

TENNESSEE REAL ESTATE COMMISSION MINUTES
April 4 – 5, 2012

The Tennessee Real Estate Commission convened on April 4, 2012, at 9:24 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 David Flitcroft, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Wendell Alexander and Commissioner Michelle Haynes were present. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel (Litigation) Robyn Ryan, Administrative Law Judge Mary Collier, Court Reporter Janie Garland and Administrative Secretary Kelly McDermott.

The first order of business was the adoption of the agenda (**Exhibit 1**) for the April 2012 Commission meeting. **Commissioner DiChiara made a motion to adopt the agenda for the April 2012 agenda; seconded by Commissioner Flitcroft; Commissioner Alexander made a motion to amend to allow time for Chairman Northern and Executive Director Maxwell and Assistant General Counsel Julie Cropp and Robyn Ryan to meet regarding why there are so many items on the Legal Report that have already been heard in past month’s meetings and are now being re-presented on the current month’s Legal Report and further to discuss why it is necessary for these items to continue to be re-presented; seconded by Commissioner Haynes; motion as amended carried unanimously.**

The next order of business was the approval of the March 2012 minutes (**Exhibit 2**). **Commissioner Stephenson made a motion to approve the March 2012 minutes; seconded by Commissioner DiChiara; vote: 7 yes, 0 no; Commissioner Griess abstained as he was not yet appointed at the time of the March 2012 meeting; motion carried.**

Chairman Northern introduced newly appointed Commissioner John Griess. Chairman Northern advised that Commissioner Griess has been appointed by the Governor to fulfill the remainder of Commissioner Valerie Joh’s term after her resignation. Mr. Griess told the Commission about himself and stated that he was looking forward to working with the members of the Commission.

FORMAL HEARING

The formal hearing of TREC v. Ronald R. Davis, license #321880, Docket #12.18-115953A convened at 9:28 a.m. Chairman Northern recused himself from the formal hearing as he had previously been contacted by the Respondent prior the hearing. Vice-Chairman Stephenson recessed the meeting for lunch at 11:26 a.m. and reconvened the meeting at 1:15 p.m. at which point the formal hearing continued. The formal hearing adjourned at 5:11 p.m.

In the hearing of Mr. Ronald R. Davis, license #321880, it was ordered that Respondent’s license as a broker, #321880, previously issued by the Tennessee Real Estate Commission is hereby suspended until Respondent satisfies all the terms of this Order. If Respondent does not complete the terms set forth below by his renewal date of June 18, 2012, then

Respondent's license shall then be immediately permanently revoked. Therefore, Respondent is ordered to pay a civil penalty of Three Thousand Dollars (\$3,000.00) for violations of T.C.A § 62-12-312 (b)(1),(14) and (20) and must pay this penalty by June 18, 2012. Respondent is further ordered to pay all hearing costs in this matter which includes but is not limited to the costs of the Administrative Law Judge and the court reporter. The hearing costs in this matter total Two Thousand One Hundred Ninety Dollar (\$2,190.00) including court reporter costs of One Thousand Two Hundred Dollars (\$1,200.000), and Administrative Law Judge costs of Nine Hundred Ninety Dollars (\$990.00). Respondent is therefore ordered to pay the total court costs of Two Thousand One Hundred Ninety Dollars (\$2,190.00) no later than June 18, 2012. Respondent is further ordered to complete all outstanding education requirements for license renewal, is ordered to obtain a current errors and omission policy, is ordered to re-affiliate with a principal broker, and is ordered four hours additional education in ethics, all to be complete and in place no later than June 18, 2012. Respondent is further enjoined from upgrading his license to broker status for a period of seven (7) years as an active affiliate from the original date of licensure. This Final Order shall take effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State. If any of these terms are not completed by June 18, 2012, Respondent's license shall be immediately permanently revoked and Respondent will still be required to pay the civil penalty and court costs after such revocation.

Vice-Chairman Stephenson recessed the meeting on Wednesday, April 4, 2012 at 5:12 p.m.

April 5, 2012

The Tennessee Real Estate Commission reconvened on April 5, 2012, at 9:23 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 David Flitcroft, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Wendell Alexander and Commissioner Michelle Haynes were present. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly McDermott.

INFORMAL APPLICANT APPEARANCE

Kelly Williams, applicant appeared with potential Principal Broker Donna Clark of Reliant Realty Premier to request he be approved to apply for an Affiliate Broker license. Mr. Williams disclosed to the Commission the following convictions: two counts of Possession of a Controlled Substance; and additionally Tampering with a Government License, Forgery of a Check, Possession of a Controlled Substance with Intent to Deliver in June 2006. **Commissioner Stephenson made a motion to approve Mr. Williams' request to apply for an Affiliate Broker license; seconded by Commissioner DiChiara; vote: 7 yes, 0 no; Commissioner Alexander abstained; motion carried.**

RECIPROCITY DISCUSSION

Mr. Pug Scoville, Director of Communication and Education for the Tennessee Association of REALTORS® and Chris Sexton, Director of Governmental Affairs for the Tennessee Association of REALTORS® discussed with the Commission the issue of License Reciprocity with other states.

Ms. Maxwell presented the Commission with several reports regarding reciprocity. Among these reports were a Summary of Reciprocity and License Recognition, the names of all states who offer reciprocity with Tennessee, a Reciprocity State Comparison outlining each state's requirements for examination, education, criminal background checks and the number of states with which certain states have reciprocity. She also presented a table outlining each state and how many licensees Tennessee has in each State that are Active & Retired Affiliate Brokers and Brokers in addition to requirements for examination, education, bonds, credit reports and background checks. Some content of the Summary of Reciprocity and License Recognition and the statistical information follows as an overview to preface the content of the discussion. Ms. Maxwell wrote in her report the following:

There are basically two methods by which states license nonresidents, reciprocity and license recognition. Each of these is only a means or process to obtain a real estate license. Generally speaking, once the real estate license is issued, it stands alone, and is not contingent upon licensure in another state. In many states, the license from the state of original licensure does become important at renewal, as many states allow the completion of resident state CE to count toward the fulfillment of the nonresident state CE requirements.

Reciprocity is the recognition of the validity of a license granted by another state. Reciprocity is governed by a specific Reciprocity Agreement between the two states. Reciprocity does not guarantee that a license in one state will be recognized for by another state—it only establishes the criteria and the process by which the licensee's credentials will be reviewed by the states. Those who do not meet the established criteria will not be granted a license by reciprocity. For instance, to be granted a license by reciprocity in Tennessee, a licensee must, first of all, reside in a state with which Tennessee has a current reciprocity agreement. At this time, those states are Arkansas, Connecticut, Georgia, Iowa, Louisiana, Massachusetts, Mississippi, North Dakota, Virginia and West Virginia. Tennessee has partial reciprocity with Florida and New Hampshire.

Tennessee automatically accepts previous education, taken in another state, as equal to the education required in Tennessee. If the exam was written and administered by a recognized national testing firm, then the exam results are automatically accepted as equal to those which one would have received on the Tennessee national and state exams. The licensee must have tested in the jurisdiction in which he resides—one cannot piggyback off of a license issued through reciprocity. The licensee must reside outside the state of Tennessee and the licensee must be affiliated with a firm with an active Tennessee license.

License Recognition is the method being used by a number of states for the licensure of nonresident licensees. The License Recognition process involves viewing all licensees with current licensure in another state, regardless of their place of residency, through the same lens; that is, all nonresident licensees must meet the same requirements in order to obtain a license by recognition. There are variations on this process and some states do have recognition agreements with other states, but the majority does not tailor their requirements to match those of the state of the nonresident licensee. Most states utilizing the recognition process require that the nonresident licensee take the state exam, a specific state law course or both the state exam and a course. This is very similar to the current Tennessee nonresident process, which

requires, at a minimum, all applicants take the Tennessee portion of the exam. The national portion will not have to be taken if the licensee took and passed a national exam written and administered by a recognized national testing company. The pre license education of each applicant is reviewed to determine if it is substantially equivalent to that required by Tennessee. The review may entail the submission of course materials in order to make a determination if all or a portion of the required pre license education may be waived.

The information which follows is a compilation of the charts which are attached to this summary.

As of March 30, 2012:

2155 licensees who got license via reciprocity:

Of those: **1577** are currently active

578 are currently retired

Distribution among status:

Total Affiliates: 1054 Active: 725 Retired: 329

Total Brokers: 439 Active: 187 Retired: 249

Total PBs: 664 Active: 664 Retired: 0

Grandfathered: Total: 313 Active: 213 Retired: 100

Reciprocal licenses among the states breakdown as follows:

	Affiliate	Active	Retired	Broker (incl PB)	Active	Retired	Total Lic.	Active	Ret
AL	94	70	24	122	102	20	216	172	44
AR	15	13	2	37	30	7	52	33	9
AZ				2		2	2	0	2
CA				9	3	6	9	3	6
CO				5	3	2	5	3	2
FL	21	6	15	105	47	58	126	53	73
GA	364	271	93	261	229	32	625	500	125
HI	Timeshare-retired								
IA				3	2	1	3	2	1
IL				8	4	4	8	4	4
IN	1		1				1	0	1
KS				1		1	1	0	1
KY	82	63	19	80	69	11	162	132	30
LA				6	2	4	6	2	4
MA				5	4	1	5	4	1
MD				5	2	3	5	2	3
MI	1		1	2	1	1	3	1	2
MN				1	1		1	1	0
MO	1		1	5	4	1	6	4	2
MS	315	186	129	124	103	32	439	271	161
MT				3	2	1	3	2	1
NC	33	25	8	180	150	30	213	175	38

	Affiliate	Active	Retired	Broker (incl PB)	Active	Retired	Total Lic.	Active	Ret
NH	1		1				1	0	1
NJ				1	1		1	0	1
NM	1		1	3	3		4	4	0
NV				1	1		1	0	1
NY				2	1	1	2	1	1
OH	1	1	11	1	1	0	12	1	11
OK	1	1		6	6		7	6	1
OR				1	1		1	1	0
PA	2	1	1	2	2		4	3	1
RI				1	1		1	1	0
SC	2		2	5	2	3	7	2	5
TX	3		3	29	13	16	32	13	19
UT	1		1	2	2		3	2	1
VA	115	90	25	70	57	13	185	147	38
WA				1		1	1	0	1
WY				1		1	1	0	1
WA				1		1	1	0	1
WY				1		1	1	0	1

- **EXAM REQUIREMENT: 41**--- Number of states which require that nonresident applicants, whether applying through reciprocity or recognition, take the state exam.
- **COURSE REQUIREMENT: 27**— Number of states which require that nonresident applicants, whether applying through reciprocity or recognition, take some state prelicense hours.
- **LICENSE RECOGNITION: 31**--- Number of states with some form of license recognition. (limited, full, mutual)
- **RECIPROCITY: 20**— Number of states with reciprocity (by specific agreement).
- **BACKGROUND CHECK: 27**--- Number of states which require background check of all applicants regardless of process through which apply.
- **CREDIT REPORT: 1**— Number of states which require a credit report be submitted with application via reciprocity.
- **SURETY BOND: 1**--- Number of states which require a \$2000.00 surety bond be submitted with application via reciprocity.
- **STATES THAT ACCEPT CE FROM RESIDENT STATE: 24**—Number of states which accept CE that nonresident completed to fulfill his resident state CE requirements. Usually requires that nonresident licensee submit certification of hours and often state reserves right to determine that CE equivalent to theirs.
- **STATES THAT DO NOT ACCEPT CE WITHOUT REQUEST: 27**---States which require nonresident to submit request for acceptance of licensee's resident state CE or which do not accept at all.
- **STATES THAT REQUIRE ALL OR PORTION OF CE BE PHYSICALLY TAKEN IN STATE: 10**— Subset of above number. Number of states that accept no out of state CE or require licensee take some portion of CE in nonresident license state.

Licensees who got licensed via reciprocity now live in 38 states. Over 70% of reciprocal licensees live in a border state.

Ms. Maxwell stated that Tennessee's reciprocity agreements with other states have been terminated because some states are going to a system of License Recognition which involves a more in depth process for analyzing a person's education and exam history.

Chairman Northern recognized Mr. Scoville of TAR. Mr. Scoville stated that TAR has not taken a firm position on reciprocity but from a personal viewpoint, he stated he has assumed people would take at least the state portion of the exam necessitating a familiarity with the state laws of Tennessee. Chairman Northern stated that is not always the case because of the various reciprocity agreements. Mr. Scoville stated that the biggest problem regarding reciprocity is people receiving credit for continuing education across state lines. He stated that to his knowledge no other state requires that TAR's courses be submitted for approval by the Commission. Therefore, he said the only substantial issue with reciprocity is after licensure. Ms. Maxwell asked him if he thinks it more beneficial for an applicant to take the state examination or to take a state specific course in Tennessee. He stated that he is less concerned about how the person acquires the knowledge but that they do, in fact, have the knowledge.

Mr. Chris Sexton, Director of Governmental Affairs for the Tennessee Association of REALTORS® asked if any valuable information regarding reciprocity had been learned at any of the recent ARELLO meeting attended by TREC Staff and Commission members. Chairman Northern pointed out that two Staff members and two Board members were to attend the ARELLO Mid-Year Meeting the following week and he would like to see a report back on what other states are doing to handle reciprocity. In the discussion of the state by state comparison, it was noted that many states do require background checks and therefore perhaps Tennessee should require those background checks as well. Mr. Cropp stated that, after consulting with General Counsel Wayne Pugh, that to require a FBI criminal background check it would require a legislative change by changing the statute.

Chairman Northern stated that the primary reason for the subject of reciprocity being on the agenda is because the Board is trying to determine if they are going to continue with the current reciprocity programs or make changes. He stated that the Board needs to determine if they are in a position to make those decisions or defer for a month. Commissioner Stephenson stated that he is of the opinion that whatever the other state requires, we should also require the same. Commissioner Haynes stated that she would like for Tennessee to set the bar by requiring more education. Commissioner DiChiara stated that perhaps applicants by reciprocity should be required to take the CORE course. **Commissioner Stephenson made a motion to table any further discussion of reciprocity until May after Ms. Maxwell, Mr. McDonald, Commissioner Haynes and Commissioner DiChiara attend the upcoming ARELLO Mid-Year meeting; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Ms. Maxwell discussed with the Commission the next upcoming ARELLO District 2 meeting. She also explained that the Annual Conference is being held in Canada so no one will be approved to attend because the travel policy does not allow for travel outside the 48 contiguous states. She also stated that there is a scheduling conflict because currently the June 2012 TREC meeting is scheduled for the same week as the ARELLO District meeting. Commissioner DiChiara made a

motion to move the June 6-7, 2012 meeting to June 13-14, 2012 to allow for attendance at the ARELLO District meeting if approved; seconded by Commissioner Flitcroft; unanimous vote; motion carried. While discussing the meeting schedule, the Commission went ahead with the discussion to determine the location of the East Tennessee meeting in the Fall of 2012. After discussion of possible locations, it was determined that Chattanooga would be the location for the meeting. **Commissioner Griess made a motion to hold the October 11-12, 2012 in Chattanooga; seconded by Commissioner McMullen; unanimous vote; motion carried.** The discussion returned to ARELLO attendance. **Commissioner Alexander made a motion to request that the following people be allowed to attend the ARELLO District meeting: Executive Director Eve Maxwell, Assistant General Counsel Julie Cropp, Commissioner Bear Stephenson and either Commissioner DiChiara or Commissioner Haynes; seconded by Commissioner Griess; unanimous vote; motion carried.** The request will be submitted to the Administration.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for March 2012. After some discussion regarding a few of the presented courses, **Commissioner Alexander made a motion to approve the Courses for Commission Evaluation; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

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

- Karen Czarnecki of the Williamson County Association of REALTORS® (#1135) requested the approval of Tiffany Chevront to teach Transaction Desk (#5870). Ms. Chevront is the Executive Vice President of Operations with WCAR (#1135). She has a BS in Political Science and a double minor in English and International Relations as well as a Masters in Public Administration.
- Sally Cummings with TAR® (#1110) requested the approval of Gregg Driscoll for Transaction Desk (#5747), Transaction Desk Advanced (#5748) and Transaction Desk-Train the Trainer (#5749). Mr. Driscoll is responsible for software implementation and social media strategies with Instanet Solutions. He is a TX licensee and holds a Bachelor's degree in English Linguistics.

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

Mr. McDonald presented the Commission with the following proposed CORE course curriculum. He advised that he would like to pass along an approved curriculum to the providers. Commissioner DiChiara and Mr. McDonald worked together independently to trim the course content down to make it more manageable in a six credit hour format.

DISCUSSION II - 2013 – 2014 TREC CORE COURSE

- I. TREC Rules, Laws, Updates, and E & O Guidelines
- II. Agency
- III. Advertising
 - a. Claims, Offers and Guarantees
 - b. Teams

- IV. Contracts
- V. Property Management
 - a. Escrow Account Set-up
 - b. TREC Requirements

Commissioner Collins made a motion to approve the proposed curriculum for the 2013-2014 TREC Core curriculum; seconded by Commissioner Alexander; unanimous vote; motion carried.

Mr. McDonald advised the Commission that Mr. Ken Barnes, owner of Professional School of Real Estate sent the following email regarding the possible creation of a CORE course specifically for principal brokers.

"If the commission approves a core course designed for principal brokers I am not suggesting requiring grandfathered licensees to now be required to take this core course. If allowed to design such a course for commission approval the topic outline I propose is:

1. Trust Account Management
2. Disciplinary Procedures
3. Disciplinary Cases
4. TREC laws and rules update
5. Supervision of licensees

Thank you for your support.

Ken Barnes

Professional School of Real Estate"

Mr. McDonald stated that he was asked to introduce the idea of a CORE course for principal brokers. It was discussed whether the course would be pre-licensing or continuing education. Ms. Maxwell advised that if the course is created as a pre-licensing course then it would require rulemaking. She also stated that the Board has the authority to make a portion of the required CE credit as mandatory (i.e. the CORE). The Commission asked that Ms. Maxwell meet with Mr. McDonald about the potential creation of a PB CORE course and report back to the Commission. **Commissioner Alexander made a motion to move forward and ask schools to design/write a course that will then be presented to the Commission for review; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

The presentation of complaints in the Legal Report was deferred until the next month's meeting.

RULEMAKING DISCUSSION

Assistant General Julie Cropp addressed the Commission regarding the proposed rule changes to be sent to the Secretary of State for review. Ms. Cropp advised the Commission that she had made the requested changes by the Board at the previous month's meeting to the proposed rules and represented the newly written rules. She advised the Commission that both Rule 1260-01-.12 and Rule 1260-02-.32 were both properly addressed at the previous month's

meeting. She advised that changes were made to Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]. Ms. Cropp read the new content into the record as follows:

Rule 1260-02-.38 Death or Extended Absence of Principal Broker

- (1) The Commission must be notified within ten (10) days of the death, resignation, termination, or incapacity of a principal broker. In the event of an unexplained extended absence of a principal broker, the Commission must be notified within a reasonable time period. At the time of notification, a plan must be submitted which addresses the continuation of operations without a principal broker.
- (2) The Commission may, in its discretion, based on the merits and circumstances of each case, permit a real estate firm to continue operating without a principal broker for a period of time not to exceed thirty (30) days from the date of death, resignation, termination, or incapacity of a principal broker, subject to conditions imposed by the Commission.
- (3) If, within the aforementioned thirty (30) day period, a real estate firm contacts the Commission demonstrating compliance with their initial approved plan and circumstances which require additional time to continue operating without a principal broker, the executive director shall have the authority to grant a thirty (30) day extension to the period originally allowed by the Commission. In the event that a thirty (30) day extension is granted, a new principal broker must be in place no later than the sixty-first (61st) day from the date of death, resignation, termination, or incapacity of a principal broker.

Commissioner Collins made a motion to approve the proposed Rule 1260-02-.38 as presented; seconded by Commissioner DiChiara; unanimous vote; motion carried.

The Commission and Ms. Cropp completed the Regulatory Flexibility Act Analysis for Rule 1260-02-.38.

Regulatory Flexibility Analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules
 - **Commissioner Collins made a motion that the rule does not create overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- (2) Clarity, conciseness, and lack of ambiguity in the rule
 - **Commissioner DiChiara made a motion that the rule is clear, concise and further the rules are not open to different interpretations; seconded by Commissioner Collins; unanimous vote; motion carried.**
- (3) The establishment of flexible compliance and reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule imposes a requirement that all real estate firms must timely notify the Commission regarding the death, resignation, termination, incapacity or unexplained absence of a broker and provide a suitable plan governing the operation of a firm until a new principal broker can be placed and held responsible for the firm's actions and**

this requirement helps to ensure the health, safety, and welfare of the citizens of Tennessee; seconded by Commissioner Collins; unanimous vote; motion carried.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule provides reasonable deadlines for both the reporting of the death, resignation, termination, incapacity, or unexplained extended absence of a principal broker as well as for the submission of a suitable plan governing the operation of a firm without a principal broker until a new principal broker is in place; seconded by Commissioner Collins; unanimous vote; motion carried.**
- (5) The consolidation or simplification of compliance or reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule clearly establishes what is required of a firm that has experienced the death or extended absence of a principal broker; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.
 - **Commissioner DiChiara made a motion that the rule sets the expectation for all small businesses to abide by the requirements of these rules; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs
 - **Commissioner DiChiara made a motion that the rule does not stifle entrepreneurial activity, curb innovation, or increase costs but instead encourages entrepreneurial activity and innovation and increasing costs by permitting a firm to act for a temporary period in certain circumstances without a principal broker until a new principal broker is placed; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Ms. Cropp moved to the next Rulemaking Notice hearing for Vacation Lodging Services.

Ms. Cropp stated that at the previous month's meeting the Commission, upon General Counsel Wayne Pugh's advice, determined that part of the proposed rule regarding a possible waiver for applicants with prior criminal convictions should be deleted and language be inserted that is used in the rules for Affiliate Brokers and Brokers. She advised that changes were made to Rule 1260-07-.02 [Designated Agent Qualifications]. Ms. Cropp read the new content into the record as follows:

Rule 1260-07-.02 Designated Agent Qualifications

To obtain a designated agent license, applicants must meet the following prerequisites:

- (1) Applicants must have obtained a high school diploma or general education diploma;
- (2) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and
- (3) Applicants shall not be considered for licensure unless two (2) years have passed from the date of expiration of probation, parole or conviction, or from the date of release from incarceration, whichever is longer in time. This restriction shall apply to all felonies, and to misdemeanors which involve the theft of money, services, or property. An applicant who appears before the Commission requesting licensure and who is denied will not be eligible for reconsideration for six (6) months from the date of denial.

Commissioner Dichiara made a motion to accept the proposed language as presented for Rule 1260-07-.02; seconded by Commissioner Collins; unanimous vote; motion carried.

Counsel Cropp advised the Commission that it was unnecessary to perform the Regulatory Flexibility Act Analysis because it was done at the previous month's meeting.

Chairman Northern asked Ms. Cropp about the wording of subsection 3 of Rule 1260-07-.03 [Designated Agent Responsibilities]. He stated that the wording should perhaps be changed to reflect that the principal broker is responsible for maintaining an escrow account. Therefore, upon Chairman Northern's recommendation, **Commissioner Alexander made a motion to change the wording from "3) The designated agent shall maintain the vacation lodging service escrow account" to "3) The designated agent shall be responsible for maintaining a vacation lodging service escrow account."** **Seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Ms. Cropp continued with the rulemaking discussion by reading the next proposed rule into the record. She presented the new content of Rule 1260-07-.04 as follows:

Rule 1260-07-.04 Civil Penalties.

- (1) The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

Violation	Penalty
T.C.A. § 62-13-104(b)(3)(C)	\$ 200 ---- 1000
T.C.A. § 62-13-104(b)(3)(D)(i)	200 ---- 1000
T.C.A. § 62-13-104(b)(7)(B)	
(i)	250 ---- 1000
(ii)	250 ---- 1000
(iii)	300 ---- 1000
(iv)	100 ---- 1000
(v)	300 ---- 1000
(vi)	200 ---- 1000
(vii)	100 ---- 1000
(viii)	200 ---- 1000
(ix)	300 ---- 1000

	(x)	300 ---- 1000
	(xi)	50 ---- 1000
	(xii)	250 ---- 1000
	(xiii)	200 ---- 1000
T.C.A. § 62-13-104(b)(8)(A)(i)		200 ---- 1000
T.C.A. § 62-13-104(b)(10)	(A)	25 ---- 1000
	(B)	25 ---- 1000
Any Commission Rule or Order		50 ---- 1000

- (2) Each day of a continued violation may constitute a separate violation.
- (3) In determining the amount of a civil penalty, the Commission may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and
 - (e) the interest of the public.

Commissioner Collins made a motion to approve the revised proposed language for Rule 1260-07-.04; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Counsel Cropp advised the Commission that based on the minutes from the March 21-22, 2011 meeting; she revised the wording of the advertising rule for VLS. Ms. Cropp read into the record the following language for Rule 1260-07-.05 [Advertising]

Rule 1260-07-.05 Advertising

- (1) Effective July 1, 2012, all advertising, regardless of its nature or medium, promoting vacation lodging service rentals shall prominently display the following information:
- (a) The firm name of the vacation lodging service, as registered with the Commission; and
 - (b) The vacation lodging service firm license number.
- (2) Effective July 1, 2012, all internet home pages and rental agreement confirmation pages for vacation lodging service firms shall prominently display the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number. The requirements of subsection (1) of this rule shall not apply to internet advertising.

Commissioner DiChiara made a motion to approve the proposed language of Rule 1260-07-.05; seconded by Commissioner Collins; opened to discussion; it was discussed that the rule should be rewritten for simplicity and ease of understanding; Chairman Northern suggested that a subsection c be added to section 1 stating that this subsection shall not apply to internet advertising; Commissioner Alexander made a motion to accept that change in language as part of the proposed language; seconded by Commissioner Haynes; motion as amended to include revised language with new subsection Rule 1260-07-.05(1)(c) carried unanimously.

The Commission then performed the Regulatory Flexibility Act Analysis for Rule 1260-07-.05.

Regulatory Flexibility Analysis:

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules
 - **Commissioner DiChiara made a motion that the rule does not create overlap, duplicate or conflict with other federal, state or local government rules; seconded by Commissioner Haynes; unanimous vote; motion carried.**
2. Clarity, conciseness, and lack of ambiguity in the rule
 - **Commissioner DiChiara made a motion that the rule is clear, concise and further the rules are not open to different interpretations; seconded by Commissioner Haynes; unanimous vote; motion carried.**
3. The establishment of flexible compliance and reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule provides uniform and reasonable standards for the vacation lodging services in order to assist with ensuring the health, safety and welfare of the citizens of Tennessee; seconded by Commissioner Collins; unanimous vote; motion carried.**
4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule provides uniform standards for all vacation lodging services; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
5. The consolidation or simplification of compliance or reporting requirements for small businesses
 - **Commissioner DiChiara made a motion that the rule regulating vacation lodging services are contained within this chapter and these rules clearly specify the requirements for all vacation lodging services; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.
 - **Commissioner DiChiara made a motion that the rule sets the expectation for all small businesses to abide by the requirements of these rules; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs
 - **Commissioner DiChiara made a motion that the rule do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Ms. Cropp advised the Commission that the rules would now move ahead in the review process and be sent to the Secretary of State's office. Chairman Northern asked, for the record, if the rules are being submitted in a timely manner for proper notice. Ms. Cropp stated that although pushed for time, the rules should be ready and submitted in time.

Ms. Cropp presented the Commission with the proposed language for a new policy discussed at the previous month's meeting. The policy was presented as follows:

POLICY ON TRANSACTIONS INVOLVING ASSET MANAGEMENT COMPANIES

It is recognized by the Tennessee Real Estate Commission that the federal government is not bound by the provisions of the Tennessee Real Estate Broker License Act and the rules adopted by the Tennessee Real Estate Commission. It is further recognized that licensees must comply with Federal law, regulations, and/or practice despite inconsistency with state licensing law requirements when working with lenders and/or asset management companies handling the sale of properties for governmental agencies.

Commissioner Collins made a motion to accept the proposed language as presented for Policy 2012-CPS-002; seconded by Commissioner Alexander; opened to discussion; Chairman Northern made the suggestion that FDIC insured institutions also be included in the wording; Commissioner DiChiara made a motion to amend the include the words FDIC insured institutions in the policy language; seconded by Commissioner Stephenson; motion as amended carried unanimously.

Ms. Cropp asked for clarification on a matter since she is new to the position of Assistant General Counsel. She stated that her understanding is that it is acceptable for staff to issue Agreed Citations for certain violations. She stated that if a licensee does not respond to an Agreed Citation with a signed citation and payment of the penalty then it would be referred by the TREC office to the Legal Division where a complaint would be opened. She asked the Commission if a licensee signs and pays the Agreed Citation, before the complaint is presented to the Commission on the Legal Report, does she have the authority to close the complaint without it coming before the Board. It is the consensus of the Commission that this is acceptable. After Ms. Maxwell advised that these citations are listed on the DAR (Disciplinary Action Report), she was asked if it could somehow be denoted on the report that the licensee has paid after a complaint was opened but before it is heard by the Commission.

Chairman Northern stated that he wants the minutes timely completed and sent to the Commissioners via email by the Friday of the week following the board meeting. After discussion with Staff about time constraints and workload, it was determined that the minutes would need to be to the Commissioners no later than the Friday two weeks after the meeting.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

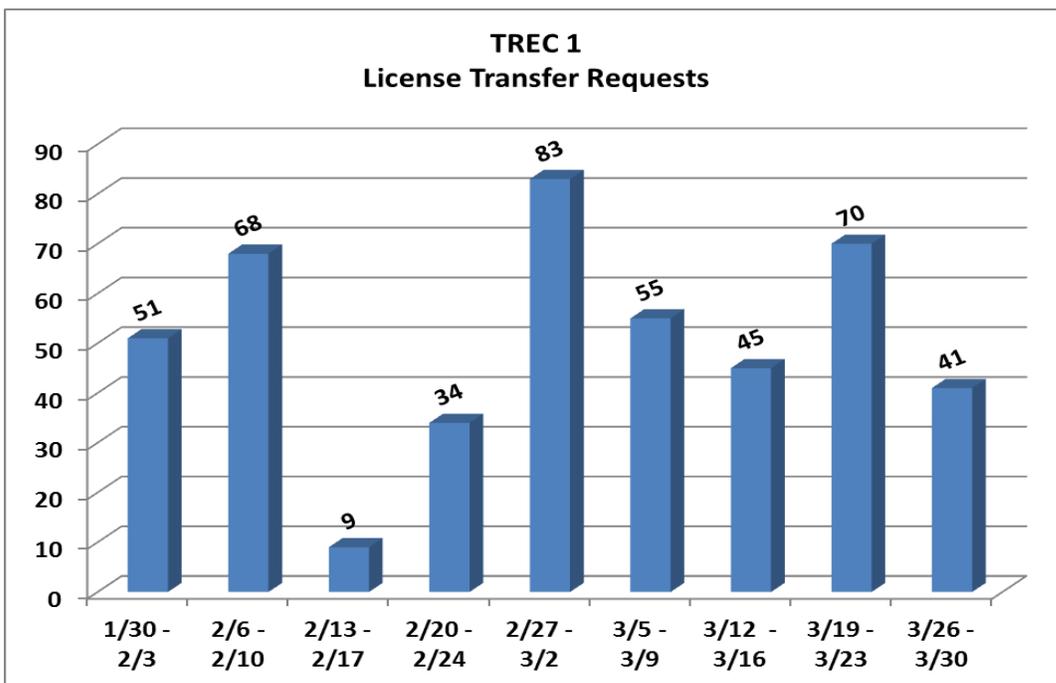
Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report** (Exhibit 3) – Ms. Maxwell presented complaint statistics to the Commission. As of March 30, 2012, TREC had a total of 95 open complaints. There were 24 new complaints in March 2012. There were 85 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 2011-2012 is 145. Total Civil Penalties paid in March 2012 were \$22,167.00.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of April 2012. As of March 30, 2012, there were 23,420 active licensees, 1,391 inactive licensees and 10,135 retired licensees. There were 4,137 active firms and 326 retired firms. There were 282 new applications approved in March 2012. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in March 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.

Ms. Maxwell presented a chart of all TREC 1 forms received that were transfers. This information was requested at a previous meeting and the information had been analyzed and organized into the following chart:



The Commission deferred the discussion on Ms. Maxwell’s report regarding the time period between examination attempts when someone fails part of all of the examination. There was also a brief discussion regarding the standard operating procedure when an auditor finds a violation at a firm and the steps taken to remedy the issue.

Vice-Chairman Stephenson adjourned the meeting on Thursday, April 5 at 12:05 p.m.