

**TENNESSEE REAL ESTATE COMMISSION MINUTES
February 9, 2011**

The Tennessee Real Estate Commission convened on February 9, 2011 at 9:11 a.m. in the Davy Crockett Tower at 500 James Robertson Parkway, Room 160, Nashville, TN 37243. **The following Commission Members were present: Chairman Isaac Northern, Vice-Chairman Allen Woods, Commissioner Grover Collins, Commissioner William "Bear" Stephenson, Commissioner Valerie Joh, Commissioner Wendell Alexander and Commissioner David Flitcroft. Commissioner Michelle Haynes and Commissioner Carol Tate were absent. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Robyn Ryan, Assistant General Counsel, Mark Green, Assistant General Counsel, Wayne Pugh, General Counsel and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the February 2011 Commission meeting. **Commissioner Stephenson made a motion to adopt the agenda for the February 2011 meeting; seconded by Commissioner Flitcroft; unanimous votes; motion carried.**

The next order of business was the approval of the minutes from the December 2010 meeting (**Exhibit 2**). **Commissioner Collins made a motion to approve the December 2010 meeting minutes; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

The next order of business was the adoption of Robert's Rules of Order. **Commissioner Collins made a motion to adopt Robert's Rules of Order; seconded by Commissioner Joh; unanimous vote; motion carried.**

RULEMAKING HEARING

Chairman Northern called the Rule Making Hearing to order at 9:15 a.m. Eve Maxwell, TREC Executive Director read into the record the specifics of the official notice of rulemaking. Mark Green, Assistant General Counsel read the rulemaking procedures and the content of the proposed rule changes into the record. He stated that the purpose of the rulemaking hearing is to solicit comments on proposed rules that the Commission has made by the public in order to establish rules regarding conduct discussed therein as Ms. Maxwell had just stated in the notice of hearing. Mr. Green advised that members of the public wishing to speak had signed a sign in sheet and those members who have signed would be permitted to speak before the Commission with regards to the rules being discussed. Following are a list of all chapter and rules to be discussed at the hearing.

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.32	Civil Penalties
1260-02-.38	Death or Extended Absence of Principal Broker

Chapter Number	Chapter Title
1260-07	Vacation Lodging Services
Rule Number	Rule Title
1260-07-.01	Scope
1260-07-.02	Designated Agent Qualifications
1260-07-.03	Designated Agent Responsibilities
1260-07-.04	Civil Penalties
1260-07-.05	Advertising
1260-07-.06	Instructor Qualifications
1260-07-.07	Fees

Mr. Green advised that the content of the proposed rule change to Rule 1260-02-.32 is an amendment. Civil Penalties is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 1260-02-.32 [Civil Penalties] -

(1) The Commission may, in a lawful proceeding against any person required to be licensed by the commission, 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. § 62-13-103(b)	\$ 50 ---- 1000
T.C.A. § 62-13-301	50 ---- 1000
T.C.A. § 62-13-312(b)	
(1)	250 ---- 1000
(2)	200 ---- 1000
(3)	300 ---- 1000
(4)	100 ---- 1000
(5)	300 ---- 1000
(6)	200 ---- 1000
(7)	300 ---- 1000
(8)	100 ---- 1000
(9)	200 ---- 1000
(10)	300 ---- 1000
(11)	250 ---- 1000
(12)	300 ---- 1000
(13)	300 ---- 1000
(14)	50 ---- 1000
(15)	250 ---- 1000
(16)	250 ---- 1000
(17)	200 ---- 1000
(18)	250 ---- 1000
(19)	250 ---- 1000
(20)	200 ---- 1000

	(21)	100 ---- 1000
T.C.A. § 62-25-103(a)		50 ---- 1000
T.C.A. § 62-25-107(b)		
	(1)	250 ---- 1000
	(2)	250 ---- 1000
	(3)	300 ---- 1000
	(4)	50 ---- 1000
T.C.A. § 66-32-121(f)		
	(1)	250 ---- 1000
	(2)	100 ---- 1000
	(3)	200 ---- 1000
	(4)	300 ---- 1000
	(5)	250 ---- 1000
	(6)	250 ---- 1000
	(7)	400 ---- 1000
	(8)	350 ---- 1000
	(9)	400 ---- 1000
	(10)	250 ---- 1000
Any Commission Rule Order		50 ---- 1000

(2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-13-102	\$1000
T.C.A. § 62-13-103	\$1000
T.C.A. § 62-13-105	\$1000
T.C.A. § 62-13-109	\$1000
T.C.A. § 62-13-110	\$1000
T.C.A. § 62-13-301	\$1000
T.C.A. § 62-13-312	\$1000

(3) Each day of a continued violation may constitute a separate violation.

(4) 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.

Authority: T.C.A. §§56-1-308 and 62-13-203.

Following is the content of the proposed new Rule 1260-02-.38:

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

- (1) The Commission must be notified within five (5) 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.
- (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 sixty (60) days, subject to conditions imposed by the Commission. A new principal broker must be in place no later than the sixty-first (61st) day of any continued operation period granted by the Commission.

Regarding Chapter 1260-07 titled Vacation Lodging Services, following are the proposed rule changes to

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

Rule 1260-07-.01 [Scope] - The rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).

Rule 1260-07-.02 [Designated Agent Qualifications] –

- (1) To obtain a designated agent license, applicants must meet the following prerequisites:
 - (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and
 - (c) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement.
- (2) If an applicant fails to meet the requirements of subsection (1)(c), he or she may appear before the Commission to seek a waiver of this requirement.

Rule 1260-07-.03 [Designated Agent Responsibilities] –

- (1) The designated agent shall be responsible for supervising all employees of the firm.
- (2) Designated agents shall be reasonably available to manage and supervise each vacation lodging service office during regular business hours.

(3) The designated agent shall maintain the vacation lodging service escrow account.

Rule 1260-07-.04 [Civil Penalties] –

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

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

Rule 1260-07-.05 [Advertising] -

(1) 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;
- (b) The telephone number of the vacation lodging service firm office; and
- (c) The vacation lodging service firm license number.

(2) All internet advertising must include the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number on each page of the website.

Rule 1260-07-.06 [Vacation Lodging Services Instructor Qualifications] -

- (1) To obtain certification as an instructor of vacation lodging services, applicants must meet the following prerequisites:
 - (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement;
 - (c) Applicants must also:
 1. hold a license as a designated agent under the Vacation Lodging Services Act; or
 2. possess a minimum of three (3) years experience in vacation lodging services.
 - i. If a course concerns any other field in which a degree, certification, or other recognized designation is commonly awarded then the instructor must have earned that degree or designation, or have at least three (3) years of relevant experience in the field.
- (2) The Commission may charge a fee of twenty-five dollars (\$25) for each instructor in an education cycle, in order to review that instructor's qualifications.

Rule 1260-07-.07 [Fees] - The following fees shall apply:

- (1) For the issuance of an original vacation lodging service firm or original designated agent license, a fee to be paid to the Commission of one hundred dollars (\$100.00);
- (2) For each renewal of a license, a fee to be paid to the Commission of eighty dollars (\$80.00);
- (3) A fee to be paid to the Commission for the following:
 - (a) Change of firm address, fifty dollars (\$50.00);
 - (b) Change of Designated Agent, twenty-five dollars (\$25.00);
 - (c) Commission manual, ten dollars (\$10.00);
 - (d) Certified copies, one dollar (\$1.00) per page;
 - (e) Copies, twenty-five cents (\$0.25) per page;
 - (f) Printouts of licensee information, charges will be based upon the cost of producing the printout;
 - (g) Certification of licensure, twenty-five dollars (\$25.00);
 - (h) Change of name, ten dollars (\$10.00);
 - (i) Duplicate license, ten dollars (\$10.00);
 - (j) Bad checks must be made good within five (5) days after the licensee is notified. Any bad check not made good within sixty (60) days of the notification will be subject to a one hundred dollar (\$100.00) fee for collection.

There was a discussion regarding the length of time speakers will be allowed to address the Commission. **Commissioner Stephenson made a motion that no person speaking before the Commission in the rulemaking hearing speak more than three minutes; seconded by Commissioner Joh.** General Counsel Wayne Pugh addressed the Commission regarding those attendees who wish to address the Commission. He stated that the purpose of the Rulemaking hearing is to receive these

comments and he advised the Commission about limiting the comments too much. He explained that Mr. Green is serving as the moderator and if things got repetitive then the speakers can be asked to finish their comments. **Commissioner Stephenson withdrew his motion and Commissioner Joh withdrew her second.**

The Chairman called for comments from the attendees who signed up to address the proposed rules.

The following members of the public addressed the Commission regarding the rules:

- Jim Gibbs, Principal Broker of Ideal Realty and owner and real estate instructor of Career Institute.
- Matt Scanlan, attorney/representative for the Smoky Mountain Vacation Lodging Association
- Brad Ivens of Eagle Property Management and President of the Smoky Mountain Vacation Lodging Association
- Dan Haskell of the Nashville Bar and speaking on behalf of the Smoky Mountain Vacation Lodging Association

At the conclusion of the public comments, Mr. Green closed the public comment section of the hearing. Mr. Pugh addressed the Commission. He stated that he had been made aware that the Commission had received communication from a gentleman who wishes to make a comment on the advertising guidelines as proposed. Mr. Pugh advised the Commission that he had reviewed the APA and he did not see anything that would prohibit the Commission from going ahead and discussing the other rules and extending the period of time for commenting on the advertising until the next meeting. He suggested that the Commission close the meeting for the day but extend the period of time for comments on that advertising until the next meeting.

Commissioner Stephenson made a motion that the Commission close the public hearing portion of the rulemaking hearing, the public comment portion and further move for an extension of the advertising portion of Vacation Lodging Services until TREC's March 2011 Commission meeting; seconded by Commissioner Alexander; Chairman Northern restated the motion before the vote. The motion as stated, as read by Chairman Northern, was to close the public comment period on all proposed rules with the exception of the advertising portion, Rule 1260-07-.05. After discussion, there was a roll call vote; 7 yes, 0 no; motion carried by a unanimous roll call vote.

Mr. Pugh advised that the rulemaking hearing was concluded at that point and the Commission could continue the discussion period. Chairman Northern entertained comments from the Commissioners with regards to moving forward with the adoption of the remaining proposed rules.

Commissioner Collins made a motion to approve the proposed rule changes with the exception of the VLS advertising rule, Rule 1260-07-.05; seconded by Commissioner Woods. Before the vote, Mr. Pugh advised the Chairman that the Commission needs to formally close the rulemaking hearing. After formally concluding the hearing at 10:17 a.m., Mr. Pugh advised the

Commission that they must discuss the economic impact statement before adopting the rules.

As part of the rulemaking process for any proposed rule that may have an impact on small businesses, each agency shall prepare and economic statement as an addendum for each rule that is deemed to affect small business (T.C.A. § 4-5-403). The statement shall include the following economic concerns. The Commission began the discussion regarding the Economic Impact Statement so as to lessen the impact on small businesses in Tennessee by the proposed rules. The discussion did not include the advertising portion of the VLS rules as that had been deferred.

Following is a breakdown of the various area of the Economic Impact Statement as related to each rule. For the purpose of this report, the questions will be listed numerically and then each area of the rules addressed as a, b, and c. Mr. Green presented specific recommendations and the Commission voted on each recommendation.

"a" is Rule 1260-02-.32 [Civil Penalties]

"b" is Rule 1260-02-.38 [Death or Extended Absence of Principal Broker

"c" is Rules regarding Chapter 1260-07 [VLS] with the exception of Rule 1260-07-.05 [Advertising] which was deferred for more public comments at the next Commission meeting.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost or directly benefit from the proposed rule.

- a. All small licensed real estate firm and VLS firms within the State of Tennessee will be affected by the proposed rule.
- b. Same statement
- c. Same statement
 - **Commissioner Stephenson made a motion to accept recommended statement; seconded by Commissioner Alexander; unanimous vote; motion carried.**

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule.

- a. Regarding Civil Penalties, there would be no cost.
 - **Commissioner Flitcroft made a motion to accept legal counsel's statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
- b. Regarding the extended absence of a PB, there would be no additional costs.
 - **Commissioner Joh made a motion to accept legal counsel's recommended statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
- c. Regarding VLS, except the advertising, the rules are necessary to the health and safety of the citizens of the State of Tennessee to ensure

there is proper education for licensees, updated information on file with the Commission and accountability for improper activity by a licensee.

- **Commissioner Joh made a motion to accept legal counsel's recommended statement; seconded by Commissioner Woods; unanimous vote; motion carried.**

3. A statement of the probable effect on impacted small businesses and consumers.

- a. It should not affect small business other than to continue to deter licensees from improper activity.
 - **Commissioner Flitcroft made a motion to accept the legal counsel's recommended statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
- b. This rule will only affect a minority of small real estate firms in that the absence of a PB must reported in a timely manner.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- c. The proposed rule changes will have a significant effect on a small VLS firm by requiring them to adhere to qualifications for operation, education requirements, responsibilities and a schedule of violations therefore protecting the health and safety of the citizens of the State of Tennessee.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement stating that there will be an economic impact but the adoption of the new rules is necessary to protect the public; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

4. A description of any less burdensome, less intensive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist and to what extent the alternative means might be less burdensome to small business.

- a. There are not less burdensome, intensive or costly methods.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- b. There are no less burdensome, intensive or costly methods to ensure compliance to protect citizens.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
- c. There is a less costly way but it does not offer the same protection to the citizens or reimburse the Commission for expenses incurred for processing application paperwork.

- **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 5. Compare these rule changes to those of other State and Federal counterparts. Are they consistent or repetitive?**
- a. The proposed civil penalties are not greater of other boards and there are not federal counterparts with which to compare.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
 - b. There are no State counterparts of which counsel is aware.
 - **Commissioner Woods made a motion to accept legal counsel's recommended statement; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
 - c. **There is no State counterpart and the rules are essentially identical to other boards.**
 - Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Woods; unanimous vote; motion carried.
- 6. Can a small business be exempt from the rule? If so,**
- a. It would establish less protection for the citizens of the State of Tennessee based on the size of the small business.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Joh; unanimous vote; motion carried.**
 - b. It would prohibit the Commission from have responsibility for small business who have lost their Principal Broker unexpectedly.
 - **Commissioner Woods made a motion to accept legal counsel's recommended statement; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
 - c. It will establish less protection to the citizens of the State of Tennessee based on the size of the business.
 - **Commissioner Flitcroft made a motion to accept legal counsel's recommended statement; seconded by Commissioner Woods; unanimous vote; motion carried.**

Chairman Northern concluded the recommendations for the Economic Impact Statement requirement. He confirmed with General Counsel Wayne Pugh that the Commission conducted themselves in accordance with the requirements of the rulemaking process of the State of Tennessee.

Commissioner Woods made a motion to approve all of the proposed rules as written except Rule 1260-07-.05 [advertising]; seconded by Commissioner Collins; roll call vote: 7 yes, 0 no, 2 absent; motion carried.

Chairman Northern concluded the Rulemaking Hearing.

Chairman Northern recessed the meeting for lunch at 11:37 a.m. and reconvened at 1:02 p.m.

An informal conference was held between Mr. Ray Boudier, owner of the Ray Boudier School of Real Estate and the Commission. Mr. Steve McDonald, Education Director, presented information to the Commission. Mr. McDonald's written report to the Commission included a timeline of correspondence between the Tennessee Real Estate Commission and the Ray Boudier School of Real Estate (1081), the receipts of unclaimed certified mail, the incomplete renewal packet, the selling of unapproved 2009/2010 TREC CORE Courses, an audit report from TREC Auditor Bill Stewart, and copies of the school's website advertising courses unapproved and non-compliant with the Tennessee Real Estate Commission. Following was the content of the written report.

- June 2009, the Commission requested that providers submit course and instructor applications into TREC due to changes on the forms. The review was completed by Ms. Eve Maxwell and Ray Boudier School of Real Estate did not comply. June 14, 2010, new rules and laws became effective. All changes in education were relayed to providers via the Share-Line and to the public on the TREC website. The course renewal process began within the education department. A packet was sent to Ray Boudier School of Real Estate in a bulk mailing from the education department shortly after this effective date.
- August 11, 2010, an audit was requested of classroom rosters and student surveys of (17) education providers including Ray Boudier School of Real Estate. The deadline for the materials to be into the Commission office was set for September 20, 2010. On September 21, 2010 the student rosters from Ray Boudier School of Real Estate were received. A letter, before the delivery of the rosters to the education department, was drafted and sent both by fax and via Certified Mail (7004 1350 0002 6146 2788). This letter put Ray Boudier School of Real Estate on thirty (30) day probation for not complying with the request. Once the packet of class rosters was received in the education department, a letter was sent September 23, 2010 confirming receipt of the rosters and urged the provider to maintain course evaluations as a portion of the school's record keeping and to incorporate this method of record keeping with the provider's next real estate course. The Certified Mail (7004 1350 0002 6146 2788) with the letter of probation was returned unclaimed. The fax confirmation of transmission was kept as receipt.
- October 31, 2010, the deadline for course renewals expired.
- November 2, 2010, an incomplete renewal packet including a check for \$800.00 was received by the mailroom.

- November 5, 2010, the cashier processed check number 7952 for \$800.00 for the attempt to renew courses. The Education Department received portions of the renewal that were almost illegible.
- November 8, 2010, a "Bulletin" was sent to the provider listing the missing forms required to complete the renewal. This was sent Certified Mail (7004 1350 0002 6146 5970). The Certified mail was returned December 9, 2010 as unclaimed.
- December 2, 2010, Certified Mail (7004 1350 0002 6146 6007) was sent to the provider explaining the expiring of his courses, the issue of a complaint handled regarding a CORE Course sold to a licensee from the school, the schools PSI suspension, and the urgency to attend the Tennessee Real Estate Commission meeting January 13, 2011 in Nashville. As of January 5, 2011, the Certified Mail (7004 1350 0002 6146 6007) was still unclaimed.
- December 15, 2010, TREC Auditor Bill Stewart visited the provider and supplied a report to Eve Maxwell, Steve McDonald, and the Commissioners.
- December 15, 2010, Camilla Brinner, File 291978, emailed Betsy Bowman in the Education Department about reinstatement. She purchased a TREC Core from Ray Boudier School of Real Estate via Correspondence learning. The 2009/2010 Core Course the licensee purchased was never approved with TREC. The licensee repurchased the 2009/2010 Core from D&D School of Real Estate (1183) and received proper credit.
- December 16, 2010, Wendi Rawson, File 260922, purchased an education packet from Ray Boudier School of Real Estate and her education for the (12) hours of electives was posted on May 12, 2010. Licensee did not receive credit for her 2009/2010 CORE from Ray Boudier School of Real Estate because the provider did not have it approved. Betsy Bowman added the CORE Course late to her education history. The interoffice recognized post-date modifier of "December 25" used for late education was inputted from the D&D School of Real Estate (1183) and Ms. Rawson received proper credit for the Core Course completion on December 25, 2009. No record of licensee's completed coursework or order information from the Ray Boudier School of Real Estate could be found.
- December 30, 2010, PSI deactivated the provider per a request sent by the Education Director on December 2, 2010.
- January 5, 2011, www.rayboudier.com was no longer live. However, the provider's website advertised 2011 Courses on the inspected dates of November 30, December 14, 15, 16, 17, 21, 22, 28, 30 and January 4, 2011.
- There have been multiple phone conversations between the Education Director and Mr. Ray Boudier about the seriousness of these matters. The Education Director has a saved voicemail that captured a candid conversation with Mr. Boudier and his son. His son, Brett Boudier, threatened a lawsuit against the Tennessee Real Estate Commission. Also, Betsy Bowman fielded a call from a student accusing sexual harassment against the school's instructor, Louis

Gallegos, which was undocumented formally, but addressed immediately over the phone with Mr. Boudier. Mr. Boudier's willingness to cooperate, the blatant disregard to Certified Mail, and his lack of supervision of the school are evident. This chronological event chain documents the inability to comply with rules and laws set forth by the Tennessee Real Estate Commission.

Mr. McDonald also gave the Commission a packet of information with the following supplemental information:

- A printed snapshot of a website advertising Ray Boudier Schools: www.rayboudierschools.com
- Confirmation that www.rayboudier.com is not longer live.
- Correspondence collected from a former student which also included the discussion between Mr. Gallegos, instructor and student.
- The harassment complaint against Mr. Gallegos being corrected from sexual to "extremely unprofessional, condescending and demeaning."
- A copy of a renewal form and receipt of renewal payment dated 10/29/10 completed before the extension termination of 10/31/2010.
- A copy of the pass/fail rate from 1/10/10 – 12/31/10 from PSI, TREC's testing vendor.

Mr. Boudier appeared before the Board because he wished to have his school reinstated so that he may teach real estate courses. After discussion regarding the various allegations by TREC regarding Mr. Boudier, the Chairman summarized the reason for the informal conference.

Chairman Northern stated that the purpose of the informal hearing setting was to allow Mr. Boudier to explain the fact that his school is still being marketed and to speak to the complaints that have been levied against him. He explained to Mr. Boudier that as far as the Commission was concerned, his school does not exist. It will remain so until it is approved by the Commission. He stated that he believed at this point there was nothing the Commission needed to do other than acknowledge that Mr. Boudier understand the position that he and his school are in and the position the Commission has taken in regards to that position. Mr. Boudier, when asked if he agreed, concurred.

Mr. McDonald advised the Commission that although Mr. Boudier had not met all of the requirements to renew, he did pay the \$800.00 renewal fee for his courses and instructors. He asked the Commission how they wanted to handle this issue. **Commissioner Alexander made a motion to refund Mr. Boudier the \$800 he paid for renewal fees in October of 2010; seconded by Commissioner Collins; unanimous vote; motion carried.**

This concluded the informal conference with Mr. Boudier.

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 licensing statistics to the Commission. As of December 30, 2010, TREC had a total of 67 open complaints. Of those 67 open complaints, 5 were Errors & Omissions insurance complaints. There were 25 new complaints in December 2010. There are 59 complaints in the legal department and 8 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2010-2011 is 73. Total Civil Penalties paid in December 2010 were \$14,650.00. As of January 31, 2011, TREC had a total of 59 open complaints. Of those 59 open complaints, 1 was an Errors & Omissions insurance complaint. There were 23 new complaints in January 2011. There are 50 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 2010-2011 is 73. Total Civil Penalties paid in January 2011 were \$7,466.00.
- Licensing Statistics (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of December 2010. As of December 30, 2010, there were 26,092 active licensees, 1,868 inactive licensees and 10,402 retired licensees. There were 4,323 active firms and 331 retired firms. There were 123 new applications approved in December 2010. Ms. Maxwell presented licensing statistics for the month of January 2011. As of January 31, 2011, there were 24,982 active licensees, 2,510 inactive licensees and 10,521 retired licensees. There were 4,274 active firms and 342 retired firms. There were 158 new applications approved in January 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in both December and January of 2005, 2006, 2007, 2008, 2009 and 2010. She also presented license renewal percentages and the number of licenses approved in 2009 and 2010, individual licensees lost and gained from 2000 – 2010 and the average number of licensees (individuals) issued per month for each year from 2000 -2010. Mr. McDonald, Education Director, presented bar graphs reflecting trends in test taking. The graphs were comprised of test taking statistics for 2007, 2008, 2009 and 2010 and the year to date testing totals and trends for Affiliate Brokers, Brokers, Timeshare Salesperson and Acquisition Agents.

Mr. Maxwell reported on the renewal process for Errors & Omissions insurance. She explained the number of uninsured licensees was less than during the last two year renewal cycle. She presented a timeline of all activities revolving around encouraging licensees to comply with the E&O requirement. 1,220 names of uninsured licensees were printed in the TREC News Journal to be published within the week of the meeting. Ms. Maxwell also advised that she put Principal Brokers with a substantial number of uninsured licensees in "Problem" status. She explained that this has precipitated responses from Brokers and their affiliates. Commissioner Flitcroft would like to address the expiration date of the E&O policy when the State next does the Request for Proposal

for an insurance vendor. Chairman Northern agreed that changing the expiration date could help resolve issues regarding licensees renewing their E&O insurance timely.

Ms. Maxwell advised that the testing contract with PSI expires on 7/1/2011. She explained that the Commission needs to make a decision if they would like an amendment to extend the contract for one more year. She explained the base contract itself expires on 7/1/2011 but provides for the option of extending the contract. Chairman Northern asked if non-substantive changes can be made to the contract. Mr. Ryan advised that only non-substantive changes can be made and if substantial changes want to be made, a new RFP would need to be done. There was some discussion regarding various testing locations and their low testing numbers. Counsel and Mr. Maxwell advised that there may be a way to give PSI the option to not operate those less used centers without it being a substantial change to the contract.

Commissioner Flitcroft made a motion to approve a one year extension of the PSI contract with some amended language regarding non-substantial changes (i.e. testing locations); seconded by Commissioner Alexander; unanimous vote; motion carried.

Ms. Maxwell asked the Commission if they would like to pick a location for the September meeting since none has been determined. **Commissioner Collins made a motion to hold the September 2011 TREC meeting in Chattanooga, Tennessee; seconded by Commissioner Joh; unanimous vote; motion carried.**

Ms. Maxwell discussed with the Commission attending the ARELLO Mid Year Conference. She stated that the Administration had indicated that no more than two staff members and two Commissioners should be submitted for consideration to attend. The Commissioner discussed who should attend the conference but no definitive decision was reached and the topic deferred.

The weather took a bad turn and it began snowing in Nashville. **The Commission did not want to endanger any of the attendees therefore Commissioner Flitcroft made a motion to allow the attendees to use their own discretion as to whether they feel safe attending the second day of the meeting and if they do decide to not attend they will still be given full CE credit; seconded by Commissioner Alexander; unanimous vote; motion carried.**

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation for the month of January 2011. **Commissioner Joh made a motion to reduce the number of credit hours approved for the course "Real Estate Puzzles" (J45 on report) from eight to four hours; seconded by Commissioner Flitcroft; unanimous vote; motion carried. Commissioner Flitcroft made a motion to not approve the course "Stress Management" (J46 on report); seconded by Commissioner Joh; unanimous vote; motion carried. Commissioner Joh made a motion to approve all of the remaining Courses for Commission Evaluation for January 2011; seconded by Commissioner Collins; unanimous vote; motion carried.**

Request for Instructor Approval (January 2011)

Sally Cummings with TAR requests:

- **Gary Blume** be approved to teach the 2011/2012 TREC Core Course (6520)
- **Monica Neubauer** be approved to teach the Agency in Tennessee (6257)
- **Keith Morris** to teach the Land 101(4417) Course. Mr. Morris has been licensed since 1985, 34 years in the construction business, RLI and TAR Certified instructor, ABR, ALC, CRB, CRS, and GRI designations.

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

Mr. McDonald, Education Director, presented Courses for Commission Evaluation for the month of February 2011. **Commissioner Stephenson made a motion to approve all Courses for Commission Evaluation for February 2011 except the Course "NSPF Certified Pool Operators" (F32 on report); seconded by Commissioner Woods; unanimous vote; motion carried.**

Request for Instructor Approval (February 2011)

Sally Cummings of TAR (1110) requests the following to teach the 2011/2012 TREC Core Course. These instructors are previously approved and are in compliance with T.C.A § 62-13-324(7)(c):

- Susan Barnette
- Marty Calfee
- Helen Carter
- Steve Champion
- Sue Chilton
- Randa Dawson
- Janet DiChiara
- Paul Gaddes
- Krystal Grebner
- Gail Wallin Johnson
- Brent Maybank
- Monica Neubauer
- Bobbie Noreen
- Jim Oakley
- Charles Pecka
- Ron Poe
- Marlene Rakow
- Karen Randolph
- Harold Reed
- Bill Schlueter
- Patricia Shepherd
- Mary W. Sharp
- Bobby Wood
- Brent Ward

Lorie Jayne of SunTrust Mortgage (1500) requests:

- John Rhea to be approved to teach the Back to Basics of Real Estate Finance Course (6206).
- Mike Rhea to be approved to teach the Back to Basics of Real Estate Finance Course (6206).

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

The weather conditions continued to deteriorate so it was determined that the attendees should be allowed to leave and the Commission would press on to try and finish the entire agenda in one day.

Mr. McDonald asked the Commission for input regarding schools that have a low pass rate on the examination. The Commissioner discussed what the standard protocol had been in the past. In the past letters have been sent that said the school should improve their practices or the school may be put on probation. **Commissioner Joh made a motion to send a Letter or Warning to the providers suggesting that they improve their w so students' ability to pass the examination will improve and they school will continue to be monitored; seconded by Commissioner Collins; unanimous vote; motion carried.**

Mr. McDonald presented for review the newly created Instructor Certificates. He explained that the certificate serve as proof for instructors that they have been approved to teach the course/area of study that were submitted on their application. It confirms that TREC has their initial paperwork and their \$25.00 instructor fee. He explained that if an instructor were to ask to teach a course in an area not listed on the original application, they would again need to seek approval and pay the fee.

Mr. McDonald presented the 2011 TREC Seminar schedule to the Commission and advised that the information is available on the TREC website and attendees can receive two hours of free continuing education for attending the seminar.

Commissioner Joh made a motion to continue with the agenda and finish all business on the agenda in one day due to inclement weather; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL

- 1) 2010006251 &
- 2) 2010035831 – Commissioner Joh made a motion accept legal counsel's recommendation to issue a Consent Order for Respondent 2 (2010035831) with a civil penalty of \$1,000 for a violation of T.C.A. §62-13-313(a)(2) [failure to file and answer within ten days] and issue a Consent Order to both Respondents with a civil penalty of \$1,000.00 each for violation of T.C.A. §62-13-309(b)(3) and T.C.A. §62-13-312(b)(14) [failure to provide a sign outside the firm and address and failure to notify the Commission of a change of address within ten

- days]; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 3) 2010030701 &
 - 4) 2010030702 – Commissioner Flitcroft made a motion to dismiss as to both Respondents; seconded by Commissioner Woods; unanimous vote; motion carried.
 - 5) 2010031131 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.
 - 6) 2010032581 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Letter of Warning regarding T.C.A. §62-13-312(b)(14 and Commission Rule 1260-02-12(4)(a, c) [failure to include phone number of principal broker on internet advertising]; seconded by Commissioner Alexander; unanimous vote; motion carried.
 - 7) 2010032951 &
 - 8) 2010032952 – Commissioner Flitcroft made a motion to dismiss as to both Respondents; seconded by Commissioner Woods; unanimous vote; motion carried.
 - 9) 2010033021 &
 - 10) 2010033051 &
 - 11) 2010033061 &
 - 12) 2010033111 &
 - 13) 2010033131 &
 - 14) 2010033141 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Litigation monitoring agreement, pending the outcome of two pieces of legislation; seconded by Commissioner Alexander; unanimous vote; motion carried.
 - 15) 2010034031 &
 - 16) 2010034032 – Commissioner Flitcroft made a motion to dismiss as to both Respondents; seconded by Commissioner Woods; unanimous vote; motion carried.
 - 17) 2010034971 – Commissioner Alexander made a motion to defer; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
 - 18) 2010035051 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$500 for violating T.C.A. §62-13-403(2) and T.C.A. §62-13-312(14) [failing to disclose adverse facts (no earnest money collected)]; seconded by Commissioner Joh; unanimous vote; motion carried.
 - 19) 2010033171 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for violating T.C.A. §62-13-313(a)(2) [failing to respond to a complaint]; seconded by Commissioner Alexander; unanimous vote; motion carried.
 - 20) 2010035271 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for violating T.C.A. §62-13-104 and T.C.A.

- §62-13-302(a)[operating without a license]; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 21) **2010035422 – Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$7,000.00 (\$1,000.00 for each incident) plus require 16 hours of continuing education in contract writing and four (4) hours in ethics; both continuing education and payment of penalty must be within four months) for violating T.C.A. §62-13-312(5) [failing to account for moneys belonging to others]; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 22) **2010036922 &**
- 23) **2010036921 – Commissioner Flitcroft made a motion to dismiss as to both Respondents; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 24) **2010030711 &**
- 25) **2010035721 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss as to both Respondents; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 26) **2010030751 - Commissioner Flitcroft made a motion to accept legal counsel’s recommendation that in light of said affidavit, the original consent order be rescinded and the complaint dismissed; seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Ryan advised the Commission that Mandy Spencer, Paralegal, has been reassigned to work the Board of Cosmetology where her organizational and administrative skills can best be used at this time. **Commissioner Alexander made a motion to have Staff write a letter from the Commission of acknowledgement for her valued service to the Tennessee Real Estate Commission that will be made a part of her personnel file; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

Steve Majchrzak, Assistant Commissioner of Regulatory Boards, addressed the Commission regarding Ms. Maxwell’s performance evaluation and the recommendation by the Board for her to receive a raise. Mr. Majchrzak advised the Commission on the procedure that would need to be followed to request the increase. He also discussed with the Commission the State of Tennessee’s Travel Policy. He advised that it is the State of Tennessee’s current policy to keep travel to a minimum for budgetary reasons and suggested the Commission will need to decrease the number of participants that are being submitted to attend the ARELLO conference. He also briefly touched on the reorganization of the legal department and the reallocation of resources to resolve all issues with all boards efficiently and effectively.

Commissioner Flitcroft made a motion to adjourn; seconded by Commissioner Joh; unanimous vote; motion carried.

Chairman Northern recessed the meeting Wednesday, February 9, 2010 at 4:25 p.m.