 29, 2008. As of September 29, 2008, there were 33,362 active licensees, 2,247 inactive licensees and 9,497 retired licensees. There were 4,641 active firms and 301 retired firms. There were 293 new applications approved in September 2008.

Chairman Haynes suggested a policy statement be created regarding offering four hours of ethics continuing education credit to licensees who voluntarily attend a Commission meeting. **Commissioner Joh made a motion that if a licensee voluntarily attends the Commission meeting, it will fulfill the four hour ethics course requirement for education; seconded by Commissioner Tate; opened to discussion; Ms. Joh amended her motion to state the licensee must attend both days of the Commission meeting to receive eight hours of continuing education which may include four hours of ethics continuing education; seconded by Commissioner Collins; vote on amendment: 6 yes, 3 no; amendment passed; vote on motion as amended: 6 yes, 3 no; motion as amended passed. Vice-Chairman Stephenson made a motion that any licensee who needs four hours of ethics continuing education may attend the day of the Commission meeting when the Legal Report is presented and receive four hours of ethics continuing education; seconded by Commissioner Tate; vote on motion: 8 yes, 1 no; motion carried. Commissioner Alexander made a motion to make the ethics credit opportunity effective today; seconded by Commissioner Northern; unanimous vote; motion carried.**

- **Testing RFP** – There was a discussion regarding the Testing Contract. It was suggested additional testing locations be added across the State of Tennessee and the days the test is being offered be adjusted. The Commission recommended the following sites (existing and proposed) and a minimum number of days the test should be offered at each site.

- Nashville, Knoxville and Memphis – daily
- Chattanooga, Cookeville, Jackson, Clarksville, Johnson City – 3 days per week
- Dyersburg and Lewisburg – 2 days per week

Chairman Haynes requested a report be prepared indicating how many testers our current testing provider averages each week.

The Commission recommended a two year base term with three one year renewal terms with the same terms and conditions.

Commissioner Northern suggested the contract should include a provision requiring a different version of the test be administered after each failed attempt.

Commissioner Joh 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 Tate; unanimous vote; motion carried.

There was a discussion of the Subject Matter Experts Team that will assist in a review of the state specific test items for the Tennessee affiliate and broker examination given by the testing vendor. **Commissioner Alexander made a motion that the Commission request of the testing vendor that all members of the Subject Matter Expert Team have their meals and lodging expenses paid for by the testing vendor; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

There was a discussion regarding the content of the test and what provisions exist for review of content.

Chairman Haynes recessed the meeting for lunch at 11:20 a.m. and the meeting reconvened at 1:05 p.m.

Chairman Haynes advised the attendees the Knoxville Area Association of Realtors will not accept attendance at a Commission meeting as fulfillment of their association ethics requirement. He advised each attendee to contact their local association to determine if credit will be offered for ethics continuing education.

Ms. Maxwell addressed the Commission regarding the Errors & Omissions Insurance RFP. She advised that Rice Insurance did win the bid to become the State of Tennessee E&O carrier.

Per the Commission's request, Ms. Maxwell presented a report on the average number of test takers per week at each testing location. After discussion, the following decision was made regarding site locations and the number of days the test will be administered. **Commissioner Collins made a motion to offer the examination daily in Nashville, Knoxville and Memphis and in Chattanooga, Cookeville, Jackson, Clarksville, Johnson City, Dyersburg and Lewisburg the test will be offered a minimum of one day a week; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Ms. Maxwell presented information regarding Edison, a newly implemented time keeping program for the State of Tennessee.

The Commission proposed changes to the 2009 meeting schedule. **Commissioner Alexander made a motion that the meetings be held in Jackson in March, Memphis in May, Gallatin in June and Kingsport in October; seconded by Commissioner Joh; unanimous vote; motion carried. Commissioner Joh made a motion that meetings not held in Nashville (excluding Gallatin) be held on Thursday and Fridays; seconded by Commissioner Northern; unanimous vote; motion carried.** The revised meeting schedule will be presented at the November meeting for adoption.

RULEMAKING DISCUSSION – ITEMS PREVIOUSLY DISCUSSED OR MENTIONED AS POSSIBLE RULE CHANGES.

Chairman Haynes asked the attendees if anyone would like to address the Commission regarding proposed rule changes. Bob Giltnane, licensee, addressed the Commission regarding Rule 1260-2-.12 [Advertising] and the IDEX system. Ken Barnes, licensee, addressed the Commission regarding Rule 1260-2-.09(3) [Deposits and Earnest Money]. Kathy Leedy, licensee, addressed the Commission regarding 1260-2-.02 [Termination of Affiliation]. Frank Hahn addressed the Commission regarding 1260-2-.02 [Termination of Affiliation].

Any action taken regarding rulemaking was done by consensus vote.

- 1260-2-.02 [Termination of Affiliation] – **Commissioner Flitcoft made a motion to amend the rule to state a principal broker’s supervisory responsibility for any future actions shall terminate upon the Commission’s receipt of a release form which may be accomplished by physical delivery through the mail or other means or by fax or email and the principal broker shall retain a copy as part of the licensee’s file; seconded by Commissioner Tate; unanimous vote; motion carried. .**
- 1260-2-.09 (3) [Deposits and Earnest Money] – **Commissioner Joh made a motion to delete the current rule and replace it 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.”; seconded by Commissioner Tate; opened to discussion; Commissioner Flicroft made a motion (4) should read “Where a contract authorizes an individual other than either broker to hold funds in an escrow account or trustee account, the broker will be relieved of liability with reference to the escrow funds upon receipt of such funds by the escrow or trustee; seconded by Vice-Chairman Stephenson; opened to discussion; unanimous vote; motion carried.**
- 1260-2-.09(6) [Deposits and Earnest Money] – **Commissioner Collins made a motion to amend part (a) of the rule to read “Funds should be**

disbursed or interplead within 30 calendar days from the date of a written request for disbursement of earnest money; opened to discussion; Commissioner Woods made a motion to amend the motion to change (a) to read "Funds should be disbursed or interplead within or no later than 15 calendar days from the date of the receipt of a written request for disbursement of earnest money; seconded by Commissioner Joh; amendment passed unanimously; motion as amended passed unanimously.

To ensure the approval of the minutes, Chairman Haynes called for the vote on the approval of the minutes which passed unanimously.

- 1260-2-.12 [Advertising] – **Commissioner Alexander made a motion that a licensee does not need to have owner/agent on any sign; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.**
- 1260-2-.12 [Advertising] - After discussion, the Commission deferred any further action until the following day of the meeting.
- 1260-5-.12 [Affiliate Brokers] – **Vice-Chairman Stephenson made a motion to accept the proposed change to delete the rule and replace to apply to affiliates and brokers; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 1260-5-.17 [Course Intermission] – **Commissioner Flitcroft made a motion to delete the rule in its entirety; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- 1260-6-.04 [Disclosure of Rescission Rights (Timeshare)] – **Commissioner Collins made a motion to approve the proposed change to the rule which would require a physical and mailing address be provided for cancellation; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 1260-6-.11 [Renewal of Registration (Timeshare)] – **Commissioner Collins made a motion to approve the proposed change to the rule to state "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 Joh; unanimous vote; motion carried.**

Chairman Haynes recessed the meeting Wednesday, October 1, 2008 at 3:25 p.m.

TENNESSEE REAL ESTATE COMMISSION
Thursday, October 2, 2008

The Tennessee Real Estate Commission reconvened on October 2, 2008 at 9:03 a.m., at the Supreme Court Appellate Building, 505 Main Street, 2nd Floor Courtroom, Knoxville, TN. **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.**

RULEMAKING DISCUSSION (continued)

- 1260-2-.12 [Advertising] – The proposed change after discussion was to amend part (5)(a) to read "No licensee shall advertise property listed by another licensee without written authorization from the owner of the property." **Commissioner Woods made a motion to require that the option be disclosed to the owner; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Joh made a motion to state "No licensee shall advertise another broker's property without acknowledging the listing firm's name and phone number on any advertisement on every page or in every occurrence."; seconded by Commissioner Collins; unanimous vote; motion carried. Commissioner Woods made a motion to defer any action regarding guarantees until the next meeting so staff may research what other boards do in Tennessee to regulate the advertising of other industries; seconded by Commissioner Alexander; unanimous vote; motion carried.**

The Commission discussed TREC Policy 2000 – CPS – 004 [Internet Advertising]. It was decided the policy would be kept until the proposed rule changes regarding misleading advertising are passed.

Sue Markowski, licensee, addressed the Commission regarding IDEX and MLS.

Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit)

- 1) 2007052972 – **Commissioner Joh made a motion that the respondent may take an additional eight hours of education for a total of 16 hours instead of attending an 8 hour Commission meeting; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 2) 2005044971 – **Commissioner Collins made a motion to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

- 3) 2006043851 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.
- 4) 2008000651 – Commissioner Tate had previously reviewed the complaint and recommended a civil penalty of \$1000.00. Commissioner Collins made a motion to accept Commissioner Tate’s recommendation to issue a Consent Order with a civil penalty of \$1000.00; seconded by Commissioner Joh; vote: 7 yes, 0 no; Commissioner Tate abstained; motion carried.
- 5) 2007074991 – Commissioner Tate had previously reviewed the complaint and recommended a civil penalty of \$1000.00. Commissioner Collins made a motion to accept Commissioner Tate’s recommendation to issue a Consent Order with a civil penalty of \$1000.00; seconded by Commissioner Northern; vote: 7 yes, 0 no; Commissioner Tate abstained; motion carried.
- 6) 2007069481 – Commissioner Collins had previously reviewed the complaint and recommended a civil penalty of \$500.00. Commissioner Northern made a motion to accept Commissioner Collin’s recommendation to issue a Consent Order with a civil penalty of \$500.00; seconded by Commissioner Joh; vote: 7 yes, 0 no; Commissioner Collins abstained; motion carried.
- 7) 2007065651 – Commissioner Woods had previously reviewed the case and recommended a civil penalty of \$1000.00. Commissioner Collins made a motion to accept Commissioner Wood’s recommendation to issue a Consent Order with a civil penalty of \$1000.00; seconded by Commissioner Tate; vote: 7 yes, 0 no; Commissioner Woods abstained.
- 8) 2007070441 &
- 9) 2007070442 – Commissioner Woods had previously reviewed the complaint and recommended a substantial education requirement for the respondent and the managing firm. Commissioner Joh made a motion to issue a Consent Order to the respondent with a civil penalty of \$2,000.00 (\$1000.00 for each violation) and requiring eight hours of ethics education within six months; seconded by Commissioner Flitcroft; opened to discussion; Commissioner Alexander made a friendly amendment to the motion to state the eight hours of continuing education cannot be completed on the internet; Commissioner Joh and Commissioner Flitcroft accepted Commissioner Alexander’s friendly amendment as part of their motion; Commissioner Collins made a motion to amend to reduce the civil penalty from \$2000.00 to \$1000.00 (\$500.00 for each violation); seconded by Commissioner Northern; vote on amendment: 2 yes, 6 no; Commissioner Woods abstained; amendment failed; vote on original motion; 7 yes, 0 no; Commissioner Woods abstained; motion carried. Commissioner

Flitcroft made a motion to send a Letter of Reprimand to the firm and open a complaint against the respondent's principal broker; seconded by Commissioner Alexander; 5 yes, 3 no; Commissioner Woods abstained; motion carried. After discussion, it was decided to open a complaint against the principal broker and not send a Letter of Reprimand.

- 10) 2005042991 – Commissioner Collins had previously reviewed the case. Vice-Chairman Stephenson made a motion to defer; seconded by Commissioner Tate; unanimous vote; motion carried.
- 11) 2007074611 &
- 12) 2007074612 &
- 13) 2007079351 &
- 14) 2007079352 &
- 15) 2007048351 &
- 16) 2007048352 &
- 17) 2007081291 &
- 18) 2008007731 &
- 19) 2007072231 &
- 20) 2007086661 &
- 21) 2007086662 &
- 22) 2007086663 &
- 23) 2007058001 &
- 24) 2007058002 &
- 25) 2007058003 &
- 26) 2007062621 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 27) 2008012031 &
- 28) 2007077681 – Commissioner Northern made a motion to accept legal counsel's recommendation to flag the file and refuse to renew; seconded by Commissioner Woods; unanimous vote; motion carried.
- 29) 2007075761 – Commissioner Joh made a motion to accept legal counsel's recommendation to Close with a Letter of Warning; seconded by Commissioner Northern; unanimous vote; motion carried.
- 30) 2007071131 – Vice-Chairman Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
- 31) 2007073831 &
- 32) 2007076711 – Commissioner Joh made a motion to dismiss; seconded by Vice-Chairman Stephenson; opened to discussion unanimous vote; motion carried.
- 33) 2007048011 &
- 34) 2007048012 &
- 35) 2007048013 – Commissioner Northern made a motion to accept legal counsel's recommendation to Close with a Letter of

Warning as to respondent I, dismiss as to respondent II and dismiss as to respondent III; seconded by Commissioner Joh; unanimous vote; motion carried.

- 36) 2007048301 – Vice-Chairman Stephenson made a motion to defer so Commissioner Flitcroft can review the complaint; seconded by Commissioner Tate; unanimous vote; motion carried.
- 37) 2007070181 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
- 38) 2007079831 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.
- 39) 2007070731 &
- 40) 2007071111&
- 41) 2007085481 – Commissioner Northern made a motion to issue a Consent Order requiring eight hours of contract writing education within six months; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 42) 2007083491 – Commissioner Joh made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 43) 2007070411 – Commissioner Joh made a motion to accept legal counsel's recommendation to Close with a Letter of Warning; seconded by Commissioner Northern; unanimous vote; motion carried.
- 44) 2007088991 – Commissioner Tate made a motion to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.

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

From the Consent Order Log, the following complaints were reviewed:

- #2007054891 – Chairman Haynes suggested Ms. Wiseman post for a formal hearing.
- #207049121C – **Commissioner Northern made a motion to accept legal counsel's recommendation to refer the case (unlicensed activity) to the district attorney; seconded by Commissioner Tate; unanimous vote; motion carried.**
- Commissioner Joh asked Ms. Wiseman to address #2006037181. Ms. Wiseman explained she is in the process of reviewing the respondent's response to the Consent Order.
- Commissioner Collins asked Ms. Wiseman to address #2007049121F, #2007049121E and #2007049121C. Ms. Wiseman explained that respectively a phone conversation had been held with the respondent's attorney, the respondent is on a pay plan or the respondent cannot be located.

- Commissioner Northern asked Ms. Wiseman to address the dismissal of closed Consent Orders #2007075631, #2006042372, #2007050331, #2006021322, and #2006021321 and #2007052941. Ms. Wiseman explained the complaints were brought back before the Commission and they were dismissed.

From the Legal File Summary, the following complaints were reviewed:

- Commissioner Flitcroft asked Ms. Wiseman to address #2006010181. She will investigate the status and report back.
- Ms. Wiseman explained complaints #2005034161, #2005034851, #2006001091, #2006003461 and #2006024231 are all the same respondent who is being criminally prosecuted. The Commission had voted previously to defer pending litigation. Chairman Haynes requested staff bring a copy of the minutes next month where it was discussed that all complaints involving fraud take precedence on the legal report.

COMMISSIONER REPORTS

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

Comments from Attendees

Chairman Haynes 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.

Chairman Haynes adjourned the meeting Thursday, October 2, 2008 at 11:54 a.m.