

AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING

Conference Room 235, TREC Headquarters Office
1101 Camino La Costa, Austin, Texas

February 23, 2009, at 3:00 p.m.

CALL TO ORDER - *Done @ 3:03 pm then Commission broke for 30 minute delay to wait for the Commission Chairman and Administrator to arrive from State Senate hearings.*

1. Call to order and pledges of allegiance *Done*
2. Election of Officers Vice chair – *Avis Wukash, Sec’y – Adrian Ariaga*
3. Recognition of John Walton for his service to the Texas Real Estate Commission and the State of Texas *Done*

MINUTES

4. Approval of minutes of December 15, 2008, Commission meeting *Done*
5. Discussion and possible action to excuse commissioner absence(s), if any *Avis Wukash excused*

STAFF AND COMMITTEE REPORTS

6. Reports by Interim Administrator and Division Directors which may include reports of monthly activities and statistical data for licensing, education, enforcement, technology usage, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by Commissioners to Division Directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by the Commission for additional information or reports from staff; and introduction of new employees *Done, no extraordinary items of note presented. I have the Dec '08 detailed staff reports if anyone needs a specific item then let me know. The report showed 3,845 total inspectors at the end of Dec but that includes active & inactive inspectors so it continues to be skewed somewhat.*

PUBLIC COMMENTS

7. General comments from visitors *Wow, here was a doozy! A speaker that introduced himself as “a consumer” proceeded to present a wild, off the wall tirade against home inspectors in general and one San Antonio inspector in particular. TREC Chairman Eckstrum and the other Commissioners listened politely as the speaker claimed this one inspector was negligent, fraudulent, unethical, just plain wrong and was also in collusion with an attorney to make unfounded claims for defective building practices. TREC Enforcement has already heard and processed his case last year and determined that TREC had no jurisdiction in this particular case. Commissioner Eckstrum explained the administrative process to the gentleman and agreed to consider putting this case on the May agenda for further action. Past Commission Chairman John Walton as well as TREC Legal Counsel Robert Meisel met informally with the speaker after the meeting and I also talked to him. As it turns out, he is a small home builder in San Antonio and the inspector had inspected the new home for the buyer. The report called out various relatively benign deficiencies that needed to be addressed. Those included the apparent lack of tempered, safety glass is appropriate locations, range hood venting to the attic, several things like that. The builder said the inspector was wrong on those items and that they were all properly installed. The bottom line of the builder’s argument was that an Inspector of a new home should not be allowed to use his TREC inspectors license nor*

the 7A-1 form for new home inspections since those inspections are not governed by TREC. He was adamant and livid about this. My personal opinion...TREC will review this scenario and either bring new home inspections under their wing or prohibit inspectors from using 7A-1 and/or their TREC license when inspecting new homes.

EXECUTIVE SESSION

8. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071 and if necessary, to receive legal advice from general counsel on posted agenda items and employment law, and to discuss personnel matters regarding administrator position under Texas Government Code, §§551.071 and 551.074 *Done*

ACTION ON MATTERS FROM EXECUTIVE SESSION

9. Discussion and possible action to authorize settlement of recovery fund claims or take other action on items considered in executive session *Done, two claims from the Real Estate fund for \$35,000 were paid in January and one for \$15,000 was approved for March payment. No Inspector Recovery Fund payments have been made recently. One Commissioner commented, "Great, no inspector claims, you guys must be continuing to do a really great job!". I thought to myself..."Well, if that's what you think then why did you approve the E&O requirement last year?*

RULES FOR POSSIBLE PROPOSAL

10. Discussion and possible action to propose amendments to 22 TAC §535.206 concerning The Texas Real Estate Inspector Committee *See Item #19*

11. Discussion and possible action to propose amendments to 22 TAC §535.212(a)(5)(J)(i) regarding Education and Experience Requirements for an Inspector License *Done – this involved a minor typographical revision to the 7A-1 form. No changes to the education or experience requirements were proposed.*

RULES FOR POSSIBLE ADOPTION

12. Discussion and possible action to adopt amendments to 22 TAC §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors *Done – no inspector impact*

PENDING BUSINESS

13. Discussion and possible action to approve staff recommendation for TREC licensing and information system vendor and update on Request for Offers for TREC's licensing and information system *Done*

14. Legislative update *Done, no legislative bills pending, at this time that would affect inspectors*

15. Discussion and possible action regarding the job description, job posting, selection criteria and selection process for the TREC administrator position *Done in Executive Session*

16. Discussion and possible action regarding any changes to the Legislative Appropriations Request pursuant to October 13, 2008, letter from Governor Rick Perry

NEW BUSINESS

17. Discussion and possible action regarding letter from Lieutenant Governor Dewhurst and Speaker Straus concerning a 2.5% budget reduction proposal for FY 2009

18. Report on DIR penetration test

19. Discussion and possible action to appoint members to the Texas Real Estate Inspector Committee *Done – IAC Chairman Larry Foster asked the commission to delay the appointment of two new IAC members but the commission in all their wisdom said Nope...instead "we re-elect Fred Willcox & Brian Murphy to new 6 year terms". 12 inspectors had placed their names in nomination for the 'open' committee positions. Only two people had applied for the public member position so Commissioner Leal proposed relaxing the rule against real estate field related public members so that a sales agent could be added to the IAC. That didn't seem to get a huge amount of support from the other commissioners and the adding of the public member was deferred until the May 26th meeting. I discussed this with the IAC Chairman after the meeting and he assured me that the rule would not be changed . Famous last words, I thought. To me, this is HUGE. There's only so much fox guarding the hen house that anyone can take. This needs to die a swift death at the proposal stage.*
20. Discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, §2256.007(d)

CONTESTED CASES

21. Consideration and possible action regarding Proposals for Decision from State Office of Administrative Hearings:

- (a) Proposal for Decision in the Matter of Delani Angulo, SOAH Docket No. 329-09-4287;
- (b) Proposal for Decision in the Matter of Brizeida Balderas, SOAH Docket No. 329-08-3661;
- (c) Proposal for Decision in the Matter of Olin Jeffries Nelson, SOAH Docket No. 329-09-0287;
- (d) Proposal for Decision in the Matter of Kevin Allan Smith, SOAH Docket No. 329-09-0678;
- (e) Proposal for Decision in the Matter of Unique R. Walker, SOAH Docket No. 329-08-4418;

These cases all involved applicants for real estate sales' licenses that had been declined by TREC, typically for past criminal offenses, then had been heard by an Administrative Law Judge. The applicant had one last final appeal to the Commissioner's here today. All of the above cases were resolved & all were denied a salesman's license except for (c) which was granted a 1 year Probationary License. OK, a little off topic here but it was interesting to note that Mr. Nelson was the only one to show up for today's meeting in person and he quietly spoke to the Commission. He explained that he had been convicted of an undisclosed crime and had served his time 12 years ago. He now worked for the federal government at Ft. Hood and had a security clearance and he wanted to expand his career into real estate and was just asking for a chance. He took responsibility for his actions and expressed regret and seemed genuinely remorseful of his actions years ago. He had brought his mom and brother with him for support. All three were truly appreciative of the Commission for their understanding and giving him the opportunity. Mom shed a few tears as did a couple of other audience members. I'm not usually too lenient for folks like that but he struck a nerve...I wish him well.

FUTURE MEETINGS

22. Discussion and possible action to schedule future meetings *Scheduled for May 26th, starting at 1:00 pm*
23. Adjourn