

TENNESSEE REAL ESTATE COMMISSION MINUTES
July 6 – 7, 2011

The Tennessee Real Estate Commission convened on July 6, 2011 at 9:13 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 Bear Stephenson, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Michelle Haynes, Commissioner David Flitcroft and Commissioner Valerie Joh. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

The Formal Hearing for Robert O. Hyde, licensee #210144, complaint #2009011211, Docket #12.18-110867A convened at 9:15 a.m.

Chairman Northern recessed the hearing for lunch at 11:40 a.m. and reconvened at 1:17 p.m.

In the matter of Robert O. Hyde, license #210144, complaint #2009011211, Docket # 12.18-110867A, the Commission voted to impose the following penalty:

- 1) Respondent shall be assessed a civil penalty in the amount of Two Thousand, Nine Hundred Fifty Dollars (\$2,950.00).
- 2) It was further ordered, adjudged and decreed that the Respondent shall take eight (8) hours of approved continuing education in contract writing and eight (8) hours of approved continuing education in ethics all of which must be completed within six months of the date of the order.
- 3) It was further ordered, adjudged and decreed that Respondent shall pay all court costs in the matter including all costs of the Administrative Law Judge in the amount of Eight Hundred and EightY dollars (\$880.00), court reporter fees of One Thousand Six Hundred and Sixty Dollars (\$1,660.00), and investigation costs in the amount of Five Hundred Sixty Six Dollars and Eighty Six Cents (\$566.86) for a total of Three Thousand One Hundred Six Dollars and Eighty Six Cents (\$3,106.86) and shall pay this total within thirty (30) days of the date this order.

The formal hearing adjourned at 6:32 p.m.

Chairman Northern recessed the meeting on July 6, 2011 at 6:33 p.m.

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The Tennessee Real Estate Commission reconvened on July 7, 2011 at 9:1613 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 Bear Stephenson, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Michelle Haynes, Commissioner David Flitcroft and Commissioner Valerie Joh. Others Present: Eve Maxwell, Executive Director, Steve McDonald, Education Director, Mark Green, Assistant General Counsel, Robyn Ryan, Assistant General Counsel and Kelly McDermott, Administrative Secretary.

Chairman Northern called the meeting to order for regular business. Commissioner Flitcroft spoke to the attendees about the ultimate outcome of the formal hearing the day prior. After explaining the Commission's conclusion, he advised the attendees to always answer any complaints within the 10 days required by statute and if they are ever required to appear for a formal hearing, they should strongly consider attending with a lawyer.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- o **Complaint Statistics Report** (Exhibit 3) – Ms. Maxwell presented licensing statistics to the Commission. As of June 30, 2011, TREC had a total of 340 open complaints. Of those 340 open complaints, 283 were Errors & Omissions insurance complaints. There were 30 new complaints in June 2011. There were 330 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 2010-2011 is 156. Total Civil Penalties paid in June 2011 were \$14,510.00.
- o **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of June 2011. As of June 30, 2011, there were 24,759 active licensees, 2,322 inactive licensees and 10,149 retired licensees. There were 4,152 active firms and 329 retired firms. There were 196 new applications approved in June 2011. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in June of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the number of licenses approved in 2009 and 2010, individual licensees lost and gained from 2000 – 2011 and the average number of licensees (individuals) issued per month for each year from 2000 - 2011.

The Chair recognized that the Commission had not approved the minutes or adopted the agenda at the beginning of the meeting as usual because of the formal hearing the prior day. As a matter of procedure, the agenda and minutes were addressed.

The Commission voted on adopting the agenda (**Exhibit 1**) for the July 2011 meeting. **Commissioner Stephenson made a motion to adopt the agenda as presented**

for the June 2011 meeting; seconded by Commissioner Joh; unanimous votes; motion carried.

The Commission voted on the approval of the minutes from the June 2011 meeting **(Exhibit 2). Commissioner Collins made a motion to approve the June 2011 meeting minutes; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

Ms. Maxwell and Ms. Ryan discussed with the Commission the ongoing issue of non-compliance with Errors & Omissions insurance. Ms. Maxwell presented a written report on all of the states that require mandatory E&O insurance. She explained that while E&O is mandatory in 13 states and all have some sanctions available, Tennessee appears to be one of the leaders in proactively enforcing the E&O requirement. She stated that every state that requires E&O insurance has a problem with the same non-compliance issues. The Commissioners all agreed to take the report home with them and also asked that it be emailed to the members of the E&O subcommittee for further study. There was a brief discussion about the bidding of the new E&O Request for Proposal (RFP) and she stated that she would suggest the Staff and Commission begin discussing the RFP at the upcoming meeting as it has to be complete and submitted much earlier than the actual expiration date of the current E&O policy. It was agreed by the Commission that the E&O subcommittee would be chaired by Commissioner Flitcroft because former Chair of the committee Allen Woods had recently resigned from the Commission. The subcommittee will meet prior to the next full discussion with the entire Commission. Chairman Northern and Ms. Maxwell touched on an earlier idea that licensees be required to enter the E&O insurance policy information including expiration date on all contracts they write acting as a consistent reminder of the date of expiration/renewal. It was agreed that could be helpful and can be discussed in the subcommittee discussions.

Commissioner Flitcroft asked for Staff to elaborate on the principal broker's responsibility to keep their affiliated licensees in compliance. Per the E&O policy, principal brokers are held accountable for supervising their affiliated licensees and will be penalized \$1,000 per uninsured affiliate who failed to purchase an E&O policy in a timely manner. Ms. Ryan, Assistant General Counsel and the attorney who will prosecute the E&O formal hearings, addressed the Commission regarding broker responsibility and the hearings. She stated that the problem partly is that the real estate industry in a business where an affiliated licensee is not necessarily actively selling real estate or comes to the office frequently, if at all, to be supervised. She went on to explain that more importantly the broker responsibility is for their affiliated licensees that are actively working in the industry and therefore if the State holds a formal hearing then it is the State's burden to prove the licensee was actively working in the business without E&O insurance. She went on to say that most of the licensees she has spoken to regarding the E&O citations told her that they have not been actively working in the industry. They have also reported that their mail does not always get forwarded until a certified letter arrives in the firm mail at which point the principal broker contacts them and they will voluntarily surrender their license, pay the penalty and get insurance or proceed to a formal hearing. Chairman Northern asked Ms. Ryan to indeed confirm that in the majority of the cases that the licensee was simply not active or visiting the firm office so the penalty

did not "run them out of business" or encourage them to give up their license for any other reason than their inactivity. Ms. Ryan agreed that seemed to be the case for the most part. She advised the Commission that she would actively be pursuing the principal brokers who have affiliates who are uninsured or they themselves are uninsured and who have been cited for non-compliance with the statute. She also advised that if the affiliated licensee bought their insurance after the deadline and were actively working in the industry, she will also pursue those brokers vigorously. She went on to say that is a difficult standard to reach legally without the Commission setting up some new rules because currently TREC does not have rules regarding what exactly a principal broker must do to sufficiently supervise their affiliated licensees. She stated that an employee/employer relationship is not ideal so without a standard for defining "actively working" then there will be issues with the hearings. She advised that the formal hearings against principal brokers who have blatantly disregarded the law and their responsibilities will be held first and therefore may encourage other principal brokers to comply in the future.

Ms. Maxwell was asked by the Commission at the last meeting to provide information outlining what is required for the Education & Recovery Fund to pay a claim and to whom and for what reason there has been a claim paid recently. Ms. Maxwell explained that she studied the requirements of making a claim against the E&R fund when an aggrieved individual wished to do so. She stated that for someone to draw on the E&R fund they must notify TREC first that they are involved in some kind of litigation that might involve a claim on the Education and Recovery Fund and once that person pursues the litigation and prevails on the merits against the licensee then they must exhaust all of their remedies against that licensee before making a claim. She further explained that when the person gives TREC notice they have exhausted the remedies, the court will hold a hearing and the case is handled by the Attorney General's office. She advised that at that time the AG's office would represent the State of Tennessee and research whether or not the individual should be paid money from the Education and Recovery Fund. She went on to say that there are certain circumstances where a person cannot be paid out of the fund such as both parties are licensees or it is a bonding company trying to recoup a loss. She explained that once a hearing is held and if it is determined that the person meets the requirements, then the court will order TREC to make the payment and that the maximum that will be paid is \$15,000.00 per claim or \$30,000.00 per person and that no more will be paid on the licensees behalf. She stated that a licensee whose license may have been suspended or revoked as a consequence of the action would be required to pay the amount back to the fund to get their license back if the Commission deemed their getting their license back acceptable otherwise. She stated that there have been three claims made in the last five years and one resulted in no payment because it was between licensees and the other two were paid and involved a failure by a licensee to remit monies of another. Commissioner Alexander asked what the balance of the account is at the current time. After some discussion regarding minimum balances and the interest on the account being used to fund the Education Seminars or other educational needs, Commissioner Stephenson asked Ms. Maxwell to gather the information requested regarding the balance of the account and report back at a future meeting.

The Commission discussed the 40 plus year longevity breakfast to honor licensees who have achieved 40 plus years of service as a licensee since the breakfast that was previously held in 2008. Ms. Maxwell presented to the Commission a report on the number of licensees with over 40 years of service broken down by county and license status. She explained some counties were included, such as Hamilton; that would most likely be more inclined to attend the East Tennessee longevity breakfast. The Commission discussed whom to invite (active and retired or only active licensees). It was determined that for the purposes of giving actual certificates, they would be awarded to those licensees who have reached 40 plus years of service since the last award breakfast three years ago but to also invite to the breakfast past honorees. Commissioner Haynes, who is working with sponsors of the event, suggested that TREC email the invitation to everyone on the list provided by Ms. Maxwell and also send an invitation via regular mail and call the new honorees who have reached the 40 plus year mark in the last three years. She went onto to say that if TREC received a response from those who have already been honored then they are welcome to attend the breakfast but a great emphasis will be placed on specifically honoring those who have reached their 40 years of service since the last breakfast was held. Commissioner Haynes asked Ms. Maxwell to get the exact number of new honorees. Ms. Maxwell advised that last time the breakfast was held 205 licensees qualified and 61 attended the breakfast. It was agreed that if someone qualified for the last breakfast and did not attend for whatever reason (travel, illness, etc...) then they would also be honored at this year's event. The Commissioners and Staff all agreed that it was a wonderful event and with the help of the sponsor will be again. It was discussed that the sponsor will need to send the mailed invitations and it was decided that all of the invitations would be sent by a third party (such as GNAR who helped in 2008) with a RSVP date. Once the RSVP date arrives, Commissioners can then phone the other new honorees and invite them personally to the breakfast.

Ms. Maxwell advised the Commission that she had interviewed for a new employee to fill the West Tennessee auditor position and have made a recommendation to the Human Resources department. She explained that the process is now in HR's hands and they will let her know if the applicant is approved.

Before concluding her report, Ms. Maxwell advised the Commission that the new Application for Designated Agent has been posted to the TREC web page. Commissioner Alexander asked Ms. Maxwell to again remind the legislature when they come back into session later in the year that TREC still wishes for the Vacation Lodging Services industry to be removed from the jurisdiction of TREC.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. Steve McDonald, Education Director, presented Courses for Commission Evaluation and Discussion for the month of July 2011. Mr. McDonald asked for discussion on the Course "FHA Basics" to be provided by the U.S. Department of Housing and Urban Development (HUD). HUD requested the Commission waive the instructor and provider fee and provide approval of the course. Mr. McDonald explained that the underlying issue is that the federal government does not write checks. Ms. Maxwell added that there is a voucher process that can be followed but it is lengthy and HUD wishes to teach the course in the near future. Commissioner Alexander suggested that the Commission might want to approve the course at the current time and ask that HUD pay later via voucher. However, he wanted it to be clear and on the record that he does not support waiving the fees. **Commissioner Flitcroft made a motion to approve Courses for Commission Evaluation (J1-J15) and the Course for Commission Discussion (J16), "FHA Basics" subject to a satisfactory resolution of the payment matter to be handled by Ms. Maxwell by the authority of the Commission; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Request for Instructor Approval

- Tina Marshall of Wells Fargo Home Mortgage (#1516) requested approval of Allan Michaud to instruct the "Renovation Financing course" (#6702).
- Nicci Lundquist of MAAR (#1094) requested approval of Gregg Dunn for the "REBAC/HAFA Complete Course" (#6503).

Commissioner Collins made a motion to approve to approve the instructor requests; seconded by Commissioner Joh; unanimous vote; motion carried.

Mr. McDonald also presented to the Commission a follow up report on the possible approval of synchronous internet courses and webinar courses. In February 2011, the Commission received a live presentation of a webinar course and had determined at the time that it could be a valuable learning tool but had deferred approval. Since that meeting, Mr. McDonald has gathered information regarding the International Distance Education Certification Center (IDECC) who provides a service to review course delivery methods similar to ARELLO. ARELLO serves the real estate industry and IDECC serves the other industries as well as academic institutions. He advised the Commission that synchronous internet or "webinar" courses are live and are considered by IDECC as being the closest to the live classroom experience and that IDECC requires interactivity in all certified courses and instructors must document how they will engage the students in the course. He further explained that IDECC requires instructors to have procedures in place to deal with students that do not participate and should be communicated in the course orientation to the students. At the February meeting, one major concern for the Commission was the verification of identity of participants of the class. Mr. McDonald included in his report comments from Joe McClary of ARELLO received via email in response to validating identity. Per Mr. McDonald's report, Mr. McClary stated, "Synchronous administrators verify identify the same way they do in other asynchronous

courses. By having the students attest to their identity. I realize this isn't bullet proof, but no methodology really is unless you require photo ids at all continuing education events, including those taught in the classroom. Our standards for synchronous do assure that someone logged in as the student is actively engaged in the course. Even in synchronous courses there must be quizzes and exercises every so many minutes to ensure the student is engaged. IF they are not, (which most software packages will tell you) the school must have procedures in place to deal with that type of event. "

After some discussion about the necessity for a subcommittee to discuss the issue, it was decided that a subcommittee is not necessary and that TREC can follow the rules for review and approval set forth by IDECC. **Commissioner Joh made a motion to use the requirements needed by IDECC for approval for a webcam/webinar course and instructor and approve the webinar method as a valid method of delivery for course; seconded by Commissioner Collins; unanimous vote; motion carried.** Commissioner Haynes expressed interest in possibly attending one of the courses as well as a student and then report back to the Commission. Mr. McDonald asked legal counsel if a rule change was required to approve courses not certified by ARELLO. Legal Counsel Mark Green advised that per the rule the Commission has the authority to approve courses certified by ARELLO or any other certifying body at the discretion of the Commission.

Chairman Northern made note of the information added to the meeting books regarding the name of the course and credit hours for various fields of study within real estate continuing education. He asked Mr. McDonald to review this new information with the Commission at a future meeting.

Mr. McDonald spoke briefly about the Education Seminars currently being held across the State of Tennessee and advised of the future locations as licensees can receive two free hours of CE credit if they attend a TREC seminar. He was happy to report that the seminars have been a success thus far and that Staff looks forward to the upcoming seminars.

LEGAL REPORT, MARK GREEN, ASSISTANT GENERAL COUNSEL

- 1) **2010036481 – Commissioner Alexander made a motion to dismiss; seconded by Commission Joh; unanimous vote; motion carried.**
- 2) **2010036741 &**
- 3) **2011001101 – Commissioner Woods had previously been asked to hold an informal conference with the Respondent. Commissioner Woods has resigned from the Commission; therefore another Commissioner will need to participate in the informal conference. Commissioner Stephenson volunteered to take part in the informal conference.**

- 4) **2010006251 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Joh; unanimous vote; motion carried.**
- 5) **2010010811 &**
- 6) **2011006651 – Mr. Green stated that these complaints were presented last month and ultimately an Attorney General’s opinion was requested by the Commission. He, however, wanted to clarify a point on the matter before the request was made to the Attorney General’s office. The issue involved is whether an investment company that owns real estate is exempt from needing a broker. Mr. Green stated that it is his legal opinion that if you have an investment company, buying and selling houses for profit then it is their vocation and therefore they are not exempt from the Tennessee Broker Act. There was discussion regarding the pitfalls and the implications of the rule and they discussed how business has been done in the past. Commissioner Haynes asked for clarification that if an LLC, partnership or corporation are out buying and selling property then they need a broker to do so. Mr. Green concurred that is was his legal opinion that they were not exempt from the Broker Act. After more discussion, the Commission decided to stay the course and ask for the AG’s opinion regarding the matter and then the legislature can vote it up or down. Commissioner Flitcroft made a motion per Commissioner Alexander’s recommendation to still ask for the Attorney General’s opinion and to then rely on the legislature to vote the issue up or down; seconded by Commissioner Stephenson; unanimous vote; motion carried.**
- 7) **2011007671 &**
- 8) **2011007672 – Commissioner Alexander made a motion to issue a Consent Order to both Respondents with a civil penalty (to each) of \$5,000.00 for unlicensed activity; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 9) **2011004371 – Commissioner Alexander moved to authorize a formal hearing; seconded by Commissioner Joh. Mr. Green advised the Commission that Ms. Ryan has been speaking with the Respondent’s attorney regarding an additional matter. Therefore, Commissioner Alexander reworded his motion to authorize a formal hearing that also included the other matter if possible, or if not possible, proceed with a formal hearing based on this complaint. As she seconded the motion originally, Commissioner Joh agreed to the amended motion. The vote was unanimous and the motion carried.**
- 10) **2011010721 &**
- 11) **2011010722 – Commissioner Joh made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 12) **2011010741 – Commissioner Stephenson made a motion to issue a Consent Order with a civil penalty of \$5,000.00 for unlicensed activity and \$1,000.00 for failure to respond; seconded by Commissioner Alexander; unanimous vote; motion carried.** Commissioner Haynes asked legal counsel if these cases, once heard, cannot be attached to a legislative request as a case history our files to remove VLS from TREC’s jurisdiction and to substantiate the claims as to why TREC wishes for the

VLS industry to be removed from TREC jurisdiction. Mr. Green advised he would speak with the department's legislative liaison regarding attaching the cases to any proposed legislation.

- 13) **2011010581 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to issue a Consent Order requiring not only payment of the initial order of \$250.00 but also include an additional \$250.00 penalty for failure to respond; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 14) **2011010381 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; unanimous vote; motion carried.**
- 15) **2011010361 &**
- 16) **2011010371 – Commissioner Collins made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$500.00 for violation of Rule 1260-2-.12(b) [Advertising] and a \$750.00 civil penalty for violating Rule 1260-2-.12(b) [failure to supervise affiliate]; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 17) **2011010401 &**
- 18) **2011010402 – Commissioner Collins made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$500.00 for failure to remit or account for within a reasonable time money belonging to others under T.C.A. §62-13-104(b)(7)(A)(v), \$500.00 for failure to provide a copy of a contract to all signatories under T.C.A. §62-13-104(b)(7)(A)(vii) for both respondents; Commissioner Alexander seconded the motion with a friendly amendment to increase the penalties from \$500.00 to \$1,000.00 and Commissioner Collins accepted his friendly amendment; unanimous vote; motion carried as amended.**

Mr. Green made a clarification that in the meeting books the printed legal report was dated June 2011 when it should have read July 2011. The correction will be made to the record.

Mr. Green reviewed the Consent Order Log with the Commission. **Commissioner Collins made a motion to accept the Consent Order Log as presented without further discussion; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**

The final order of business of the meeting was the discussion of the renewal of Executive Director Maxwell's contract because it comes up for renewal for another four years on August 1, 2011. Previously the Personnel subcommittee had agreed unanimously, as had the full Commission, that Ms. Maxwell's contract should be extended for another four year period and she should receive a salary increase of \$15,000.00 which would raise her salary from \$60,000.00 a year to \$75,000.00 a year. Commissioner Stephenson made the observation that the best thing that TREC had ever done since he joined the Commission seven years earlier was hire Ms. Maxwell as Executive Director and all agreed enthusiastically. Commissioner Alexander observed

that Ms. Maxwell had only received one raise in salary of \$5,000.00 and that raise was given after her first six months of employment by the Commission. He also confirmed that Ms. Maxwell does work for the Board of Commissioners by statute and not the State of Tennessee and that the Board of Commissioners of the Tennessee Real Estate Commission wants for Ms. Maxwell to not only have her contract renewed but also receive the raise in compensation of \$15,000.00 to raise her salary from \$60,000.00 a year to \$75,000.00 a year. **Commissioner Flitcroft concurred with Mr. Alexander's statement and made a motion that the same effect to renew her license and raise her salary as outlined by Commissioner Alexander; seconded by Commissioner Collins; unanimous vote; motion carried.** Chairman Northern asked Ms. McDermott to make sure that anything the Commission specifically states is "for the record" be included in the minutes. He stated that it was very important that the Administration know that the Commissioners support Ms. Maxwell, her work and the motion and the minutes should reflect so. Therefore, Ms. McDermott included all discussion regarding Ms. Maxwell's contract and compensation in the official minutes of the Tennessee Real Estate Commission.

Commissioner Collins made a motion to adjourn; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Chairman Northern adjourned the meeting on Thursday, July 7, 2011 at 11:55 a.m.